VERMONT SUPREME COURT
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Case No. 24-AP-072

ENTRY ORDER

AUGUST TERM, 2024

In re A.N., Juvenile (B.D., Mother*)	}	APPEALED FROM:
	}	Superior Court, Addison Unit, Family Division
	}	
	}	CASE NO. 23-JV-00844

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

Mother filed a notice of appeal from the trial court's determination that A.N. was a child in need of care or supervision (CHINS). Custody of A.N. was returned to parents pursuant to a stipulated parenting agreement at disposition. For the reasons set forth below, we dismiss this appeal as moot.

"[A] case becomes moot—and this Court loses jurisdiction—when there no longer is an actual controversy or the litigants no longer have a legally cognizable interest in its outcome." In re M.M., 2024 VT 28, ¶ 6 (quotation omitted). We held in M.M. that parents' appeal of a CHINS determination was moot where, at disposition, the child was returned to the parents' "unconditional, unsupervised custody." Id. ¶ 1. Consistent with 33 V.S.A. § 5103(d)(2), we explained, the issuance of "the disposition order marked the conclusion of the underlying juvenile proceeding, and "[a]s a result, the CHINS adjudication ha[d] no current impact on the family division's authority to make orders regarding [the child's] legal custody." Id. ¶ 8. Thus, "the reversal or remand [the] parents [sought] would not provide them with effective relief." Id.

We rejected the parents' assertion that the case was not moot because "negative collateral consequences [were] likely to result from the action being reviewed." Id. ¶ 9. We emphasized that, to fall within this exception, "[t]he consequences at issue must be specific to the appellant, and a mere possibility that they will come to pass in the absence of a favorable decision is insufficient to sustain review." Id. ¶ 10 (quotation omitted). The parents in M.M. argued that they could be substantiated and listed on the Child Protection Registry based on the CHINS adjudication, and "that the adjudication could adversely affect them if they [had] any future involvement with DCF." Id. ¶ 15. We deemed these arguments about future possibilities "too remote to sustain application of the [mootness] exception." Id. We similarly rejected the parents' argument that "negative collateral consequences could result if records pertaining to the CHINS adjudication [were] introduced in their divorce case as relevant to legal and physical parental rights and responsibilities and parent-child contact." Id. ¶ 16. Because the parents had stipulated to a parenting arrangement,

which was adopted into a final order, we concluded that "the CHINS adjudication ha[d] no bearing on the resolution of custody in [the] parents' divorce case." Id. While the "parents argue[d] that the adjudication could be introduced as evidence if either seeks to modify the final order in the future, they d[id] not explain why it would be relevant under the applicable change-of-circumstances analysis given their stipulation." Id. We thus held that the parents failed to "identif[y] a sufficient prospect that resolution of the issues on appeal will affect them." Id. ¶ 17.

We reach a similar conclusion here. As indicated above, custody of A.N. was returned to parents at disposition pursuant to a stipulated shared-parenting plan, which was adopted in a final order in their domestic case. Parents agreed to divide legal decisionmaking authority and to share physical responsibility for A.N. The court found this in A.N.'s best interests and the juvenile case was closed. As in M.M., there is no longer any effective relief that can be provided to mother as a reversal of the CHINS determination would have "no current impact on the family division's authority to make orders regarding [A.N.'s] legal custody." Id. ¶ 8.

Mother fails to show that "negative collateral consequences are likely to result from the action being reviewed." Id. ¶ 9. Mother contends that, based on the policy of A.N.'s current school district, she would be unable to volunteer at his school. She states that the volunteering process requires a check of the Vermont Child Protection Registry and, according to mother, she has been substantiated in the DCF case.

At the outset, we emphasize that the merits of any substantiation and inclusion on the Child Protection Registry are not before us and any such challenges would not be appropriate in a CHINS appeal. See generally id. ¶ 12 (explaining that "[s]ubstantiation occurs where DCF investigates a report of child abuse or neglect and concludes that it 'is based upon accurate and reliable information that would lead a reasonable person to believe that [a] child has been abused or neglected.' " (quoting 33 V.S.A. § 4912(16)); see also 33 V.S.A. §§ 4911-4923 (discussing substantiation process and Child Protection Registry, including ways in which party can challenge inclusion on registry). The basis of any substantiation is not clear from the record in this case as mother was found to have physically injured a different child in her home, in addition to the court's finding that A.N. was CHINS. As the State points out, moreover, the school-district volunteering rules provided by mother do not categorically prohibit those who have been substantiated from volunteering. Nor does mother assert that she tried to volunteer and was prohibited from doing so because she was substantiated for neglecting A.N. Mother fails to establish the necessary "direct link" between the order she seeks to challenge on appeal and the purportedly negative collateral consequences so as to fall within the exception. Paige v. State, 2013 VT 105, ¶ 13, 195 Vt. 302.

We are equally unpersuaded by mother's assertion that she is suffering from a loss of parent-child contact due to the CHINS adjudication. She speculates that father will likely file a motion to modify parental rights and responsibilities and parent-child contact, and that the CHINS decision will "almost certainly affect" the outcome of any motion father may file. Like M.M., however, mother stipulated to the parenting plan adopted in the domestic case and any reversal of the CHINS decision will not undo that agreement. Mother speculates about future motions that father might file and she does not explain why the CHINS decision "would be relevant under the applicable change-of-circumstances analysis given [her] stipulation." In re M.M., 2024 VT 28, ¶ 16. In reaching this conclusion, our decision in M.M. is controlling and we are not persuaded otherwise by the earlier, unpublished, three-Justice panel decision cited by mother. See generally V.R.A.P.

33.1(d)(1) recognizing that "[a]n unpublished decision by a three-justice panel may be cited as persuasive authority but is not controlling precedent," with exceptions not relevant here).

As in In re M.M., 2024 VT 28, ¶ 17, mother fails to "identif[y] a sufficient prospect that resolution of the issues on appeal will impact [her]," and we therefore dismiss this appeal as moot.

Dismissed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice