

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest	)	MEMORANDUM DECISION
of T.H., a person under	)	(Not For Official Publication)
eighteen years of age.	)	
<hr/>	)	Case No. 20090805-CA
	)	
S.C.,	)	F I L E D
	)	(November 19, 2009)
Appellant,	)	
	)	2009 UT App 340
v.	)	
	)	
State of Utah,	)	
	)	
Appellee.	)	

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Third District Juvenile, West Jordan Department, 960972  
The Honorable James R. Michie Jr.

Attorneys: Sheleigh A. Harding, Salt Lake City, for Appellant  
Mark L. Shurtleff and John M. Peterson, Salt Lake  
City, for Appellee  
Martha Pierce, Salt Lake City, Guardian Ad Litem

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Before Judges Bench, Davis, and McHugh.

PER CURIAM:

S.C. (Mother) appeals the termination of her parental rights to T.H. We will 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." In re B.R., 2007 UT 82, ¶ 12, 171 P.3d 435. "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.

The juvenile court's termination of parental rights may be sustained upon a determination that any one of the grounds enumerated under Utah Code section 78A-6-507 has been established by clear and convincing evidence. See Utah Code Ann. § 78A-6-507(1) (2008). The juvenile court found that termination was justified by Mother's neglect. See generally id. § 78A-6-507(1)(b). The juvenile court found that Mother was an unfit or

incompetent parent. See generally id. § 78A-6-507(1)(c). The juvenile court also found that Mother had been unable to remedy the circumstances that caused the child to be in an out-of-home placement and that there was a substantial likelihood Mother would not be capable of exercising proper and effective parental care in the near future. See generally id. § 78A-6-507(1)(d). The juvenile court further found Mother failed to make a parental adjustment. See generally id. § 78A-6-507(1)(e). Finally, the juvenile court found that after a trial home placement, Mother substantially and continuously failed to give the child proper parental care. See generally id. § 78A-6-507(1)(h). Mother argues that there was insufficient evidence to support the termination of her parental rights on any of the foregoing grounds.

T.H. was first removed from Mother's custody in January 2004. After five years and extensive services, Mother is still unable to parent T.H. without supervision. An Assessment of Attachment Relationship concluded that Mother had not demonstrated to T.H. that she could provide "a safe, predictable, nurturing environment that is consistent with his needs." The assessment further stated that Mother does not interact with T.H. "consistent with his age, abilities, and emotional capacities" and engages in "physically intrusive behaviors" that were "focused on making physical contact with [T.H.] while overlooking his needs." In addition, the juvenile court considered a psychological evaluation performed by Dr. Ted Harris, which diagnosed Mother with a schizoid personality disorder. Mother did not object to the evaluation's admission or to Dr. Harris's qualification as an expert, but claimed that the evaluation was invalid due to lack of accommodation made for Mother's hearing disability. The juvenile court did not err in allowing admission of the evaluation. Dr. Harris testified that the lack of accommodation did not invalidate the evaluation because it was based largely upon written examinations that included validity scales. He concluded that the prognosis was poor for any significant changes in Mother's behavior. Dr. Harris's evaluation recommended that Mother participate in long-term individual counseling, but she failed to commence the recommended counseling during the nine months between the evaluation and the trial. This evidence, coupled with the lengthy history of the case, was sufficient to support the juvenile court's determination that Mother's parental rights should be terminated based upon unfitness and neglect due to emotional or mental illness or disability that rendered her unable to care for T.H. and meet his needs.

There was also clear and convincing evidence to support termination of Mother's parental rights based upon failure of parental adjustment. Mother remains incapable of parenting T.H.

after more than five years of DCFS involvement and more than reasonable services. Mother has clearly been "unable or unwilling within a reasonable time to substantially correct the circumstances, conduct, and conditions that led to placement of her child outside of [her] home, notwithstanding reasonable and appropriate efforts made by the Division of Child and Family Services to return" T.H. to her custody. Id. § 78A-6-502(2). Finally, it is undisputed that Mother also had two failed trial home placements.

There is no credible challenge to the best interests determination. T.H. has thrived in the foster home and indicated that he would like to be adopted by his foster parents if he is not returned to Mother. Mother's argument that T.H. has as his "primary desire" to return to Mother's custody does not support a claim that T.H. is opposed to the adoption.

Affirmed.

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Russell W. Bench, Judge

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge