

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest	)	MEMORANDUM DECISION
of M.F., a person under	)	(Not For Official Publication)
eighteen years of age.	)	
_____	)	Case No. 20080250-CA
	)	
M.R.G.	)	F I L E D
	)	(May 30, 2008)
Appellant,	)	
	)	2008 UT App 201
v.	)	
	)	
State of Utah,	)	
	)	
Appellee.	)	

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Third District Juvenile, Salt Lake Department, 514436  
The Honorable Sharon P. McCully

Attorneys: Colleen K. Coebergh, Salt Lake City, for Appellant  
Mark L. Shurtleff, John M. Peterson, and Carol L.C.  
Verdoia, Salt Lake City, for Appellee  
Martha Pierce, Salt Lake City, Guardian Ad Litem

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Before Judges Thorne, Bench, and Orme.

PER CURIAM:

M.R.G. (Father) appeals the termination of his parental rights in M.F. Father challenges the determination that he was an unfit parent, contending that the termination was improperly based upon his national origin and the fact that he was deported to Mexico, rather than upon sufficient proof that he was an unfit parent.

The juvenile court held a termination trial on January 30, 2008. The juvenile court found that Father had been unable to have physical custody since August 7, 2006, due to his incarceration and deportation. As a result, M.F. had contact with Father for only three or four months. The court found that Father "remains unavailable to care for the child, and there is no evidence that he will be available, accessible, or able to care for the child at any point in the foreseeable future." The court further found that Father's "conscious disregard of the

laws of the United States, his disregard for the potential loss of his own freedom, and his disregard for his own security or the safety and well-being of the child, makes the father unfit." Finally, the court found that Father did not provide any financial support for his child after the child's removal by the Division of Child and Family Services. The court found that M.F. is an adoptable child and that it is in his best interests that he be adopted by his maternal grandparents, who have cared for him since August 2006 and wish to adopt him.

"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, 171 P.3d 435. 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. Father's reliance upon, or attempt to distinguish, In re D.B., 2002 UT App 314, 57 P.3d 1102, is misplaced. Although D.B. involved construction of a statute not at issue in this case, we also concluded that "even absent the statutory mandate, . . . incarceration of a parent that deprives the child of a normal home for a 'lengthy' period of time may alone support a finding of unfitness." Id. ¶ 12.

Father had physical custody of M.F. for only three or four months after M.F.'s mother left the infant in Father's care. After being arrested in August 2006, Father was incarcerated for eighteen months before being released and deported to Mexico. Father cannot legally return to the United States to care for M.F. in Utah. Father has provided no financial support for M.F. since August 2006. M.F. is now slightly over two years old, and Father has been unavailable for eighteen months of M.F.'s life due to incarceration and deportation. The disruption and deprivation of a normal home, not the incarceration or deportation per se, supports the juvenile court's finding of unfitness. Father contends, without support, that because his "fairly long term incarceration" had ended by the time of the termination trial, incarceration was no longer a factor that could be considered and that the State was thus required to produce other evidence of neglect, abuse, or unfitness. Besides being unsupported by case law, the argument discounts the facts that (1) Father was deported after his release and is still unavailable to parent M.F. in the United States and (2) Father's incarceration and resulting inability to financially support M.F. for eighteen months deprived M.F. him of a normal home. The evidence amply supports the juvenile court's findings and conclusions. Father's parental rights were not terminated based

upon his nationality, but based upon his unavailability to parent M.F. due to his lengthy incarceration, followed by deportation, and his inability to return to the United States legally to assume parental care of M.F.

We affirm the juvenile court's termination of Father's parental rights.

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William A. Thorne Jr.,  
Associate Presiding Judge

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Russell W. Bench, Judge

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Gregory K. Orme, Judge