

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest)	MEMORANDUM DECISION
of B.A., a person under)	(Not For Official Publication)
eighteen years of age.)	
_____)	Case No. 20080844-CA
)	
T.M.,)	F I L E D
)	(November 28, 2008)
Appellant,)	
)	2008 UT App 430
v.)	
)	
State of Utah,)	
)	
Appellee.)	

Third District Juvenile, Salt Lake Department, 543763
The Honorable Charles D. Behrens

Attorneys: Brent Salazar-Hall, Salt Lake City, for Appellant
Mark L. Shurtleff and John M. Peterson, Salt Lake
City, for Appellee
Martha Pierce, Salt Lake City, Guardian Ad Litem

Before Judges Greenwood, Thorne, and Orme.

PER CURIAM:

T.M. (Mother) appeals the termination of her parental rights to B.A. Mother first contends that the evidence was insufficient to support the determination that she is an unfit parent, arguing that the juvenile court found she followed her doctor's orders in feeding B.A. We disagree. The juvenile court found that B.A. was removed after the Division of Child and Family Services received a failure to thrive referral. The juvenile court found that hospital staff stated "there was no organic reason for the failure to thrive and that the likely cause was that the child was not being fed properly." While the juvenile court found that "Mother reports that she had been following her doctor's orders," nowhere did the juvenile court make a finding that Mother in fact followed the doctor's orders in feeding B.A. The court found

only that Mother claimed that she had done so. Thus, Mother misstates the juvenile court's findings of fact.

Mother also contends that the court erred in finding her unfit based "solely" upon Dr. David Dodgion's updated evaluation that commended her dramatic changes. Mother was evaluated by Dr. Dodgion in 2006 after the removal of her older child, G.H., and again in April 2008, after the removal of B.A. The juvenile court found that the 2008 psychological evaluation was substantially the same as the 2006 evaluation. The juvenile court found that Dr. Dodgion was a credible witness and that his testimony was critical to the allegation that Mother's situation had not really changed from the time when her rights to G.H. were terminated. However, the juvenile court did not rely solely upon the 2008 evaluation. Mother's rights to G.H. were terminated on January 31, 2007, after she failed to meet the objectives of two service plans. She did not seek treatment between termination of her rights to G.H. and the birth of B.A. and did not follow the recommendations from the 2006 evaluation. Although Dr. Dodgion noted a dramatic change in Mother's attitude and approach in 2008, the 2008 psychological evaluation reached similar conclusions that Mother's evaluation was strongly indicative of a psychotic disorder, that it was unlikely Mother could become an effective parent in the near future, and that Dr. Dodgion was concerned about Mother's ability to provide adequate care for B.A., as indicated by the failure to thrive diagnosis. The 2008 evaluation reflected concerns about the risk of abuse for B.A. if she was returned to Mother's care. The findings of fact on parental fitness are amply supported by the record evidence.

Mother also challenges the sufficiency of the evidence to support the juvenile court's best interests determination. The evidence demonstrated that after removal from Mother's care, B.A. began thriving in foster care and was within normal weight ranges by the time of trial. The foster parents who adopted G.H. were capable and willing to also adopt B.A. B.A. was integrated into the foster family, where she had resided since her removal at about six weeks of age.

We will overturn the juvenile court's decision "only if it either failed to consider all of the facts or considered all of the facts and its decision was nonetheless against the clear weight of the evidence." In re B.R., 2007 UT 82, ¶ 12, 171 P.3d 435. "When a foundation for the court's decision exists in the evidence, an appellate court may not engage in a reweighing of the evidence." Id. Because Mother demonstrates no error in the

juvenile court's findings of fact, conclusions of law, or termination order, we affirm.

Pamela T. Greenwood,
Presiding Judge

William A. Thorne Jr.,
Associate Presiding Judge

Gregory K. Orme, Judge