

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest	)	MEMORANDUM DECISION
of L.P., a person under	)	(Not For Official Publication)
eighteen years of age.	)	
_____	)	Case No. 20080396-CA
	)	
D.P.,	)	F I L E D
	)	(February 20, 2009)
Appellant,	)	
	)	2009 UT App 42
v.	)	
	)	
State of Utah,	)	
	)	
Appellee.	)	

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Third District Juvenile, Salt Lake Department, 521672  
The Honorable Frederic (Ric) M. Oddone

Attorneys: Colleen K. Coebergh, Salt Lake City, for Appellant  
Mark L. Shurtleff and John M. Peterson, Salt Lake  
City, for Appellee  
Martha Pierce, Salt Lake City, Guardian Ad Litem

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Before Judges Greenwood, Bench, and Orme.

GREENWOOD, Presiding Judge:

D.P. (Father) appeals the juvenile court's order terminating his parental rights in L.P., arguing that the court erred in finding him unfit because of his continued association with L.P.'s mother (Mother) and in considering Mother's relinquishment of parental rights in Father's case. We affirm.

Utah Code section 78A-6-507 states that parental rights may be terminated where the juvenile court finds "that the parent is unfit or incompetent." Utah Code Ann. § 78A-6-507(1)(c) (2008).<sup>1</sup>

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<sup>1</sup>This section of the Utah Code has been amended and renumbered since the juvenile court proceedings pertinent to this appeal began. See Utah Code Ann. § 78A-6-507 (2008) (amend. notes). For purposes of this appeal, however, the current version of the statute is substantively identical. Thus, for  
(continued...)

At the conclusion of the termination trial, the juvenile court found that "[F]ather has engaged in an ongoing pattern of conduct that shows he continues to have an emotional attachment to [M]other," that he has lied repeatedly to DCFS, and that he has "failed to protect [L.P.] from [M]other." The juvenile court also noted that Father "has never requested [n]or petitioned the Court for full custody of [L.P.]" and that "[t]here is no evidence that [F]ather is prepared to provide full-time care for [L.P.]." Based on these findings, the juvenile court concluded that Father is an unfit parent<sup>2</sup> and terminated his parental rights in L.P.

Father's two arguments on appeal ultimately involve the same central legal question: Did the juvenile court err as a matter of law in finding Father unfit due to his continued association with Mother? "Whether a parent's rights should be terminated presents a mixed question of law and fact." In re B.R., 2007 UT 82, ¶ 12, 171 P.3d 435. However, because Father has failed to provide us with a transcript of the proceedings below, we are constrained in our review and must assume that the juvenile court's factual findings are supported by and consistent with the evidence. See Utah R. App. P. 54(a). We therefore grant the juvenile court's decision on this fact-intensive legal question "a high degree of deference" and are mindful that "[w]hen a foundation for the court's decision exists in the evidence, [we] may not engage in a reweighing of the evidence." In re B.R., 2007 UT 82, ¶ 12.

As an initial matter, Father contends that the juvenile court erred when it found that Mother "was adjudicated as an unfit parent." We agree that this finding is contrary to the record. Although the court determined that L.P. was "a neglected child" with respect to Mother at an earlier adjudication hearing, Mother relinquished her parental rights prior to the termination trial, thus avoiding a potential unfitness determination. We therefore agree with Father that it was error for the juvenile court to have stated that Mother was adjudicated as an unfit parent. However, it is clear to us that this finding was not the

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<sup>1</sup>(...continued)  
reader convenience, we cite to the current version of the statute throughout this opinion.

<sup>2</sup>Although the juvenile court found additional grounds to justify termination of Father's parental rights, we requested briefing specifically on the issue of the implications of Mother's relinquishment of her parental rights on the juvenile court's determination that Father is unfit, and thus, we analyze only the unfitness issue.

basis upon which the juvenile court found Father to be an unfit parent.

Furthermore, Mother's relinquishment of her parental rights carries less importance than Father contends. It is well-settled in Utah that a parent's parental rights may be terminated based on continued association with an unfit and incompetent parent. See, e.g., In re V.L., 2008 UT App 88, ¶ 23, 182 P.3d 395. Father acknowledges this authority and argues simply that "the facts in this case do not support . . . a finding [of unfitness] based on association." In this regard, Father presents several Utah cases and attempts to factually distinguish them from the instant case. For example, Father discusses In re T.M., 2006 UT App 435, 147 P.3d 529, where termination of the father's parental rights based on unfitness was upheld because, among other things, the father described himself as "addicted" to the mother and the trial court determined that his continued relationship with the mother "prevent[ed] him from being an adequate father and endanger[ed] the [c]hildren." Id. ¶ 9. Father argues that unlike the father in T.M., he was not addicted to Mother, but simply "felt sorry" for her. This and Father's other attempted factual distinctions are not persuasive.

In addition, Father argues that Utah law permits a finding of unfitness-by-association only where the party with whom the parent is associating has been adjudicated as unfit. Father therefore contends that because Mother relinquished her parental rights, avoiding a potential unfitness finding, the unfitness-by-association cases are not applicable. This argument is not persuasive and would lead to unwarranted results.<sup>3</sup> The key policy behind the unfitness-by-association line of cases is not to prevent association with parents who have been adjudicated unfit, but to protect children from harm by those with whom their parents associate. See id. ¶ 20 (stating that unfitness-by-association doctrine is aimed largely at counteracting the parent's "willingness to put the [child's] safety at risk"). Utah case law makes clear that "courts have minimal empathy for parents whose strong emotional ties to their spouses or significant others jeopardize their children's safety." Id.

Finally, Father argues that the juvenile court erred in assessing the implications of Mother's relinquishment on Father's

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<sup>3</sup>It takes little effort to imagine a scenario in which a parent's associate presents a danger to the parent's child, while nevertheless avoiding an unfitness determination. See, e.g., In re G.D., 894 P.2d 1278, 1280, 1283 (Utah Ct. App. 1995) (affirming termination of a mother's parental rights when she continued contact with a man, not the children's father, suspected of abusing her children).

termination.<sup>4</sup> In doing so, Father implies that allowing Mother to relinquish her parental rights means that she is less culpable than if she had been found unfit. Therefore, Father argues, he should not have been penalized for association with Mother absent a valid determination that she was unfit. Contrary to Father's assertion, a finding of Mother's unfitness was unnecessary for the court's determination that Father's exposure of L.P. to Mother posed a danger to L.P. and constituted unfitness on Father's part. In support thereof, the findings crucial to termination of Father's parental rights are that Mother used drugs most of her life, including while caring for L.P.; Mother was unsuccessful in drug treatment; Father repeatedly allowed Mother to return to his home; Father was fully aware of Mother's problems and the "threat of harm" she posed to L.P.; Father knew of Mother's drug abuse problem "and that she engaged in drug use and illegal activity while" residing with Father; and Father has an "ongoing relationship with [Mother] and thus there is an increased risk to [L.P.] if returned to the custody of [Father]." Given the facts as found by the juvenile court, we cannot say that the juvenile court erred in assessing the implications of Mother's relinquishment on Father's termination.

Based on the foregoing, we affirm.

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Pamela T. Greenwood,  
Presiding Judge

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WE CONCUR:

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Russell W. Bench, Judge

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Gregory K. Orme, Judge

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<sup>4</sup>Father relatedly argues that the juvenile court found him to be a fit, loving, and appropriate parent except for his association with Mother. Father misconstrues the order terminating his rights. Although the juvenile court did note that "[F]ather has . . . stated that he would provide full care for [L.P.]," it also found that Father enabled Mother's continued drug use, allowed Mother to spend time with L.P. while using drugs, and "failed to protect [L.P.] from . . . [M]other."