IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest) MEMORANDUM DECISION (Not For Official Publication)) of Z.B., A.B., A.B., and M.B., persons under eighteen years Case No. 20070640-CA of age. FILED (December 20, 2007) D.B., Appellant, 2007 UT App 401 v. State of Utah, Appellee.

Second District Juvenile, Ogden Department, 450279 The Honorable Paul F. Iwasaki

Attorneys: Jennifer A. Clark, Ogden, for Appellant
Mark L. Shurtleff, Carol L.C. Verdoia, and John M.
Peterson, Salt Lake City, for Appellee
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Before Judges Davis, McHugh, and Orme.

PER CURIAM:

Appellant D.B. (Mother) appeals the termination of her parental rights. "Because of the factually intense nature of [a parental fitness] inquiry, the juvenile court's decision should be afforded a high degree of deference." In re B.R., 2007 UT 82, ¶ 12, 589 Utah Adv. Rep. 43. We 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." Id. (emphasis added). "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.

The juvenile court found that despite reasonable services provided by the Division of Child and Family Services (DCFS), Mother lost custody of her children in November 2005, and

subsequently failed to substantially correct the circumstances, conduct, or conditions that led to placement of the children outside the home. The court found:

[W]hile in the care or the custody of their mother, the mother had continually subjected all of the children to emotional and mental harm due to their observing domestic violence being perpetrated against the mother by the multiple men the mother has allowed to live with her and the children.

The court entered detailed findings on the mental state of each child. The court also found that Mother's "continued violation of the Court's no-contact order demonstrates an unwillingness of the mother to put the children's needs ahead of hers." The court cited the testimony of defense witness Dr. Kocherans that Mother was "still at risk for becoming involved in relationships that could harm her family." The court determined that Mother demonstrated an unwillingness or inability to keep inappropriate men out of her and her children's lives, as indicated by continual and recent violation of court orders. Finally, the court found that Mother's significant mental health and emotional issues were not likely to be resolved in the near future and precluded return of the children. Considering the relevance of Mother's progress, the court found

The magnitude of the harm done by the children's exposure to domestic violence, the physical and emotional harm done to the children due to the mother's choices in the men she has allowed into their lives, and the likelihood that such would continue if the children are allowed home, is not diminished by the minimal improvements achieved by the mother.

Although Mother "demonstrated a slight improvement in her ability to parent," the court found that "there is no reasonable or strong likelihood that she will be able to properly care for them in the near future." We conclude that the court considered evidence of Mother's progress and that the findings on the grounds for termination are amply supported.

Mother challenges the juvenile court's best interests determination. She contends, without significant record support, that the children testified that they wished to return to her. Z.B. testified that he did not wish to return. The older A.B. testified that she loved Mother but wished to be in a safe home and did not believe that she could be safe with Mother. The

therapist for the younger children testified that they were ambivalent about returning to Mother. Although they loved Mother, they were concerned about being safe and about "mean boys" who might hurt them or Mother. Mother next challenges the credibility and ability of the older A.B.'s foster mother. The alleged deficiencies in one foster home do not undermine the determination that it is in the best interests of the children to be placed for adoption because they cannot be safely returned to Mother's custody. The best interests determination is amply supported.

Mother challenges the testimony of the children regarding her contact with her boyfriend, despite a no contact order. The juvenile court acted within its discretion in determining that the testimony was credible. The court also did not err in considering evidence of a recent sexual assault by an acquaintance as it related to Mother's pattern of unhealthy relationships. In addition, the claim that the testimony of Virginia Cook should not have been considered is without merit.

Mother's therapist, as well as other witnesses, testified that family therapy would be necessary to allow the safe return of the children to Mother's custody. Family therapy was initiated, but it was cancelled based upon Mother's inappropriate actions. Mother's claim that DCFS failed to provide appropriate services because it did not resume family therapy is without merit.

We affirm the order terminating parental rights.

James Z. Davis, Judge
Carolyn B. McHugh, Judge
Gregory K. Orme. Judge