

SUPREME COURT OF VERMONT

In re M.O., Juvenile

2015 VT 120, 200 Vt. 384 (2015) · No. 2015-170 · Decided September 18, 2015

SUMMARY

The Vermont Supreme Court affirmed a trial court’s determination that newborn M.O. was a child in need of care or supervision (CHINS). The court held that the evidence of the mother’s observed inability to perform basic parenting tasks without around-the-clock assistance supported a finding of risk of harm, even absent actual harm. The court also concluded that the trial court’s findings were sufficient for appellate review.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                               |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Vermont                                                                                                                                                                                                                                                                      |
| WRITING FOR THE COURT | Robinson, J.; Dooley, J.; Skoglund, J.; Eaton, J.; Burgess, J. (Ret.), Specially Assigned                                                                                                                                                                                                     |
| JURISDICTION          | Vermont                                                                                                                                                                                                                                                                                       |
| DECIDED               | September 18, 2015                                                                                                                                                                                                                                                                            |
| DOCKET                | 2015-170                                                                                                                                                                                                                                                                                      |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | Father appealed the Superior Court, Bennington Unit, Family Division’s adjudication that newborn M.O. was a child in need of care or supervision (CHINS).                                                                                                                                     |
| STANDARD OF REVIEW    | The trial court’s findings stand unless clearly erroneous; its legal conclusions stand when supported by the findings. The evidence is read in support of the findings when reasonably possible, and findings are construed to support the judgment when they may reasonably be so construed. |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                                |
| PARTIES               | Father v. State of Vermont                                                                                                                                                                                                                                                                    |

TOPICS

- parental rights
- family law procedure
- child custody
- standard of review
- appellate procedure

## PRACTICE AREAS

Family law

Juvenile law

Child protection

## QUESTIONS PRESENTED

1. Whether the trial court's findings were sufficiently specific to support its determination that M.O. was a child in need of care or supervision.
2. Whether the evidence established an actual risk of harm rather than merely a potential or speculative risk.
3. Whether the trial court improperly relied on presumptions concerning a parent's cognitive or learning disabilities.
4. Whether the discrepancy between the trial court's oral preponderance finding and written form order's clear-and-convincing-evidence designation affected the CHINS determination.

## HOLDINGS

1. The trial court's findings were sufficient to show what it decided and why, and the findings and legal conclusion were supported by the record.
2. A child need not suffer actual harm before being adjudicated CHINS; demonstrated parenting limitations establishing an actual risk of harm are sufficient.
3. The trial court did not improperly presume that a parent with cognitive or learning disabilities could not parent; it based the determination on observed parenting ability.
4. The discrepancy between the trial court's oral application of the preponderance standard and the written form order's clear-and-convincing designation did not affect the appeal because a CHINS determination may be based on a preponderance of the evidence.

## KEY QUOTATIONS

*“Mother’s inability to feed a baby, or perform other necessary tasks, without around-the-clock assistance from others is sufficient to show that M.O. was at a risk of harm.” (389)*

*“The risk to M.O. that drove the court’s decision was neither speculative nor hypothetical; it was based on evidence of mother’s actual parenting after the child’s birth.” (389)*

*“The trial court did not base its determination on any presumptions arising from mother’s self-described learning disability, or her observed cognitive limitations. It based its determination on her observed parenting ability.” (390)*

## FACTUAL BACKGROUND

M.O. was born on December 14, 2014, and DCF filed a CHINS petition three days later after hospital staff reported concerns about the parents' ability to care for him. Hospital observations showed that mother repeatedly needed prompting and assistance with basic infant-care tasks, could not safely feed M.O. even after repeated coaching, and was unable to care for him independently. The trial court principally relied on the hospital social

worker's observations and concluded that mother required clearly defined, around-the-clock assistance to parent M.O. safely.

## PROCEDURAL HISTORY

The Department for Children and Families filed a CHINS petition and sought emergency custody three days after M.O.'s birth. The trial court issued an emergency care order transferring temporary custody to DCF and, after an April 2015 merits hearing, found that M.O. had been CHINS from December 14 through December 17, 2014. Father appealed, arguing that the findings were insufficient and established only a potential rather than actual risk of harm.

## DISPOSITION

affirmed

## CASES CITED

- In re B.R., 2014 VT 37, ¶ 13, 196 Vt. 304, 97 A.3d 867
- In re L.M., 2014 VT 17, ¶ 29, 195 Vt. 637, 93 A.3d 553
- Seaway Shopping Ctr. Corp. v. Grand Union Stores, Inc., 132 Vt. 111, 117, 315 A.2d 483, 487 (1974)
- First Vt. Bank & Trust Co. v. Vill. of Poultney, 134 Vt. 28, 35-36, 349 A.2d 722, 728 (1975)
- In re D.D., 2013 VT 79, ¶ 34, 194 Vt. 508, 82 A.3d 1143
- Molleur v. Molleur, 2012 VT 16, ¶ 15, 191 Vt. 202, 44 A.3d 763
- Bull v. Pinkham Eng'g Assocs., 170 Vt. 450, 459, 752 A.2d 26, 33 (2000)