IN THE UTAH COURT OF APPEALS

----ooOoo----

State of Utah, in the interest of N.B., a person under eighteen years of age. _____ S.B., Appellant, v. State of Utah, Appellee.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20080569-CA F I L E D (October 2, 2008) 2008 UT App 352

Fourth District Juvenile, Provo Department, 836674
The Honorable Mary T. Noonan

Attorneys: Jacob R. Powell, Provo, for Appellant
Mark L. Shurtleff, Carol L.C. Verdoia, John M. Peterson, Salt Lake City, for Appellee
Martha Pierce, Salt Lake City, Guardian Ad Litem

Before Judges Billings, Davis, and McHugh.

PER CURIAM:

S.B. (Mother) appeals the juvenile court's order terminating her parental rights in N.B. We affirm.

On appeal, Mother first asserts that her trial counsel was ineffective for failing to exploit the potential deficiencies in the State appointed expert's testimony regarding Mother's parental fitness examination.

A parent has a right to effective assistance of counsel at his or her parental rights termination trial. See In re P.F.B., 2008 UT App 271, ¶ 25, 608 Utah Adv. Rep. 31. This court has adopted the Strickland test for evaluating claims for ineffective assistance of counsel in proceedings involving the termination of parental rights. See id. In order to establish the ineffective assistance of counsel, a parent must demonstrate both objectively deficient performance by his or her counsel as well as prejudice

to his or her chance of a more favorable result at trial. See id. Thus, because a party has the burden to satisfy both prongs of this test, "it is unnecessary for this court to apply both parts where our inquiry reveals that one of its parts is not satisfied." State v. Mecham, 2000 UT App 247, ¶ 21, 9 P.3d 777.

At trial, the juvenile court heard evidence from a State-funded expert who supervised Mother's parental fitness examination. The expert concluded that based on the results of the examination, Mother could not satisfy N.B.'s parental needs, in part, due to her inability to remedy the circumstances that led to N.B.'s out-of-home placement. Mother asserts that either the State or her appointed counsel should have retained an expert witness to testify on her behalf and challenge the original State-funded expert's conclusions. Mother fails to present any legal authority for the proposition that she was entitled to have the State fund an expert witness to testify on her behalf, or that her appointed counsel was required to provide an expert out of his own funds. However, we need not analyze Mother's ineffective assistance of counsel claim under the first prong as Mother has not demonstrated that counsel's strategy to refrain from hiring an expert witness prejudiced her chance of a more favorable result at trial. Mother's assertion that another expert would have concluded that Mother was a fit parent is highly speculative in light of the overwhelming evidence against her. Thus, Mother has failed to demonstrate that her counsel was ineffective under the Strickland test.

Mother next asserts that there was insufficient evidence to support the juvenile court's determination that there were grounds to terminate her parental rights and that doing so was in N.B.'s best interests. If there are sufficient grounds to terminate parental rights, in order to actually do so "the court must [next] find that the best interests and welfare of the child are served by terminating the parents' parental rights." In re R.A.J., 1999 UT App 329, ¶ 7, 991 P.2d 1118; see also Utah Code Ann. § 78-3a-406(3) (Supp. 2007). The determination of whether the termination of parental rights is in the best interests of the child is reviewed for an abuse of discretion. See In re A.G., 2001 UT App 87, ¶ 7, 27 P.3d 562. A juvenile court's findings of fact will not be overturned unless they are clearly erroneous. See id. 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. Furthermore, this court gives the juvenile court a "'wide latitude of discretion as to the judgments arrived at' based upon not only the court's opportunity to judge credibility firsthand, but also based on the juvenile court judges' 'special training, experience and interest in this field.'" Id. (citation omitted).

The record supports the juvenile court's determination that there were sufficient grounds to terminate Mother's rights and that it was in N.B.'s best interests to do so. Specifically, the record supports the juvenile court's findings that, among other things: (1) Mother was unfit or incompetent; (2) N.B. was being cared for in an out-of-home placement because Mother wilfully refused or was unable or unwilling to remedy the circumstances that caused him to be in an out-of-home placement; and (3) there was a substantial likelihood that Mother would not be capable of exercising proper and effective parental care in the near future as rehabilitative services had failed to be productive. See Utah Code Ann. § 78A-6-507(1) (Supp. 2008).

The record also demonstrates that it was in N.B.'s best interests to terminate Mother's parental rights. Since leaving Mother's care, N.B. has made significant improvements, including, but not limited to, his newfound maturity and ability to take responsibility for his behavior. The record also demonstrates that N.B. needs to remain in a home with close and trusting relationships where he may have proper modeling of normal, healthy interactions between adults and children. N.B.'s foster home provides precisely this environment. As a result of N.B.'s placement in a foster home, he has improved in school, improved his communication skills, remedied his shortcomings in personal hygiene, and has developed age-appropriate skills. When there is an evidentiary basis for the juvenile court's decision, this court will not engage in a reweighing of the evidence. See In re B.R., 2007 UT 82, ¶ 12, 171 P.3d 435. Thus, we cannot say that the juvenile court abused its discretion in determining that there were sufficient grounds to terminate Mother's rights and that it was in N.B.'s best interests to do so.

Mother next asserts that the juvenile court erred when it denied Mother's motion to dismiss. Specifically, Mother asserts that the juvenile court erred by finding that the petition for termination was timely filed under Utah Code section 78A-6-314(5). Section 78A-6-314(5) provides that if the final plan for a minor is to proceed toward termination of parental rights, "the petition for termination of parental rights shall be filed, and a pretrial held, within 45 calendar days after the permanency hearing." Utah Code Ann. § 78A-6-314(5) (Supp. 2008). The record indicates that there was no final plan for N.B.'s adoption and termination of Mother's parental rights until the August 21, 2007 review hearing when the final permanency goal was changed from "individualized permanency" to "adoption." Therefore, the petition was timely filed. Likewise, Mother's assertion that the juvenile court erred in allowing a change to N.B.'s permanency goal also lacks merit. Under Utah Code section 78A-6-314, concurrent planning for minors is statutorily prescribed. See

id. § 78A-6-314. Thus, we cannot say that the juvenile court erred in permitting a change in the permanency goal.[1]

Mother next asserts that the juvenile court erred by determining that Mother had to overcome her perception that N.B. was oppositional and defiant and that the juvenile court erred in failing to include in its findings of fact that N.B. had, at times, also been oppositional and defiant. A juvenile court is not required to enter findings of fact pertaining to each piece of evidence in a termination proceeding so long as there are sufficient findings of fact that support the termination of parental rights and they are not clearly erroneous. See In re E.C., 2006 UT App 121U (mem.) (per curiam); see also In re A.G., 2001 UT App 87, ¶ 7. In this case, there were sufficient findings that Mother had to overcome her perception that N.B. was primarily oppositional and defiant. Additionally, the juvenile court did not err by electing not to include formal findings that N.B. had, at times, been oppositional and defiant.

Mother next asserts that Dr. Dunning should not have been allowed to testify regarding the "Parent/Child Stress Index," because the evidence lacked appropriate scientific foundation. However, even assuming that Dr. Dunning's testimony lacked scientific foundation, we cannot say that Mother was harmed by such testimony. An error is harmless if it is sufficiently inconsequential and there is no reasonable likelihood that it affected the outcome of the proceedings. See State v. Evans, 2001 UT 22, ¶ 20, 20 P.3d 888. Because the substance of Dr. Dunning's testimony concerned Mother's negative interactions with N.B. and her failure to have a close, positive relationship with him, such testimony was merely cumulative of other properly admitted evidence. Thus, such alleged error was sufficiently inconsequential as there is no showing that it affected Mother's rights or the outcome of the proceeding.

Lastly, Mother asserts that the juvenile court erred in finding that there were insufficient extraordinary circumstances to grant her counsel's post-judgment motion to withdraw. However, there is nothing in the record to demonstrate objectively that good cause exists for providing substitute counsel, as there has been no showing of a conflict of interest, a complete breakdown in communication, or an irreconcilable conflict leading to an unjust verdict. See In re C.C., 2002 UT

---

1. Mother also suggests that the juvenile court erred by concluding that she was unable to care for the immediate physical and emotional needs of N.B. because he had not been removed earlier. We determine that such assertion lacks merit and decline to address it.

App 149, ¶ 14, 48 P.3d 244. Specifically, Mother has not demonstrated an adequate disagreement with the manner in which counsel had been representing her. The mere fact that Mother would prefer to be represented by someone else does not demonstrate "good cause" for substitution of counsel. Furthermore, the record does not demonstrate that Mother had unequivocally conveyed her intent to proceed pro se.

Affirmed.

_____
Judith M. Billings, Judge

_____
James Z. Davis, Judge

_____
Carolyn B. McHugh, Judge