

IN THE UTAH COURT OF APPEALS

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In the matter of the adoption of C.R.M., a minor.)	MEMORANDUM DECISION
_____)	(Not For Official Publication)
)	Case No. 20090104-CA
A.R.N. and B.N.,)	
Appellees,)	F I L E D
)	(April 30, 2009)
v.)	2009 UT App 114
)	
C.V.M.,)	
Appellant.)	

First District, Logan Department, 082100043
The Honorable Thomas Willmore

Attorneys: C.V.M., Phoenix, Arizona, Appellant Pro Se
Marlin J. Grant, Logan, for Appellees

Before Judges Greenwood, Davis, and McHugh.

PER CURIAM:

C.V.M. (Father) appeals the termination of his parental rights to C.R.M. This case is before the court on a sua sponte motion for summary disposition and on Appellees' motion for summary disposition.

A.R.N. (Mother) and B.N. (Stepfather) filed a petition for adoption of C.R.M. and sought termination of Father's parental rights. "A district court has jurisdiction to hear and decide a petition to terminate parental rights in a child if the party who filed the petition is seeking to terminate parental rights in a child for the purpose of facilitating the adoption of the child." Utah Code Ann. § 78B-6-112(1) (2008). The district court may terminate a person's parental rights "on grounds described in Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act." Id. § 78B-6-112(5).

Father moved to dismiss the petition, claiming that it must have been filed in the district court that entered the biological parents' divorce decree. However, because Cache County is the

county where the child resides with Mother and Stepfather, the petition was correctly filed in that county. See id. § 78B-6-105(1)(a) (2008) (stating an adoption petition shall be filed in the district where a person adopting resides).

Although Father requested a transcript of the evidentiary hearing on the termination petition, he did not make the payment arrangements necessary to its preparation. "If the appellant intends to urge on appeal that a finding or conclusion is unsupported by or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion." Utah R. App. P. 11(e)(2). In the absence of a transcript, "we are unable to ascertain whether the trial court's findings were based upon sufficient evidence," and the appellant's "claim of error is merely an unsupported, unilateral allegation which we cannot resolve." Horton v. Gem State Mut., 794 P.2d 847, 849 (Utah Ct. App. 1990). Because Father did not provide a transcript, we cannot review any claim that the evidence was insufficient and "we can only presume that the judgment was supported by sufficient evidence." Id.

We conclude that the district court's findings support its determinations that Father abandoned C.R.M. and was an unfit parent. C.R.M. was born in November 2001. Mother and Father divorced in April 2004. Father has a lengthy history of illegal drug use. In 1997, he was convicted of distributing a controlled substance, sentenced to serve zero to five years in prison, and placed on probation. From 1997 to December 2001, Father was in and out of jail or drug rehabilitation programs. Father's probation was revoked in December 2001, and he was sent to prison. In November 2002, Father was released from prison on parole. In March 2003, Father violated his parole. From October 2004 through October 2006, Father was in prison in Utah. Commencing in October 2006, Father was free on parole for approximately six months. In March 2007, Father returned to prison. In March 2008, Father was sentenced on a conviction on federal drug and weapons charges and imprisoned at a federal correctional facility in Arizona. He has a possible parole date of December 2011.

Father's last visit with C.R.M. was in October 2006. The district court found that Father spent very little, if any, time with C.R.M. and had not "maintained any type of meaningful father/son relationship." Father sent four letters to C.R.M. through the paternal grandparents during a six-year period. Father did not use his telephone privileges to have telephone visitation with C.R.M. Father owes over \$5000 in back child support. The court rejected Father's claim that Mother had concealed C.R.M. or prohibited contact with Father. The court placed great weight on the fact that during the six months from

October 2006 through March 2007 when Father was on parole, he failed to visit or communicate with C.R.M. The district court also found that Father failed to show "the normal interest of a natural parent," Utah Code Ann. § 78A-6-508(1)(b) (2008). Accordingly, the district court concluded that Father had abandoned C.R.M. Because the ground of abandonment is sufficient to support termination and is adequately supported by the district court's findings, we can affirm the termination of parental rights on this ground alone. See id. § 78A-6-507(1) (stating that the court may terminate parental rights on any one of the enumerated grounds).

The district court also concluded that Father was an unfit parent pursuant to Utah Code section 78A-6-508(2)(c) because of habitual and excessive use of controlled substances that rendered him unfit as a parent, see id. § 78A-6-508(2)(c). The court also concluded Father was an unfit parent pursuant to Utah Code section 78A-6-508(2)(e) because he is incarcerated on a felony conviction and his sentence is "of such length that his child will be deprived of a normal home for more than one year," id. § 78A-6-508(2)(e). However, because Father's incarceration did not deprive C.R.M. of his "normal home" with Mother and Stepfather, it "does not, by itself, justify termination of [Father's] parental rights under subsection (e)." In re D.B., 2002 UT App 314, ¶ 11, 57 P.3d 1102. Nevertheless, Father's repeated incarceration based upon drug-related convictions rendered him unavailable to parent, provide financial support, or develop a relationship with C.R.M. Accordingly, we conclude that the findings also supported the district court's conclusion that Father is an unfit parent. Father does not state a challenge to the district court's determination that termination was in C.R.M.'s best interest.

Although Father claims that the district court failed to consider evidence he provided to establish his contacts with C.R.M., the court's findings demonstrate otherwise. That evidence appears in the record as attachments to Father's motion to dismiss. The findings reflect that the court considered the letters and other materials submitted. Father also contends that he was not allowed to attend or have counsel to represent him in the termination proceedings. The record again reflects otherwise. Father received notice of the hearing and would have had the opportunity to appear in person but for his incarceration in Arizona. However, the district court held an evidentiary hearing at which Father participated telephonically and was allowed to present evidence, testify, and cross-examine witnesses. Father retained counsel, who was present only at a September 2008 hearing. The minutes from the November 2008 evidentiary hearing state that a discussion regarding counsel occurred, which resulted in Father proceeding pro se. Because

Father did not provide a transcript, there is no basis to support Father's claim that he was denied counsel.¹

Accordingly, we affirm.

Pamela T. Greenwood,
Presiding Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge

¹In termination proceedings involving a child adjudicated to be within juvenile court jurisdiction, parents have a statutory right to counsel. See Utah Code Ann. § 78A-6-1111 (2008). C.R.M. is not within the jurisdiction of the juvenile court. Thus, there is no statutory right to the appointment of counsel or a transcript at public expense in this civil case.