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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-376

APRIL TERM, 2004

In re D.G.R. }	APPEALED FROM:
}	
}	Caledonia Superior Court
}	
}	
}	DOCKET NO. 174-8-03 Cacv
}	
}	Trial Judge: Alan W. Cheever
}	
}	

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

Father appeals from the trial court= s dismissal of his petition for writ of habeas corpus, filed on behalf of his minor daughter D.G.R., for failure to state a claim on which relief could be granted. He argues that the trial court erred in dismissing his petition because the undisputed facts show that D.G.R.= s restraint was unlawful and it is D.G.R.= s best interests to be released to her parents. We affirm.

The following facts are undisputed. Mother and father, who are divorced, are the parents of D.G.R. D.G.R, who was fourteen at the time of the underlying proceedings, was residing with mother, and at some point, she refused to return home. In April 2003, the Department of Social and Rehabilitative Services filed a petition alleging that D.G.R. was a child in need of care and supervision. The Orleans Family Court issued a temporary detention order and D.G.R. was placed in SRS custody. The following day, a juvenile detention hearing was held. Father and mother were present and represented by counsel. The family court found probable cause for detaining D.G.R, and issued a detention order transferring custody and guardianship of D.G.R. to SRS pending a hearing on the merits. A merits hearing was held in May 2003, and by stipulation of the parties, D.G.R. was found to be a child without or beyond control of her parents pursuant to 33 V.S.A. ' 5502(a)(12)(C).

A disposition hearing was scheduled for June 2003, but it was continued at father= s request and rescheduled for July. After it became evident that disposition was disputed, the matter was scheduled for an evidentiary hearing on August 4, 2003. Although a hearing was held on that date, and continued on August 8, the hearing was not completed. On August 13, 2003, father filed a petition for writ of habeas corpus on D.G.R.= s behalf with the Caledonia Superior Court. In his petition, father sought to transfer custody of D.G.R. from SRS to mother and father. SRS filed a motion to dismiss father= s petition. After a hearing, the court granted SRS= s request, concluding in an entry order that father had failed to state a claim on which relief could be granted. This appeal from the order of the Caledonia Superior Court followed.

When A reviewing the trial court= s disposition of a motion to dismiss, we assume that all well pleaded factual allegations in the complaint are true, as well as all reasonable inferences that may be derived therefrom.@ Winfield v. State, 172 Vt. 591, 593 (2001) (mem.). A A motion to dismiss for failure to state a claim should not be granted unless there exist no facts or circumstances that would entitle the plaintiff to relief.@ Id.

Father asserts that the Caledonia Superior Court erred in dismissing his habeas petition because the undisputed facts show that D.G.R. is being unlawfully detained. In support of this assertion, father maintains that: (1) at the time the petition was filed, the Orleans Family Court had not yet completed the disposition hearing; (2) the State A utterly

failed@ to comply with the statutes governing juveniles; and (3) D.G.R.= s detention violates the Vermont Constitution and the Fifth and Fourteenth Amendments to the United States Constitution.

We find these arguments without merit. The family court has A exclusive jurisdiction over all proceedings concerning any child who is or who is alleged to be . . . a child in need of care or supervision.@ 33 V.S.A. ' 5503(a). A Habeas corpus is not available as a means of collateral attack based on any error in a juvenile proceeding. In order for habeas corpus to lie, the procedural defect in the juvenile proceeding must be > jurisdictional= such that any order is void.@ In re A.S., 152 Vt. 487, 492 (1989). In this case, the record shows that the family court properly obtained jurisdiction over D.G.R., and as discussed below, father has not identified any jurisdictional defect that would invalidate the orders of the family court.

First, father= s argument that the Orleans Family Court had not completed the disposition hearing at the time he filed his habeas petition does not draw the family court= s jurisdiction into question. While 33 V.S.A. ' 5526 sets forth a timeline for the scheduling of disposition hearings, we have held that the statutory time frame is a directory, rather than jurisdictional, requirement. In re J.V., 154 Vt. 644, 644 (1990) (mem.); see also In re J.R., 153 Vt. 85, 92-93 (1989) (noncompliance with statutory time frame does not void either the CHINS adjudication or the disposition order). In light of the cases cited above, father= s reliance on In re B.M.L., 137 Vt. 396, 399 (1979) is misplaced. See In re A.S., 152 Vt. at 492 (overruling In re B.M.L. in part, and finding it inapplicable where there had been a CHINS determination as well as a timely disposition hearing). In In re B.M.L., there had been no adjudication that the juvenile was in need of care and supervision. 137 Vt. at 399. We have explained that it is this determination that allows the family court to go forward and make dispositional orders. See In re A.S., 152 Vt. at 492. As noted above, there has been a merits determination here following the hearing held in May 2003, on stipulation of the parties, and from which no appeal was taken.

Second, while father asserts that SRS failed to comply with various statutory requirements governing juveniles, he does not identify how these alleged errors deprive the family court of jurisdiction over D.G.R. Father challenges the merits of SRS= s proposed disposition, not the underlying jurisdiction of the family court. Father asserts, for example, that SRS has violated 33 V.S.A. ' 5501(a)(1) by placing D.G.R. A at risk@ through her current foster care placement, and violated 33 V.S.A. ' 5501(a)(3) by failing to seek reunification of D.G.R. with her parents. However, these arguments simply do not raise a jurisdictional question. We do not address father= s argument that SRS acted contrary to statutory provisions governing A runaway@ children. Father failed to raise this argument below, and we consider it waived. See State v. Ben-Mont Corp., 163 Vt. 53, 61 (1994) (A To properly preserve an issue for appeal a party must present the issue with specificity and clarity in a manner which gives the trial court a fair opportunity to rule on it.@).

Finally, we reject father= s assertion that D.G.R.= s detention violates the Vermont Constitution, and the Fifth and Fourteenth Amendments to the United States Constitution. Father contends that D.G.R.= s detention is unconstitutional because SRS has denied him and mother contact with D.G.R. based solely on D.G.R.= s alleged desire not to have contact with them. Father asserts that SRS is obligated to defer to the parents= reasonable requests concerning the placement and care of D.G.R. while she is in the custody of SRS. First, as previously discussed, D.G.R. was placed in SRS custody after the family court determined, based on the parties= stipulation, that she was a child without or beyond control of her parents pursuant to 33 V.S.A. ' 5502(a)(12)(C). We have previously recognized the constitutionality of statutory provisions that allow the family court to place custody of children with SRS or persons other than the parents. In re A.S., 152 Vt. at 493. Once a child has been adjudicated CHINS, it is the family court= s responsibility to determine the A disposition most suited to the protection and physical, mental, and moral welfare of the child.@ 33 V.S.A. ' 5528. In this case, father= s constitutional arguments attack the merits of the case plan developed by SRS, but they do not show that the family court lacks jurisdiction over D.G.R. The juvenile statutes provide father with the opportunity to challenge SRS= s case plan and recommended disposition, and his concerns are properly raised in the family court, not the superior court. Father= s petition for a writ of habeas corpus presents nothing more than a collateral attack on the family court proceedings. We therefore conclude that the trial court properly dismissed father= s habeas petition for failure to state a claim on which relief could be granted. See In re J.R., 162 Vt. 219, 225-26 (1994) (habeas petition that did not challenge jurisdiction of court was properly denied). Based on our conclusion, we do not address father= s assertion that it is in D.G.R.= s best interests to be placed with her parents.

Affirmed.

BY THE COURT:

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Paul L. Reiber, Associate Justice