ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-027

MAY TERM, 2017

In re A.M., Juvenile	}	APPEALED FROM:
	}	
	}	Superior Court, Windsor Unit,
	}	Family Division
	}	
	}	DOCKET NO. 209-11-14 Wrjv
		Trial Judges: Robert P. Gerety (merits); M. Kathleen Manley (termination)

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

Mother seeks reversal of the superior court's order terminating her parental rights, arguing that the court committed plain error and exceeded its limited jurisdiction by not addressing her personally before accepting her attorney's agreement that the court could consider the Department for Children and Families' (DCF) affidavit when the court determined whether A.M. was a child in need of care or supervision (CHINS). We affirm.

The following facts are uncontested. On November 10, 2014, the superior court issued an emergency care order placing A.M. in DCF custody. The merits hearing on DCF's CHINS petition was scheduled for January 29, 2015. Mother and her attorney were present on that date for the scheduled hearing. Before any evidence was taken, DCF's attorney stated that no written stipulation would be submitted to the court, but that DCF "would just put on the record that, based on [DCF's] affidavit, that A.M. was a child in [need of] care and supervision, based on a generic CHINS admission." When the court questioned mother's attorney about the State's proposed "generic CHINS admission," the attorney stated that he would object to the court making a finding of merits or of CHINS based on the allegations in the affidavits because it would not differ "from a normal CHINS merits stipulation." Uncertain what the attorney was suggesting, the court stated that it needed to discuss the matter further with counsel either from the bench or in chambers. DCF's attorney suggested that the matter be discussed in chambers because the father was on the telephone. The attorneys and the court then retired to chambers for a brief unrecorded discussion before returning to the courtroom. Upon returning to the courtroom, mother's attorney responded in the affirmative when the court asked him in open court in mother's presence if his client agreed that the court could "take into consideration the affidavit that was filed by the State in support of the CHINS petition and make its decision on CHINS." Despite the discussion of a "generic" CHINS, the court then adjudicated A.M. CHINS under 33 V.S.A. § 5102(3)(B) based upon the allegations in the affidavit and stated that it would schedule the matter for a disposition hearing.

Mother contested DCF's disposition plan filed on February 24, 2015, and a hearing was scheduled. The hearing was rescheduled several times and still had not taken place when DCF filed a petition to terminate mother's parental rights. The termination hearing occurred over

four days in February and March of 2016. On December 13, 2016, the superior court issued a decision granting the petition and terminating mother's parental rights.[*] The court determined that the State was not required to show changed circumstances because it was seeking termination of parental rights at the initial disposition hearing, but that even if it were required to make such a showing, clear and convincing evidence demonstrated stagnation due to mother's failure to address the issues—primarily her severe and complex mental health issues—that resulted in A.M. being placed in state custody and prevented her from caring for the child. The court further determined, based on clear and convincing evidence, that termination of mother's parental rights was in A.M.'s best interests because mother would not be able to resume her parental duties with a reasonable period of time from the perspective of A.M., who had been in state custody for a significant period of time and had special needs that required a stable and supportive environment that mother could not provide.

On appeal, mother does not challenge any of the termination order's substantial findings and conclusions demonstrating her inability to parent A.M. Rather, she argues that the termination order must be reversed because at the January 29, 2015 scheduled merits hearing, the court failed to engage her in a personal colloquy before accepting her attorney's agreement in open court in her presence that the court could rely on the allegations in DCF's affidavit to make a CHINS determination. In In re R.S., this Court rejected the argument that a court was required to personally address a parent before accepting a judicial admission by the parent's counsel at a CHINS merits hearing. 143 Vt. 565, 570-72 (1983) (reasoning that sole issue at merits hearing is whether children are in need of care or supervision and that merits determination could not, in and of itself, prevent parents from gaining custody of their children). Mother attempts to distinguish R.S. by noting that in this case the court and attorneys discussed the matter in a brief chambers conference outside of her presence before her attorney agreed to the court considering the affidavit.

We need not consider the merits of mother's argument because at the time of the CHINS determination in this case—January 29, 2015—an adjudication of CHINS at a merits hearing was a final order that had to be appealed within thirty days, which mother did not do. See In re D.D., 2013 VT 79, ¶ 21, 194 Vt. 508 (concluding that CHINS "merits decision is a final order and that failure to bring an appeal of that order within thirty days bars subsequent challenges to the order"); see also In re C.P., 2012 VT 100, ¶ 28, 193 Vt. 29 (recognizing, under statute in effect at time of CHINS decision, that CHINS determination is final appealable order and cannot be collaterally attacked). Mother does not acknowledge this case law, but rather cites a statutory provision that did not become effective until July 1, 2016. See 2015, No. 153 (Adj. Sess.), § 28 (amending 33 V.S.A. § 5315(g) to state that CHINS merits adjudication "is not a final order subject to appeal separate from the resulting disposition order"). Nor does she contend that the statutory amendment applied retroactively. Moreover, to the extent that mother's argument can be construed as asserting that the CHINS decision is void for lack of jurisdiction, we reject it. See In re C.P., 2012 VT 100, ¶ 18 (rejecting similar argument, and

[*] The father voluntarily relinquished his parental rights on the first day of the termination hearing.

explaining that "a challenge made on subject matter grounds must show that the court lacked jurisdiction over the general category of case").

Affirmed.

BY THE COURT:

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Marilyn S. Skoglund, Associate Justice

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice