

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

| | | |
|--------------------------------|---|--------------------------------|
| State of Utah, in the interest |) | MEMORANDUM DECISION |
| of J.M. and S.M., persons |) | (Not For Official Publication) |
| under eighteen years of age. |) | |
| <hr/> |) | Case No. 20090965-CA |
| |) | |
| I.M., |) | F I L E D |
| |) | (February 11, 2010) |
| Appellant, |) | |
| |) | 2010 UT App 37 |
| v. |) | |
| |) | |
| State of Utah, |) | |
| |) | |
| Appellee. |) | |

Second District Juvenile, Ogden Department, 543448
The Honorable L. Kent Bachman

Attorneys: Gary W. Barr, Ogden, for Appellant
Mark L. Shurtleff and John M. Peterson, Salt Lake
City, for Appellee
Martha Pierce, Salt Lake City, Guardian Ad Litem

Before Judges Davis, McHugh, and Bench.¹

PER CURIAM:

I.M. (Mother) appeals the termination of her parental rights. Mother does not challenge the specific grounds for termination and does not challenge the juvenile court's factual findings. Instead, Mother argues that she lost her parental rights due to failure of the juvenile court and the Division of Child and Family Services (DCFS) "to appropriately inform, instruct, and assist [her] as required by law"; that the juvenile court failed to adequately consider her progress during the final six months prior to the termination trial; and that she was penalized for failures that were beyond her control and held to a standard that was impossible to achieve.

¹The Honorable Russell W. Bench, Senior Judge, sat by special assignment pursuant to Utah Code section 78A-3-102 (2008) and rule 11-201(6) of the Utah Rules of Judicial Administration.

The children were removed from Mother's custody on January 17, 2008, after she left them unattended under circumstances that posed a threat to their health and safety. In September 2008, the juvenile court held the first permanency hearing. Although Mother continued to test positive for drugs, the court found that she had made substantial efforts to comply with her service plan and continued reunification services for an additional three months. In January 2009, the juvenile court held a second permanency hearing, at which it terminated reunification services and changed the permanency goal to adoption. However, the termination trial did not begin until July 2009--almost eighteen months after the children were removed from Mother's custody.

Mother first argues that DCFS failed to promptly recognize her need for an inpatient drug treatment program and also argues that it was impossible for her to comply with the requirements of her service plan because her drug use and involvement in domestic violence were beyond her control. Neither argument has merit. Mother began substance abuse counseling in January 2008. She was unsuccessful in the Clean Start program and was later unsuccessful in a more intensive outpatient treatment program. In January 2009, Mother's substance abuse counselor gave her an ultimatum to enter a residential treatment program. Her substance abuse counselor and DCFS caseworker arranged for Mother to enter such a program on three separate occasions, but Mother failed to appear. On or about January 21, 2009, Mother was found in her apartment high on marijuana. Mother's counselor gave her twenty-four hours to clean up and enter the residential program. Mother entered the residential drug treatment program at Tranquility House on January 22, 2009. Mother was terminated unsuccessfully from Tranquility House for rule infractions on May 4, 2009. Nevertheless, from shortly after her entry into Tranquility House in January 2009 to the time of the termination trial roughly seven months later, Mother did not test positive for drugs. Mother's DCFS caseworkers had frequent contact with her, encouraged her to seek more intensive drug treatment, and worked with her substance abuse counselor. Furthermore, Mother received extensive services, including service plans, family and team meetings, supervised visits, substance abuse treatment, and domestic violence and parenting classes. The juvenile court's finding that DCFS made reasonable and appropriate efforts to reunify Mother with her children is adequately supported by the evidence. Mother's claim that it was impossible for her to comply with her service plan and treatment goals is without merit.

Mother next claims that the juvenile court did not appropriately consider her improvement during the six months immediately preceding the termination trial. Mother requested that the juvenile court consider her present ability in light of

In re B.R., 2007 UT 82, 171 P.3d 425. Under In re B.R., the juvenile court was required "to consider the totality of the evidence regarding [Mother's] parenting--all of her conduct up to the termination trial." Id. ¶ 13. However,

the weight which a juvenile court must give any present ability evidence is necessarily dependent on the amount of time during which the parent displayed an unwillingness or inability to improve his or her conduct and on any destructive effect the parent's past conduct or the parent's delay in rectifying the conduct has had on the parent's ability to resume a parent-child relationship with the child. . . . [I]f a parent has demonstrated some improvement in parenting ability but not a strong likelihood that the parent can provide a proper home for the child in the very near future, after a long period of separation, a history of problems and failure to remedy, and deterioration of the relationship between the child and parent, this court should not overturn a court's order terminating parental rights.

Id.

The juvenile court's careful consideration of Mother's parenting ability at the time of the termination trial is reflected in its detailed findings of fact. The juvenile court found that Mother's efforts to stay clean of drugs were only in the first stage. Although she was now testing clean, she had not satisfied the goal of successfully completing treatment for substance abuse. Mother had been receiving income from employment since May 2009, which would be sufficient to support herself but would not be sufficient to support the children. Mother continued to be involved in domestic violence with the children's father and an abusive boyfriend during the case. Therefore, the juvenile court could not find that Mother had internalized the skills necessary to keep herself and the children safe from domestic violence. Ultimately, the juvenile court found that while Mother had improved, she was "dilatory to start to rehabilitate herself." Even after the juvenile court extended her an additional three months of services, she was unwilling to change her lifestyle until the permanency goal was changed to adoption. The juvenile court found that the children had benefitted from the safety and security provided by the foster parents and had bonded with the foster family. After detailed consideration of the testimony of experts, therapists, and caseworkers, the juvenile court found that Mother waited too

long to change her behaviors and thus "has been unable or unwilling within a reasonable time to correct the circumstances, conduct or conditions that led to placement of the children outside their home, notwithstanding reasonable and appropriate efforts made by DCFS to return the children" to Mother. The juvenile court's further decision that it was in the children's best interests to terminate Mother's parental rights and allow them to be adopted is amply supported by findings and evidence that are not disputed by Mother.

We will overturn the juvenile court's decision "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. ¶ 12. "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. Applying the foregoing standard, we affirm the decision of the juvenile court.

James Z. Davis, Presiding Judge

Carolyn B. McHugh,
Associate Presiding Judge

Russell W. Bench, Senior Judge