

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

State of Utah, in the interest) MEMORANDUM DECISION
of L.A., V.A., A.A., and R.A.,) (Not For Official Publication)
persons under eighteen years)
of age.) Case No. 20080458-CA

D.A.,)
Appellant,) F I L E D
v.) (July 10, 2008)
State of Utah,)
Appellee.) 2008 UT App 264

Second District Juvenile, Ogden Department, 552662
The Honorable Paul F. Iwasaki

Attorneys: Sharon S. Sipes, Ogden, for Appellant
Mark L. Shurtleff and Carol L.C. Verdoia, Salt Lake
City, for Appellee
Martha Pierce, Salt Lake City, Guardian Ad Litem

Before Judges Greenwood, Thorne, and Orme.

PER CURIAM:

D.A. (Mother) appeals the juvenile court's May 7, 2008 order denying her motion for a new trial or relief from judgment. We affirm.¹

Mother asserts that she is entitled to a new trial based on newly discovered evidence. Rule 48(a) of the Utah Rules of Juvenile Procedure provides that a party may seek a new trial or relief from judgment after an order terminating his or her parental rights. See Utah R. Juv. P. 48. Rule 48(a) specifies that such motion may be made under rules 52, 59, and 60 of the Utah Rules of Civil Procedure. See id. A party may also seek a

1. Mother separately appealed the juvenile court's order terminating her parental rights after she voluntarily relinquished her rights in open court. This court affirmed the juvenile court's order terminating her parental rights. See In re L.A., 2008 UT App 202U, para. 3 (mem.) (per curiam).

new trial following an order terminating his or her parental rights under Utah Code section 78-3a-908. See In re C.L., 2007 UT 51, ¶ 10, 166 P.3d 608.

Mother asserts that she has new evidence justifying a new trial or relief from judgment. Requests for a new trial under rule 59(a)(4) and section 78-3a-908 are reviewed under the same standard. See id. In order to merit a new trial, a party must prove that the newly discovered evidence meets four requirements: (1) it must be material, competent evidence which is in fact newly discovered; (2) it must be such that it could not, by due diligence, have been discovered and produced at trial; (3) it must not be merely cumulative or incidental, but must be of sufficient substance that there is a reasonable likelihood that with it there would have been a different result; and (4) it must relate to facts which were in existence at the time of trial. See id. ¶ 12. If the moving party fails to establish any of these elements, a new trial may not be granted. See id. ¶ 13.

Mother's alleged new evidence is that her husband coerced her into terminating her parental rights and, therefore, her relinquishment was not voluntarily given. However, Mother concedes that the alleged threats and coercion were known by her prior to trial. The record also demonstrates that Mother had multiple opportunities to disclose the alleged threats to the court or her counsel prior to relinquishing her parental rights. Because these alleged threats and coercion were known before trial, even assuming that they were true, they could have been produced at trial. Thus, they do not constitute newly discovered evidence. See id. ¶ 12.

Mother next asserts that under rule 60(b)(6) of the Utah Rules of Civil Procedure, she is also entitled to relief from judgment due to newly discovered evidence. However, because the juvenile court did not err in determining that the alleged threats did not constitute newly discovered evidence, the juvenile court did not err in declining to grant relief from judgment.

Accordingly, the juvenile court's order is affirmed.

Pamela T. Greenwood,
Presiding Judge

William A. Thorne Jr.,
Associate Presiding Judge

Gregory K. Orme, Judge