

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest)	MEMORANDUM DECISION
of T.W., a person under)	(Not For Official Publication)
eighteen years of age.)	
_____)	Case No. 20090948-CA
)	
F.W.,)	F I L E D
)	(January 28, 2010)
Appellant,)	
)	2010 UT App 14
v.)	
)	
State of Utah,)	
)	
Appellee.)	

Third District Juvenile, Salt Lake Department, 1011436
The Honorable Andrew A. Valdez

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

Before Judges McHugh, Orme, and Bench.¹

PER CURIAM:

F.W. (Father) appeals the termination of his parental rights
in T.W. We affirm.

Father asserts that there was insufficient evidence to
support the juvenile court's determinations that he had
substantially neglected T.W., that he had been unable to remedy
the circumstances that caused T.W. to be placed in an out-of-home
placement, and that there is a substantial likelihood that Father
will not be capable of exercising proper and effective parental
care in the near future.

¹The Honorable Russell W. Bench, Senior Judge, sat by
special assignment pursuant to Utah Code section 78A-3-102 (2008)
and rule 11-201(6) of the Utah Rules of Judicial Administration.

A juvenile court may terminate parental rights if the court finds that a child is being cared for in an out-of-home placement under the supervision of the court; that the parent has substantially neglected, wilfully refused, or has been unable or unwilling to remedy the circumstances that caused the child to be in an out-of-home placement; and that there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care in the near future. See Utah Code Ann. § 78A-6-507(1)(d) (Supp. 2009). This determination is alone sufficient to warrant the termination of parental rights. See id.; see also In re F.C. III, 2003 UT App 397, ¶ 6, 81 P.3d 790. A juvenile court's findings will not be overturned unless they are clearly erroneous. See In re A.G., 2001 UT App 87, ¶ 7, 27 P.3d 562. A finding is clearly erroneous only when, in light of the evidence supporting the finding, it is against the clear weight of the evidence. See id.

The record supports the juvenile court's determination that Father's habitual incarceration demonstrates his inability or unwillingness to remedy the circumstances that have caused T.W. to be in an out-of-home placement. Despite knowing of the mother's pregnancy with T.W., Father's actions led him to be incarcerated on several occasions before T.W.'s birth. When T.W. was nine-months old, Father had been incarcerated for a significant portion of T.W.'s life. The record also supports the juvenile court's determination that there is a substantial likelihood that Father will not be capable of exercising appropriate parental care in the near future in light of his rehabilitation commitments. Thus, we cannot say that the juvenile court erred by determining that there were sufficient grounds to terminate Father's parental rights.²

Father next asserts that there was insufficient evidence to support the juvenile court's determination that it was in T.W.'s best interests to terminate Father's parental rights. 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. § 78A-6-506(3). 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.

²Because the record supports the juvenile court's determination to terminate Father's parental rights under section 78A-6-507(1)(d), we need not address the alternative grounds before affirming the termination of Father's parental rights. See Utah Code Ann. § 78A-6-507(1).

A juvenile court's findings of fact will not be overturned unless they are clearly erroneous. See id. This court has previously determined that if the parent-child relationship has been destroyed as a result of the parent's conduct, it is likely to be in the child's best interests to terminate the parental relationship and allow the child an opportunity to establish a meaningful relationship with loving, responsible parents. See In re J.R.T., 750 P.2d 1234, 1238 (Utah Ct. App. 1988).

The record supports the juvenile court's determination that it was in T.W.'s best interests to terminate Father's parental rights. T.W.'s foster parents have cared for him as their own child since he was three weeks old. T.W. has been successfully integrated into the foster parents' home and extended family. T.W. has developed emotional ties with the foster family. Conversely, the record indicates that Father has seen T.W. only once, while he was in jail, and that he has made only token efforts to support T.W. Thus, we cannot say that the juvenile court abused its discretion by determining that it was in T.W.'s best interests to terminate Father's parental rights.

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

Carolyn B. McHugh,
Associate Presiding Judge

Gregory K. Orme, Judge

Russell W. Bench, Senior Judge