

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest)	MEMORANDUM DECISION
of B.H. and B.H., persons)	(Not For Official Publication)
under eighteen years of age.)	Case No. 20090887-CA
_____)	
)	
A.H.,)	F I L E D
)	(March 11, 2010)
Appellant,)	
)	2010 UT App 62
v.)	
)	
State of Utah,)	
)	
Appellee.)	

Fourth District Juvenile, Provo Department, 1017281
The Honorable Kay A. Lindsay

Attorneys: Carolyn E. Howard, Orem, for Appellant
Mark L. Shurtleff and John M. Peterson, Salt Lake
City, for Appellee
Martha Pierce, Salt Lake City, Guardian Ad Litem

Before Judges Davis, Thorne, and Roth.¹

PER CURIAM:

A.H. (Mother) appeals the juvenile court's adjudication order determining that two of her children were abused or neglected, transferring temporary custody to B.H. (Father), and ordering services. We affirm.

A juvenile court's findings of fact will not be overturned unless clearly erroneous. See In re E.R., 2001 UT App 66, ¶ 11, 21 P.3d 680. Additionally, a juvenile court has broad discretion regarding judgments, based on the juvenile court's specialized experience and training, as well as its ability to judge

¹The Honorable Stephen L. Roth, Third District Court Judge, sat by special assignment pursuant to Utah Code section 78A-3-103(2) (2008) and rule 3-108(3) of the Utah Rules of Judicial Administration.

credibility firsthand. See id. When a foundation for the juvenile court's decision exists in the evidence, this court may not reweigh the evidence. See In re B.R., 2007 UT 82, ¶ 12, 171 P.3d 435.

Mother asserts that there was insufficient evidence to support that the children were abused or neglected. In essence, she argues that this was no more than a messy divorce that caused the children stress. However, this mischaracterizes and understates the evidence before the juvenile court. Testimony from several witnesses established that Mother's behavior and mental health had deteriorated over about two years. Mother's continual allegations against Father had resulted in the youngest child experiencing emotional distress and had ultimately caused the child to call for help and seek removal from Mother. The Division of Child and Family Services investigated Mother's conduct and found it to constitute emotional maltreatment, which the juvenile court substantiated in its order. In sum, there was sufficient evidence supporting the juvenile court's findings that Mother's conduct amounted to emotional abuse of the children, even apart from the underlying stress of a divorce.

Mother also asserts that the juvenile court erred in removing B.L.H. absent required statutory findings. This issue was not preserved below. For an issue to be preserved for appeal, "the issue must be presented to the trial court in such a way that the trial court has an opportunity to rule on that issue." 438 Main St. v. Easy Heat, 2004 UT 72, ¶ 51, 99 P.3d 801. Although Mother opposed the removal generally, she did not raise an issue of whether the court's findings were sufficient to meet statutory requirements. She argued only that the matter belonged in district court and denied the allegations in the petition. This was not sufficient to raise an issue that the juvenile court's findings regarding removal were insufficient. Issues not raised at trial are waived. See id.

Mother asserts that the court's lack of findings should be reviewed under plain error or ineffective assistance of counsel. However, she does not address the standards for either of these exceptions to preservation. In particular, she does not assert any prejudice from the lack of specific findings. The juvenile court found that B.L.H. was suffering emotional damage and that there were no reasonable means available to protect her without removing her from Mother's custody. Additionally, the juvenile court found that the lack of preventive efforts was reasonable under the circumstances. Given these findings, Mother has shown no prejudice in the lack of a specific finding regarding other possible preventive efforts.

Finally, Mother argues that the juvenile court erred in failing to apply custody factors used in district court in divorce proceedings. However, Mother failed to preserve this issue as well. Mother asserts that the issue was preserved because the juvenile court was aware of the divorce proceedings. Mother did not, however, assert that these separate factors were applicable in juvenile court and therefore did not raise the issue below in such a way that the juvenile court had an opportunity to rule on that issue. Accordingly, the issue is waived. See id.

Affirmed.

James Z. Davis,
Presiding Judge

William A. Thorne Jr., Judge

Stephen L. Roth,
Visiting Judge