

NOT DESIGNATED FOR PUBLICATION

No. 119,061

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Interest of I.O.,  
A Minor Child.

MEMORANDUM OPINION

Appeal from Leavenworth District Court; MICHAEL D. GIBBENS, judge. Opinion filed January 18, 2019. Affirmed.

*Charles Joseph Osborn*, of Osborn Law Office, LLC, of Leavenworth, for appellant natural father.

*Chadler E. Colgan*, of Colgan Law Firm, LLC, of Kansas City, for appellant natural mother.

*Joan Lowdon*, deputy county attorney, and *Todd Thompson*, county attorney, for appellee.

Before BRUNS, P.J., BUSER and SCHROEDER, JJ.

BUSER, J.: This is a parental termination appeal brought by the biological Mother and Father of I.O. On May 24, 2017, the district court terminated the parents' rights to their son, I.O. On appeal, both parents contend the district court erred because there was insufficient evidence they were unfit parents as set forth in K.S.A. 2017 Supp. 38-2269. Upon our review of the record on appeal and the parties' briefs, we hold the district court did not err in ordering the termination of parental rights to I.O. Accordingly, we affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

Mother and Father are I.O.'s biological parents. On July 13, 2014, Mother left I.O. at his paternal relatives' home in the care of his 16-year-old aunt. At the time, I.O. was four months old. When Mother did not return after several hours, I.O.'s paternal grandmother called Mother to come pick him up. Mother told the paternal grandmother to take I.O. to the maternal great-grandmother and the paternal grandmother complied. The maternal great-grandmother called the Leavenworth Police Department advising them that she could not provide care for I.O.

The officers attempted to contact Mother without success. Upon learning from paternal relatives that Mother and Father were essentially homeless, the officers took I.O. and placed him in police custody. When officials finally contacted Mother, she indicated that she could no longer care for I.O. and "acted like it was no big deal and had no signs of sympathy or regret." Mother also advised that she wanted to "move on" with her life. As a result, the State filed a child in need of care (CINC) petition, and the district court ordered an ex parte protective order which transferred the custody of I.O. to the Kansas Department of Children and Families (DCF).

On August 5, 2014, Mother stipulated that I.O. was a CINC and the district court placed the infant in DCF custody. This was not Mother's first child to be removed from her care due to her inability to provide parental care. In 2012, Mother consented to a permanent custodianship of her eight-month-old daughter with her maternal great-grandmother. On September 2, 2014, the district court adopted a reintegration plan for Mother to complete, while I.O. remained in DCF custody. Social services were offered to Mother and Father through KVC Kansas (KVC). Mother's compliance with the reintegration process proceeded slowly.

During the latter part of 2014 and in 2015, there were concerns about the safety and appropriateness of Mother's residence. At this time, Mother ended her relationship with Father and was financially dependent on her boyfriend. According to the State, Mother and Father also frequently failed drug testing or declined to submit to the testing. The State asserted that Mother tested positive for drug use once in 2014 and on five occasions during 2015. The drugs identified included marijuana, methadone, benzodiazepine, and oxycodone. Mother declined drug testing once in 2014 and on six occasions during 2015. Father failed to submit to drug testing on two occasions in 2014.

On February 20, 2015, Father was arrested for possession of marijuana with the intent to distribute and possession of narcotic paraphernalia. Nine months later, on November 12, 2015, Father was arrested after shots were fired into an occupied dwelling and he fled from officers. A handgun was recovered along the route that Father had traveled in attempting to escape from police. By December 8, 2015, Father was in the Leavenworth county jail.

On December 11, 2015, the State filed a motion to terminate Mother and Father's parental rights. At the time this motion was filed, I.O. was 22 months old and had been out of his parents' care since he was 4 months old. The motion was later withdrawn when Mother began complying with the reintegration plan. On February 26, 2016, Father was convicted of criminal discharge of a weapon into an occupied dwelling, a level 7 felony, and sentenced to 12 months' incarceration.

I.O. remained in DCF custody while the district court continued to conduct status hearings until June 2016. In June 2016, the district court determined that Mother had progressed in her reintegration plan. As a result, while I.O. was to remain in DCF custody, he was placed in Mother's home while she continued to work on her reintegration plan. Importantly, the district court ordered Mother not to allow anyone to care for I.O. unless they passed a background check or were licensed home care

providers. The district court also ordered that upon Father's release from prison, his visitation with I.O. must be supervised and visitation was contingent on Father successfully passing drug testing.

In October 2016, concerns were raised about Mother's frequent changes in housing. For example, during two months in late 2016, Mother moved three times without providing prior notice to KVC staff members. Mother was also not forthcoming about other individuals who were living in the residences.

In December 2016 DCF and KVC staff members learned that Mother had left I.O. in Father's care on several occasions in violation of district court orders. On one occasion, Mother let Father have custody of I.O. for a four-day period. Mother knew Father should not have any unsupervised contact with I.O. and that only licensed home care providers should care for him. Moreover, Mother was aware that Father had a history of violence. In one instance, Father had previously strangled Mother to the point that she had difficulty breathing.

On December 3, 2016, Mother allowed Father's girlfriend to pick I.O. up and take him to the girlfriend's home with Father. While I.O. was there, a firearm discharged and the child was shot in his little finger. According to Mother, I.O. told several people that Father shot him. At the time, 4 adults and a 12-year-old boy were present in the home. One of the adults was also shot in the leg. There was no indication that any of these individuals was a licensed home care provider. I.O.'s injury necessitated surgery at Children's Mercy Hospital. His hand was placed in a cast, and further surgeries are possible as I.O. continues to grow.

On January 4, 2017, the State filed a second motion to terminate parental rights. The motion recounted the shooting of I.O. and alleged that Father had failed to submit to drug tests, provide proof of income, employment, or receipt of mental health services.

Similarly, the State asserted that Mother declined to participate in mental health services and, due to financial limitations, had not taken her prescription medication.

On May 24, 2017, an evidentiary hearing was held on the State's second motion to terminate parental rights. At the hearing, I.O.'s caseworkers and Mother testified. Cara Smith, the case manager from January 2015 to April 2015, testified that during this time frame, Father did not make any progress towards reintegration and that Mother struggled with reintegration.

Tiffany Hekele was the case manager from April 2015 to June 2016 and after the December 2016 shooting incident. According to Hekele, Mother's reintegration plan included providing stable housing, employment, budgeting, participation in mental health services, and parenting classes with court-ordered visitation. Under the plan, I.O. was to be supervised at all times. If there was a need for other supervision, a plan would be developed where only responsible adults could watch I.O. Hekele related conversations wherein Mother described Father's behavior as inappropriate. With regard to the shooting incident, Mother indicated that she believed Father was in a good place and that Father's girlfriend was appropriate to supervise I.O. After the shooting incident, Hekele testified that Mother complied with KVC's reintegration plan. In particular, Mother was working at Burger King and submitted to weekly drug tests.

With regard to Father, Hekele testified that Father did not participate in Mother's reintegration plan. Although Father's visitation with I.O. was contingent on successfully passing drug tests, Father never had supervised visitation with I.O. Hekele believed that Father's unauthorized visits with I.O. occurred on more than one occasion. Of note, Father had no contact with KVC while Hekele was the caseworker.

Elizabeth Gray, an aftercare therapist with KVC, testified about her efforts to assist the family upon I.O.'s return to Mother's home. According to Gray, during this time

period Mother was not completely forthcoming about the individuals who were living with her. This interfered with necessary background checks. Gray testified that from September 2016 to December 2016, she was concerned about Mother's frequent residential moves and her failure to provide prior notice to KVC so that a walkthrough of the home could occur to insure that it was suitable for I.O.

Mother testified on her own behalf. Regarding the shooting incident, Mother testified that she "messed up," but she "never thought that would happen while he was with his father. And I know I shouldn't have let him go there." Mother acknowledged that she was aware that Father was not allowed to have unauthorized contact with I.O. and that she was aware of Father's history of violence. Mother agreed that Father had previously strangled her until she could not breathe. Mother also admitted that she had not been a part of I.O.'s life for about one-third of his life. At the time of the hearing, Father was incarcerated in prison and he did not testify.

Patrick Cahill, the guardian ad litem for I.O., in closing argument, observed that Mother had done some positive things, but she had not been able to parent her son for the majority of his life. Cahill noted that Mother only had actual custody of I.O. for one-sixth of his life. He also expressed concern about the December 2016 shooting incident. According to Cahill, it was an incredibly bad decision on Mother's part when a child of tender years is completely dependent on adults to protect him. Cahill acknowledged that Mother was improving as a parent but he expressed concern that she had a daughter who was also adjudicated a CINC and is now living with the Mother's grandmother.

The district court took the termination matter under advisement while noting the length of time that the case had been open and I.O.'s lengthy out-of-home placement. The district court stated that Mother's progress towards reintegration was positive, but her decisions to let Father have unauthorized visitations with I.O. on numerous occasions

while knowing Father had a history of violence were significant because "[I.O.'s] life was actually put in[] danger."

In a five-page memorandum decision, the district court terminated both Mother and Father's parental rights after finding that the State proved, by clear and convincing evidence, that Mother and Father "are unfit by reason of conduct or condition which renders the parents unable to care properly for a child and the conduct or condition is unlikely to change in the foreseeable future." As discussed in the analysis section, the district court relied on multiple factors listed under K.S.A. 2017 Supp. 38-2269(b) and (c). Additionally, the district court found that it would be in the best interests of I.O. to terminate parental rights to insure the child's physical, mental, and emotional health. The district court granted custody to DCF and authorized adoption as the permanency goal.

#### INTRODUCTION

When an appellate court reviews a district court's termination of parental rights, it considers whether a rational fact-finder could have found it highly probable, i.e., by clear and convincing evidence, that the parent's rights should be terminated. *In re M.H.*, 50 Kan. App. 2d 1162, 1170, 337 P.3d 711 (2014). "[I]n reviewing the district court's decision, we may not reweigh the evidence, judge the credibility of witnesses, or redetermine factual questions." 50 Kan. App. 2d at 1170.

The Revised Kansas Code for Care of Children (Code) allows a district court to terminate parental rights upon certain findings after a child has been adjudicated a CINC. K.S.A. 2017 Supp. 38-2269. The district court may only terminate parental rights when there is clear and convincing evidence that (1) the parent is unfit by reason of conduct or condition which renders the parent unable to properly care for the child and (2) such unfitness is not likely to change in the foreseeable future. K.S.A. 2017 Supp. 38-2269(a); *In re M.H.*, 50 Kan. App. 2d at 1169.

The statute lists nonexclusive factors the court shall consider in making a determination of unfitness. K.S.A. 2017 Supp. 38-2269(b). The court must also consider a separate list of nonexclusive factors when a child is not in the parent's physical custody. K.S.A. 2017 Supp. 38-2269(c). "The existence of any one of [these] factors standing alone may, but does not necessarily, establish grounds for termination of parental rights." K.S.A. 2017 Supp. 38-2269(f). Moreover, under K.S.A. 2017 Supp. 38-2269(g)(1):

"If the court makes a finding of unfitness, the court shall consider whether termination of parental rights as requested in the petition or motion is in the best interests of the child. In making the determination, the court shall give primary consideration to the physical, mental and emotional health of the child."

We will consider the appeals by Mother and Father individually.

#### TERMINATION OF FATHER'S PARENTAL RIGHTS

On appeal, Father contends there was insufficient evidence to support the district court's finding that he was an unfit parent. In arriving at its termination decision, the district court found that five statutory factors applied to warrant termination of Father's parental rights. We will consider each factor separately to evaluate whether sufficient evidence supported the district court's finding.

*Conduct toward a child of a physically, emotionally, or sexually cruel or abusive nature (K.S.A. 2017 Supp. 38-2269[b][2])*

As to the first factor, Father admits to the incident in which I.O. was shot, but he asserts it was simply an accident which does not equate to physical cruelty or child abuse. Father further asserts that he was not criminally charged for the incident and there were no previous allegations of abuse or cruelty prior to the shooting.

At the outset, the fact that criminal charges were never filed against Father is not determinative. A child of tender years may be subject to emotionally or physically cruel or abusive conduct, yet there may never be criminal charges filed. Moreover, although Father notes there were no prior reported instances of abuse or cruelty towards I.O., the record demonstrates Father's propensity for violence against Mother and others—which in one case resulted in his criminal conviction for his discharge of a weapon into an occupied dwelling.

There are limited facts regarding the shooting incident. At the time of the shooting, there were 4 adults at the home with I.O. and a 12 year-old boy. One of the adults was also injured during the incident. While Father suggests the shooting may have been an accident, the fact that I.O. was injured in Father's care is informative. Because Father was previously convicted of a felony, a question is raised whether he possessed the firearm and, if so, whether he was legally permitted to do so. Regardless, it is apparent that Father allowed I.O. to be present when a firearm was discharged and injured him. To permit I.O. to be victimized both emotionally and physically by the discharge of a firearm is both cruel and abusive. This is especially true given I.O.'s statement, "[D]addy shot [me]." Under the circumstances, the cruel and abusive nature of this incident is highlighted by the fact that I.O. was old enough to attribute his gunshot injury to his father. Sufficient evidence supports the district court's finding regarding this factor.

*Conviction of a felony and imprisonment (K.S.A. 2017 Supp. 38-2269[b][5])*

Father candidly concedes that he was convicted of a felony and imprisoned, but he argues this was not a "condition unlikely to change" because he was discharged in February 2018, about six months after the district court terminated his rights. The State responds: "Yet, the father, by his own acknowledgement, was in custody for almost the entirety of this case."

During the termination hearing, the district court took judicial notice of three criminal cases filed in 2015 wherein Father was a defendant—15 CR 108, 15 CR 317, and 15 CR 780. We agree with the State that Father's past conduct is the best predictor of future conduct.

Our court addressed a similar issue in *In re S.D.*, 41 Kan. App. 2d 780, 204 P.3d 1182 (2009). In that case, the mother was scheduled to be released from incarceration in less than a year. Our court considered whether the mother's condition would change in the foreseeable future. We noted that "[w]hat is the 'foreseeable future' is to be considered 'from the child's perspective, not the parents', as time perception of a child differs from that of an adult. [Citation omitted.]" 41 Kan. App. 2d at 790. The panel concluded that "incarceration for as few as 7 additional months from the date of the hearing, along with other factors, was sufficient to establish that the parent's condition would not change in the foreseeable future." 41 Kan. App. 2d at 790.

Similar to *In re S.D.*, Father was incarcerated from the date of the termination hearing in May 2017 until his release in February 2018. Thus, Father had about nine months left to serve on his sentence at the time of the hearing. This length of time, coupled with Father's prior criminal conduct, was sufficient to show that Father's confinement would not change in the foreseeable future.

*Lack of effort on the part of the parent to adjust the parent's circumstances, conduct, or conditions to meet the needs of the child (K.S.A. 2017 Supp. 38-2269[b][8])*

With regard to this factor, Father argues that his incarceration prevented him from showing the required effort to change his circumstances, conduct, and conditions to meet the needs of I.O. Father claims that while the incarceration was his own fault, it would be inequitable for the district court to count his incarceration against him twice. Father also notes that the record is silent as to Father's reintegration.

Because Father was incarcerated for the majority of I.O.'s life, he did not attend the CINC proceedings or the hearings thereafter. Thus, the district court did not provide a plan for Father's reintegration with I.O. and, accordingly, the record does not show any reintegration efforts by Father.

Although Father did not have a court-mandated reintegration plan, he did not ask for contact with I.O. or try to maintain an ongoing relationship with him during his incarceration. Upon Father's release from prison, he had multiple unauthorized visits with I.O., including a four-day trip to Lawrence despite being fully aware that his visitation with I.O. was contingent on passing drug tests and that all visits had to be supervised. Father ignored these court orders and refused to submit to drug tests. Additionally, Father lacked the effort to adjust his conduct to meet I.O.'s needs when Father put I.O. in unsafe and dangerous circumstances which resulted in I.O.'s shooting injury. Sufficient evidence supports the district court's finding regarding this factor.

*The child has been in extended out-of-home placement as a result of actions or inactions attributable to the parent in conjunction with the failure to maintain regular visitation, contact, or communication with the child or with the custodian of the child. (K.S.A. 2017 Supp. 38-2269[b][9] and K.S.A. 2017 Supp. 38-2269[c][2])*

The district court also found that K.S.A. 2017 Supp. 38-2269(b)(9) and (c)(2) were statutory factors that indicated Father's parental unfitness. The statutory scheme requires that (1) the child has been in extended out-of-home placement due to the actions of the parent under (b)(9) and (2) one of the factors—in this case (c)(2)—is applicable. The district court found that I.O.'s extended out-of-home placement was due to Father's actions and also that he failed to maintain regular visitation, contact, or communication with the child or with the custodian of the child.

At the outset, Father concedes "the District Court is correct that [I.O.] has been in extended out of home placement." However, he argues that I.O.'s extended out-of-home

placement began due to Mother's actions of leaving I.O. with relatives, not from his own conduct. Father also asserts that the evidence does not support the finding that he failed to maintain visitation, contact, or communication with I.O. Instead, Father claims that he maintained contact with I.O. and that while he handled it in an inappropriate—and on one occasion unsafe manner—the district court cannot deny that regular contact occurred.

Father was incarcerated for the majority of I.O.'s life. After Father was released from prison sometime after June 2016, he had several unsupervised visits with I.O. However, these visits or contacts were irregular, given that Father was incarcerated again at the time of the termination hearing in May 2017. Thus, there is evidence to support the finding that Father failed to maintain regular contact with I.O. and when he did visit the child, he failed to do so in accordance with court orders. Sufficient evidence supports the district court's finding regarding this factor.

In summary, one statutory factor standing alone may establish grounds for termination of parental rights. K.S.A. 2017 Supp. 38-2269(f). Upon our review of the district court's order terminating Father's parental rights, we have reviewed all the evidence, viewed in the light most favorable to the State, and we are convinced that a rational fact-finder could have found it highly probable by clear and convincing evidence that the parent's rights should be terminated. See *In re K.W.*, 45 Kan. App. 2d 353, Syl. ¶ 1, 246 P.3d 1021 (2011).

Moreover, Father's prior criminal history and lengthy incarceration shows that his circumstances are unlikely to change in the foreseeable future. In light of I.O.'s physical, mental, and emotional health, we hold it is in I.O.'s best interests to terminate Father's parental rights.

## TERMINATION OF MOTHER'S PARENTAL RIGHTS

On appeal, Mother similarly contends the district court did not have sufficient evidence that she was unfit. As to Mother, the district court found that four statutory factors applied to warrant termination of her parental rights. We will consider each factor separately.

*Physical, mental or emotional abuse, or neglect or sexual abuse of a child (K.S.A. 2017 Supp. 38-2269[b][4])*

Mother contends that her actions and omissions did not rise to the level of neglect as defined in K.S.A. 2017 Supp. 38-2202(t). That statute defines neglect as:

"[A]cts or omissions by a parent, guardian or person responsible for the care of a child resulting in harm to a child, or presenting a likelihood of harm, and the acts or omissions are not due solely to the lack of financial means of the child's parents or other custodian. Neglect may include, but shall not be limited to:

. . . .

"(2) failure to provide adequate supervision of a child or to remove a child from a situation which requires judgment or actions beyond the child's level of maturity, physical condition or mental abilities and that results in bodily injury or a likelihood of harm to the child." K.S.A. 2017 Supp. 38-2202(t).

Mother argues that although I.O. was initially adjudicated a CINC because of her conduct, she had improved her parenting skills by following her reintegration plan. Mother claims that if she failed to supervise I.O. or failed to remove him from a situation resulting in bodily harm on one occasion, it is not sufficient to terminate her parental rights. Mother also points out that she is employed and moved to a new city to get a new start.

In response, the State acknowledges Mother's "considerable progress" made after the filing of the first motion to terminate, but adds that Mother "wanted to go out for her birthday and, as such, decided to leave [I.O.] with his father, not only knowing of the father's violence, but having been subjected to it herself. Her action resulted in harm to I.O."

I.O.'s caseworkers generally agreed that Mother had made significant progress on complying with her reintegration plan. As a result, the district court allowed I.O. to be placed in Mother's home while DCF retained legal custody in June 2016. Of course, the purpose of the reintegration plan was not simply to learn parenting skills but for Mother to exhibit them in caring for her young son. Only six months after I.O. was placed with Mother, she began to allow Father to have unauthorized contacts with I.O.

As Mother conceded at the termination hearing, she was fully aware that Father was not allowed to have contact with I.O. without supervision and any visitation was contingent on Father passing drug tests. Mother was also required to provide information to DCF and KVC regarding any person who had contact with I.O., and she was only allowed to have licensed home care providers watch I.O. when she was not able to supervise the child. Finally, Mother was aware that Father had a violent history and had choked her almost to unconsciousness on a prior occasion.

Knowing all this, Mother still allowed Father's girlfriend to pick I.O. up and take him to her house to be with Father. In short, Mother willfully disobeyed court orders and KVC staff directives that were specifically designed to protect the safety of I.O. As a result, this lack of judgment directly caused I.O. to be shot with a firearm. It is understatement to observe that this conduct showed that Mother failed to provide adequate supervision for I.O. and failed to remove him from a situation which required judgment beyond his maturity level, physical condition, and mental abilities. In sum,

Mother's conduct fulfilled the statutory prerequisites for a finding of neglect. See K.S.A. 2017 Supp. 38-2202(t).

Mother argues that she is "certainly guilty of an instance of poor judgment and violating the Court's order in allowing Natural Father [to have] contact with I.O. when he was injured, but that alone is insufficient to terminate her parental rights." Mother also emphasizes that she is remorseful and has continued to cooperate with DCF after the termination hearing. Mother relies on *In re D.M.*, No. 112,445, 2015 WL 2414508 (Kan. App. 2015) (unpublished opinion), to support her position that more than one instance of poor judgment is necessary in order to justify the termination of parental rights.

In *In re D.M.*, the district court ordered Mother to not have contact with B.W. The mother and B.W. previously had arguments, but the mother testified that she did not understand why the no-contact order was in place because B.W. had never been physical or violent with her. The district court found that the "physical, mental, or emotional abuse or neglect" factor applied because the mother repeatedly violated the no-contact order with B.W. and was aware that violating the order would result in her kids being removed from the home, thereby neglecting their emotional health. However, our court found there was no evidence that mother or the children were ever abused by B.W. We found that "[m]ore is required because there is no evidence equating Mother's violation of the no-contact order with abuse of the children." 2015 WL 2414508, at \*5.

In *In re D.M.*, there was also an incident where the children were left unattended in a park for over an hour which displayed Mother's poor judgment. Our court held that "a single documented instance of bad judgment is not sufficient, under the clear and convincing standard, to persuade us to terminate Mother's parental rights forever." 2015 WL 2414508, at \*5.

*In re D.M.* provides scant support for Mother's argument. Unlike *In re D.M.*, in the present case on appeal, there was clear evidence that Father had previously exhibited domestic violence by choking Mother. Father also had a prior conviction for violence; in particular, on February 26, 2016, Father was convicted of criminal discharge of a weapon into an occupied dwelling, a level 7 felony, and sentenced to 12 months' incarceration.

Mother was fully aware of Father's violent tendencies. Yet, with this knowledge and cognizant of the numerous restrictions placed on Father having any visitation with I.O., Mother imperiled I.O.'s safety and well-being. As a consequence, I.O. sustained a gunshot wound.

Moreover, Mother's conduct was not just a single instance of bad judgment. Mother left I.O. with adults that were not licensed home care providers and did not have background checks performed on them. There were multiple instances where Mother allowed Father to have unsupervised visits and Mother testified that she was not always forthcoming with that information. As discussed above, Mother's conduct meets the definition of neglect found in K.S.A. 2017 Supp. 38-2202(t). Thus, there was evidence of multiple instances of poor judgment. Sufficient evidence supports the district court's finding regarding this factor.

*Lack of effort on the part of the parent to adjust the parent's circumstances, conduct, or conditions to meet the needs of the child (K.S.A. 2017 Supp. 38-2269[b][8])*

Mother claims there is insufficient evidence that she lacked the effort to adjust her circumstances, conduct, or conditions to meet the needs of the child because I.O.'s caseworkers were not concerned about her employment, housing, or providing drug tests. Instead, Mother argues that she has made sufficient efforts to adjust her circumstances as evidenced by the fact that I.O. was allowed to reside with her in 2016.

Mother is correct that there was evidence of her compliance with most of the reintegration goals. There were concerns, however, that while I.O. was residing with Mother she failed to give KVC notice about moving until she had already moved or was in the process of moving. Mother was also not forthcoming about who else was living in the residences with her and I.O. These omissions correlate to a lack of concern regarding I.O.'s safety and physical well-being that led to I.O. being shot while visiting with his Father.

While Mother made important progress with her reintegration plan, she did not complete it, to the detriment of I.O. Considering all the evidence, we are persuaded that the district court did not err in ruling that Mother lacked the necessary effort to change her circumstances to meet I.O.'s needs.

*The child has been in extended out-of-home placement as a result of actions or inactions attributable to the parent in conjunction with the failure to assure care of the child in the parental home when able to do so (K.S.A. 2017 Supp. 38-2269[b][9] and K.S.A. 2017 Supp. 38-2269[c][1])*

For the final two factors, Mother concedes that I.O. was in out-of-home placement for an extended period of time. See K.S.A. 2017 Supp. 38-2202(i). She disagrees, however, that she failed to "assure care of the child in the parental home when able to do so" because she made progress with her reintegration plan and provided housing for I.O.

The State counters that I.O. was removed from Mother's custody when he was four months old. I.O. then spent five and a half months residing with Mother from June through December 2016. The State concludes: "The vast majority of [I.O.'s] life was spent in out of home placement."

As detailed and discussed earlier in this opinion, the evidence was noteworthy that while Mother made strides towards completing her reintegration program, she repeatedly

made decisions that adversely impacted I.O.'s safety and well-being. This poor decision making was also in direct contravention of the district court's orders and the directives of DCF and KVC. In short, there is substantial competent evidence that Mother failed to assure that I.O. was properly being taken care of when he was not with her.

While Mother now concedes that she "exercised extremely poor judgment," she states this lack of judgment will never occur again. As mentioned earlier, our court generally does not evaluate whether a parent's condition will change in the foreseeable future from the parent's perspective of time. On the contrary, "[w]hat is the 'foreseeable future' is to be considered 'from the child's perspective, not the parents', as time perception of a child differs from that of an adult. [Citation omitted.]" *In re S.D.*, 41 Kan. App. 2d at 790. I.O.'s lifetime has been remarkable for the months that he has remained in State custody. Considering the lengthy history of this case and Mother's failures and omissions which have already adversely affected I.O., we are convinced that Mother's condition will not change in the foreseeable future.

#### CONCLUSION

We have reviewed the district court's termination of Mother and Father's parental rights and considered whether a rational fact-finder could have found it highly probable, i.e., by clear and convincing evidence, that the parents' rights should be terminated. In our review of the district court's decision we have not reweighed the evidence, judged the credibility of witnesses, or redetermined factual questions.

Based upon our review we are convinced there is clear and convincing evidence that Mother and Father are unfit by reason of conduct or condition which renders the parents unable to properly care for I.O. and such unfitness is not likely to change in the foreseeable future. Finally, for the sake of completeness we also conclude that the district

court's order of termination was in I.O.'s best interests. See K.S.A. 2017 Supp. 38-2269(g)(1).

Affirmed.