IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest of B.B., a person under eighteen years of age.	)	MEMORANDUM DECISION (Not For Official Publication)
	)	Case No. 20080182-CA
R.B. and K.B.,	)	F I L E D (July 25, 2008)
Appellants,	)	2008 UT App 292
v.	)	
State of Utah,	)	
Appellee.	)	

Third District Juvenile, Salt Lake Department, 430199
The Honorable C. Dane Nolan

Attorneys: Marsha McQuarrie Lang, Salt Lake City, for Appellants
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:

R.B. and K.B. (Adoptive Parents) appeal the juvenile court's order denying their petition to relinquish their parental rights in B.B.

Adoptive Parents first argue that the juvenile court failed to comply with the Utah Uniform Child Custody Jurisdiction and Enforcement Act (UUCCJEA) because it did not contact the Tennessee court which had previously entered a custody order in 2002. As a result, Adoptive Parents assert that none of the juvenile court's findings are final and the case must be remanded to the juvenile court to allow it "to contact the Tennessee Court and hold an expedited evidentiary hearing pursuant to the applicable provisions of the UUCCJEA."

Utah Code section 78-45c-203 states:

> Except as otherwise provided in Section 78-45c-204, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under Subsection 78-45c-201(1)(a) or (b) and:
>
> > (1) the court of the other state determines it no longer has exclusive jurisdiction under Section 78-45c-202 or that a court of this state would be a more convenient forum under Section 78-45c-207; or
> >
> > (2) a court of this state or a court of the other state determines that neither the child, nor a parent, nor any person acting as a parent presently resides in the other state.

Utah Code Ann. § 78-45c-203 (2002). Therefore, under this section a juvenile court has jurisdiction to modify another state's child custody determination if the Utah juvenile court has jurisdiction to make an initial child custody determination under section 78-45c-201(1) and a court of this state determines that neither the child, nor the parent, nor any person acting as a parent currently resides in the other state. Adoptive Parents do not dispute that the juvenile court properly determined that it had jurisdiction under section 78-45c-201 to make an initial custody decision. Further, at the time the juvenile court exercised jurisdiction over B.B., both B.B. and his biological mother resided in Utah while Adoptive Parents resided in Texas.[1] Thus, no interested party remained resident in Tennessee. Accordingly, under the statute the juvenile court had jurisdiction to modify Tennessee's child custody order without any need to confer with the Tennessee court to determine which court would exercise its jurisdiction.

Adoptive Parents next argue that the evidence was insufficient to support certain findings of fact as well as the juvenile court's ultimate determination that it would not be in

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[1]Adoptive Parents were served with the State's Initial Verified Petition on September 15, 2003, in Texas. Further, Adoptive Parents admit in their petition on appeal that they were served with the State's petition while residing in Texas.

B.B.'s best interest to terminate the parental rights of Adoptive Parents. 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 (internal quotation marks 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. Further, we give the juvenile court a "'wide latitude of discretion as to the judgments arrived at' based upon not only the court's opportunity to judge credibility firsthand, but also based on the juvenile court judge's 'special training, experience and interest in this field.'" Id. (citation omitted).

At trial, B.B.'s case worker indicated that based upon her interaction with B.B. and his counselors, it would not be in B.B.'s best interest to terminate Adoptive Parents' parental rights. Testimony also indicated that should something happen to Adoptive Parents prior to B.B.'s maturity, B.B. may be entitled to certain benefits, i.e., social security and other governmental benefits. On the other hand, the record was devoid of any facts demonstrating that it would actually be in the best interest of B.B. to allow Adoptive Parents to voluntarily relinquish their parental rights. Thus, the record supports the juvenile court's findings. "When a foundation for the court's decision exists in the evidence, an appellate court may not engage in a reweighing of the evidence." In re B.R., 2007 UT 82, ¶ 12, 171 P.3d 435. Accordingly, the juvenile court did not abuse its discretion in determining that Adoptive Parents had failed to demonstrate that it was in B.B.'s best interest to allow them to relinquish their parental rights.

Adoptive Parents' remaining issues were not sufficiently preserved for review. See Holman v. Callister, Duncan & Nebeker, 905 P.2d 895, 899 (Utah Ct. App. 1995) (stating that a litigant's failure to raise an issue with the trial court fails to preserve the claim for appeal). Adoptive Parents argue that the juvenile court erred in concluding the trial for the day on December 10, 2007, making it impossible for them to attend another day of trial or call remaining witnesses. However, the record reveals that contrary to Adoptive Parents' assertions, they did not object to concluding trial on December 10, 2007. In fact, after the juvenile court indicated that it was concluding matters for the day, counsel for Adoptive Parents stated: "I think we are through" and "I think we'll submit." At no time did Adoptive Parents ever indicate that they objected to the conclusion of the day's proceeding or inform the court that they had other

witnesses they wished to call. Accordingly, they waived the issue on appeal. See id.; see also State v. Briggs, 2006 UT App 448, ¶ 4, 147 P.3d 969 (stating that claimed errors must be brought to the attention of the district court to give the court an opportunity to correct any error).

Similarly, Adoptive Parents' issues concerning whether the juvenile court erred in making a determination concerning the best interest of the child when the guardian ad litem was not present at trial and whether the State should have been allowed to present argument at trial when it failed to file an answer to their petition for relinquishment prior to the trial are also unpreserved. There are no objections in the record that would have sufficiently alerted the juvenile court of the perceived errors so that it would have had an opportunity to have corrected the errors. Accordingly, the issues cannot be raised for the first time on appeal. See id.

Affirmed.

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Pamela T. Greenwood,
Presiding Judge

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Gregory K. Orme, Judge

THORNE, Judge (dissenting):

While I do not necessarily disagree with the majority's decision, I would send the case to full briefing on the issue of jurisdiction.

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William A. Thorne Jr.,
Associate Presiding Judge