NOT DESIGNATED FOR PUBLICATION

No. 125,474

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Interest of C.T.,
a Minor Child.

MEMORANDUM OPINION

Appeal from Rawlins District Court; KEVIN BERENS, judge. Opinion filed March 24, 2023. Affirmed.

Craig L. Uhrich, of Uhrich Law Firm, P.A., of Oakley, for appellant natural mother.

Heather F. Alwin, of Alwin Legal Services, LLC, of Colby, guardian ad litem.

Isaac LeBlanc, county attorney, for appellee.

Before COBLE, P.J., HILL and ATCHESON, JJ.

PER CURIAM: The natural Mother of C.T. appeals the district court's decision to terminate her parental rights, largely claiming the insufficiency of evidence presented by the State. Despite her difficulties meeting case plan goals, she argues that the district court erred by finding her unfit, that her unfitness is unlikely to change in the foreseeable future, and that termination of her parental rights was not in the best interests of the child. We disagree. Finding the State presented clear and convincing evidence of Mother's inability to adjust her circumstances to meet the needs of her child, and the court did not abuse its discretion in finding that termination of Mother's parental rights was in the child's best interests, we affirm the district court's decision.

FACTUAL AND PROCEDURAL BACKGROUND

Cases involving the termination of parental rights are necessarily fact driven, so we must set forth the factual background in some detail. In May 2019, when C.T. was about seven months old, the State filed a petition alleging C.T. was a child in need of care (CINC) under K.S.A. 38-2202(d)(1). The State claimed C.T. was without adequate parental care because C.T.'s older sister was previously removed from the home and a parental termination hearing was pending, Mother also had four other children removed from her care in Colorado, and Kansas Department for Children and Families (DCF) had several concerns regarding C.T. because Mother was not following reintegration plans with her older children.

During an early temporary custody hearing, the district court found that "Mother has failed to make many appointments and has [a] long history of drug use. [Her rights] to 4 kids have been terminated and [a] 5th child may be terminated shortly." The court allowed C.T. to temporarily remain in Mother's custody on the conditions that she "provide [a] stable environment at home, not use drugs or alcohol, maintain [a] job, meet all of her and [C.T.]'s appointments (EHS, ABC program, medical, etc.) [and] continue mental health and drug and alcohol counseling." After C.T. was adjudicated a child in need of care, Mother continued to have custody of the child and the court ordered Mother to participate in family preservation services and continue to comply with prior court orders.

In November 2019, the district court found that Mother's drug use was a concern and ordered her to be drug tested at least twice a month and to see a therapist. C.T. was allowed to remain with Mother but was placed under DCF custody.

Four months later, there were still concerns for C.T.'s well-being. Mother agreed to comply with specific terms, including: attend mental health therapy; work toward re-

enrolling C.T. in Early Head Start services and participate with those services; meet regularly with Family Preservation; obtain employment; and submit to drug tests. The district court adopted the agreed terms and reminded Mother that her child may be removed from her home if she did not make substantial progress towards these tasks.

During a later permanency hearing in July 2020, the district court found that C.T.'s needs were not being adequately met because Mother failed to participate in Early Head Start, drug testing, and many other services ordered by the court. The court ordered C.T. to be removed from Mother's care and placed in a DCF facility. After a paternity test, the biological father was identified, but he later voluntarily relinquished his rights and does not take part in this appeal.

Over the next several months, although reintegration remained a goal and St. Francis Ministries (SFM) personnel tried to work with Mother toward that aim, she largely failed to comply with her required tasks. Although Mother was consistently and repeatedly ordered to have no positive drug tests, complete regular drug testing, complete inpatient drug treatment, continue all recommended services, and complete a mental health intake, her progress was found to be inadequate. Eventually the district court found reintegration of the family was not a viable goal, and through regular status hearings, the district court moved toward termination.

In January 2022, the district court permitted a 90-day continuance of the termination hearing because Mother appeared to be making some progress with the case plan tasks. The court also ordered that in the meantime, Mother must comply with specific conditions—largely tracking those which had been in place throughout the pendency of the case—including verifiable employment, weekly clean drug tests, attendance at all visits with the child, engaging in mental health therapy, and maintaining suitable stable housing.

During the termination hearing held four months later, in May 2022, the district court heard from State witnesses Ivy Wendt and Tina Rojas, SFM caseworkers. Mother also testified on her own behalf. Testimony revealed that, although Mother completed inpatient drug treatment in September 2020, she did not complete the required outpatient services and was unsuccessfully discharged. Mother did complete a second inpatient treatment program in November 2021; however, Mother continued to test positive for drugs after completing treatment. Mother also failed to commit to the weekly drug tests required by the permanency plan and did not attend Narcotics Anonymous as required.

In addition to her drug problems, Mother never progressed to overnight visitation with C.T. and missed 23 of her 62 scheduled visits. Although Mother completed a mental health intake, she did not attend any therapy services or medication management appointments. Mother was permitted to speak with a pastor instead of a mental health professional, but she did not submit the required release form to SFM. When asked, Mother could not remember the pastor's full name, when she started seeing him, or the name of the church where the pastor was located.

The case plan also required Mother to be employed, yet she provided no proof of employment to her caseworkers. Although she once sent her caseworker a copy of her work schedule, the caseworker testified the information sent did not reflect nearly the 35 hours of employment required, and Mother sent no other documentation regarding employment.

After reviewing the court report submitted by SFM and the testimony gathered during the hearing, the district court terminated Mother's parental rights. Specifically, the court found there was clear and convincing evidence that Mother was unfit and that the conduct or condition was unlikely to change in the foreseeable future. The district court found:

> "[T]here's a failure of reasonable efforts made by the appropriate public or private agency to rehabilitate the family [under K.S.A. 38-2269(b)(7)]. There's been lack of efforts on behalf of—on the part of the parent to adjust her current—adjust her circumstance or conduct or conditions to meet the needs of the child [under K.S.A. 38-2269(b)(8)]."

After finding Mother was unfit under K.S.A. 38-2269(a) based on the facts supporting K.S.A. 38-2269(b)(7) and (8), the district court went on to find that the presumptions of unfitness under K.S.A. 38-2271(a)(1), (a)(3), and (a)(5) also applied in this case, but Mother failed to meet her burden to rebut the presumptions. The court acknowledged that Mother had made considerable efforts to attempt to change her circumstances, but concluded that "after considering the mental, physical, and emotional health of the child," termination of parental rights was in the child's best interests.

Mother untimely filed a notice of appeal, but the district court granted her motion to extend time to file her notice, finding excusable neglect under K.S.A. 2021 Supp. 60-2103(a). No party has objected to such finding.

ANALYSIS

Mother argues that the district court erred in terminating her parental rights because the evidence presented was insufficient to find her unfit. She raises three issues on appeal: (1) the district court's finding of a lack of effort on Mother's part to adjust her circumstances, conduct, or condition to the needs of the child was not supported by evidence; (2) the district court erred by finding Mother neglected or willfully refused to carry out the case plan; and (3) the district court erred by relying on her drug use as the basis for terminating her parental rights.

Governing Legal Principles

A parent has a constitutionally protected liberty interest in the relationship with his or her child. *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); *In re B.D.-Y.*, 286 Kan. 686, 697-98, 187 P.3d 594 (2008). Given the inherent importance and unique character of that relationship, the right has been deemed fundamental. Accordingly, the State may extinguish the legal bonds between parent and child only upon clear and convincing proof of parental unfitness. K.S.A. 38-2269(a); *In re R.S.*, 50 Kan. App. 2d 1105, Syl. ¶ 1, 336 P.3d 903 (2014).

"Termination of parental rights will be upheld on appeal if, after reviewing all the evidence in the light most favorable to the prevailing party, the district judge's fact-findings are deemed highly probable, i.e., supported by clear and convincing evidence. " *In re Adoption of Baby Girl G.*, 311 Kan. 798, 806, 466 P.3d 1207 (2020). When reviewing a district court's decision based on any clear and convincing evidence standard, an "appellate court does not weigh conflicting evidence, pass on credibility of witnesses, or redetermine questions of fact." *In re B.D.-Y.*, 286 Kan. at 705.

Under K.S.A. 38-2269(a), the State must prove the parent to be unfit "by reason of conduct or condition" making him or her "unable to care properly for a child" and that the circumstances are "unlikely to change in the foreseeable future." The statute contains a nonexclusive list of nine conditions that singularly or in combination would amount to unfitness. K.S.A. 38-2269(b). And the statute lists four other factors to be considered if a parent no longer has physical custody of a child. K.S.A. 38-2269(c). The existence of any one of the statutory factors standing alone may, but does not necessarily, establish grounds for termination of parental rights. K.S.A. 38-2269(f). The State may also rely on one or more of the 13 statutory presumptions of unfitness outlined in K.S.A. 38-2271.

If the court finds a parent unfit, the court then determines whether it is in the child's best interests to terminate the parent's rights. *In re R.S.*, 50 Kan. App. 2d at 1115. In this "best-interests" determination, the "'issue is no longer whether parental rights *can* be terminated; the issue is whether, in light of the child's needs, parental rights *should* be terminated.'" 50 Kan. App. 2d. at 1115. As an appellate court, we review the best-interests determination under our traditional abuse-of-discretion standard. That is, an abuse of discretion by the district court "occurs when no reasonable person would agree with the district court or the district court premises its decision on a factual or legal error." 50 Kan. App. 2d. at 1116.

The district court's finding of Mother's unfitness by was supported by clear and convincing evidence.

Here, as noted, the district court found Mother to be unfit based on multiple factors: K.S.A. 38-2269(b)(7), the failure of reasonable efforts made by appropriate agencies to rehabilitate the family; K.S.A. 38-2269(b)(8), a lack of effort by Mother to adjust her circumstances, conduct, or conditions to meet the needs of the child; K.S.A. 38-2271(a)(1), Mother has previously been found to be an unfit parent in other legal proceedings; K.S.A. 38-2271(a)(3), on two or more prior occasions a child in Mother's physical custody has been adjudicated a child in need of care; and K.S.A. 38-2271(a)(5), the child has been in an out-of-home placement, under court order for a cumulative total period of one year or longer and Mother has substantially neglected or willfully refused to carry out a reasonable plan, approved by the court, directed toward reintegration of the child into her home.

Mother's lack of effort to adjust her circumstances, conduct, or conditions to meet the needs of the child.

On appeal, Mother primarily claims she did make efforts to change her circumstances to meet the needs of the child, so the district court's finding of unfitness

under K.S.A. 38-2269(b)(8) was in error. She argues that the successful completion of some of her case plan tasks illustrates her continued efforts, which contradicts the district court's findings.

To support her argument, Mother claims she completed nearly all her tasks, arguing she: completed inpatient treatment; completed out-patient treatment; maintained stable and appropriate housing; maintained adequate and stable employment; attended visitations; had no reported violence in the home; sought out mental health treatment; and completed a parenting and cognitive thinking course.

But the State joined in the Guardian Ad Litem's argument that Mother was not making considerable effort and failed to achieve most of her case plan tasks. The Guardian Ad Litem and the State assert that although some tasks were completed, the facts of the case showed a lack of sufficient effort from Mother on the balance of her case plan tasks.

We agree that, although Mother did exert some effort at various times during the life of the case, the record on appeal illustrates quite a disparate narrative than what Mother claims. Mother admits that the primary priorities of her case plan were maintaining sobriety and clean drug tests; following through with mental health recommendations; maintaining suitable housing; and maintaining stable employment. It is true that her maintenance of suitable housing was not contested by the State at the time of termination. And it was uncontested that Mother did complete drug treatment on two occasions. But the State produced evidence that she failed to meet every other goal, and the only evidence Mother provided to support her completion of the tasks was her own testimony.

For instance, Mother did not provide SFM documents to show that she was attending Narcotics Anonymous meetings as she claimed. Mother also did not attend

mental health services as recommended, could not document her claimed visits with her pastor, and failed to follow medication management services. Mother reported that she was employed, yet she provided no documentation to SFM to validate her employment status, and the single schedule she did provide to her caseworker showed she was not scheduled to work the required number of hours under the case plan. Mother also struggled to keep the scheduled visitations with the child and meetings with SFM, and she continuously tried to reschedule her visit every month. In fact, Mother missed 23 of her 62 available visits with the child. All these facts demonstrate a systemic failure in Mother's efforts to substantially abide by the reintegration plan.

Although Mother admits on appeal that documentation for her visits with the pastor and proof of her employment were lacking, she argues that the State presented no evidence at trial to show that she was not actually meeting the pastor or that she was soundly employed. But the SFM report and testimony of caseworkers contained considerable evidence that Mother continued to fail to adjust her circumstances, conduct, or conditions to meet the case plan even when she was afforded more than a year to comply. Although the evidence was not overwhelming, when viewed in a light most favorable to the State, as we are required to do, it sufficiently supports the district court's findings. See *In re B.D.-Y.*, 286 Kan. at 705 (finding the "clear and convincing" evidentiary standard best described as whether a reasonable fact-finder could have determined the ground of unfitness to be highly probable based on the district court's weighing of the evidence).

Many of Mother's representations that she completed tasks in the case plan rested on her uncorroborated testimony at the termination hearing, including her present employment, ongoing pastoral counseling, and participation in Narcotics Anonymous or a comparable program combatting substance abuse. The district court's findings necessarily entail an implicit credibility determination against Mother on those points. See *State v. Horn*, No. 118,930, 2019 WL 3047354, at *2 (Kan. App. 2019) (unpublished

opinion) (district court's factual findings in memorandum decision "track[ing]" testimony from a particular witness "necessarily reflect an implicit credibility determination" favoring that witness); *State v. Cheatham*, No. 106,413, 2012 WL 4678522, at *2 (Kan. App. 2012) (unpublished opinion) (appellate court infers credibility determination from district court's factual findings comporting with one witness' account of relevant events rather than conflicting account from second witness). We may not reassess the district court's obvious, though implicit, assessment that Mother was not credible.

Mother contends the district court erred by relying on her failure to maintain sobriety to show a lack of effort and tries to overcome her frequent relapses into drug use by emphasizing that her troubled journey of sobriety shows continued extraordinary effort to complete the case plan. But the record reflects she failed to make lasting progress to maintain sobriety throughout the life of the reintegration plan. Although she did complete inpatient and outpatient treatment for drug abuse, Mother also failed to provide weekly drug tests to SFM and tested positive for 9 out of the 15 tests she completed there. More importantly, although Mother had two negative tests, she also had two positive drug test results after completing her most recent drug treatment and before the termination hearing, which shows that Mother continued to use drugs.

Mother's case plan tasks required her not to use drugs or alcohol. So, the sporadic negative drug test results do not constitute adequate progress under the case plan ordered by the court because Mother continued to use illegal drugs. Even when Mother knew that maintaining sobriety was one of the tasks she must complete, she did not demonstrate a willingness to fully address her drug abuse issues. This supports the district court's finding of Mother's lack of effort to change her circumstances.

As the district court noted, the attempts shown by Mother to meet some goals in her case plan do elicit sympathy; however, they were simply not enough. Mother's apparent lack of effort to *fully* adjust her circumstances was sufficiently shown by the

State. Thus, the district court's finding of Mother's unfitness was supported by clear and convincing evidence. As such, viewing the evidence presented in the light most favorable to the State, we find that the district court did not err in finding Mother unfit under K.S.A. 38-2269(b)(8).

Finally, Mother also argues that the district court erred by finding her conduct or condition was unlikely to change in the foreseeable future, a finding required under K.S.A. 38-2269(a). When assessing the foreseeable future under this statute, the court considers foreseeable future "'from the child's perspective, not the parents', as time perception of a child differs from that of an adult.'" *In re S.D.*, 41 Kan. App. 2d 780, 790, 204 P.3d 1182 (2009). Moreover, "time is of the essence in cases involving parental rights; children are entitled to the stability of an expedient and final decision on the legal standing of their parents." *In re H.R.B.*, 30 Kan. App. 2d 599, 601, 43 P.3d 887 (2002).

Here, C.T. was around seven months old when the CINC petition was filed and by the time of the termination hearing, the child was over three years old. As discussed above, Mother's failure to comply with all parts of the case plan and continued substance abuse, even after multiple inpatient and outpatient drug treatments, were significant indicators that she was incapable of adjusting her circumstances in the foreseeable future. And this court has recognized that a parent's past conduct may be used as a predictor of her future unfitness. *In re Price*, 7 Kan. App. 2d 477, 483, 644 P.2d 467 (1982). Mother already had an extensive history with DCF, as her other children were removed from the home and her parental rights were terminated or relinquished.

The record sufficiently shows that the evidence supports that a rational fact-finder could conclude that Mother's situation was unlikely to change. As such, the district court did not err in finding Mother's condition unlikely to change in the foreseeable future under K.S.A. 38-2269(a).

The District Court Did Not Abuse Its Discretion in Determining the Best Interests of the Child Supported Termination of Mother's Parental Rights.

The district court considered Mother's lack of effort to adjust her circumstances to meet the needs of the child under K.S.A. 38-2269(b)(8) in support of its finding of unfitness under K.S.A. 38-2269(a). The court must then consider whether termination of parental rights as requested in the petition or motion is in the best interests of the child under K.S.A. 38-2269(g)(1). Here, the district court found that "[c]onsidering the physical, mental or emotional health of the child, termination of [Mother's] parental rights is in the best interests of the child . . . and the physical, mental or emotional needs of the child would best be served by termination of parental rights."

Although Mother did make some effort to comply with the case plan objectives, she still did not meet many of the major goals. At the time of the termination hearing, C.T. had been out of Mother's home for more than half his life, and even prior to that time, C.T. was a child in need of care with in-home agency assistance for a year before being removed from Mother's home. And, even though all parties agreed to postpone the termination hearing to allow Mother more time to complete progress toward her plan goals, she still had positive drug tests and other incomplete goals. The district court found it was necessary to consider the "foreseeable future" from the child's perspective, not the parents, and it is in the child's best interests to be able to move on with "his life in a process which provides him more permanency."

We find no abuse of discretion in the district court's ruling. A reasonable person could agree with the ruling, given the evidence presented by the State, and we find no factual or legal error in the conclusion.

We need not reach Mother's other claims.

In addition to her claim under K.S.A. 38-2269(b)(8), Mother also argues that, under the presumption found in K.S.A. 38-2271(a)(5), she did not substantially neglect nor willfully refuse to carry out the reintegration plan. The facts underlying this argument closely track her contentions regarding lack of effort under K.S.A. 38-2269(b)(8), and we need not rehash those facts.

Mother also alleges that the district court erred by basing her unfitness on her continued use of illegal drugs. The Guardian Ad Litem and the State maintain that Mother's argument about drug use is immaterial because the district court did not base its findings on the drug use factor found in K.S.A. 38-2269(b)(3). And, while it is true that the district court did not make a finding under this factor, it is unnecessary for us to address the issue.

Any one of the factors in K.S.A. 38-2269(b) or (c) may establish grounds for termination of parental rights. K.S.A. 38-2269(f). Because we find clear and convincing evidence to support the district court's decision to terminate Mother's parental rights under K.S.A. 38-2269(b)(8) and find no legal error in that determination, we need not and do not consider the other statutory grounds outlined in the termination order.

Viewing the evidence presented in the light most favorable to the State, the district court's finding of unfitness and termination of Mother's parental rights was supported by clear and convincing evidence, and we find no abuse of discretion in the court's finding that the best interests of the child would be served by termination.

Affirmed.