

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-108

JUNE TERM, 2008

In re K.B., S.B., J.C. & H.B., Juveniles	}	APPEALED FROM:
	}	
	}	Rutland Family Court
	}	
	}	DOCKET NOS. 200/201/202/203- 11-07 Rdjv

Trial Judge: Nancy Corsones

In the above-entitled cause, the Clerk will enter:

Mother appeals from the family court's order adjudicating K.B., S.B., J.C., and H.B., as children in need of care or supervision (CHINS). She argues that the court's decision is not supported by its findings and that several findings are not supported by the record. We affirm.

Mother is the biological parent of N.B., born in October 1991; K.B., born in September 1995; S.B., born in November 1999; and H.B., born in December 2000. She is also the legal guardian of her grandson, J.C., born in July 2005. All of the children, with the exception of J.C., have previously been in custody of the Department for Children and Families (DCF) due to mother's substance abuse problems. In November 2007, the children were again taken into emergency custody, and the family court subsequently determined that they were CHINS.*

The family court found as follows. In early November 2007, N.B. reported that her mother was using crack cocaine and that she and her siblings were being neglected. N.B. provided officials with a blue cosmetic case in which mother stored her drug paraphernalia. Inside the case were crack and marijuana clips, rolling papers, canisters commonly used to hold marijuana, and another canister with white residue in it. Mother kept this case in her bedroom closet, where she also stored snacks for the children. J.C., who was two years old, slept on the floor in mother's bedroom, and he was often locked alone in mother's bedroom before being transported to day care. After reporting her concerns, N.B. refused to return home, and she was placed in emergency DCF custody.

Several days later, K.B. made additional disclosures to a DCF investigator. She explained that mother sometimes left home for extended periods without informing the children about where she would be. On one occasion, mother took J.C. with her and did not return until

* The parties agreed that the only evidence to be considered by the court at the merits hearing was the evidence presented at the contested detention hearing.

the following day. Mother did not answer repeated phone calls from N.B., who was trying to determine her whereabouts. Mother later indicated that she and J.C. had slept in the car. Mother also disappeared during the weekend before N.B. was taken into custody.

K.B. also indicated that the children were sometimes left unattended on school mornings. Mother would leave N.B. in charge of all of the children, and when N.B. left for school, this responsibility would fall to K.B., and then to H.B. H.B. described changing J.C.'s diapers, and he stated that when he and S.B. left for school, they would place J.C. on a mattress on the floor of mother's bedroom and lock the door from the outside. According to H.B., mother told him that there was "an invisible security system" in the house that would detect only babies, and that she would know if J.C. left the bedroom. K.B. also recounted that her stepfather's son, S.R., a convicted sex offender who had "maxed out" his sentence without completing treatment, had been to the family home, and that she was going to "miss him." In 2006, mother had been specifically told by DCF not to permit this individual to enter the family home. While mother had cooperated in having S.R. served with a no-trespass order upon his release from jail, the court found that S.R. was at the family home on at least two occasions in violation of the order. The court also noted that a DCF social worker, who was familiar with mother, testified that she sensed that mother was not well, emotionally, and that instead of turning to DCF for assistance with the children as she had done in the past, mother had become uncommunicative. The court found that N.B. and K.B.'s observations, as well as the evidence regarding the crack cocaine use, corroborated the social worker's concerns for the safety and welfare of the children.

At the contested hearing, mother denied using drugs or having a drug problem, and she denied leaving the children unattended. She did admit to being away during the weekend of November 2, but she stated that she had gone shopping with a girlfriend in New Hampshire. The court rejected mother's testimony as not credible, partly because the court found it highly unlikely that N.B. would have called mother over fifty times had she known mother's whereabouts. The more believable explanation, the court stated, was that mother's whereabouts were unknown and that upon receipt of her monthly benefit check, mother obtained crack cocaine and left the children unsupervised. The court also found that mother had also taken J.C. with her overnight just prior to that weekend and slept with him in the car. Finally, the court found that shortly before the children were taken into custody, mother had acted inappropriately in an attempt to stop J.C. from fighting with H.B. Mother pulled J.C. up by the arms and flung him across the room, where he fell and hit his head. K.B. and one of her friends witnessed mother's actions. The court found that mother used excessive force and that her conduct frightened the other children. Based on these and other findings, the court found by a preponderance of the evidence that the children were without proper parental care at the time of the CHINS petition. The court thus adjudicated the children CHINS and continued them in DCF custody. This appeal followed.

On appeal, mother challenges several of the court's findings, and she argues that other findings, standing alone, do not support a CHINS determination. According to mother, the evidence showed that the children's stepfather was present when she was not at home, and thus, the children were not unsupervised. Assuming that the children were left alone, she continues, the court should have considered each child's individual ability to prepare for school without adult supervision. Mother next argues that the court erred in finding that the children were CHINS simply because she allowed an untreated sex offender into her home. Mother maintains

that there was no evidence that S.R. had any unsupervised contact with the children or that she had exposed the children to a risk of harm. Mother also takes issue with the court's finding that she threw J.C. across the room, asserting that a single isolated act of physical violence does not support a CHINS finding, and that even if it did, the court did not have sufficient evidentiary support for this finding. Finally, mother asserts that the court erred in finding that on the weekend before N.B. was taken into custody, she used crack cocaine and left the children without supervision. She maintains that the court engaged in speculation in making this finding, and she asserts that one cannot assume that her erratic behavior was evidence of cocaine use. She also suggests that using drugs outside of the home is less egregious than using them inside the home.

We find no basis to disturb the court's decision. A child is CHINS if he or she is "without proper parental care or subsistence, education, medical, or other care necessary for [the child's] well-being." 33 V.S.A. § 5502(a)(12)(B). As we have explained, the family court must determine, as a matter of fact, if a child is "without proper 'parental' care," such that his or her "well-being is threatened." In re G.C., 170 Vt. 329, 334 (2000). We review the family court's findings for clear error, and thus, we will not disturb its findings unless they are unsupported by any credible evidence. In re M.B., 162 Vt. 229, 239 (1994) (citation omitted). Moreover, it is for the trial court, not this Court, to "determine the credibility of the witnesses and weigh the persuasiveness of the evidence." Cabot v. Cabot, 166 Vt. 485, 497 (1997). We conclude that the family court's decision is well-supported by the evidence here.

As recounted above, the court found that mother used crack cocaine at least two times in early November, and this finding is supported by the record. N.B. provided extensive testimony about mother's drug use. She stated that mother told her she was using crack cocaine, and that mother used crack cocaine on November 1 through November 3, after receiving a benefits check in the mail. N.B. produced a blue cosmetic case where mother stored her drug paraphernalia. She testified that, although mother left the case behind when she disappeared for the weekend, there were two crack pipes missing from the case. Mother was unreachable for several days, and her whereabouts were unknown. She did not respond to numerous phone calls from N.B. Mother had also disappeared with J.C. several nights before, and she admitted to having slept in the car with J.C. Certainly, there was ample evidence for the court to conclude that mother used drugs, and it was reasonable to infer that her erratic behavior was due to drug use. Contrary to mother's suggestion, the family court did not need to consider whether mother's decision to use drugs outside the home, and to disappear for days at a time, was somehow less harmful to the children than if she had used drugs inside the home. We note as well that mother stored her drug paraphernalia in an area at home that was attractive and accessible to the children.

The evidence also shows that mother knowingly allowed an untreated sex offender into her home on numerous occasions, despite the existence of a no-trespass order. We wholly reject mother's assertion that she was not exposing the children to risk by this behavior. The presence of S.R. in the home, in itself, posed a danger to the children's well-being. We note, moreover, that on at least one occasion, S.R. stopped by the home when mother was not present, and asked K.B. to engage in an outside activity with him.

There is also credible evidence that mother left the children, including a two-year old, to fend for themselves on school mornings. H.B., who was six years old, described in detail how to

change J.C.'s diaper, and he recounted locking the child in mother's bedroom in the morning. H.B. stated that, on at least one occasion, J.C. was locked in the bedroom all day because no one came to pick him up for day care. H.B. also described in detail the type of medicine that S.B. needed to take, and stated that when K.B. was home, she would help S.B. take his medicine. If K.B. was not home, then H.B. would help S.B.

We reject mother's assertion that the court should have evaluated if K.B., age twelve, could satisfactorily tend to her own needs. Even if K.B. could get herself ready in the morning without assistance, it does not follow that the court therefore erred in finding that she was a CHINS. In any event, the evidence showed that K.B. was not only responsible for herself, but through mother's absence, she was made responsible for meeting the needs of the other younger children, including administering medicine to S.B. While there was some evidence that the children's stepfather was at home when mother was absent, there was also evidence that he worked two jobs, one between 2:00 a.m. and 11:00 a.m., and another that began in the afternoon. Additionally, the children's descriptions of their morning routine is plainly inconsistent with the notion that their stepfather was playing a significant or meaningful role in supervising them.

Finally, we reject mother's assertion that the court erred in its consideration of her violent act toward J.C. The court did not base its decision on this act of violence alone, as mother suggests, but rather, it properly considered this act together with all of the other evidence of the children's circumstances. Moreover, there is no meaningful difference between the children's description of mother's behavior. When one child stated that mother "grabbed and dropped the child across the room," the court was well within its discretion in finding that mother "flung," "threw," and "pretty much threw" J.C. across the room. In light of all of the evidence, we find no basis to disturb the court's determination that the children's well-being was threatened by a lack of proper parental care, and that they were therefore CHINS.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice