

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

State of Utah, in the
interest of C.J., a person
under eighteen years of age.

J.J.,
Appellant,

v.

State of Utah,
Appellee.

) MEMORANDUM DECISION
) (Not For Official Publication)
)
) Case No. 20060335-CA

) F I L E D
) (June 15, 2006)

) 2006 UT App 250

Seventh District Juvenile, Price Department, 176015
The Honorable Scott N. Johansen

Attorneys: Jeremiah C. Humes, Price, for Appellant
Mark L. Shurtleff and John M. Peterson, Salt Lake
City, for Appellee
Martha Pierce, Salt Lake City, Guardian Ad Litem

Before Judges Billings, McHugh, and Orme.

PER CURIAM:

J.J. (Mother) appeals a disposition order placing C.J. in the custody of the Division of Child and Family Services (DCFS).

A petition filed in the juvenile court alleged that C.J. was habitually truant and within the court's jurisdiction under Utah Code section 78-3a-104(1)(h).¹ See Utah Code Ann. § 78-3a-104(1)(h) (Supp. 2005). At a June 2005 hearing, C.J. admitted the allegations made in the petition and was adjudicated to be

¹The petition recites that jurisdiction is premised on Utah Code section 78-3a-104(1)(g); however, that language now appears in sub-section (h). Section 78-3a-104(1)(h) provides for juvenile court jurisdiction over "a minor who is a habitual truant from school." Utah Code Ann. § 78-3a-104(1)(h) (Supp. 2005).

within the court's jurisdiction. The court ordered protective supervision by DCFS and set the matter for further review. In November 2005, the court found that C.J. was not in compliance with his truancy agreement, imposed sanctions, and set the matter for further review. DCFS later caused an order to show cause to be issued based upon allegations that C.J. was in contempt of the court's orders as a result of using marijuana in violation of the protective supervision service plan. Following a hearing in January 2006, the juvenile court entered two orders. The first found C.J. in contempt and committed him to detention. The second transferred custody of C.J. to DCFS based upon review of the habitual truancy case.

On February 1, 2006, the juvenile court held the hearing that resulted in the order being appealed. The caption for the court's minutes incorrectly stated that the hearing as to C.J. was both on "habitual truancy" and "CW-Permanency." However, the minutes themselves state that, "In regard to [C.J.], this matter came before the court for a dispositional hearing." The transcript includes the court's statements that C.J. "is here on delinquency," and "this isn't a child welfare case." Finally, the court overruled Mother's objection that the court made a permanency order without an adjudication of claims against her. The court reiterated that the hearing was a dispositional hearing in a delinquency case involving C.J.

Mother's central claim is that the juvenile court treated the delinquency case as a child welfare matter without complying with the procedural requirements for a child welfare case, which she claims resulted in a denial of due process. Mother also challenges the sufficiency of the evidence used to support the court's order, and she contends that the juvenile court erred in stating that a parent is not entitled to a hearing in a delinquency matter.

Although C.J.'s family history includes one or more child welfare cases, the case before this court is the delinquency case originating in May 2005. The juvenile court adjudicated C.J. to be within its jurisdiction under Utah Code section 78-3a-104. After a child has been found to be within the jurisdiction of the court under section 78-3a-104, the court may make any of the dispositions listed in Utah Code section 78-3a-118(2), including placing a child's legal custody in DCFS. See Utah Code Ann. § 78-3a-118(2)(c)(i)(A) (Supp. 2005). "Prior to committing a minor to the custody of the Division of Child and Family Services, the court shall make a finding as to what reasonable efforts have been attempted to prevent the minor's removal from his home." Id. § 78-3a-118(2)(c)(iii)(C). Accordingly, the court was required to make findings in support of its decision to remove C.J. from Mother's custody, including "a finding as to

what reasonable efforts have been attempted to prevent the minor's removal from his home." The juvenile court's findings referred to services provided in both the delinquency case and in a prior child welfare case. Although those findings referred to the adjudication in a previous child welfare proceeding, they did not make a separate adjudication of neglect or abuse within the delinquency case.

The disposition order and its incorporated findings are amply supported by evidence that C.J. remained a habitual truant, despite services provided, and that he violated the truancy agreement by using drugs, failing to perform well academically, and continuing to have unexcused absences. Mother was provided notice of the hearing in the ongoing delinquency matter, she participated, and she was represented by counsel. Accordingly, we reject her claim that the court erroneously ruled she was not entitled to a hearing.

We affirm the order of the juvenile court.

Judith M. Billings, Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge