

NOT DESIGNATED FOR PUBLICATION

No. 125,394

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Interests of I.B., D.B.B., D.I.B., M.B., K.B., B.B., and B.M.,
Minor Children.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; MICHAEL J. HOELSCHER, judge. Opinion filed February 24, 2023. Affirmed.

Laura E. Poschen, of Law Office of Laura E. Poschen, of Wichita, for appellant natural mother.

Kristi D. Allen, assistant district attorney, and *Marc Bennett*, district attorney, for appellee.

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

PER CURIAM: The natural mother (Mother) timely appeals the district court's denial of her request for a continuance of the hearing set requesting the district court to terminate her parental rights to her seven children. Mother argues the district court abused its discretion by not granting her motion to continue her termination hearing and the denial was not in the best interests of the children. After a thorough review of the record, we find no error in the district court's decision. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In October 2020, the district court issued an ex parte order of protective custody for I.B. (born in 2010), D.B.B. (born in 2012), D.I.B. (born in 2013), M.B. (born in 2015), K.B. (born in 2018), B.B. (born in 2019), and B.M. (born in 2020) (the children),

largely due to Mother's ongoing methamphetamine use, medical neglect of K.B. and B.B., and failure to comply with the Kansas Department for Children and Families (DCF) involvement in the family for the benefit of the children. Mother submitted a no-contest statement to the State's child in need of care petition related to all seven children, which the district court accepted.

The district court held a permanency hearing in March 2021. The State noted that progress in the case by Mother and the children's four fathers had been minimal at best. The district court ordered Saint Francis Ministries to prepare a 90-day achievement plan for each parent involved in the case. The children remained in DCF custody.

The district court conducted another permanency hearing in early July 2021. The hearing was continued to July 29, 2021, because the Indian Child Welfare Act (ICWA) applied to the oldest three children and the Cherokee Nation did not get notice of the hearing. Before continuing the hearing, the district court explained to the parents:

"I suspect that the parties are going to be served with a motion to terminate parental rights at this time. I have given this lecture a few times earlier today. It's not the end of it. You have the—certainly you can kind of see the train coming down the tracks at this point in time. If you are serious about being parents to these children—a child or the children, this is the time to act. You can turn it around. You can do—you can only change what happens today and going forward. You can't change what has happened in the past. So if you are certain about it, this is the time to get serious about it."

Before the July 29, 2021 hearing, the State filed an ICWA motion for finding of unfitness and termination of parental rights related to Mother and the children's four fathers. On July 29, 2021, the district court conducted an ICWA permanency hearing, at which the Cherokee Nation appeared, and determined reintegration was no longer a viable option. The district court addressed Mother and the father of B.B. and B.M.—the

parents who were still working on the case plan—and encouraged them to stay involved and further explained:

"If you are serious about parenting these kids, it's not too late, but the room for error is gone. You have to make good decisions. You have to step up and show the case team that you are serious about working these orders, getting sober, staying sober, and moving the ball forward.

....

"Again, you have got—there's a lot of issues pending in these cases, but as long as you are making good decisions and trying to show everybody that you are parenting—you are serious about parenting these kids, I don't think anybody is going to rush to terminate your parental rights. But having said that, we are going to go ahead and select trial dates here today."

The termination hearing on the State's motion for finding of unfitness and termination of parental rights was scheduled in December 2021. On the date of the hearing, the district court found good cause to continue the hearing as Mother claimed she was in the hospital the day before the hearing and there were issues with notice as to the fathers. At the continued termination hearing held in February 2022, the district court found by clear and convincing evidence the father of M.B. and the father of B.B. and B.M. were unfit and terminated their parental rights. The father of K.B. relinquished his parental rights. The district court continued the case for Mother because of insufficient notice.

At the continued termination hearing held in April 2022, the father of I.B., D.I.B., and D.B.B.—the children to whom the ICWA applied—relinquished his parental rights. Mother requested a continuance, claiming she was scheduled to start outpatient treatment at Miracles, Inc. the day after the hearing and further claiming she provided a negative urinalysis drug test the morning of the hearing. Mother acknowledged she had recently had a positive hair follicle test for methamphetamine, though it showed very low levels,

but claimed the hair follicle test showed a false positive. Mother also explained she had been hospitalized many times in the six months before the hearing due to a stomach condition and pregnancy. Mother said that due to her history, she had been drug tested each time she was in the hospital and claimed she never tested positive. Mother asked for a continuance to subpoena hospital records to address the drug and hair follicle test results. No explanation was provided to the district court as to why the records had not previously been subpoenaed given Mother's notice of the motion for finding of unfitness and termination of her parental rights.

The State responded it was not in the best interests of the children to continue Mother's termination hearing, explaining:

"[T]his case was filed in early October of 2020. This case is now a year and a half old. 18 months these kids have been in custody. Mom has made really no progress up to this point. I do not think, considering child time and these seven kids—[B.M.] has been [in] custody her entire life, Your Honor, and [K.B.] and [B.B.] have been in custody for significant portions of their lives.

"If I—I think if the State had seen some good-faith progress by Mother earlier on in the case, our position might be different, but I can tell you that as recently as last month she was still trying to avoid and evade arrest on several outstanding warrants and was not even having visits with her children because of that."

The children's guardian ad litem (GAL) and the Cherokee Tribe also opposed Mother's requested continuance. The district court denied Mother's request for a continuance because it was not in the best interests of the children and proceeded with the evidentiary hearing.

The district court, after deliberation, found Mother unfit by reason of conduct or condition, rendering her unable to care properly for her children, and the conduct or

condition was unlikely to change in the foreseeable future. The district court terminated Mother's parental rights, finding termination to be in the best interests of the children.

Mother presents only one issue for our review—whether the district court abused its discretion when it denied her motion for continuance.

ANALYSIS

The District Court Did Not Abuse Its Discretion

Mother argues the district court abused its discretion by denying her request for a continuance to obtain evidence of her lack of drug use. Mother claims the district court denied her the opportunity to present a meaningful defense and, by allowing her time to obtain hospital records with drug test results, she would have established her hair follicle drug test taken in March 2022 showed a false positive. Mother contends the district court's denial of her request for a continuance was not in the best interests of the children and a continuance would have changed the entire outcome of the case, preserving the relationship between Mother and the children. The substantive findings of the district court—that Mother was unfit and her parental rights should be terminated—have not been challenged on appeal; therefore, any such argument is deemed waived and abandoned. *State v. Arnett*, 307 Kan. 648, 650, 413 P.3d 787 (2018).

A parent has a constitutionally recognized fundamental right to a parental relationship with his or her child. See *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); *In re B.D.-Y.*, 286 Kan. 686, 697-98, 187 P.3d 594 (2008). The district court has substantial discretion in controlling the proceedings before it, which includes the discretion to decide whether to grant a request for a continuance. See *In re Adoption of J.A.B.*, 26 Kan. App. 2d 959, 964, 997 P.2d 98 (2000). We review the district court's decision for abuse of discretion and reverse "only when no reasonable

person would take the view adopted by the district court." *In re J.A.H.*, 285 Kan. 375, 384-85, 172 P.3d 1 (2007). The party asserting an abuse of discretion bears the burden of proving the district court abused its discretion. *Northern Natural Gas Co. v. ONEOK Field Services Co.*, 296 Kan. 906, 935, 296 P.3d 1106 (2013).

Cases involving the termination of parental rights should be disposed of without unnecessary delay, and a continuance should be granted only if the district court finds it is in the best interests of the child and only when good cause is shown. See K.S.A. 38-2246; K.S.A. 38-2267(a). The district court "must consider all circumstances, particularly such matters as the applicant's good faith, his [or her] showing of diligence, and the timetable of the lawsuit." *In re J.A.H.*, 285 Kan. at 385. The district court's discretion to grant a continuance is bound by due process requirements "that interested parties be afforded an opportunity to present their objections, which includes a reasonable time to prepare a defense to the litigation." *In re H.C.*, 23 Kan. App. 2d 955, 961, 939 P.2d 937 (1997); *In re L.F.*, No. 124,157, 2022 WL 1122691, at *7 (Kan. App. 2022) (unpublished opinion).

Mother acknowledges parents are not guaranteed unlimited continuances in a child in need of care case. See 2022 WL 1122691, at *6-7. Mother contends she showed good cause for the district court to continue her case to allow her time to subpoena hospital records with drug test results. Mother asserts the continuance would have been significant as her hair follicle test conducted in March 2022 showed very low levels of methamphetamines, which she suggests was mistakenly a false positive.

The State opposed Mother's request for a continuance because the children had been placed in custody for 18 months and Mother failed to make progress in the case. In fact, one of the seven children had been in custody for her entire life, while two other children had been in custody for a significant portion of their lives. Both the Cherokee Tribe and the children's GAL agreed with the State.

The district court appropriately exercised its discretion and denied Mother's request for a continuance as a reasonable person could conclude a continuance was not in the best interests of the children. The district court, therefore, did not abuse its discretion in denying Mother's request for a continuance of her termination hearing.

Affirmed.