

2001

State of Utah, in the interest of A.Z., a child under eighteen years of age v. A.Z. : Brief of Appellee

Utah Court of Appeals

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COPY

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
 In the Interest of :
 :
 A.Z., A Child under :
 eighteen years of age, :
 : Case No. 20010591-CA
 Appellee. :
 :
 T.Z. : Priority No. 4
 :
 Appellant. :

BRIEF OF APPELLEE STATE OF UTAH

APPEAL FROM A PARENTAL RIGHTS TERMINATION ORDER ENTERED
 AFTER TRIAL IN THE THIRD DISTRICT JUVENILE COURT
 IN AND FOR SALT LAKE COUNTY, STATE OF UTAH,
 THE HONORABLE ROBERT S. YEATES PRESIDING

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FILED
 DEC 11 2001
 COURT OF APPEALS

ORAL ARGUMENT AND PUBLISHED OPINION NOT REQUESTED

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
In the Interest of	:	
	:	
A.Z., A Child under	:	
eighteen years of age,	:	
	:	Case No. 20010591-CA
Appellee.	:	
	:	
T.Z.	:	Priority No. 4
	:	
Appellant.	:	

BRIEF OF APPELLEE STATE OF UTAH

JURISDICTION

T.Z. appeals from a final order of the Third District Juvenile Court terminating his parental rights to the above-captioned child pursuant to Utah Code Ann. § 78-3a-407 (Supp. 2001). The Utah Court of Appeals has jurisdiction of this case pursuant to Utah Code Ann. § 78-2a-3(2)(c) (Supp. 2001) and § 78-3a-909 (1996).

ISSUES PRESENTED AND STANDARDS OF REVIEW

1. Whether there was sufficient evidence to support three of the juvenile court's factual findings. Standard of Review: the juvenile court's findings of fact will not be overturned absent clear error. Furthermore, an appellant wishing to challenge the sufficiency of the evidence to support a court's factual finding must first marshal all the evidence which supports that finding

and show that it is insufficient. State ex rel. C.B., 1999 UT App. 293, ¶5, 989 P.2d 76, 77-78.

2. Whether the juvenile court's findings of fact support its ultimate conclusion that Appellant is unfit. Standard of Review: the juvenile court's conclusions of law are reviewed for correctness with no deference granted. However the juvenile court is entitled to a measure of discretion in its application of law to the facts. Id.

STATUTES, RULES, CONSTITUTIONAL PROVISIONS

1. Utah Code Ann. § 78-3a-407.

(Addendum A).

STATEMENT OF THE CASE

The Division of Child and Family Services (DCFS) filed a Verified Petition For Termination of Parental Rights in this matter on January 26, 2001. (R. 128-33).

The Petition came for trial on June 5, 2001, before the Honorable Robert S. Yeates, Third District Juvenile Court. (R. 190). The Court filed its Findings of Fact, Conclusions of Law, and Order on July 2, 2001, terminating appellant's parental rights to A.Z. on numerous grounds. (R. 190-95; Addendum B).

T.Z. filed a Notice of Appeal on July 18, 2001. (R. 199).

STATEMENT OF FACTS

T.Z. is the natural father of A.Z., a female child born November 26, 1991. He has been the custodial parent for most of her life. (R. 190; R. 210 at 104).¹

DCFS removed A.Z. from her father's home on or about September 3, 1997, based upon allegations of emotional maltreatment, physical abuse, and neglect. A.Z. was adjudicated as an emotionally abused child on December 1, 1997. She was in foster care from September 3, 1997 to July 1998. (R. 29-32, 34, 46-50, 190-91).

Between December 1997 and September 1998, DCFS provided a variety of reunification services designed to assist the father in regaining custody of his daughter. Those services included two episodes of family preservation, peer parenting, individual and family counseling, a psychological evaluation, and parenting classes. (R. 191; R. 210 at 84, 98-99, 104).

A.Z. was returned to her father's custody on a trial home placement in July 1998. Permanent custody was restored to T.Z. on September 3, 1998, and jurisdiction of the juvenile court was terminated. (R. 57-59, 89-90, 99-101, 191).²

¹ The natural mother, K.L.M., relinquished her parental rights on April 25, 2001. (R. 161-63).

² Nowhere in his brief does Appellant acknowledge the fact that there were two separate court cases involving him, or that jurisdiction was terminated for a period exceeding a year between these two cases.

DCFS removed A.Z. from her father's home a second time on September 7, 2000, based upon allegations of emotional maltreatment and physical abuse. A.Z. was adjudicated as an abused child on September 25, 2001, after T.Z. admitted to the allegations contained in the State's verified petition. DCFS has also investigated numerous Child Protective Services referrals concerning T.Z.'s care of his child. (R. 191, R. 210 at 84; Exh. #1).

In light of this family's history, the division was ordered to provide no reunification services to the father after the second removal. (R. 109-12, 118-22, 191). The State filed a Verified Petition for Termination of Parental Rights on January 26, 2001. (R. 128-33). The petition came for trial on June 5, 2001. (R. 190).

The evidence presented at trial indicated that T.Z. has been diagnosed with a major depressive disorder which impairs his ability to parent. He demonstrates symptoms of anxiety and suffers from irrationality associated with depression. His depression tends to interfere with his ability to focus on the needs of his child. The father has also been diagnosed with Personality Disorder NOS with schizoid, avoidant and paranoid features which further impair his ability to properly care for A.Z. (R. 191; Exh. #4).

T.Z. also leads a socially isolated lifestyle. He has few friends, if any, and has minimal family associations. He lives

his life as a loner, is unskilled in relationships, and is uncomfortable around others. The father presents in a hostile and intense manner and exhibits repetitive, concrete thinking and tends to fixate on fairness issues. He does not have the necessary insight or cognitive awareness to change his approach to parenting. (R. 191-92; R. 210 at 27; Exh. #1, 4).

T.Z. has significant parenting deficits and limited parenting awareness skills. He has a difficult time placing the needs of his child above his own and has difficulty maintaining appropriate parent/child boundaries. The father also has a difficult time meeting the developmental needs of A.Z. and tends to rely on his daughter to meet his social and emotional needs. (R. 192; Exh. # 1, 4).

Finally, the father has a difficult time managing his anger and admitted to yelling or screaming at A.Z., and to striking her on the head. Several months prior to trial, he began taking medications for his mental health problems. These medications appeared to stabilize T.Z. and it is unlikely that he could succeed as a parent on a long-term basis without them. (R. 192; R. 210 at 21, 24, 103, 107-09, 127, 129; Exh. #4).

The father's mistreatment of his child has left her emotionally scarred. A.Z. shares an enmeshed and pathological relationship with her father. She has become parentified, and has been diagnosed with anxiety and attachment disorders. A.Z.

has significant emotional and behavioral problems consistent with children who have been both abused and neglected. T.Z.'s actions and behaviors have damaged A.Z. to such an extent that she will have a hard time leading a normal life. (R. 192-93; R. 210 at 32, 48, 51, 53-54; 59, Exh. #3).

After hearing the evidence presented, the trial court issued its Findings of Fact, Conclusions of Law and Order on July 2, 2001. The court terminated T.Z.'s parental rights on grounds of abuse and neglect, unfitness, out-of-home placement, failure of parental adjustment, failure of a trial home placement, and best interests, pursuant to Utah Code Ann. § 78-3a-407. (R. 190-95).

SUMMARY OF THE ARGUMENT

Appellant challenges the sufficiency of the evidence to support the termination of his parental rights. However, he challenges only three of the court's factual findings, while ignoring other key findings. Furthermore, while he purports to marshal the evidence supporting these three findings, his argument is based upon misrepresentation. Accordingly, Appellant's entire argument is deceptive and disingenuous. The entire record in this case reveals a clear and adequate basis for terminating Appellant's parental rights. Therefore, the judgement should be affirmed.

ARGUMENT

I. APPELLANT'S SUFFICIENCY CHALLENGE FAILS BECAUSE HE CHALLENGES ONLY THREE FINDINGS AND THAT CHALLENGE IS BASED UPON A MISREPRESENTATION OF THE RECORD.

Appellant argues that there was insufficient evidence to support the termination of his parental rights. More specifically, he argues that three of the juvenile court's findings were erroneous and that this error undermines the court's ultimate decision. However, Appellant's central claim of error is based upon misrepresentation and is, thus, not persuasive when viewed in light of the record as a whole.

Appellant argues that the juvenile court erred in terminating his rights because he is currently a fit parent. He acknowledges his past deficiencies but claims to be currently fit because he is now taking medication to control his psychological problems. However, while conceding his past unfitness, he places all of the blame upon a former psychologist. In a nutshell his argument is this, he has a psychological disorder which is allegedly controllable through medication. Therefore, if the earlier evaluator had done his job properly, his disorder would have been remedied and he would not have been found to be unfit. Obviously, there are several problems with this argument, not the least of which is its inherent speculativeness.

First of all, in order to make this argument persuasive, Appellant has to distort the record and omit a key fact. According to Appellant, there were two evaluations performed in

this case, one by Dr. Icke, which was incorrect, and one by Dr. Reisinger-Marshall which was correct. However, what Appellant fails to acknowledge is that the evaluation performed by Dr. Icke was not, strictly speaking, part of this case.

Appellant's daughter was first removed in September 1997. (R. 29). As part of those proceedings, Dr. Icke performed his evaluation of Appellant in November 1997. (R. 34). Eventually, in September of 1998, the father was found to be in compliance with his service plan, full custody was returned to him, and court jurisdiction was terminated. (R. 99-101).

However, in September of 2000, A.Z. was removed again based upon allegations similar to her first removal. (R. 29-32, 109-112, 191; R. 210 at 24, 85). This removal led to the current proceedings. Appellant completely fails to point out that there was an intervening period of two years where he had full custody and the state was not involved in his life. Reading Appellant's brief gives this Court the impression that these two separate cases were one seamless proceeding.

In light of this important fact, the arguments that Appellant makes in his brief are tenuous at best. Given that Dr. Icke's evaluation was performed over three years prior to that of Dr. Reisinger-Marshall, it is difficult to say that it was necessarily incorrect at that time. This is particularly true given that those earlier proceedings ended with Appellant receiving custody of his daughter. His ostensible fitness

suggests not that Dr. Icke's evaluation was incorrect, but rather that Appellant's psychological problems had not fully manifested themselves at that time.

Moreover, assuming that Dr. Icke's dated evaluation was somehow relevant to these current proceedings, it was incumbent upon Appellant to introduce it into evidence and explain its relevance to the court. If this was Appellant's theory, he should have called Dr. Icke to testify, admitted his evaluation into evidence, and cross-examined Dr. Reisinger-Marshall about the earlier evaluation. In this manner he could have put this issue squarely before the court.

Instead, appellant now takes the backhanded approach of speculating on appeal that the juvenile court disregarded Dr. Icke's evaluation because it was not credible. (Appellant's Brief at 10). If Dr. Icke had testified at trial and his evaluation had been entered into evidence, such speculation might possibly be warranted. However, given Appellant's failure to place such evidence squarely before the court, this argument is not very persuasive. The reason this prior evaluation is not mentioned is because it was not current, not introduced into evidence, and not relevant to the current proceedings.

In any event, while Appellant's degree of psychological impairment at this earlier date is something which can only be speculated about, it is not really a crucial issue. What is

clear is that Appellant has serious psychological problems, and that they have seriously impacted his parenting abilities.

More importantly, his psychological problems have caused substantial damage to his child. This is really the most critical fact. Even assuming that Appellant is now fully cured by his current regimen of medication, which seems unlikely, it still does not make any difference.

This Court has clearly held that any claim of current fitness by a parent must be considered in light of the effect of their past unfitness upon the parent/child relationship. State ex rel. M.L., 965 P.2d 551 (Utah App. 1998). In this case, such an analysis proves fatal to Appellant's claim of present fitness, assuming for the sake of argument that he is now fit.

Several of the juvenile court's findings, which Appellant has failed to challenge, go directly towards this issue. For example, the court noted that Appellant leads a socially isolated lifestyle, has few friends, has generally poor interpersonal skills, and relies upon his daughter to meet his social and emotional needs. (R. 191-92, ¶¶17-19). In short, rather than acting like a parent to his child and putting her needs first, his behavior has caused his daughter to become parentified and requires her to, in effect, parent him. Id.; see also (R. 210 at 32, 61).

Furthermore, in light of her history of mistreatment, A.Z. is particularly in need of a stable nurturing home where she can

heal, not a home where she must act like the parent. (R. 193, ¶¶1-14) (court's best interest findings). Thus, while Appellant's mental health may have improved significantly with his new regimen of medication, he is a person who, emotionally, still has a long way to go.

Moreover, his daughter bears the scars of his past abuse and needs far more than he can give her at this time. Thus it is clear that Appellant has been unfit, remains essentially unfit, and that his daughter's best interests require termination of his parental rights. Therefore, even assuming that Appellant's speculative claims of error were correct, his parental rights were still properly terminated. Accordingly, the juvenile court's judgment should be affirmed.

CONCLUSION

Appellant challenges the termination of his parental rights, arguing that he is presently fit. However, his arguments are speculative and based upon a distortion of the record.

Additionally, he concedes his past unfitness but fails to acknowledge that his past abusive behavior has a continuing debilitating effect upon his child. The law makes clear that no claim to present fitness can outweigh the damage already done to the parent-child relationship by past abuse. Thus, even assuming Appellant's claim of present fitness was accurate, which is far

from clear, it would not matter. Therefore, the juvenile court's judgment should be affirmed.

STATEMENT CONCERNING ORAL ARGUMENT AND PUBLISHED OPINION

The state requests neither oral argument nor a published opinion in this appeal.

RESPECTFULLY SUBMITTED this 11th day of December, 2001.

MARK SHURTLEFF
Attorney General



JOHN PETERSON
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that, on the 11th day of December, 2001, I caused to be mailed, postage prepaid, two true and exact copies of BRIEF OF APPELLEE STATE OF UTAH to:

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ADDENDA

ADDENDUM A

(e) the name and address of the person having legal custody or guardianship, or acting in loco parentis to the child, or the organization or agency having legal custody or providing care for the child;

(f) the grounds on which termination of parental rights is sought, in accordance with Section 78-3a-407; and

(g) the names and addresses of the persons or the authorized agency to whom legal custody or guardianship of the child might be transferred.

(2) A copy of any relinquishment or consent, if any, previously executed by the parent or parents shall be attached to the petition.

1994

78-3a-406. Notice — Nature of proceedings.

(1) After a petition for termination of parental rights has been filed, notice of that fact and of the time and place of the hearing shall be provided, in accordance with the Utah Rules of Civil Procedure, to the parents, the guardian, the person or agency having legal custody of the child, and to any person acting in loco parentis to the child.

(2) A hearing shall be held specifically on the question of termination of parental rights no sooner than ten days after service of summons is complete. A verbatim record of the proceedings shall be taken and the parties shall be advised of their right to counsel. The summons shall contain a statement to the effect that the rights of the parent or parents are proposed to be permanently terminated in the proceedings. That statement may be contained in the summons originally issued in the proceeding or in a separate summons subsequently issued.

(3) The proceedings are civil in nature and are governed by the Utah Rules of Civil Procedure. The court shall in all cases require the petitioner to establish the facts by clear and convincing evidence, and shall give full and careful consideration to all of the evidence presented with regard to the constitutional rights and claims of the parent and, if a parent is found, by reason of his conduct or condition, to be unfit or incompetent based upon any of the grounds for termination described in this part, the court shall then consider the welfare and best interest of the child of paramount importance in determining whether termination of parental rights shall be ordered.

(4) Any hearing held pursuant to this part shall be held in closed court without admittance of any person who is not necessary to the action or proceeding, unless the court determines that holding the hearing in open court will not be detrimental to the child.

1994

78-3a-407. Grounds for termination of parental rights.

The court may terminate all parental rights with respect to one or both parents if it finds any one of the following:

(1) that the parent or parents have abandoned the child;

(2) that the parent or parents have neglected or abused the child;

(3) that the parent or parents are unfit or incompetent;

(4) that the child is being cared for in an out-of-home placement under the supervision of the court or the division, that the division or other responsible agency has made a diligent effort to provide appropriate services and the parent has substantially neglected, wilfully refused, or has been unable or unwilling to remedy the circumstances that cause the child to be in an out-of-home placement, and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care in the near future;

(5) failure of parental adjustment, as defined in this chapter;

(6) that only token efforts have been made by the parent or parents:

(a) to support or communicate with the child;

(b) to prevent neglect of the child;

(c) to eliminate the risk of serious physical, mental, or emotional abuse of the child; or

(d) to avoid being an unfit parent;

(7) the parent or parents have voluntarily relinquished their parental rights to the child, and the court finds that termination is in the child's best interest;

(8) the parent or parents, after a period of trial during which the child was returned to live in his own home, substantially and continuously or repeatedly refused or failed to give the child proper parental care and protection; or

(9) the terms and conditions of safe relinquishment of a newborn child have been complied with, pursuant to Title 62A, Chapter 4a, Part 8, Safe Relinquishment of Newborn Child.

2001

78-3a-408. 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 Section 78-3a-313.5.

(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 him 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 his physical, mental, and emotional health and development by a parent or parents who are capable of providing that care. However, a parent who, legitimately practicing his religious beliefs, does not provide specified medical treatment for a child is not for that reason alone a negligent or unfit parent;

(e) with regard to a child who is in the custody of the division, if 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) 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.

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

(a) sexual abuse, 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;

ADDENDUM B

**THIRD DISTRICT JUVENILE COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

STATE OF UTAH, in the interest of

ZUNKOWSKI, Alycia (11/26/91)

A person under the age of eighteen years

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER**

CASE NO. 861080

The above matter came before the Court for trial on June 5, 2001, on the Amended Verified Petition filed by the State of Utah on May 3, 2001 for Termination of the Parental Rights of Tom Zunkowski relative to the above-named child. Mr. Zunkowski was present and represented by counsel, Tupakk Renteria. The State was represented by Julie Lund, Assistant Attorney General, and the child was represented by Guardian ad Litem, Tracy Mills.

The conduct of the trial is set forth in the minutes. The Court took judicial notice of the legal file. At the conclusion of the trial, the matter was taken under advisement with a decision to be rendered within thirty days. Having reviewed all of the evidence, the Court enters the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT
PARENTAL FITNESS AND COMPETENCE

The Court hereby finds by clear and convincing evidence that :

- 1) Alycia Zunkowski is a nine year old female child having been born on November 26, 1991. She is a resident of Salt Lake County;
- 2) The natural father of the above-named child is Tom Zunkowski who resides at 287 East Cordelio, #8, Salt Lake City, Utah;
- 3) The natural mother of the above-named child is Karen Lorraine minor whose last known address was 1261 East 3745 South, Salt Lake City, Utah 84106;
- 4) Alycia has had minimal contact with her mother since infancy and has been raised almost exclusively by her father. Ms. Minor voluntarily relinquished her parental rights to Alycia before this Court on April 25, 2001;
- 5) Alycia was removed from the custody of her father on or about September 3, 1997 by the Utah State Division of Child and Family Services (D.C.F.S.), based on allegations of emotional maltreatment, physical abuse and neglect;

-continued on next page-

6) On or about December 1, 1997, Alycia was adjudicated as an emotionally abused child by this Court;

7) Alycia remained in foster care from September 3, 1997, to July of 1998;

8) From December of 1997, until September of 1998, D.C.F.S. provided a variety of reunification services to assist Mr. Zunkowski in being reunited with his daughter. Two episodes of Family Preservation Services were provided as well as peer parenting services. Individual and family counseling were provided by the State as well as parenting classes and a psychological evaluation;

9) On June 2, 1998, the Court authorized a trial home placement of Alycia with her father when deemed appropriate by DCFS;

10) On September 3, 1998, permanent custody and guardianship of Alycia was restored to Mr. Zunkowski and Juvenile Court jurisdiction was terminated;

11) On or about September 7, 2000, Alycia was again removed from the custody of her father by DCFS based on allegations of emotional maltreatment and physical abuse;

12) On September 25, 2000, the Court adjudicated Alycia as an abused child relative to Mr. Zunkowski;

13) Alycia has remained in the custody of DCFS since her second removal from her father on September 7, 2000;

14) The Division has investigated numerous child protective services referrals concerning Mr. Zunkowski's care of Alycia;

15) Mr. Zunkowski is diagnosed with a major depressive disorder which impairs his ability to parent. He demonstrates symptoms of anxiety and suffers irrationality associated with depression. His depression tends to interfere with his ability to focus on the needs of his daughter;

16) Mr. Zunkowski is also diagnosed with a personality disorder NOS with schizoid, avoidant, and paranoid features which further impairs his ability to properly care for his daughter;

17) Mr. Zunkowski leads a socially isolated lifestyle. He has few friends if any, and has minimal family associations. Mr. Zunkowski lives his life as a loner and is unskilled in relationships and is uncomfortable around others;

-continued on next page-

18) Mr. Zunkowski tends to present in a hostile and intense manner. His speech is stilted and deliberate. He exhibits repetitive concrete thinking and tends to fixate on fairness issues. Mr. Zunkowski does not appear to have the necessary insight on cognitive awareness to change his approach to parenting;

19) Mr. Zunkowski has significant parenting deficits and limited parenting awareness skills. He struggles to place the needs of Alycia above his own and has difficulty maintaining appropriate parent, child boundaries. Mr. Zunkowski has a difficult time meeting the developmental demands of Alycia and tends to rely on his daughter to meet his social and emotional needs;

20) Mr. Zunkowski has a difficult time managing his anger and admits to yelling and screaming at Alycia and striking her on her face and head;

21) Since January of 2001, Mr. Zunkowski has been taking medications for his personality disorder and for mood management. The medications appear to have had a stabilizing effect on him. Without medication given his history and emotional functioning coupled with his lack of parenting skills and personality characteristics, it is unlikely that he would succeed as a parent on a long-term basis;

22) Mr. Zunkowski's depression and attending anger pose a risk of harm to Alycia;

23) Alycia has been removed from her fathers care on two different occasions by the State of Utah during the last four years. Both removals involved emotional maltreatment and physical abuse. Between the first and second removal, the State of Utah provided Mr. Zunkowski with numerous services to help him improve his parenting skills. Even with their services, Mr. Zunkowski has been unable to make the fundamental changes necessary to safely parent his daughter. He has damaged his daughter emotionally to the point that she will more than likely have a difficulty in leading a normal life;

24) Mr. Zunkowski poses an ongoing risk of harm to Alycia due to his mental health and depression problems coupled with his anger management issues;

BEST INTEREST OF THE CHILD

1) Alycia is a bright and precocious child whose intellectual functioning is in the "high average" range;

2) Mr. Zunkowski loves his daughter and wants to be reunited with her. Alycia loves her father and is concerned about him;

3) Alycia presents as a child who has been neglected. She is aggressive and demonstrates socially inappropriate behaviors. Alycia is a very demanding and challenging child

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and always wants to be the center of attention. Her social functioning is delayed but has improved significantly while in foster care.

4) Alycia demonstrates emotional and behavioral problems consistent with children who have been abused. She is angry and internalizes her anger and aggression towards herself. Alycia is hyper sexualized and seems to use a seductive interpersonal style to achieve attention for herself and appears older than she is. She views herself as a fragile person and sees the world as a threatening place;

5) Alycia desperately wants to connect with others but fears rejection. She is diagnosed with a reactive attachment disorder yet has bonded well to the two foster families she has resided with since her second removal;

6) Alycia has also been diagnosed with an anxiety disorder and is a difficult child to manage as a result of her attachment problems and her anxiety disorder. She also suffers from depression;

7) Alycia shares an enmeshed and pathological relationship with her father. She is very parentified and acts as a caretaker for her father and has bonding issues with him;

8) Alycia loves her father but is angry toward him for his hurting her in the past;

9) Alycia is a child who is easy to love but difficult to deal with because of her behavioral problems and her manipulative behaviors. She is a needy child who can be aggressive in pursuit of affection and acceptance and she tends to be clingy;

10) Alycia has specialized needs and requires stability and structure;

11) Alycia wishes to be adopted by an older half-sister, Angela Mandeville, who resides in New York. Ms. Mandeville has expressed an interest in adopting Alycia and came to Salt Lake City to visit with her for a week earlier this year;

12) Alycia is doing very well in her current foster placement but is anxious to be placed with her half sister. Alycia is concerned about her father but nevertheless wishes to be placed with her half-sister in New York;

13) Alycia has made significant progress since being placed back into foster care in September of 2000. She has become more social and less anxious and less preoccupied with taking care of her father;

14) There is no question that Mr. Zunkowski loves Alycia. It is also clear that Mr.

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Zunkowski has a history of being physically and emotionally abusive toward his daughter which has been very detrimental to her growth and development. It is equally clear that the best interests of Alycia would be served by the termination of her father's parental rights to free her for adoption;

Therefore, based on the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1) That pursuant to Utah Code Ann. Section 78-3a-407(2), Alycia Zunkowski has been abused and neglected by her biological father, Tom Zunkowski, justifying the termination of his parental rights;

2) That pursuant to Utah Code Ann. Section 78-3a-407(3), Tom Zunkowski is an unfit and/or incompetent parent due to emotional and/or mental illness which has rendered him unable to care for the immediate and continuing physical needs of Alycia for extended periods of time, thereby justifying a termination of his parental rights;

3) That pursuant to Utah Code Ann. Section 78-3a-407(4), Alycia Zukowski has been cared for in in out-of-home placement under the supervision of the Division of Child and Family Services. The Division has made diligent efforts to provide appropriate services and Mr. Zunkowski has substantially neglected, willfully refused or has been unable or unwilling to remedy the circumstances that caused Alycia to be in an out-of-home placement, and there is a substantial likelihood that Mr. Zunkowski will not be capable of exercising proper and effective parental care in the near future, thereby justifying a termination of his parental rights;

4) That pursuant to Utah Code Ann. 78-3a-407 (5), Tom Zunkowski has failed to make a parental adjustment, thereby justifying a termination of his parental rights;

5) That pursuant to Utah Code Ann. 78-3a-407(8) Mr. Zunkowski, after a period of trial during which Alycia was returned to live in her home, substantially and continuously or repeatedly refused or failed to give his daughter proper parental care and protection;

6) That it is in Alycia Zunkowski's best interest to be adopted where she will have the opportunity to be protected from abuse and neglect;

7) It is proper that an order be entered permanently terminating the parental rights of Tom Zunkowski to Alycia Zunkowski;

ORDER

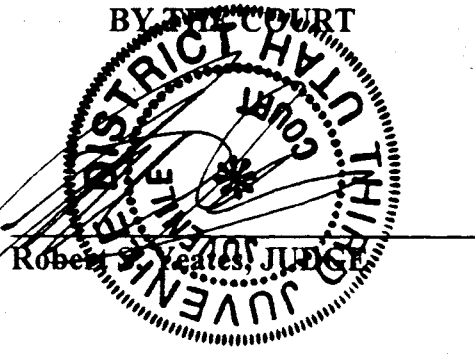
1) The parental rights of Tom Zunkowski are hereby permanently terminated relative to Alycia Zunkowski including any residual rights.

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2) Temporary custody and guardianship of Alycia is continued with the Division of Child and Family Services for the purpose of adoption.

3) A hearing for review of the permanency plan for the child shall be set in the manner provided by law.

Dated this 2nd day of July, 2001



CERTIFICATE OF MAILING

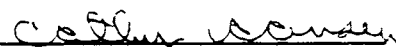
I hereby certify that I delivered a true and exact copy to the following:

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Salt Lake City, Utah 84111

Dated this ____ day of July, 2001


Deputy Court Clerk