

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

SUPREME COURT DOCKET NO. 2020-019

APRIL TERM, 2020

In re E.C., Juvenile (C.C., Father*)	} { { { { {	APPEALED FROM: Superior Court, Franklin Unit, Family Division DOCKET NO. 215-8-18 Frjv
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Trial Judge: Howard E. Van Benthuyzen

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

Father appeals the termination of his parental rights to son E.C., who is nearly two years old. We affirm.

E.C. was born in July 2018. The Department for Children and Families (DCF) began providing services to mother and father in November 2017. Father, who was under the supervision of the Department of Corrections for a stalking conviction, struggled to modulate his controlling and threatening behaviors or to comply with DCF's safety plan. He gave E.C. melatonin, a substance that is not indicated for infants, because E.C. was waking up too often. In August 2018, DCF filed a petition alleging that E.C. was a child in need of care or supervision (CHINS). The court issued emergency and temporary care orders transferring custody of E.C. to DCF. E.C. was placed with a foster family, with whom he continues to reside.

At a hearing in December 2018, mother admitted to the merits of the CHINS petition. Father agreed that mother had the right to stipulate that E.C. was CHINS and that father was a noncustodial parent. However, father objected to the description in the stipulation that he perpetrated "domestic violence" because there were no allegations of physical violence. Father also objected to the inclusion of certain allegations that had been the subject of a previous relief-from-abuse (RFA) petition filed by mother against him. Father argued that the RFA court had found mother's allegations to be not credible, and therefore those allegations could not be used against him in the CHINS affidavit. Father did not specify which specific allegations he was referring to. The court noted father's objection and stated that it would go forward with mother's stipulation. The court then conducted a colloquy with mother. Mother agreed that E.C. and her other child were CHINS due to domestic violence perpetrated by father and, separately, because of her own mental health issues. The court entered an adjudication of CHINS.

The court subsequently adopted a case plan that called for reunification with either parent. It recommended that father engage in mental health counseling weekly; sign releases for DCF; maintain housing and a job; contact E.C.'s medical providers after appointments; attend visits with E.C., court hearings, and team meetings; and attend Family Time Coaching

and a Nurturing Parents class. Father's participation with the plan was minimal. He never engaged in counseling, did not complete the Nurturing Parents class, and was discharged from Family Time Coaching due to poor attendance. He missed nearly half of visits with E.C. His last contact with E.C. was in July 2019, shortly before DCF filed motions to terminate the parental rights of both parents.

In September 2019, mother voluntarily relinquished her parental rights to E.C. A termination hearing was held in December 2019. Father did not appear, and his attorney did not present any evidence on his behalf. In a written decision, the court found that father had stagnated in his ability to parent E.C. and that it was in E.C.'s best interests to terminate father's parental rights.

On appeal, father argues that the court erred in accepting mother's stipulation to CHINS based on allegations that father had perpetrated domestic violence against mother when those allegations had been disproven at the RFA hearing. He further argues that he is a party whose signature was required for the merits stipulation to be valid, but he did not sign and was not advised of his rights as required by 33 V.S.A. § 5315a. He claims he was told that he lacked standing to object or appeal the CHINS merits decision. He argues that the court violated his constitutional rights to due process and equal protection by accepting mother's stipulation.

The CHINS merits determination became final and subject to appeal when the court issued the resulting disposition order in April 2019. See In re C.L.S., 2020 VT 1, ¶ 16; 33 V.S.A. § 5315(g) (providing that CHINS merits adjudication "is not a final order subject to appeal separate from the resulting disposition order"); 33 V.S.A. § 5318(d) (stating disposition order is final order). Father did not appeal from disposition and therefore is precluded from attacking the CHINS determination now. See In re C.L.S., 2020 VT 1, ¶ 16 (explaining that "[p]arties are generally precluded from collaterally attacking a final CHINS merits determination at a later stage of the proceedings," and holding that court's alleged error of adjudicating child CHINS based on mother's stipulation alone was insufficient to render judgment void for lack of subject-matter jurisdiction).

To the extent father argues that the CHINS merits determination is void because the court denied him due process, the record does not support his claim. Father was provided notice of the CHINS petition and hearings and appeared at the CHINS merits hearing with his attorney. He objected to the wording of the stipulation but did not argue that his signature was necessary for the stipulation to be valid or that the court had to advise him of his rights pursuant to 33 V.S.A. § 5315a. He also did not appeal when the court issued the disposition order. Contrary to father's assertion in his appellate brief, the court did not advise father that he lacked standing to object to the CHINS determination or to appeal that determination. Accordingly, we see no violation of due process that would render the judgment subject to collateral attack. See id. ¶ 25 (rejecting argument that CHINS judgment was void because court acted inconsistently with due process). Father did not raise his other constitutional claims before the trial court and therefore did not preserve them for our review. See Miller-Jenkins v. Miller-Jenkins, 2010 VT 98, ¶ 28, 189 Vt. 518 ("Failure to preserve issues below results in waiver, even of constitutional issues.").

Although the court incorrectly stated in the termination order that both parents had stipulated to the merits of the CHINS petition, the error does not require reversal. The court's findings are otherwise supported by the record and, in turn, support its conclusion that termination of father's parental rights was in E.C.'s best interests. See In re B.M., 165 Vt. 331, 340 (1996) (explaining that termination order will not be reversed merely because some

findings are erroneous if findings that were supported by evidence were sufficient to support court's decision).

Affirmed.

BY THE COURT:

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice