

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest)	MEMORANDUM DECISION
of M.A., a person under)	(Not For Official Publication)
eighteen years of age.)	
_____)	Case No. 20100651-CA
)	
S.B.,)	F I L E D
)	(November 4, 2010)
Appellant,)	
)	2010 UT App 311
v.)	
)	
State of Utah,)	
)	
Appellee.)	

Third District Juvenile, West Jordan Department, 1013157
The Honorable Christine S. Decker

Attorneys: Judith L.C. Ledkins, Salt Lake City, for Appellant
Mark L. Shurtleff, Carol L.C. Verdoia, and John M.
Peterson, Salt Lake City, for Appellee
Martha Pierce, Salt Lake City, Guardian Ad Litem

Before Judges Orme, Roth, and Christiansen.

PER CURIAM:

S.B. (Mother) appeals the termination of her parental rights. The juvenile court concluded that Mother (1) was an unfit or incompetent parent, see Utah Code Ann. § 78A-6-507(1)(c) (2008); (2) had been unable or unwilling to remedy the circumstances that led to an out-of-home placement and that there was not a substantial likelihood that Mother would be capable of exercising proper and effective parental care in the near future, see id. § 78A-6-507(1)(d); and (3) had experienced a failure of parental adjustment, see id. § 78A-6-502(2). Mother argues that the juvenile court did not adequately consider or give appropriate weight to her parenting ability at the time of the termination trial.

The juvenile court was required "to consider the totality of the evidence regarding [Mother's] parenting--all of her conduct

up to the termination trial." In re B.R., 2007 UT 82, ¶ 13, 171 P.3d 425. However,

the weight which a juvenile court must give any present ability evidence is necessarily dependent on the amount of time during which the parent displayed an unwillingness or inability to improve his or her conduct and on any destructive effect the parent's past conduct or the parent's delay in rectifying the conduct has had on the parent's ability to resume a parent-child relationship with the child. . . . [I]f a parent has demonstrated some improvement in parenting ability but not a strong likelihood that the parent can provide a proper home for the child in the very near future, after a long period of separation, a history of problems and failure to remedy, and deterioration of the relationship between the child and parent, this court should not overturn a court's order terminating parental rights.

Id.

The juvenile court's careful consideration of Mother's parenting ability at the time of trial is reflected in detailed findings of fact. The juvenile court considered Mother's successful completion of the CATS drug treatment program and parenting classes while in jail, as well as her ongoing participation in criminal drug court. At the time of trial, Mother had been out of jail for about twelve days and was in phase II of the four phases of criminal drug court. If she continued to be successful, she would graduate from criminal drug court in January 2011. Mother was residing with her mother and step-father and was seeking work, but she had not been employed since 2008. She had not visited with M.A. for the four months from January 7, 2010, to May 7, 2010, while she was incarcerated. Since her release, she had only two supervised visits, which had gone well.

At the time of trial, M.A. had been in an out-of-home placement for fifteen months. Despite reasonable reunification services offered through the juvenile court case, Mother failed to consistently address her drug use and addiction up to the time she was incarcerated in January 2010--just one month short of a year after M.A.'s removal from her custody. Mother's case manager from criminal drug court testified that she would not be admitted to phase III of the drug court program until she had achieved a period of sobriety outside of jail and paid a

treatment fee. If all went well, she would graduate from criminal drug court in January 2011. Although Mother was bonded to M.A., her involvement in the child's life had been frequently disrupted by drug use, criminal activity, and incarceration. Although Mother's commendable efforts to address her drug use through the CATS program and criminal drug court were carefully considered by the juvenile court, the juvenile court did not find that evidence to be compelling enough to demonstrate present fitness to regain custody of M.A. or to support a finding that Mother had fully addressed the circumstances that led to M.A.'s removal. Furthermore, Mother did not make a convincing challenge to the juvenile court's finding that adoption by the foster parents--M.A.'s paternal grandmother and her husband--would be in M.A.'s best interests.

We will overturn the juvenile court's decision "only if it either failed to consider all of the facts or considered all of the facts and its decision was nonetheless against the clear weight of the evidence." Id. ¶ 12. "When a foundation for the court's decision exists in the evidence, an appellate court may not engage in a reweighing of the evidence." Id. Applying the foregoing standard, we affirm the decision of the juvenile court.

Gregory K. Orme, Judge

Stephen L. Roth, Judge

Michele M. Christiansen, Judge