NOT DESIGNATED FOR PUBLICATION

No. 119,335

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Interest of K.F.W.,
A Minor Child.

MEMORANDUM OPINION

Appeal from Butler District Court; KRISTIN H. HUTCHISON, judge. Opinion filed January 18, 2019. Affirmed.

Joshua S. Andrews, of Cami R. Baker & Associates, P.A., of Augusta, for appellant natural father.

Joseph M. Penney, assistant county attorney, for appellee.

Before MALONE, P.J., BUSER and STANDRIDGE, JJ.

PER CURIAM: B.H. (Father) appeals from the district court's decision to terminate the parental rights to his natural son, K.F.W. Father contends the district court erred in finding that he was unfit, that his condition of unfitness was unlikely to change in the foreseeable future, and that termination of his parental rights was in K.F.W.'s best interests. Finding no error, we affirm.

FACTS

On March 15, 2016, the Kansas Department for Children and Families (DCF) received a report alleging possible physical neglect of K.F.W., who was approximately 16 months old at the time. The report stated that the natural mother (Mother), with whom K.F.W. lived, was using drugs and that she had been taken to the hospital. The report

claimed that Mother had been shooting up heroin for four months and that she had been selling her food stamps to support her substance abuse addiction. The report also claimed that K.F.W. only had bread for food at times.

On March 21, 2016, social worker Jennifer Wiebe met with Mother. Wiebe worked for a DCF contractor, St. Francis Community Services (SFCS). During this meeting, Mother admitted to Wiebe that she had been using methamphetamine. Mother agreed to submit her hair for follicle drug testing but would not allow K.F.W. to be tested unless her own test came back positive. Mother ultimately tested positive for methamphetamine, amphetamine, hydrocodone, and oxycodone.

During April 2016, Wiebe went to Mother's home six times to inform Mother of the test results and to have Mother authorize hair follicle drug testing for K.F.W. Mother was not at home during any of these six attempted contacts. Mother eventually sent Wiebe an e-mail on April 25, 2016. In response, Mother provided Wiebe her new phone number and assured Wiebe that she was taking steps in the right direction to regain her sobriety.

On June 14, 2016, Mother admitted to Wiebe that she had used methamphetamine a week earlier. Wiebe strongly suggested to Mother that she accept agency services to help her keep K.F.W. in the home. Mother refused, saying that she planned to get back into treatment with South Central Mental Health.

On June 27, 2016, Wiebe received a report expressing concerns about the possible medical neglect of K.F.W.'s sibling, a four-year-old who also resided in Mother's home. The report indicated that Mother again admitted to using methamphetamine and had failed to take K.F.W.'s sibling to three scheduled medical appointments.

From June 28, 2016, to July 7, 2016, Wiebe went to Mother's home five times to follow up on the various concerns set forth in the June 27, 2016, report. Each time, no one was home.

On July 7, 2016, DCF received concerns about a possible of lack of supervision over K.F.W. who was now 20 months old. The concerns related, in part, to prior statements made by K.F.W.'s four-year-old brother who had told mental health workers that he would like to kill K.F.W. by pushing him out of the second story window of their house and then kill himself by jumping out of the window afterward. Although Mother had been aware of these statements before July 7, 2016, Mother left K.F.W. and his sibling alone in the house on July 7, 2016, without supervision, and they were seen running by and around an accessible and uncovered second story window.

On that same day, Ashley Reid from South Central Mental Health reported to Wiebe that the medical neglect issues of K.F.W.'s sibling had not been resolved, that the sibling had expressed suicidal and homicidal thoughts to mental health workers, and that the worker who picked the sibling up for an appointment that day observed an eviction notice on Mother's door stating she had three days to vacate her apartment. Wiebe also learned that Mother had failed to follow through with treatment at South Central Mental Health and also had failed to attend parent support meetings, drug and alcohol classes, or family therapy appointments.

On July 8, 2016, the State filed a petition to declare K.F.W. a child in need of care. At the time the petition was filed, the father was listed as unknown. No father was listed on the child's birth certificate, and Mother was unwilling to provide any information as to the identity of the father.

On July 12, 2016, the district court granted temporary legal custody of K.F.W. to DCF with out of home physical placement at the discretion of the SFCS, the contracting

agency. Mother remained unwilling to provide any information about the identity of the father.

On August 23, 2016, the district court held an adjudication and disposition hearing. After hearing the evidence, the court adjudicated K.F.W. to be a child in need of care and ordered the child to remain in the legal custody of DCF with out of home physical placement at the discretion of SFCS. The identity of the father remained unknown.

At some point between August 23, 2016, and November 4, 2016, Mother provided Wiebe with the name of K.F.W.'s putative father. After learning the putative father's name, Wiebe began conducting routine searches to locate Father. One of those searches was through a public electronic website run by the Kansas Department of Corrections (KDOC) called Kansas Adult Supervised Population Electronic Repository (KASPER), which found that Father was being housed as a KDOC inmate at Hutchinson Correctional Facility. Wiebe included this information about the possible location of the putative father in a report submitted to the district court approximately two weeks before November 4, 2016, which was the next scheduled review hearing. But the review hearing scheduled for November 15, 2016, ultimately was continued to January 17, 2017, because Mother was unwell.

On January 17, 2017, the district court held the hearing as planned. After hearing the evidence, the court determined reintegration with Mother was no longer a viable option and directed the State to file a motion to terminate parental rights within 30 days as required by state law. Based on Mother's recent identification of a putative father and Wiebe's follow-up concerning Father's location, the court also ordered genetic paternity testing be completed on the child and Father.

On February 17, 2017, the State filed a motion to terminate the parental rights of Mother as directed by the district court. At some point between February 17 and March 17, the results of the paternity test were received by the court and the parties. The results identified Father as the natural father of K.F.W. With this new information in hand, the State filed an amended motion to terminate the parental rights of both Mother and Father.

A joint termination hearing for both Mother and Father was scheduled for June 15, 2017. Because of an issue resulting in the State's failure to transport Father from Hutchinson Correctional Facility to the hearing, the court continued the termination hearing as to Father's parental rights to July 27, 2017. Mother's termination hearing proceeded as planned. At the close of evidence, the district court found that Mother was unfit, that Mother's condition of unfitness was unlikely to change in the foreseeable future, and that termination of her parental rights was in K.F.W.'s best interests.

Father's termination hearing was held on July 27, 2017, as scheduled. The district court began by taking judicial notice, without objection, of the criminal convictions for which Father was incarcerated at the time. The State then called Christina Cagley, a licensed permanency specialist with SFCS and the caseworker assigned to K.F.W.'s case, as a witness. She testified that K.F.W. had been in DCF custody since July 12, 2016, and in that time he had been with the same foster family and was very attached to his foster parents, whom he viewed as his actual mom and dad. Meanwhile, Father had been incarcerated for the entirety of the child in need of care (CINC) proceedings regarding K.F.W. and, to Cagley's knowledge, had never contacted K.F.W. nor provided any sort of financial support.

Cagley further testified that although it was initially unknown who was the father of K.F.W., once paternity was established she contacted Father at Hutchinson Detention Facility via phone and, after determining that he wanted to pursue reintegration, sent him a case plan. Relevant here, the case plan required Father to:

- Complete an age appropriate parenting class preapproved by SFCS;
- Submit to random drug testing as required by SFCS;
- Complete a drug and alcohol assessment;
- Complete a mental health assessment;
- Follow through with all requirements of any legal cases he was involved in;
- Sign releases allowing SFCS to obtain information from all agencies providing Father with services;
- Obtain and maintain employment and provide SFCS with documentation of legal income; and
- Obtain and maintain stable housing and provide SFCS with documentation confirming that housing.

Citing Father's incarceration and his lack of any type of relationship with K.F.W., Cagley testified she did not believe reintegration was a realistic permanency goal at the time she sent Father the case plan. At the time of the termination hearing, Cagley testified Father had completed a parenting class (albeit not an age appropriate one) through the Salvation Army New Beginnings program and had undergone a drug and alcohol assessment but had not made any progress on any of his other case plan tasks. With regard to reintegration, Cagley testified that even under the best case scenario—in which everything came together immediately and there were "no snags" or "bumps in the road"—it would take a minimum of six months after release from prison for Father to make enough progress on his case plan tasks to make reintegration a realistic possibility. That time line was further extended by the fact that Father could not start working on many of his case plan tasks until his release from prison, which at the time of the hearing was scheduled for September 2017. In light of the extended reintegration time line and the fact that K.F.W. had been in DCF custody for almost half of his young life, Cagley testified that, in her opinion, it would be in K.F.W.'s best interests to terminate Father's parental rights.

Father testified on his own behalf at the hearing. While he admitted to or confirmed a large portion of Cagley's testimony, he also contradicted her in some key areas. Specifically, Father said he had always known that he was the natural father of K.F.W. but had been in prison since before K.F.W. was born. Father testified that he had met K.F.W. one time, when K.F.W. was four months old and Father was still in Douglas County Jail. He also said he wrote letters and drew pictures for K.F.W. but quit sending them after learning that K.F.W. was in DCF custody. Finally, Father said he had spoken to K.F.W. by phone in the past by calling his own mother while she was visiting with K.F.W.

Father also testified about why he had been in prison since K.F.W. was born. Specifically, Father acknowledged being convicted of one count of attempted aggravated assault and two counts of fleeing and eluding. Those convictions stemmed from an incident in Douglas County, Kansas, in which Father refused to pull over because he did not have his driver's license with him. He subsequently led police on a car chase and at one point drove head on towards a law enforcement officer until they both turned off to avoid a collision. Father also admitted to having a number of prior burglary convictions. Lastly, and most recently, Father admitted that he was removed from his Wichita work release program in December 2016 after failing a urinalysis drug test and getting caught using chewing tobacco.

Despite his history with the criminal justice system, Father testified that the birth of K.F.W. and, more importantly, the termination of Mother's parental rights were "life changing event[s]" for him because it made him realize that he was the only one left to take care of K.F.W. Father said that he intended to live with his brother after getting released from prison and that he already had begun sending his resume and job applications to potential employers. All of these efforts, Father claimed, were made to give him a chance to change, to lead a lawful life, and to do what was right for K.F.W.

After the close of evidence, the district court took the matter under advisement and continued the matter to August 10, 2017. At the August 10, 2017, hearing, the district court announced its decision to terminate Father's parental rights.

ANALYSIS

On appeal, Father argues there was insufficient evidence to support the district court's decision to terminate his parental rights. Before terminating parental rights, the district court must find that the State proved by clear and convincing evidence that the parent is unfit and the conduct or condition which renders the parent unfit is unlikely to change in the foreseeable future. K.S.A. 2017 Supp. 38-2269(a). The district court must also find by a preponderance of evidence that termination of parental rights is in the best interests of the child. K.S.A. 2017 Supp. 38-2269(g)(1).

In reviewing a district court's decision regarding unfitness and unlikeliness to change, an appellate court must consider whether, after review of all the evidence, viewed in the light most favorable to the State, it is convinced that a rational fact-finder could have found it highly probable, i.e., by clear and convincing evidence, that the parent is unfit and the conduct rendering the parent unfit is unlikely to change in the foreseeable future. *In re B.D.-Y.*, 286 Kan. 686, 705, 187 P.3d 594 (2008). Clear and convincing evidence is an "intermediate standard of proof between a preponderance of the evidence and beyond a reasonable doubt." 286 Kan. at 691. Appellate courts do not reweigh the evidence, judge the credibility of witnesses, or redetermine questions of fact. 286 Kan. at 705. We review the district court's decision regarding the best interests of the child for an abuse of discretion. *In re M.H.*, 50 Kan. App. 2d 1162, 1175, 337 P.3d 711 (2014).

A. *Unfitness*

The district court evaluates whether a parent is unfit by considering a nonexclusive list of factors delineated in K.S.A. 2017 Supp. 38-2269(b) and (c). Any one of the factors standing alone may—but does not necessarily—provide sufficient grounds for termination. K.S.A. 2017 Supp. 38-2269(f). In this case, the district court relied on the following six statutory factors to find Father unfit:

- Conviction of a felony and imprisonment. K.S.A. 2017 Supp. 38-2269(b)(5).
- 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).
- Whether the child has been in extended out of home placement as a result of actions or inactions attributable to the parent and one or more of the factors listed in subsection (c) apply. K.S.A. 2017 Supp. 38-2269(b)(9).
- Failure to assure care of the child in the parental home when able to do so. K.S.A. 2017 Supp. 38-2269(c)(1).
- 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(c)(2).
- Failure to pay a reasonable portion of the cost of substitute physical care and maintenance based on ability to pay. K.S.A. 2017 Supp. 38-2269(c)(4).

1. *Felony convictions and incarceration*

There is no dispute that Father has been convicted of multiple felonies and was sentenced to prison as a result. Thus, clear and convincing evidence supports the district court's finding of unfitness as set forth under K.S.A. 2017 Supp. 38-2269(b)(5). Even so, Father argues that the evidence was insufficient to establish that his incarceration was a valid factor to support termination of his parental rights.

A parent incarcerated for a long term obviously cannot provide the customary parental care and guidance required to perform the day-to-day responsibilities expected of a parent. In such a case, "the court must consider the extent to which the 'imprisoned parent has made reasonable attempts to contact and maintain an ongoing relationship' with [his or] her child. The sufficiency of those efforts is for the trial court to determine." *In re S.D.*, 41 Kan. App. 2d 780, 790, 204 P.3d 1182 (2009).

Father cites to four examples of reasonable efforts he made to fulfill his parental duties, despite his incarceration. First, Father claims he immediately acknowledged his responsibility as the natural father of K.F.W. as soon as Mother became pregnant. Second, Father claims he wrote letters and drew pictures in prison and sent them K.F.W. Third, Father claims he talked to K.F.W. by telephone when K.F.W. was visiting Father's mother. Fourth, Father claims he visited with K.F.W. during his confinement at the Douglas County Jail when K.F.W. was 4 months old.

The district court held the efforts cited by Father fell short of the reasonable efforts required to initiate and maintain an ongoing relationship with K.F.W. We agree. Most significantly, Father has been incarcerated during K.F.W.'s entire life, which at the time of the termination hearing was a period of two years and nine months. Although Father claims he acknowledged his duties and responsibilities as the natural father of K.F.W. as soon as Mother became pregnant, Father failed to testify about any meaningful efforts he made to initiate, build, and maintain a relationship with K.F.W. Father never made any attempt to have himself legally recognized as K.F.W.'s natural father. And less than three months before his baby's due date, Father intentionally engaged in the unlawful conduct that resulted in the prison term he was still serving at the time of the termination hearing. K.F.W. was just a few months shy of turning three years old on the date of the termination hearing but had met his natural father only one time. That meeting occurred at the Douglas County Jail when K.F.W. was four months old. Although Father testified that he sent letters and pictures to K.F.W. from prison, Father later divulged that he

stopped sending correspondence to K.F.W. when he learned that K.F.W. had been taken into DCF custody, which would had been about a year before Father's termination hearing.

The district court properly considered both Father's past and current felony convictions and incarcerations to support the court's finding that Father was unfit to parent K.F.W. See K.S.A. 2017 Supp. 38-2269(b)(5); see also *In re M.H.*, 50 Kan. App. 2d at 1164.

2. *Failure to adjust circumstances, conduct, or conditions to meet the child's needs*

The next factor relied on by the district court to find Father unfit was the "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" as set forth in K.S.A. 2017 Supp. 38-2269(b)(8). Father claims there is insufficient evidence to support the court's reliance on this factor in finding him unfit. Specifically, Father notes that as soon as he learned K.F.W. was in DCF custody and the subject of a CINC case, he immediately began working on the case plan tasks that he could while in prison. This included completing a parenting class through the Salvation Army, undergoing a drug and alcohol evaluation, and signing up for the prison's random urinalysis testing. Father also claimed that he initiated efforts to obtain stable housing and employment upon his release.

While, as Father noted, he did take a class with a parenting component from prison, there is clear and convincing evidence that Father failed to adjust his circumstances, conduct, or conditions to meet K.F.W.'s needs. The district court found Father's failures in this regard started even before the birth of his child. After his girlfriend became pregnant with his child, Father committed three felonies and, as a result, was sent to prison before K.F.W. was born. Due to threats made by Father against

her, Mother filed for and received a protection from abuse order against Father, which was in place while she was pregnant and after K.F.W. was born.

Father's conduct in prison also establishes that Father failed to adjust circumstances, conduct, or conditions to meet his child's needs. During his prison term, Father was granted the privilege of participating in a work release program, which certainly would inure to the benefit of K.F.W. in terms of money that could have been provided to the child and a work history that would have helped Father secure employment upon release. In December 2016, however, which was five months *after* K.F.W. was placed in the custody of the State, Father admitted to being removed from his Wichita work release program after failing a urinalysis test for illegal drug use and getting caught using chewing tobacco. Specifically, Father tested positive for pain pills he obtained illegally from a coworker. Father blamed these incidents on poor decision making and the fact that he was "an adrenaline junkie." This behavior was consistent with the history of poor decision making that led him to engage in criminal conduct in the past, both before and after K.F.W. was born, and is clear and convincing evidence that Father failed to adjust his circumstances, conduct, or conditions in order to meet K.F.W.'s needs.

3. *Extended out of home placement*

Citing K.S.A. 2017 Supp. 38-2269(b)(9), the third factor relied on by the district court to find Father unfit was that K.F.W. had been in extended out of home placement as a result of Father's actions or inactions. In support of this finding, the court found K.F.W. had been in the legal custody of the State for a little over a year; thus, a large portion of the child's life has been spent in custody. On appeal, Father argues that the district court erred when it found that the approximately 12-month time period during which K.F.W. was in State custody qualified as an extended out of home placement as that term is used in K.S.A. 2017 Supp. 38-2269(b)(9).

When the district court issued its decision, the subsection of the statute upon which the court relied for this particular factor, K.S.A. 2017 Supp. 38-2269(b)(9), dictated that the court consider the following in making a determination of unfitness:

> "(9) whether the child has been in *extended out of home placement* as a result of actions or inactions attributable to the parent and one or more of the factors listed in subsection (c) apply." (Emphasis added.)

At the same time, the phrase "extended out of home placement" was defined at the beginning of the CINC code as "a 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 at which a child in the custody of the secretary was removed from the home." K.S.A. 2017 Supp. 38-2202(i). Thus, when K.S.A. 2017 Supp. 38-2269(b)(9) and K.S.A. 2017 Supp. 38-2202(i) were considered together, the standard for determining whether a parent was unfit was as follows:

> Whether a 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 at which a child in the custody of the secretary was removed from the home as a result of actions or inactions attributable to the parent and one or more of the factors listed in subsection (c) apply.

As Father notes, however, K.F.W. was only in DCF custody for 12 months, rather than the requisite 15 out of the last 22 months. Thus, the district court's finding that the time K.F.W. had spent in State custody weighed in favor of termination was not supported by clear and convincing evidence.

As a side note, and perhaps because of the confusion created by the failure to define the term "extended out of home placement" in K.S.A. 2017 Supp. 38-

2269(b)(9), the Legislature amended the statute in its 2018 session to include the definition of "extended out of home placement" as set forth in 2017 Supp. 38-2202(i) were. See L. 2018, ch. 107, § 13. Thus, the statute now provides 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." L. 2018, ch. 107, § 13.

4. *Failure to provide a parental home for K.F.W. when able to do so.*

The district court found Father failed to provide a parental home to K.F.W. Father acknowledges that fact but claims, as an incarcerated parent, he is exempt from the requirement to provide a parental home because, as the statutory language itself says, he is not able to do so.

The language of the applicable statute states that when a child is not in the physical custody of a parent, the court shall consider whether the parent has assured care of the child in the parental home when able to do so. K.S.A. 2017 Supp. 38-2269(c)(1). In this case, Father has been incarcerated for all of K.F.W.'s life and, at least for the second half of K.F.W.'s life, Mother did not have legal or physical custody of K.F.W. Thus, at least for the second half of K.F.W.'s life, Father was not able to assure care of K.F.W. in the parental home. The district court erred in relying on this factor.

5. *Failure to maintain regular visitation, contact or communication with the child or with the custodian of the child*

Father claimed that he attempted to establish a relationship or otherwise communicate with K.F.W. since the day K.F.W. was born. The district court found no

evidence to support Father's claim. In challenging the district court's finding on appeal, Father points to his testimony stating that he regularly sent K.F.W. letters and drawings and occasionally talked to the child on the phone. We note, however, that Cagley testified she was not aware of any contact between Father and K.F.W.

Even if we consider Father's alleged attempts to maintain regular visitation, contact, or communication with K.F.W., the minimal interaction described by Father can only be characterized as incidental contact, which the statute says may be disregarded. See K.S.A. 2017 Supp. 38-2269(c)(4). Although Father testified that K.F.W. called him "dad" during an alleged phone conversation, Father admitted that K.F.W. did not know that Father was his natural father and instead simply viewed all male figures as "dad."

Simply put, even if Father did send letters and occasionally talked to K.F.W. before the child was taken into State custody, there is absolutely no evidence in the record that this minimal contact was effective in establishing a relationship. Based on the facts in the record, we find clear and convincing evidence that Father failed to maintain regular visitation, contact, or communication with the child or with the custodian of the child.

6. *Failure to pay a reasonable portion of the cost of substitute physical care and maintenance based on ability to pay*

The last factor relied on by the district court to find Father unfit was his failure to provide financially for K.F.W. See K.S.A. 2017 Supp. 38-2269(c)(4). On appeal, Father claims that he was not able to provide financial support due to his incarceration but that he did provide money one time in the past. Father testified that he intends to obtain employment immediately upon his release from prison and will therefore be able to provide financial support to K.F.W. in the future.

Father is correct that the court must consider his ability to pay in considering this factor. See K.S.A. 2017 Supp. 38-2269(c)(4) (court must consider parent's failure to pay reasonable portion of cost of substitute physical care and maintenance *based on parent's ability to pay*). But Father acknowledges that he did have the ability to financially support K.F.W. to some extent while employed in the Wichita work release program. In fact, Father testified he gave Mother some money one time when she dropped by his work site. But this incidental payment does not establish that Father attempted to pay a reasonable portion of the cost of substitute physical care for K.F.W. First of all, there is no evidence as to how much money Father gave Mother. Second, there is no evidence to establish that Father gave the money to Mother at a time when Mother still had custody of K.F.W. Father was employed in the Wichita work release program from April 2016 to December 2016. K.F.W. was removed from Mother's home on July 8, 2016. Without knowing the date Father gave the money to Mother, there is no way to know whether Mother had custody of K.F.W. at the time he did so. And even if the isolated payment to Mother was at a time when K.F.W. was living with her, Father provides no explanation as to why he did not consistently provide money for K.F.W.'s care with each of the paychecks he received during the six-month time period in which he worked in the release program.

As we noted at the outset, "[t]he existence of any one of the above factors standing alone may, but does not necessarily, establish grounds for termination of parental rights." K.S.A. 2017 Supp. 38-2269(f). In this case four of the six factors relied upon by the district court are supported by clear and convincing evidence. For this reason, we affirm the district court's finding that Father is unfit.

B. *Foreseeable future*

Having found sufficient evidence to support the district court's finding of clear and convincing evidence that Father was unfit, we now must next determine whether there is clear and convincing evidence to support the district court's finding that the conduct or

conditions which rendered Father unfit is unlikely to change in the foreseeable future. As determined above, the conditions rendering Father unfit are: (1) his conviction of a felony and imprisonment, (2) his lack of effort to adjust his circumstances to meet the K.F.W.'s needs, (3) his failure to maintain more than incidental contact with K.F.W. or his custodian, and (4) his failure to pay a reasonable portion of the cost to provide substitute physical care.

We begin our analysis by noting that children experience the passage of time differently than adults. K.S.A. 2017 Supp. 38-2201(b)(4). Therefore, the test is not whether Father was making positive steps toward accomplishing the goals set forth in his case plan, but whether he has the ability to actually accomplish—in the foreseeable future—the tasks necessary for reunification. A court may predict a parent's future unfitness based on his or her past history. *In re Price*, 7 Kan. App. 2d 477, 483, 644 P.2d 467 (1982).

In finding the conduct or conditions which rendered Father unfit were unlikely to change in the foreseeable future, the district court relied on Father's history as a guide. See *In re Price*, 7 Kan. App. 2d at 483 (court may predict parent's future unfitness based on his or her past history). The court pointed to undisputed testimony from the caseworker at the hearing that, even if everything came together immediately, it would be a minimum of six months after Father was released from prison before SFCS would even consider reintegration. And in reality, that minimum time period would be at least eight months because Father still had two months left on his prison sentence when the termination hearing occurred. There also was testimony at the hearing from which to conclude it highly probable that "snags" and "bumps in the road" to reintegration were likely to occur. As the court noted, Father "presented no real plans for employment" and instead simply introduced into evidence a letter seeking employment that he had written years before the hearing. Father also had an extensive criminal history dating back to 2004. Indeed, Father had spent most of the years from 2004 to 2017 in prison due to

crimes committed or parole violations that sent him sent back to prison after being released. Although he had taken some positive steps—namely completing a parenting class and undergoing a drug and alcohol evaluation—while incarcerated, he also had his work release privileges revoked for violating the program's rules and failing a urinalysis drug test.

As required, the court found that it must measure the "foreseeable future" from the perspective of "child's time." K.F.W. already had been in the State's custody for a little over a year and K.F.W. had no connection to Father at all. Aside from making some brief references to his scheduled release date, Father presented no evidence to refute the facts showing it was highly probable that the conduct and conditions which rendered Father unfit were unlikely to change in the foreseeable future. We affirm the district court's finding of clear and convincing evidence to establish that Father's unfitness was unlikely to change in the foreseeable future.

C. *Best interests*

The district court found by a preponderance of evidence that termination of parental rights was in K.F.W.'s best interests. K.S.A. 2017 Supp. 38-2269 (g)(1). In making this determination, the court gives primary consideration to the physical, mental, and emotional needs of the children. K.S.A. 2017 Supp. 38-2269(g)(1).

> "[T]he court must weigh the benefits of permanency for the children without the presence of their parent against the continued presence of the parent and the attendant issues created for the children's lives. In making such a determination, we believe the court must consider the nature and strength of the relationships between children and parent and the trauma that may be caused to the children by termination, weighing these considerations against a further delay in permanency for the children." *In re K.R.*, 43 Kan. App. 2d 891, 904, 233 P.3d 746 (2010).

On appeal, this court reviews for an abuse of discretion the district court's decision regarding the best interests of the child. *In re R.S.*, 50 Kan. App. 2d at 1116. An abuse of discretion occurs when no reasonable person would agree with the district court or if the court bases its decision on an error of fact or law. 50 Kan. App. 2d 1105, Syl. ¶ 2.

Here, the district court decided it was in K.F.W.'s best interests to terminate Father's parental rights because the evidence showed that Father had no real plans for employment, has never been the primary caretaker of a child, has numerous felony convictions, and has no real relationship with K.F.W. We find no abuse of discretion in the court's decision.

Affirmed.