

IN THE UTAH COURT OF APPEALS

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In the interest of A.B., a	)	MEMORANDUM DECISION
person under eighteen years of	)	(Not For Official Publication)
age.	)	
_____	)	Case No. 20100149-CA
	)	
K.W.,	)	F I L E D
	)	(July 1, 2010)
Appellant,	)	
	)	2010 UT App 177
v.	)	
	)	
L.B.O.,	)	
	)	
Appellee.	)	

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Second District Juvenile, Ogden Department, 469771  
The Honorable L. Kent Bachman

Attorneys: Charles R. Ahlstrom, Ogden, for Appellant  
David Bert Havas, Ogden, for Appellee  
Martha Pierce, Salt Lake City, Guardian Ad Litem

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Before Judges Davis, McHugh, and Roth.

PER CURIAM:

K.W. (Father) appeals the termination of his parental rights in A.B. We affirm.

Father asserts that there was insufficient evidence to terminate his parental rights. A juvenile court may terminate parental rights if the court finds that a parent has either abandoned a child, neglected a child, or is an unfit or incompetent parent. See Utah Code Ann. § 78A-6-507(1) (2008). Pursuant to section 78A-6-507(1), a finding of any of these grounds is alone sufficient to warrant the termination of parental rights. See id. § 78A-6-507(1); see also In re F.C. III, 2003 UT App 397, ¶ 6, 81 P.3d 790.

The juvenile court is in the best position to weigh conflicting testimony, to assess credibility, and from such determinations, render findings of fact. See In re L.M., 2001 UT App 314, ¶¶ 10-12, 37 P.3d 1188. 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.

Father first asserts that there was insufficient evidence to support the juvenile court's finding that Father had abandoned A.B. In determining whether a parent has abandoned a child, it is prima facie evidence of abandonment that the parent "failed to communicate with the child by mail, telephone, or otherwise for sixth months." Utah Code Ann. § 78A-6-508(1)(b). Father did not have any contact with A.B. between July of 2007 and April of 2010. Thus, Father was required to rebut the prima facie case of abandonment. See id. However, the juvenile court determined that Father failed to present credible evidence rebutting the evidence demonstrating abandonment.

A parent may be found to have abandoned a child when the parent fails to show the normal interest of a natural parent without just cause. See id. ¶ 78A-6-508(1)(c). In addition to determining that Father had failed to communicate with A.B. for six months or more, the juvenile court also found that Father had consciously disregarded his parental obligations to A.B. The juvenile court's determination that Father abandoned A.B. is not against the clear weight of the evidence. Thus, we cannot say that the juvenile court erred by finding that Father abandoned A.B. Because the record supports the juvenile court's determination that Father abandoned A.B., this court need not address Father's alternate claim that there was insufficient evidence that Father neglected A.B. Where there has been a proper finding of abandonment, it is unnecessary to consider whether a parent also neglected a child as a finding of abandonment is alone sufficient to support the termination of parental rights. See id. § 78A-6-507(1).

Father next asserts that there was insufficient evidence to support the juvenile court's determination that it was in A.B.'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 interest 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. This court has previously determined that if the parent-child relationship has been destroyed as a result of a parent's choices, it is likely to be

in the child's best interest to terminate the parental relationship and allow the child an opportunity to establish a meaningful relationship with loving parents. See In re J.R.T., 750 P.2d 1234, 1238 (Utah Ct. App. 1988).

The juvenile court determined that Father's conscious disregard of his parental obligation to A.B. led to the destruction of their parent-child relationship. The juvenile court found that Father's explanations for failing to fulfil his parental obligations lacked merit. Conversely, A.B. is in a stable, loving home where Mother and R.E. love A.B. R.E. treats A.B. as his own daughter and loves and supports her. A.B. refers to R.E. as her father. In the event that Mother's medical condition ever precludes her from caring for A.B., R.E. testified that he desired to adopt A.B. Mother's family also expressed interest in caring for A.B. should the need arise. The juvenile court's determination that it is in A.B.'s best interests to terminate Father's parental rights is not against the clear weight of the evidence.

Accordingly, the juvenile court's order terminating Father's parental rights is affirmed.

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James Z. Davis,  
Presiding Judge

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Carolyn B. McHugh,  
Associate Presiding Judge

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Stephen L. Roth, Judge