IN THE UTAH COURT OF APPEALS

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In the interest of M.Y. and I.Y., persons under eighteen years of age.	)	MEMORANDUM DECISION (Not For Official Publication)
	)	Case No. 20080016-CA
P.Y.,	)	F I L E D (May 30, 2008)
Appellant,	)	2008 UT App 203
v.	)	
R.G.,	)	
Appellee.	)	

Third District Juvenile, Salt Lake Department, 532776
The Honorable Kimberly K. Hornak

Attorneys: Theodore R. Weckel, Lisa B. Lokken and Jana Dickson, Salt Lake City, for Appellant
Chadron J. Gladstone, Salt Lake City, for Appellee
Martha Pierce, Salt Lake City, Guardian Ad Litem

Before Judges Thorne, Bench, and Orme.

PER CURIAM:

P.Y. (Father) appeals the termination of his parental rights in M.Y. and I.Y. We affirm.

Father first argues that Utah's termination statutes violate equal protection because parents who are the subject of state intervention receive reunification services and those parents who are subject to a privately initiated petition do not receive services. Father's assertion on appeal fails for two reasons. First, the issue was not properly preserved below. Second, even if it was preserved, there was no violation of equal protection principles.

To preserve an issue for appeal, the issue "must be presented to the trial court in such a way that the trial court has the opportunity to rule on that issue." Pratt v. Nelson, 2007 UT 41, ¶ 15, 164 P.3d 366. In particular, the issue must be raised in a timely manner, must be specifically raised, and must

be supported by legal authority. See id. The mere mention of an issue, without more, is insufficient to preserve the issue for appeal. See Hart v. Salt Lake County Comm'n, 945 P.2d 125, 130 (Utah Ct. App. 1997).

Father first raised the issue of equal protection in his closing statement at trial. He merely mentioned the issue; he did not ask the court to take any action or rule on a motion. Additionally, he provided no legal support for his argument other than noting that the right to parent is a fundamental right. A similar mention was made in a posttrial brief, without further support or argument. The record shows that the juvenile court did not have the opportunity to rule on the issue because it was not "sufficiently raised to a level of consciousness before the trial court." Id. Accordingly, the issue was not preserved for appeal.

Even if the issue was preserved, there is no equal protection violation here. Father alleges generally that parents subject to state initiated petitions are treated differently than parents subject to privately initiated petitions, particularly that parents in state initiated proceedings receive reunification services under many circumstances. Even accepting Father's premise for the purpose of this case, there is no different treatment where the alleged ground for termination is abandonment.[1] "In cases where . . . abandonment . . . [is] involved, neither the division nor the court has any duty to make 'reasonable efforts' or to, in any other way, attempt to provide reunification services, or to attempt to rehabilitate" the parent. Utah Code Ann. § 78-3a-311(2)(a)(iii)(A) (Supp. 2007). The statute authorizes no reunification services where a parent has abandoned a child. Here, the petition alleged abandonment as the ground for termination. Accordingly, there is no circumstance where Father would receive reunification services regardless of who initiated the petition.

Father next asserts that the juvenile court erred in striking the testimony of one of Father's witnesses, Bruce Kraus. The juvenile court determined that Kraus's testimony was inadmissible hearsay. Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered to prove the truth of the matter asserted." Utah R. Evid. 801(c). Kraus testified regarding the out-of-court

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[1]As a general matter, there is no entitlement to services even where a petition is initiated by the state but, rather, they are provided on a case by case basis. See Utah Code Ann. § 78-3a-311 (Supp. 2007).

statements made by two unidentified women who came to his house during the time Father was staying there.

Kraus's testimony was clearly hearsay. He testified about out-of-court statements of someone else and the testimony was offered to prove the truth of the matter asserted, i.e., that someone was threatening Father. Accordingly, the juvenile court did not err in striking the testimony.[2]

Father also argues that the juvenile court erred in prohibiting Father from testifying as to what Kraus told Father about the incident. Although Kraus's testimony was directly offered for the truth of the matter asserted, when the matter is filtered through Father, it becomes offered, not for truth, but for the fact that a statement was made. From Father's point of view, it does not matter whether the incident reported by Kraus ever actually happened. What matters is that a statement was made to him, true or not, that made him fear arrest. "If an out-of-court statement is offered simply to prove that it was made, without regard to whether it is true, such testimony is not proscribed by the hearsay rule." In re G.Y., 962 P.2d 78, 84 (Utah Ct. App. 1998). Accordingly, the trial court erred in limiting Father's testimony and prohibiting him from testifying as to what Kraus told him.

Although the testimony was improperly excluded, a reversal is not warranted absent prejudice. See State v. Haltom, 2005 UT App 348, ¶ 15, 121 P.3d 42. Father was not prejudiced by the exclusion of this portion of his testimony. Father successfully presented his defense for failing to visit his children for more than eighteen months even without the specifics of his conversation with Kraus. Father testified that Mother had threatened him on several occasions, that Mother knew he had legal problems, and that, based on a discussion with Kraus, he was afraid that he would be arrested if he visited his children.

Additionally, and more importantly, the juvenile court found that Father's excuse for not visiting the children was not legitimate and failed to justify his lack of visitation. Father does not challenge this finding. As a result, even if Father could have more fully supported his excuse by testifying regarding what Kraus told him, the excuse itself was inconsequential. Accordingly, any error in limiting Father's testimony was harmless.

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[2]Father argues that the statements would come in under the state of mind exception to hearsay. See Utah R. Evid. 803(3). However, the declarants' states of mind were not at issue.

Finally, Father asserts that the Guardian Ad Litem (GAL) violated Father's right to a fair trial by having Father arrested at trial. This claim is without merit. The GAL brought to the bailiff's attention the fact that Father had five outstanding warrants. After confirming the information, the bailiff notified the juvenile court. The juvenile court, not the GAL, had the final decision and authority to order Father arrested.

Additionally, Father knowingly attended court with the outstanding warrants. Indeed, the fact of his unresolved legal problems, including warrants, was part of his defense that he testified to at trial. Finally, the arrest did not delay Father's visitation or harm his trial. Father received his visit with the children before the next trial day. Also, trial counsel noted to the court that he had no concern about the judge's impartiality after the arrest. In sum, Father's arrest had no effect on the trial and did not deprive him of a fair trial.

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

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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