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. 2019-417

APRIL TERM, 2020

In re R.T., Juvenile (C.T., Father* & R.T., Mother*)	} }	APPEALED FROM:
	} } }	Superior Court, Chittenden Unit, Family Division
	} }	DOCKET NO. 106-3-18 Cnjv
		Trial Judge: David R. Fenster

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

Mother and father appeal the court's decision terminating their parental rights at initial disposition to R.T., born in March 2018. On appeal, parents argue that the court committed plain error in accepting mother's stipulation to the merits and that parents were prejudiced by the lack of a case plan. We affirm.

R.T. was placed in the custody of the Department for Children and Families (DCF) on the day she was born based on risk of harm. The State filed a petition alleging that R.T. was a child in need of care or supervision (CHINS). Parents stipulated to the merits of the petition, including that parents' rights to three older children were previously terminated, father was a registered sex offender for a 2008 offense against a thirteen-year-old girl, and both parents required parent education to safely parent R.T. when she was born.

In January 2019, the State filed a petition seeking to terminate parents' rights at the initial disposition. Following a hearing, the court found as follows. Parents required education to provide safe parenting for R.T. To address this need, mother and father began participating in Easter Seals Family Time coaching in May 2018.

Mother was engaged with significant services to enable her to care for herself but did not consistently engage and was unable to make significant progress. Mother also did not progress regarding her ability to read R.T.'s cues. Mother demonstrated an inability to understand her relationship with R.T. and believed she had no problem providing basic care to R.T. Mother struggled to provide safe care for R.T. Mother was unable to feed R.T. safely, could not change R.T. without allowing feces within R.T.'s reach, and could not put R.T. consistently into a car seat. Mother became dysregulated, emotional, and appeared threatening at times. Mother was unable to deal with R.T.'s temper tantrums.

Father has no concerns about mother caring for R.T. alone over a weekend, and has confidence in mother's parenting abilities that is inconsistent with the evidence. Because father worked seven days a week and family time coaching sometimes conflicted with his work, his attendance at family time coaching was inconsistent. When he did participate, his interactions

with R.T. were not age appropriate. Like mother, he struggled to interpret R.T.'s cues when she needed a diaper change. At times, including at a case plan review and at shared family time, he also escalated in front of R.T., standing up, raising his voice, pounding the table, and pacing around the room. He did not progress through the course of this case in managing his anger.

DCF placed R.T. with a foster mother who was willing to adopt. The foster mother was able to accurately read R.T.'s cues. R.T. has a strong bond with her extended foster family. R.T. is an independent and caring child. She has good verbal skills. She exhibited dysregulation on days when she visited her parents, her sleep was disturbed and at times she became inconsolable, anxious, and uncomfortable.

The court evaluated the statutory best-interests factors and found that termination was in R.T.'s best interests. The court found that neither parent would be able to assume parental duties within a reasonable time given R.T.'s young age, her time in custody, and parent's lack of progress. The court further found that R.T.'s relationship with her parents was problematic and they do not play a constructive role in R.T.'s life. R.T. was well adjusted to her foster mother's home and community, and she was strongly bonded with her foster mother and foster family.

On appeal, parents argue that the court committed plain error in accepting mother's stipulation to the merits of the CHINS. Parents argument stems from the fact that mother was determined to be incompetent during the pendency of the proceeding and assigned a guardian ad litem (GAL). Vermont Rule of Family Court Proceedings 6(d)(3) contains the following requirements for individuals who have a GAL:

> (3) Waivers of Constitutional and Other Important Rights. When a ward or a guardian ad litem wishes to waive a constitutional right of the ward, enter an admission to the merits of a proceeding, or waive patient's privilege under V.R.E. 503, the court shall not accept the proposed waiver or admission unless the court determines, after opportunity to be heard, each of the following:
>
> (A) that there is a factual and legal basis for the waiver or admission;
>
> (B) that the attorney has investigated the relevant facts and law, consulted with the client and guardian ad litem, and the guardian ad litem has consulted with the ward;
>
> (C) that the waiver or admission is in the best interest of the ward; and
>
> (D) that the waiver or admission is being entered into knowingly and voluntarily by the ward and also by the guardian ad litem, except as set forth in (4) below.

Because mother did not object to the merits stipulation in the trial court, on appeal she contends that the court committed plain error in accepting her admission to the merits by not fully complying with the requirements of Rule 6(d)(3). Specifically, mother argues that the court did not inquire fully as to whether the admission was made knowingly and voluntarily by the GAL, as required by Rule 6(d)(3)(D), or whether mother's attorney had investigated the facts and law as required by Rule 6(d)(3)(B).

We conclude that there is no basis for reversal. In the civil context, the plain-error doctrine is reserved for the "exceptional case[ ]" where the error implicates fundamental rights. In re D.C., 157 Vt. 659, 650 (1991) (mem.); see also Hanson-Metayer v. Hanson-Metayer, 2013 VT 29, ¶ 40, 193 Vt. 490. Here, mother's fundamental rights were not violated. The court engaged in a full colloquy regarding her consent to the merits stipulation. At the hearing, the court indicated that it wanted to review the stipulation carefully with both parents to make sure everyone understood it and that it was voluntary. The court questioned mother at length, confirming that mother understood that the State had the burden of proving that R.T. was CHINS and that mother knew she had a right to have the State bring testimony and prove its case. Mother also confirmed that she had had enough time to discuss the case with her attorney. The court read the entire stipulation out loud to mother, who agreed that the facts were accurate. The court similarly reviewed the stipulation with father and found he was making the stipulation knowingly and voluntarily. The court inquired of mother's GAL, who indicated that she believed the agreement was in mother's best interests and that mother had received adequate representation.

This colloquy adequately protected mother's fundamental rights. Although the better course would have been for the court to make express findings of the determinations required by Rule 6(d)(3), the record reflects general compliance with the rule. Although the court did not make an explicit finding that the GAL's admission was done knowingly and voluntarily, nothing in the record suggests otherwise. The GAL was present during mother's colloquy with the court and confirmed that the stipulation was in mother's best interests. Mother asserts that neither mother nor the GAL understood what it meant to agree to the merits. In essence, mother argues that she did not understand at the time that her stipulation would lead to termination of her parental rights. To accept the stipulation, the court was not required to confirm mother's understanding of the probable paths the proceeding might take. The purpose of a merits stipulation is to allow the parties to admit to the facts and accept the determination that the child is CHINS. See 33 V.S.A. § 5315(b). Here, the court's colloquy demonstrated that mother and the GAL understood the facts underlying the stipulation and understood that by admitting to those facts the State would not be required to prove them with evidence. The court fully explained that the stipulation would concede that R.T. was CHINS, the court read all the facts included in the stipulation, and mother agreed to those facts.

In addition, the record shows that mother's attorney understood the facts and the law underlying the stipulation. Prior to parents' admission, the court held the first day of a contested merits hearing at which mother's attorney actively participated. At the hearing, much of what was included in the stipulation was admitted as evidence, including father's conviction and placement on the sex-offender registry, DCF's prior involvement with the family, and the termination of parents' rights to another child. Therefore, it was evident that the attorney understood the facts and the law. Moreover, mother does not challenge any of the facts upon which the stipulation was based. Accordingly, we discern no possible prejudice to mother, and no basis to disturb the judgment. See In re R.W., 2011 VT 124, ¶ 17, 191 Vt. 108 (noting that Court will reverse termination-of-parental-rights judgment only where error affected a party's substantial right).

Parents also contend that they were prejudiced by the fact that there was no case plan during the eighteen-month pendency of the case. First, it is important to note that termination of parents' rights was not based on their failure to make progress towards the goals in the case plan because termination was granted at the initial disposition. Second, lack of an approved case plan did not prejudice parents because they were aware of the parenting deficits that they needed to address to be able to parent. In May 2018, the State filed an initial case plan, which provided goals for both mother and father. These included engaging with providers, demonstrating an ability to care for

R.T., demonstrating significant progress in parenting skills, and identifying detrimental behaviors and changing those behaviors. Parents had services provided to them, including Family Time coaching to address parenting deficits. Because it was evident from the beginning of the case that parents needed to address their parenting skills, they suffered no prejudice from lack of a formal case plan. See In re H.T., 2020 VT 3, ¶ 29 (concluding that parents were not prejudiced by lack of formal case plan where they were on notice of parenting deficits that required state intervention).

Affirmed.

BY THE COURT:

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice