IN THE UTAH COURT OF APPEALS

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In the interest of A.C.G., a person under eighteen years of age.	MEMORANDUM DECISION (Not For Official Publication)
	Case No. 20100770-CA
R.G., Appellant,	F I L E D (December 9, 2010)
	2010 UT App 347
v.	
Y.F., Appellee.	

Second District Juvenile, Ogden Department, 1032970
The Honorable Paul F. Iwasaki

Attorneys: Ramona R. Mann and Gary W. Barr, Ogden, for Appellant
Scott P. Nickle, Ogden, for Appellee
Martha Pierce, Salt Lake City, Guardian Ad Litem

Before Judges Davis, Orme, and Roth.

PER CURIAM:

R.G. (Father) appeals the juvenile court's order terminating his parental rights in A.C.G. We affirm.

When reviewing the termination of parental rights, this court gives the juvenile court broad discretion based on the juvenile court's opportunity to evaluate credibility firsthand, as well as the juvenile court judge's special training and experience. See In re A.B., 2007 UT App 286, ¶ 10, 168 P.3d 820. "In reviewing a decision to grant or deny a termination petition, '[w]e 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. "When a foundation for the [juvenile] 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.

Pursuant to Utah Code section 78A-6-507(1), the juvenile court may terminate parental rights if it finds that a parent has abandoned a child. See Utah Code Ann. § 78A-6-507(1)(a) (2008). Abandonment has been defined as "conduct on the part of the parent which implies a conscious disregard of the obligations owed by a parent to the child, leading to the destruction of the parent-child relationship." In re J.C.O., 734 P.2d 458, 462 (Utah 1987). Abandonment may be established by showing that a parent has failed to communicate with a child for six months or that a parent has failed to show the normal interest of a natural parent without just cause. See Utah Code Ann. § 78A-6-508(1)(b)-(c).

Father asserts there was insufficient evidence to support the juvenile court's finding that he had abandoned A.C.G. The juvenile court found that Father had abandoned A.C.G. because of (1) a lack of communication for a period longer than six months and (2) because of a failure to show the normal interest of a parent without just cause. The juvenile court's findings are well supported in the record.

Father admits to not having seen A.C.G. for seven years. A.C.G. testified that he had not heard from Father for a period of several years before Father began calling occasionally. The testimony from several witnesses was consistent that Father sporadically sent gifts over the course of several years and that he spoke with A.C.G. on the phone three to four times a year in more recent years. The conversations were brief and A.C.G. felt like he was talking to a stranger. A.C.G. testified that he had no bond with Father. Overall, there is a "foundation for the [juvenile] court's decision" in the evidence. See In re B.R., 2007 UT 82, ¶ 12. Father's sparse contact with A.C.G. over the years established that he failed to show the normal interest of a parent and, as a result, destroyed the parent-child relationship.

Father also asserts that the juvenile court's findings are inadequate to permit appellate review. Y.F. (Mother) prepared initial findings of fact and conclusions of law reflecting the juvenile court's ruling and mailed them to Father's counsel on August 4, 2010. Father objected to the proposed findings and conclusions. In response, Mother incorporated some of the requested changes into a new set of findings and conclusions, which were mailed to Father's counsel on August 25, 2010. The certificate of mailing noted that the findings would be submitted to the court if no objections were received within five days. No objection was made to the amended findings and conclusions. The juvenile court signed them on September 10, 2010.

Father's assertion that the findings and conclusions signed by the juvenile court are insufficient is not preserved. There

was no additional objection to the new proposed findings. To preserve a challenge to the adequacy of the findings, a party must object below. See In re K.F., 2009 UT 4, ¶¶ 60-61, 201 P.3d 985. The objections filed were specific to the August 4 proposed findings and the later proposed findings were significantly amended. Accordingly, this issue is not properly before this court. See id.

Father also argues that the juvenile court improperly admitted Mother's phone records and a proffered statement from A.C.G. He asserts that the phone records were inadmissible because they were "incomplete." However, the foundation laid for the records indicated that the records were complete for the time period they covered and that they were not manipulated or edited in any way. Given the foundation for the records, the objection was correctly overruled.

Father asserts that the proffer was improperly admitted because trial counsel did not stipulate to it. However, counsel twice failed to object to the proffer when it was raised at trial. The first time the proffer was discussed, counsel stated, "I'm perfectly okay with having it be proffered." Later, A.C.G. was about to be put on the stand but then the proffer was offered instead.[1] Mother's counsel represented to the court that the parties had agreed to admit the proffer. The proffer was offered as evidence without objection. Given the proceedings in the juvenile court, Father's assertion that the court erred in admitting the proffer was not preserved and is not properly before this court. See 438 Main St. v. Easy Heat, Inc., 2004 UT 72, ¶ 51, 99 P.3d 801.

Finally, Father asserts that he received ineffective assistance of counsel. To establish ineffective assistance of counsel, an appellant must show objectively deficient performance and resulting prejudice. See State v. Rojas-Martinez, 2005 UT 86, ¶ 9, 125 P.3d 930. A claim of ineffective assistance of counsel "may be defeated upon a finding by the court that either prong was not satisfied." Id.

Father asserts that counsel was ineffective in failing to cross-examine Mother about discrepancies in phone records; failing to object to Father being placed out of A.C.G.'s line of sight while A.C.G. testified; and failing to offer an illustrative exhibit into evidence. Even if these asserted

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[1]Ultimately, A.C.G. testified as a rebuttal witness and testified consistently with his proffer. As a result, any alleged error would be harmless.

failures were errors, there is no prejudice given the weight of the evidence.

Father's phone records showed more calls made than those reflected in Mother's phone records. However, the phone calls were made within roughly the year prior to trial. The parent-child relationship had already been irreparably damaged. A flurry of phone calls in the recent past does not overcome Father's overall lack of interest over the years. The remaining alleged errors likewise did not prejudice Father given the actual status of the relationship between Father and A.C.G. as shown at trial. Accordingly, Father's claim of ineffective assistance of counsel fails.

Affirmed.

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James Z. Davis,
Presiding Judge

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Gregory K. Orme, Judge

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Stephen L. Roth, Judge