

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

State of Utah, in the interest	)	MEMORANDUM DECISION
of B.I.R., a person under	)	(Not For Official Publication)
eighteen years of age.	)	
_____	)	Case No. 20080056-CA
	)	
S.B.,	)	F I L E D
	)	(September 25, 2008)
Appellant,	)	
	)	2008 UT App 344
v.	)	
	)	
State of Utah,	)	
	)	
Appellee.	)	

-----

Third District Juvenile, Salt Lake Department, 518504  
The Honorable Andrew A. Valdez

Attorneys: Colleen K. Coebergh, Salt Lake City, for Appellant  
Mark L. Shurtleff and Carol L.C. Verdoia, Salt Lake  
City, for Appellee  
Martha Pierce and David L. Johnson, Salt Lake City,  
Guardians Ad Litem

-----

Before Judges Greenwood, Bench, and Billings.

BILLINGS, Judge:

Appellant S.B. (Mother) appeals the juvenile court's termination of her parental rights in B.I.R. Mother contends that the evidence was insufficient to support the five grounds upon which the court based the termination of her parental rights. Given the totality of the evidence presented at trial and the deference we afford the juvenile court in parental rights termination cases, see In re V.L., 2008 UT App 88, ¶ 21, 182 P.3d 395 (recognizing "the juvenile court's broad discretion to evaluate the totality of the evidence"), we affirm.

The State filed a verified petition for termination of Mother's parental rights on September 18, 2007. The trial on the State's petition was held on December 13 and 18, 2007. At the end of the first day of trial, Mother was taken into custody

pursuant to a warrant from Davis County on criminal charges of illegal possession and use of a controlled substance.

At the conclusion of trial, the court found that although Mother had obtained housing, undergone a substance abuse evaluation, and completed an online parenting course, she had not resolved her substance abuse problem. The court further found that Mother had not obtained stable employment or a means to support herself and B.I.R., had failed to comply with the court orders for random drug screens, had failed to attend court so that she could resume visitation with B.I.R., and had failed to internalize the lessons of the online parenting course she completed. Moreover, at the time of the termination trial, Mother was still on probation for a 2005 conviction and was facing new criminal drug charges and revocation of her probation. The juvenile court determined that Mother neglected B.I.R. and is an unfit or incompetent parent pursuant to Utah Code section 78A-6-507(1)(b)-(c), see Utah Code Ann. § 78A-6-507(1)(b)-(c) (Supp. 2008), and therefore ordered the termination of Mother's parental rights in B.I.R.

In determining whether a parent has neglected a child or is unfit or incompetent, the juvenile court considers, among other things, the parent's "habitual or excessive use of . . . controlled substances, or dangerous drugs." See id. § 78A-6-508(2)(c). The evidence presented at trial supports the juvenile court's finding that Mother "has a history of drug abuse that has negatively affected her ability to parent" and that "[s]he has an ongoing pattern of drug abuse since 2003." The evidence also supports the finding that Mother "currently has a drug problem that she refuses to acknowledge."

As support for these findings, the court considered the following evidence of Mother's history of drug use. In 2003, Mother was arrested for possession and use of a controlled substance and was convicted of this charge in 2005. In 2005, she entered a drug rehabilitation program. In July 2007, Mother tested positive for methamphetamine and missed all subsequent drug tests. Mother has "failed to obtain treatment for her drug abuse" even though she admitted to the allegations in the termination petition that she "has a drug problem that has negatively affected her ability to parent her child." Finally, Mother was incarcerated during the termination trial on new charges of possession of a controlled substance and possession of marijuana that occurred in November 2007.

Mother claims that she has not used drugs since 2003 and denies that she was using drugs at the time of her positive test for methamphetamine. She maintains that the positive drug test must have been a false positive. Mother further asserts that she

skipped drug screens following the positive drug test because she believed that the drug screens were only required when she was allowed to visit B.I.R. and that after her scheduled visitations were suspended in August 2007, she was no longer required to undergo drug testing. However, after reviewing the evidence at trial, including Mother's own testimony, the trial court found Mother's assertions were "not credible."

We agree with Mother that her arrest and incarceration during the termination trial do not rise to the level of clear and convincing evidence of drug use. However, we also agree with the juvenile court that while such evidence alone does not establish by clear and convincing evidence that Mother has a substance abuse problem, it is relevant evidence given the other evidence of Mother's drug use.

More importantly, there were additional factors besides Mother's drug abuse that contributed to the court's finding that Mother either neglected B.I.R. or is an unfit or incompetent parent and the court's ultimate termination of Mother's parental rights in B.I.R. In July 2007, after Mother's positive drug test, Mother absconded with B.I.R. for approximately two days and refused to return B.I.R. to her grandmother (Grandmother) with whom B.I.R. had been living. Mother and B.I.R.'s whereabouts were unknown. After returning with B.I.R., Mother's scheduled visitations were suspended until Mother came to court; however, Mother did nothing to obtain visitation until her attorney filed a motion in October 2007 to have visitation reinstated. Further, Mother failed to obtain gainful employment to support herself and B.I.R., and she failed to undergo a mental health assessment. Essentially, Mother failed to create a stable home for B.I.R. In fact, during the first three years of her life, B.I.R. lived with Grandmother for approximately twenty to twenty-four months. Additionally, Mother lost custody of another child due to her drug use. Given the juvenile court's broad discretion to evaluate the totality of the evidence presented at trial regarding Mother's drug abuse and her overall ability to parent B.I.R.,<sup>1</sup> we conclude that the juvenile court was within its discretion to find that clear and convincing evidence supports

---

<sup>1</sup>We note that only Mother and Grandmother presented testimony at the termination trial. While their testimony is extremely relevant to the termination proceedings, we acknowledge that the evidence presented at trial would have been strengthened by DCFS or other additional testimony.

its determination that Mother has neglected B.I.R. or is an unfit or incompetent parent.

We affirm.

---

Judith M. Billings, Judge

-----

WE CONCUR:

---

Pamela T. Greenwood,  
Presiding Judge

---

Russell W. Bench, Judge