

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest)	MEMORANDUM DECISION
of J.G., T.G., R.G., J.G., and)	(Not For Official Publication)
C.G., persons under eighteen)	
years of age.)	Case No. 20090633-CA
_____)	
)	
State of Utah,)	F I L E D
)	(November 27, 2009)
)	
Appellant,)	2009 UT App 353
)	
v.)	
)	
M.G. and L.G.,)	
)	
Appellees.)	

Third District Juvenile, West Jordan Department, 1016586
The Honorable Elizabeth A. Lindsley

Attorneys: Mark L. Shurtleff, Carol L.C. Verdoia, and John M. Peterson, Salt Lake City, for Appellant
M.G. and L.G., South Jordan, Appellees Pro Se
Martha Pierce, Salt Lake City, Guardian Ad Litem

Before Judges Bench, Davis, and McHugh.

PER CURIAM:

The State appeals the juvenile court's order dismissing its petition for protective supervision over the children of M.G. (Father) and L.G. (Mother). We affirm.

The State first argues that there was sufficient evidence to conclude that the children were neglected. In so arguing, it also asserts that some of the juvenile court's findings were against the clear weight of the evidence. 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 accord 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 the State had not presented clear and convincing evidence to support several of its allegations. As such, the juvenile court found that the State had failed to demonstrate that the children were abused or neglected. The juvenile court did not abuse its discretion in so finding. For example, the State leaned heavily on an alleged domestic violence incident in February 2009 to support its claim that the children were abused or neglected. After the juvenile court heard the State's evidence, it found that there were still questions surrounding the incident and there were contradictions in the original statements Mother made to police, which she later recanted. Therefore, the juvenile court was unable to find that the domestic violence episode described in the petition actually occurred. Similarly, the record supports the juvenile court's findings that the State had failed to prove other critical elements of its petition. While the State presented some evidence that supported its allegations, other evidence, or lack of evidence, supported the juvenile court's findings. It is not the role of this court to reweigh the evidence. See In re B.R., 2007 UT 82, ¶ 12, 171 P.3d 435 ("When a foundation for the court's decision exists in the evidence, an appellate court may not engage in a reweighing of the evidence."). Thus, because a foundation for the juvenile court's decision exists, the juvenile court did not err in determining that the State had failed to prove certain critical allegations by clear and convincing evidence.

The State also argues that the juvenile court erred by requiring the State to prove that there was an on-going pattern of domestic violence or substance abuse before asserting jurisdiction over the children. After reviewing the record, it is clear that the juvenile court did not impose such a requirement. While the juvenile court made findings that there was not an on-going pattern of anger management issues or substance abuse problems, such findings appear to be in response to the State's allegations that Mother "has failed to protect the children from on-going domestic violence issues," and that Father had serious substance abuse issues, as well as in response to the State's attempt to bolster the credibility of recent allegations of domestic violence and alcohol use by pointing to past allegations and convictions. As discussed above, the juvenile court found that the State did not prove critical elements of its

petition by clear and convincing evidence. Ultimately, the juvenile court's decision was based on the State's failure to prove several of its allegations, not upon an additional requirement to prove ongoing patterns of abuse or neglect.

Finally, the State argues that the juvenile court erred "by declining to assert jurisdiction entirely rather than dealing with its concern that no services were needed at the dispositional phase." The juvenile court found that the State failed to prove by clear and convincing evidence that the children were abused or neglected.¹ As such, the juvenile court could not assert jurisdiction over the children. See Utah Code Ann. § 78A-6-103(1)(c) (2008). The juvenile court cannot assert its jurisdiction simply because a family has, as the State asserts, "problems." The juvenile court's jurisdiction is constrained by statute and can only be invoked under certain prescribed situations. See id. § 78A-6-103. Therefore, the district court did not err in refusing to assert its jurisdiction when the statutory predicates to jurisdiction had not been proven.

Affirmed.

Russell W. Bench, Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge

¹During the course of trial, it appears that the State's argument was focused on whether the children were abused or neglected. There was little to no evidence concerning whether the children were dependent, because most of the evidence focused on the conduct of the parents instead of the condition of the children. Accordingly, the juvenile court did not make any specific findings on the issue.