

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. 2018-218

OCTOBER TERM, 2018

In re B.C., Juvenile
(S.C., Mother*)

} APPEALED FROM:
}
} Superior Court, Franklin Unit,
} Family Division
}
} DOCKET NO. 176-9-15 Frjv

Trial Judge: Mary L. Morrissey

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

Mother appeals from the termination of her parental rights in B.C. Father voluntarily relinquished his rights. Mother argues she was denied a full and fair opportunity to be reunited with B.C. due to court delays and other procedural issues. We affirm.

B.C. was born addicted to drugs in January 2010. Following his discharge from the hospital, and pursuant to an expectation set by hospital staff, B.C. and parents moved into the home of B.C.'s maternal grandparents. Parents and B.C. later moved out but returned twice after being evicted from other homes. Mother struggles with substance abuse. She attempted residential drug treatment several times in 2015 but was unsuccessfully discharged. In September 2015, the Department for Children and Families (DCF) filed a petition alleging that B.C. was a child in need of care or supervision (CHINS) based on concerns about parents' substance abuse, homelessness, and their inability to meet B.C.'s needs. B.C. was taken into DCF custody pursuant to an emergency care order and continued in DCF custody following an emergency care hearing. B.C. was placed with his maternal grandparents, where he remains.

By her own testimony, mother's drug use "went through the roof" and she became homeless after B.C. was taken into custody. At a November 2015 status conference, a DCF caseworker stated that mother was informed and understood that she needed to access treatment and be clean and sober going forward. DCF filed an initial case plan in December 2015. Apparently due to then-existing circumstances with the trial court's docket, a CHINS merits hearing was not scheduled for over a year, although a status conference was held in June 2016. At the September 2016 CHINS merits hearing, mother stipulated that B.C. was CHINS at the time that the petition was filed due to her substance abuse issues and the negative effect that it had on her ability to parent. The court held a disposition hearing in December 2016 and adopted a concurrent plan of reunification with either parent or termination of parents' rights. The estimated date for achieving the case plan goal was six months. Mother was required, among other things, to refrain from using illegal or illicit substances, follow recommendations from her treatment provider, submit to requested urinalyses (UAs) from DCF, gain safe and stable housing, and participate in all court hearings and team meetings.

In August 2017, DCF moved to terminate parents' rights. A TPR hearing was held over several days in February, March, and April 2018. At the start of the February hearing, father voluntarily relinquished his rights contingent on termination of mother's rights. In June 2018, the court issued a written order terminating mother's rights. It made numerous findings, none of which are challenged on appeal. The court recounted the procedural history of this case. It found that grandparents were meeting B.C.'s needs. It determined that mother continued to use drugs. Between June 2016 and August 2017, mother tested positive for opiates sixteen times and cocaine twenty-two times. The treatment clinic that mother attended recommended that mother engage in more intensive treatment and specific treatment for cocaine but there was no evidence that mother followed this recommendation. Mother did not produce all the UAs requested by DCF. Mother obtained employment but was fired based on suspicions that she was rummaging through other peoples' cars. Mother testified that she sold drugs daily after losing her job. In September 2017, mother was charged with selling cocaine and referred to Chittenden County Drug Court. Because of her consistently positive UAs, mother was directed to engage in inpatient substance abuse treatment.

In the Fall of 2017, mother stole money from grandmother; she was also sleeping through most of her visits with B.C. The court credited a DCF worker's testimony that mother was clearly under the influence during one of the visits he supervised. By the time of the March 22, 2018 hearing, mother was participating in a 14-day residential drug treatment program, which she completed. She acknowledged that, prior to going to this treatment program, she had been using drugs daily for the prior six to eight months. Mother resumed using drugs after completing the treatment program. She was then reincarcerated through the Drug Court.

Mother did not obtain stable housing; her last verifiable residence was in the Fall of 2017. She had not worked since July 2017. Mother failed to maintain consistent communication with DCF and she failed to regularly participate in team meetings. Mother was unable to transition to unsupervised visits with B.C. because she could not provide three weeks of clean UAs.

Based on these and other findings, the court concluded that mother had stagnated in her ability to parent and that termination of her parental rights was in B.C.'s best interests. Summarizing the circumstances described above, the court found that mother was unable to assume her parental duties within a reasonable time. She could not prioritize B.C.'s needs over her own. She continued to use drugs; she did not progress to unsupervised visits; and she was homeless and unemployed. B.C. had been living in grandparents' home since he was four years old and he was deeply connected to the community there. B.C. had been out of parents' custody for over thirty months and he had a critical need for permanence. For these and other reasons, the court terminated mother's rights. This appeal followed.

Mother does not challenge any of the court's findings or its conclusions. Instead, she argues that the court failed to provide adequate oversight of this case. She notes that a case plan was not presented within sixty days of B.C. being placed in DCF custody. She also cites the delay in adjudicating B.C. as CHINS, the delay in the disposition and permanency review, and notice issues and unspecified delays with respect to the TPR proceedings. Mother appears to suggest that, as a result of these issues, she had "little guidance from the court." She asserts that she took good care of B.C. until he was removed from her care and notes that she was not obligated to take any parenting classes as part of the case plan.

Mother fails to show that she raised this argument below. See In re A.M., 2015 VT 109, ¶ 28, 200 Vt. 189 ("To 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 and alteration omitted); see also V.R.A.P. 28(a)(4)(A) (stating that appellant must describe “the issues presented” and “how they were preserved” and cite to “parts of the record on which the appellant relies”). Assuming *arguendo* that mother’s argument was preserved, we find it without merit. The court that held the CHINS merits hearing was cognizant of the delay that had occurred, apparently due to issues then occurring with the court’s docket. Mother’s attorney indicated at a September 2016 juvenile permanency planning hearing that if mother’s rights were not terminated at the CHINS merits hearing, “the delay will not be appealed.” Mother’s rights were not terminated at that time. A timely disposition hearing was scheduled but continued and held several months after the CHINS merits hearing. Mother did not appeal the CHINS determination or disposition order. We are mindful that the “time expectations” set forth by statute “are extremely important in juvenile cases,” and that “delays are likely to be disruptive to the child and the child’s stability.” *In re A.S.*, 2016 VT 76, ¶ 10, 202 Vt. 415 (per curiam). Nonetheless, the laws governing the timing of these hearings are designed “to protect children and . . . the time limits in the statute are directory and not jurisdictional.” *Id.* ¶ 8 (quotation omitted). All notice issues were cured by the court. In fact, despite notice, mother did not attend numerous court proceedings. Mother does not identify any particular delay at issue in the TPR proceeding beyond delay designed to cure notice issues. See *id.* ¶ 12 (recognizing that “two important goals—the efficient and timely resolution of cases and the provision of fair process—must be carefully balanced to ensure that the needs of both children and parents are met”).

Additionally, mother fails to show any prejudice that arose from these delays. To the contrary, mother was afforded extra time in which to change her behavior. She was aware from the outset of these proceedings that obtaining sobriety was necessary. She stipulated that B.C. was CHINS due to her substance abuse problems and the disposition plan required her to refrain from using illicit drugs. As set forth in the court’s unchallenged findings, mother was unable to stop using drugs during the nearly three years that B.C. was in DCF custody. She continued to use drugs both before and after B.C. was adjudicated CHINS and a case plan was adopted. She was homeless and unemployed. She did not progress beyond supervised visitation due to her failure to maintain sobriety. She failed to show that she could prioritize B.C.’s needs over her own. Mother was provided a full and fair opportunity to reunite with B.C. and she is responsible for her behavior, not the court. The court’s findings amply support its conclusion that termination of mother’s rights was in B.C.’s best interests. See *In re A.F.*, 160 Vt. 175, 178 (1993) (explaining that on review, trial court’s findings “will stand unless clearly erroneous,” and its “conclusions of law will be upheld if supported by the findings”).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice