

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest)	MEMORANDUM DECISION
of N.C., D.C., and G.C.,)	(Not For Official Publication)
persons under eighteen years)	
of age.)	Case No. 20080638-CA
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K.C.,)	F I L E D
)	(January 23, 2009)
Appellant,)	2009 UT App 17
)	
v.)	
)	
State of Utah,)	
)	
Appellee.)	

Eighth District Juvenile, Vernal Department, 148143
The Honorable Larry A. Steele

Attorneys: Herbert W. Gillespie, Roosevelt, for Appellant
Mark L. Shurtleff and John M. Peterson, Salt Lake
City, for Appellee
Martha Pierce, Salt Lake City, Guardian Ad Litem

Before Judges Greenwood, Davis, and McHugh.

PER CURIAM:

K.C. (Mother) appeals the termination of her parental rights in N.C., D.C., and G.C. We affirm.

Mother first asserts that the juvenile court erred in denying her reunification services. Specifically, Mother claims that the juvenile court's determination to refrain from offering her reunification services was predicated on her admission from an earlier proceeding wherein Mother admitted that she was aware that her children were being sexually abused but failed to take appropriate measures to protect her children. Mother further

asserts that she lacked the benefit of counsel to advise her regarding such admission.¹

Utah Code section 78A-6-312 provides that the court has no duty to order reunification services in cases where there is sufficient evidence of sexual abuse. See Utah Code Ann. § 78A-6-312(2)(a)(iii) (2008). In all cases, the children's health, safety, and welfare shall be the juvenile court's paramount concern in determining whether reasonable efforts for reunification should be made. See id. Additionally, a parent has no constitutional right to receive reunification services. See In re N.R., 967 P.2d 951, 955 (Utah Ct. App. 1998). Rather, reunification services are a gratuity provided by the legislature. See id.

Even were this court to accept Mother's assertion that the juvenile court erred in considering improper admissions, there was other evidence supporting the juvenile court's discretionary determination to deny reunification services. The record demonstrates that the juvenile court also considered the children's health, safety, welfare, and the family's extensive history with the Division of Child and Family Services. There was sufficient evidence, including, but not limited to, the children's unsafe and uninhabitable living conditions, sexual abuse, physical abuse, and environmental neglect. Thus, we cannot say that the juvenile court abused its discretion by denying reunification services.

Mother next asserts that section 78A-6-312, which grants the juvenile court discretion to grant or deny reunification services, is unconstitutional under the Equal Protection Clause and the Operations of Law Clause of the Utah Constitution. Mother also asserts that the juvenile court violated her due process rights either by failing to provide proper notification that the August 2, 2007 hearing was a permanency hearing, or alternatively, that if the hearing was not a permanency hearing, that the court failed to hold one.

However, these issues were not preserved. As a general rule, "claims not raised before the trial court may not be raised on appeal." State v. Holgate, 2000 UT 74, ¶ 11, 10 P.3d 346. This preservation rule applies to "every claim, including constitutional questions, unless an appellant demonstrates that 'exceptional circumstances' exist or 'plain error' occurred." Id. To preserve the issue for appeal, a party "must enter an objection on the record that is both timely and specific." State v. Rangel, 866 P.2d 607, 611 (Utah Ct. App. 1993). "The

1. The record indicates that Mother waived her right to counsel and admitted the Petition for Protective Supervision Services.

objection must 'be specific enough to give the trial court notice of the very error' of which [the party] complains." State v. Bryant, 965 P.2d 539, 546 (Utah Ct. App. 1998). Mother fails to demonstrate that these claims were preserved, and she also fails to establish exceptional circumstances or plain error. Mother had the opportunity to raise a timely and specific objection in the juvenile court, but elected not to do so. Thus, we decline to address these issues.²

Finally, Mother asserts that rules 55 and 58 of the Utah Rules of Appellate Procedure unconstitutionally deny her right to a meaningful appeal by precluding full review of the trial transcripts and audio recordings. More particularly, Mother argues that rule 58, which authorizes this court to make a determination absent full briefing, deprives Mother's right to a meaningful appeal. See Utah R. App. P. 58(a). The Utah Supreme Court has resolved this very issue and determined that a child welfare appellant's lack of access to trial transcripts during the preparation of the petition on appeal is not unconstitutional. See In re B.A.P., 2006 UT 68, ¶ 20, 148 P.3d 934. In the context of a child welfare appeal, an appellate court may constitutionally render a decision on the merits with only a presentation of the issues along with its independent examination of the record. See id. ¶ 18.

This court has reviewed the petition on appeal and the record. The record supports the juvenile court's determination that Mother's parental rights should be terminated. Accordingly, the order terminating Mother's parental rights is affirmed.

Pamela T. Greenwood,
Presiding Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge

2. Even assuming that the equal protection issue had been preserved, this court has previously determined that the statute is constitutional. See In re N.R., 967 P.2d 951, 957 (Utah Ct. App. 1998). This court has also held that a permanency hearing and termination trial may be combined. See In re E.R., 2001 UT App 66, ¶ 16, 21 P.3d 680.