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. 2020-112

JULY TERM, 2020

In re C.L., A.L., K.L., Juveniles (C.S., Father*)	}	APPEALED FROM:
	}	
	}	Superior Court, Chittenden Unit, Family Division
	}	
	}	DOCKET NO. 250/251/252-6-18 Cnjv
		Trial Judge: Megan J. Shafritz

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

Father appeals the termination of his parental rights to minor children C.L., A.L., and K.L. We affirm.

Father and mother have four children together: seven-year-old C.L., four-year-old A.L., and three-year-old K.L., who are the subjects of this appeal; and six-month-old Cl.L., who lives with parents pursuant to a conditional custody order in a separate proceeding. Father has a history of substance abuse and issues with housing stability. His parental rights to an older child were terminated in 2014. In May 2016, the Department for Children and Families (DCF) filed petitions alleging that C.L. and A.L. were children in need of care or supervision (CHINS). The children were adjudicated CHINS in October 2016. Parents engaged in services and successfully reunified with the children in October 2017, and that case was closed.

This proceeding began in June 2018, when DCF filed petitions alleging that C.L., A.L., and K.L. were CHINS due to resumed substance abuse by parents, unsanitary and unsafe living conditions, and neglect of the children's needs. At the time, the family was living at a motel in South Burlington. The children were placed in DCF custody pursuant to an emergency care order. Parents stipulated to the merits of the CHINS petitions in September 2018. Following a contested disposition hearing, the court continued DCF custody and adopted a case plan with a goal of reunification with either parent. The case plan called for father to: engage with a domestic-violence specialist and follow any treatment recommendations; not incur further criminal charges; engage in a substance-abuse assessment and submit to random urinalyses; find and maintain stable and appropriate housing; participate in parent coaching with Easter Seals; and engage in DCF planning and attend all meetings, hearings, and child medical appointments.

Father made progress toward addressing his substance-abuse issues and did not incur any new criminal charges. However, he failed to make progress in improving his parenting skills. He did not engage with parenting coaches and often showed up late, left early, or failed to appear at visits, such that DCF filed motions on three separate occasions to suspend his visitation. He also did not engage in domestic-violence counseling or case planning, or attend team meetings or

medical appointments for the children. Father's housing remained unstable. At the time of the termination hearing, he lived with mother and Cl.L. in the home of his cousin and her three young children in Barre.

In March 2019, DCF filed motions to terminate the parental rights of mother and father. The court conducted a hearing over two days in December 2019 and January 2020. At the beginning of the first day of the hearing, mother voluntarily relinquished her parental rights to all three children. Father appeared and testified on the first day of the hearing. He did not appear on the second day. Based on the testimony presented, the court concluded in a written decision issued in February 2020 that father had stagnated in his progress and that it was in the children's best interests to terminate parental rights. This appeal followed.

Father's sole argument on appeal is that the family court committed reversible error by failing to provide him with direct notice of the second day of the termination hearing. He relies on our decision in In re M.T., in which we held that, pursuant to a statute then in effect, 33 V.S.A. § 5532(b), the family court is required to provide direct notice to parents, in addition to their attorneys, of a scheduled termination hearing in a CHINS case. 2006 VT 114, ¶ 10, 180 Vt. 643 (mem.). We concluded that the Legislature required direct notice to ensure that a parent "recognize[s] the full import of the proceeding." Id. ¶ 12. In M.T., we reversed the decision of the family court terminating a mother's rights with respect to her minor son where the court did not send direct notice to mother of the termination hearing and she did not attend the hearing.[*] Id.

Assuming without deciding that the court has a legal obligation to provide a parent direct notice of a termination of parental rights hearing, we conclude that reversal is not required in this case because the family court complied with its obligation to provide direct notice of the hearing to father.

The family court docket entries show that in October 2019, the court set the termination hearing for December 13, 2019. On December 2, DCF's attorney gave the court a new address for parents in Barre. The court sent a hearing notice to that address, but it was returned as "attempted, not known." Despite this, father and mother both attended the first day of the hearing and testified in DCF's direct case. Father's attorney stated he would wait until he put on his case to question father.

On December 16, 2019, the court scheduled the second day of hearing for January 17, 2020, and sent a hearing notice to father at the Barre address. On January 2, the notice was returned as "attempted, not known." Father did not appear on the second day of hearing. Father's attorney attended and did not object to proceeding without father. A DCF caseworker testified that he had visited the Barre address on January 3 and father was living there. He testified that he informed father of the date and time of the hearing and encouraged him to contact his attorney. He later called and texted father to remind him of the hearing but received no response. He managed to reach mother and asked her to remind father about the hearing.

[*] Subsequent to that decision, the Legislature repealed 33 V.S.A. § 5532 and replaced it with 33 V.S.A. § 5113, which provides that any order modifying or vacating an existing disposition order "shall be made after notice and hearing." Unlike § 5532, § 5113 does not refer to the statute governing service of a CHINS petition. Neither party argues that the statutory change affected the direct-notice rule set forth in In re M.T. We need not resolve the question of whether direct notice to parents continues to be required under the new statutory scheme because we conclude that even if it is, the court complied with the rule.

We have held that the court's obligation under M.T. is satisfied when the court mails notice to a parent's last known address, even if it is returned due to the parent's failure to update his or her address. In re J.L., 2007 VT 32, ¶ 10, 181 Vt. 615 (mem.). In J.L., the court sent notice of a termination hearing to the father at his last known address and the notice was returned. The father subsequently learned of the hearing date from his attorney. He initially participated by telephone, but then hung up and was subsequently unreachable. On appeal from the decision terminating his parental rights, he argued that his due process rights were violated due to lack of notice. We rejected this claim, holding that the court provided adequate process under M.T. by mailing notice directly to the father at his last known address. Id. ¶ 13.

Here, as in J.L., the court mailed notice of the termination hearing to father's last known address, thereby discharging its obligation under M.T. "It was [father's] failure to update the court as to his change of address that resulted in the failure of the notice to reach him." Id. Father was plainly aware of the requirement to notify the court of changes in address, as he had done so previously in this case. Accordingly, we find no error. See id.; In re S.W., 2008 VT 38, ¶ 12, 183 Vt. 610 (mem.) (holding rule set forth in M.T. was satisfied where court sent notice to mother of last day of multi-day termination hearing).

Although father argues that the Barre address provided by DCF had been proven wrong and the court erred in relying upon it, the record does not support this claim. It is apparent from the transcript that father was actually living at the address provided by DCF, even if the postal service was unaware of that fact. Father does not claim that he was living somewhere else. In any event, "[t]hat the notice was returned due to an incorrect address does not alter the situation since [father] had an obligation to notify the court of any change in address." In re X.L., No. 2011-353, 2012 WL 1293536, at *3 (Vt. Mar. 15, 2012) (unpub. mem.) (holding that court satisfied obligation of direct notice by mailing direct notice to mother's last known address even though mail was returned as undeliverable); see 33 V.S.A. § 5311(f) ("The parent shall be responsible for providing the Court with information regarding any changes in address.").

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

_____
Beth Robinson, Associate Justice

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Karen R. Carroll, Associate Justice