

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest)	MEMORANDUM DECISION
of D.R. and A.R., persons)	(Not For Official Publication)
under eighteen years of age.)	
_____)	Case No. 20080520-CA
)	
R.R.,)	F I L E D
)	(August 7, 2008)
Appellant,)	
)	2008 UT App 296
v.)	
)	
State of Utah,)	
)	
Appellee.)	

Third District Juvenile, Salt Lake Department, 532016, 532021
The Honorable Kimberly K. Hornak

Attorneys: Julie George, 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

Before Judges Greenwood, Thorne, and Billings.

PER CURIAM:

R.R. (Father) appeals the termination of his parental rights in D.R. and A.R. Father argues that his parental rights should not have been terminated because he loves his children and desires to take care of them when he is released from prison. Because Father does not attack any specific finding concerning the reasons for terminating his parental rights, we assume that Father argues that the evidence was insufficient to support the juvenile court's finding that it was in the best interests of D.R. and A.R. to terminate Father's parental rights. We affirm.¹

1. Because Father has not included a copy of the trial transcript on appeal, we presume the correctness of the juvenile court's findings of fact. See State v. Mead, 2001 UT 58, ¶ 48, 27 P.3d 1115.

Father admits that the juvenile court's order terminating his parental rights is supported by law. Specifically, Father acknowledges that he has been incarcerated in a federal prison since 2005 and will remain incarcerated until at least 2011. He further acknowledges that he has not seen his children since 2005 or paid any child support since that time. As a result, he does not dispute the juvenile court's conclusion that he is an unfit parent based upon his long term incarceration. See Utah Code Ann. § 78-3a-408(2)(e) (Supp. 2007) (stating that a parent may be considered unfit if his child is in the custody of the Division of Child and Family Services, and the parent is incarcerated as a result of a felony, "and the sentence is of such length that the child will be deprived of a normal home for more than one year"). However, Father argues that the application of this and other grounds supporting termination to him and his circumstances was unfair. Father asserts that he loves his children and wants to take care of them when he is out of prison.

This court has no reason to doubt that Father loves D.R. and A.R. and has a desire to change his life in order to care for them when he is released from prison; however, we do not agree that termination of Father's parental rights was unfair. At the time of trial, Father was not prepared to be a parent to D.R. and A.R., nor was he likely to be prepared to be a parent in the near future. Father has not seen his children since 2005 and will remain incarcerated in prison until approximately April of 2011, thereby depriving the children of a normal home life during that time.²

On the other hand, the juvenile court's findings indicate that D.R. and A.R. are in need of permanency and stability and that both children are adoptable. In fact, both children reside together in a legal risk home in which their foster mother desires to adopt them. At the time of trial Father was not, and would not soon be, in a position to give the children the permanency and stability they need. Accordingly, the juvenile court determined that it was in the best interests of D.R. and A.R. for Father's parental rights to be terminated. There is no evidence to demonstrate that the juvenile court's findings regarding the best interests of D.R. and A.R. were incorrect. See 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.").

2. The children's mother's parental rights were also terminated and there were no relatives who were willing or able to take care of the children.

The findings support the juvenile court's determination that there were sufficient grounds to terminate Father's parental rights and that it was in D.R. and A.R.'s best interests to order the termination of Father's parental rights. Further, there is no evidence in the findings that would support Father's suggestion that terminating his parental rights in this case was unfair. Accordingly, the order terminating Father's parental rights is affirmed.

Pamela T. Greenwood,
Presiding Judge

William A. Thorne Jr.,
Associate Presiding Judge

Judith M. Billings, Judge