VERMONT SUPREME COURT
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Case No. 22-AP-040

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

JULY TERM, 2022

In re A.C., Juvenile	}	APPEALED FROM:
(J.C., Father*)	}	
	}	Superior Court, Grand Isle Unit,
	}	Family Division
	}	CASE NO. 21-JV-00814
		Trial Judge: David A. Barra

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

Father appeals a disposition order in this juvenile matter involving his daughter, A.C. On appeal, father argues that the court abused its discretion in adopting a case plan with a goal of reunification within six months. We affirm.

Juvenile A.C., born in September 2019, was placed in the custody of the Department for Children and Families (DCF) in June 2021 at eighteen months old due to concerns about the condition of the home and parents' substance abuse. This was A.C.'s first time in DCF custody; mother's other children had previously been in custody, and two were in the custody of the maternal grandparents under a permanent guardianship. The State filed a petition alleging that A.C. was a child in need of care or supervision (CHINS). Parents stipulated to the merits of the CHINS petition in October 2021.

DCF submitted a case plan in December 2021 with a goal of reunification with parents. The case plan goal had an estimated date for achievement of the case plan goal of June 2022. The case plan explained that A.C. was two years old, had been in DCF custody for six months, and required a stable, clean, and safe home and structure and routine to meet her needs. At the time, father was homeless and unemployed. The case plan set forth goals for father, including that he would refrain from using illicit substances, obtain substance-abuse treatment, engage in mental-health counseling, engage in a parenting group, maintain safe housing, and meet with a domestic-violence specialist.

Father filed objections to the case plan. Among other things, he asserted that an estimated completion date of June 2022 was unrealistic and that he needed more time to address the issues identified in the case plan. At the disposition hearing, father argued that more time was necessary to achieve the case plan goal of reunification because the pandemic had slowed things down and it would take more time for father to find housing and complete other goals like Family Time Coaching. In response to father's request for more time, the court questioned what

the harm was in having a deadline of June and assessing at that time whether the date needed to be extended. Father argued that if the goals were not accomplished by the goal date, then it was likely that a petition to terminate parental rights would be filed. The State opposed extending the goal date. Ultimately, the trial court accepted the case plan with the June estimated completion date, explaining that the court's focus was on A.C.'s needs, and, given her young age and lengthy of time in custody, it was in her best interests to leave the goal date as June 2022. The court subsequently issued a disposition order.* Father appeals the disposition order.

On appeal, father asserts that the family court erred in adopting a case plan with an estimated date of June 2022 for achieving the case plan goal of reunification. Father contends that all parties understood parents would need more time to work on the case plan and that the trial court's decision to adopt the case plan was not supported by the record and an error of law.

Father has failed to demonstrate that the family court made any error of fact or law. When a child is adjudicated as CHINS, DCF has the responsibility of filing a disposition case plan, which includes a permanency goal and an estimated date for achieving the goal. 33 V.S.A. § 5316(b)(1). At disposition, the court makes orders as to custody that are in the child's best interests and may reject the plan proposed by DCF if the plan "does not adequately support the permanency goal for the child." Id. § 5318(b). In juvenile cases, this Court will not disturb the family court's findings unless they are clearly erroneous and will uphold its conclusions if reasonably supported by the findings. In re K.F., 2004 VT 40, ¶ 8, 176 Vt. 636 (mem.).

Here, the record supported the court's decision declining to reject the case plan that included an estimated date of June 2022 to achieve the permanency goal. In assessing the case plan and determining an appropriate disposition outcome, the family court properly focused on the child's best interests. See 33 V.S.A. § 5318(a) (explaining that at disposition court must make orders related to custody "as the court determines are in the best interests of the child"). Although father may have wanted or even needed more time to work through all of the goals in the case plan, the court's focus remains on the child. Here, the family court properly applied the law, and the facts support its finding that June 2022 was a reasonable estimate for achieving the case plan goal given the child's young age, length of time in DCF custody, and need for permanence. See In re R.M., 2013 VT 78, 194 Vt. 431, ¶ 14 (affirming disposition with six-month estimated date for compliance as within court's discretion). Contrary to father's assertion, it was appropriate for the court to consider the child's young age in its assessment of whether the disposition order was in A.C.'s best interest. Id. (assessing whether permanency time period was reasonable based on parent's past performance and child's need for permanency).

There is no merit to father's arguments that pre-disposition delays that were outside of parents' control amounted to constitutional violations or that the June 2022 estimated compliance

* In its appellee brief, the State argued that the matter should be remanded because the family court erred by failing to select a permanency goal in its form disposition order. In response to father's request, this Court put the appeal on hold and remanded for the family court to consider father's request to correct a clerical error in the order and indicate a permanency goal. The family court granted the request and issued a corrected disposition order, which indicated that the case plan goal was reunification with parents. The appeal proceeded and this Court invited the State to file a brief responding to father's substantive argument regarding the estimated date in the case plan. The State did not respond to this request and has not filed a brief responding to father's arguments. Although the State's lack of response is unfortunate, it does not amount to a concession of error or entitle father to relief as asserted by father.

date will deprive them of services in the future. Parents were provided due process throughout the proceeding in that they were noticed and provided with an opportunity to participate. See In re H.A., 153 Vt. 504, 509 (1990) (explaining that parents' due process rights in termination proceeding must be "strictly observed" and that even in that context those rights are satisfied by providing notice and opportunity to be heard). To the extent that father foresees that he might be denied services in the future or that stagnation may be caused by factors outside his control, these arguments are speculation and not ripe for review.

Similarly, we reject father's assertion that the court committed legal error when it stated that the compliance date could be extended in the future to grant parents more time to achieve the permanency goal if necessary. According to father, the court improperly understood its power because father claims that extending the estimated achievement date in the case plan would require modification of the disposition order and thus a showing of changed circumstances. Father's claim is hypothetical and premature. The court's statement was not a substantive ruling or determinative of any issue. Moreover, father's claim is conjecture as to how the estimated date of compliance may affect future proceedings. If and when there is a motion to modify the existing disposition plan, the State will have the burden to show a change of circumstances. See 33 V.S.A. § 5113(b); see also In re R.M., 2013 VT 78, ¶ 14 (explaining that estimated time to achieve permanency does not have binding effect and parent can challenge time period if unreasonable in hindsight). It would amount to an advisory opinion to guess at this point when the State may file such a motion and whether the facts would support a finding of changed circumstances due to stagnation.

Affirmed.

BY THE COURT:

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Harold E. Eaton, Jr., Associate Justice

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William D. Cohen, Associate Justice

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Nancy J. Waples, Associate Justice