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. 2018-293

JANUARY TERM, 2019

In re J.S., Juvenile (S.S., Mother*)	} } } } } } }	APPEALED FROM: Superior Court, Chittenden Unit, Family Division DOCKET NO. 447-11-17 Cnjv Trial Judge: Alison S. Arms

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

Mother appeals the family division's decision placing her minor son J.S. in a permanent guardianship. We affirm.

J.S. was born in May 2008. In November 2017, the Department for Children and Families (DCF) filed a petition alleging that J.S. was a child in need of care or supervision (CHINS) due to parental neglect. DCF alleged that J.S. had been living with his fictive grandparents, Ju. L. and Je. L., since July 2017; that he had gone without necessary medical, dental, and mental health care due to mother's failure to complete necessary paperwork, which caused his Medicaid coverage to lapse; and that mother had abused alcohol and drugs in his presence. At the December 2017 temporary care hearing, the court granted conditional custody to mother jointly with Ju. L. and Je. L.

The CHINS merits hearing took place in January 2018. Mother did not appear. The court granted DCF's motion to remove mother as a conditional custodian and adjudicated J.S. to be a CHINS.

A disposition hearing was held on April 2, 2018. Mother did not appear, and the court noted that she "ha[d] not been in the [j]uvenile's life for months." Prior to the hearing, DCF filed a disposition report recommending that J.S. be placed in a permanent guardianship with Ju. L. and Je. L. DCF orally amended the case plan goal at the hearing to include a concurrent goal of termination of parental rights. The court ordered J.S.'s attorney to file a termination or guardianship petition by April 16, 2018.

On May 4, 2018, J.S.'s attorney filed a petition to create a permanent guardianship. Several unsuccessful attempts were made to serve mother with notice of the petition and related hearings. In June 2018, the court ordered service by publication to both mother and father.[*] Mother was eventually

[*] The identity of J.S.'s father is unknown to DCF. He did not participate in the proceedings below and is not a party to this appeal.

served in hand with notice of the hearing on the permanent guardianship. The hearing was held on July 30, 2018. Mother did not attend.

At the guardianship hearing, Ju. L. testified that she and her husband Je. L. had cared for J.S. off and on since he was an infant and that J.S. had lived with them continuously for the previous year. She and Je. L. are not related to J.S. but consider themselves to be J.S.'s grandparents. Ju. L. stated that J.S.'s last contact with mother was Christmas 2017. She did not know where mother was residing. Je. L. testified similarly. All of the parties except for mother's attorney agreed that mother was not able to resume parental duties within a reasonable amount of time. Mother's attorney stated, "Your honor, my client is not here. I assume she would deny that, but I can't guarantee her position." The court orally found by clear and convincing evidence that neither parent was able to resume parental duties within a reasonable time and that the other requirements for a permanent guardianship had been met. It entered an order appointing Ju. L. and Je. L. as permanent guardians for J.S.

The family court may create a permanent guardianship for a child in a CHINS proceeding if it finds by clear and convincing evidence that certain statutory criteria are satisfied, including the requirement that "[n]either parent is able to assume or resume parental duties within a reasonable time." 14 V.S.A. § 2664(a). "As long as the court applied the proper standard, we will not disturb its findings unless they are clearly erroneous, and we will affirm its conclusions if they are supported by the findings." In re G.S., 153 Vt. 651, 652 (1990) (mem.).

On appeal, mother argues that the family court's finding that she was unable to resume parental duties within a reasonable time was not supported by evidence because no testimony was presented at the guardianship hearing regarding mother's current circumstances, the nature of her relationship with J.S., or the child's risk of physical or emotional harm.

The court applied the correct standard and the challenged finding was not clearly erroneous. The record showed that mother effectively abandoned J.S. to the fictive grandparents in July 2017. Mother had not contacted J.S. for more than seven months. She did not participate in any of the court proceedings after December 2017, including the permanent guardianship hearing for which she was hand-delivered notice. She did not seek a continuance of that hearing or offer any explanation for her absence. In short, the evidence demonstrated no prospective desire or ability by mother to resume parenting J.S. See In re B.M., 165 Vt. 331, 337 (1996) (explaining that court must consider parent's prospective ability to parent in assessing whether he or she will be able to resume duties within reasonable time). The court therefore did not err in finding that mother was unable to resume parental duties within a reasonable time. This finding, along with the court's other findings, supported its decision to establish a permanent guardianship.

Affirmed.

BY THE COURT:

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Karen R. Carroll, Associate Justice