

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest	)	MEMORANDUM DECISION
of C.V. and J.V., persons	)	(Not For Official Publication)
under eighteen years of age.	)	Case No. 20080440-CA
_____	)	
	)	
J.V.,	)	F I L E D
	)	(August 21, 2008)
Appellant,	)	
	)	2008 UT App 313
v.	)	
	)	
State of Utah,	)	
	)	
Appellee.	)	

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Third District Juvenile, Salt Lake Department, 522669  
The Honorable James R. Michie, Jr.

Attorneys: Todd M. Olsen, Salt Lake City, for Appellant  
Mark Shurtleff, Carol L.C. Verdoia, and John M.  
Peterson, Salt Lake City, for Appellee  
Martha Pierce, Salt Lake City, Guardian Ad Litem

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Before Judges Greenwood, Thorne, and Billings.

PER CURIAM:

J.V. (Mother) appeals from a permanency order determining that her two teenage children could not be safely returned home, terminating reunification services, and awarding permanent custody and guardianship to a maternal aunt. The juvenile court found that the Division of Child and Family Services made reasonable efforts to accomplish the permanency goal of reunification but that those efforts had been unsuccessful. The juvenile court concluded that the children could not safely return to the custody of Mother because their return would create a substantial risk of detriment to the physical and emotional well being of the children. The court found that the children wished to live with their maternal aunt and that it was in their best interests to grant permanent custody and guardianship to the aunt.

Mother contends that the evidence was insufficient to support the order granting permanent custody and guardianship to the children's aunt. Mother claims the evidence was insufficient to show that she was abusing her prescribed drugs, which insufficiency the juvenile court acknowledged, and she also claims that the evidence demonstrated substantial compliance with various versions of the service plan.

"If the court finds, by a preponderance of the evidence, that return of the minor would create a substantial risk of detriment to the minor's physical or emotional well-being, the minor may not be returned to the custody of the minor's parent." Utah Code Ann. § 78-3a-312(2)(b) (Supp. 2007). If the child is not returned at the permanency hearing, the court "shall" terminate reunification services and "make a final determination regarding whether termination of parental rights, adoption or permanent custody and guardianship is the most appropriate final plan for the minor." Id. § 78-3a-312(4)(a)(ii). The court "shall take the minor's desire into consideration in determining the final plan." Id. § 78-3a-312(4)(c).

Mother's drug and alcohol assessment recommended that she enroll in treatment based upon the high likelihood of addiction. Valley Mental Health had a strict policy against the use of benzodiazepine drugs, such as Xanax, during drug treatment. However, they were willing to enroll Mother in treatment if she agreed to "taper off" Xanax under the supervision of the attending psychiatrist. Mother was unwilling to meet with the psychiatrist at Valley Mental Health to evaluate her situation or to consider any treatment that would require her to taper off Xanax. The juvenile court found that Mother's refusal to allow her addiction issues to be evaluated by a psychiatrist constituted failure to comply with the service plan. These findings were supported by the evidence.

There was sufficient additional evidence to support the decision that the children could not safely be returned home. Mother was engaged in individual and domestic violence counseling, but she had not completed either and had not been clinically discharged. Family therapy had been suspended pending completion of more individual therapy and due to lack of progress and adverse consequences for the children. The family therapist testified that unsupervised contact between the children and Mother would not be in the children's best interests. At the time of the permanency hearing, Mother was limited to contact with the children in a therapy setting.

"Because of the factually intense nature of [a parental fitness] inquiry, the juvenile court's decision should be afforded a high degree of deference." In re B.R., 2007 UT 82,

¶ 12, 171 P.3d 435. We overturn the juvenile court "only if it either failed to consider all of the facts or considered all of the facts and its decision was nonetheless against the clear weight of the evidence." Id. (emphasis added). "When a foundation for the court's decision exists in the evidence, an appellate court may not engage in a reweighing of the evidence." Id. The juvenile court's findings are supported by sufficient evidence and those findings support the award of permanent custody and guardianship to the maternal aunt. We affirm.

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Pamela T. Greenwood,  
Presiding Judge

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William A. Thorne Jr.,  
Associate Presiding Judge

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Judith M. Billings, Judge