NOT DESIGNATED FOR PUBLICATION

No. 125,876

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Interest of A.M., a Minor Child.

MEMORANDUM OPINION

Appeal from Geary District Court; KEITH L. COLLETT, judge. Opinion filed July 21, 2023. Affirmed.

Anita Settle Kemp, of Wichita, for appellant natural mother.

Krista Blaisdell, county attorney, for appellee.

Before HURST, P.J., ATCHESON and PICKERING, JJ.

PER CURIAM: Biological mother (Mother) appeals the district court's order terminating her parental rights to A.M., a minor child. Mother claims the district court erred in terminating her parental rights because she complied with the court's permanency plan. However, contrary to Mother's assertions, she seriously neglected A.M. at the outset of this case and failed to complete the court's permanency plan in order to provide appropriate care for A.M. Clear and convincing evidence demonstrated that Mother remained unfit to care for A.M. at the time of the termination hearing and that unfitness would continue for the foreseeable future. Finding no error, this court affirms the district court's decision to terminate Mother's parental rights.

FACTUAL AND PROCEDURAL BACKGROUND

On February 4, 2021, police officers responded to a call requesting a welfare check on a child in Mother's apartment. When the officers arrived, the apartment's front door was ajar. Officers entered the apartment and found it "extremely trashed with clothing and debris and feces." According to the responding officers, the apartment smelled of feces and urine and the temperature inside was uncomfortably hot. Bugs crawled on rotten food in a highchair, and there were vermin droppings on the floor.

After entering the apartment, officers heard a child—now known to be A.M., who was just over two years old at the time—whom they found behind a locked bedroom door. Officers opened the locked door to find A.M. in a portable crib that was pushed up against the door. The room was covered with garbage and smelled of feces, which was streaked around the room. About 20 minutes later, Mother arrived at the apartment. She estimated to the officers that A.M. had been home alone for about an hour and a half. The State took A.M. into protective custody that same day.

A week later, the State filed a child in need of care (CINC) petition and the district court placed A.M. into the temporary custody of the Kansas Department for Children and Families (DCF). The district court held a hearing the following month, where Mother appeared through counsel, and A.M.'s biological father (Father) also appeared and acknowledged paternity. Mother and Father filed a statement of no contest, which the district court found was knowingly and voluntarily given. The district court adopted the State's proposed permanency plan, which required Mother to:

(1) attend a mental health evaluation and follow all recommendations;
(2) attend a parent psychological evaluation and follow all recommendations;
(3) work with Infant/Toddler Services and follow recommendations for A.M.;
(4) obtain safe housing and provide documentation thereof;

(5) allow random walkthroughs of her home;
(6) maintain legal income and provide documentation thereof;
(7) apply for appropriate services for herself and A.M.;
(8) maintain weekly contact with Saint Francis Ministries;
(9) complete an age-appropriate parenting class and demonstrate what she learned; and
(10) follow all court orders.

The district court held a permanency hearing on December 15, 2021, where Mother appeared in person and with counsel. The district court found that reintegration continued to be a viable goal. Another permanency hearing was held six months later, after which the district court found that reintegration was no longer a viable goal. The State later moved to terminate Mother's parental rights pursuant to K.S.A. 38-2269(b)(4), (b)(7), (b)(8), (b)(9) and K.S.A. 38-2269(c)(1) and (c)(3).

On October 17, 2022, the district court held a termination hearing where, among other witnesses, one of the officers who participated in the initial welfare check testified. The officer testified to each of the above underlying facts about the state in which officers found A.M. and the condition of the home. Along with the officer's testimony, the State also admitted into evidence several photographs of the home's condition. A DCF social worker testified that she interviewed Mother shortly after A.M. was taken into State custody. Mother said the home was in such bad condition because she was feeling overwhelmed and was not receiving support from her roommates.

A.M.'s foster parent testified that A.M. had been in her care for approximately 20 months at the time of the hearing. The foster parent testified that when A.M. was placed in her care, she smelled "very strongly of urine, her hair was matted, her hair looked like she'd been dipped in grease." The foster parent further testified that it took her a week to

get the grease out of A.M.'s hair and the child flinched during baths and behaved as though she had not been bathed in a long time.

The foster parent also testified extensively regarding A.M.'s behavior toward food. She testified that shortly after picking up A.M., she took her to the grocery store to get snacks and A.M. tore at the food packaging in the store to try to get into the food. For the first few days, A.M. would eat "very fast" and so quickly that she would make herself throw up. Eventually this habit subsided but would resurface following visits with Mother. After unsupervised visits, A.M. would throw up clear liquid that would sometimes have "gummies" in it, and she would be returned to the foster home with candy. Other times, A.M. would return from visits with Mother and run to the pantry or refrigerator and shove food in her mouth. After longer visits with Mother, A.M. returned looking as though she had not slept, was very hungry, and was upset. A.M. was generally willing and happy to go to preschool but would say she did not want to go visit Mother and would struggle to bathe and get dressed.

The permanency specialist in A.M.'s case until June 2022 testified that Mother received a parenting psychological evaluation which resulted in recommendations that Mother attend individual therapy and receive parental education. Saint Francis Ministries offered to provide those services to Mother, but Mother had some scheduling difficulties for individual therapy and did not have transportation.

Although Mother reported that she completed a mental health evaluation on August 16, 2022, and began receiving mental health services, Mother refused to sign a release of information. The State therefore could not verify whether Mother had actually received mental health services.

The permanency specialist testified that as Mother's visitation increased in duration and transitioned from supervised to unsupervised visits, A.M.'s concerning food

behaviors would resurface. Unsupervised visits started around July 2021 but reverted to supervised office visits in February 2022 due to the resurgence of A.M.'s food behaviors. The social services worker testified that after a visit with Mother, she picked up A.M. and found her diaper soiled and soaked through her clothing. As of February 2022, Mother had not completed any parenting classes, could not manage overnight visits, and had made no progress in therapy.

Mother obtained employment around July 2021 and maintained consistent visitation with A.M. throughout the case. Mother did not participate in most of the parental education classes offered to her and did not provide proof of having a mental health evaluation or attending individual therapy. Although Mother obtained new housing before the termination hearing, she was not part of any rental agreement, so she was dependent on others to allow her to remain in that home. Mother also had an outstanding electricity bill of over $1,000 that prohibited her from finding her own housing in an emergency. Mother did eventually complete a parenting class approximately two weeks before the termination hearing. The permanency specialist testified that Mother did not benefit from local and accessible support services and generally lacked engagement with many of the permanency plan requirements until just before the termination hearing.

Mother called a different permanency specialist involved in A.M.'s case who testified that she found no immediate safety concerns with Mother's current residence. However, that permanency specialist also noted that Mother failed to sign a release of information to verify her mental health treatment despite being asked three times to provide one.

Mother also testified on her own behalf and acknowledged the condition of her home on the day A.M. was taken into DCF custody, attributing it to a lack of support. Mother admitted that she had not signed a release of information for her mental health services because she was busy with work. Mother further admitted that she did not have

any type of agreement for her living arrangements. Mother testified that she thought her overnight visits with A.M. were going well and that she cooked A.M. dinner, read her stories, and attempted to potty train her.

After hearing all the evidence, the district court made extensive and thorough findings from the bench. The district court later issued the following written findings of unfitness pursuant to K.S.A. 38-2269(b)(4), (b)(8), (b)(9), and (c)(3):

> "1. A.M. was born to mother C.P. and father D.M. in the fall of 2018. A.M. was in her mother's custody until February 4, 2021. On that day, Junction City police officers went to A.M.'s residence on a welfare check dispatch. They found A.M., then just over two years old, alone in C.P.'s filthy, unlocked apartment, in a playpen, in a locked, feces-smeared bedroom, with her hair badly matted and her body and clothing also smeared with feces. A.M. was taken into police protective custody. An emergency foster parent came to pick up A.M. The foster mother testified that she took A.M. to a store to buy appropriate food, and she was unable to prevent A.M. from tearing food packets apart in the store aisles in order to gobble as much as she could as fast as she could; that food conduct continued for several weeks. The foster mother also testified that de-matting A.M.'s hair took a great deal of time and effort.
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> "2. A.M. has been in continuous state custody, with out-of-home placement, since February 4, 2021. On February 9, 2021, the court ended police protective custody and entered orders for temporary DCF custody in a proceeding under the Code for Care of Children. Lawyers were appointed to represent both parents[.]
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> "3. On March 15, 2021, the court adjudicated A.M. as a child in need of care and approved a case plan with the goal of reintegration. C.P., the mother, had a few overnight visits in the fall and winter of 2021-2022. She met some case plan tasks, in that she maintained employment, regularly showed up for office visits with A.M[.], and submitted to a parenting psychological evaluation. She failed to make timely progress on the establishment of suitable housing, a mental health intake, and the completion of appropriate parenting classes. On June 15, 2022, after A.M. had been in state custody and out of the parental home for a little over

sixteen months, the court determined that reintegration was no longer a viable case plan goal and ordered the filing of a petition to terminate parental rights.

"4. D.M., the father, was a North Carolina resident at the time A.M. was taken into custody, and he remained there throughout the pendency of the case. He relinquished his parental rights at the beginning of the termination hearing.

"5. Despite appropriate efforts, no kinship placement could be located either on a temporary or permanent basis.

"6. After the June 15 ruling that reintegration was not a viable case plan goal, C.P. signed up for parenting classes, and completed them in the late summer of 2022. She started to be better prepared for her time with A.M., by bringing activities and snacks to the visits. At last, she rearranged her housing. She testified at this hearing that she believed she was capable of being an appropriate placement for A.M.

"7. The Geary County attorney filed a petition to terminate the parents' rights on September 2, 2022, after A.M. had been in out-of-home placement for eighteen of her forty-five months of life.

"Given these facts, the court considers the factors set forth in K.S.A[.] 38-2269 for determining whether the parent, C.P., is unfit now by reason of conduct or condition, and whether she is unlikely to achieve fitness in the foreseeable future.

". . . The court's focus is on (b)(4), (b)(8), and (c)(3), the physical, mental, or emotional abuse and neglect of the child, the lack of effort on the part of C.P. to adjust her circumstances and conduct to meet the needs of the child, and the mother's failure to carry out a reasonable plan directed toward reintegration. Additionally, the time-out-of-home provisions of subs. (b)(9) are considered.

"The court begins by evaluating A.M.'s situation on February 4, 2021. This unattended-child situation was not the result of a few hours' inattention. A.M.'s condition spoke of weeks or months of appalling neglect. The reporting officers were unable to determine whether the feces that filled the apartment and covered this child were dog, cat, or human. A.M.'s hair was not just dirty, it was matted. She was desperate for food and remained so. Subs. (b)(4) was triggered by this physical neglect, the evidence of which was clear and convincing.

"A.M. was removed from her mother's home on February 4, 2021; sixty days after that date takes us to April 6 as a beginning date for consideration of subs. (b)(9). She has remained in DCF custody and placed with neither parent for the duration of the

case, a period substantially exceeding fifteen months, and the court finds that the time spent out of home was attributable to the mother's failure to adjust her circumstances to the child's needs.

"The court finds, also by clear and convincing evidence, that C.P. has not made significant, timely efforts to adjust her circumstances to meet the needs of the child. Although she was never without employment, she did not make appropriate housing arrangements for herself and A.M. until the late summer of 2022. She did not testify that poverty prevented her from finding housing. She exercised overnight visits only three or four times. She signed up for parenting classes only in July or August 2022, and she completed them only a few weeks before the termination hearing. Her testimony about the classes was that they were geared toward communication and discipline, but the court finds that what she needed was training in bathing, feeding, homemaking, and similar parenting tasks; there was no evidence that she has trained for the basic tasks of parenting. She lacks any semblance of a family or friend support system.

"C.P. submitted to a Parenting Psychological Evaluation in July 2021. The evaluation indicated that there were mental health issues, and some cognitive issues, that would need to be dealt with if C.P. was to successfully parent A.M. The evaluator made recommendations. Thereafter, a year passed, and it was August 2022 before C.P. contacted a therapist in accord with the evaluator's recommendations and the social workers' directives. The court cannot attribute C.P.'s case-plan failure to mental or physical disability or mental illness; rather, it is attributable to her failure/refusal to complete critical case plan tasks. The court finds by clear and convincing evidence that C.P. failed to carry out a reasonable plan of reintegration, under subs. (c)(3).

"The court finds that DCF and S[ain]t Francis Ministries, the custodial and reintegration agencies, made reasonable efforts to rehabilitate the family. Their efforts are set forth in the various court reports previously submitted and made part of the court's record.

"The final factor the court considers is whether the conduct and condition of C.P. that led to her being unable to care properly for A.M. is unlikely to change in the foreseeable future, under [K.S.A.] 38-2269(a). The court acknowledges that C.P. began to make progress after hearing that the state was ordered to file a petition to terminate parental rights. Specifically, she re-arranged her housing, she began therapy, and she took what the court has determined to be a not-very-helpful parenting class. But it took her sixteen months to get moving on those tasks, and the court cannot find that her sudden,

last-minute flurry of case plan task completion is an indication that she will be able to sustain current levels of compliance. To the contrary, it is an indication that her previous inactivity was of her own volition. Three months of furious activity cannot atone for sixteen months of non-compliance. Those months of inactivity, combined with C.P.'s mental and cognitive problems, and her tragic lack of a support structure, lead the court to the inescapable conclusion that she is unlikely to be able to achieve parental competence in the future.

"The court finds, accordingly, that C.P. is an unfit parent, by clear and convincing evidence. The court further finds that the termination of parental rights is in A.M.'s best interest, and the court so orders."

In its subsequent order terminating Mother's parental rights, the district court found by clear and convincing evidence that Mother was unfit to parent under K.S.A. 38-2269(b)(4), (b)(7), (b)(8), (b)(9), and (c)(3), that her unfitness was unlikely to change in the foreseeable future, and that termination of her parental rights was in A.M.'s best interests:

"The Court finds that reasonable efforts have been made to reintegrate the family. The Court finds [Mother] is unfit pursuant to [K.S.A.] 38-2269 (a) court finds by clear and convincing evidence that the parent is unfit by reason of conduct or condition which renders the parent unable to care properly for a child and the conduct or condition is unlikely to change in the foreseeable future; [K.S.A. 38-2269](b)[4) physical, mental or emotional abuse or neglect or sexual abuse of a child; [K.S.A. 38-2269](b)[7) failure of reasonable efforts made by appropriate public or private agencies to rehabilitate the family; and [K.S.A. 38-2269](b)[8) 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. 38-2269](b)[9) whether, as a result of the actions or inactions attributable to the parent and one or more of the factors listed in subsection (c) apply, the child has been in the custody of the secretary and placed with neither parent for 15 of the most recent 22 months beginning 60 days after the date on which a child in the secretary's custody was removed from the child's home and [K.S.A. 38-2269](c)[3) failure to carry out a reasonable plan approved by the court directed toward the integration of the child into a parental home.

> The Court finds it is in the best interests of the child to terminate the rights of [Mother] and so orders it."

Mother appealed.

DISCUSSION

Mother claims the district court's termination of her parental rights was not supported by clear and convincing evidence and that it abused its discretion in finding termination was in A.M.'s best interests. Mother first notes inconsistencies between the district court's oral findings and its subsequent written findings and order terminating her parental rights. In its oral findings from the bench, the district court found that K.S.A. 38-2271(a)(5) created a presumption that Mother was unfit to parent. However, the district court's written findings and order terminating parental rights did not include a finding that K.S.A. 38-2271(a)(5) applied. Instead, in its written order, the district court terminated Mother's parental rights under K.S.A. 38-2269(b)(4), (b)(7), (b)(8), (b)(9), and (c)(3). In civil cases, "a district court's journal entry of judgment controls over a prior oral pronouncement from the bench." *Steed v. McPherson Area Solid Waste Utility*, 43 Kan. App. 2d 75, 87, 221 P.3d 1157 (2010); *In re I.G.*, No. 122,009, 2020 WL 2296918, at *2 (Kan. App. 2020) (unpublished opinion). Thus, this court will review the district court's written findings.

The Revised Kansas Code for Care of Children (Code), K.S.A. 38-2201 et seq., governs how district courts handle the termination of parental rights. Under the Code, after a child has been adjudicated to be a child in need of care (CINC), the district court may terminate parental rights only when it finds by clear and convincing evidence that the parent is unfit by reason of conduct or condition which renders the parent unable to properly care for the child and the conduct or condition is unlikely to change in the foreseeable future. K.S.A. 38-2269(a).

On appeal, this court will uphold the termination of parental rights only if, after reviewing all the evidence in the light favorable to the State, it determines the district court's factual findings are supported by clear and convincing evidence. This court will not weigh conflicting evidence, pass on the credibility of witnesses, or redetermine questions of fact. *In re Adoption of Baby Girl G.*, 311 Kan. 798, 806, 466 P.3d 1207 (2020), *cert. denied* 141 S. Ct. 1464 (2021).

I. *The district court did not err in finding mother unfit.*

The district court considers the nonexhaustive list of factors identified in K.S.A. 38-2269(b) when determining a parent's fitness. When the child is not in the physical custody of the parent, the district court may also consider the factors in 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). On appeal, Mother only challenges the district court's findings under K.S.A. 38-2269(b)(8), (b)(9), and (c)(3). She does not contest the district court's findings of unfitness under K.S.A. 39-2269(b)(4) or (b)(7).

The district court's finding that Mother was unfit under K.S.A. 38-2269(b)(8) because of her lack of effort to change her conditions, conduct, or circumstances to meet A.M.'s needs was supported by clear and convincing evidence.

K.S.A. 38-2269(b)(8) provides that the district court shall consider "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." Mother raises two arguments in challenging the district court's finding that she lacked effort to change her conditions or circumstances: (1) She completed the permanency plan, and (2) the timeliness of her effort was not a requirement in the permanency plan.

Viewing all the evidence in the light favorable to the State, Mother's challenge to the district court's finding under K.S.A. 38-2269(b)(8) is unavailing. Beyond refusing to sign releases necessary to allow the court to verify that she took a mental health evaluation and was attending individual therapy, Mother also failed to maintain or obtain safe, stable housing throughout the case. Just before the termination hearing, Mother began living in a new home that could potentially accommodate A.M., but the living arrangement was not guaranteed. Mother did not have a rental agreement in place, so her housing situation remained unstable and uncertain. Mother also had a large outstanding utility bill that would inhibit her ability to find new housing in an emergency. In the event the homeowners where Mother planned to live decided they could no longer accommodate her and A.M., they could be left homeless and without the ability to obtain emergency housing. Mother also does not dispute that she failed to provide documentation of her housing, another requirement of the permanency plan.

The evidence also shows that Mother failed to use available and required services for more than a year while A.M. was in DCF custody. For example, even if Mother's unverified testimony is believed, she did not obtain a mental health evaluation until August 2022—just two months before the termination hearing. However, DCF and the court could not verify that Mother accomplished this task because she refused to complete the separate requirement of signing releases allowing the State and court to obtain records of her mental health activities. This delay is troublesome where evidence showed that there were few to no barriers in place precluding Mother from obtaining those mental health services. Further, Mother's parent psychology evaluation resulted in a recommendation that Mother seek individual therapy to address past trauma and aid in reintegration. While following that recommendation was required as part of her permanency plan, Mother waited approximately a year until just before the termination hearing to start that process. Because of that delay, the permanency specialist testified that any potential reunification would be further delayed for at least nine months to a year while Mother participated in therapy.

Mother cites *In re J.L.*, No. 110,993, 2014 WL 4627604, at *9 (Kan. App. 2014) (unpublished opinion), to support her timeliness argument. In *In re J.L.*, a panel of this court found that the district court erred in reading additional requirements into a permanency plan when it found that visitation required more than just attending the meetings. 2014 WL 4627604, at *9. Although Mother does not conclude her argument, she ostensibly means to argue that the district court here erred by similarly reading a timeliness requirement into the permanency plan. This case is distinguishable. The district court did not add any requirements but rather found that Mother's delay in completing the requirements prevented reunification in a reasonable time from the perspective of a young child. Panels of this court have long held that timeliness, as measured through the child's perspective, is a core component in CINC and termination cases to ensure that the child receives stability. *In re M.S.*, 56 Kan. App. 1247, 1254, 447 P.3d 994 (2019). Here, A.M. had spent almost half of her life in State custody—not living with Mother—and Mother's year-long delay in starting mental health services would result in a precipitous delay in reunification if that were even possible. The district court did not err in considering the timeliness of Mother's actions through A.M.'s perspective.

Mother does not dispute that the evidence showed that she failed to adequately feed A.M. at the inception of this case. Nor does she dispute that A.M. would return from unsupervised visits and vomit or tear at food as though she had not eaten. This evidence, viewed in the light favorable to the State, supports a finding that A.M. was not appropriately fed while in Mother's care. In any event, Mother has waived argument on this issue because she does not address it in her appellate brief and, instead, focuses only on her assertion that she completed the permanency plan and that she was not under a timeliness requirement. See *Russell v. May*, 306 Kan. 1058, 1089, 400 P.3d 647 (2017). Reviewing all the evidence in the light favorable to the State, the district court's determination that Mother was unfit because of her lack of effort to adjust her circumstances, conduct, or conditions to meet A.M.'s needs was supported by clear and convincing evidence.

The district court's finding that Mother was unfit under K.S.A. 38-2269(b)(9) and K.S.A. 38-2269(c)(3) because of her failure to carry out a reasonable plan approved by the court while the child was in State custody for 15 of the last 22 months beginning 60 days after the date the child was removed from the home was supported by clear and convincing evidence.

K.S.A. 38-2269(b)(9) states that the district court shall consider:

> "whether, as a result of the actions or inactions attributable to the parent and one or more of the factors listed in subsection (c) apply, the child has been in the custody of the secretary and placed with neither parent for 15 of the most recent 22 months beginning 60 days after the date on which a child in the secretary's custody was removed from the child's home."

Mother does not challenge that A.M. was in custody for the requisite amount of time and admits that K.S.A. 38-2269(b)(9) applies. However, K.S.A. 38-2269(b)(9) applies only when a corresponding factor in K.S.A. 38-2269(c) also applies. See K.S.A. 38-2269(b)(9). On that point, the district court found that K.S.A. 38-2269(c)(3), which provides that "failure to carry out a reasonable plan approved by the court directed toward the integration of the child into a parental home," applied and supported a finding of unfitness. Mother challenges the district court's finding, arguing that she completed the permanency plan.

As explained above, the record contains clear and convincing evidence to support a finding that Mother failed to satisfy the terms of the permanency plan by the time of the termination hearing. Mother failed to maintain and provide documentation for safe housing, refused to sign releases necessary to show that she completed a mental health evaluation, and failed to show that she was attending individual therapy as recommended in her parent psychological report. Reviewing all the evidence in the light favorable to the State, the district court's determination that Mother was unfit under K.S.A. 38-2269(b)(9) and K.S.A. 38-2269(c)(3) was supported by clear and convincing evidence.

II. *The district court did not err in finding Mother's unfitness was unlikely to change in the foreseeable future.*

When gauging the likelihood of change in the foreseeable future under K.S.A. 38-2269(a), courts should use "child time" as the measure. Children experience the passage of time in a way that makes a month or a year seem far longer than it would for an adult, particularly depending on the child's age. *In re M.B.*, 39 Kan. App. 2d 31, 45, 176 P.3d 977 (2008); *In re G.A.Y.*, No. 109,605, 2013 WL 5507639, at *1 (Kan. App. 2013) (unpublished opinion) ("'child time'" differs from "'adult time'" in termination of parental rights proceedings "in the sense that a year . . . reflects a much longer portion of a minor's life than an adult's"). In acknowledging that time perception, the district court is charged with disposing of these proceedings without unnecessary delay. K.S.A. 38-2201(b)(4).

The district court's finding on this issue was supported by clear and convincing evidence. This case had been ongoing for approximately 20 months—nearly half of A.M.'s life. In that time, Mother showed little to no progress in correcting her troubling feeding habits, obtaining stable housing, or addressing her own mental health. Even if Mother's mental health treatment was verifiable, the district court heard evidence that Mother's delay in seeking treatment extended the time frame for reintegration by no less than "nine months to a year." Viewed in the light favorable to the State, nine months to a year was presumed to be a minimum estimated time until reintegration if everything went perfectly. That means it could have taken even longer than that in a case that had already been ongoing for nearly two years. From a child's perspective, especially one as young as A.M., that time frame is substantial. Mother had also, as the district court put it, "couch surfed" for much of that time and could not show that her current residence was not more of the same. Thus, reviewing all the evidence in the light favorable to the State, the district court's determination that Mother's unfitness was unlikely to change in the foreseeable future was supported by clear and convincing evidence.

III. *The district court did not abuse its discretion in finding that terminating Mother's parental rights was in A.M.'s best interests.*

This court reviews a district court's finding on the best interests of the child for an abuse of discretion. *In re P.J.*, 56 Kan. App. 2d 461, 465, 430 P.3d 988 (2018). A judicial action constitutes an abuse of discretion if (1) it is arbitrary, fanciful, or unreasonable; (2) it is based on an error of law; or (3) it is based on an error of fact. *Biglow v. Eidenberg*, 308 Kan. 873, 893, 424 P.3d 515 (2018). The party asserting the district court abused its discretion—in this case, Mother—bears the burden of showing such abuse of discretion. *Gannon v. State*, 305 Kan. 850, 868, 390 P.3d 461 (2017).

Mother's entire argument on this finding is the following:

> "As to finding that termination is in the best interest of the minor child the court merely identifies that the case has been open for more than 22 months. The testimony does show there is a loving bond between Mother and the child. No evidence was presented of any prior DCF intakes or concerns about Mother, other than this case. There is no evidence to support a probable cause finding that the termination is in the best interest of the child, A.M."

The State responds by citing Mother's lack of progress as supporting the district court's finding.

The district court found that termination of Mother's parental rights was in A.M.'s best interests, and much of the evidence discussed above supports this finding. Among that evidence, A.M. did not want to go to visits with Mother, would act hungry or vomit after unsupervised visits with Mother, and was happy and functioning well in the foster home. Mother references the district court's order to argue that it only cited the length of the case to support its finding, but Mother ignores the plethora of other findings that the

district court made as to Mother's failure to establish adequate housing, engage in mental health services, acquire a support system, and learn about basic childcare responsibilities.

Mother is similarly mistaken in her argument that DCF had no concerns. Indeed, concerns for A.M.'s well-being while in Mother's care is the reason Mother's visitation, which had been extended, reverted back to short and supervised office visits. While Mother did testify to having a loving bond with A.M., a loving bond cannot overcome the serious health, safety, and stability concerns.

CONCLUSION

A.M. entered State custody after police officers found her alone in deplorable and unsafe conditions. When she entered foster care, A.M. exhibited unhealthy symptoms around food and eating, and those symptoms persisted and recurred after visits with Mother. Mother was unable to maintain extended and unsupervised visits with A.M. and never obtained stable, verifiable housing or provided verification of receiving mental health care. At the time of the termination hearing, A.M. had spent almost half of her young life in State custody and under a presumption of the best possible circumstances for Mother, her delay in completing certain tasks would have resulted in at least another nine months of time in custody. When viewed in the light favorable to the State, there was clear and convincing evidence that a reasonable fact-finder could find it highly probable that Mother was unfit pursuant to K.S.A. 38-2269(b)(4), (b)(8), (b)(9), and (c)(3), and that such unfitness was unlikely to change in the foreseeable future. Moreover, this court finds that the district court did not abuse its discretion in finding that termination of mother's parental rights was in the best interests of A.M. Finding no error, the judgment of the district court is affirmed.

Affirmed.