

NOT DESIGNATED FOR PUBLICATION

No. 125,070

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Adoption of L.M.,
a Minor Child.

MEMORANDUM OPINION

Appeal from Shawnee District Court; RACHEL L. PICKERING, judge. Opinion filed April 28, 2023. Affirmed.

John Paul D. Washburn, of Washburn Law Office, LLC, of Topeka, for appellant natural mother.

Brian Frost, of Alderson, Alderson, Conklin, Crow & Slinkard, LLC, of Topeka, for appellee.

Before CLINE, P.J., MALONE and ATCHESON, JJ.

PER CURIAM: C.G. (Mother) appeals the district court's decision terminating her parental rights to L.M. and granting K.M.'s (Stepmother) petition for stepparent adoption. Mother claims the district court erred in finding that she failed or refused to assume the duties of a parent for two consecutive years immediately preceding the filing of the petition. More specifically, Mother argues that the district court failed to address whether A.M. (Father) interfered with her ability to maintain contact with L.M. and thereby prevented her from assuming her parental duties. Because the record shows that the district court fully considered the relevant circumstances and clear and convincing evidence supports its conclusion that Mother failed to assume her parental duties, we affirm the district court's decision to grant the stepparent adoption petition.

FACTS

Mother and Father were married in December 2013, and L.M. was born on May 30, 2014. A year later, Mother and Father separated but did not finalize their divorce until March 14, 2018. Under the divorce decree, both parents were granted joint legal custody with equal parenting time over L.M., and neither party was ordered to pay child support. Their agreed parenting schedule provided that Mother would have time with L.M. each week from Saturday at 7 p.m. to Tuesday at 7 p.m., and that the exchange would occur at the Topeka Law Enforcement Center. Mother was also granted the option of exercising more parenting time every other Saturday morning.

While the divorce was pending, Father began a new relationship with Stepmother and was living with her by 2016. The couple would eventually marry in November 2018. Stepmother formed a close bond with L.M. during this time.

On Saturday, August 4, 2018, Mother did not show up to the Law Enforcement Center to pick up L.M. as scheduled. She did not provide any notice to Father that she would not be taking L.M. that week. Father tried to contact Mother about her absence but received no response. Over the next few weeks, Father continued taking L.M. to the Law Enforcement Center for drop-offs, but Mother did not show up for the next six scheduled exchanges. Because of Mother's repeated nonappearance, Father stopped taking L.M. to the Law Enforcement Center after September 8, 2018. He later explained that he did so because he worried "about the impact of these no-shows" on L.M.

On the morning of September 22, 2018, Mother showed up at Father's house unannounced and demanded to take L.M. Mother was accompanied by law enforcement, but the officers left without intervening after discussing the situation with Father. Mother and Father then agreed to meet at the Law Enforcement Center later that evening to

exchange L.M. That afternoon, Mother and Father engaged in a contentious text exchange during which Father requested an explanation for Mother's absence.

At the Law Enforcement Center later that evening, Father again requested an explanation about why Mother had not shown up at exchanges and failed to exercise her parenting time for the prior two months. Mother would not respond to Father's questions, became upset, and left after saying goodbye to L.M. Before leaving, Mother told L.M. "that she was going away for awhile and needed to finish college." Mother would later divulge that "financial and health and mental issues" were the root cause preventing her from exercising her parenting time during the summer of 2018.

Father, Stepmother, and L.M. would not hear from Mother for the next two years. The only attempted contact Mother made was by anonymously sending gifts around L.M.'s birthday. Father and Stepmother became L.M.'s sole caretakers. The week after the September 2018 encounter, Father moved in the divorce proceedings for sole residency and to modify parenting time. Mother did not appear at the hearing, and the district court ordered the parties into case management. The case manager eventually withdrew from the case, noting Mother stated that she wanted "to be left alone." Mother later explained that she did not have the financial ability to pay for case management.

On September 22, 2020, two years to the day after Mother said goodbye to L.M. at the Law Enforcement Center, Stepmother filed a motion for termination of parental rights and simultaneous petition for stepparent adoption. L.M. was then six years old. In her petition, Stepmother alleged that L.M. had resided exclusively with her and Father for the previous 25 months and that Mother had no in-person parenting time with L.M. or provided any financial support for her in that time. Stepmother contended that termination of Mother's parental rights was in the best interests of L.M. because Mother had either failed or refused to assume the duties of a parent for the prior two years. Stepmother also alleged that she and Father had "provided 100% of all of [L.M.]'s food,

clothing, shelter, medical care, school and school related expenses, all day-to-day activities and entertainment." Father consented to Stepmother's proposed adoption.

Mother refused to grant her consent and contested Stepmother's petition. In her trial brief, Mother alleged that Father had prevented her from exercising her agreed parenting time on September 22, 2018. Mother also pointed to financial issues that had prevented her from assuming her parental duties and explained that she could not afford the cost of case management. Mother argued that she had still provided financial support, gifts, and cards to L.M. between September 2018 and September 2020 and that she had provided health insurance for L.M. between September 2018 and January 2019, although it was Father's responsibility to do so under their separation agreement.

The district court held a bench trial on April 23, 2021. Mother, Father, and Stepmother all testified. Mother admitted "that she had had no personal contact with [L.M.] for over two years immediately preceding the filing of the Petition for Step-Parent Adoption." The only attempted contact Mother had with L.M. were the gifts she had anonymously sent. Mother also acknowledged that she had not informed Father that she was no longer going to exercise her scheduled parenting time starting in the summer of 2018, nor did she ever tell him that she wanted to resume contact or parenting time with L.M. over the next two years. Finally, Mother conceded that she had no documentation showing that Father had withheld parenting time from her on any occasion. In response to Mother's assertion that he had interfered with her ability to care for L.M., Father "testified that he never told [Mother] that she couldn't take [L.M.]" and that he "never denied parenting time or otherwise withheld [L.M.] from [Mother]."

On February 8, 2022, the district court filed a memorandum decision and order granting the motion for termination of parental rights and Stepmother's petition for adoption. The district court made extensive findings of fact and conclusions of law. More specifically, the district court found:

"In this case, [Mother] is not committed to her parental responsibilities. During this two-year period, she did not have visits with the child, did not attempt phone calls with the child, nor attempt to visit or speak to her child. The only factor that [Mother] could point to was that she had sent a few unidentified gifts for the child. Yet under K.S.A. 2018 Supp. 59-2136(h)(2)(B), the district court may disregard 'incidental visitations, contacts, communications.' In consideration of Kansas case law and statutes, there is more than sufficient evidence that the natural mother, [Mother], has failed to assume her parental duties from September 22, 2018 – September 22, 2020."

The district court terminated Mother's parental rights, found that her consent to the stepparent adoption was unnecessary, and granted the petition for stepparent adoption. Mother timely appealed the district court's judgment. Because the digital recording of the bench trial was lost, the parties submitted an agreed statement of proceedings on September 7, 2022, which the district court adopted under Kansas Supreme Court Rule 3.04(a) (2022 Kan. S. Ct. R. at 24).

ANALYSIS

Mother argues the district court erred in terminating her parental rights because it did not consider whether Father prevented her from assuming her parental duties in the two years before the filing of Stepmother's petition for adoption. Stepmother counters that Mother did not raise this argument before the district court and has therefore failed to preserve her argument for this court's review. In the alternative, Stepmother asserts that the record supports the district court's conclusion that Mother failed to assume the duties of a parent and that there is no evidence that Father prevented her from doing so.

Before addressing the merits of Mother's claim, we will address Stepmother's contention that Mother's argument is not preserved. Generally, issues not raised before the district court cannot be raised on appeal. *In re Adoption of Baby Girl G.*, 311 Kan. 798, 801, 466 P.3d 1207 (2020). A party must either provide a "pinpoint reference to the

location in the record on appeal where the issue was raised and ruled on" in the district court, or "[i]f the issue was not raised below, there must be an explanation why the issue is properly before the court." Kansas Supreme Court Rule 6.02(a)(5) (2023 Kan. S. Ct. R. at 36); see *Kansas Medical Mut. Ins. Co. v. Svaty*, 291 Kan. 597, 623, 244 P.3d 642 (2010) (each issue must begin with citation to appropriate standard of review and reference to specific location in record where issue was raised and ruled upon).

Stepmother contends that Mother's testimony at trial focused solely on her own conduct and circumstances and that she never addressed whether Father barred her from assuming the duties of a parent. Because the trial record was lost, the sole indication of what was presented and argued before the district court are Mother's trial brief and the agreed statement of proceedings. Both the trial brief and the agreed statement of proceedings reveal that Mother at least peripherally alleged that Father had interfered with her ability to parent her daughter. In her trial brief, Mother claimed that Father, on at least one occasion, had denied her access to L.M. And the agreed statement of proceedings notes that Mother alleged Father was abusive and she was afraid of him—that said, it also states that Mother "could not provide any specific instances or documentation that [Father] had withheld parenting time from her in the past."

Mother has shifted the focus of her argument on appeal to her assertion that Father's conduct prevented her from making the necessary contact with L.M. to prevent the termination of her parental rights. But the general issue contested on appeal is the same issue that was addressed in district court: whether Mother failed or refused to assume the duties of a parent for two consecutive years immediately preceding the filing of the petition for stepparent adoption. We find that Mother's arguments are sufficiently preserved for appeal to allow this court to address the merits of her claim.

Kansas generally disfavors nonconsensual adoptions as public policy emphasizes maintaining a natural parent's rights where possible. See *In re Adoption of G.L.V.*, 286

Kan. 1034, Syl. ¶ 6, 190 P.3d 245 (2008). But this goal is not without bound and may be overcome in some cases. In a contested stepparent adoption, a district court may terminate a person's parental rights if it finds, by clear and convincing evidence, that certain statutorily prescribed factors are present. K.S.A. 2022 Supp. 59-2136(h)(1); *In re Adoption of Baby Girl P.*, 291 Kan. 424, 431, 242 P.3d 1168 (2010). Relevant here, a natural parent's parental rights may be terminated if the natural parent "has failed or refused to assume the duties of a parent for two consecutive years immediately preceding the filing of the petition." K.S.A. 2022 Supp. 59-2136(h)(1)(G); see also K.S.A. 2022 Supp. 59-2136(b) (section applicable to father also applicable to mother). In making such a finding, a district court "(A) [s]hall consider all of the relevant surrounding circumstances; and (B) may disregard incidental visitations, contacts, communications or contributions." K.S.A. 2022 Supp. 59-2136(h)(2).

A district court faced with deciding whether a parent has failed to assume their parental duties may consider evidence that one parent interfered with the other parent's right to maintain contact with the child. *In re Adoption of P.N.S.*, No. 117,331, 2017 WL 4082293, at *5 (Kan. App. 2017) (unpublished opinion); see *In re Adoption of F.A.R.*, 242 Kan. 231, 237, 747 P.2d 145 (1987). But this court has noted that "there is 'a significant distinction between [a parent] being hindered in efforts to contact [another parent] and being unable to provide support.'" *In re Adoption of C.S.*, 57 Kan. App. 2d 352, 365, 452 P.3d 858 (2019) (quoting *In re Adoption of M.D.K.*, 30 Kan. App. 2d 1176, 1181, 58 P.3d 745 [2002]). And "there is a difference in being hindered while trying to set up visitation time and being unable to do so entirely." *In re Adoption of E.S.*, No. 123,301, 2021 WL 2879149, at *5 (Kan. App. 2021) (unpublished opinion).

A district court's finding that a parent has refused or failed to assume parental duties for two years before the filing of the petition for stepparent adoption is a finding of fact that is reviewed to determine whether it is supported by substantial competent evidence. *In re Adoption of J.M.D.*, 293 Kan. 153, 171, 260 P.3d 1196 (2011). Appellate

courts reviewing such a determination consider whether, after review of all the evidence viewed in the light more favorable to the prevailing party—here, Stepmother—the district court's fact-findings are highly probable. In reviewing those findings, an appellate court will not reweigh conflicting evidence, pass on the credibility of witnesses, or redetermine questions of fact. *In re Adoption of C.L.*, 308 Kan. 1268, 1278-79, 427 P.3d 951 (2018).

On appeal, Mother argues that she did not willfully fail to assume her parental duties but was hindered in doing so by Father. She contends the district court erred by failing to consider all the relevant circumstances and asserts that had the court done so, it would have found that Father interfered with her ability to maintain a relationship with L.M. in the two years preceding Stepmother's petition. Mother lists "repeated hinderances by Father" that she believes the district court overlooked in making its ruling. For the sake of completeness, we will set forth all the circumstances Mother asserts in her brief were overlooked or not properly considered by the district court:

- "Mother's significant involvement with the child during the child's first four plus years of the child's life.
- "Mother testified that her relationship with Father was violent and abusive.
- "The parties' divorce was contentious which resulted in exchanges for parenting time to occur at the local Law Enforcement Center.
- "In the Divorce case, Mother was previously represented by Kurt James, who was later disbarred.
- "In the Divorce case, Mother's subsequent counsel withdrew, during a material and crucial portion of the case—Father filed for sole custody the day after this attorney withdrew from representing Mother.
- "In the Divorce case, Mother could not afford a case manager who was assigned to help mediate the issues between her and Father.
- "Mother's financial circumstances remained limited during the time of this case, evidenced by her being appointed counsel at the trial court and appellate court level.

- "Father moved without providing the required notice to Mother under Kansas Law.
- "Father failed to follow the Divorce Court Order corresponding to his responsibilities as a joint legal custodian of [L.M.].
- "Mother provided health insurance for [L.M.] during a portion of the two-year period in question.
- "Mother's medical condition contributed to her inability to participate in a high-conflict co-parenting relationship with Father; mother was pregnant and seizures during pregnancy due to PTSD could be fatal to her unborn child.
- "Father refused to communicate with Mother directly, telling her 'get a lawyer,' 'stop contacting me,' and to 'go to hell.'
- "Father and/or his family threw away Mother's gifts to [L.M.]. Mother sent gifts on [L.M.]'s birthday each year during the two-year period in question.
- "Mother mailed a gift to Father's lawyer for delivery to Father and [L.M.].
- "The pandemic began in March 2020 and continued through the filing of this case, which significantly altered people's ability to be in contact with each other and altered people's access to the Court system."

Few of these circumstances speak to Father's alleged role in preventing her from assuming her parenting duties—the majority concern her own financial and health issues precipitating her prolonged absence from her parental role. Moreover, the potentially relevant factors that Mother does identify either occurred before the statutorily relevant period or are ineffectual in the face of her own testimony.

Mother asserts she was prevented from assuming her parental duties because her marriage to Father was violent and abusive and because their divorce was contentious. But Mother fails to recognize that the only relevant time period to review Mother's assumption of her parental duties is from September 22, 2018, to September 22, 2020. Mother and Father separated in 2015 and finalized their divorce in March 2018. Father's behavior while the divorce was pending may have been relevant to the stepparent adoption proceedings if Mother could show that Father's alleged violent and abusive

conduct during the divorce affected Mother's ability to assume her duties as a parent during the two years immediately before the filing of the adoption petition. But Mother fails to tie Father's alleged abusive conduct to the statutory time period, and the agreed statement of proceedings specified that Mother "could not provide any specific instances or documentation that [Father] had withheld parenting time" during the relevant period.

Next, Mother alleges the district court failed to consider the difficulties she had in communicating with Father and claims these difficulties effectively barred her from parenting L.M. More specifically, she contends that Father refused to communicate with her, that he moved without providing notice, that he threw away gifts that she sent to L.M., and that Father "failed to follow the Divorce Court Order corresponding to his responsibilities as a joint legal custodian." But while these actions could be considered hinderances, Mother's own testimony negates the import of Father's alleged actions.

Mother admitted that "she had had no personal contact with [L.M.] for over two years immediately preceding the filing of the Petition for Step-Parent Adoption"; that "she did not give notice to [Father] that she would not be exercising her scheduled parenting time"; and that "she never contacted [Father] about resuming contact or parenting time with [L.M.] during those two years." Even if this court were to accept Mother's assertion that Father tried to impede her relationship with L.M. by not communicating, Mother admitted that she made no attempts to directly contact L.M., let alone schedule any visitation. While such communication with Father could have been difficult, Mother unilaterally stopped appearing for visitation with L.M. without providing notice or explanation and made no attempts to contact or visit L.M. after September 22, 2018.

As for Mother's claim that Father moved without providing the required notice to Mother, Father testified and acknowledged that he and Stepmother moved in 2019 without notifying Mother. But Father explained that the parties' primary method of

communication was by text, and he always kept the same phone number. Father testified that he received no request from Mother after the move to re-establish contact of any kind or to resume parenting time—testimony that Mother did not controvert at the hearing.

As for Mother's claim that she sent gifts to L.M. but Father and his family threw them away, Father acknowledged that some small gifts were anonymously mailed to L.M. during the two-year period in question, but the only gift that he believed came from Mother was a Snoopy book in November 2018. Father testified that he received another gift in May 2019, but it was from L.M.'s half-brother. Father testified that a few more anonymous gifts were mailed to his parents, but he "did not know who the sender was and he disposed of them, as it seemed sketchy to him." Based on this evidence, the district court found that Mother had sent a few unidentified gifts for L.M., but the court could disregard "incidental visitations, contacts, [or] communications."

On top of the lack of evidence demonstrating the impact of Father's actions on Mother's inaction, there is little evidence in the record to support Mother's contention that she made any attempt to care for, or even communicate with, her daughter in the two years before the filing of the stepparent adoption petition. As for Mother's assertion that she provided health insurance for L.M. during a portion of the two-year period, the evidence showed that Mother provided "secondary health insurance coverage" for L.M. during 2018. The only relevant portion of time was from September 22, 2018, to the end of that year. But apparently Father did not know about the secondary health insurance coverage or never used it, because his testimony was that he and Stepmother "provided 100% of all of [L.M.]'s food, clothing, shelter, medical care, school and school related expenses, all day-to-day activities and entertainment" during that time.

A review of the record reveals no basis for Mother's assertion that the district court overlooked Father's role in allegedly preventing Mother from assuming her parental duties, nor does it display any efforts on her part to assume such a role. Mother's

testimony at trial outlined that her own financial and health and mental issues, as well as her misunderstandings of the case management order, had been the primary roadblocks preventing her from exercising her parenting time. The record bears out the district court's finding that between September 22, 2018, and September 22, 2020, Father and Stepmother were L.M.'s sole caretakers and that Mother was "not committed to her parental responsibilities [and] did not have visits with the child, did not attempt phone calls with the child, nor attempt to visit or speak to her child."

As the district court explained in its ruling, "'a natural parent's right to raise his or her child is protected to the extent that the parent demonstrates a commitment to his or her parental responsibilities.'" *In re Adoption of G.L.V.*, 286 Kan. at 1059. In the two years before the petition was filed, Mother's sole outreach to L.M. was sending some anonymous gifts and providing "secondary health insurance coverage" that Father may have been unaware of and never used. Mother made no other attempt to reach out to, communicate with, or visit L.M. during that time. These incidental contacts or contributions cannot support any finding that Mother assumed her parental duties.

When viewing the district court's decision in a light more favorable to Stepmother, there was substantial evidence to support the district court's conclusion that clear and convincing evidence showed that Mother either failed or refused to assume the duties of a parent in the two years preceding Stepmother's filing of her petition. Mother's assertion that the district court overlooked Father's alleged interference in her failure to assume a parenting role is not supported by the evidence. The district court did not err in terminating Mother's parental rights and granting the stepparent adoption petition.

Affirmed.