

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest)	MEMORANDUM DECISION
of D.D. and D.D., persons)	(Not For Official Publication)
under eighteen years of age.)	
_____)	Case No. 20090483-CA
)	
D.D.,)	F I L E D
)	(September 11, 2009)
Appellant,)	
)	2009 UT App 253
v.)	
)	
State of Utah,)	
)	
Appellee.)	

Fourth District Juvenile, Heber City Department, 545962
The Honorable Mary T. Noonan

Attorneys: Randy M. Lish, Provo, for Appellant
Mark L. Shurtleff and John M. Peterson, Salt Lake
City, for Appellee
Martha Pierce, Salt Lake City, Guardian Ad Litem

Before Judges Greenwood, Thorne, and Orme.

PER CURIAM:

D.D. (Mother) appeals the termination of her parental rights in her children. Mother asserts that there was insufficient evidence to support the termination of her parental rights. We affirm.

In reviewing an order terminating parental rights, this court "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 (internal quotation marks omitted). A juvenile court's findings of fact will not be overturned unless they are clearly erroneous. See In re E.R., 2001 UT App 66, ¶ 11, 21 P.3d 680. A finding of fact is clearly erroneous only when, in light of the evidence supporting the

finding, it is against the clear weight of the evidence. See id. Further, we give the juvenile court a "'wide latitude of discretion as to the judgments arrived at' based upon not only the court's opportunity to judge credibility firsthand, but also based on the juvenile court judges' 'special training, experience and interest in this field.'" Id. (citation omitted).

The juvenile court determined that Mother's parental rights should be terminated due to failure of parental adjustment. In support of this conclusion, the court found that despite her best efforts, Mother had not substantially complied with the service plan and that the court could not "find that it [was] safe or appropriate to return the children to the parents' custody and care." This finding was supported by testimony from Mother's therapists and counselors indicating that while Mother was a very willing student and participant in her counseling sessions, she had a difficult time internalizing the lessons that she was learning and putting those concepts into practice. Further, testimony indicated that Mother had a hard time making her children a priority, despite her desire to do so. Similarly, the court found that while Mother was truly making efforts to comply with her service plan, she and the Children's father were

months, if not longer, away from being able to function independently, let alone effectively parent these children. The parents need continual support and prompting to effectuate appropriate parenting during visits and family therapy sessions. The parents need continual support and prompting to handle their own daily affairs, including budgeting, finances, and home conditions.

The record supports these findings.

We acknowledge that the facts presented by Mother in this case present a close call. However, this court cannot substitute its judgment for that of the juvenile court. See In re R.W., 717 P.2d 258, 259 (Utah 1986). "When a foundation for the court's decision exists in the evidence, an appellate court may not engage in a reweighing of the evidence." In re B.R., 2007 UT 82, ¶ 12, 171 P.3d 435. As such, this court must "forebear disturbing the close call." Id. Thus, because the record supports the juvenile court's findings, which, in turn, support the juvenile court's ultimate conclusions of law, the evidence was sufficient to support the juvenile court's order terminating

Mother's parental rights.¹ Because the evidence was sufficient to support terminating Mother's parental rights on the ground of failure of parental adjustment, we need not examine the other grounds supporting termination of Mother's parental rights relied upon by the juvenile court.² See Utah Code Ann. § 78A-6-507(1) (2008) (providing that the juvenile court may terminate all parental rights if it finds any one of the grounds listed); In re F.C. III, 2003 UT App 397, ¶ 6, 81 P.3d 790 (noting that any single ground is sufficient to terminate parental rights).

Mother also asserts that the Utah Supreme Court's holding in In re B.A.P., 2006 UT 68, 148 P.3d 934, places an undue burden on counsel to articulate an argument in the petition on appeal prior to counsel having access to the record on appeal. This court is bound by the precedent set forth by the court in In re B.A.P. Accordingly, such an argument must be pursued, if at all, in the Utah Supreme Court.

Affirmed.

Pamela T. Greenwood,
Presiding Judge

William A. Thorne Jr.,
Associate Presiding Judge

Gregory K. Orme, Judge

¹Mother makes a parallel argument that the juvenile court violated Mother's constitutional rights by terminating her parental rights when the grounds did not meet the constitutional standard for termination of parental rights. However, Utah courts have repeatedly upheld the Termination of Parental Rights Act, as well as its condition that evidence supporting the termination of parental rights be proven by clear and convincing evidence. See, e.g., In re A.H., 716 P.2d 284, 287 (Utah 1986).

²Mother makes no specific argument concerning whether it was in the children's best interest to terminate her parental rights; accordingly, we do not address the issue.