



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

DECEMBER TERM, 2021

In re A.H., Juvenile	}	APPEALED FROM:
(B.F., Mother*)	}	
	}	Superior Court, Rutland Unit,
	}	Family Division
	}	CASE NO. 21-JV-00292
	}	Trial Judge: David A. Barra

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

Mother appeals from the trial court's determination that A.H. is a child in need of care or supervision (CHINS). She argues that the court's decision is not supported by the evidence. We affirm.

A.H. was born in January 2017. In February 2021, the Department for Children and Families (DCF) received a report that mother was "actively smoking and selling crack cocaine while caring for her [four]-year-old child." In March 2021, the State filed a petition alleging that A.H. was CHINS and seeking a conditional custody order (CCO). In the affidavit accompanying the CHINS petition, the State alleged that mother had long struggled with drug addiction, leading to the termination of her rights in a different child. DCF had opened a case regarding A.H. after A.H. tested positive for cocaine at birth; A.H. was in DCF custody for a period of time until that case was closed in June 2020. DCF stated in its affidavit that, after it received the February 2021 report above, it had difficulty contacting mother, and father expressed concern about the child's welfare in mother's care. Based on information provided by father, DCF accompanied father to a public location to speak with mother. Mother initially left the scene with A.H. but, with the assistance of law enforcement, she returned to speak with the DCF worker. DCF alleged that mother was unwilling to engage in safety planning around drug use. Although father was caring for A.H. at the time the petition was filed, DCF feared that mother would seek to have the child returned to her care. DCF sought temporary custody of A.H. to ensure her safety until it could assess mother's sobriety and safety.

In May 2021, the parties' stipulated that A.H. would be placed in father's custody subject to a CCO. A CHINS merits hearing was held in July 2021; mother did not appear. Father testified that mother was using drugs and that she was a "junkie." He witnessed her smoking crack and nodding off; he had also seen her in possession of illegal drugs. Father stated that mother would also leave A.H. with A.H.'s maternal aunt for long periods of time and that mother's sister reached out to father to care for A.H. because she could not locate mother. He

also saw mother and A.H. going into a hotel where mother was staying under a different name. Father testified to mother's behavior toward him when he had A.H. in his custody on the weekends. He explained that mother did not like it and she called the police several times; she also yelled at him saying he "stole" A.H. Father testified that A.H. "never had . . . the right clothes on" when he picked her up for weekend visits. He stated that she had "been missing doctor appointments," which he confirmed both with A.H. and the child's doctor. She was not potty trained at four years old, and she was not attending daycare. Once he obtained custody, he enrolled A.H. in daycare and ensured that she attended her well-child visit. He also contacted a dentist for A.H.

A DCF investigator also testified. She explained that DCF accepted a report that mother was using and selling crack cocaine while caring for A.H. at hotels. The investigator tried many times to contact mother without success. After several weeks, mother stated by text that she would call the investigator but she never did. The investigator finally saw mother face-to-face at a Dunkin Donuts in late February 2021 where father was scheduled to meet mother to pick up A.H. The investigator asked for assistance from law enforcement. As the investigator and a law enforcement officer approached mother's car, mother "peeled out" of the parking lot. She was pursued by law enforcement officers who were eventually able to get mother to pull over. A.H. was with mother in the car at the time. Mother returned to the parking lot and spoke with the investigator.

During their conversation, mother admitted to "staying at a hotel sometimes" and "living in hotels off and on." Mother told the investigator that she had stopped drug treatment eight months earlier because of her work schedule. She denied using drugs but failed to provide a urinalysis (UA) as requested by DCF. The investigator asked for a UA three or four times without success. It was very hard for DCF to contact mother after this meeting. Mother failed to follow through with any of DCF's recommendations. The investigator explained that a CHINS petition was filed because mother was not engaging in assessing safety and sobriety and she was also calling law enforcement frequently and showing up at father's home and demanding that A.H. be returned to her. DCF was concerned that A.H. would be returned to mother and it would not be able to locate mother or A.H.

At the close of the hearing, the trial court determined by a preponderance of the evidence that A.H. was CHINS. The court found that mother had discontinued her substance-abuse treatment against medical recommendations, which mother admitted. It noted that father's testimony about mother's prior drug use provided useful context for the present case. Mother struggled with unstable housing and refused to engage in safety planning with DCF. Mother admitted to unstable housing situations where she would leave her parents' home (where she and A.H. were living) and take A.H. to various hotels, at least once staying under an assumed name. Mother refused to cooperate with safety planning with father or with DCF. She attempted to elude DCF when they sought to speak with her at a public location, which the court found fit with mother's pattern of failing to cooperate with DCF in assuring that A.H. was safe. Mother was difficult with communicate with as she did not provide addresses or phone numbers and did not respond to requests from father or DCF. Although mother agreed to take a urinalysis test, she did not do so. The court found that mother did not cooperate with the other aspects of the safety plan and interfered with A.H.'s safety by escalating certain situations and calling the police on several occasions. The court also noted that mother failed to schedule a well-child visit for A.H. and that she dressed A.H. in inappropriate clothing at times. It found father's observations of mother's behavior while under the influence of drugs and his observation of A.H. wearing inappropriate clothing supportive of its conclusion that mother could not care for A.H.

appropriately. Based on the findings above, the court concluded by a preponderance of the evidence that A.H. was “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 court later issued a disposition order continuing A.H. in father’s custody pursuant to a CCO. This appeal followed.

Mother argues on appeal that the court’s findings are not supported by substantial evidence. Specifically, she asserts that the court erred in finding her housing “unstable” and finding that she stayed at “various” hotels because there was no evidence regarding the frequency and duration of her hotel stays. She further asserts that there is no evidence that these hotel stays placed A.H. at risk of harm. Mother also challenges the finding that she failed to schedule a well-child visit for A.H., arguing that there was no evidence when A.H. had her last well-child visit and no evidence of medical neglect. Additionally, she asserts that more evidence was required to support a finding that A.H.’s clothing was sometimes inappropriate. Mother also argues that there was no evidence to show that she escalated situations or interfered when father had A.H. lawfully. Finally, mother states that there is no evidence that she has illegally used or possessed drugs since 2018.

At a CHINS merits hearing, the State must prove by a preponderance of the evidence that, at the time a CHINS petition was filed, a child is in need of care or supervision. In re L.M., 2014 VT 17, ¶¶ 19-20, 195 Vt. 637. On review of a CHINS determination, “we will uphold the court’s findings of fact unless they are clearly erroneous” and “we will uphold the court’s legal conclusions where supported by its findings.” In re M.L., 2010 VT 5, ¶ 8, 187 Vt. 291. We leave it to the trial court “to weigh the evidence and assess the credibility of witnesses.” Id. ¶ 29.

The court’s findings are supported by the evidence here, and the findings support the court’s conclusion that A.H. was CHINS. As reflected above, mother admitted to living in hotels “off and on” and father testified he saw mother and A.H. going into a hotel where mother was staying under a different name. Father also stated that mother would leave A.H. with A.H.’s maternal aunt for long periods of time and that aunt reached out to father to care for A.H. because she could not locate mother. The DCF investigator testified that she learned from maternal grandfather at a meeting in March 2021 that he had not seen mother very much recently and that mother and A.H. were not staying at grandparents’ home. Based on the evidence, the court did not err in characterizing mother’s housing situation as unstable and it could properly rely on this finding in concluding that A.H. was “without proper parental care or subsistence, education, medical, or other care necessary for . . . her well-being.” 33 V.S.A. § 5102(3)(B). The court’s finding of instability does not depend on whether mother stayed in one hotel or different hotels, although we note mother’s admission to living in “hotels.”

The court’s finding that mother failed to schedule an annual checkup for A.H. is also supported by the record. Father testified that he was informed by the doctor that A.H. “never made it” for her four-year-old check-up and that he made the appointment for A.H. once she was in his care. He also contacted a dentist for A.H. Father’s testimony supports the court’s finding that A.H. did not have “a scheduled well-visit until [father] set that up and followed up to make sure it happened.” Given the evidence and the fact that A.H. had turned four in January 2021, it was not unreasonable to characterize A.H. as “behind” on her medical visits at the time of the March 2021 CHINS petition. Father’s testimony also supports the finding that father “observed [A.H.] in inappropriate clothing on several occasions.” Father stated that A.H. “never had . . . the right clothes on” and described them as ill-fitting and sometime inappropriate for the weather. The court could consider this information in reaching its conclusion.

Both father and the DCF investigator testified that mother escalated situations or interfered when father had custody, which supports the court's finding on this point. The court did not find that mother used drugs after 2018. It found that mother, by her own admission, had stopped drug treatment due to her work schedule, and she then refused to engage in any safety planning so that DCF could ensure that A.H. had a safe and sober caretaker. It noted father's observations of mother's behavior when she was using drugs, including nodding off, which called into question her ability to care for A.H. if she was under the influence of drugs. The court did not err in considering mother's refusal to engage in safety planning and allow DCF to assess her sobriety in reaching its conclusion that A.H. was CHINS. The court's findings are supported by the evidence, and they support the court's conclusion that A.H. was in need of care or supervision at the time the petition was filed.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

William D. Cohen, Associate Justice