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. 2018-091

AUGUST TERM, 2018

In re G.L.C., Juvenile	}	APPEALED FROM:
(A.H., Mother* & R.C., Father*)	}	
	}	Superior Court, Bennington Unit,
	}	Family Division
	}	
	}	DOCKET NO. 168-12-16 Bnjv
		Trial Judges: John W. Valente, David A. Howard

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

Mother and father appeal the termination of their parental rights to eighteen-month-old G.L.C. We affirm.

Mother has four older children. Over the past five years, all of them were removed from her custody due to neglect. Three of the children are in a permanent guardianship with a grandparent and custody of the fourth was transferred to the biological father, who is not the father in this case, in January 2017. Father has at least two older children from other relationships. He has contact with a son, but his parental rights to daughter K.C. were terminated six months prior to G.L.C.'s birth. Father is a registered sex offender. It is unknown whether he has engaged in sex offender treatment.

In December 2016, the Department for Children and Families (DCF) learned mother was pregnant with G.L.C. Due to mother's history, DCF attempted to contact her regarding the child's care. A case worker initially went to the residence in Bennington where DCF believed mother was living on December 8. The case worker was told by an unidentified male that mother was away. Later, mother called the case worker and denied she was pregnant. She said that she had some housing issues and was in New Hampshire. The case worker asked mother to come in for an appointment to confirm that she was not pregnant, but mother did not appear. Mother subsequently called the case worker and said that she had suffered a miscarriage and was staying in North Carolina. She would not give an address or phone number. Four days after that call, DCF learned that mother had gone into labor at a hospital in Massachusetts. Massachusetts authorities took G.L.C. into temporary custody on the day she was born. DCF did not have contact with father during this time.

On December 19, 2016, DCF filed a petition alleging that G.L.C. was a child in need of care or supervision (CHINS). The court issued an emergency order transferring custody to DCF. A temporary care hearing was held the next day, at which both parents appeared. Parents did not

object to Vermont courts assuming jurisdiction over the matter. The court issued a temporary care order maintaining custody with DCF.

DCF filed a document with information for the December 20, 2016 temporary care hearing that contained a list of recommended services to facilitate reunification. It included recommendations for both parents to reestablish and maintain sobriety, engage in mental health and substance abuse treatment, engage in parenting education and attend all visits with G.L.C., work with service providers to meet their own and the child's needs, attend appointments for G.L.C., and maintain suitable housing. The document also recommended that mother engage in developmental services to support her own wellbeing. The parents met with the DCF case worker once to go over the service recommendations, but cancelled subsequent meetings.

The parents did not appear for court hearings in January, February, and March 2017. They did attend a May status conference, and the matter was set for a contested merits hearing in June. At the merits hearing, evidence of the proceedings involving mother's four older children, including DCF case plans and reviews that were filed with the court in each case, was offered and admitted. The DCF case worker testified that during the year prior to G.L.C.'s birth, mother essentially did not participate in visitation with her older child A.B., whose case was pending at the time. Nor did she engage in the recommended services under A.B.'s case plan, which were substantially similar to those in G.L.C.'s case plan and were designed to address mother's issues with mental health, substance abuse, and housing. Her behavior was similar in the cases involving her older children.

Following the hearing, the court issued a written decision finding G.L.C. to be CHINS. The court noted that there was no direct evidence of abuse or neglect of G.L.C. during the few days before custody was transferred to DCF. However, it found that mother had significant difficulties with mental health issues, substance abuse, and housing security. She had not been able to follow case plans for her older children that involved learning how to safely parent those children and stabilizing her own life and had not been able to regain custody of them despite the services provided to help her. The court found the sibling evidence to be probative because it was recent in time and included the period immediately prior to G.L.C.'s birth. It found further support for its decision in mother's attempt to avoid an assessment by DCF and possible services by denying that she was pregnant and giving birth out of state. The stability of mother's housing was also called into question by her claims that she was in New Hampshire and North Carolina just prior to the birth. The court stated that its findings as to mother would suffice for a CHINS judgment regardless of father's history "since the evidence is that she was the custodial parent and his involvement with the pregnancy and birth is unknown, but the above findings as to his history with other children also support the judgment."

In July 2017, DCF filed a disposition case plan calling for adoption. This case plan contained a similar plan of services as the December 2016 document. DCF petitioned to terminate parental rights for both parents in August 2017.

The disposition hearing took place in February 2018. The evidence showed that between December 2016 and October 2017, mother attended thirty-four of eighty supervised visits with G.L.C., and father attended only twenty-six of the visits. Mother's visits were discontinued in October due to her lack of attendance. At her request, visits were reinstated in December 2017,

but she only attended one visit in December and one visit in January 2018. Although the family time coach observed a bond between mother and G.L.C. during early visits, over time G.L.C. did not return mother's affections.

The trial court found that neither parent engaged in the services recommended by DCF while the case was pending. Mother did not participate in mental health or substance abuse treatment or developmental services, attend parenting classes or other parent education groups, maintain stable housing, or attend medical, physical therapy, or other appointments for G.L.C. despite being invited to do so. Father did not establish or maintain sobriety, engage in mental health or substance abuse treatment, or attend parenting programs. He would not allow DCF to inspect his residence. He had no visits with G.L.C. between June and December 2017. At some point prior to the disposition hearing, mother applied for and received a temporary protective order against father due to domestic violence, although she subsequently had the order vacated.

The court assessed the statutory factors set forth in 33 V.S.A. § 5114. It found that G.L.C.'s bond with mother had decreased over the year prior to the hearing, and she had no bond with father. She had a strong relationship with her foster family, who wanted to adopt her, and was well-adjusted to their home. Mother and father's past history of DCF involvement, as well as their failure to consistently attend visits with G.L.C. or to engage in other recommended services, showed that they were unlikely to be able to assume parental duties within a reasonable time. They did not play a constructive role in the child's life. Based on these factors, the court concluded that termination of parental rights was in G.L.C.'s best interests. Both parents appealed.

The court may terminate parental rights at the initial disposition stage if it finds by clear and convincing evidence that termination is in the best interests of the child. 33 V.S.A. § 5317(d). To determine a child's best interests, the court must consider four statutory factors, the most important of which is the likelihood that the parent will be able to resume parental duties within a reasonable time. In re B.M., 165 Vt. 331, 336 (1996); 33 V.S.A. § 5114. If the family court applied the correct standard, we will affirm its findings unless they are clearly erroneous, and its conclusions if supported by the findings. In re G.S., 153 Vt. 651, 652 (1990) (mem.).

On appeal, mother argues that the court erred by finding that termination was in the child's best interests based on her failure to comply with the recommended services in the case plan where mother never had an opportunity to challenge that case plan. When a child is found to be in need of care or supervision, DCF is required to file a case plan prior to the disposition hearing. 33 V.S.A. § 5316(a). The court considers the case plan at the disposition hearing and, if appropriate, determines whether the case plan "is designed to achieve the permanency goal." Id. § 5318(b). Here, the court did not consider the case plan prior to the termination hearing because termination was sought at initial disposition. Because the result of the disposition hearing was termination, the court was not required to accept or reject the plan. Id.; see In re J.T., 166 Vt. 173, 179 (1997) (rejecting mother's argument that termination of parental rights at initial disposition without approved case plan was reversible error).

Mother also claims that the delay in holding a disposition hearing deprived her of due process because the court held her lack of progress during the eight months between merits and disposition against her without ever reviewing the case plan to see if its expectations were appropriate. While mother is correct that the disposition hearing did not occur within thirty-five

days of the merits decision as required by 33 V.S.A. § 5317(a), the statutory time limits are "directory and not jurisdictional." In re M.B., 158 Vt. 63, 67 (1992) (quotation omitted) (holding delay of over a year between filing of petition and merits hearing did not deprive mother of due process). It was not unfair for the court to consider mother's record of engagement in visitation and available services during the pendency of the case at the disposition hearing. The sole issue before the court at that time was whether termination was in the best interests of the child. In re C.P., 2012 VT 100, ¶ 30, 193 Vt. 29. In weighing the best-interests factors, the court appropriately considered mother's poor attendance at visits with G.L.C. and her failure to even attempt to engage in any of the services offered by DCF during the previous year. These facts were relevant to the most important best-interests factor—mother's ability to resume parenting within a reasonable time—as well as her "interaction and interrelationship" with G.L.C. and whether she played a constructive role in the child's life. 33 V.S.A. § 5114(a)(1), (3), (4).

Mother is correct in suggesting that because DCF's case plan had not yet been reviewed or approved by the court as part of an initial disposition order, her failure to comply with the specific requirements of the plan does not necessarily support termination of her parental rights. Parents are not committed by any court order to following every recommendation in an unapproved DCF plan. But even prior to disposition, the DCF case plan is evidence of DCF's recommendations to parents, as well as of the services made available to parents to address the challenges that led to the child's removal and the CHINS determination. Indeed, the CHINS statute recognizes the importance of directing parents to those services which could facilitate reunification at the earliest stage possible. See 33 V.S.A. §5307(e)(4)(requiring DCF to provide to the court at temporary care hearing information regarding services which could facilitate return of child to custodial parent). In this case, the required information was filed with the court on the day the temporary care hearing was held and was made available to all parties. There is no requirement in the statute that the court approve of this list of services, but it provided immediate notice to the parents of DCF's recommendations .

Here, the trial court did find that mother did not meet the case plan goals—a finding that in itself would offer little to support the court's termination decision since the case plan goals and requirements had not been approved by the court. But the court's findings as a whole and, more important, its analysis of the best interests factors, make it clear that the court's concern was not whether mother had complied with any purported requirements imposed by DCF, but, rather, was whether mother had taken steps to mitigate the underlying problems that led to the CHINS determination and the child's removal in the first place. DCF's case plan, and the information regarding recommended services filed on the day of the temporary care hearing, provided evidence of the services DCF recommended for mother to improve her parenting skills and address the challenges that led to the CHINS determination. That she neither availed herself of those services nor engaged in other services or actions independent of the DCF recommendations in order to address those problems is relevant to an assessment of the child's best interests—especially the likelihood that mother would be able to resume a parental role in a reasonable time.

Contrary to mother's argument, the court was not limited to considering the evidence as it existed at the time of the merits decision. See In re M.W., 2016 VT 28, ¶ 14, 201 Vt. 622 (considering totality of facts including period between merits and initial disposition/termination hearing).

Next, mother argues that at the CHINS merits stage, the court improperly shifted the burden to her to prove that G.L.C. was not CHINS by considering her noncompliance with case plans for her older children. This argument is likewise without merit. We have long recognized that "evidence concerning the treatment of siblings is relevant and may be relied on by the court to support its conclusions with respect to the juvenile." In re K.B., 154 Vt. 647, 647 (1990) (mem.). Here, the State presented evidence showing that despite years of receiving services designed to improve her parenting, mother never regained custody of her four other children. Even while she was pregnant with G.L.C., mother failed to engage in services or consistently attend visitation with her next youngest child, A.B., resulting in custody of that child being transferred to her father. The court did not err in concluding based on this evidence that it was more likely than not that mother was currently unable to care for G.L.C. See E.J.R. v. Young, 162 Vt. 219, 225 (1994) (holding evidence of pattern of abuse and neglect of older siblings strongly suggested child's own likely future treatment and justified CHINS order); 33 V.S.A. § 5315(a) (requiring State to prove CHINS by preponderance of evidence). The court's conclusion was further supported by other current evidence, namely, mother's evasive behavior during her pregnancy and the apparent instability of her housing situation.

According to mother, it was error for the court to consider her record of compliance with case plans for her older children in making its CHINS determination where those case plans did not appear to be aimed at reunification. Mother failed to preserve this argument by raising it below. 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)). The record shows that mother's attorney objected to admission of the case plans on hearsay grounds, and more specifically to the facts underlying DCF involvement in each case. At no point did she claim that the goals contained in the case plans or mother's progress toward those goals were irrelevant because they were not targeted at reunification. In fact, the attorney conceded that the case worker could testify about the case plan goals and her opinion regarding mother's compliance with those goals. We therefore decline to reach this argument. Id.

Finally, mother argues that the court improperly considered the opinion of the guardian ad litem (GAL) in deciding the merits of the CHINS petition, in violation of V.R.F.P. 6(e)(3). That rule states that a GAL "shall not be asked for nor provide an opinion on the merits to the court at any contested merits hearings held under Chapters 52 and 53 of Title 33." Mother's argument is based on a footnote in the merits decision stating "Attorney and GAL for the juvenile took the position that a finding of CHINS was appropriate and supported." A review of the record reveals that the GAL's position was relayed to the court through the child's attorney. Even if the court erred in noting the GAL's position on the merits of the CHINS petition, the error does not warrant reversal because the merits decision was based on and supported by other evidence, namely, mother's pattern of neglect toward her children, her precarious housing situation, and her attempts to evade DCF involvement with G.L.C. Nothing in the trial court's CHINS opinion suggests that the GAL's reported position was a factor in the court's analysis.

Father joins in mother's arguments on the above points, as they relate to him, and we reject them as to father for the same reasons set forth above.

In addition, father argues that the court erred in finding G.L.C. to be CHINS based solely on mother's history where father had no control over mother's behavior toward her older children. We see no error. Because the focus in a CHINS proceeding is on the well-being of the child, a court may adjudicate the child as CHINS even if the allegations are established only as to one parent if the evidence establishes that the child is without proper parental care as a result of that parent's actions or deficits. See In re B.R., 2014 VT 37, ¶ 15, 196 Vt. 304. As discussed above, the court's findings as to mother are sufficient by themselves to support its CHINS judgment. But the court also made findings specific to father, including the termination of his parental rights to another daughter six months before G.L.C.'s birth, his refusal to let DCF into his home during the case with his other daughter, and his failure to provide records of sex offender treatment that would permit DCF to assess his safety around children. These findings are supported by the record and in turn support the CHINS determination. We accordingly affirm the trial court's decision.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Karen R. Carroll, Associate Justice