

*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. 2018-062

JULY TERM, 2018

In re C.S., Juvenile	}	APPEALED FROM:
(S.S., Father*)	}	
	}	Superior Court, Chittenden Unit,
	}	Family Division
	}	
	}	DOCKET NO. 169-5-16 Cnjv
		Trial Judge: Alison S. Arms

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

Father appeals a disposition order continuing custody of his eleven-year-old daughter C.S. with the Commissioner of the Department for Children and Families (DCF). We affirm.

C.S. was born in August 2006. In May 2016, DCF filed a petition alleging that C.S. was a child in need of care or supervision (CHINS). At the time, C.S. was in the sole custody of father and had not had contact with her mother for several years. The petition alleged that father's mental health appeared to be deteriorating and that he was abusing substances. The parties initially agreed to a conditional order maintaining father's legal custody but requiring that C.S. reside with her paternal grandmother.

At a hearing in July 2016, father stipulated to the merits of the CHINS petition. He admitted that he was struggling with extreme back pain causing him sleep deprivation; was prescribed Klonopin, Suboxone, and Vyvance; had used unprescribed marijuana two to three times when C.S. was not present; and presented as substantially impaired during a May 2016 doctor's appointment and a subsequent home visit by DCF. Father admitted that the above were negatively impacting his ability to function and to parent C.S. The parties agreed to waive the preparation of a disposition report and to have father participate in a psychological evaluation instead. The court issued an amended conditional custody order requiring father to undergo the evaluation and follow its recommendations. It also removed the requirement that C.S. live with her grandmother.

Father apparently met with the psychologist in September 2016, but the report was not completed for some time. At a disposition hearing on November 14, 2016, the court indicated it would need to review the psychological evaluation in order to determine whether a disposition plan was necessary. Three days later, father filed a motion to hold the DCF worker, DCF's attorney, the child's attorney, and the guardian ad litem in contempt, alleging that they improperly disclosed confidential information about him and the case to father's mother.

The psychologist completed the evaluation on November 29, 2016 and provided it to DCF, who provided a copy to father. Father objected to sharing the evaluation with the other parties and filed a motion to seal the evaluation.

The case was delayed for several months while the parties litigated father's contempt motion. Father also filed several motions seeking a new attorney. In May 2017, the court denied father's motion for contempt and granted his motion for a new attorney. The court also ordered DCF to file a disposition plan and set the matter for a disposition hearing. DCF filed a disposition plan in June 2017 recommending that the conditional custody order be continued for another three months.

At the disposition hearing on June 19, 2017, father indicated that he assented to the plan and agreed to release the psychological evaluation to the parties. The disposition hearing did not conclude, however, because at the start of the hearing the court was informed in chambers of an incident that took place earlier that day when C.S.'s paternal grandfather and step-grandmother came to pick up C.S. to take her to Maine for a prescheduled vacation. Father became dysregulated, started ranting, and did not want C.S. to get into the car. After they drove away, C.S. told her grandparents that she was afraid of father and that he had threatened to kill everybody if she told. Father denied these allegations. The court found that the allegations were "concerning enough" to order that C.S. temporarily remain with her grandparents until the matter could be more fully heard.

A few days later, DCF filed an emergency motion to transfer temporary custody to DCF. It also filed father's psychological evaluation with the court.

Several additional hearings were held in June and July 2017 at which father and DCF witnesses testified. Father was asked whether he was following the recommendations of the psychological evaluation. Father testified that he had not engaged in evidence-based treatment, continued to obtain medications from different providers, and had not been in counseling for the past month and a half.

At the close of testimony on July 10, 2017, the court found that "C.S. reported that [father] did not hurt her but that he had made a statement a few weeks ago that he would kill people if she were not able to go home, and if for some reason she were not in his care. Further, she said that she was afraid and she didn't want to die." The court was unable to determine on the record before it whether father's statements reflected his true intentions or were merely a reflection of his mental illness. The court concluded that C.S.'s best interests required a transfer of custody to DCF until there was some assurance that father was receiving proper treatment. C.S. was subsequently placed in foster care, where she remains.

Just prior to the July 10 hearing, DCF had filed an amended case plan in support of its request to transfer temporary custody. The plan required father to follow the recommendations in the psychological evaluation, maintain sobriety, provide urine screens as requested, and provide a valid driver's license to DCF. The plan noted that father had three convictions for driving under the influence and three convictions for driving with a suspended license; appeared to be currently driving without a valid license; and had not signed releases to allow DCF to communicate with his providers, as required by court order. At the hearing, the court gave father ten days to review the plan. Father's attorney subsequently filed a letter stating that father was "not in agreement with the 'Amended Disposition Plan' and requests this matter be scheduled for a Contested Disposition Hearing."

The contested hearing took place on September 5 and November 15, 2017. Prior to the second day of the hearing, DCF filed a second amended permanency plan, which the parties agreed was the operative plan for the court to consider. The new plan had concurrent goals of reunification

with either parent within six months or adoption.<sup>1</sup> Like the first amended plan, it required father to follow the recommendations of the psychological evaluation, maintain sobriety, provide urine samples upon request, and show that he had a valid driver's license. Additionally, it required father to complete substance abuse screening and comply with all court conditions regarding his October 2017 felony charge for driving under the influence of drugs and/or alcohol (DUI).

DCF witnesses testified at the disposition hearing that C.S. was happy with her current foster family; that she cared for father but did not want to live with him because she was frightened of him; that father attended parenting visits but perseverated on the DCF case and had to be redirected by C.S. and the social worker; that C.S. had twice ended visits due to father's behavior, and became upset after visits; that C.S. tended to act like the parent during interactions with father; and that father was between ten to fifty minutes late for every visit. Father's stepmother testified that father had a history of angry outbursts and erratic behavior. stated that father had been a good parent to C.S. when the child was young but had become increasingly controlling as C.S. had gotten older. Father's father testified that father had been diagnosed with OCD, ADHD, and Tourette's. He stated that C.S. and father were quite socially isolated before she was taken into DCF custody. Father interrupted DCF's witnesses several times, and the court twice asked him to leave the courtroom due to his disruptive behavior.

For his part, father testified that he had been attending counseling since August 2017 and was sober. His testimony was rambling and unfocused. Neither he nor his attorney stated any specific objections to the requirements of the November 2017 case plan at the disposition hearing.

In December 2017, the court issued a disposition order continuing DCF custody and adopting the second amended case plan and its goals of reunification with either parent or adoption. The court found that the plan of services was "sufficient to address the most significant concerns" in the plan, which were "[f]ather's mental health and substance abuse issues, and the desire to see him stabilize himself" such that his behaviors posed low or no risk to C.S. The court did not make specific findings regarding the diagnoses or recommendations in the psychological evaluation, which had not been admitted into evidence at the hearing. It also did not make findings regarding the October 2017 DUI charge, which was still pending at the time, although it noted that father had been involved in a recent car accident and was relying on taxis for transportation.<sup>2</sup>

On appeal, father claims that the court erred in concluding that he had mental-health issues and approving the case plan requirement that he follow recommendations in the psychological evaluation where that evaluation was not entered into evidence at the disposition hearing. Father also challenges the requirements that he remain sober, complete substance-abuse screening, provide urine screens upon request, provide a valid driver's license to DCF, and comply with conditions regarding his most recent DUI charge, arguing that these requirements were not supported by findings or evidence.

We review a court's disposition order adopting a case plan for abuse of discretion. In re L.T., 149 Vt. 473, 476 (1988). We see none here. Reunification was a stated goal of the case plan. The plan set forth specific steps for father to make reunification with C.S. possible, including

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<sup>1</sup> After DCF filed the CHINS petition, mother expressed interest in resuming contact with C.S.

<sup>2</sup> The docket entries for the October 2017 DUI charge indicate that father pleaded guilty in March 2018 to an amended misdemeanor charge of grossly negligent operation and was given a suspended sentence of six to twelve months plus eighty hours of community service.

addressing his mental-health and substance-abuse issues. There was sufficient evidence in the record to support the court's conclusion that father had substance-abuse and mental-health issues requiring treatment, including the findings in the CHINS stipulation, father's presentation and behavior in court and with C.S., the paternal grandfather's testimony about father's diagnoses, and father's October 2017 DUI charge. The court determined that the case plan requirements were necessary to further the goal of permanency by addressing these issues. See 33 V.S.A. § 5318(b) (providing that court must "adopt a case plan prepared by the Department which is designed to achieve the permanency goal"). The court's decision was supported by the record and was not an abuse of discretion.

Although father objected generally to the case plan prior to the contested hearing, he did not object to any of its specific requirements and therefore did not preserve the claims raised in his appellate brief. See In re A.M., 2015 VT 109, ¶ 28, 200 Vt. 189 ("[T]o 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." (quotation omitted)). We have recognized that "we can reverse on even an unpreserved issue in exceptional cases." In re D.C., 157 Vt. 659, 660 (1991). However, we see no error in this case that is "so obvious, grave, and serious as to warrant reversal." Id.

The requirement that father follow the recommendations of the psychological evaluation had been in place since the original July 2016 conditional custody order. The parties anticipated that the evaluation would be used to help determine father's treatment needs. By July 2017, the evaluation had been released to the parties with father's permission, and the court and the parties were aware of its diagnoses and recommendations. The specific recommendations of the evaluation were discussed with father during the July 10, 2017 disposition hearing. He did not object to the recommendations then or at any other time. While it would have been better practice for DCF to offer the evaluation into evidence, we see no error in the court's approval of the case plan requirement that father follow the evaluation's recommendations. See In re C.L., 151 Vt. 480, 490–91 (1989) (holding failure to introduce case plan "formally into evidence does not necessarily preclude its use where such use was anticipated and its contents were known in advance, especially in the absence of an objection at the hearing").

Likewise, the requirements regarding substance abuse screening, providing a valid driver's license, and complying with court conditions in the DUI case were supported by the record. The CHINS petition was founded on father's impaired functioning and inability to parent C.S. while he was under the influence of prescribed and unprescribed substances. Father repeatedly refused to sign releases, meaning that DCF was unable to confirm that he was maintaining sobriety and participating in substance abuse treatment during the case. The case plans submitted by DCF showed that father had multiple convictions for DUI and driving with a suspended license. In October 2017, just prior to the second day of the contested hearing, father was charged with yet another DUI. The court could reasonably infer from these circumstances that father continued to have a substance abuse problem at the time of the hearing and that the case plan requirements were necessary to address that problem. Cf. In re C.B., 162 Vt. 614, 614 (1994) (mem.) (holding disposition report dated eight months prior to hearing could not support finding that mother

continued to suffer from severe substance-abuse problem at time of hearing). It was therefore not improper for the court to approve the challenged case plan requirements.

Affirmed.

BY THE COURT:

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice