

VERMONT SUPREME COURT
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Case No. 21-AP-235

ENTRY ORDER

DECEMBER TERM, 2021

In re K.S., Juvenile (J.I., Father*)	}	APPEALED FROM:
	}	Superior Court, Franklin Unit, Family Division
	}	CASE NO. 79-6-20 Frjv

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

Appellees K.S. and the State of Vermont move to dismiss the above-captioned appeal, arguing that father filed an interlocutory appeal without permission. Father opposes dismissal and moves instead to strike record complete. We grant the motion to dismiss, but on a different basis than argued by appellees.

In June 2020, the State filed a petition alleging that K.S. was a child in need of care or supervision (CHINS). At the time, mother and father were living together, and the State subsequently amended the petition to allege that father was a custodial parent.

In June 2021, mother stipulated that K.S. was CHINS due to father's history of sexual and physical abuse, her lack of understanding about the seriousness of father's history, and her lack of stable housing. The family division issued a CHINS adjudication based on mother's stipulation. Father did not agree to the stipulation and requested a merits hearing.

Father's merits hearing was scheduled for September 2021, but father did not appear. The court questioned whether it had to hold a merits hearing because mother had stipulated that K.S. was CHINS, and gave father's attorney time to brief that issue. It issued a disposition order transferring conditional custody back to mother and adopted a case plan establishing reunification with mother as a goal.

Father objected to the disposition order, arguing that the CHINS merits stipulation was invalid because it lacked his signature and the court could not proceed to disposition without first holding a hearing on the merits. Father also filed a timely notice of appeal from the disposition order. In his brief on appeal, he argues that as a custodial parent, his signature was required for the stipulation to be valid, and he had objected; the family division lacked authority to enter a disposition order without a valid merits adjudication; and that the court violated his rights to due process and equal protection by entering a merits adjudication based on mother's admission to his conduct. He asks this Court to vacate the disposition order and remand for a merits hearing on the petition.

After father filed his notice of appeal, the family division issued an order in which it concluded that mother's stipulation to the merits of the petition was valid, but that father was

entitled to a hearing because some of the facts stipulated to by mother were about his behavior and history. It held the merits hearing on December 9, 2021. On December 13, 2021, the family division issued an entry order stating that “based on [m]other’s testimony, all agree that [f]ather was not a custodial parent at the time the petition was filed as had not provided any care to [K.S.]” It ordered DCF to prepare an updated case plan and indicated that it would set a disposition hearing.

K.S. has moved to dismiss father’s appeal on the ground that the family division’s September 2021 order was an interlocutory order and father did not obtain permission to appeal it. The State joins in K.S.’s motion. Father opposes dismissal, arguing that the court’s September 2021 order was a final disposition order. He asks this Court to strike record complete to include the transcript of the December 9, 2021, hearing, so that he can raise new arguments related to the court’s decision that he was a noncustodial parent at the time of the petition.

We agree that this appeal should be dismissed, but on a different basis than argued by appellees. The September 2021 order, which adopted a case plan and transferred conditional custody to mother, appeared at that time to be the court’s final disposition order and father could appeal it. See 33 V.S.A. § 5315(d) (“A disposition order is a final order. ...”). However, after father filed his notice of appeal from the September 2021 disposition order, the family division acknowledged that father was entitled to a merits hearing and that further proceedings concerning disposition were required. The appeal has therefore become moot. A case is moot when “the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.” In re Moriarty, 156 Vt. 160, 163 (1991) (quotations omitted). “Even if a case originally presented an actual controversy in the trial court, the case must remain live throughout the appellate process for us to examine the issues. Thus, a change in facts or circumstances can render a case moot if this Court can no longer grant effective relief.” Houston v. Town of Waitsfield, 2007 VT 135, ¶ 5, 183 Vt. 543 (quotation omitted). The family division has granted the relief that father seeks on appeal, thereby rendering this case moot. The appeal is therefore dismissed. Father’s motion to strike record complete is denied.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice