



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

SEPTEMBER TERM, 2021

In re D.F., Juvenile
(K.F., Father*)

} APPEALED FROM:
}
} Superior Court, Windsor Unit,
} Family Division
} CASE NO. 20-JV-00412

Trial Judge: Lisa A. Warren

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

Father appeals from the trial court's determination that D.F. is a child in need of care or supervision (CHINS). He argues that the court's findings do not support its conclusion. We affirm.

D.F. was born in February 2018. The Department for Children and Families (DCF) had an open case for D.F. between 2018-2019 due to parents' substance-abuse issues and police involvement. Mother was D.F.'s custodial parent and D.F. lived with mother pursuant to a conditional custody order during eight months of this time. Father missed hearings and was not involved in case planning in the first DCF action; he stated that this was due to his heroin use. In mid-November 2020, mother died of a drug overdose while D.F. was in her care. The court found that father became D.F.'s custodial parent upon mother's death. Once DCF located father, he came to pick D.F. up from the police station. D.F. stayed with father at father's parents' home for several days. DCF conducted a safety assessment and made repeated attempts to engage father in a safety plan. When that failed, DCF filed the CHINS petition at issue here.

Following a hearing, the court found D.F. was CHINS. It determined, based on the totality of the circumstances, that D.F. was at risk of harm in father's care. It made the following findings. After mother's death, a DCF supervisor attempted to interview father and explain DCF's involvement in the matter. Father did not want to speak to the supervisor; he swore at her and told her the interview was pointless. A woman was screaming in the background during their conversation. The supervisor conducted a suitability review that included a records review, criminal background check, assessment of substance-abuse issues, and residence review; she also reviewed the history of DCF's prior involvement with D.F. While the supervisor had not seen father use drugs, she did observe injection marks on the left side of his neck. Father declined to provide any urine samples.

A DCF social worker was assigned to conduct a safety assessment; he also spoke with father and with D.F.'s paternal grandmother. DCF considered safety planning necessary due to the family's history with DCF, which included substance abuse, father's previous failure to participate in case planning, and his father's inability to verify if father had made positive changes. Father stated that he was using heroin during the last DCF case but claimed to now be clean of all substances. Father did not have a provider to verify this or to show that he was in treatment. He again declined to provide a urine sample. Father agreed to undergo a substance-abuse screening but then failed to attend or respond to the screener's multiple attempts to reach him. Father also told the social worker that no one in his current household had a DCF or criminal history. In fact, both father and paternal grandfather have criminal histories.

D.F.'s maternal aunt testified to father's behavior with D.F. She has known father since elementary school and saw D.F. frequently before mother's death. She also had temporary custody of D.F. at one point. The aunt has been in recovery for three years and has known many addicts. The aunt observed father yell at D.F. when he was one year old, telling him to shut up when he needed a diaper change. In December 2019, the aunt stopped by father's house to pick up D.F.'s car seat. Father handed D.F. off to her, saying he could not handle the child. Father appeared "dope sick" and two women showed up at father's home during their interaction.

After mother died and DCF located father, the child was placed in father's custody. Father stayed at his parents' home with D.F.; D.F. also visited with mother's relatives during this time. When D.F.'s maternal aunt went to pick D.F. up from father, the windows of his house were open although it was very cold outside. The aunt observed women run to the house windows to close them when she arrived. The women then left the house and the aunt saw another woman she knew to be a drug addict arrive and enter the home. Not long thereafter, the aunt again went to drop D.F. off with father but father was not home. Father arrived fifteen minutes later, on foot with two women whom the aunt did not know. When the aunt arrived to pick D.F. up the next day, D.F. was crying and wearing dirty clothes and a dirty diaper. Father retrieved D.F.'s belongings from a tent set up in the living room.

The court explained that DCF took steps to work with father, but father refused to cooperate with DCF's attempts to safety plan. While father had the right to do so, DCF also had the right to request the filing of a CHINS petition to ensure D.F.'s immediate safety and to mitigate any future risk of harm in his home environment. The court explained that it found D.F. at risk of harm based on the totality of the circumstances, including: mother's fatal drug overdose while D.F. was in her care, father's admission to a history of drug use, his failure to participate fully in the prior CHINS matter, his recent association with a known drug addict, his refusal to safety plan with DCF to avoid DCF filing for custody, his failure to be screened for current drug use, his lack of candor about his father's criminal history, and his limited role as the custodial parent (for three days after mother's overdose). The court later issued a disposition order continuing D.F. in DCF custody. This appeal followed.

Father argues on appeal that the court's decision is unsupported by the evidence and its findings. He contends that: mother's overdose is irrelevant; his lack of forthrightness about his father's criminal history is irrelevant; his limited role as custodial parent is not probative; and the evidence did not show that he had a current substance-abuse issue or that his parenting was adversely affected when he did have a substance-abuse issue.

A child may be adjudicated as CHINS if, at the time the petition is filed, he or she 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). “A child need not suffer actual harm before he or she can be adjudicated CHINS.” In re B.C., 2018 VT 126, ¶ 12, 209 Vt. 48 (quotation omitted). In conducting its analysis, the court may consider “the circumstances leading up to the filing of the CHINS petition” as “[t]his allows the court to have a full picture of the child’s well-being and to base its decision on all relevant information.” In re L.M., 2014 VT 17, ¶ 20, 195 Vt. 637. On review, we will “uphold the court’s factual findings unless clearly erroneous and the court’s legal conclusions when supported by those findings.” In re D.D., 2013 VT 79, ¶ 34, 194 Vt. 508. “We leave it to the sound discretion of the family court to determine the credibility of the witnesses and to weigh the evidence.” In re A.F., 160 Vt. 175, 178 (1993).

The family court’s decision is supported by the evidence here, although not abundantly so. Mother was D.F.’s custodial parent and the court did not err in considering her overdose death as a relevant circumstance leading up to the filing of the CHINS petition. Father’s minimal involvement in the child’s life was also a relevant consideration, including the fact that, by his own admission, father did not participate in case planning during the prior DCF proceedings due to his heroin use. It is evident that father’s past drug use affected his parenting given his noninvolvement in the first child-protection proceeding and it is reasonable to infer that continued heroin use would similarly have a negative effect on his ability to parent D.F. See In re B.C., 169 Vt. 1, 14 (1999) (“The adverse impacts upon a child resulting from the drug addiction of the child’s care-giver hardly needs explanation.”); see also In re L.M., 2014 VT 17, ¶ 30 (recognizing that in considering if child is CHINS, trial court can “properly draw upon its own common sense and experience” (quotation omitted)). Father has been observed to be “dope-sick,” and during parent-child contact, a DCF supervisor has observed injection marks on his neck. He refused to engage in a substance-abuse screening or otherwise support his assertion that, despite his prior use of heroin that rendered him unable to participate in earlier child-protection proceedings, he was now clean of all substances. Father’s demonstrated lack of candor about his father’s criminal history—a person with whom father and D.F. were staying—is relevant to an assessment of father’s credibility on other points, including his claim to be drug-free. As we have repeatedly emphasized, the “focus of a CHINS proceeding is the welfare of a child.” Id. ¶ 12. Given the totality of the circumstances, the court did not err in concluding that DCF established by a preponderance of the evidence that D.F. was at risk of harm in father’s care.

Affirmed.

BY THE COURT:

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

William D. Cohen, Associate Justice