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**d.d.b. (Mother), Petitioner - Appellant, vs. j.l.c. (Father),
Respondent - Appellee.**

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

D.D.B. (Mother) in the interest of
G.J.C. (Child),
A child under 18 years of age.

GUARDIAN AD LITEM
RESPONSE BRIEF.

Juv. No. 1083532
App. No: 20150432-CA

D.D.C. (Mother),
Appellant,
vs.
J.L.C. (Father),
Appellee.

APPEAL FROM ORDER DENYING TERMINATION PETITION
JUVENILE COURT, FIRST JUDICIAL DISTRICT, BOX ELDER COUNTY, UTAH
HONORABLE ANGELA FONNESBECK

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GUARDIAN AD LITEM
RESPONSE BRIEF.

Juv. No. 1083532

App. No: 20150432-CA

Martha Pierce, Attorney Guardian ad Litem for the minor Child, responds to Mother's Petition on Appeal and concedes the juvenile court erred as a matter of law in its best interest analysis.

JURISDICTION

Section 78A-4-103(2)(c) provides this Court statutory jurisdiction over appeals from final orders of the juvenile court. Mother timely filed her May 22, 2015 notice of appeal from the juvenile court's May 15, 2015 final order.

ISSUES

1. Whether the juvenile court erred in relying on section 78A-6-503 to analyze best interest when that section does not go to best interest. This issue is one of statutory interpretation, which this Court independently reviews. *In re H.J.*, 1999 UT App 238, ¶ 15, 986 P.2d 115.
2. Whether the juvenile court erred in relying on inappropriate factors to determine best interest. This issue is one of law which this Court independently reviews. *In re H.J.*, 1999 UT App 238 at ¶ 15.

3. Whether the juvenile court erred in relying on inappropriate factors to determine best interest. This issue is one of law which this Court independently reviews. *In re H.J.*, 1999 UT App 238 at ¶ 15.

CONTROLLING PROVISIONS

Controlling provisions including Utah Code Ann. §§ 78A-6-503 and -507(1), each of which is included in the Addendum to Mother's Brief.

PROCEDURAL STATEMENT

Mother appeals a juvenile court order denying her petition to terminate Father's parental rights. The juvenile court found five separate grounds to terminate, but denied the petition based on lack of best interests.

RELEVANT FACTS

This brief does not challenge the juvenile court's oral and written factual findings, but argues that the juvenile court erred in its choice of findings to rely on to determine best interests. The juvenile court's oral and written findings, as they stand, can support only a best-interest determination. For purposes of this appeal, this brief adopts those written and oral findings. *See* Addendum.

SUMMARY OF ARGUMENTS

The best-interest analysis considers the impact of termination on the child's best interests. *In re J.D.*, 2011 UT App 184, ¶ 12, 257 P.3d 1062. Generally, once a court finds grounds, it has little wiggle room to determine no best interests to terminate. *Id.* at ¶

27. Such cases are rare. *Id.* at ¶ 35 (Orme, J., concurring specially). This case is not among those rare cases.

Here, the juvenile found five separate grounds to terminate, but determined it could not find best interests. The juvenile court erred in its choice of findings to rely on to determine best interests. The juvenile court's oral and written findings as they stand can support only a best-interest determination.

The juvenile court erroneously relied on section 78A-6-503 to determine best interests. Section 78A-6-503 codifies language from three major cases, *Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388 (1988), and *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054 (2000), and *In re J.P.*, 648 P.2d 1364 (Utah 1982), all of which go to a parent's fundamental liberty interest in the care, control and custody of that parent's child and to reasonable efforts.

The juvenile court relied on inappropriate factors in its best-interest analysis. Those factors include: Mother's single status, Mother having once relied on state assistance, Child's lack of detriment or damage, grandparent visitation, and actions taken earlier by the divorce court.

Many of the juvenile court's findings addressed section 78A-6-509 and -510 best-interest factors including the Child's physical, mental or emotional needs and conditions; the parent's efforts to adjust circumstances leading to the Child not living with him; the

parent's financial support, maintenance of parent-time and maintenance of custodial communication; the love, affection, permanence, commitment, and stability of the Child's intended family; and the intended family's ability to integrate the Child into their home and to treat Child as a permanent family member. Despite having made findings going to those considerations, the juvenile court failed to weigh them in its best-interest analysis. The juvenile court's findings, as they stand, can support only a best-interest determination. This Court should therefore remand this case with instructions to the juvenile court to enter a best-interest determination and to grant the termination petition

ARGUMENT

1. THE COURT ERRED IN RELYING ON SECTION 78A-6-503 TO DETERMINE BEST INTEREST.

The juvenile court erred in relying on section 78A-6-503 to determine best interests analysis because that section goes to a parent's fundamental liberty interests and not to best interest. This Court independently reviews issues of statutory interpretation. *In re H.J.*, 1999 UT App 238, ¶ 15, 986 P.2d 115.

The 2005 Amendment. In 2005, Representative LaVar Christensen sponsored House Bill 338, which codified language from three major cases into section 62A-4a-201 of the Human Services Code. 2005 Utah Laws CH. 304 (H.B. 338). The three cases were: *Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388 (1988), *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054 (2000), and *In re J.P.*, 648 P.2d 1364, 1372 (Utah 1988). Each case emphasized the fundamental liberty of a parent in the care, custody and control of his or

her child.¹ Representative Christensen argued to the House Floor that his will would result in no substantive changes because it served only to codified existing case law. Placing the language from the three cases in the Human Services could would make it ore likely that practitioners would rely on that language. *See* 2005 Utah Laws Ch. 304 (H.B. 338), House Floor Video Day 38, 2005 Gen. Sess. Part 2 at Part 2.²

The 2012 Amendment. In 2012, Representative Christensen introduced a bill that would include similar language into sections 78A-6-503 and 507 of the Judicial Code.³ 2012 Utah Laws Ch. 281 (H.B. 161). Representative Christensen's hour-long presentation made to the February 23, 2012 House Judiciary Committee emphasized his concern that Utah judges and practitioners were still not relying on language from *Santosky*, *Troxel*, and *In re J.P.*⁴ Representative Christensen again emphasized that his bill would make no substantive changes and would only codify existing case law. Representative Christensen's intent was that this language

¹ Significantly, in 1982, the year both *Santosky* and *In re J.P.* were decided, Utah law already conformed to their holdings. In fact, *Santosky* cited favorably to Utah law requiring clear and convincing evidence to support termination orders. 455 U.S. at 750 n.3. Moreover, while the *In re J.P.* case was pending before the Utah Supreme Court, the Legislature amended Utah law to clarify that a termination order must be based on unfitness as well as best-interests alone. *In re J.P.*, 649 P.2d at 1369.

² http://utahlegislature.granicus.com/MediaPlayer.php?clip_id=10198&meta_id=446335.

³ *Compare* Utah Code Ann. § 78A-6-503(1) *with Santosky*, 455 U.S. at 759 (both referring to the parent's right to care, custody, companionship and management of the parent's child); *compare* Utah Code Ann. § 78A-6-503(4) *with Santosky*, 455 U.S. at 753 (parent's fundamental right does not evaporate simply because they have not been model parents or have lost temporary custody); *compare* Utah Code Ann. § 78A-6-503(6) *with Santosky*, 455 U.S. at 759 (parent and child cannot be presumed adversaries until parental presumption rebutted by unfitness).

⁴ http://utahlegislature.granicus.com/MediaPlayer.php?clip_id=1087&meta_id=41674.

would be in the Utah code “right there staring you in the face” and thus “we would not have to run the risk that the research did not go far enough.”⁵

In his 2005 and 2012 presentations, Representative Christensen spoke only in the context of state-initiated cases, arguing that a parent’s constitutional rights should be emphasize to counter balance the powers of the State.⁶ Both times, Representative Christensen quoted that *Santosky* passage that the state’s resources “almost inevitably dwarfs the parents’ ability to mount a defense.” 455 U.S. at 763.

Representative Christensen’s 2012 bill also included language from the Fostering Connections Act to Success and Increasing Adoptions Act of 2008 (Fostering Connections). Pub. L. No. 110-351 § 201, 122 Stat. 3949 (2008) (amending 42 U.S.C. § 675) to emphasize the Division’s duty to provide in-home services and to place with kin. *See e.g.*, Utah Code Ann. § 78A-6-503(10)(d) (“The interests of the state favor preservation and not severance of natural familial bonds in situations where a positive,

⁵ Representative Christensen’s fears seem to be unfounded, at least as far as Utah appellate courts are concerned. As of this writing, Utah appellate courts have cited to the 1982 *Santosky* thirty-three times, to the 1982 *In re J.P.* case seventy times, and to the 2000 *Troxel* case fifteen times.

⁶ The language of section 78A-6-503 also suggests it is directed primarily toward state-initiated cases. *E.g.*, “. . . (1) For this reason, the termination of family ties **by the state** may only be done for compelling reasons. . . . (3) If the party moving to terminate parental rights is a **governmental entity**, . . . (6) Prior to an adjudication of unfitness, **government action** in relation to a parent . . . (10)(b) **the state's role is** secondary and supportive to the primary role of a parent. . . . (d) The interests of **the state favor preservation** and not severance of natural familial bonds in situations where a positive, nurturing parent-child relationship can exist, including extended family association and support.” Utah Code Ann. § 78A-6-503.

nurturing parent-child relationship can exist, including extended family association and support.”). His desire was that the Division would first provide in-home services, move to voluntary kinship care and “go to the government last.”

Here, the juvenile court peppered its best-interest analysis phrases from section 78A-6-503. Specifically, the juvenile court considered detriment or damage from subsection 503(7);⁷ reasonable efforts to preserve nurturing relationships from subsections 503(6), (8), (10)(d), and (12);⁸ compelling reason to interfere in family life from subsections 503(1), (6), (8);⁹ the need to preserve and to rely on “family life,”

⁷ See e.g., tr. 468:13-14 (“absence of testimony . . . as to what **psychological damage** . . . this child may be experiencing”); *id.* 471:24-25; 472:1-6. (“I didn’t hear any evidence of **actual physical abuse** . . . I didn’t hear any evidence to suggest the child is suffering from some type of **psychological detriment**.”); *id.* 472:17-18 (“I’m not sure what sort of **psychological damage** . . . he’s suffering at this stage”); *id.* 473:7-10 (supervised visitation was not because “of any **direct abuse or damage** to the child.”); *id.* 478:10-12 (“We have an extended family here who has not proven to be any **direct detriment** to this child.”); *id.* 478:21-23 (“no evidence presented that this child was actually suffering any **psychological damage**.”); *id.* 479:1-4 (“no “reason to terminate Dad’s rights if this child is not suffering that **detriment**.”).

⁸ See e.g., tr. at 475:1-3 (quoting from subsection 503(10)(d); *id.* at 478:3-5 (“I do, however, believe that this child could benefit from a **positive, loving, nurturing** relationship with his extended family.”); *id.* 478:13-16 (“will Dad able to have that **positive, loving, nurturing relationship** with this child? I don’t know. But what the statute says is that **that relationship can exist**.”⁸ **And I think we have to believe it can.**”); *id.* 474:24-25; (the interests of the State favors **preservation**.”); *id.* 475:6-8 (“You have a **lot of work to do**”); *id.* 478:15-18 (the statute says “we have to believe” **Dad is capable** of a positive, loving, nurturing relationship); *id.* at 479:14-16 (“Dad, you’ve got a **lot of freakin’ work** to do.”).

⁹ See e.g., tr. 479:3-4 (“I don’t find that there’s any **compelling** reason to terminate Dad’s rights”).

“extended family ties, support” from subsections 503(1), (5), (8), (10)(d), (12);¹⁰ and fundamental liberty interest and parental presumption from subsections 503(1), (3), (4), (7), (9), (10)(c).¹¹

Each of these phrases goes to grounds and reasonable efforts and not to best interests. Thus the juvenile court erred in relying on this language in its best-interest analysis. This Court should deem that the findings as they stand support a best-interest determination. Finally, this Court should remand with instructions to grant the termination petition.

2. THE JUVENILE COURT RELIED ON INAPPROPRIATE FACTORS TO DETERMINE BEST INTEREST.

The juvenile court’s best-interest analysis relied on factors rejected by this Court. Those factors include Mother’s single parent status; Mother having once relied on state assistance; Child not showing damage or detriment from Father’s unfitness; grandparent visitation; and the divorce court not having suspended Father’s visitation. Whether a

¹⁰ See e.g., tr. 477:23-25 (“it is a matter of policy in the state that **a child have two parents**”); *id.* 478:6-7 (“having that **second family** in his life would be in his best interests.”); *id.* 478:10-12 (“we have an **extended family** here . . .”); *id.* 478:17-18 (“I do know that [positive relationship] can exist . . . with his **extended family**.”); *id.* 478:18-20 (“I think terminating the possibility for that [extended family] relationship would be contrary to [Child’s] best interest.”).

¹¹ See e.g., tr. 474:11-12 (“the **fundamental liberty** interest of a parent,”); *id.* 474:16-18 (court may not presume parent and child are **adversaries**); *id.* 475:7-8 (“You are not a **model parent**.”).

factor is pertinent to a best-interest determination is one of law which this Court independently reviews. *In re H.J.*, 1999 UT App 238, ¶ 15, 986 P.2d 115.

Mother's single parent status. The juvenile court announced that the state had a policy that a child should have two parents, suggesting that an unfit parent was better than no parent. Tr. 477:20-25. At least in the adoption context, the Legislature has deemed otherwise, providing for adoption by "any single adult" and noting that a court could place a child "with a single adult," so long as the adult was not in a prohibited marriage. Utah Code Ann. §§ 78B-6-102(4), -117(4).

Our appellate courts likewise support court awards of custody to a single parent in child welfare cases rejecting arguments that termination is precluded where one parent brings a petition against the other, where a single adult brings a petition, where a child is not legally available for adoption, where the anticipated adoptive parent is single, where an adoptive home has not yet been identified, or where an adoptive placement has fallen through. *See e.g., In re A.M.*, 2009 UT App 119, 208 P.3d 1058 (affirming termination order where Mother brought petition, holding that best-interest did not require an evaluation of the petitioning parent's fitness.); *In re S.Y.T.*, 2011 UT App 407, 267 P.3d 930 (affirming termination petition brought by children's older, half-sister); *In re W.M.*, 2007 UT App 15, 2007 WL 127938 (rejecting Mother's argument that her rights should not have been terminated when Father's rights to youngest remained intact, which prevented that child from being adopted); *In re B.O.*, 2011 UT App 215, ¶ 14, 262 P.3d 46 (affirming termination of parental rights where child was placed with single-parent

relative); *In re C.A.*, 2006 UT App 159, ¶ 3, 2006 WL 1030364 (affirming termination order where adoptive home had not been located); *In re J.W.*, 2006 UT App 52, 2006 WL 350216 (affirming termination where foster parents determined they could not adopt child). *See also In re J.D.*, 2011 UT App 184 ¶ 23, 257 P.3d 1062 (child's adoption status is only one factor to consider in best-interest analysis); *Id.* at ¶ 36 (Orme, J., concurring) (only in the rarest case would it serve a child's interests to maintain an unfit parent's legal claim).¹²

State financial subsidies. The juvenile court erred as a matter of law relying on the fact that Mother had once received public assistance in its best-interest analysis. *See tr.* 469:3-13 (“I did find it interesting . . . that there was still a period of time, albeit brief, that she applied for State assistance. You know, that’s one thing that public policy requires us to look at here.”). The juvenile court’s position seems untenable given that virtually every foster parent receives a state subsidy and given that the Legislature requires the Division to inform all potential adoptive parents about available subsidies. Utah Code Ann. §§ 62A-4a-607; -904. In the present case, Father had proven himself

¹² The few cases where the court of appeals endorsed arguments going to single-parent status or adoptive-status resulted in reversal on certiorari. *In re Adoption of R.B.F.S.*, 2011 UT 46, 258 P.3d 583 (reversing Utah Court of Appeals holding that termination of Father’s rights was inappropriate where Stepfather not yet eligible to adopt); *In re C.L.*, 2007 UT 51, 166 P.3d 608 (reversing court of appeals determination that single foster mother’s post-termination decision to back out of adoption was grounds to set aside termination order.). In short, a judge’s reluctance to grant a termination petition brought by a single parent is not borne out by law but nevertheless happens. *See e.g., Thiele v. Judge Anderson*, 1999 UT App 56, 975 P.2d 481 (granting petition for extraordinary relief against judge who was reluctant to grant single mother’s adoption petition).

unlikely to provide support whether or not his parental rights were intact.

Child was happy and loving and was not suffering “enough.” The court ruled against best-interest in part because no evidence supported that Child was suffering any psychological damage from Father’s unfitness. “I don’t find any compelling reason to terminate his rights if child is not suffering that detriment.”

A best-interest determination does not require a showing of damage or detriment. *See* Utah Code Ann. §§ 78A-6-509, -510. In fact, this Court has endorsed best-interest determinations where the juvenile court had found that the child was thriving and happy. *See, e.g., In re T.H.*, 2009 UT App 340, ¶ 5, 2009 WL 3863681 (child had thrived in foster home); *In re C.B.*, 2009 UT App 290, ¶ 7, 2009 WL 3215067 (children had bonded with foster family); *In re J.D.*, 2011 UT App 184 at ¶ 21 (best interest supported termination where children presented as mentally, physically and emotional well in their present situation); *In W.M.W.*, 2004 UT App 233, ¶¶ 1-2, 2004 WL 1534789 at *1 (court appropriately terminated parental rights even absent evidence of harm or injury to child); *In re M.C.*, 940 P.2d 1229, 1237, 1997 WL 348872 (Utah Ct. App. 1997) (court erred in denying termination based “on its largely unexplained feelings . . . that the abuse in this case was not sufficient to justify termination); *In re N.K.C.*, 1999 UT App 345, ¶ 8, 995 P.2d 1 (affirming medical neglect despite fact that Mother’s inaction did not result in harm to child); *In re Z.B.*, 2004 UT App 477, 2004 WL 2903984, at *1 (rejecting Mother’s argument that termination not warranted where her behavior demonstrated no severe abuse or neglect).

Paternal Grandparent visitation. The juvenile court impermissibly factored grandparent and extended family visitation into its best-interest analysis, even though Mother maintained the constitutional prerogative to determine third-party visitation. *See Jones v. Jones*, 2015 UT 84, ¶ 22, 986 P.2d 115 (mother has fundamental right to regulate child's visitation). "I do believe this child could benefit from a positive loving nurturing relationship with his second family." Tr. 478:3-5. Again, Mother's fitness was not at issue. *In re A.M.*, 2009 UT App 118 at ¶ 23 ("The best interests prong of the termination statute does not anticipate an evaluation of a parent whose fitness has not been challenged by a cross-petition to terminate parental rights."); *In re M.J.*, 2013 UT App 122, ¶ 25, 302 P.3d 485 (foster family's fitness "is not at issue here.").

Fact that other courts did not suspend Father's visitation. The juvenile court erroneously relied on the fact that the district had not suspended Father's visitation. "If the divorce court feels it is in child's best interest, why would I do otherwise?"¹³ Tr. 479:11-13. First, Mother never sought an order to suspend visitation in the district court. Second, district court custody actions presume parental fitness, whereas a juvenile court best-interest analysis is made after that presumption has been rebutted.

The case of *In re S.Y.T.* may be helpful. In that case, the juvenile court had earlier denied a protective order only to later grant a termination petition based on the same set

¹³ After the October 2011 armed-kidnapping, Father's visits were subject to both professional supervision and to a security detail. *See Minutes*, 094902929 Divorce/Annulment, Dec. 22, 2011.

of facts. 2011 UT App 407. In *In re S.Y.T.*, an older sister sought a child protective order on behalf of her younger half-sister against their sexually abusive father, in part because the child was approaching the age when Older Sister herself had been victimized. *Id.*, 2011 UT App 407 at ¶ 4. The juvenile court denied the protective order based on lack of exigency, but later found grounds and best interests to terminate. *Id.* Father appealed the order based in part on this perceived anomaly. This Court affirmed the juvenile court's actions, noting that the elements of a protective order differed from those of a termination action. *Id.* at ¶ 40.

Even though the juvenile court relied on impermissible factors to deny best-interests, its findings as whole support best interest. This Court should remand the matter with instructions to the juvenile court to determine best interests and to grant the termination order.

3. THE JUVENILE COURT FAILED TO RELY ON MANDATORY STATUTORY CONSIDERATIONS TO DETERMINE BEST INTEREST.

Despite having made findings going to the mandatory statutory considerations, the juvenile court failed to rely on those findings in its best-interest analysis. This issue goes to statutory interpretation, which this Court reviews for correctness. *In re H.J.*, 1999 UT App 238, ¶ 15, 986 P.2d 115. This Court announced its intent to more closely scrutinize those rare cases where the juvenile court found grounds but not best interests. *In re M.C.*, 940 P.2d 1229, 1236-37, 1997 WL 348872 (Utah Ct. App. 1997). This Court instructed

trial courts to go to “extra lengths” to prepare findings for appellate review in those rare cases. *Id.*

Statutory best-interest factors. While evidence going to grounds may also support best-interest, the evidence is viewed through a different lens to consider “the impact of termination on the child, rather than simply on evaluating whether the statutory grounds for termination have been met.” *In re J.D.*, 2011 UT App 184 at ¶ 12. Thus, a best-interest analysis requires a court to view evidence in terms of the “paramount importance” of the child’s best interests. *Id.* at ¶ 26. This Court has acknowledged that, having found grounds, a court will often find no “wiggle room” in its best-interest analysis. *In re S.L.*, 1999 UT App 390, ¶ 59, 995 P.2d 17 (Wilkins, P.J., concurring); *In re J.D.*, 2011 UT App 184 at ¶ 27. The present case has little, if any, wiggle room.

“[I]n recognition of the importance of this [best-interest] inquiry, the legislature has thoughtfully identified factors that the juvenile court must consider in performing the best interest analysis. *Id.* at ¶ 27 Those thoughtfully-considered factors, found in section 78A-6-509, require a court to consider the Child’s physical, mental or emotional needs and conditions;¹⁴ the parent’s efforts to adjust the circumstances leading to the Child not

¹⁴ The juvenile court found that the Child, who was born in March 2008, last saw Father in February 2012, when he was nearly four years old. Tr.Ord. ¶ 22. The Child is now seven years old. The Child is “a loving and happy child” who loves trains. Tr. 466:21: 471:17-18. The child is “happy, loving and fun.” *Id.* 478:24-25.

living with him;¹⁵ the parent's financial support;¹⁶ maintenance of parent-time and maintenance of custodial communication.¹⁷

Section 78A-6-510, while restricted to state-initiated proceedings, nevertheless lists relevant factors. Those factors include whether the child has been integrated into his present home; whether the child's current family is able and willing to permanently treat the child as a member of the family; the love, affection and other emotional ties between the child and his present family; the current family's capacity and disposition to provide the child love, affection, and guidance and to continue the education of the child; and the length of time the child has lived with his present family; and the permanence and stability of that family.¹⁸ Utah Code Ann. § 78A-6-510.

¹⁵ The juvenile court found that Father demonstrated no accountability or remorse. Ord. ¶ 25. Father has failed to rectify his substance abuse problems and has thrice been kicked out of prison substance abuse programs. *Id.* ¶ 26. Father will not be able to provide the child a normal home for at least a year. *Id.* ¶ 32b. Father's lack of involvement with the Child is "a direct result" of his actions and no one else. Tr. 476:23-24. Father does not accept accountability for his actions. *Id.* 462:11-13.

¹⁶ The juvenile court found that Father had made only nominal financial contributions to the Child's support and has paid no child support since October 2010 such that he owes over \$20,000. Ord. ¶ 7. Father will not likely ever provide for Child. Tr. 464:3-10.

¹⁷ The juvenile court found that Father has had no contact with the Child since February 2012, which was a "direct result" of his own actions. Ord. ¶¶ 22, 32a; Tr. 476:23-24.

¹⁸ The juvenile court found that Child had lived with Mother and Maternal Grandparents since June 2009. Ord. ¶¶ 6, 27. The court found that Maternal Grandparents provided emotional support to the Child, and that Child is "pretty lucky to have grandparents like that." Tr. 466:14-16. Maternal Grandparents see the Child as a "loving and happy child." *Id.* 466:20-21; 471:14-18; 478: 23-25. Maternal Grandfather has stepped into the role of father figure in every way. *Id.* 477:23-25; 478:1-2. Maternal Grandparents intend to

The juvenile court's written and oral findings reflect that Mother produced evidence going to the statutory best-interest factors, but that the juvenile court did not rely on those findings into its best-interest analysis. Because the findings have already been made, there is no reason to remand the matter for further procedures other than to instruct the trial court to enter a best-interest determination and to grant the termination petition.

Practical effect of termination. Defense counsel often refer to an order terminating parental rights as analogous to the death penalty. The analogy is misleading and harms children. A termination order does not and cannot affect the biological or emotional relationship of a parent and child. A termination order is not a no-contact order. A termination order means that visitation, if any, becomes best-interest-driven rather than rights-driven and that the visitation decision is left in the hands of the child's eventual legal parent. The only thing a termination order can do is to end an unfit parent's legal claims to a child.

Defense counsel are quick to point out that a termination order ends a parent's duty to pay child support and ends a child's right to intestate inheritance. Defense counsel fail to acknowledge that a termination order does not stop a parent from making financial contributions or from preparing an appropriate will. Practically speaking, most children

continue providing a home for Child. Ord. ¶ 27. Child would have suffered greatly had Father in fact killed or harmed Maternal Grandparents during the October 2011 kidnapping. Tr. 476:13-15.

who are the subject of termination petitions will not receive child support from an unfit parent, whether or not that parent's rights are terminated.

On the other hand, those unfit parents who maintain residual rights may continue to involve the child and his or her new family in interminable legal processes, which (whether the child is aware of the processes or not), by their nature, bring emotional and financial stress to the household. In the present case, Father has already shown himself to be an enthusiastic pro se litigant with the time, capacity and access to a legal library to pursue such incessant litigation. Those unfit parents who maintain residual rights may stymie a child's health, development and chances for happiness by vetoing an adoption, vetoing a child's chosen religious affiliation, vetoing an enlistment decision and vetoing major medical, surgical, or psychiatric treatment. Utah Code Ann. § 78A-6-105(35) (defining residual parental rights).

Another legal implication arises in the event of the fit parent's death or disability. In such an event, any district court custody order would cease to operate and custody would automatically vest in the surviving parent. *Nielson v. Nielson*, 826 P.2d 1065, 1066, 1991 WL 330202 (Utah Ct. App. 1991). The surviving (unfit) parent would then have the "rights and obligations of the surviving divorced parent . . . unaffected by the custody decree entered in the divorce proceeding." *Id.* at 1066-67. Maternal Grandparents, who have been Child's day-to-day care givers, would then be required to undergo yet another legal procedure to obtain visitation, much less custody at a time

when the family is already in crisis. *Id. See also Jensen v. Bowcutt*, 892 P.2d 1053, 1055 (Utah Ct. App. 1995).

Given the juvenile court findings going to grounds, (in this case Father's significant criminal history, lack of remorse, lack of accountability, refusal to comply with court orders, antisocial behavior, substance abuse, mental illness, abandonment, neglect, history of violent behavior as well as the best-interest findings detailed above) there is no best-interest reason for Father to maintain any legal claim to Child.

CONCLUSION

This Court should remand the case to the juvenile court with instructions to enter a best-interest determination and to grant the termination petition.¹⁹

DATED this 7th day of October 2015.



Martha Pierce, Appellate Attorney
Office of Guardian ad Litem

¹⁹ To the extent the trial-level Guardian ad Litem contributed to the juvenile court's misapprehension of the law, it was not so much invited error, but ineffective assistance of a Guardian ad Litem, which the Director has since remedied. For this reason, this Court should consider these claims on appeal as it did when it summarily reversed *In re L.C.*, 20150019-CA based on the Attorney General's concession of error, which contradicted the position of the trial-level Attorney General.

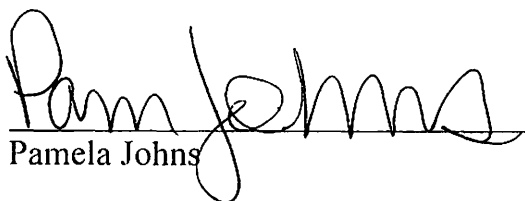
MAILING CERTIFICATE

I hereby certify that on the 7th day of October 2015, a true and correct copy of the foregoing **Guardian ad Litem Response Brief to Mother's Appeal** was mailed/delivered to:

Utah Court of Appeals
450 South State Street, 5th Floor
P.O. Box 140230
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Pamela Johns

ADDENDUM

2. Oral Findings, entered January 30, 2015, Tr. 455-480.
3. Order Denying Termination Petition. May 15, 2015.

IN THE FIRST DISTRICT JUVENILE COURT – BRIGHAM CITY
IN AND FOR BOX ELDER COUNTY, STATE OF UTAH

STATE OF UTAH in the Interest of:		
G.J.C. 03-16-2008		Case No. 1083532
A person under 18 years of age.		

TERMINATION OF PARENTAL RIGHTS
Volume I

January 28, 2015

BEFORE THE HONORABLE ANGELA F. FONNESBECK
Juvenile Court Judge

1 So let me just take a minute and tell you folks
2 what I reviewed so you know exactly what I had an
3 opportunity to look at during the break, all right?

4 I've got the two binders from petitioner's
5 counsel. While we didn't independently number them, I have
6 treated them as being numbered consistent with the tabs, as
7 provided by petitioner's counsel.

8 Now, in terms of those documents, there was
9 only -- let's just find it here now. There was only one
10 document that I did not specifically take a look at that I
11 did not -- that was not addressed or specifically referenced
12 in any testimony, and let me tell you what that is. I've
13 just got to get to it.

14 In volume -- or in Binder 1, under Tab 1, the very
15 first document in that section starting with zero -- or
16 ending with 01 is a presentence report. I did not review
17 that specific report, although later in that same section,
18 there were some documents related to Mr. Carter's addendum,
19 which I did review, and there was the discharge summary
20 related to Mr. Cronin's substance abuse program while
21 incarcerated that I also reviewed.

22 I did not review in detail the other Department of
23 Corrections attached to that discharge summary, as we never
24 addressed them particularly either. Although, like I said,
25 I did review in detail the other documents provided, the --

1 the presentence addendum and report that Mr. Carter actually
2 spoke about, as well as the Board of Pardons worksheets, the
3 progress report and re-hearing report, the board of hearings
4 applications in those. With the exception of that, I
5 reviewed the other documents in each of these binders, okay?

6 Now, in terms of dad's exhibits, again, we didn't
7 label them specifically while we were in court because we
8 weren't sure which ones we were going to be taking a look at
9 for sure. So let me tell you how I labeled them so
10 everybody knows.

11 I labeled as dad's Exhibit A the registered
12 principal search provided from the Utah Department of
13 Commerce website. I labeled as Defendant's Exhibit B the
14 letter from Jacqueline Campbell as -- and then No. 3 was the
15 email from a Neil Cooper. Both of these items, I believe,
16 are duplicates in the other exhibits, but I did not find the
17 page numbers of those.

18 I labeled as Defendant's Exhibit D the
19 psychological evaluation by Dr. Fox that Mr. Cronin
20 referenced. I want to make perfectly clear again that I did
21 not review that as some type of expert document in any way,
22 shape or form, I simply looked at it in the context of
23 Mr. Cronin's testimony. But, again, I gave it no particular
24 weight as some type of evidentiary, you know, expert
25 testimony or -- or finding or anything of the sort.

1 I labeled as Defendant's Exhibit E a series of
2 emails between Mr. Cronin and Mr. Baxter, and these were the
3 emails that were provided, I believe, on day one of this
4 trial when Mr. Baxter was testifying and these were provided
5 to the Court and to counsel during Mr. Cronin's cross-
6 examination of Mr. Baxter.

7 And then I labeled as Defendant's F a series of
8 emails -- I'm sorry. Well, they say email, but I actually
9 think they were text messages. A Facebook printout and some
10 transcripts from protective order hearings, as well as the
11 Davis County Justice Court docket that Mr. Cronin addressed
12 with the petitioner mom during her cross-examination by him.

13 So those are the documents that we have in the
14 record that I have reviewed.

15 Now, let me get my other stack of documents over
16 here.

17 So I think everybody in this room recognizes the
18 difficulty of these situations and the difficult decision
19 that this Court is asked to make regarding at least what I
20 think is a pretty complicated legal issue, not to mention
21 we're dealing with some -- some very serious, you know,
22 quasi-constitutional rights of parents here. This was not
23 an easy choice, this was not an easy decision, and I have
24 spent a bulk of the last several days reading the Code,
25 reading the law, reading any cases I could find to be

1 adequately prepared for what I thought might come up in
2 these proceedings.

3 And I want to thank both parties, you know, for
4 your demeanor during court. I know these are difficult
5 issues. I know we're dealing with some very contentious
6 issues, full of a lot of emotional and -- and you both
7 behaved yourself appropriately in court, and I appreciate
8 that.

9 Mr. Cronin, you did a fine job representing
10 yourself. I know it was difficult and you felt like the
11 Court oftentimes threw up roadblocks. But I -- I think you
12 both had fine representation in this courtroom during these
13 proceedings, and I know that's part of what makes my role so
14 difficult here.

15 Mr. Mortensen, thank you again for providing a
16 trial brief to the Court that is quite helpful to me, and
17 for having your exhibits in such a helpful order. It takes
18 a lot of the work out of what we would have to otherwise do
19 in these proceedings, so I appreciate that very much. Thank
20 you.

21 So let me start by telling you the facts that I
22 found most relevant. It doesn't mean that there weren't
23 other facts presented, but these are the facts that I found
24 most relevant to the situation before us.

25 That during this marriage and up through late

1 summer/early fall of October 2010, I think that Dad did his
2 best to have consistent and regular contact with "G." And I
3 think he did have a fairly close father-son relationship
4 during that period of time, which was supported by his
5 extended family; primarily, it appears, his mother and at
6 least one sister.

7 I also believe that during that period of time,
8 Mr. -- Mr. Cronin, or Dad, contributed in some way to the
9 emotional health and support of "G," and perhaps only
10 nominally, you know, to his financial support.

11 I realize that there -- during the course of the
12 marriage when the parties resided together, there was some
13 family support and the like. I realize Mr. Cronin did pay
14 for a parent time supervisor, which at least speaks for
15 something.

16 On the child support area, obviously, the
17 financial support was extraordinarily lacking. And even
18 though there's a disagreement on what amounts were paid,
19 they were nominal at best, compared to what the court order
20 required of him.

21 I also find that the child involvement with law
22 enforcement up to and including that summer and early fall
23 is extraordinarily troublesome, it is disturbing to me. I
24 don't place the fault for that squarely on Dad's shoulders
25 or solely on his shoulders. I believe that Dad took

1 liberties with parent time. I believe that he withheld the
2 child at the conclusions of visits, contrary to what court
3 orders required of him. But I do believe that a lot of law
4 enforcement involvement at that point in time, was a direct
5 result of a pretty nasty, ugly custody battle between two
6 parents. And I think the fault for that police involvement
7 for pick-ups and exchanges and whatever rests squarely, you
8 know, on both parents' shoulders.

9 Now, that's not to say that -- that I don't place
10 fairly -- or squarely on Mr. Cronin's shoulders the police
11 involvement during the October incident, because that was in
12 fact a direct result of his actions.

13 You know, I -- I was -- as a practitioner, I spend
14 an awful lot of time in front of Comm. Garner. When he says
15 something to the effect of "a protective order is being put
16 in place to protect the parents from each other because they
17 can't communicate, because they can't do what's in their
18 child's best interest," I believe that to be true. And I
19 really do believe, up to that point in time, a lot of the
20 vitriol and hatred between these two parties was as a result
21 of that divorce proceeding and not because either of them
22 weren't capable of being parents.

23 I'm -- I am concerned by Dad's custodial
24 interference charges and his recent criminal history. I was
25 less compelled, I guess, to -- to worry about his driving

1 record and charges, just as I was not particularly compelled
2 by the recent DUI allegations levied against Mom. I know
3 the child was not in the car during that period of time --
4 that was Mom's testimony -- so I didn't find that
5 particularly moving.

6 I also didn't hear any evidence to suggest that
7 during the period of time of Dad's, perhaps, poor choice in
8 driving skills, or technique, I didn't hear that the child
9 was -- was present during any of those either, so I did not
10 give particular weight to that.

11 In terms of the testimony of the parties, let
12 me -- or not of the parties, I'm sorry, of the witnesses, I
13 was pretty moved by Mr. Baxter's testimony in the context of
14 the seriousness of those texts from Mr. Cronin. Those are
15 disturbing text messages. No attorney doing their job
16 should ever have to receive a text message like that
17 threatening himself or his family. That type of behavior is
18 absolutely deplorable.

19 And in the same vein, I find it equally deplorable
20 that that kind of threat would be made via text message to
21 Mom. And I think there's at least a couple of occasions
22 where text messages show that that did in fact happen, with
23 threats being made to Mom and to her parents. I find that
24 particularly troublesome because, even in a -- in a nasty
25 divorce situation, that might be taking things one step too

1 far.

2 In regard to Mr. Carter's testimony, I found his
3 testimony to be very capable and honest. I was -- it was
4 refreshing for me to see him acknowledge that he had only
5 nominal training in mental health issues, even though he was
6 making some assessments about someone's mental health. But
7 I do believe he has substantial training and a broad skill
8 set when evaluating defendants for the court. And because
9 of that, I did give his -- his testimony considerable
10 weight.

11 I thought it was extremely compelling that he --
12 he stated that he, meaning Mr. Cronin, does not appear to
13 seriously take into account the consequences of his actions
14 and that he's minimizing the long-term effects his actions
15 may have had on the victims. I think those are really
16 indicative of a situation that -- that Mr. Cronin found
17 himself in.

18 Now, I don't know whether that's a product of a
19 mental illness. I don't know what that's a product of, but
20 those are -- actually, those are disturbing statements from
21 someone who sees a lot of defendants in the system.

22 As a result of Mr. Carter's testimony, I am also
23 concerned about Dad's drug dependency issues, his lack of
24 ownership of those drug dependency issues, and even by his
25 admissions, you know, his failure to rectify any of those.

1 We did not spend a lot of time discussing the depth or
2 length of those drug dependency issues, but they're clearly
3 there and they are problematic, especially if they continue
4 to go untreated.

5 In terms of Mr. Cronin's testimony, there is no
6 doubt in my mind that he's really sorry to find himself in
7 this situation. And I'm sure he wishes that things were --
8 were different. And I think, in his own way, he loves "G."
9 Now, I don't know that's the way that all parents would love
10 a child, but I think, from his perspective, those things are
11 all true.

12 I am not, however, convinced that he is
13 particularly remorseful for his actions against Mr. and
14 Mrs. Bess. Now, while I understand that Dad cannot comment
15 related to issues for which he's currently incarcerated, he
16 invoked his right to not comment on those, which I did not
17 hold against him in any way, shape or form, I think this
18 courtroom, perhaps, was the first time anyone heard the
19 words "remorse" or "forgiveness" or "I'm sorry" come out of
20 his mouth. Because of that, I'm not convinced those are
21 genuine feelings on his part.

22 I also don't know that I believe that he's
23 particularly remorseful for making that threat against
24 Ms. Bess. I think these two parties clearly don't like each
25 other. I think it's pretty obvious, you know, that that's

1 the case, and "hate" might even be the right word. But I
2 don't feel a lot of empathy or remorse between them.

3 I do think Mr. Cronin has made only minimal
4 efforts to provide support for this child, despite his
5 statements in court and his presumed ability to earn an
6 income. I'm just not convinced that he ever will provide
7 support for this child. I do think he sees it as a burden
8 and an obligation that he's not obligated to follow through
9 with unless he's getting what he wants on a parent time
10 schedule, and that's just not what the law says.

11 So, you know, again, I think he's made nominal
12 efforts, at best, on that financial end.

13 I'm also troubled that there are no verifiable
14 attempts by Mr. Cronin to improve his current situation. I
15 have to conclude, therefore, that there haven't been such
16 attempts. And I think that's supported by the fact, again
17 by his own testimony, that, three times, he's been booted
18 out of rehab programs in the prison.

19 While I heard him testify that he was trying to
20 "find himself" and he was exploring some other things, you
21 know, there is just no verifiable attempts on his -- on his
22 part to get treatment or therapy or anything of the sort.

23 I'm inclined to believe that Mr. Cronin does
24 suffer from some type of mental health event. He himself
25 has indicated that he suffers from depression and was, at

1 one point in time, suicidal. I don't know if he continues
2 to suffer from those things. We didn't hear testimony as to
3 that end. We did hear that he didn't receive much
4 treatment, although he did testify to some treatment prior
5 to his incarceration.

6 But I think there is a severe lack of follow-
7 through there to get himself in a situation where his mental
8 health is such as to be stable and healthy and happy and
9 productive.

10 Based on the testimony before the Court today, it
11 appears that Mr. Cronin last saw "G" around February of
12 2012. There was some indication it may have been closer to
13 Easter. But at least in that early February 2012 time frame
14 would have been the last time that Mr. Cronin, or it appears
15 any member of his family, saw "G."

16 Now, as to the testimony of both Mr. and
17 Mrs. Bess. This was extremely moving to the Court. I think
18 it took a lot of guts on their part to sit in this courtroom
19 to again tell the story of the incidences that happened in
20 October of 2010. I can't thank them enough for doing that
21 because I know it was difficult. And the amount of
22 emotional turmoil that they must have experienced because of
23 Mr. Cronin's actions, because of his behavior, wow, that is
24 deplorable. It's horrible. No one should ever have to
25 experience that type of event. And I can absolutely

1 understand, without question, why the Besses want no contact
2 with Mr. Cronin. I think we can all just be grateful
3 that -- that "G" was not present or in the car during that
4 series of events. That is a terrible situation in which to
5 place people, regardless of whether a gun was involved or
6 not. And I'm not going to make that finding. I think lots
7 of other courts have issued factual findings and -- and
8 Mr. Cronin's incarcerated for a specific reason; that is a
9 heinous event directed towards Mr. and Mrs. Bess.

10 Just one more thing on that note. I think
11 everybody owes a great deal of gratitude to Mr. and
12 Mrs. Bess for, throughout this process, you know, trying to
13 provide some degree of reason in terms of parent time
14 exchanges and -- and providing that financial and emotional
15 support to "G." I think he's pretty lucky to have
16 grandparents like that.

17 I was -- I was excited to hear each of them talk
18 about this little boy because we got very little evidence
19 about what this little boy was like and we're here
20 discussing what's best for him. So I was pleased to hear
21 the grandparents talk about what a loving and happy child he
22 is, because that's who this is really about.

23 In terms of Mr. Sharp's testimony, I do think his
24 testimony was based on -- on substantial expertise in the
25 field of licensed professional counseling. And I think,

1 from that end, his testimony is credible.

2 I did find it concerning that Mr. Sharp indicated
3 that, when using that DSM as a diagnostic tool, that
4 interviewing or interacting with the subject was not
5 necessary. I think that's a little bit scary as a person
6 that who knows who's out there diagnosing each of us, you
7 know, this exact moment? I'm sure everyone might say that
8 we're all a little crazy for being here in the first place.

9 That was bothersome to me, I have to say. And I
10 was glad to hear Mr. Sharp later qualify that -- that using
11 that as a diagnostic tool is in fact better if that type of
12 interaction would have occurred.

13 Mr. Sharp also testified to treating Mom
14 personally and interacting with the child on just limited
15 circumstances through that treatment. He indicated that, in
16 addition to reviewing the information from his patient, he
17 reviewed Dr. Fox's psychological evaluation, AP&P
18 assessments, court-ordered protective orders, other AP&P
19 records, and Mr. Cronin's criminal records.

20 While not all of that information is biased, I do
21 think a lot of the information reviewed by Mr. Sharp comes
22 from a biased perspective against Dad. And I -- I don't
23 know the way of knowing, nor do I feel like I was
24 appropriately educated to know whether or not the
25 information Mr. Sharp received in those assessments was

1 complete.

2 I also don't know whether the evidence he reviewed
3 was somehow cherry-picked or shortened or lengthened or - I
4 have no idea. But I do think a lot of that information did
5 come from a biased perspective, and I would feel so much
6 better if his - his testimony had been based on some type of
7 interaction with Mr. Cronin.

8 So while I - I believe that Mr. Sharp's testimony
9 is credible and reliable, I did not give it the type of
10 weight or that hefty weight that I think petitioner would
11 have liked me to have done so.

12 Much like the guardian, I was surprised by the
13 absence of testimony from this particular individual as to
14 what psychological damage or effects that this child may be
15 experiencing or suffering from. We didn't hear anything
16 about that, and that's somewhat surprising to this Court.
17 It creates a hole, I think, in what I can consider.

18 Now, in terms of Mom, I think she has a subjective
19 fear, a very real subjective fear of Mr. Cronin. I think
20 she has a severe dislike and mistrust of him, and I think
21 that is all supported by their history. I don't think
22 anyone is surprised to - to see that. I believe she loves
23 her son, I believe she truly wants what's best for him.

24 I'm concerned, as she was, that "G" was and may
25 still be being used as a pawn when we're talking about

1 custody of this child. He may not know it, but I think all
2 the adults in the room can see that for what it is.

3 I believe that Mom has produced, you know, a
4 résumé that gives her the financial ability to support this
5 child. I think she has supported this child. I did find it
6 interesting, although I didn't give it great weight, that
7 despite this - this ability to support herself and despite
8 her family's willingness to provide that financial support
9 that there was still a period of time, albeit brief, that
10 she applied for State assistance. You know, that's one
11 thing that public policy requires us to look at here. So, I
12 mean, I was pleased to see that it was for a very short
13 period of time, you know, but I did take a look at that
14 fact.

15 I did take particular note, as I think the
16 guardian ad litem did, that the cards and/or letters,
17 whether it's two or twenty, that are sent by Mr. Cronin to
18 the child, after she consulted with her therapist, decided
19 that it was not appropriate to give them to the child or for
20 her to look at them because of the damage to her.

21 I didn't hear why anyone thought it would be
22 damaging to him to review or receive these letters. I think
23 we can all guess, but I didn't hear any evidence to that
24 end. I wish I would have.

25 I also took note and found it interesting that,

1 despite these multiple police interventions, that Mom never
2 called DCFS for an investigation of abuse or neglect and
3 that no law enforcement agency was ever called to perform a
4 welfare check during parent time. It appears that law
5 enforcement was pretty primarily used only to keep the peace
6 during exchanges.

7 So as to Genevieve Cronin's testimony, much like
8 the other grandparents in this case, I found her testimony
9 particularly moving. I think there is no doubt in the world
10 that we have grandparents on both sides of this family that
11 deeply love this child. I think that Mrs. Cronin did have a
12 wonderful grandparent-grandchild relationship with "G" and
13 that him being removed from her life was particularly
14 devastating to her. I have to think that it was devastating
15 to "G" as well, if he did have that type of relationship,
16 which it appears that he did.

17 I do not believe, based on the testimony I've
18 heard over the last three days, that Genevieve Cronin's
19 actions were in any way - I don't believe she was in any way
20 an accomplice to or - or involved in Mr. Cronin's actions,
21 whether they be the October 2010 incident or the refusal to
22 return "G" at the end of parent time. I simply do not
23 believe Mr. Cronin's extended family knowingly participated
24 in any type of event.

25 So a couple of other things I think everyone

1 should know that I looked at here.

2 Clearly, both parents' testimony are extremely
3 self-serving. I get that. I understand that. I would
4 expect it to be. I sat at these tables as an attorney long
5 enough to know that's how we present our clients. So I
6 recognize that fact. I didn't hold it against either one of
7 you for doing that. But I just want you to know I did take
8 them for what they were.

9 I've mentioned already that I - I feel like we
10 were missing something throughout the course of these three
11 days, and that's this little boy. I mean, we're here to
12 talk about him and his best interest, and yet I sit up here
13 knowing practically nothing about him.

14 I know he's six, or around six. I know his name
15 is "G." I know he lives with his mom. But everything else
16 I heard about him, basically, was from a grandparent that
17 says he's happy, he's loving, he loves trains, he's a lot of
18 fun. That's what I know about this child, and that is it.

19 That is surprising to me as a finder of fact in a
20 case trying to make a decision about what is best for him.
21 I know nothing about him.

22 Throughout these proceedings - and I think
23 Mr. Cronin made this pretty clear - I didn't hear any
24 evidence of actual physical abuse against this child, I
25 didn't hear any evidence to suggest the child is suffering

1 from some type of psychological detriment post-October or
2 2010. And even if I had, I'm not sure I would be able to
3 find that it was a direct result of the October incident,
4 given that he wasn't there, as opposed to being a direct
5 result of this vitriolic relationship between the parents
6 and their custody dispute.

7 I didn't hear any evidence that the child
8 witnessed any violence. I don't have any evidence to - to
9 hear that the child was even aware of the October 2010
10 incident. I know he wasn't there, which means, if he knows
11 about it, somebody told it - told him about it after the
12 fact. But I don't know if he even knows.

13 I also don't know if this child is even aware of
14 Dad's current incarceration. He's obviously aware that
15 Dad's not visiting him. And I'm not saying that's a bad
16 thing he doesn't know those things, but I'm just - again,
17 I'm not sure what sort of psychological damage or impact
18 he's even suffering at this stage.

19 I would mention that it was extremely helpful to
20 me to be able to review the protective orders and the
21 divorce orders, to help establish this factual history
22 between Mom and Dad. I just would remind everyone, though,
23 that the standard of proof in the divorce court is lower
24 than the standard of proof here. The standard of proof here
25 is clear and convincing, which means I have to be pretty

1 dang certain that the facts support what's - you know, the
2 relief being sought.

3 I did find it compelling that, even after the
4 allegations related to the October 2010 incident were
5 brought before the Court, that the divorce court did not
6 stop parent time or stop contact altogether.

7 Now, I realize that supervised parent time was put
8 in place, but again, I have to agree with the guardian here
9 that it does not appear that that was put in place because
10 of any direct abuse or damage to the child. So, again, I
11 found those things interesting.

12 Now, let me kind of go through a few other things
13 in the law that I think are important for us to keep in mind
14 here. And I'm going to actually read a couple of sections
15 of the Code that I think are so important.

16 It is petitioner's burden in a case like this to
17 prove by clear and convincing evidence that one of the
18 statutory grounds for termination have been met. But it's
19 also petitioner's burden to show that it is in the best
20 interest of this child that parental rights be terminated.
21 That means that, you know, even if I find that one of these
22 statutory grounds have been met, I still have to make
23 another finding.

24 And I did want to read to you from 78A-6-503(12).
25 And this section of the Code talks specifically about the

1 State's public policy, sort of preferences, in these types
2 of cases. And it just says that, if a parent is found to be
3 unfit or incompetent based on one of those grounds for
4 termination, it still says that the court shall then
5 consider the welfare and best interest of the child of
6 paramount importance in determining whether to terminate -
7 determining whether termination of the parental rights
8 should be ordered.

9 This is a separate prong that we have to decide
10 here, and the burden has to be met as to that prong as well.

11 And in that same section, in subpart (4), it says,
12 you know, the fundamental liberty interest of a parent
13 concerning the care, custody and management of the parent's
14 child is recognized protected and does not cease to exist
15 simply because a parent fails to be a model parent.

16 A little further down in Section 7 it says that
17 the court may not presume that a child and the child's
18 parents are adversaries.

19 You know, we're looking at some pretty serious
20 issues here. These are what we consider quasi-
21 constitutional rights under the law.

22 The other section of the Code here that I found of
23 particular relevance to this case is found at - same
24 section, subpart (10)(d). And it states:

25 "The interest of the State favors preservation and

1 not severance of natural familial bonds in
2 situations where a positive, nurturing parent-
3 child relationship can exist, including extended
4 family association and support."

5 Now, both parents have faults, no question.

6 Dad, you've got some real issues. You are not a
7 model parent. You are not a model citizen. You have a lot
8 of work to do.

9 I think both of you have faults as parents, but,
10 Dad, clearly, your faults are pretty large and pretty
11 looming in this room. You need to be cognizant of that.

12 So, when I look at this and I look at the
13 standards under the law and the provisions of the law, and I
14 look at whether petitioner has met their burden by clear and
15 convincing evidence, I do believe they have met their burden
16 as it comes to some statutory provisions. I do believe that
17 they have met their burden in proving that Dad has abandoned
18 this child and that he has failed to communicate with the
19 child by telephone or otherwise for six months.

20 Now, I'm specifically excluding mail here, because
21 I don't know how many times Mr. Cronin has attempted to
22 contact him by mail. But I do know that it has been,
23 roughly, two years since Mr. Cronin has had any contact with
24 this child.

25 I do believe that Mr. Cronin has neglected this

1 child and that he is incarcerated as a result of a
2 conviction of a felony, the sentence of such that the length
3 would deprive the child of a normal home for one year.

4 I also believe that there is evidence of a history
5 of violent behavior here. Maybe not towards the child, but
6 violent behavior nonetheless.

7 I do believe that petitioner - and I find the
8 petitioner has met their burden when it comes to finding
9 evidence of unfitness. Because I do think the crime that
10 Mr. Cronin has been convicted of is such a nature as to
11 prove his unfitness in caring for this child's emotional
12 health and development.

13 I can't imagine what pain this little boy would be
14 in if you had in fact harmed or killed his grandparents.
15 That is pretty ugly and that would be a pretty ugly world to
16 leave this child in.

17 I also believe that petitioner has met their
18 burden when it comes to the finding of token efforts. And I
19 say that because I think Mr. Cronin has made less than token
20 efforts when it comes to supporting this child or
21 communicating with this child. Again, I don't know how many
22 letters you have or have not sent, but your lack of
23 involvement in this child's life over the last couple of
24 years is a direct result of your actions and no one else's.

25 I also find that you've made only token efforts to

1 avoid being an unfit parent.

2 Now, I want to make one comment specifically as to
3 the token efforts to communicate based on a case that
4 Mr. Cronin brought before this Court, talking about
5 grandma's attempt to communicate with a child. And I'm
6 going to distinguish this case from that case in this way:

7 In the case that Mr. Cronin brought before the
8 Court, it talked about "grandma attempting to arrange parent
9 time and visitation on behalf of the parent." That is not
10 the reason grandma was trying to make contact here, because
11 dad was not able to visit with the child. So I think the
12 facts before this Court are distinguishable from that.

13 Now, that gets us to the last prong of what we're
14 here to deal with today, which is the best interest of this
15 child. And when I look at this, I have to look at what is
16 in "G's" best interest, not what is in Mom's best interest,
17 not what is in Dad's best interest and not what I believe
18 would be in Grandma's or Grandpa's best interest; I have to
19 look at "G" here.

20 I think everyone should know that the lack of
21 having an individual to step in to replace the role of the
22 parent, while important, I gave less weight, I think, than
23 the guardian ad litem did. You know, it is a matter of
24 policy in the state that a child have two parents. While we
25 have a grandpa who cannot step into that role legally, he

1 has stepped into that role in every other way. So I gave
2 that fact very little consideration in my decision.

3 I do, however, believe that this child could
4 benefit from a positive, loving, nurturing relationship with
5 his extended family. I think he has a second family in his
6 life, and having that second family in his life would be in
7 his best interest. And if I were to terminate Dad's
8 parental rights today, I would be going against what I think
9 is best for this child in that regard.

10 We have an extended family here who has not proven
11 to be any direct detriment to this child. He has not - they
12 have not proven to even show that they would be.

13 Now, will Dad be able to have that positive,
14 loving, nurturing relationship with this child? I don't
15 know. But what the statute says is that that relationship
16 can exist. And I think we have to believe that it can. But
17 I do know that it can exist with the second - with his
18 extended family on Mr. Cronin's side. And I think
19 terminating the possibility for that relationship would be
20 contrary to "G's" best interest.

21 I also, again, was - was so surprised to find that
22 there was no evidence presented that this child was actually
23 suffering any psychological damage or effect from his
24 previous relationship with Mr. Cronin. All the evidence
25 says is that "he's happy, loving and fun." I don't know

1 that my terminating Dad's rights would change that; I
2 certainly hope not. But I don't find that there's any
3 compelling reason to terminate Dad's rights if this child is
4 not suffering that detriment.

5 And, again, just to mention that, you know, the
6 divorce court has a lower standard than we do in this court.
7 And I found it compelling that the divorce court, even when
8 becoming aware of these incidences in October of 2010, did
9 not feel that it was necessary to prohibit Dad's contact
10 with this child.

11 If the divorce court feels that it's in the best
12 interest of this child to have - have this parent, why would
13 I - why would I do otherwise?

14 And because of those reasons, I am not finding
15 today that it is in the child's best interest to terminate
16 Dad's rights. Now, make no bones about it, Dad, you've got
17 a lot of freakin' work to do. You are a long way from being
18 a good parent. And I can't sit here today and tell you that
19 Mom is ever going to let you be involved in this child's
20 life. But at least sitting here today, with the facts that
21 I have before me, I am going to deny Mom's petition for
22 termination of parental rights.

23 Now, I'm going to remind everyone present in the
24 courtroom that you do have a right to appeal this decision
25 if you're aggrieved by the decision I made today. In a

1 child's welfare action, you must file that notice of appeal
2 within 15 days of my written decision.

3 Now, if you are represented by an attorney, which
4 you are, ma'am, your attorney is required to prepare that
5 notice of appeal, and you are both required to sign it. So
6 be aware of that.

7 Ms. Wight, I'm actually going to ask you to
8 prepare the order from today's proceedings, making sure each
9 of the parties has a copy of it.

10 That will be the order of the Court. Court's in
11 recess.

12 (Whereupon, at the hour of 2:55 p.m.,
13 January 30, 2015, the trial in this
14 matter was concluded.)

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**IN THE FIRST DISTRICT JUVENILE COURT
FOR BOX ELDER COUNTY, STATE OF UTAH**

DESIREE DAWN BESS, in the interest of Griffin Joshua Cronin (born March 16, 2008), a minor under 18 years of age. Petitioner, vs. JOSHUA LETOICE CRONIN Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER Case No. 1083532 Judge Angela F. Fannesbeck
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This matter came before the Court on the 30th day of January, 2015 for ruling on Petitioner's Verified Petition to Terminate Parental Rights. Present were: Desiree Dawn Bess, the petitioner, and her counsel, Paul W. Mortensen; Joshua Letoice Cronin, the respondent, *pro se*; and Camille Wight, Guardian ad Litem.

Whereupon, the Court having listened to the testimony of Brandon Baxter, petitioner's former attorney; Todd Carter, respondent's former probation officer; Joshua Cronin, respondent; Noel Bess, petitioner's father, Chuck Sharp, expert witness; Desiree Bess, petitioner, Mildred Bess, petitioner's mother, and Genevieve Cronin, respondent's mother, and reviewed Petitioner's Exhibits 1-21 (minus a few documents in Exhibit 1, which were not addressed or specifically referenced by any testimony) and Respondent's Exhibits A-F, the Court enters, by clear and convincing evidence, the following Findings of Fact:

1. Griffin Joshua Cronin is a male child who was born on March 16, 2008.
2. Desiree Dawn Bess is the legal mother of the child. Her current address is 323 East 700 North, Brigham City, Utah 84302. Her date of birth is October 11, 1982.
3. Joshua Letoice Cronin is the legal father of the child. He is currently incarcerated in the Utah State Prison, 14425 Bitterbrush Lane, Draper, Utah 84020. His date of birth is July 13, 1981.
4. This Court has jurisdiction over this Petition pursuant to Utah Code §78A-6-103(g). Venue is proper in Box Elder County pursuant to Utah Code §78A-6-110.
5. Ms. Bess and Mr. Cronin were formerly wife and husband. They were married on July 6, 2006.
6. Ms. Bess and Mr. Cronin separated in June 2009. Ms. Bess filed for divorce at that time.
7. Since the parties' separation in June 2009, Mr. Cronin's financial contribution to the child has been nominal. Mr. Cronin has paid no child support since October 2010. His current obligation is over \$20,000.
8. In September 2009, a temporary order was issued in the divorce action awarding Ms. Bess sole physical custody of the child and granting Mr. Cronin statutory parent time.

9. In November 2009, Ms. Bess filed for a protective order against Mr. Cronin. During a hearing on the matter, Commissioner Garner found that there had been no physical violence, but entered the protective order based on the threats Mr. Cronin made to the mother. There were no restrictions placed on Mr. Cronin's parent time.
10. During the parties' marriage and up through October 2010, Mr. Cronin did his best to have consistent and regular contact with Griffin. Mr. Cronin had a relationship with Griffin that was supported by Mr. Cronin's extended family. Mr. Cronin contributed to Griffin's emotional and mental support.
11. During the summer of 2010 up through early fall of 2010, the child had involvement with law enforcement as a result of the troublesome relationship between Ms. Bess and Mr. Cronin. However, during that time, law enforcement was never contacted to conduct welfare checks on the child while he was in the care of the father and D.C.F.S. was never contacted to investigate abuse or neglect of the child.
12. Also, during that time, Mr. Cronin took liberties with his parent time. On at least two occasions, he kept the child longer than his parent time order allowed. As a result of his actions, Mr. Cronin received two "criminal interference with custodial rights" charges and the Court ordered supervised parent time.

13. On July 9, 2010, Ms. Bess' attorney, Mr. Baxter received a threatening text from Mr. Cronin stating, "This approach may cost your family and hers more than your willing to wager its not a smart move to try and corner a resourceful man."
14. Around this same time, Mr. Cronin also sent threatening texts to Ms. Bess.
15. On October 6, 2010, Mr. Cronin had the child and arranged with Ms. Bess' parents, Noel and Mildred Bess, to meet him so he could return the child to Ms. Bess' care. When Mr. and Mrs. Bess arrived at the arranged location, the child was not present. Mr. Cronin got into the car and forced them to drive to Ms. Bess' location. At some point during the drive, Mr. Bess stopped the car and Mrs. Bess exited the vehicle. Mr. Cronin also exited the vehicle and threatened Mrs. Bess. Mrs. Bess fled from the scene. Mr. Cronin returned to the car and had Mr. Bess drive him back to his vehicle.
16. During the events on October 6, 2010, the child was not present. Later that evening, police were able to locate the child with Mr. Cronin's sister and he was returned to Ms. Bess. Mr. and Mrs. Bess, Ms. Bess and the child stayed at a hotel that night and had police search their home before returning to it the next day.
17. Mr. and Mrs. Bess have suffered emotional turmoil as a result of this incident.
18. As a result of this incident, Mr. Cronin received two kidnapping charges.

19. Ms. Bess has a real, subjective fear of Mr. Cronin and a severe distrust of Mr. Cronin that is supported by the parties' history as outlined above.
20. Ms. Bess and Mr. Cronin's marriage was terminated by decree of divorce entered January 7, 2011. Ms. Bess was awarded sole physical and sole legal custody of Griffin. After a two-day trial, the Court entered a supplemental final decree on April 27, 2011. Mr. Cronin's contact with Griffin was limited to once-per-week parent-time under the direction and supervision of a certified parent-time supervisor in the town or city where Griffin resides.
21. Mr. Cronin exercised supervised parent-time under the direction of Jill Scharrenberg from December 2010 until February or March 2012.
22. Mr. Cronin last saw the child in either February or March of 2012 prior to his most recent incarceration. Mr. Cronin has sent cards and letters to the child since his incarceration. These cards and letters have been kept by Ms. Bess, but not given to the child because of the damage it would cause to Ms. Bess.
23. Genevieve Cronin had a relationship with the child up until the time of Mr. Cronin's incarceration. Mrs. Cronin has not seen the child since February or March of 2012. Mrs. Cronin has suffered emotionally as a result of this. Mrs. Cronin was not involved or an accomplice to Mr. Cronin's attempts to extend his parent time.
24. Mr. Cronin has a significant criminal history, the most recent convictions include:

- a. May 2011 – he pleaded guilty to violating a protective order and was sentenced to serve 30 days in jail.
- b. November 2011 – he was found guilty of two counts of criminal interference with custodial rights and was sentenced to serve 180 days in jail.
- c. December 2011 – he pleaded guilty to two counts of Third Degree Felony Attempted Kidnapping and was sentenced to 0-5 years in the Utah State Prison.

25. On sentencing for the kidnapping charges, AP&P Officer Todd Carter recommended prison because of Mr. Cronin's lack of accountability, lack of remorse, prior convictions and substance abuse problems, as well as the impact statements provided by the victims. Mr. Carter felt that Mr. Cronin did not appreciate the consequences of his actions and lacked remorse.

26. On March 28, 2012, Mr. Cronin began his indeterminate sentence of 0-5 years at the Utah State Prison. Throughout his incarceration, Mr. Cronin has failed to rectify his drug dependency issues – having been released from the prison's drug program on three occasions; and has not sought mental health treatment – though he suffers from mental health issues.

27. Ms. Bess and the child have continuously lived with her parents, Mr. and Mrs. Bess, since the time of her separation from Mr. Cronin. Mr. and Mrs. Bess have provided

for the child financially during that time. Mr. and Mrs. Bess intend to continue to support the child financially.

28. Mr. Bess is employed and is and has been able to provide financially for the child.

However, for a short period of time in 2012 and 2013 when Ms. Bess was briefly unemployed, Ms. Bess received state assistance in the form of food stamps and Medicaid.

29. Ms. Bess has not remarried and there is no imminent adoption.

30. Mr. Cronin has never physically injured the child.

31. The child is not being treated by a mental health therapist and no expert testimony as to the psychological or emotional condition of the child was presented at trial.

32. Petitioner has met her burden as to the following grounds for termination:

- a. Mr. Cronin has abandoned Griffin in that he has failed to communicate with the child by telephone or otherwise in over 6 months.
- b. Mr. Cronin has neglected the child in that he is incarcerated as a result of a conviction of a felony the sentences of such that the length would deprive the child of a normal home for one year and that there is a history of violent behavior.

- c. Mr. Cronin is unfit in that the crime that he committed is of such a nature to prove his unfitness in caring for this child's emotional health and development.
- d. Mr. Cronin has made less than token efforts in support or communication in that his lack of involvement in the child's life over the past few years are a result of his actions.
- e. Mr. Cronin has only made token efforts to avoid being an unfit parent.

33. Petitioner has failed to meet her burden that termination is in this child's best interest because:

- a. The lack of individual to step in to replace the role of the parent legally.
- b. The child could benefit from a positive, loving, nurturing relationship with Mr. Cronin and Mr. Cronin's extended family.
- c. The lack of evidence that a relationship with Mr. Cronin's extended family is or would be a detriment to the child.
- d. There is no evidence of psychological or emotional damage from child's previous relationship with Mr. Cronin.
- e. The District Court in the divorce action did not find it necessary to cut-off contact between the minor and Mr. Cronin after becoming aware of the October 2010

incidents and entered less restrictive orders that preserved the parent-child relationship.

CONCLUSIONS OF LAW

1. Under Utah Code §78A-6-507(1)(a), Mr. Cronin has abandoned the child.
2. Under Utah Code §78A-6-507(1)(b), Mr. Cronin has neglected the child.
3. Under Utah Code §78A-6-507(1)(c), Mr. Cronin is unfit.
4. Under Utah Code §78A-6-507(1)(f)(ii), Mr. Cronin has made only token efforts to support of communicate with the child.
5. Under Utah Code §78A-6-507(1)(f)(ii), Mr. Cronin has made only token efforts to avoid being an unfit parent.
6. Under Utah Code §78A-6-503, termination would not be in this child's best interest.

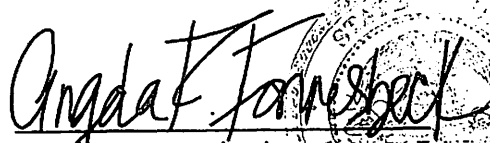
Based on the above Findings of Fact and Conclusions of Law, the Court enters the following order:


ORDER

1. Petitioner's Verified Petition to Terminate Parental Rights is dismissed.

THIS SHALL CONSTITUTE A FINAL ORDER FOR PURPOSES OF APPEAL.

Dated this 15 day of May 2015.


Angela F. Fonnesebeck
Juvenile Court Judge



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Findings of Fact, Conclusions of Law and Order** was emailed or mailed to the following on May 15, 2015.

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