

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest	)	MEMORANDUM DECISION	
of A.H., a person under	)	(Not For Official Publication)	
eighteen years of age.	)		
_____	)	Case No. 20070050-CA	
	)		
K.H.,	)	F I L E D	
	)	(March 8, 2007)	
	)		
Appellant,	)	<table border="1"><tr><td>2007 UT App 78</td></tr></table>	2007 UT App 78
2007 UT App 78			
	)		
v.	)		
	)		
State of Utah,	)		
	)		
Appellee.	)		

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Third District Juvenile, Salt Lake Department, 507275  
The Honorable Sharon P. McCully

Attorneys: Jacee E. Ballard, Salt Lake City, for Appellant  
Mark Shurtleff and John M. Peterson, Salt Lake City,  
for Appellee  
Martha Pierce and Mandy Rose, Salt Lake City,  
Guardians Ad Litem

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Before Judges Greenwood, Billings, and Davis.

PER CURIAM:

K.H. appeals the termination of his parental rights. He challenges the sufficiency of the evidence to support the grounds for termination. We "review the juvenile court's factual findings based upon the clearly erroneous standard." In re E.R., 2001 UT App 66, ¶11, 21 P.3d 680. In reviewing a decision to terminate parental rights, we "will not disturb the juvenile court's findings and conclusions unless the evidence clearly preponderates against the findings as made or the court has abused its discretion." In re R.A.J., 1999 UT App 329, ¶6, 991 P.2d 1118.

The juvenile court found that A.H. "was battered by the time she was seven weeks old," suffering "multiple broken ribs, a broken arm, and several bruises." The juvenile court adjudicated

A.H. as severely abused by K.H. Within two weeks after that adjudication, K.H. was incarcerated for six and a half months on a parole violation. The juvenile court found that K.H. "knowingly and voluntarily acted in such a way that his parole was revoked." The court also found that "[t]he severe abuse . . . was the basis for denying the father reunification services, as well as being a ground for termination." Finally, the juvenile court found that "[t]he father is an unfit parent based on his severe abuse of the child, and due to his commission of criminal acts after the adjudication which made him totally unable to address his issues in order to have his child reunified with him."

K.H.'s claim that he would have been offered reunification services if he had not been incarcerated is speculative and is not supported by the record. The juvenile court adjudicated A.H. as severely abused by K.H., which gives rise to a statutory presumption that reunification services will not be provided. See Utah Code Ann. § 78-3a-311(3)(d)(i)(E) (Supp. 2006). Although Father consistently denied that he abused A.H., he did not appeal the adjudication order. See In re M.W., 2000 UT 79, ¶26, 12 P.3d 80. In the disposition order, the juvenile court stated that "[b]ased upon the findings of severe abuse as to the father, there is a presumption that no reunification services be offered." The juvenile court denied reunification "[b]ased on the aggravated circumstances of the abuse and the incarceration." K.H.'s incarceration resulted from his voluntary actions that violated his parole. Accordingly, the consequences of his own actions rendered him unable to seek reunification services or to take other steps to be reunited with A.H. The acts that resulted in his incarceration occurred within two weeks after adjudication and prior to the disposition hearing.

The juvenile court's findings of fact are not clearly erroneous nor does the termination decision preponderate against the findings or reflect an abuse of discretion. We affirm the termination order.

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Pamela T. Greenwood,  
Associate Presiding Judge

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Judith M. Billings, Judge

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James Z. Davis, Judge