

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

State of Utah, in the interest)	MEMORANDUM DECISION
of K.B., a person under)	(Not For Official Publication)
eighteen years of age.)	
_____)	Case No. 20051139-CA
)	
M.R.B.,)	F I L E D
)	(June 15, 2006)
Appellant,)	2006 UT App 247
)	
v.)	
)	
State of Utah,)	
)	
Appellee.)	

Third District Juvenile, Tooele Department, 458583
The Honorable C. Dane Nolan

Attorneys: Wayne A. Freestone, Sandy, for Appellant
Mark L. Shurtleff and John M. Peterson, Salt Lake
City, for Appellee
Martha Pierce and James R. Michie Jr., Salt Lake
City, Guardians Ad Litem

Before Judges Billings, McHugh, and Orme.

PER CURIAM:

M.R.B. (Mother) appeals the juvenile court's termination of her parental rights in K.B. We affirm.

Mother argues that the evidence is insufficient to support the determination that she abused or neglected K.B. 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 (quotations and citation 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. (quotations and citation omitted).

The juvenile court terminated Mother's parental rights on various grounds, including abuse or neglect. See Utah Code Ann. § 78-3a-407(1)(b) (Supp. 2005). A "neglected child" includes one "whose parent, guardian, or custodian has subjected the minor to mistreatment or abuse," id. § 78-3a-103(1)(s)(i)(B) (Supp. 2005), and includes a child that has been returned to an abusive environment by a parent, thus exposing the child to the substantial risk of abuse in the future. See In re C.B., 1999 UT App 293, ¶¶8-11, 989 P.2d 76 (upholding trial court's finding that child was "neglected child" because mother voluntarily returned to abusive relationship with child's father, thus subjecting child to risk of future abuse).

The juvenile court made numerous findings supporting its conclusion of neglect. These findings focused on Mother's continued voluntary relationship with J.C., despite knowledge that J.C. had inflicted various injuries upon K.B. Failure to cut ties to the man who severely harmed her child constitutes a fully adequate basis for terminating Mother's parental rights. See id. at ¶¶9-10 (holding that return to abusive relationship by mother was neglect of her child justifying protective intervention); In re Jonathan Michael D., 459 S.E.2d 131, 137-38 (W. Va. 1995) (per curiam) (affirming termination of parental rights of mother who completed treatment plan but continued to allow abusive father to have access to child).

Mother also asserts that the juvenile court abused its discretion when it found that termination was in the best interest of K.B. If there are sufficient grounds to terminate parental rights, "the court must [then] find that the best interests and welfare of the child are served by terminating the parents' parental rights." In re R.A.J., 1999 UT App 329 at ¶7; see Utah Code Ann. § 78-3a-406(3) (Supp. 2005) ("If a parent is found . . . 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.").

Because of the fact-intensive nature of parental termination cases, this court "will reverse the decision of the [juvenile] judge on matters of fact only when 'the evidence clearly preponderates against the findings . . . or [when] the court has abused its discretion.'" In re R.A.J., 1999 UT App 329 at ¶13 (second alteration in original) (citation omitted). Further, "we

grant the juvenile court a measure of discretion when applying the law to a specific fact scenario." In re L.M., 2001 UT App 314, ¶12, 37 P.3d 1188.

After setting forth detailed findings regarding the injuries K.B. sustained while in Mother's care and custody, the juvenile court juxtaposed that setting to the care, nurture, and development K.B. enjoyed while under the guardianship of his great-uncle. The juvenile court then determined that it was in the best interest of K.B. to terminate Mother's parental rights. Specifically, the juvenile court found that K.B. requires the "secure, stable and protected" existence that his great-uncle can provide. These findings are supported by the evidence presented at trial.

Finally, Mother argues that her due process rights were violated because no shelter hearing or permanency hearing was held in this case. Pursuant to Utah Code section 78-3a-306(1), a shelter hearing is only required after one of four events, none of which arose in this case. See Utah Code Ann. § 78-3a-306(1) (Supp. 2005). Moreover, an initial hearing regarding the placement of K.B. with his great-uncle did take place, during which Mother consented to the placement. Similarly, the provisions of Utah Code section 78-3a-312 do not apply here. See id. § 78-3a-312 (Supp. 2005). Instead, the underlying proceeding was initiated pursuant to a petition for termination of parental rights under the Termination of Parental Rights Act. See id. §§ 78-3a-401 to -415 (2002 & Supp. 2005). Pursuant to Utah Code section 78-3a-406, due process is satisfied if a party receives proper notice and is advised of her right to counsel. See id. § 78-3a-406(1)-(2); In re M.A.V., 736 P.2d 1031, 1033 (Utah Ct. App. 1987). There is no dispute that Mother received notice of and participated fully in the termination trial.

Accordingly, we conclude there was no abuse of discretion and no due process violation in terminating Mother's parental rights and therefore affirm.

Judith M. Billings, Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge