

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest)	MEMORANDUM DECISION
of K.W. and L.W., persons)	(Not For Official Publication)
under eighteen years of age.)	
_____)	Case No. 20100289-CA
M.H.,)	
)	F I L E D
Appellant,)	(May 20, 2010)
)	
v.)	2010 UT App 131
)	
State of Utah,)	
)	
Appellee.)	

Third District Juvenile, Tooele Department, 429437
The Honorable Mark W. May

Attorneys: David J. Angerhofer, Sandy, 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, Orme, and Roth.

PER CURIAM:

M.H. (Mother) appeals the juvenile court's March 25, 2010 order terminating her parental rights. We affirm.

Mother asserts that the State's claims were not materially different than its claims in her prior parental rights termination proceeding. Thus, Mother asserts, the termination of her parental rights in K.W. and L.W. is barred by the claim preclusion branch of res judicata.

In order to invoke the claim preclusion branch of res judicata: (1) the two cases must involve the same parties or privies; (2) the claim alleged to be barred must have been presented in the first suit, or must be one that could and should have been raised in the first action; and (3) the suit must have ended in a final judgment on the merits. See Madsen v. Borthick, 769 P.2d 245, 247 (Utah 1988).

This court has previously addressed the doctrine of res judicata in the context of child welfare proceedings, and we

expressed reservations about the applicability of the doctrine to such proceedings. See In re J.J.T., 877 P.2d 161, 163 (Utah Ct. App. 1994). Specifically, "we have emphasized 'that a hyper-technical application of res judicata is improper' because 'considerations involving a child's welfare are rarely, if ever, static.'" In re S.D.C., 2001 UT App 353, ¶ 15, 36 P.3d 540. Often, the elements of res judicata cannot be met as a matter of law due to the change in a child's circumstances. See In re T.J., 945 P.2d 158, 164 (Utah Ct. App. 1997) (Wilkins, J., concurring). If any appreciable time has passed between the dates where the juvenile court was asked to make a judgment on a petition seeking termination of parental rights, the claim is necessarily and materially different than the one previously tried. See id. Furthermore, "where two actions rest on different facts, and evidence of a different kind or character is necessary to sustain them, the claims are not the same for purposes of res judicata." In re J.J.T., 877 P.2d at 165.

The juvenile court determined that the second prong of the Madsen test for claim preclusion was not satisfied because the State's claims were materially different than in the first termination proceeding. Specifically, the record indicates that the children's best interests had changed. In the first proceeding, K.W. and L.W. did not wish to be adopted. However, at the time of the second termination proceeding, K.W. and L.W. expressed their desire to be adopted into their foster families. Thus, because there was an appreciable change regarding the children's best interests, res judicata does not operate to bar the termination of Mother's parental rights. See id.

Accordingly, the juvenile court's March 25, 2010 order is affirmed.

James Z. Davis,
Presiding Judge

Gregory K. Orme, Judge

Stephen L. Roth, Judge