

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest	)	MEMORANDUM DECISION
of L.S. and D.S., persons	)	(Not For Official Publication)
under eighteen years of age.	)	
_____	)	Case No. 20080720-CA
	)	
F.L.S.,	)	F I L E D
	)	(October 30, 2008)
Appellant,	)	
	)	2008 UT App 398
v.	)	
	)	
State of Utah,	)	
	)	
Appellee.	)	

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Third District Juvenile, Salt Lake Department, 532729, 534922  
The Honorable Sharon P. McCully

Attorneys: Joseph Lee Nemelka, Salt Lake City, for Appellant  
Martha Pierce, Salt Lake City, Guardian Ad Litem

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Before Judges Thorne, Bench, and Orme.

PER CURIAM:

F.L.S. (Father) appeals the termination of his parental rights in L.S. and D.S. We affirm.

Father first argues that the juvenile court erred by concluding that Father was an unfit parent solely on the basis that he is incarcerated. Father's premise is incorrect. The findings of fact and conclusions of law indicate several reasons why Father was found to be unfit and why his parental rights were terminated, the most notable of which are the acts that led to his incarceration. More particularly, in an interview with police, Father admitted to sexually abusing his eldest daughter. After being charged with several crimes, Father eventually pleaded guilty to the charge of attempted aggravated sexual abuse of a child.

This court has previously stated that "some acts are so grave that the resulting inference of unfitness may be, at least as a practical matter, insurmountable. Utah law recognizes as

much by identifying certain circumstances that constitute 'prima facie evidence of unfitness.'" In re B.R., 2006 UT App 354, ¶ 95, 144 P.3d 231 (citation omitted), rev'd on other grounds, 2007 UT 82, ¶ 12, 171 P.3d 435. Specifically, Utah Code section 78A-6-508(6)(a) states that "sexual abuse, sexual exploitation, injury, or death of a sibling of the child, or of any child, due to known or substantiated abuse or neglect by the parent" is prima facie evidence of unfitness. Utah Code Ann. § 78A-6-508(6)(a) (Supp. 2008). "A prima facie case is proven when evidence has been introduced which, in the absence of contrary evidence, would entitle the party with the burden of proof to judgment as a matter of law." In re M.L., 965 P.2d 551, 557 (Utah Ct. App. 1998).

Here, the record demonstrates that in an interview with police, Father admitted to various forms of sexual contact with his eldest daughter. He was subsequently charged with several crimes and ultimately entered into a plea bargain whereby he pleaded guilty to attempted aggravated sexual abuse of a child. These admissions, coupled with the testimony of his daughter, constituted prima facie evidence of unfitness. The only evidence Father presented to rebut this prima facie case was his own self-serving statements denying the inappropriate behavior and claiming that his admissions were caused because he was high from "melting off laquer thinner." After reviewing a video tape of the interview and observing the testimony of all the witnesses, the juvenile court found that Father's testimony lacked credibility. Thus, Father failed to rebut the presumption of unfitness created by the statute. Accordingly, the juvenile court properly determined that Father was an unfit parent.<sup>1</sup>

Next, Father asserts that the juvenile court erred in determining that it was in the best interests of the children to terminate Father's parental rights because the juvenile court failed to place any weight or significance on preserving Father's family. The determination of whether the termination of parental rights is in the best interests of the children is reviewed under an abuse of discretion standard. See In re A.G., 2001 UT App 87, ¶ 7, 27 P.3d 562. Further, we give the juvenile court a "'wide latitude of discretion as to the judgments arrived at' based upon

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<sup>1</sup>Father also argues that the district court abused its discretion by finding that Father's parental rights should be terminated based upon failure of parental adjustment. However, because this court has determined that the termination of Father's parental rights is supported on the ground of unfitness, there is no need to address this claim. See In re F.C. III, 2003 UT App 397, ¶ 6, 81 P.3d 790 (noting that any single ground is sufficient to terminate parental rights).

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.'" In re E.R., 2001 UT App 66, ¶ 11, 21 P.3d 680 (citations omitted). Contrary to Father's argument, the record demonstrates that the juvenile court reviewed many factors in its determination of the best interests of the children, including the preservation of the family unit. Specifically, the record reveals that neither of the children wanted to continue their relationship with Father. Further, the report of a clinical consultant recommended that the children not be forced to re-establish a relationship with Father, and that the children should continue therapy to help them deal with Father's actions. When these factors are coupled with the fact that Father remains in prison with an indeterminate sentence that could be for life, we surely cannot conclude that the juvenile court erred in determining that it would be in the best interests of the children to terminate Father's parental rights. See In re B.R., 2007 UT 82, ¶ 12, 171 P.3d 435 ("When a foundation for the court's decision exists in the evidence, an appellate court may not engage in a reweighing of the evidence.").

Finally, Father argues that the court erred in allowing the "Guardian ad Litem to prepare the children's testimony and no depositions or any evaluations of the children were permitted by an impartial third party." However, Father failed to preserve this argument for appeal by appropriately raising it during the juvenile court proceedings. Therefore, we do not address this issue. See In re T.W., 2006 UT App 259, ¶ 25, 139 P.3d 312 (refusing to address an issue the parent failed to raise in the juvenile court).

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William A. Thorne Jr.,  
Associate Presiding Judge

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Russell W. Bench, Judge

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Gregory K. Orme, Judge