IN THE UTAH COURT OF APPEALS

----ooOoo----

State of Utah, in the interest of B.A.P. and A.S.P., persons under eighteen years of age. _____ C.P. and A.P., Appellants, v. State of Utah, Appellee.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20050350-CA F I L E D (July 29, 2005) 2005 UT App 337

Seventh District Juvenile, Moab Department, 153056
The Honorable Lyle R. Anderson

Attorneys: William L. Schultz, Moab, for Appellants
Mark L. Shurtleff and John M. Peterson, Salt Lake City, for Appellee
Martha Pierce and Connie Mower, Salt Lake City, Guardians Ad Litem

---

Before Judges Billings, Bench, and Greenwood.

PER CURIAM:

A.P. and C.P. appeal the termination of their parental rights on the grounds that they made token efforts to support the children, prevent neglect, or avoid being unfit parents, see Utah Code Ann. § 78-3a-407(1)(f) (2002); neglected the children, see id. § 78-3a-407(1)(b); failed in their parental adjustment, see id. § 78-3a-407(1)(c); and will not be capable of exercising proper and effective parental care in the near future, see id. § 78-3a-407(1)(d).

A.P. and C.P. contend that the evidence presented at the termination trial was insufficient to support the findings of fact. We "review the juvenile court's factual findings based upon the clearly erroneous standard." In re E.R., 2001 UT App 66,¶11, 21 P.3d 680. "[W]e defer to the juvenile court because of its advantaged position with respect to the parties and the

witnesses in assessing credibility and personalities." In re S.L., 1999 UT App 390,¶20, 995 P.2d 17. Finally, a challenge to the termination based upon the findings is reviewed for correctness. See In re C.K., 2000 UT App 11,¶17, 996 P.2d 1059.

C.P. challenges the juvenile court's findings that (1) the Division of Child and Family Services provided reasonable services to him; (2) he has antisocial personality disorder; and (3) he did not maintain stability in employment or housing. C.P. also argues the court improperly considered his history without evidence that "it had repeated during the reunification period." A.P. contends that the juvenile court (1) improperly terminated reunification services; (2) failed to recognize her progress; and (3) improperly considered her reconciliation with C.P. as a negative factor. In sum, C.P. and A.P. claim that they "demonstrated significant changes in their lives since the children were removed."

The evidence was sufficient to support the findings that neither parent had maintained stability in housing or employment. Although C.P. claims that he did not have any significant gaps in employment, the evidence demonstrated that he frequently changed employment and had not achieved stability. Similarly, although A.P. and C.P. contend that their frequent changes of residence were made in an effort to better their situation, the evidence does not support this assertion. Following the permanency hearing, they moved to California where they resided with C.P.'s grandmother. At the time of the second termination trial, they still did not have a separate residence and had only vague plans to obtain permanent housing.

C.P.'s challenge to the finding that he received reasonable services is without merit. The testimony at both the termination trial and the permanency hearing demonstrated that C.P. consistently denied any parenting deficiencies, refused to sign a service plan, attended counseling at less than the recommended frequency, argued with caseworkers, and was resistant to any instruction. C.P.'s vague assertion that the juvenile court improperly considered his history without evidence that it had repeated during the reunification period is unsupported by the record. The history was relevant to demonstrating behavior that had adversely impacted his parenting. There is no support in the record for the claim that this evidence was given inappropriate weight by the juvenile court. Finally, C.P. challenges the finding that he has antisocial personality disorder. This finding was supported by the testimony of Dr. C.Y. Roby, which was based upon psychological evaluations conducted in 1995 and 1996 and on C.P.'s subsequent history. It was also supported by the testimony of Mary Orme, C.P.'s former counselor. Although Paul Smyth, a family therapist, disputed the diagnosis based upon

his observations, he conceded that he had conducted no psychological testing. We defer to the juvenile court's assessment of the evidence, and conclude that the finding is not clearly erroneous.

Without challenging any specific finding, A.P. contends that the juvenile court did not give adequate recognition to her progress and improperly considered her reconciliation with C.P. as a negative factor. The findings demonstrate that the juvenile court carefully considered both her progress and lack of progress. A.P. participated in drafting a service plan that included having no contact with C.P. as an objective. However, A.P. reconciled with C.P. approximately two months before the permanency hearing. The juvenile court noted in findings of fact and conclusions of law entered after the permanency hearing that reconciliation with C.P. posed a significant risk to her chances at reunification with the children. In addition, caseworkers testified that A.P. became less cooperative after reconciling with C.P. The juvenile court gave appropriate consideration to the progress made by A.P. and to the impact that reconciliation with C.P. had on her efforts to correct the circumstances that necessitated removal.

Finally, A.P. and C.P. contend that they had made significant efforts to improve their ability to parent by obtaining marriage counseling on their own initiative. The therapist testified that parenting issues were not addressed.

> [I]f a parent has demonstrated some improvement in parenting ability but not a strong likelihood that the parent can provide a proper home for the child in the very near future, after a long separation, a history of problems and failure to remedy, and deterioration of the relationship between the child and parent, this court should not overturn a court's order terminating parental rights.

In re M.L., 965 P.2d 551, 562 (Utah Ct. App. 1998). Accordingly, the weight given to any present ability evidence "is necessarily dependent on the amount of time during which the parent displayed an unwillingness or inability to improve [his or] her conduct" and the effect of that delay or conduct on the ability to resume a parent-child relationship. Id. at 561. Even considering testimony that the parents had improved their relationship through counseling, we will not overturn the termination order, given the length of separation and the failure to demonstrate

that the parents can provide a stable home for the children, who have been in an out of home placement since December of 2001.

We affirm the order terminating parental rights.[1]

_____
Judith M. Billings,
Presiding Judge

_____
Russell W. Bench,
Associate Presiding Judge

_____
Pamela T. Greenwood, Judge

---

[1]In the petition on appeal and a reply, counsel for A.P. and C.P. argues that unless full briefing is allowed, an appellant challenging the sufficiency of the evidence to support the juvenile court's decision will be denied a meaningful appeal. Appellate counsel is required to file a petition on appeal including, in part, a statement of all material facts and a concise statement of the issues to be raised on appeal. See Utah R. App. P. 55(d). "After reviewing the petition on appeal, any response, and the record, the Court of Appeals may rule by opinion or memorandum decision." Utah R. App. P. 58(a). Based upon our review, we do not order full briefing in this case.