

NOT DESIGNATED FOR PUBLICATION

No. 125,161

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Interest of S.R.,  
a Minor Child.

MEMORANDUM OPINION

Appeal from Wyandotte District Court; JANE A. WILSON, judge. Opinion filed June 16, 2023.  
Affirmed.

*Debera A. Erickson*, of Kansas City, for appellant natural mother.

*Kayla L. Roehler*, deputy district attorney, and *Mark A. Dupree Sr.*, district attorney, for appellee.

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

PER CURIAM: The natural mother of S.R., whom we refer to as Mother, challenges the district court's decision to terminate her parental rights. She raises two arguments on appeal. First, though Mother does not challenge the district court's finding that she is presently unfit to parent S.R., she claims that the evidence did not support the district court's finding that her unfitness to parent was unlikely to change in the foreseeable future. Second, she argues that the termination of her parental rights was not in S.R.'s best interests. The State disagrees, asserting that Mother's continued drug use before and throughout the case was sufficient to support the district court's order. After thoroughly reviewing the record and the parties' arguments, we affirm the district court's judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

In August 2020, the State filed a petition two days after S.R.'s birth to find S.R. a child in need of care. The petition alleged that, while pregnant with S.R., Mother tested positive multiple times for cocaine and THC. Mother and S.R. both tested positive for the same drugs at S.R.'s birth. S.R. was immediately placed in custody of the Kansas Department for Children and Families. After a hearing where Mother appeared with counsel, the district court entered an order temporarily removing S.R. from her parents' custody.

In November 2020, Mother stipulated that S.R. was a child in need of care. The district court found that reintegration was a viable goal and adopted the State's proposed permanency plan. This plan required Mother to submit to random urinalysis tests, take a drug and alcohol assessment, and complete various other tasks that would show Mother was able to care for S.R.

Unfortunately, Mother did not complete many of these requirements. Most concerning was Mother's continued drug use. Throughout the pendency of the case, Cornerstones of Care—the organization overseeing Mother's permanency plan—reported to the district court that Mother routinely either failed to take her required urinalysis tests or tested positive for marijuana and cocaine.

About a year after the case was filed, the district court held a permanency hearing and found that reintegration may or may not be a viable goal, and added a concurrent goal of adoption. The State moved to terminate Mother's parental rights about two months later, alleging that Mother was unfit to parent under K.S.A. 38-2269(b)(1), (b)(3), (b)(7), and (b)(8). The State also sought to terminate the parental rights of S.R.'s natural father.

The district court held a joint hearing to consider the rights of both parents in February 2022. There, the State called Thomas Massic, an addiction counselor, to describe Mother's drug use throughout the case. Massic testified that he administered Mother's drug and alcohol assessment, which resulted in a recommendation that Mother receive inpatient treatment due to the severity of her drug use. Despite this recommendation, Mother did not participate in an inpatient treatment program. Instead, Mother participated in outpatient treatment, but she was unsuccessfully discharged after she stopped showing up to her treatment appointments. Mother admitted to Massic that she was using drugs while in treatment.

The State also called Ramona MacDougall, a court services officer assigned to the case. MacDougall testified that Mother admitted to taking a urinalysis test on the day of the February 2022 hearing, which was positive for cocaine. Mother also admitted to MacDougall that she had used unspecified drugs a week before the hearing. MacDougall acknowledged that Mother had secured housing and had a steady income, but she indicated that Mother's continued drug use was the primary concern in the case.

Michelle Mayes, a records custodian for the organization that administered Mother's drug tests, testified that Mother had missed approximately 50 urinalysis tests throughout the case. Mayes estimated that Mother also produced 13 to 15 positive test results, usually showing the presence of marijuana, cocaine, and benzodiazepines. Mayes stated that she had not analyzed any negative urinalysis tests from Mother throughout the case.

McKenzie Oslica, a foster-care management specialist with Cornerstones of Care, testified that S.R. was placed in a foster home with her three biological siblings, who had been adopted by S.R.'s foster parents. Oslica recounted that Mother had not followed the recommendations of her substance-abuse assessment and that Mother had informed

Oslica that she would not attend inpatient treatment. Mother told Oslica that she was still using drugs throughout the case.

Mother also testified at the hearing. She admitted to using cocaine about a month before the hearing and marijuana about a week before the hearing.

After considering the evidence, the district court terminated Mother's parental rights and the parental rights of S.R.'s natural father. The court found that Mother was unfit to parent S.R. under K.S.A. 38-2269(b)(3)—that she had "engaged in excessive use of intoxicating liquors or narcotic or dangerous drugs of such duration or nature to render them unable to properly care for" S.R.'s needs. The court also found that the Department and affiliated organizations had made reasonable efforts to reintegrate the family, but neither parent seriously attempted to curb their drug use. See K.S.A. 38-2269(b)(7), (b)(8). The court observed that "at the end of the day, drug usage had to be dealt with and it hasn't been dealt with. I don't even—I don't even feel like there was an effort put out to address the sobriety issue in this case and it's really unfortunate."

The court noted that both parents knew they needed to stop using drugs but had continued to do so throughout the case. Based on this failure to change course, the court found that it was unlikely that the drug use would change in the foreseeable future. And the court found that termination of Mother's parental rights was in S.R.'s best interests. Mother appeals.

#### DISCUSSION

A parent has a constitutionally protected liberty interest in the relationship with his or her children. *Santosky v. Kramer*, 455 U.S. 745, 753, 758-59, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); *In re B.D.-Y.*, 286 Kan. 686, 697-98, 187 P.3d 594 (2008). Before terminating parental rights, Kansas law requires a district court to find the State has

proved that the parent is unfit, that the conduct or condition that renders the parent unfit is unlikely to change in the foreseeable future, and that termination of parental rights is in the children's best interests. K.S.A. 38-2269(a), (g)(1).

Due to the fundamental nature of a parent's rights, any findings relating to a parent's unfitness must be proved by clear and convincing evidence. K.S.A. 38-2269(a); *In re R.S.*, 50 Kan. App. 2d 1105, Syl. ¶ 1, 336 P.3d 903 (2014). When reviewing a finding of parental unfitness, this court must determine, after considering all the evidence in a light favoring the State, whether the evidence was sufficient to support the court's decision—that is, whether a rational fact-finder could have found it highly probable that the parent was unfit. *In re B.D.-Y.*, 286 Kan. 686, Syl. ¶ 4. We do not reweigh conflicting evidence, pass on the credibility of witnesses, or otherwise independently decide disputed questions of fact. 286 Kan. at 705.

After finding a parent unfit—both at the time of the hearing on the State's termination request and for the foreseeable future—the district court must determine if termination of parental rights is "in the best interests of the child." K.S.A. 38-2269(g)(1). This assessment gives "primary consideration to the physical, mental and emotional health of the child." K.S.A. 38-2269(g)(1). Because determining what is in a child's best interests is inherently a judgment call, we will only overturn a district court's best-interests determination when it constitutes an abuse of discretion. *In re R.S.*, 50 Kan. App. 2d 1105, Syl. ¶ 2. A district court exceeds its broad latitude if it rules in a way no reasonable person would have under the circumstances, ignores controlling facts or relies on unproven factual representations, or acts outside the appropriate legal framework. *State ex rel. Secretary of DCF v. Smith*, 306 Kan. 40, 60, 392 P.3d 68 (2017).

The district court found that the State had proven by clear and convincing evidence that Mother was unfit to parent S.R. at the time of the February 2022 hearing under K.S.A. 38-2269(b)(3) (based on Mother's drug use), K.S.A. 38-2269(b)(7) (failure

of reasonable efforts by the agencies to rehabilitate the family), and K.S.A. 38-2269(b)(8) (lack of effort to adjust her circumstances). Mother does not contest any of these findings in her brief and thus has waived any challenge to the district court's unfitness determination. See *State v. Arnett*, 307 Kan. 648, 650, 413 P.3d 787 (2018) (issues not briefed are deemed waived or abandoned); see also *State v. Salary*, 309 Kan. 479, 481, 437 P.3d 953 (2019) (same for issue not adequately briefed).

Instead, Mother's arguments on appeal focus on the district court's findings that her unfitness was unlikely to change for the foreseeable future and the court's conclusion that terminating her parental rights was in S.R.'s best interests. Mother asserts that there was evidence presented at the hearing regarding other strides she made as the case progressed, showing that she would be able to reintegrate with S.R. in the future. In particular, Mother points out that when the district court terminated her parental rights, she had secured independent housing, was taking college classes, and had maintained a job, thereby providing support to S.R. And she asserts that the length of time that the case was pending at the time of the termination hearing—roughly a year and a half—was not enough to allow her to address the behavior that formed the basis for the district court's unfitness findings.

But these arguments fail to address the heart of the district court's finding that Mother's unfitness was likely to continue for the foreseeable future. The district court did not find that Mother was unfit as a parent due to the lack of adequate housing or lack of employment. Rather, the district court found that Mother's future unfitness stemmed from her failure to address her drug habit. The district court noted that while Mother made laudable steps in other areas throughout the case, she continued to use cocaine and marijuana from when she was pregnant with S.R. until the time of the February 2022 hearing. The evidence showed that Mother never tested negative for drugs while the case was pending. Mother declined to participate in inpatient treatment for her drug use and was unsuccessfully discharged from outpatient treatment. And Mother admitted to using

cocaine and marijuana in the month leading up to the hearing on the State's motion to terminate her parental rights.

Based on this pattern of behavior, the district court found that Mother's unfitness to parent S.R. was unlikely to change in the foreseeable future. While past behavior is not always determinative of a person's future conduct, courts have recognized that sometimes a person's previous actions—or pattern of actions—can suggest how they will conduct themselves in the future. See *In re M.S.*, 56 Kan. App. 2d 1247, 1264, 447 P.3d 994 (2019); *In re Price*, 7 Kan. App. 2d 477, 483, 644 P.2d 467 (1982).

Mother had several opportunities throughout the case to curb her drug use. She knew that her drug habit was one of the State's primary concerns from the outset of the case, when S.R. tested positive for cocaine and THC at birth. But Mother took few, if any, steps to change her behavior, even as she knew the State was asking the court to terminate her parental rights. In light of this record, we find the evidence was sufficient to show that her drug use was unlikely to change in the foreseeable future.

As we have noted, Mother also argues that she was allowed "only a year and a half to try to comply with the court's orders for reintegration," asserting that this was insufficient time to allow her to change her behavior. But courts evaluate the passage of time in cases involving children—including the "foreseeable future" in a termination case—from a child's perspective, not that of an adult. And children have a different perception of time. *In re R.S.*, 50 Kan. App. 2d at 1117. For a child, "a month or a year seem[s] considerably longer than it would for an adult." *In re M.S.*, 56 Kan. App. 2d at 1263; see K.S.A. 38-2201(b)(4). At the time of the February 2022 hearing, this case had been pending the entire year and a half that S.R. had been alive, during which Mother made no progress in addressing her drug habit. The district court did not err when it found by clear and convincing evidence that Mother's unfitness was unlikely to change in the foreseeable future.

In her final argument on appeal, Mother asserts that the district court erred when it found that it was in S.R.'s best interests to terminate Mother's parental rights. Mother asserts that no evidence showed she was abusive toward S.R. or otherwise put S.R. in danger. Without this type of evidence, Mother argues that her fundamental right to parent S.R. should outweigh any other considerations. This is particularly true here, Mother claims, because no one disputed that Mother loves S.R. and wants to provide for the child.

These arguments, however, distort the nature of the district court's decision when considering a request to terminate a person's parental rights. The fundamental importance of a person's parental rights is reflected in the State's elevated burden of proof—to show a parent's present and future unfitness by clear and convincing evidence. K.S.A. 38-2269(a); *In re R.S.*, 50 Kan. App. 2d 1105, Syl. ¶ 1. Once this showing has been made, Kansas law recognizes that a district court has discretion to determine whether terminating parental rights is in the child's best interests. This assessment focuses on the child's physical, mental, and emotional health. K.S.A. 38-2269(g)(1).

While no one contests Mother's affection for S.R. and desire to be reunited with the child, the district court did not abuse its discretion when it found that S.R.'s best interests weighed in favor of terminating Mother's rights. S.R. had spent her entire life living with someone other than Mother, primarily due to Mother's continued drug use. S.R. was placed with foster parents who had already adopted her three biological siblings—a placement one of the witnesses described as "a family at this point." And despite Mother's arguments before the district court and on appeal, the district court did not abuse its discretion when it found that Mother's continued drug use was harmful to S.R. The child was born with drugs in her system, yet Mother failed to address her drug habits. Mother's efforts to downplay the impact of her drug use on S.R. are unpersuasive. Given the length of time that this case had been pending with no positive movement on

Mother's drug use, the district court did not err when it found that permanency with S.R.'s siblings, rather than continued association with Mother, was best for S.R.'s physical, mental, and emotional health.

We recognize—as the district court did—that Mother made some positive changes in her life during these proceedings. But Mother does not challenge the district court's finding that the February 2022 hearing showed that Mother's continued drug use rendered her unfit to parent S.R. We conclude that there was sufficient evidence to show that this unfitness was unlikely to change in the foreseeable future. And in light of this evidence and S.R.'s placement throughout this case, the district court did not abuse its discretion when it found terminating Mother's parental rights was best for S.R.

The district court did not err when it terminated Mother's parental rights.

Affirmed.