

IN THE UTAH COURT OF APPEALS

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In the interest of K.P., a
person under eighteen years
of age.

C.C.,
Appellant,
v.
K.P.,
Appellee.

) MEMORANDUM DECISION
) (Not For Official Publication)
)
) Case No. 20090418-CA

)
) F I L E D
) (September 3, 2009)

) 2009 UT App 244
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Third District Juvenile, West Jordan Department, 981483
The Honorable James R. Michie Jr.

Attorneys: Scott L. Wiggins, Salt Lake City, for Appellant
David J. Berceau, Salt Lake City, for Appellee
Martha Pierce, Salt Lake City, Guardian Ad Litem

Before Judges Greenwood, Thorne, and Orme.

PER CURIAM:

C.C. (Grandmother) appeals the juvenile court's order dismissing her petition for permanent custody and guardianship of K.P. We affirm.

Grandmother asserts that the juvenile court erred by failing to consider the parental presumption factors set forth in Hutchison v. Hutchison, 649 P.2d 38, 41 (Utah 1982), when reviewing her petition for permanent custody of K.P.

Utah Code section 78A-6-103 sets forth several circumstances in which the juvenile court has exclusive original jurisdiction. See Utah Code Ann. § 78A-6-103 (2008). The juvenile court has exclusive original jurisdiction in cases involving children that are abused, neglected, or dependent. See id. § 78A-6-103(1)(c). A juvenile court's findings pertaining to abuse, neglect, or dependency will not be overturned unless they are clearly erroneous. See In re A.G., 2001 UT App 87, ¶ 7, 27 P.3d 562. A finding is clearly erroneous only when, in light of the evidence

supporting the finding, it is against the clear weight of the evidence. See id.

Grandmother asserts that the juvenile court erred by applying an incorrect standard of proof in a custody dispute, and that the juvenile court was only required to consider the best interests of the child. Grandmother cites Hutchison in support of this proposition. In Hutchison, the Utah Supreme Court determined that once the parental presumption is rebutted, the parties seeking custody of the child compete on equal footing, "and the custody award should be determined solely by reference to the best interests of the child." Hutchison, 649 P.2d at 41.

However, unlike Hutchison, Grandmother's petition for permanent custody was filed in the juvenile court and not the district court. Thus, in order for the juvenile court to ultimately grant Grandmother's petition, the juvenile court was required to make a finding of neglect or abuse as alleged in Grandmother's petition. Grandmother asserts that the juvenile court incorrectly reviewed the evidence for abuse or neglect under a clear and convincing standard of evidence, instead of reviewing the evidence under a preponderance of the evidence standard.

We need not reach this issue. Even were we to assume that the juvenile court should have reviewed the evidence under a preponderance of the evidence standard, it is apparent from the record that the evidence was insufficient to satisfy the preponderance standard. The record lacks any direct evidence of abuse or neglect. The juvenile court concluded that much of the evidence submitted to demonstrate abuse or neglect was circumstantial evidence which merely gave rise to an inference of abuse or neglect, or was otherwise inconclusive. The evidence presented is insufficient to support a finding of neglect or abuse under a lesser standard of the evidence. Accordingly, the juvenile court's order is affirmed.¹

Pamela T. Greenwood,
Presiding Judge

William A. Thorne Jr.,
Associate Presiding Judge

Gregory K. Orme, Judge

¹Father's request for fees and costs on appeal is denied.