

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

SUPREME COURT DOCKET NO. 2020-149

DECEMBER TERM, 2020

In re S.F., Juvenile
(C.F., Father*)

} APPEALED FROM:
}
} Superior Court, Washington Unit,
} Family Division
}
} DOCKET NO. 132-7-19 Wnjv

Trial Judge: Kirstin K. Schoonover

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

Father appeals a family division order adjudicating juvenile S.F. as a child in need of care or supervision (CHINS). On appeal, father argues that the court's findings were not supported by a preponderance of the evidence. We affirm.

S.F., born in December 2018, resided in an apartment with her parents. The Department for Children and Families (DCF) became involved with the family after an incident in May 2019 when father was caring for S.F. and mother was at work in Randolph. Father then brought S.F. to mother's work. Parents' versions of why father went to mother's work differed. In any event, the parties agree that father took mother's car and drove to Newport, New Hampshire, with S.F. in the car, where he was involved in a high-speed car chase with another individual, who had a gun. The court made no findings regarding the source of the conflict between father and the individual who chased him. Father admitted to knowing the individual and having a dispute with him about money in the past. Father did not seek police help during the incident. He drove at a high rate of speed until he flipped the car. S.F. was in the car and suffered broken fingers because of the accident. Father sustained a broken back and ribs and was hospitalized. In July 2019, the State filed a CHINS petition. The court granted custody of S.F. to DCF.

Following a contested hearing, the court made findings on the record and in a written order. The court expressed concern about why father got himself into a situation where he had S.F. in the car and was being chased by an individual with a gun and did not seek help. The court found that this behavior put S.F. at risk and displayed poor judgment. Father tested positive for fentanyl after the accident. The court did not credit father's assertion that the drug was administered at the hospital. Father refused to sign a release to allow DCF to confirm his explanation.

After the accident, father was incarcerated, and mother and S.F. moved in with mother's grandmother. Mother testified that she stopped using suboxone after S.F. was born but admitted to DCF that she had an addiction. Grandmother found white powder on the shelf next to S.F.'s rattle along with a credit card, a cellophane wrapper, and an empty prescription bottle in parents' home and observed that the apartment was filthy. In July, mother was found sleeping or unconscious in her car with S.F. in the back seat. In June 2019, the grandmother found a straw in

mother's laundry. Mother also has mental-health issues. She attempted suicide as a teenager. While she was residing with maternal grandmother, she called her sister late one night and said she was having a panic attack. When the sister arrived, she found mother sweating heavily, undressed, and pacing. Father called mother offensive names and hit things in S.F.'s presence, including a time when he punched a hole in the wall. Based on these findings, the court found that there were concerns about parents' substance abuse, mother's mental health, and domestic violence and concluded that S.F. was CHINS because she was at risk of harm and without proper parental care necessary for her well-being. Following a disposition order in April 2020, father filed this appeal.*

On appeal, father argues that the court's findings supporting the CHINS determination were made based on speculation and not supported by a preponderance of the evidence.

A child is CHINS if, among other options, the child "is without proper parental care or subsistence, education, medical, or other care necessary for his or her well-being." 33 V.S.A. § 5102(3)(B). The State is required to prove the allegations in the CHINS petition by a preponderance of the evidence. In re M.O., 2015 VT 120, ¶ 6, 200 Vt. 384. "A child need not suffer actual harm before he or she can be adjudicated CHINS." Id. (quotation omitted). On appeal, the family division's findings are affirmed "unless clearly erroneous," and this Court reads "the evidence in support of the findings if reasonably possible." Id. ¶ 7.

Father contends that the court's findings were not supported by credible evidence. He contends that the court focused primarily on the car accident, but that this accident does not indicate that S.F. was CHINS. Father asserts that it was not relevant why father took the parties' car and drove to New Hampshire, it was reasonable for him to drive in the manner he did given that there was a another driver pointing a gun at him, and that he behaved as safely as possible in a moment of stress.

The court's findings related to the car accident are supported by the evidence. Father himself testified that while his daughter was in the car, he engaged in a verbal altercation with an individual, who father described as a "bad guy" and admitted to having a fight with over money in the past. Father swore at the individual. Father tested positive for fentanyl after the accident. All these facts support the court's finding that father put S.F. in danger and displayed poor judgment.

The evidence also supports the court's concerns about parents' substance abuse. Father challenges the court's finding that the fentanyl found in his system was not administered by the hospital. The court acted within its discretion as factfinder in not crediting father's explanation regarding the fentanyl. See In re A.F., 160 Vt. 175, 178 (1993) (explaining that matters of credibility and weight afforded to evidence are within sound discretion of family court). Father also argues that there was insufficient evidence for the court to find that the white powder found in parents' apartment was drugs and not something benign, especially since the powder was not tested. The court did not make a specific finding regarding the identity of the white residue found in parents' apartment. The court simply found, based on this and other evidence, that there was a concern about mother's drug use, and this placed S.F. at risk of harm. This evidence included the following: mother had an addiction to suboxone; a white powder, cellophane, a credit card, and an empty prescription bottle were found in parents' home; there was a straw in mother's laundry; mother tested positive for suboxone; and mother was found sleeping in her vehicle with S.F. in the car. A DCF worker testified that the cellophane wrapper was a common way to package drugs

* Mother has not appealed.

and that a credit card is often used to line it up and snort the drugs. She expressed concern that it was found so close to S.F.'s rattle because there was a risk of the child ingesting the substance. The evidence supports the court's finding that mother and father had abused substances and that this put S.F. at risk of harm.

Father similarly challenges the court's finding that there were domestic-violence concerns. He asserts that the court should have accepted his explanation that the hole in the wall occurred after he kicked off his boot. It is up to the trial court to determine the credibility of witnesses and the weight to give to evidence. In re M.L., 2010 VT 5, ¶ 29, 187 Vt. 291. The court acted within its discretion in finding that father's version of events was not credible, and that father punched a hole in the wall.

Affirmed.

BY THE COURT:

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice