IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest of D.H., a person under eighteen years of age. _____ J.H., Appellant, v. State of Utah, Appellee.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20061134-CA F I L E D (February 23, 2007) 2007 UT App 58

Third District Juvenile, Salt Lake Department, 474757
The Honorable Kimberly K. Hornak

Attorneys: Summer D. Shelton, Salt Lake City, for Appellant
Mark L. Shurtleff and John M. Peterson, Salt Lake City, for Appellee
Martha Pierce and Kristin Fadel, Salt Lake City, Guardians Ad Litem

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Before Judges Greenwood, Billings, and Davis.

PER CURIAM:

J.H. appeals the termination of her parental rights. She first claims the court did not adequately consider her post-permanency hearing efforts and her present fitness. J.H.'s argument is based upon In re B.R., 2006 UT App 354, 144 P.3d 231, where we concluded that "it is not enough to show only that a parent has been unfit or incompetent at some time in the past." Id. at ¶86. However, "evidence of past events may be combined with evidence of a parent's inability or unwillingness to change to establish that, at the time of termination, the parent continues to" be unfit. Id. The mother in B.R. "presented, and the juvenile court accepted as fact, evidence of substantial rehabilitative efforts occurring after the termination of reunification services but prior to the [termination] trial." Id. at ¶105. We concluded that findings supporting the grounds

for termination were clearly erroneous because the juvenile court did not consider the mother's present parenting ability. See id. at ¶128. Noting that the parent "managed to accomplish substantial rehabilitation between the permanency hearing and the time of the termination trial" and that the mother's post-permanency hearing efforts were "objectively extraordinary," we held "that Mother's previous drug use and other prior failings do not outweigh the evidence of present parenting ability accepted as fact by the juvenile court." Id. at ¶¶130, 132.

The mother in B.R. presented "evidence of substantial rehabilitative efforts," which "the juvenile court accepted as fact." Id. at ¶105. In contrast, J.H. testified that she had housing at her father's home, but had applied for other housing. She had been working full-time for almost four weeks. She was scheduled to begin parenting classes on the Thursday after the termination trial. She claimed to have completed drug treatment while in jail. The juvenile court did not accept this evidence as credible and found that there was "no evidence that the mother has appropriate housing, that she has a job, that she completed drug treatment, or that she is signed up for parenting classes." "Findings of fact in a parental rights termination proceeding are overturned only if they are clearly erroneous." In re G.B., 2002 UT App 270,¶9, 53 P.3d 963. We "defer to the juvenile court because of its advantageous position with respect to the parties and the witnesses in assessing credibility and personalities." Id. We conclude that the juvenile court adequately weighed the evidence of post-permanency hearing rehabilitative efforts, but it found that evidence to be unpersuasive.

J.H. next contends that the evidence was insufficient to support a finding that the Division of Child and Family Services (DCFS) made reasonable reunification efforts. The court did not order reunification services for J.H. due to her incarceration. A court is not required to make a finding under Utah Code section 78-3a-407(3)(a) that DCFS made reasonable efforts to provide services unless the court "has directed [DCFS] to provide reunification services to a parent." Utah Code Ann. § 78-3a-407(3)(a) (Supp. 2006). Thus, the court was not required to make the challenged finding. In addition, although the statutory ground of failure of parental adjustment requires a finding that DCFS made reasonable and appropriate efforts to return the child home, none of the other grounds relied upon by the juvenile court required such a finding. Furthermore, DCFS made reasonable efforts to provide services to J.H. under the circumstances. At the time of the disposition hearing, J.H. had been sentenced to serve 365 days in jail. Therefore, the court did not order reunification services. A DCFS caseworker testified to having phone contact with J.H. during her incarceration, receiving

letters from her for D.H., and providing J.H. with pictures. J.H. alleges that she was thwarted in her efforts to obtain visitation after her release. However, the court ordered therapeutic visits, and it was the professional judgment of the child's therapist that no visits should occur. Under these circumstances, the finding that DCFS made reasonable efforts is supported.

Finally, J.H. claims that the best interests findings are insufficient and do not include enough facts to show the evidence upon which they are grounded. She also argues that the court did not engage in an adequate analysis of statutory factors. However, where "it is clear from the detailed findings that the court did consider the requirements," it is not necessary for the court to make specific reference to the statute. Id. at ¶22. The court's findings on best interests are supported by the evidence and also demonstrate consideration of the statutory factors.

We affirm.

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Pamela T. Greenwood,
Associate Presiding Judge

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Judith M. Billings, Judge

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James Z. Davis, Judge