

VERMONT SUPREME COURT
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Case No. 21-AP-242

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

FEBRUARY TERM, 2022

In re M.C., Juvenile	}	APPEALED FROM:
(S.M., Mother*)	}	
	}	Superior Court, Addison Unit,
	}	Family Division
	}	CASE NO. 21-JV-00865
		Trial Judge: Thomas Carlson

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

Mother appeals the family division’s initial disposition order transferring conditional custody of parents’ nine-year-old daughter, M.C., to father. We affirm.

M.C. was born in 2013 and is nine years old. In June 2021, the State filed a petition alleging that M.C. was a child in need of care or supervision (CHINS).¹ At the time, mother had custody of M.C. and father had contact with M.C. every other weekend. In the affidavit accompanying the petition, the Department for Children and Families (DCF) stated that it had received twenty-five reports about mother physically abusing and neglecting M.C. since the child was born. Eight of the reports had been accepted. DCF had had an open case with mother regarding her care of M.C. since 2017, and mother had received a high level of services to mitigate DCF’s child safety concerns. Despite this, DCF continued to receive reports of physical abuse and neglect of M.C. by mother, including three reports in the spring of 2021.

In June 2021, DCF received a report that M.C. had arrived at school with a bruise on her arm. When asked about it, M.C. initially denied knowing how it happened. Upon further questioning, M.C. stated that she was putting water into the dog’s bowl when her mother had grabbed her and dragged her. She stated that mother was “mad, mad.” A DCF worker contacted mother, who initially claimed that the bruise was caused by the family’s puppy pulling on its

¹ The State also filed a CHINS petition concerning M.C.’s younger half-sister, H.D. The outcome of that petition is not at issue in this appeal.

leash while M.C. walked her. In a subsequent conversation, mother said that she had grabbed M.C. to prevent her from running outside because there was a bear at the dumpster. DCF decided to seek court action because mother's action was a violation of a safety plan that prohibited mother from physically disciplining M.C.

The court issued emergency and temporary care orders transferring conditional custody of M.C. to father. In July 2021, mother stipulated to the merits of the CHINS petition on the ground that "[m]other's lack of parenting skills and inability to regulate her emotions have resulted in the use of physical discipline that has caused [M.C.] physical and emotional harm."

DCF filed an initial disposition case plan with a proposed permanency goal of transferring legal custody to father. The plan stated that DCF had received no reports of concern about father, and that father had established medical care, childcare, and other services for M.C. and was prepared to continue to care for M.C. Meanwhile, DCF had provided services to mother for years, but mother did not acknowledge that her use of excessive physical discipline was abusive or that M.C. had been harmed. Rather, mother told DCF that M.C. was particularly challenging and possibly autistic, and that typical parenting strategies did not work.

Mother objected to the case plan, arguing that it should include a goal of reunification with her because she had been M.C.'s primary caregiver since she was born. After conferring with DCF and opposing counsel on the first day of the disposition hearing, the State's attorney indicated that DCF might be willing to include a goal of reunification with mother. The court agreed to continue the hearing so DCF could amend the case plan.

DCF subsequently submitted an amended case plan, which added some action steps for mother but continued to recommend transfer of custody to father as the sole permanency goal. The plan explained that given the length of time and the high level of services DCF had already offered to mother, DCF did not see what more it could offer mother to support reunification.

At the continued disposition hearing in October 2021, mother objected to the amended plan because it did not include reunification with her as a goal, and because it made mother, who did not have a car, responsible for half of the transportation to and from visits with M.C. The State's attorney explained that DCF could work with mother to arrange transportation. As for mother's objection to the case plan goal, the State's attorney asserted that M.C. was doing well in father's care. Specifically, M.C. was not exhibiting the mental health and developmental needs that mother had reported, and her new mainstream school was working well for her. The child's attorney and guardian ad litem likewise stated that father seemed to understand M.C.'s needs and that M.C.'s behaviors had improved in her father's care. None of the parties presented any evidence at the hearing. Mother's attorney indicated that the court could rely on the proffers that it had heard. At the conclusion of the hearing, the court adopted the case plan and issued a disposition order continuing conditional custody with father, followed by a transfer of full custody.

On appeal, mother argues that the family division's disposition order must be reversed because the court did not make findings regarding the suitability of father to assume legal custody and the safety and appropriateness of the placement as required by statute. Section 5318

of Title 33 provides that at the disposition phase of a CHINS case, the court must “make such orders related to legal custody for a child who has been found to be in need of care and supervision as the court determines are in the best interest of the child,” which can include transfer of custody to a noncustodial parent. 33 V.S.A. § 5318(a). If the court orders custody to be transferred to a noncustodial parent, its order “shall be supported by findings regarding the suitability of that person to assume legal custody of the child and the safety and appropriateness of the placement.” 33 V.S.A. § 5318(e). “Absent an abuse of discretion the findings and disposition order of the family court must stand.” In re C.L., 2014 VT 87, ¶ 11, 197 Vt. 635 (mem.) (quotation omitted).

We conclude that the court made adequate findings to support its disposition order in this case. As noted above, none of the parties submitted any evidence at the disposition hearing, and mother agreed that the court could make its decision based on the proffers that it had heard. The court found that “following the transition into dad’s custody, all reports, all proffers are that it’s been a major change for the better for M.C. and how she’s acting and responding in school and at home.” This finding is supported by the statements made by the attorneys at the hearing and the facts contained within the case plans. Although the court’s finding was brief and did not track the language of the statute, it is clear that the court viewed father as a suitable and safe placement for M.C. We therefore conclude that the finding was sufficient to satisfy § 5318(e). See In re M.O., 2015 VT 120, ¶ 8, 200 Vt. 384 (affirming CHINS determination despite court’s findings being “less thorough than would be optimal” because findings were “sufficient to show what was decided and why” and decision was supported by evidence).

In her appellate brief, mother suggests that further findings regarding the safety of the placement were required because father is a registered sex offender. Mother failed to preserve this issue for appeal by raising it below. See In re D.C., 157 Vt. 659, 660 (1991) (mem.) (“Issues, including those with constitutional dimensions, are waived by parties unless raised at the earliest opportunity.”). Even if we were to review for plain error, we are not persuaded that father’s status renders the family division’s findings erroneous or insufficient. The case plan shows that DCF was aware of father’s status, which was based on a relatively old charge for which father had completed treatment. The case plan and proffers were nevertheless uniformly positive with respect to father. No one voiced any concerns at the hearing regarding M.C.’s safety in father’s care, and mother does not point to any evidence that father has since engaged in criminal or inappropriate behavior.² We therefore decline to disturb the disposition order on this basis.

Mother also claims that the court erroneously found, based on DCF’s representation at the disposition hearing, that it could not entertain a concurrent case plan goal of reunification with either parent. This argument lacks merit, as it is plain from the record that the family court never made such a ruling. The transcripts from the hearings show that the court initially indicated some discomfort with DCF’s proposed case plan because it did not include a goal of reunification with mother. However, the court ultimately decided to adopt the case plan as

² The family division record indicates that in December 2021, the conditional custody order was vacated by stipulation of the parties and full legal custody was transferred to father without conditions.

written because M.C. was doing well with father and mother had demonstrated an inability or unwillingness to address the issues underlying the CHINS petition despite receiving a high level of services for at least eighteen months. Nowhere did the court state that it believed or agreed that there could never be a concurrent goal if appropriate under the circumstances.

Affirmed.

BY THE COURT:

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice