

IN THE UTAH COURT OF APPEALS

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In the interest of M.L.M., a person under eighteen years of age.)	MEMORANDUM DECISION
)	(Not.For.Official Publication)
)	Case No. 20070465-CA
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D.J.M.,)	F I L E D
)	(August 30, 2007)
Appellant,)	2007 UT App 289
v.)	
R.W.M. and W.M.,)	
)	
Appellees.)	

Third District Juvenile, Salt Lake Department, 463684
The Honorable Andrew A. Valdez

Attorneys: Edward M. Garrett, Salt Lake City, for Appellant
Scott L. Wiggins, Salt Lake City, for Appellees
Martha Pierce, Salt Lake City, Guardian Ad Litem

Before Judges Bench, Greenwood, and McHugh.

PER CURIAM:

D.J.M. (Father) appeals the termination of his parental rights and the denial of his post-judgment motions to dismiss the case, for a new trial, and for relief from judgment.

Appellees and the Guardians Ad Litem claim that we lack jurisdiction to consider this appeal because Father did not appeal the adjudication order. See In re E.M., 922 P.2d 1282, 1284 (Utah Ct. App. 1996) (per curiam) (holding adjudication orders are final and appealable). However, because Father filed a timely appeal from the orders terminating his parental rights and ruling on his post-judgment motions, we have jurisdiction to consider an appeal limited to review of the termination order and ruling on post-judgment motions.

Father claims that the juvenile court lacked jurisdiction over him because he was not properly served with the termination petition. However, Father was served with the petition to

terminate parental rights in open court. He also claims that he did not have notice of the trial on the termination petition. However, Father was present with counsel at the October 2006 pretrial hearing on the termination petition when the trial date was set. The court required Father to state on the record that he understood he was to appear at trial on January 16, 2007 at 9:00 a.m. Claims that the termination petition was not properly served or that Father was not given notice of the termination trial are without merit.

Father alleges that the juvenile court improperly allowed amendment of the original neglect petition to seek termination of parental rights. In July 2005, the court adjudicated the child to be neglected, awarded temporary custody to Appellees, and required Father to address his use of controlled substances and other issues. After Father failed to comply, or to appear at the permanency hearing, the juvenile court granted permanent custody and guardianship to Appellees in April 2006. The court then terminated its jurisdiction. Subsequently, Appellees, who wish to adopt the child, filed a new petition seeking termination of parental rights. The juvenile court filed the new petition under the same number that it had assigned to the neglect case; nevertheless, the petition initiated a new statutory proceeding. See Utah Code Ann. §§ 78-3a-401 to -415 (2002 & Supp. 2007) (containing Termination of Parental Rights Act).

At the termination trial, the juvenile court took judicial notice of adjudicated facts from the neglect proceeding, which had not been challenged on appeal, and also received proffers of evidence alleged to support termination. "We review the juvenile court's judicial notice of prior adjudicated facts under Rule 201 of the Utah Rules of Evidence for abuse of discretion." In re J.B., 2002 UT App 267, ¶14, 53 P.3d 958. Father did not file an appeal of the adjudication order, and the court did not abuse its discretion in taking judicial notice of its contents. Similarly, Father did not appeal the April 2006 order awarding Appellees permanent custody and guardianship. That order was appealable because the court made a final custody award and terminated its jurisdiction. See In re A.F., 2007 UT 69, ¶16 ("[A]n order that implements a final custody award arrangement, such as guardianship or kinship placement, changes the child's status and may be appealed."). Father also challenges the sufficiency of the evidence to support termination because the court received proffers after Father did not appear at trial despite having notice. Under these circumstances, Father's claim of irregularity by proceeding through judicial notice of adjudicated facts and proffers is without merit.

In reviewing an order terminating parental rights, this court "will not disturb the juvenile court's findings and

conclusions unless the evidence clearly preponderates against the findings as made or the court has abused its discretion." In re R.A.J., 1999 UT App 329, ¶6, 991 P.2d 1118 (quotations and citation omitted). A juvenile court's findings of fact will not be overturned unless they are clearly erroneous. See In re E.R., 2001 UT App 66, ¶11, 21 P.3d 680. A finding of fact is clearly erroneous only when, in light of the evidence supporting the finding, it is against the clear weight of the evidence. See id. Under Utah Code section 78-3a-407(1), the finding of any single ground is sufficient to warrant termination of parental rights. See Utah Code Ann. § 78-3a-407(1) (Supp. 2007) (providing that the court may terminate all parental rights if it finds any one of the grounds listed); In re F.C. III, 2003 UT App 397, ¶6, 81 P.3d 790 (noting that any single ground is sufficient to terminate parental rights).

The juvenile court removed the child in 2005 and placed her in Appellees' custody. Removal was based upon the court's findings that Father regularly used controlled substances, that he did not have stable housing or employment, and that Father was physically abusive to the child's mother. The juvenile court ordered Father to submit to a psychological examination, undergo random drug testing, and obtain drug treatment. Father enrolled in drug treatment programs on at least three occasions, but did not provide any evidence that he completed treatment. Father did not visit the child after the child's removal in July 2005. He provided only token amounts of financial support. This evidence supports the juvenile court's determinations that Father abandoned his child; that he substantially neglected, willfully refused, or was unable or unwilling to remedy the circumstances that caused the child to be removed; and that there was a substantial likelihood that Father would not be able to exercise effective parental care in the near future. See Utah Code Ann. § 78-3a-407(1)(d). The record similarly supports the juvenile court's determination that it was in the child's best interest for Father's parental rights to be terminated. See id. § 78-3a-406(3) (Supp. 2007) (stating that the court must determine if termination is in the best interest of the child). The child has lived with Appellees for nearly two years. She has a strong bond with them, and they are meeting her physical, emotional, and financial needs. Appellees also wish to adopt her. Under these circumstances, the juvenile court did not abuse its considerable discretion in determining that terminating Father's parental rights was in the best interest of the child.

Father's claim that his trial counsel was negligent is without merit where Father failed to communicate with counsel between the time of the pretrial hearing and the termination trial and failed to appear at the trial. His remaining claims, including the claim that the State failed to provide

reunification services, are without merit. The State was not a party and was not ordered by the court to provide services. The court made a finding that although the State did not provide services, the court itself made reasonable efforts to assist Father. These efforts included providing referrals to drug treatment, making contacts with providers, and ordering supervised visits.

Affirmed.

Russell W. Bench,
Presiding Judge

Pamela T. Greenwood,
Associate Presiding Judge

Carolyn B. McHugh, Judge