

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest)
of D.K., a person under)
eighteen years of age.)
_____)

MEMORANDUM DECISION
(Not For Official Publication)
Case No. 20080909-CA

E.K.,)
Appellant,)

F I L E D
(January 23, 2009)

2009 UT App 19

v.)
State of Utah,)
Appellee.)

Third District Juvenile, Salt Lake Department, 514143
The Honorable Andrew A. Valdez

Attorneys: Joseph Lee Nemelka, Salt Lake City, for Appellant
Mark L. Shurtleff, John M. Peterson, and Carol L.C.
Verdoia, Salt Lake City, for Appellee
Lisa W. Nagel, Salt Lake City, Guardian Ad Litem

Before Judges Greenwood, Davis, and McHugh.

PER CURIAM:

E.K. (Father) appeals the termination of his parental rights
in D.K. We affirm.

Father asserts that there was insufficient evidence to
terminate his parental rights for failure of parental adjustment
and that the court failed to properly weigh the evidence in
reaching such determination. In order to overturn a juvenile
court's findings regarding the sufficiency of evidence, the
result must be against the clear weight of the evidence, or leave
the appellate court with a firm conviction that a mistake has
been made. See In re B.R., 2007 UT 82, ¶ 12, 171 P.3d 435. The
juvenile court is also in the best position to assess the weight
and credibility of evidence. See In re L.M., 2001 UT App 314,
¶ 12, 37 P.3d 1188. Thus, we grant the juvenile court broad

discretion when applying the law to the facts of the case. See id.

Pursuant to Utah Code section 78A-6-507(1)(e), the court may terminate a parent's rights to his or her children if the court finds that there has been a failure of parental adjustment as defined by Utah Code section 78A-6-502(2). See Utah Code Ann. § 78A-6-507(1)(e) (2008). The determination that there has been a failure of parental adjustment is a sufficient basis alone to terminate parental rights. See id. § 78A-6-507(1). Failure of parental adjustment occurs where a parent is unable or unwilling, within a reasonable time, to substantially correct the circumstances, conduct, or conditions that led to placement of his or her child outside the parent's home, notwithstanding reasonable and appropriate efforts made by the Division of Child and Family Services (DCFS) to return the child to the parent's home. See id. § 78A-6-502(2).

The record supports the juvenile court's finding of Father's failure of parental adjustment. The juvenile court adjudicated D.K. as neglected by Father. DCFS provided reunification services. However, Father failed to comply with reunification efforts or to remedy the underlying problems within the designated time frame. Thus, the court terminated reunification services. The record also demonstrates that Father has an extensive criminal record which has significantly impacted his ability to meet D.K.'s needs for extended periods of time. Father's criminal activity has deprived D.K. of a normal home life. As a result, D.K. has been forced to reside in several placements in a short period of time. Despite opportunities to correct the behavior that led to D.K.'s placement outside Father's home, the record indicates that Father jeopardized his relationship with D.K. by prioritizing his criminal endeavors over remedying the underlying problems that led to D.K.'s out-of-home placement. Thus, in light of the record, we cannot say that the finding of Father's failure of parental adjustment is against the clear weight of the evidence.

Father next asserts that pursuant to Utah Code section 78A-6-503, the juvenile court failed to place sufficient weight on preserving Father's family. Section 78A-6-503 pertains to the best interest of a child. See id. § 78A-6-503. Specifically, section 78A-6-503 provides "[w]herever possible family life should be strengthened and preserved, but if a parent is found, by reason of his conduct or condition, to be unfit or incompetent based upon any of the grounds for termination described in this part, the court shall then consider the welfare and best interest of the child of paramount importance in determining whether termination of parental rights shall be ordered." Id. § 78A-6-503(2). The determination of whether the termination of parental

rights was in the child's best interest is reviewed for an abuse of discretion. See In re A.G., 2001 UT App 87, ¶ 7, 27 P.3d 562. A juvenile court's findings of fact will not be overturned unless they are clearly erroneous. See id.

The record indicates that the court has attempted to maintain D.K.'s family life but Father's inability or unwillingness to correct the conditions which led to D.K.'s removal required the court to consider D.K.'s best interests as paramount in determining whether Father's rights should be terminated. The record demonstrates that Father was previously found to have neglected D.K. Although Father was provided with a services, he failed to incorporate them and reunification services were terminated. The record also demonstrates that Father ignored D.K.'s best interests when he secretly took custody of D.K. against the court's order. Father also does not have appropriate housing and adequate means to accommodate D.K.'s needs.

Conversely, D.K. is currently residing in a legal risk placement that is desirous of adopting him. D.K. lives in a stable, structured home where he is loved and protected from abuse and neglect. D.K. has received therapy, made significant progress, and has developed a strong bond with his caregiver. Thus, we cannot say that the juvenile court's determination that it was in D.K.'s best interests to terminate Father's parental rights was against the clear weight of the evidence.

Accordingly, the order terminating Father's parental rights is affirmed.

Pamela T. Greenwood,
Presiding Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge