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State of Utah v. M.B. : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, In the Interest of C.B., A child under eighteen years of age, Appellee.	:	Case No. 20120036-CA
M.B., Appellant.	:	

BRIEF OF APPELLEE STATE OF UTAH

APPEAL FROM FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER TERMINATING PARENTAL RIGHTS ENTERED ON DECEMBER 28, 2011 IN THIRD DISTRICT JUVENILE COURT, SALT LAKE COUNTY THE HONORABLE FREDERIC ODDONE, PRESIDING

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ORAL ARGUMENT AND PUBLISHED OPINION NOT REQUESTED

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M.B., Appellant.	: : :	

BRIEF OF APPELLEE STATE OF UTAH

JURISDICTION

Appellant challenges the Findings of Fact, Conclusions of Law, and Order Terminating Parental Rights entered on December 28, 2011. This Court has jurisdiction pursuant to Utah Code Ann. § 78A-4-103(2)(c) (West 2009).

ISSUES AND STANDARDS OF REVIEW

1. Whether the juvenile court properly determined that it did not have the authority to order a competency evaluation of a mother in a child welfare case.

Standard of Review: The proper interpretation and application of a statute is a question of law which is reviewed for correctness. *State ex rel. A.M.*, 2009 UT App 118, ¶ 6, 208 P.3d 1058.

2. Whether the Due Process Clause requires the juvenile court to order a competency evaluation for a parent in a child welfare proceeding. *Standard of Review:* Constitutional challenges are reviewed for correctness. *State v. Manwaring*, 2011 UT App 443, ¶ 12, 268 P.3d 201.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The text of the following constitutional provisions, statutes, and rules is attached as Addendum A:

U.S. Const. Amend. XIV

Utah Code Ann. § 78A-6-312 (West Supp. 2011) (detailing standards for granting or denying reunification services)

Utah Code Ann. § 78A-6-314 (West Supp. 2010) (establishing mandatory permanency guidelines in child welfare cases)

Utah Code Ann. § 78A-6-508 (West 2009) (establishing grounds for terminating parental rights)

Utah R. App. P. 24 (briefing requirements)

Utah R. Civ. P. 17 (discussing appearance by guardian or guardian ad litem when party is incompetent)

STATEMENT OF THE CASE AND FACTS

On or about February 4, 2011, three-month-old C.B. was taken into protective custody by the Division of Child and Family Services (Division) due to allegations that his mother (Appellant) had tried to suffocate him and had left him unattended. (R. Legal

File, Verified Petition ¶¶ 4-8, filed February 8, 2011). Through her counsel, Appellant stipulated to the shelter findings and the child was placed in the interim custody of the Division. (R. Legal File, Minutes, Findings, and Order, filed February 10, 2011).

At the pretrial hearing, on February 15, 2011, Appellant was taken into custody due to outstanding warrants, and the pretrial was continued. (R. Legal File, Minutes and Order, filed February 18, 2011.) At the Appellant's request, the adjudication trial was continued until April 8, 2011, because Appellant did not want to be incarcerated when the trial took place. (R. Exhibit Index at 6). Following the adjudication trial on April 8, 2011, the juvenile court found that C.B. was neglected by Appellant, and ordered that Appellant submit to a psychological evaluation and parenting assessment. (R. Legal File, Minutes, Findings, and Order, filed April 25, 2011).

On May 10, 2011, at the dispositional hearing, the juvenile court found that Appellant had only attended three of eight scheduled visits with the child, and ordered that the Appellant undergo a psychological assessment as soon as possible. (R. Legal File, Minutes, Findings, and Order, filed June 02, 2011). Appellant's counsel met with Appellant and requested that she undergo a psychological evaluation prior to further disposition, because he was having difficulty communicating with her. *Id.* In the alternative, Appellant's counsel requested that his appointment be vacated. *Id.* However, Appellant stated that she did not want another attorney, but felt that her attorney was not listening to her. *Id.*

Based on this discussion, it was stipulated that disposition would be delayed pending the completion of the psychological examination, but the court emphasized to Appellant that this delay would not stay the child welfare permanency time lines and that Appellant had only eight months from the removal to comply with reunification services. Appellant stated that she understood. *Id.*

Appellant failed to appear at the continued dispositional hearing on June 14, 2011, and it was discovered that she was incarcerated, so the matter was continued. (R. Legal File, Minutes, Findings, and Order, filed June 17, 2011). Appellant failed to appear at the continued hearing and the matter was continued again. (R. Legal File, Minutes and Order, filed July 6, 2011).

At a hearing on June 30, 2011, the court was informed that Appellant had been incarcerated twice, missed two scheduled appointments for her psychological evaluation, and had not been drug testing as required by her child and family plan. (R. Exhibit Index at 21). Appellant's counsel stated that he had originally requested a psychological evaluation because he did not believe that Appellant was cooperating in her defense, but that she had since participated in client meetings and had indicated that she would complete services. *Id.* The juvenile court expressed its frustration that disposition had not been reached and that this decision could not be reached until Appellant completed her evaluation. *Id.* The Appellant was again ordered to complete a psychological evaluation as soon as possible. *Id.*

Appellant completed her psychological evaluation on July 22, 2011, nearly four months after it was first ordered. (R. Exhibit Index at 33). The examiner found that Appellant was oriented to person, place, situation, and time. *Id.* Though not directly assessing Appellant's IQ, the examiner concluded that she appeared to be functioning within the average range of intelligence. *Id.* at 40. The examiner further concluded, based on the results of testing, that Appellant "should not experience any difficulty in comprehending and meeting the intellectual demands of her day-to-day and occupational functioning." *Id.* at 41.

On August 9, 2011, Appellant again failed to appear in court and her counsel moved to withdraw. (R. Exhibit Index at 25-26). He stated that he had not had any contact with his client since the last hearing and that he was unable to represent Appellant's interests due to this lack of contact. *Id.* The court granted this motion and ordered that reunification services should not be offered to Appellant because she missed several hearings, failed to maintain contact with counsel, did not timely pursue the ordered psychological evaluation, and had failed to comply with court orders. *Id.* at 26.

On August 23, 2011, the Division informed the juvenile court that a petition to terminate parental rights would be filed, and the court reappointed counsel for Appellant. (R. Legal File, Minutes and Order, filed August 29, 2011). The Division's petition to terminate parental rights was filed on September 8, 2011, and a trial on the petition was set for October 25, 2011. (R. Legal File, Pretrial Order, filed September 28, 2011).

On October 25, 2011, the day set for the termination trial, Appellant's counsel filed a motion to stay the proceedings until Appellant's competency could be determined. (R. Legal File, Minutes, Findings, and Order, filed November 2, 2011). Despite the Division's objection to the motion, the court granted the motion and ordered briefing. *Id.*

Following briefing, a hearing regarding the competency motion was held and Appellant again failed to appear. (R. Supplemental Index, Order Denying Motion to Stay, filed December 28, 2011). The court found that there was no statutory or procedural authority which allowed for a competency evaluation of a parent in a termination of parental rights proceeding, and that incompetence itself was grounds for terminating parental rights. *Id.*

The court also found that Appellant's procedural due process rights were adequately protected and that her defense counsel had effectively represented her interests. *Id.* The court noted that Appellant's failure to appear at court hearings and other meetings could be due to a lack of interest as much as any other factor. *Id.* The court found that the results of the psychological evaluation also supported a finding that Appellant's mental functioning was intact, and that she exhibited no abnormal thought processes. *Id.* The court denied the motion to stay and ordered that the case proceed to trial. *Id.*

Following the termination trial, the court found that Appellant had testified coherently at the trial regarding her efforts to further her education, her failure to obtain

employment, and her living arrangements. (R. Legal File, Findings of Fact and Order Terminating Rights, filed December 28, 2011). The court also noted that Appellant continued to deny any neglectful behaviors, though numerous witnesses had testified to these events. *Id.* The court found multiple grounds for termination of parental rights and ordered that Appellant's rights be terminated. *Id.*

SUMMARY OF THE ARGUMENT

Appellant argues that the trial court erred in determining that it was not empowered to order a competency evaluation for her. Appellant further argues that a competency evaluation must be granted in order to protect her constitutional due process rights.

This Court should not consider the merits of Appellant's claims because she has inadequately briefed them. Even so, if the court reaches the merits, there is no statutory or constitutional provision which mandates a competency evaluation in a termination trial. Moreover, case law indicates that incompetency can be the basis for terminating parental rights, and that mental illness does not constitute grounds for delaying termination proceedings.

In addition, Appellant's due process rights were not violated when her parental rights were terminated without a competency evaluation. Appellant received a full psychological evaluation which revealed no mental impairment concerns, and her

interests were adequately protected by her court-appointed counsel.

Even assuming that a competency evaluation should have been conducted due to counsel simply raising competency as a potential issue, the failure to order a competency evaluation was harmless error because the outcome of the termination of parental rights trial would have been the same whether Appellant was found competent or incompetent.

ARGUMENT

I. APPELLANT'S CLAIMS SHOULD NOT BE CONSIDERED BECAUSE THEY HAVE BEEN INADEQUATELY BRIEFED; ALTERNATIVELY, APPELLANT'S CLAIMS FAIL ON THE MERITS.

Appellant's claims should not be considered because she failed to adequately brief them. Even if this Court were to reach the merits of Appellant's claims, her claims fail because she has no statutory or due process right to a competency evaluation as part of a child welfare proceeding.

A. APPELLANT INADEQUATELY BRIEFED HER CLAIMS.

This Court should not consider Appellant's claim, that the juvenile court is empowered to order a competency evaluation, because it is inadequately briefed. *See* Br. Aplt. at 8-12. An appellate "argument shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of

the record relied on." UTAH R. APP. P. 24(a)(9). Rule 24(a)(9) "requires not just bald citation to authority but development of that authority and reasoned analysis of that authority." *State v. Thomas*, 961 P.2d 299, 305 (Utah 1998).

Furthermore, appellate courts are not depositories where appellants "may dump the burden of argument and research." *Id.* (citations omitted). This Court, therefore, "will not address issues that are inadequately briefed." *State v. Nielsen*, 2011 UT App 211, ¶ 5, 257 P.3d 1103 (citing *Thomas*, 961 P.2d at 304).

Appellant's brief sets forth no legal analysis to support her contention that the juvenile court has the authority to order a competency evaluation. She does not cite a single case, statute, or rule which supports this claim. Merely "setting forth selected facts from" the trial court record and "making conclusory statements," without legal analysis of those facts, does not meet the requirements of rule 24. *Angilau v. Winder*, 2011 UT 13, ¶ 28, 248 P.3d 975. This is reason alone to reject Appellant's claim that the juvenile court is empowered to order a competency evaluation.

Similarly, Appellant's claim that she is entitled to a competency evaluation in a child welfare proceeding, as a matter of constitutional due process, is equally unsupported in her briefing. *See* Br. Aplt. at 10-11. A competency evaluation would be considered a procedural due process right. However, Appellant quotes substantive due process case law relating to the fundamental liberty interest of parents, rather than procedural due process law, in efforts to bolster her claims. *See* Br. Aplt. at 11-12.

Appellant also specifically omits that there was evidence received, and findings made, by the juvenile court regarding her competency. First, the psychological examiner concluded, based on the results of the testing, that Appellant "should not experience any difficulty in comprehending and meeting the intellectual demands of her day-to-day and occupational functioning." (R. Exhibit Index at 41). Furthermore, following the termination trial, the juvenile court specifically found that it did "not have any basis to find that the mother is psychologically impaired today or for anytime during the past nine months that she has appeared before the Court." (R. Legal File, Findings of Fact and Order Terminating Rights, ¶ 25, filed December 28, 2011).

As stated above, Appellant's "bald citation to authority" does not meet the requirements of Rule 24(a)(9). This Court should therefore affirm.

B. ALTERNATIVELY, APPELLANT'S CLAIMS ALSO FAIL ON THEIR MERITS.

Even if this Court were to excuse Appellant's inadequate briefing, her claims also fail on their merits.

1. Juvenile Courts May Only Exercise Powers Specifically Granted By Statute.

Utah juvenile courts are created by statute and are thus "allowed to do only what the legislature has specifically authorized." *State ex rel. B.B.*, 2002 UT App 82, ¶ 12, 45 P.3d 527. Appellant concedes in her brief that "there are no express provisions to

support an order and/or payment for a competency evaluation." *See* Br. Aplt. at 8. Despite this concession, Appellant seeks to rely upon the implied provisions of UTAH R. CIV. P. 17. This provision allows for an appointment of a guardian ad litem "in any case when it is deemed by the court [as] expedient to represent the . . . incompetent person in the action or proceeding." UTAH R. CIV. P. 17.

However, in this case, the juvenile court never determined that it had sufficient evidence before it that Appellant was incompetent, and thus, the court did not deem it necessary to appoint a guardian ad litem for her. Furthermore, Appellant's counsel requested only a psychological evaluation, not a competency evaluation, in the early stages of the case, and this request for a psychological evaluation was granted. (R. Exhibit Index at 17-18). In addition, Appellant's counsel never argued in the juvenile court that a guardian ad litem should be appointed in the matter and has thus waived the issue.[1] *See State ex rel. T.C.*, 2006 UT App 185 (per curiam) (finding that issues are waived when they are not raised in juvenile court proceedings).

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[1] Appellant cites *United States v. 30.64 Acres of Land*, 795 F.2d 796, 806 (9th Cir. 1986), for the proposition that it is "error for a court to proceed without appointment of a guardian ad litem . . .when facts strongly suggest a lack of mental competence." *See* Br. Aplt. at 9-10. However, Appellant fails to point out that this case involved a pro se individual who was not represented by counsel in any respect. *30.64 Acres of Land*, 795 F.2d at 805. In the child welfare proceedings, Appellant was vigorously represented by her counsel, and the juvenile court determined that her interests were represented in such a way that the appointment of a guardian ad litem was unnecessary. (R. Supplemental Index, Order Denying Motion to Stay, ¶ 12, filed December 28, 2011).

Appellant next argues that payment for a competency evaluation can be inferred from the statute which provides that mental health treatment may be ordered as part of reunification services.[2] *See* Br. Aplt. at 10. Assuming arguendo, that a competency evaluation falls within this provision regarding reunification services, the fact that reunification services are not mandatory, but rather are permissive, weighs against Appellant's argument that a competency evaluation was required.[3] *See State ex rel. B.O.*, 2011 UT App 215, ¶ 6, 262 P.3d 46 (finding reunification services are gratuity provided by Legislature and it is not abuse of discretion to deny reinstating reunification services when mother resisted services and failed to follow through with services offered).

Appellant has provided no explicit statutory authority which grants the juvenile court the authority to order a competency evaluation. Thus, because the juvenile court

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[2] Though not applicable to the facts of this case, Utah law establishes a presumption that reunification services should not be provided in cases where two medical or mental health professionals show that "the parent is suffering from a mental illness of such magnitude that it renders the parent incapable of utilizing reunification services." Utah Code Ann. § 78A-6-312(21) (West Supp. 2011). Thus, when incompetence is a serious concern at the beginning of a case, incompetence can even be used as the basis for denying reunification services all together. In addition, reunification services cannot extend for a longer period of time, even if the parent is institutionalized. Utah Code Ann. § 78A-6-312(25)(d) (West Supp. 2011).

[3] In addition, Appellant was ordered to receive a psychological evaluation as part of her reunification services plan. She chose not to receive this evaluation in a timely manner and could not be forced to take advantage of the reunification services offered to her. Even had the court determined that a competency evaluation was allowed under the statute authorizing reunification services, there is no guarantee that Appellant would have taken advantage of this service in a more timely manner.

has not been granted authority to make such an order, it is outside the juvenile court's powers to order such an evaluation.

2. It Was Not A Violation Of Due Process To Terminate Parental Rights Without Ordering A Competency Evaluation.

Appellant next argues that the failure to order a competency evaluation was a violation of due process. *See* Br. Aplt. at 10-12. Appellant's argument that she was entitled to a competency evaluation is an argument which implicates procedural due process. *Id.* However, Appellant supports this procedural due process argument with substantive due process case law relating to "the fundamental liberty interests of natural parents in the care, custody, and management of their child." *See* Br. Aplt. at 11. Appellant provides no legal analysis regarding how the denial of a competency evaluation affected her procedural due process rights.[4]

While the State concedes that parents have a fundamental liberty interest in the parent-child relationship, it is beyond dispute that this relationship can be abridged if adequate procedures are used. Procedural due process claims are analyzed under

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[4] Appellant argues that the termination of parental rights was a violation of her due process rights under both the Utah State Constitution and the United States Constitution. *See* Br. Aplt. at 10-11. Because Appellant fails to argue how State constitutional law differs from federal constitutional law, the State briefs only the federal constitutional argument. *See State v. Worwood*, 2007 UT 47, ¶ 18, 164 P.3d 397 (finding cursory references to state constitution within arguments dedicated to federal constitutional claim are inadequate).

Mathews v. Eldridge, 424 U.S. 319 (1976). *Mathews* requires a court to weigh three factors to determine whether the procedures provided, prior to the deprivation of a liberty interest, are adequate:

> (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional procedural safeguards; and (3) the Government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail.

Mathews, 424 U.S. at 321. In a child welfare setting, the liberty interest at issue is the parent's interest in the care, custody, and control of their children. *State ex rel. S.A.*, 2001 UT App 307, ¶ 12, 37 P.3d 1166. The question, therefore, is whether providing a competency evaluation before a termination trial would add any "probable value" to the procedural safeguards; and whether the "fiscal and administrative burdens" of the added measure would be worth the added value. This is a question of first impression in Utah. Other states have varied in the application of *Mathews*, as found in state cases analyzed below.[5]

In the case, *In the Interest of R.M.T.*, 2011 WL 4578328 (Tex. App. 2011), a father was criminally charged with domestic violence, prior to a termination of parental rights hearing, and was found incompetent to stand trial in the criminal case. *Id.* The father

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[5] The cases from other jurisdictions all contemplate the use of a Guardian ad Litem to represent the interests of the incompetent parent. At the trial level, Appellant did not argue for the appointment of a legal guardian in addition to her court-appointed counsel.

objected to proceeding on the termination of parental rights trial, arguing he was entitled to another competency evaluation, but the trial court denied his objection, proceeded to trial, and terminated his parental rights. *Id.*

The appellate court, using the *Mathews* analysis, affirmed the termination. *Id.* Under the first prong of the *Mathews* test, the court recognized that "the parent-child relationship is of fundamental significance." *Id.* at 5. However, the court also recognized that "the child's interests are necessarily involved and must be considered in weighing the private interest at stake in accord with [*Mathews*]." *Id.* Specifically, the court noted that the trial court was up against a "legislatively-mandated time frame," had little more than one month to meet that deadline, and "could not protect the child's interest in achieving permanency in a timely fashion and accommodate [the father's] request [for a competency hearing]." *Id.*

Under the second prong of *Mathews*, the court held that the state's interest in economy and efficiency normally "pale in comparison to . . . the risk that a parent may be erroneously deprived of his or her parental rights," but that given the statutory deadline was "looming on the horizon[,] . . . the interest in economy, efficiency, and finality were strong[,] . . . [thus] weigh[ing] in favor of conducting the termination proceeding forthwith." *Id.* at 6-7.

Under the final prong of *Mathews*, the court held that the procedures used were adequate to safeguard the father's liberty interest. *Id.* at 8. Specifically, the Texas code

provided for, and the father received, a guardian ad litem, the standard of proof was clear and convincing evidence, and appellate review was conducted under strict scrutiny. *Id.* at 7. The court noted that the Texas code did not provide for a competency evaluation, but that the other procedures employed made up for any deficit this created. *Id.*

In *Clemmerson v. Arkansas Dept. Of Hum. Servs.*, 279 S.W.3d 484 (Ark. Ct. App., 2008), a mother appealed the termination of her parental rights, claiming the trial court erred by not granting her motion for a competency evaluation during her termination trial. *Id.* at 487. The mother had an appointed guardian ad litem, who regularly referred to the mother's lack of competency, but the guardian failed to request a competency evaluation for the mother until almost the end of the hearing. *Id.* at 488.

The appellate court affirmed the termination, but only because the motion for a competency evaluation was not timely raised and thus waived. *Id.* The court first noted that there was no statutory equivalent to the provision in a criminal trial which requires a competency evaluation in a civil trial. *Id.* at 487. However, the court went on to find that the supreme court of Arkansas "has extended to proceedings involving the termination of parental rights many of the same Fourteenth Amendment due-process safeguards as have been found to be constitutionally mandated in criminal trials," and that:

> given [the Arkansas] supreme court's steadfast defense of a parent's right in TPR cases to the same due-process protections afforded criminal defendants, logic demands that we accept the establishment of [a parent's] competence as a fundamental aspect of due process. . . . Accordingly, given that establishing the

> competence of a criminal defendant is so firmly rooted in his or her right to due process, we believe that it would be exalting form over substance to not find that this aspect of [the parent's] due process argument is preserved.

Id.

Utah courts do not afford the same due process protections in a termination of parental rights proceeding as they would in a criminal proceeding. *See* Utah Code Ann. § 78A-6-506 (termination of parental rights proceedings are civil proceedings governed by Utah Rules of Civil Procedure); and *State ex rel A.G.*, 2001 UT App 87, ¶ 3, 27 P.3d 562 (recognizing that parents facing termination of parental rights are not entitled to the same due process protections afforded to criminal defendants).

Next, in the case of *In the Interest of N.S.E.*, 666 S.E.2d 587 (Ga. Ct. App. 2008), a father's parental rights were terminated in his two children after he was found responsible for the child-abuse homicide of another child. *Id.* at 588-89. During the criminal proceeding, the court found the father to be incompetent to stand trial for the homicide. *Id.* at 589. The father used this as a basis to appeal the findings in the subsequent parental rights termination trial, because the juvenile court failed to raise the incompetency issue sua sponte based on the findings in the criminal trial. *Id.*

The appeals court affirmed the termination on three grounds. *Id.* First, the father failed to cite any authority that supported a parent being entitled to a competency hearing in a civil termination trial. *Id.* Second, the court, in applying the three *Mathews* factors, could not find any risk of erroneous deprivation because "the father was appointed a

guardian ad litem for purposes of the termination proceeding," and "the superior court already had done [a competency evaluation]." *Id.* Finally, the court noted that "[e]ven if the juvenile court had ordered a hearing and found the father to be mentally incompetent, such a finding would only have weighed in favor of terminating his parental rights." *Id.* at 589-90. Similarly, the Michigan Court of Appeals has also noted that "the level of competence to stand trial is much lower than the level of competence required to appropriately and safely parent children." *In re Carpenter*, 2005 WL 1923117 (per curiam) (Mich. Ct. App. 2005).

As noted in the above cases, numerous factors demonstrate that inserting criminal-type competency evaluations into child welfare proceedings is simply not practicable. First of all, Utah law does not even provide for such procedure. More importantly, merely conducting the evaluation will almost certainly cause additional delay in most cases. As the Texas court noted, child permanency timelines are not compatible with an open-ended competency proceeding. *R.M.T.*, 2011 WL 4578328 at *1 & 5; *see also* Utah Code Ann. § 78A-6-314 (West Supp. 2011) (establishing mandatory permanency timelines). Finally, given that debilitating mental illness is, in itself, a basis for terminating parental rights, conducting a competency evaluation would not provide any additional benefit to either the parent or the child.

II. EVEN IF IT WAS ERROR TO FAIL TO ORDER A COMPETENCY EVALUATION, THIS ERROR WAS HARMLESS.

Even if the juvenile court was required, as a matter of procedural due process, to order a competency evaluation prior to the termination of parental rights, the failure to do so was harmless error. Harmless error has been defined as "an error that is sufficiently inconsequential that there is no reasonable likelihood that it affected the outcome of the proceedings." *State ex rel. A.M.D.*, 2006 UT App 457, ¶ 27, 153 P.3d 724 (internal citation omitted). Furthermore, it is not enough to simply demonstrate error, but the party claiming error has the burden of establishing that the error was prejudicial. *Id.* at ¶ 26.

Appellant has not demonstrated how the outcome of the termination trial would have been any different had a competency evaluation been ordered. Assuming that a competency evaluation had been ordered, there only could have been two possible outcomes of that evaluation: either Appellant would have been found competent or incompetent.

If Appellant were found competent to stand trial, the proceedings would then have progressed in the same manner as they did in this case, and Appellant's parental rights would have been terminated on exactly the same grounds that the juvenile court found for terminating her rights.

On the other hand, if the competency evaluation had shown that Appellant was indeed incompetent, the outcome of the termination proceedings would have been the

same, though the court could have added an additional finding supporting the termination on grounds of incompetence. *See State ex rel. G.R.*, 2008 UT App 265, ¶ 2 (per curiam) (finding it improper to stay a termination proceeding to allow a parent time to address mental health issues).

Essentially, a termination of parental rights trial is a competency evaluation. Utah law expressly dictates that serious mental illness, which renders the parent unable to care for the child for extended periods of time, is a basis for terminating parental rights. Utah Code Ann. § 78A-6-508(2)(a) (West 2009). Therefore, a finding that a parent is incompetent to stand trial is tantamount to a finding of parental unfitness. *See also N.S.E.*, 666 S.E.2d at 589-90 (finding of incompetency weighs in favor of terminating parental rights); *Carpenter*, 2005 WL 1923117 at *2 (level of competence to stand trial is much lower than that required to appropriately and safely parent children); *In the Interest of E.L.T.*, 93 S.W.3d 372, 375 (Tex. App. 2002) (competency hearing defeats the purpose of defending against termination because mental illness is a basis for termination); *In re Madison A.*, 2008 WL 5423999 at *10 (Tenn. Ct. App.) (finding no violation of due process in terminating parental rights when mother was found so incompetent that she could not assist in her own defense or even attend the termination trial).

The juvenile court correctly determined that it did not have the statutory authority to order a competency evaluation. The juvenile court also properly determined that it was

not constitutionally necessary to order such an evaluation. The very fact of being incompetent to stand trial, standing alone, also renders a parent unfit to raise a child.

CONCLUSION

Based on the foregoing, the State requests that this Court affirm the judgment of the juvenile court.

STATEMENT CONCERNING ORAL ARGUMENT AND PUBLISHED OPINION

Although this is a matter of first impression in Utah, due to Appellant's inadequate briefing on the issues, the State requests neither oral argument nor the issuance of a published opinion in this appeal.

RESPECTFULLY SUBMITTED this 4th Day of April, 2012.

MARK SHURTLEFF
Attorney General

JOHN M. PETERSON
Assistant Attorney General

CERTIFICATE OF MAILING

I here by certify that, on the 4th day of April, 2012, I caused to be mailed, postage prepaid, two and exact copies of BRIEF OF APPELLEE STATE OF UTAH to:

MARTHA PIERCE
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Addenda

ADDENDUM A

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

United States Constitution
Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Utah Code Ann. § 78A-6-312 (West Supp. 2011) Dispositional hearing -- Reunification services -- Exceptions.

(1) The court may:
(a) make any of the dispositions described in Section 78A-6-117;
(b) place the minor in the custody or guardianship of any:
(i) individual; or
(ii) public or private entity or agency; or
(c) order:
(i) protective supervision;
(ii) family preservation;
(iii) subject to Subsection 78A-6-117(2)(n)(iii), medical or mental health treatment; or
(iv) other services.
(2) Whenever the court orders continued removal at the dispositional hearing, and that the minor remain in the custody of the division, the court shall first:
(a) establish a primary permanency goal for the minor; and
(b) determine whether, in view of the primary permanency goal, reunification services are appropriate for the minor and the minor's family, pursuant to Subsections (20) through (22).
(3) Subject to Subsections (6) and (7), if the court determines that reunification services are appropriate for the minor and the minor's family, the court shall provide for reasonable parent-time with the parent or parents from whose custody the minor was removed, unless parent-time is not in the best interest of the minor.
(4) In cases where obvious sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to attempt to rehabilitate the offending parent or parents.
(5) In all cases, the minor's health, safety, and welfare shall be the court's paramount concern in determining whether reasonable efforts to reunify should be made.
(6) For purposes of Subsection (3), parent-time is in the best interests of a minor unless the court makes a finding that it is necessary to deny parent-time in order to:
(a) protect the physical safety of the minor;
(b) protect the life of the minor; or
(c) prevent the minor from being traumatized by contact with the parent due to the minor's fear of the parent in light of the nature of the alleged abuse or neglect.
(7) Notwithstanding Subsection (3), a court may not deny parent-time based solely on a parent's failure to:
(a) prove that the parent has not used legal or illegal substances; or
(b) comply with an aspect of the child and family plan that is ordered by the court.
(8) In addition to the primary permanency goal, the court shall establish a concurrent permanency goal that shall include:
(a) a representative list of the conditions under which the primary permanency goal will be abandoned in favor of the concurrent permanency goal; and
(b) an explanation of the effect of abandoning or modifying the primary permanency goal.

(9) A permanency hearing shall be conducted in accordance with Subsection 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if something other than reunification is initially established as a minor's primary permanency goal.

(10) (a) The court may amend a minor's primary permanency goal before the establishment of a final permanency plan under Section 78A-6-314.

(b) The court is not limited to the terms of the concurrent permanency goal in the event that the primary permanency goal is abandoned.

(c) If, at any time, the court determines that reunification is no longer a minor's primary permanency goal, the court shall conduct a permanency hearing in accordance with Section 78A-6-314 on or before the earlier of:

(i) 30 days after the day on which the court makes the determination described in this Subsection (10)(c); or

(ii) the day on which the provision of reunification services, described in Section 78A-6-314, ends.

(11) (a) If the court determines that reunification services are appropriate, it shall order that the division make reasonable efforts to provide services to the minor and the minor's parent for the purpose of facilitating reunification of the family, for a specified period of time.

(b) In providing the services described in Subsection (11)(a), the minor's health, safety, and welfare shall be the division's paramount concern, and the court shall so order.

(12) The court shall:

(a) determine whether the services offered or provided by the division under the child and family plan constitute "reasonable efforts" on the part of the division;

(b) determine and define the responsibilities of the parent under the child and family plan in accordance with Subsection 62A-4a-205(6)(e); and

(c) identify verbally on the record, or in a written document provided to the parties, the responsibilities described in Subsection (12)(b), for the purpose of assisting in any future determination regarding the provision of reasonable efforts, in accordance with state and federal law.

(13) (a) The time period for reunification services may not exceed 12 months from the date that the minor was initially removed from the minor's home, unless the time period is extended under Subsection 78A-6-314(8).

(b) Nothing in this section may be construed to entitle any parent to an entire 12 months of reunification services.

(14) (a) If reunification services are ordered, the court may terminate those services at any time.

(b) If, at any time, continuation of reasonable efforts to reunify a minor is determined to be inconsistent with the final permanency plan for the minor established pursuant to Section 78A-6-314, then measures shall be taken, in a timely manner, to:

(i) place the minor in accordance with the permanency plan; and

(ii) complete whatever steps are necessary to finalize the permanent placement of the minor.
(15) Any physical custody of the minor by the parent or a relative during the period described in Subsections (11) through (14) does not interrupt the running of the period.
(16) (a) If reunification services are ordered, a permanency hearing shall be conducted by the court in accordance with Section 78A-6-314 at the expiration of the time period for reunification services.
(b) The permanency hearing shall be held no later than 12 months after the original removal of the minor.
(c) If reunification services are not ordered, a permanency hearing shall be conducted within 30 days, in accordance with Section 78A-6-314.
(17) With regard to a minor who is 36 months of age or younger at the time the minor is initially removed from the home, the court shall:
(a) hold a permanency hearing eight months after the date of the initial removal, pursuant to Section 78A-6-314; and
(b) order the discontinuance of those services after eight months from the initial removal of the minor from the home if the parent or parents have not made substantial efforts to comply with the child and family plan.
(18) With regard to a minor in the custody of the division whose parent or parents are ordered to receive reunification services but who have abandoned that minor for a period of six months from the date that reunification services were ordered:
(a) the court shall terminate reunification services; and
(b) the division shall petition the court for termination of parental rights.
(19) When a court conducts a permanency hearing for a minor under Section 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the sibling group together is:
(a) practicable; and
(b) in accordance with the best interest of the minor.
(20) (a) Because of the state's interest in and responsibility to protect and provide permanency for minors who are abused, neglected, or dependent, the Legislature finds that a parent's interest in receiving reunification services is limited.
(b) The court may determine that:
(i) efforts to reunify a minor with the minor's family are not reasonable or appropriate, based on the individual circumstances; and
(ii) reunification services should not be provided.
(c) In determining "reasonable efforts" to be made with respect to a minor, and in making "reasonable efforts," the minor's health, safety, and welfare shall be the paramount concern.
(21) There is a presumption that reunification services should not be provided to a parent if the court finds, by clear and convincing evidence, that any of the following circumstances exist:
(a) the whereabouts of the parents are unknown, based upon a verified affidavit indicating

that a reasonably diligent search has failed to locate the parent;
(b) subject to Subsection (22)(a), the parent is suffering from a mental illness of such magnitude that it renders the parent incapable of utilizing reunification services;
(c) the minor was previously adjudicated as an abused child due to physical abuse, sexual abuse, or sexual exploitation, and following the adjudication the minor:
(i) was removed from the custody of the minor's parent;
(ii) was subsequently returned to the custody of the parent; and
(iii) is being removed due to additional physical abuse, sexual abuse, or sexual exploitation;
(d) the parent:
(i) caused the death of another minor through abuse or neglect; or
(ii) committed, aided, abetted, attempted, conspired, or solicited to commit:
(A) murder or manslaughter of a child; or
(B) child abuse homicide;
(e) the minor suffered severe abuse by the parent or by any person known by the parent, if the parent knew or reasonably should have known that the person was abusing the minor;
(f) the minor is adjudicated an abused child as a result of severe abuse by the parent, and the court finds that it would not benefit the minor to pursue reunification services with the offending parent;
(g) the parent's rights are terminated with regard to any other minor;
(h) the minor is removed from the minor's home on at least two previous occasions and reunification services were offered or provided to the family at those times;
(i) the parent has abandoned the minor for a period of six months or longer;
(j) the parent permitted the child to reside, on a permanent or temporary basis, at a location where the parent knew or should have known that a clandestine laboratory operation was located;
(k) except as provided in Subsection (22)(b), with respect to a parent who is the child's birth mother, the child has fetal alcohol syndrome or was exposed to an illegal or prescription drug that was abused by the child's mother while the child was in utero, if the child was taken into division custody for that reason, unless the mother agrees to enroll in, is currently enrolled in, or has recently and successfully completed a substance abuse treatment program approved by the department; or
(l) any other circumstance that the court determines should preclude reunification efforts or services.
(22) (a) The finding under Subsection (21)(b) shall be based on competent evidence from at least two medical or mental health professionals, who are not associates, establishing that, even with the provision of services, the parent is not likely to be capable of adequately caring for the minor within 12 months after the day on which the court finding is made.
(b) A judge may disregard the provisions of Subsection (21)(k) if the court finds, under the circumstances of the case, that the substance abuse treatment described in Subsection (21)(k) is not warranted.

(23) In determining whether reunification services are appropriate, the court shall take into consideration:
(a) failure of the parent to respond to previous services or comply with a previous child and family plan;
(b) the fact that the minor was abused while the parent was under the influence of drugs or alcohol;
(c) any history of violent behavior directed at the child or an immediate family member;
(d) whether a parent continues to live with an individual who abused the minor;
(e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;
(f) testimony by a competent professional that the parent's behavior is unlikely to be successful; and
(g) whether the parent has expressed an interest in reunification with the minor.
(24) (a) If reunification services are not ordered pursuant to Subsections (20) through (22), and the whereabouts of a parent become known within six months after the day on which the out-of-home placement of the minor is made, the court may order the division to provide reunification services.
(b) The time limits described in Subsections (2) through (19) are not tolled by the parent's absence.
(25) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable services unless it determines that those services would be detrimental to the minor.
(b) In making the determination described in Subsection (25)(a), the court shall consider:
(i) the age of the minor;
(ii) the degree of parent-child bonding;
(iii) the length of the sentence;
(iv) the nature of the treatment;
(v) the nature of the crime or illness;
(vi) the degree of detriment to the minor if services are not offered;
(vii) for a minor 10 years of age or older, the minor's attitude toward the implementation of family reunification services; and
(viii) any other appropriate factors.
(c) Reunification services for an incarcerated parent are subject to the time limitations imposed in Subsections (2) through (19).
(d) Reunification services for an institutionalized parent are subject to the time limitations imposed in Subsections (2) through (19), unless the court determines that continued reunification services would be in the minor's best interest.
(26) If, pursuant to Subsections (21)(b) through (l), the court does not order reunification services, a permanency hearing shall be conducted within 30 days, in accordance with Section 78A-6-314.

UTAH CODE ANN. § 78A-6-314 (West Supp. 2010). Permanency hearing -- Final plan -- Petition for termination of parental rights filed -- Hearing on termination of parental rights.

(1) (a) When reunification services have been ordered in accordance with Section 78A-6-312, with regard to a minor who is in the custody of the Division of Child and Family Services, a permanency hearing shall be held by the court no later than 12 months after the day on which the minor was initially removed from the minor's home.

(b) If reunification services were not ordered at the dispositional hearing, a permanency hearing shall be held within 30 days after the day on which the dispositional hearing ends.

(2) (a) If reunification services were ordered by the court in accordance with Section 78A-6-312, the court shall, at the permanency hearing, determine, consistent with Subsection (3), whether the minor may safely be returned to the custody of the minor's parent.

(b) If the court finds, by a preponderance of the evidence, that return of the minor to the minor's parent would create a substantial risk of detriment to the minor's physical or emotional well-being, the minor may not be returned to the custody of the minor's parent.

(c) Prima facie evidence that return of the minor to a parent or guardian would create a substantial risk of detriment to the minor is established if the parent or guardian fails to:

(i) participate in a court approved child and family plan;

(ii) comply with a court approved child and family plan in whole or in part; or

(iii) meet the goals of a court approved child and family plan.

(3) In making a determination under Subsection (2)(a), the court shall review and consider:

(a) the report prepared by the Division of Child and Family Services;

(b) any admissible evidence offered by the minor's guardian ad litem;

(c) any report submitted by the division under Subsection 78A-6-315(3)(a)(i);

(d) any evidence regarding the efforts or progress demonstrated by the parent; and

(e) the extent to which the parent cooperated and utilized the services provided.

(4) With regard to a case where reunification services were ordered by the court, if a minor is not returned to the minor's parent or guardian at the permanency hearing, the court shall, unless the time for the provision of reunification services is extended under Subsection (8):

(a) order termination of reunification services to the parent;

(b) make a final determination regarding whether termination of parental rights, adoption, or permanent custody and guardianship is the most appropriate final plan for the minor, taking into account the minor's primary permanency goal established by the court pursuant to Section 78A-6-312; and

(c) establish a concurrent plan that identifies the second most appropriate final plan for the minor.

(5) If the Division of Child and Family Services documents to the court that there is a compelling reason that adoption, reunification, guardianship, and a placement described in Subsection 78A-6-306(6)(e) are not in the minor's best interest, the court may order

another planned permanent living arrangement, in accordance with federal law.
(6) If the minor clearly desires contact with the parent, the court shall take the minor's desire into consideration in determining the final plan.
(7) Except as provided in Subsection (8), the court may not extend reunification services beyond 12 months after the day on which the minor was initially removed from the minor's home, in accordance with the provisions of Section 78A-6-312.
(8) (a) Subject to Subsection (8)(b), the court may extend reunification services for no more than 90 days if the court finds, beyond a preponderance of the evidence, that:
(i) there has been substantial compliance with the child and family plan;
(ii) reunification is probable within that 90-day period; and
(iii) the extension is in the best interest of the minor.
(b) (i) Except as provided in Subsection (8)(c), the court may not extend any reunification services beyond 15 months after the day on which the minor was initially removed from the minor's home.
(ii) Delay or failure of a parent to establish paternity or seek custody does not provide a basis for the court to extend services for that parent beyond the 12-month period described in Subsection (7).
(c) In accordance with Subsection (8)(d), the court may extend reunification services for one additional 90-day period, beyond the 90-day period described in Subsection (8)(a), if:
(i) the court finds, by clear and convincing evidence, that:
(A) the parent has substantially complied with the child and family plan;
(B) it is likely that reunification will occur within the additional 90-day period; and
(C) the extension is in the best interest of the child;
(ii) the court specifies the facts upon which the findings described in Subsection (8)(c)(i) are based; and
(iii) the court specifies the time period in which it is likely that reunification will occur.
(d) A court may not extend the time period for reunification services without complying with the requirements of this Subsection (8) before the extension.
(e) In determining whether to extend reunification services for a minor, a court shall take into consideration the status of the minor siblings of the minor.
(9) The court may, in its discretion:
(a) enter any additional order that it determines to be in the best interest of the minor, so long as that order does not conflict with the requirements and provisions of Subsections (4) through (8); or
(b) order the division to provide protective supervision or other services to a minor and the minor's family after the division's custody of a minor has been terminated.
(10) If the final plan for the minor is to proceed toward termination of parental rights, the petition for termination of parental rights shall be filed, and a pretrial held, within 45 calendar days after the permanency hearing.
(11) (a) Any party to an action may, at any time, petition the court for an expedited permanency hearing on the basis that continuation of reunification efforts are inconsistent with the permanency needs of the minor.

(b) If the court so determines, it shall order, in accordance with federal law, that:
(i) the minor be placed in accordance with the permanency plan; and
(ii) whatever steps are necessary to finalize the permanent placement of the minor be completed as quickly as possible.
(12) Nothing in this section may be construed to:
(a) entitle any parent to reunification services for any specified period of time;
(b) limit a court's ability to terminate reunification services at any time prior to a permanency hearing; or
(c) limit or prohibit the filing of a petition for termination of parental rights by any party, or a hearing on termination of parental rights, at any time prior to a permanency hearing.
(13) (a) Subject to Subsection (13)(b), if a petition for termination of parental rights is filed prior to the date scheduled for a permanency hearing, the court may consolidate the hearing on termination of parental rights with the permanency hearing.
(b) For purposes of Subsection (13)(a), if the court consolidates the hearing on termination of parental rights with the permanency hearing:
(i) the court shall first make a finding regarding whether reasonable efforts have been made by the Division of Child and Family Services to finalize the permanency goal for the minor; and
(ii) any reunification services shall be terminated in accordance with the time lines described in Section 78A-6-312.
(c) A decision on a petition for termination of parental rights shall be made within 18 months from the day on which the minor is removed from the minor's home.
(14) If a court determines that a child will not be returned to a parent of the child, the court shall consider appropriate placement options inside and outside of the state.

UTAH CODE ANN. § 78A-6-508 (West 2009) Evidence of grounds for termination.

(1) In determining whether a parent or parents have abandoned a child, it is prima facie evidence of abandonment that the parent or parents:

(a) although having legal custody of the child, have surrendered physical custody of the child, and for a period of six months following the surrender have not manifested to the child or to the person having the physical custody of the child a firm intention to resume physical custody or to make arrangements for the care of the child;

(b) have failed to communicate with the child by mail, telephone, or otherwise for six months;

(c) failed to have shown the normal interest of a natural parent, without just cause; or

(d) have abandoned an infant, as described in Subsection 78A-6-316(1).

(2) In determining whether a parent or parents are unfit or have neglected a child the court shall consider, but is not limited to, the following circumstances, conduct, or conditions:

(a) emotional illness, mental illness, or mental deficiency of the parent that renders the parent unable to care for the immediate and continuing physical or emotional needs of the child for extended periods of time;

(b) conduct toward a child of a physically, emotionally, or sexually cruel or abusive nature;

(c) habitual or excessive use of intoxicating liquors, controlled substances, or dangerous drugs that render the parent unable to care for the child;

(d) repeated or continuous failure to provide the child with adequate food, clothing, shelter, education, or other care necessary for the child's physical, mental, and emotional health and development by a parent or parents who are capable of providing that care;

(e) whether the parent is incarcerated as a result of conviction of a felony, and the sentence is of such length that the child will be deprived of a normal home for more than one year; or

(f) a history of violent behavior.

(3) A parent who, legitimately practicing the parent's religious beliefs, does not provide specified medical treatment for a child is not, for that reason alone, a negligent or unfit parent.

(4) (a) Notwithstanding Subsection (2), a parent may not be considered neglectful or unfit because of a health care decision made for a child by the child's parent unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(b) Nothing in Subsection (4)(a) may prohibit a parent from exercising the right to obtain a second health care opinion.

(5) If a child has been placed in the custody of the division and the parent or parents fail to comply substantially with the terms and conditions of a plan within six months after the date on which the child was placed or the plan was commenced, whichever occurs later, that failure to comply is evidence of failure of parental adjustment.

(6) The following circumstances constitute prima facie evidence of unfitness:

(a) 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 or parents;

(b) conviction of a crime, if the facts surrounding the crime are of such a nature as to

indicate the unfitness of the parent to provide adequate care to the extent necessary for the child's physical, mental, or emotional health and development;
(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child;
(d) the parent has committed, aided, abetted, attempted, conspired, or solicited to commit murder or manslaughter of a child or child abuse homicide; or
(e) the parent intentionally, knowingly, or recklessly causes the death of another parent of the child, without legal justification.

Utah R. App. P. 24 Briefs

(a) Brief of the appellant. The brief of the appellant shall contain under appropriate headings and in the order indicated:
(a)(1) A complete list of all parties to the proceeding in the court or agency whose judgment or order is sought to be reviewed, except where the caption of the case on appeal contains the names of all such parties. The list should be set out on a separate page which appears immediately inside the cover.
(a)(2) A table of contents, including the contents of the addendum, with page references.
(a)(3) A table of authorities with cases alphabetically arranged and with parallel citations, rules, statutes and other authorities cited, with references to the pages of the brief where they are cited.
(a)(4) A brief statement showing the jurisdiction of the appellate court.
(a)(5) A statement of the issues presented for review, including for each issue: the standard of appellate review with supporting authority; and
(a)(5)(A) citation to the record showing that the issue was preserved in the trial court; or
(a)(5)(B) a statement of grounds for seeking review of an issue not preserved in the trial court.
(a)(6) Constitutional provisions, statutes, ordinances, rules, and regulations whose interpretation is determinative of the appeal or of central importance to the appeal shall be set out verbatim with the appropriate citation. If the pertinent part of the provision is lengthy, the citation alone will suffice, and the provision shall be set forth in an addendum to the brief under paragraph (11) of this rule.
(a)(7) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. A statement of the facts relevant to the issues presented for review shall follow. All statements of fact and references to the proceedings below shall be supported by citations to the record in accordance with paragraph (e) of this rule.
(a)(8) Summary of arguments. The summary of arguments, suitably paragraphed, shall be a succinct condensation of the arguments actually made in the body of the brief. It shall not be a mere repetition of the heading under which the argument is arranged.
(a)(9) An argument. The argument shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied on. A party challenging a fact finding must first marshal all record evidence that supports the challenged finding. A party seeking to recover attorney's fees incurred on appeal shall state the request explicitly and set forth the legal basis for such an award.
(a)(10) A short conclusion stating the precise relief sought.
(a)(11) An addendum to the brief or a statement that no addendum is necessary under this paragraph. The addendum shall be bound as part of the brief unless doing so makes the brief unreasonably thick. If the addendum is bound separately, the addendum shall

contain a table of contents. The addendum shall contain a copy of:
(a)(11)(A) any constitutional provision, statute, rule, or regulation of central importance cited in the brief but not reproduced verbatim in the brief;
(a)(11)(B) in cases being reviewed on certiorari, a copy of the Court of Appeals opinion; in all cases any court opinion of central importance to the appeal but not available to the court as part of a regularly published reporter service; and
(a)(11)(C) those parts of the record on appeal that are of central importance to the determination of the appeal, such as the challenged instructions, findings of fact and conclusions of law, memorandum decision, the transcript of the court's oral decision, or the contract or document subject to construction.

(b) Brief of the appellee. The brief of the appellee shall conform to the requirements of paragraph (a) of this rule, except that the appellee need not include:
(b)(1) a statement of the issues or of the case unless the appellee is dissatisfied with the statement of the appellant; or
(b)(2) an addendum, except to provide material not included in the addendum of the appellant. The appellee may refer to the addendum of the appellant.

(c) Reply brief. The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. Reply briefs shall be limited to answering any new matter set forth in the opposing brief. The content of the reply brief shall conform to the requirements of paragraphs (a)(2), (3), (9), and (10) of this rule. No further briefs may be filed except with leave of the appellate court:

(d) References in briefs to parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee." It promotes clarity to use the designations used in the lower court or in the agency proceedings, or the actual names of parties, or descriptive terms such as "the employee," "the injured person,' "the taxpayer," etc.

(e) References in briefs to the record. References shall be made to the pages of the original record as paginated pursuant to Rule 11(b) or to pages of any statement of the evidence or proceedings or agreed statement prepared pursuant to Rule 11(f) or 11(g). References to pages of published depositions or transcripts shall identify the sequential number of the cover page of each volume as marked by the clerk on the bottom right corner and each separately numbered page(s) referred to within the deposition or transcript as marked by the transcriber. References to exhibits shall be made to the exhibit numbers. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the record at which the evidence was identified, offered, and received or rejected.

(f) Length of briefs.
(f)(1) Type-volume limitation.

(f)(1)(A) A principal brief is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text; and a reply brief is acceptable if it contains no more than 7,000 words or it uses a monospaced face and contains no more than 650 lines of text.
(f)(1)(B) Headings, footnotes and quotations count toward the word and line limitations, but the table of contents, table of citations, and any addendum containing statutes, rules, regulations or portions of the record as required by paragraph (a) of this rule do not count toward the word and line limitations.
(f)(1)(C) Certificate of compliance. A brief submitted under Rule 24(f)(1) must include a certificate by the attorney or an unrepresented party that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word processing system used to prepare the brief. The certificate must state either the number of words in the brief or the number of lines of monospaced type in the brief.
(f)(2) Page limitation. Unless a brief complies with Rule 24(f)(1), a principal briefs shall not exceed 30 pages, and a reply briefs shall not exceed 15 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or portions of the record as required by paragraph (a) of this rule.

In cases involving cross-appeals, paragraph (g) of this rule sets forth the length of briefs.

(g) Briefs in cases involving cross-appeals. If a cross-appeal is filed, the party first filing a notice of appeal shall be deemed the appellant, unless the parties otherwise agree or the court otherwise orders. Each party shall be entitled to file two briefs.
(g)(1) The appellant shall file a Brief of Appellant, which shall present the issues raised in the appeal.
(g)(2) The appellee shall then file one brief, entitled Brief of Appellee and Cross-Appellant, which shall respond to the issues raised in the Brief of Appellant and present the issues raised in the cross-appeal.
(g)(3) The appellant shall then file one brief, entitled Reply Brief of Appellant and Brief of Cross-Appellee, which shall reply to the Brief of Appellee and respond to the Brief of Cross-Appellant.
(g)(4) The appellee may then file a Reply Brief of Cross-Appellant, which shall reply to the Brief of Cross-Appellee.
(g)(5) Type-Volume Limitation.
(g)(5)(A) The appellant's Brief of Appellant is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text.
(g)(5)(B) The appellee's Brief of Appellee and Cross-Appellant is acceptable if it contains no more than 16,500 words or it uses a monospaced face and contains no more than 1,500 lines of text.
(g)(5)(C) The appellant's Reply Brief of Appellant and Brief of Cross-Appellee is

ıcceptable if it contains no more than 14,000 words or it uses a monospaced face and :ontains no more than 1,300 lines of text.
.g)(5)(D) The appellee's Reply Brief of Cross-Appellant is acceptable if it contains no nore than half of the type volume specified in Rule 24(g)(5)(A).
.g)(6) Certificate of Compliance.
A brief submitted under Rule 24(g)(5) must comply with Rule 24(f)(1)(c).
(g)(7) Page Limitation.
Unless it complies with Rule 24(g)(5) and (6), the appellant's Brief of Appellant must not exceed 30 pages; the appellee's Brief of Appellee and Cross-Appellant, 35 pages; the appellant's Reply Brief of Appellant and Brief of Cross-Appellee, 30 pages; and the appellee's Reply Brief of Cross-Appellant, 15 pages.

(h) Permission for over length brief. While such motions are disfavored, the court for good cause shown may upon motion permit a party to file a brief that exceeds the page, word, or line limitations of this rule. The motion shall state with specificity the issues to be briefed, the number of additional pages, words, or lines requested, and the good cause for granting the motion. A motion filed at least seven days prior to the date the brief is due or seeking three or fewer additional pages, 1,400 or fewer additional words, or 130 or fewer lines of text need not be accompanied by a copy of the brief. A motion filed within seven days of the date the brief is due and seeking more than three additional pages, 1,400 additional words, or 130 lines of text shall be accompanied by a copy of the finished brief. If the motion is granted, the responding party is entitled to an equal number of additional pages, words, or lines without further order of the court. Whether the motion is granted or denied, the draft brief will be destroyed by the court.

(i) Briefs in cases involving multiple appellants or appellees. In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(j) Citation of supplemental authorities. When pertinent and significant authorities come to the attention of a party after that party's brief has been filed, or after oral argument but before decision, a party may promptly advise the clerk of the appellate court, by letter setting forth the citations. An original letter and nine copies shall be filed in the Supreme Court. An original letter and seven copies shall be filed in the Court of Appeals. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall state the reasons for the supplemental citations. The body of the letter must not exceed 350 words. Any response shall be made within seven days of filing and shall be similarly limited.

(k) Requirements and sanctions. All briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters. Briefs which are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees against the offending lawyer.

Utah R. Civ. P. 17 Parties plaintiff and defendant.

(a) Real party in interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's name without joining the party for whose benefit the action is brought; and when a statute so provides, an action for the use or benefit of another shall be brought in the name of the state of Utah. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Minors or incompetent persons. An unemancipated minor or an insane or incompetent person who is a party must appear either by a general guardian or by a guardian ad litem appointed in the particular case by the court in which the action is pending. A guardian ad litem may be appointed in any case when it is deemed by the court in which the action or proceeding is prosecuted expedient to represent the minor, insane or incompetent person in the action or proceeding, notwithstanding that the person may have a general guardian and may have appeared by the guardian. In an action in rem it shall not be necessary to appoint a guardian ad litem for any unknown party who might be a minor or an incompetent person.

(c) Guardian ad litem; how appointed. A guardian ad litem appointed by a court must be appointed as follows:
(c)(1) When the minor is plaintiff, upon the application of the minor, if the minor is of the age of fourteen years, or if under that age, upon the application of a relative or friend of the minor.
(c)(2) When the minor is defendant, upon the application of the minor if the minor is of the age of fourteen years and applies within 20 days after the service of the summons, or if under that age or if the minor neglects so to apply, then upon the application of a relative or friend of the minor, or of any other party to the action.
(c)(3) When a minor defendant resides out of this state, the plaintiff, upon motion therefor, shall be entitled to an order designating some suitable person to be guardian ad litem for the minor defendant, unless the defendant or someone in behalf of the defendant within 20 days after service of notice of such motion shall cause to be appointed a guardian for such minor. Service of such notice may be made upon the defendant's general or testamentary guardian located in the defendant's state; if there is none, such notice, together with the summons in the action, shall be served in the manner provided for publication of summons upon such minor, if over fourteen years of age, or, if under fourteen years of age, by such service on the person with whom the minor resides. The guardian ad litem for such nonresident minor defendant shall have 20 days after

appointment in which to plead to the action.
(c)(4) When an insane or incompetent person is a party to an action or proceeding, upon the application of a relative or friend of such insane or incompetent person, or of any other party to the action or proceeding.

(d) Associates may sue or be sued by common name. When two or more persons associated in any business either as a joint-stock company, a partnership or other association, not a corporation, transact such business under a common name, whether it comprises the names of such associates or not, they may sue or be sued by such common name. Any judgment obtained against the association shall bind the joint property of all the associates in the same manner as if all had been named parties and had been sued upon their joint liability. The separate property of an individual member of the association may not be bound by the judgment unless the member is named as a party and the court acquires jurisdiction over the member.

(e) Action against a nonresident doing business in this state. When a nonresident person is associated in and conducts business within the state of Utah in one or more places in that person's own name or a common trade name, and the business is conducted under the supervision of a manager, superintendent or agent the person may be sued in the person's name in any action arising out of the conduct of the business.

(f) As used in these rules, the term plaintiff shall include a petitioner, and the term defendant shall include a respondent.