

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest)	MEMORANDUM DECISION
of S.H. and J.H., persons)	(Not For Official Publication)
under eighteen years of age.)	Case No. 20080116-CA
_____)	
T.W.,)	F I L E D
)	(April 3, 2008)
Appellant,)	2008 UT App 125
v.)	
State of Utah,)	
)	
Appellee.)	

Third District Juvenile, Tooele Department, 529558
The Honorable Mark W. May

Attorneys: David J. Angerhofer, Sandy, for Appellant
Mark L. Shurtleff and John M. Peterson, Salt Lake
City, for Appellee
Martha Pierce, Salt Lake City, Guardian Ad Litem

Before Judges Bench, Davis, and McHugh.

PER CURIAM:

T.W. appeals the termination of her parental rights in J.H., one of her two children identified in the termination petition. We affirm.

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. Additionally, a juvenile court has broad discretion regarding judgments, based on the juvenile court's specialized experience and training, as well as its ability to judge credibility firsthand. See id. In reviewing a juvenile court's order, 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.

The sole issue on appeal is whether there was sufficient evidence to find abuse, neglect, or Mother's unfitness regarding J.H., her infant child. Mother does not challenge the findings regarding termination of her parental rights in S.H., including the juvenile court's determination that Mother was unfit. The finding regarding unfitness is dispositive here because it is a determination of Mother's capacity to parent, irrespective of whom she is parenting.

Under Utah Code section 78A-6-507, the juvenile court may terminate a parent's parental rights upon a finding that the parent is unfit or incompetent. See Utah Code Ann. § 78A-6-507(1)(c) (formerly § 78-3a-407). In determining whether a parent is unfit, the juvenile court shall consider evidence of "habitual or excessive use of . . . controlled substances[] or dangerous drugs that render the parent unable to care for the child." Id. § 78A-6-508(2)(c) (formerly § 78-3a-408). "These statutes clearly provide that a juvenile court may terminate the rights of a parent to her child for . . . incompetence when that court determines the parent's habitual use of drugs renders that parent unable to care for the child." In re D.G., 938 P.2d 298, 301-02 (Utah Ct. App. 1997).

Here, there is ample evidence of Mother's long-term drug abuse and pattern of relapse, including Mother's own testimony. The juvenile court found Mother to be unfit based on her drug use. The juvenile court found that Mother "has a serious, long-term drug addiction." Further, the court found that Mother's "drug addiction has rendered her unable to properly care for her children." Accordingly, the juvenile court concluded that Mother "is an unfit parent." The finding that Mother is unfit relates to her own status and is not specific to a particular child.

Mother asserts that there was no evidence showing that she was unfit with respect to J.H., basically, because Mother never had custody of J.H. As noted, however, the juvenile court found that Mother's drug use rendered her unable to properly care for her children. She was, therefore, as equally unfit to parent J.H. as S.H. Additionally, "Utah courts have upheld termination of parental rights in cases involving drug use by parents." Id., 938 P.2d at 302. Each individual child need not be exposed to the actual effects of drug-impaired parents in order to warrant termination based on unfitness. See id. Rather, the neglect or abuse suffered by one child is relevant to the termination of parental rights to a sibling at risk. See id. Therefore, Mother's demonstrated unfitness regarding S.H. is relevant to and supports the termination of her parental rights to J.H.

Accordingly, the termination of Mother's parental rights is affirmed.

Russell W. Bench, Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge