IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest of M.S., a person under eighteen years of age.	MEMORANDUM DECISION (Not For Official Publication)
J.S., Appellant,	Case No. 20090853-CA
v.	F I L E D (January 28, 2010)
State of Utah, Appellee.	2010 UT App 16

Third District Juvenile, Salt Lake Department, 1008395
The Honorable C. Dane Nolan

Attorneys: Shamin Monshizadeh, 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

Before Judges McHugh, Orme, and Bench.[1]

PER CURIAM:

J.S. (Father) appeals the juvenile court's order terminating his parental rights. Father argues that the juvenile court erred in determining that it was in the best interest of the child, M.S., for Father's parental rights to be terminated. Alternatively, Father argues that if it was in M.S.'s best interest to terminate his parental rights, then the child should have been placed with Father's half-sister for adoption. We affirm.

Father asserts that the juvenile court erred in determining that it was in M.S.'s best interest to terminate his parental

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[1]The Honorable Russell W. Bench, Senior Judge, sat by special assignment pursuant to Utah Code section 78A-3-102 (2008) and rule 11-201(6) of the Utah Rules of Judicial Administration.

rights. In reviewing an order terminating parental rights, this court "will not disturb the juvenile court's findings and conclusions unless the evidence clearly preponderates against the findings as made or the court has abused its discretion." In re R.A.J., 1999 UT App 329, ¶ 6, 991 P.2d 1118 (internal quotation marks omitted). A juvenile court's findings of fact will not be overturned unless they are clearly erroneous. See In re E.R., 2001 UT App 66, ¶ 11, 21 P.3d 680. A finding of fact is clearly erroneous only when, in light of the evidence supporting the finding, it is against the clear weight of the evidence. See id. Further, we give the juvenile court a "'wide latitude of discretion as to the judgments arrived at' based upon 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.'" Id.

While we do not doubt that Father loves M.S. and has a desire to change his life in order to care for her, the evidence adduced at trial sufficiently supports the juvenile court's determination that it was in M.S.'s best interest that Father's parental rights be terminated. For example, Father has never been the primary caretaker of M.S., except for a short period after she was born, and he has only had limited contact with her since that time. Father is not currently employed and does not have stable housing. Further, Father has an extensive criminal history and is at risk of further incarceration due to outstanding court fines. Conversely, M.S. is bonded to the family that was granted custody of M.S. following the death of her mother. The family meets M.S.'s emotional and physical needs and desires to adopt her. Further, M.S.'s therapist testified that the predictability and support offered by her custodians has allowed M.S. to progress significantly in her therapy. Removing her from that stability would likely be harmful to M.S. and cause M.S. to regress in her treatment. As such, the evidence adduced at trial was sufficient to support the juvenile court's determination that it was in M.S.'s best interest 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.").

Father also asserts that it was in M.S.'s best interest to be placed with Father's half-sister instead of with her current foster family. This court has previously concluded that "nothing in the plain language of the [Termination of Parental Rights Act] requires a juvenile court to consider possible kinship placements when deciding whether termination is in the best interest of the child." In re W.P.O., 2004 UT App 451, ¶ 10, 104 P.3d 662. While such kinship placements are relevant following the shelter hearing, they are not directly relevant to termination

proceedings. _See_ _id._ ¶ 11; _see also_ Utah Code Ann. § 78A-6-307(18)(a) (2008) (stating that any preferential consideration for kinship placement expires 120 days from the date of the shelter hearing, and after that time has expired a relative may not be granted preferential consideration). Accordingly, the juvenile court did not err in refusing to grant custody of M.S. to Father's half-sister at the conclusion of the termination proceeding.

Affirmed.

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Carolyn B. McHugh,
Associate Presiding Judge

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Gregory K. Orme, Judge

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Russell W. Bench, Senior Judge