NOT DESIGNATED FOR PUBLICATION

No. 125,894

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

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

MEMORANDUM OPINION

Appeal from Douglas District Court; PAUL R. KLEPPER, pro tem judge. Opinion filed June 23, 2023. Affirmed.

Jennifer Martin Smith, of Alderson, Anderson, Conklin, Crow & Slinkard, L.L.C., of Topeka, for appellant mother.

Jon Simpson, senior assistant district attorney, and *Suzanne Valdez*, district attorney, for appellee.

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

PER CURIAM: Mother brings this appeal from the district court's order terminating her parental rights to D.M. The district court found Mother was unfit to parent and that her unfitness was unlikely to change in the foreseeable future. In addition, the district court found that termination of Mother's parental rights was in D.M.'s best interests. On appeal, Mother contends that the district court erred when it applied the presumption of unfitness under K.S.A. 38-2271(a)(3). She also contends that the State failed to present clear and convincing evidence to support a finding of unfitness or to prove that her condition of unfitness was unlikely to change in the foreseeable future. Further, she challenges the district court's conclusion that the termination of her parental rights was in the best interests of D.M. Finding no reversible error, we affirm the district court's decision.

FACTS

Shortly after his birth in 2020, D.M. was placed in the protective custody of the Kansas Department for Children and Families (DCF). At the time, Mother was a party to two other child in need of care (CINC) cases involving her two older children—D.S., who was born in 2016, and D.E., who was born in 2018. In its ex parte order, the district court found that based on a psychological and parenting evaluation performed in the two pending CINC cases that Mother could not care for her children due to safety concerns arising out of her "cognitive and reasoning delays."

In the pending CINC cases, it was determined that Mother needed progressively more intensive services aimed at educating and supporting her in providing care to her young children. Unfortunately, several providers could not help Mother and indicated that she required comprehensive services that included more oversight and education than they could offer. Ultimately, the DCF caseworker assigned to work with Mother referred her to Kaw Valley Center Family Preservation Services. But after initially agreeing to work with Kaw Valley, Mother decided that she "did not wish to participate."

In a June 2019 report to the district court in the pending CINC cases, Dr. Jean Dirks—who was a psychologist at Bert Nash Community Mental Health Center and is now deceased—had diagnosed Mother with moderate intellectual disability, dependent personality disorder, and persistent depressive disorder. In Dr. Dirks' opinion, these psychological conditions resulted in Mother's inability to safely parent her young children. Specifically, Dr. Dirks determined that Mother's IQ was 48 and that she read at the 3rd grade level. As a result of her testing, Dr. Dirks determined that Mother's overall age equivalent or mental age was around six and one-half years.

In addition, Dr. Dirks explained that Mother struggled with daily living skills and that her social judgment caused her to be exploited "monetarily or sexually." On the

positive side, Dr. Dirks stated that Mother had adequate grooming and cooking skills. According to Dr. Dirks, Mother felt "uncomfortable when alone" and struggled with self-initiative as well as in making independent decisions. This resulted in Mother agreeing with inappropriate advice, staying with people who have risky behaviors, and repeatedly forming unhealthy relationships with men. Dr. Dirks reported that Mother often "feels hopeless" about her own abilities and "needs others to assume responsibility" for her.

Dr. Dirks opined that due to Mother's inability to remember parenting instructions and failure to exercise appropriate judgment, "she cannot make safe decisions about supervision of children, medical care for a baby or child, or compliance with service providers." Furthermore, Dr. Dirks opined that Mother's "cognitive skills and judgment and reasoning are at the 6-year level, which is simply too low for safe parenting." Moreover, Dr. Dirks noted that Mother does not want to live alone and needed support for her cognitive deficits, but neither her mother nor her grandmother could provide the support needed to provide stability for the children. Consequently, Dr. Dirks recommended that the children not be placed with or supervised by Mother.

After Mother gave birth to D.M. in November 2020, the hospital staff was concerned that she was not mentally and cognitively able to provide adequate care for her newborn baby. On November 24, 2020, the district court placed D.M. in the temporary custody of DCF, and he has remained in the agency's custody since that time. On January 5, 2021, the district court adjudicated D.M. to be a CINC and set the case plan goal as one of reintegration.

The district court ordered Mother to work with Kaw Valley Center and adopted a case plan that assigned her with several tasks to perform. These tasks included: (1) participate in parental empowerment programming; (2) follow all recommendations set forth in her previous parenting and psychological evaluation (i.e. find a therapist, find a benefits payee, undergo one-on-one parenting training, find housing separate from her

family or anyone engaged in illegal activity); (3) keep in contact with the Kaw Valley Center caseworker and update them regarding any changes to her contact information; (4) sign all requested releases; (5) maintain safe and stable housing; and (6) participate in visits with D.M. as deemed appropriate by Kaw Valley Center.

In Kaw Valley Center's first report to the district court, the case manager described Mother as "doing well in engaging with [D.M.] during her visits and appears to be working hard on her case plan tasks." The case manager also stated that Mother was "very open to suggestions and feedback from others [and] is showing that she wants to be a part of [D.M.]'s life and is willing to do the work." Accordingly, at a dispositional review hearing held on April 12, 2021, the district court reaffirmed the permanency goal of reintegration.

On June 10, 2021, Kaw Valley Center reported that Mother continued to participate in a parent management training class as well as a Healthy Mothers Program for infant and toddler services. Even so, the report indicated that Mother was not meeting her mental health needs and—as a result—D.M. was at risk for neglect. Although Mother had once attended therapy, she evidently had to stop due to difficulty in scheduling. Kaw Valley Center recommended Mother seek out a therapist who could work with "lower functioning" clients and the case worker offered to help her find one.

Mother continued to maintain contact with Kaw Valley Center, participated in visits with D.M., and signed releases when requested. Mother was evicted from her residence after losing her housing voucher. As a result, she temporarily lived at a hotel and struggled to find new housing. Meanwhile, on August 12, 2021, Mother voluntarily relinquished her parental rights to her two older children.

On October 18, 2021, the district court held its first permanency hearing regarding D.M. Once again, the district court reaffirmed that the goal was reintegration. At the

hearing, Kaw Valley Center reported that Mother continued to attend most of her visits with D.M., continued participating in case management services, continued working with vocational rehabilitation, and had completed the parent management training class. Still, Mother had not yet obtained a new therapist and was still working on trying to find suitable housing.

At the hearing, the caseworker noted that Mother was engaged to be married again and expressed concern about her pattern of frequently entering and exiting relationships. It was also noted that Mother had recently been divorced, and that she has a history of cancelling visits with D.M. and his siblings when she began a new relationship. In particular, the caseworker pointed out that Mother had "missed visits over the last couple of months." Further, the caseworker expressed concerns for D.M.'s safety "if [Mother] does not continue utilizing the skills . . . she has gained in [the parent management training class]." In addition, the caseworker felt that D.M. was "at risk for harm" because of Mother's ongoing "struggle with relationships and making her children a priority when problems arise in her life."

Only 3 months later, on January 24, 2022, the district court held another permanency hearing and found reintegration no longer viable. Later, on March 2, 2022, the State filed a motion seeking a finding of unfitness and termination of parental rights. In the motion, the State alleged that Mother was presumed to be unfit under K.S.A. 38-2271(a)(3) because her older two children had been adjudicated to be in need of care. The State further alleged Mother to be unfit under K.S.A. 38-2269(b)(1) due to conduct or condition which rendered her unable to care for the child; under K.S.A. 38-2269(b)(7) for failure of reasonable efforts by public or private agencies toward rehabilitation; under K.S.A. 38-2269(b)(8) for lack of effort to adjust her circumstances, conduct, or conditions to meet the needs of the child; and under K.S.A. 38-2269 (c)(3) for failure to carry out a reasonable plan toward integration. Specifically, the State alleged that Mother

was unfit due to her mental health diagnoses, her failure to carry out the tasks set forth in the case plan, and the fact that reasonable rehabilitation efforts had failed.

While the termination motion was pending, Kaw Valley Center increased Mother's visits with D.M. from one hour to one and one-half hours per week. The caseworker reported that while Mother participated in the visits and showed progress in engaging with D.M., she observed that there was a lack of bonding between parent and child. It was also reported that Mother had moved from Lawrence to an apartment in Kansas City, Missouri, which resulted in transportation issues and some missed visits. At that time, Kaw Valley Center began transporting D.M. to Mother's apartment for the visits. and the caseworker noticed a bond between Mother and D.M. But she noted that the bond was not as strong as the one developed between D.M. and the foster family that had been caring for him since he was about 2 months old.

On August 18 and 19, 2022, the district court held an evidentiary hearing on the State's termination motion. At the hearing, the State presented the testimony of Mother; D.M.'s foster mother; Carolyn Trayer, a therapist at Kaw Valley Center; Harley Graham, a case manager at Kaw Valley Center; Hayley Battenberg, a child protection supervisor at Kaw Valley Center; and Malina Meyer, a permanency case manager at Kaw Valley Center. The State also introduced 22 exhibits into evidence. These exhibits included Mother's parenting and psychological evaluation, all of Kaw Valley Center's permanency plan reports, and other reports that had been presented to the district court by representatives of Kaw Valley Center. Additionally, the district court took judicial notice of the court files in the CINC cases involving Mother's other two children. The defense recalled Mother to testify and also presented the testimony of her grandmother.

At the time of D.M.'s birth, Mother was already working with Trayer, as part of the case plan in the pending CINC cases involving her other children. Trayer testified that although she focused on the parenting of the older children, she had also offered Mother

"some minimal coaching" about caring for an infant. In addition, Trayer testified that the "attachment" work she did with Mother and the older children would have also helped create a bond with D.M. For infant and toddler training, Trayer recommended that Mother use Healthy Moms as a resource. Trayer opined that Mother would require other people around to help her raise children and could not parent without "family support."

Meyer testified that she had hoped Healthy Moms would help Mother bond with D.M but—after attending only two sessions—Mother stopped participating in the program. Because Kaw Valley Center could not find additional training services for Mother, the case managers began providing informal parent coaching at visitations with D.M. As a result of Mother's cognitive limitations, they explained things to Mother "a little bit more in detail" and reviewed any written instructions with her orally. Meyer added that she never felt comfortable recommending a change from supervised to unsupervised visits because she never saw "very clear, appropriate parenting and a high level of engagement" between Mother and D.M. Similarly, Graham testified she had concerns about the lack of any bonding between Mother and D.M. Further, Graham expressed concerns about "appropriate parenting and [D.M.'s] safety" as well as about Mother's "housing situation."

Some incidents noted by the caseworkers which supported their concern for D.M.'s safety included:

- Mother leaving D.M. unattended on the changing table;
- Mother struggling with multitasking;
- Mother "barking orders" at her other children to help with D.M. and becoming irritated when they did not do exactly what she asked them to do;
- Mother struggling to focus on her children and failing to give them proper attention during visits;

- Mother struggling to find appropriate activities to engage in with D.M. and to keep him entertained;
- Mother getting "frustrated and flustered" when her children were upset and escalating the situation;
- Mother struggling with properly feeding D.M.—these concerns included the amount of formula given, maintaining an appropriate feeding schedule, and identifying proper foods for his age;
- Mother giving D.M. an Easter basket with items that posed a choking hazard for his age;
- Mother forgetting to bring lunch for D.M. on at least two visits despite being instructed that she would need to do so;
- Mother feeding D.M. chicken nuggets and crackers without breaking them into smaller pieces; and
- Mother watching D.M. climb on the side of a chair without correcting the unsafe behavior.

Meyer also testified that in January 2021, she reminded Mother of the requirement that she find a therapist and offered her assistance in finding one that was qualified. Even so, Mother declined Meyer's offer of help. Two months later, Mother had not found a therapist, and Meyer provided additional information to try to help her find one. Instead, Mother said she was on a waiting list at Bert Nash Community Mental Health Center. Yet Graham testified that she followed up with Bert Nash staff and was told that Mother was not attending therapy at their facility nor was she on a waiting list to do so. Graham continued to offer Mother assistance in finding a therapist, but she declined her assistance.

In April 2022, Mother briefly entered a psychiatric hospital and was prescribed medication for insomnia, depression, and anxiety. Soon after, a case manager at Bert

Nash placed her on a waiting list for a therapist. Even so, because Mother had moved to Kansas City at that point, she needed to find a therapist near her residence. According to Graham, Mother never complied with the task of finding an appropriate therapist as required by the case plan.

As part of her case plan, the district court had also instructed Mother to find an appropriate representative payee to act on her behalf by helping her manage her social security payments. Graham reported that she suggested an appropriate payee to Mother. But Mother stated she would not find one, and Kaw Valley Center had concerns about others exploiting Mother by inappropriately using her income for their own purposes.

The professionals working with Mother also testified their documented concerns about Mother's judgment that resulted in her repeatedly forming harmful relationships with men. Battenberg testified that Mother had difficulty "with the pace of the relationships and . . . who was around the kids." According to Battenberg, Mother was married and divorced "several times" while her children's CINC cases were pending and had also been the victim of domestic violence. It also appeared that she did not understand the concern with having men around the children who had hurt her in their presence.

The record reflects that prior to the filing of the CINC cases, Mother had herself been charged with battery after a domestic violence incident involving her then-husband. In May 2021—while this case was pending—Mother divorced her third husband. Four months later, she was engaged to another man. After the marriage, the new husband physically abused Mother six or seven times. At the time of the termination hearing, Mother was still married to this husband, and she admitted that he engaged in behaviors that "shouldn't really be around a child."

Graham testified that Mother's relationships with men impaired her parenting because "the children took a back seat to her personal life" and "were no longer a priority." When this occurred, Mother often missed her visitation with her children. Graham expressed concern that D.M. would suffer neglect when Mother focused on her relationships with men. Likewise, Meyer testified that she talked with Mother about domestic violence resources, but she was not interested in pursuing those services.

Mother testified that she believed she could successfully parent D.M. at her home with "another person there like watching and everything, . . . like [until] I get used to it." She agreed that it would take "8 or 9 months or maybe longer" to get used to taking care of D.M. and to get her "mental issues in place" as well as to get more toys for D.M. plus trying to find parenting classes in Missouri. Although her grandmother lived in Lawrence and she lived in Kansas City, Mother testified that she could rely on grandmother's help to watch D.M. in the evenings and on weekends. Mother also suggested she could ask her mother-in-law for help because she had a lot of experience in raising children.

After hearing the testimony, reviewing the evidence, and considering the argument of counsel, the district court took the motion under advisement. On October 14, 2022, the district court issued a written order finding Mother to be unfit and ordering the termination of her parental rights to D.M. In the order, the district court found "[t]he evidence is clear and convincing that Mother and Father are unfit by reason of conduct or condition which renders them unable to care properly for the child, and that the condition is unlikely to change in the foreseeable future." The district court also found that termination of parental rights is in the best interests of the child.

Thereafter, Mother filed a timely notice of appeal.

ANALYSIS

In this appeal, Mother presents four issues: First, whether the district court erred in applying the presumption of unfitness under K.S.A. 38-2271(a)(3); second, whether clear and convincing evidence supports the district court's conclusion of unfitness; third, whether clear and convincing evidence supports the district court's finding that the condition of unfitness is unlikely to change in the foreseeable future; and whether a preponderance of the evidence supports the district court's finding that termination of parental rights is in the best interests of the minor child. In response, the State contends that the district court did not err and that there is sufficient evidence in the record to support the district court's decision.

Standard of Review

The Fourteenth Amendment to the United States Constitution protects the fundamental liberty interest of parents to make decisions regarding the care, custody, and control of their children. Consequently, parents are entitled to due process of law before they can be deprived of this fundamental right to parent. *In re P.R.*, 312 Kan. 767, 778, 480 P.3d 778 (2021). Still, the fundamental liberty interest in parenting is not without limits. *In re P.R.*, 312 Kan. at 778. Under certain circumstances, the State may seek to protect the welfare of children by asserting "processes designed to protect children in need of care." *In re A.A.-F.*, 310 Kan. 125, 146, 444 P.3d 938 (2019).

The Revised Kansas Code for Care of Children provides that a district court may terminate parental rights only if it makes three findings: (1) clear and convincing evidence shows that a parent is unfit by reason of conduct or condition which renders the parent unable to properly care for a child; (2) clear and convincing evidence shows that this conduct or condition is unlikely to change in the foreseeable future; and (3) a preponderance of evidence shows that termination of parental rights is in the best

interests of the child. K.S.A. 38-2269(a), (g)(1); see also *In re E.L.*, 61 Kan. App. 2d 311, 322, 502 P.3d 1049 (2021). In deciding whether clear and convincing evidence supports a district court's decision to terminate a parent's rights, we review the record to determine whether the evidence—viewed in the light most favorable to the State—could have convinced a rational factfinder that these facts were highly probable. *In re Adoption of Baby Girl G.*, 311 Kan. 798, 806, 466 P.3d 1207 (2020), *cert. denied sub nom. P.F. v. J. S.*, 141 S. Ct. 1464 (2021).

In making this determination, we are not to reweigh the evidence, pass on the credibility of witnesses, or redecide questions of fact. *In re Adoption of Baby Girl G.*, 311 at 806. Moreover, in reviewing a district court's decision terminating a parent's rights, we must consider whether there is a preponderance of evidence in the record that is sufficient to establish that the "termination of parental rights . . . is in the best interests of the child" based on the physical, mental, and emotional needs of the minor child. K.S.A. 38-2269(g)(1); *In re E.L.*, 61 Kan. App. 2d at 322. To the extent that our review involves the interpretation of statutes, our review is unlimited. *In re D.H.*, 57 Kan. App. 2d 421, 430, 453 P.3d 870 (2019).

Furthermore, K.S.A. 38-2269(b) provides a nonexclusive list of factors a court must consider in determining unfitness. The court must also consider a separate nonexclusive list of factors when—as in this case—a child is not in the parent's physical custody. See K.S.A. 38-2269(c). Any one of the factors set forth in K.S.A. 38-2269(b) or (c) may establish grounds for termination of parental rights. K.S.A. 38-2269(f). Even if grounds for termination are found, the State must also establish by a preponderance of the evidence that it is in the best interests of the child based primarily on the physical, mental, and emotional needs of the child. K.S.A. 38-2269(g)(1); *In re E.L.*, 61 Kan. App. 2d at 322. With these principles in mind, we turn to the merits of Mother's appeal.

Statutory Presumption of Unfitness

In this case, the State asserted—among other things—that Mother is unfit based on a statutory presumption set forth in K.S.A. 38-2271(a)(3). This presumption applies when "on two or more prior occasions a child in the physical custody of the parent has been adjudicated a child in need of care." Initially, it is the State's burden to establish a factual basis for this presumption of unfitness by clear and convincing evidence. K.S.A. 38-2271(a). If the State does so, then the burden shifts to the parent to attempt to rebut the presumption of unfitness by a preponderance of the evidence. K.S.A. 38-2271(b). If a district court finds that a parent is presently unfit and unable to care for the minor child, and that this unfitness will continue for the foreseeable future, it shall terminate the parent's rights. K.S.A. 38-2271(b).

Significantly, Mother does not dispute that the district court took judicial notice of the two prior CINC cases in which Mother's parental rights were terminated as to D.M.'s siblings. See *In re Ch.W.*, No. 114,034, 2016 WL 556385, at *6 (Kan. App. 2016) (unpublished opinion) (A district court has discretion to take judicial notice of prior CINC adjudications.). Instead, Mother suggests that because the two prior CINC cases "were filed simultaneously" and the order of termination in both cases was entered at the same time, the presumption does not apply. Yet, upon examination of the plain language of K.S.A. 38-2271(a)(3), we find that the requirement of "two or more prior occasions" includes situations in which more than one child has previously been adjudicated a child in need of care at the same time. See *In re J.B.*, No. 94,585, 2006 WL 463250, at *4 (Kan. App. 2006) (unpublished opinion) (rejecting claim that the manner in which a case for a younger child was consolidated with a case in which three other children had previously been adjudicated children in need of care precluded a finding that the "two or more prior occasions" requirement had been met).

Accordingly, we find that the Kansas Legislature's use of the word "occasions" in K.S.A. 38-2271(a)(3) means that multiple children have previously been adjudicated to be in need of care regardless of the number of cases in which the adjudications had been made. We note that Mother has not preserved a challenge to the district court's failure to specify the presumption under K.S.A. 60-414. As a general rule, we do not consider unpreserved claims even when constitutional rights are at issue. *State v. Gutierrez-Fuentes*, 315 Kan. 341, 347, 508 P.3d 378 (2022); see also *In re K.R.*, 43 Kan. App. 2d 891, 900, 233 P.3d 746 (2010) (reversal not required based on the absence of a K.S.A. 60-414(a) or (b) determination when the parent failed to raise the issue before the district court); *In re J.S.*, 42 Kan. App. 2d 113, 119, 208 P.3d 802 (2009) (same); *In re S.M.*, No. 125,400, 2023 WL 2468545, at *7 (Kan. App. 2023) (unpublished opinion) (mandate issued April 21, 2023).

Still, Mother argues that we should consider this argument even though it was not preserved because this case involves her constitutional right to parent. As we will discuss below, the district court did not simply terminate Mother's parental rights based on the statutory presumption. Rather, the district court found that clear and convincing evidence supported a finding of unfitness based on the statutory factors set forth in K.S.A. 38-2269(b) and (c). See *In re J.S.*, 42 Kan. App. 2d at 119 (if sufficient evidence supports the district court's findings on the statutory factors of unfitness, then reversal is not required). Because we find that sufficient evidence supports the district court's findings and conclusions under K.S.A. 38-2269(b) and (c), we conclude that any potential error under K.S.A. 60-414 is harmless. Thus, under these circumstances, we decline Mother's invitation to consider this unpreserved issue.

Mother also argues that she rebutted the statutory presumption based on her testimony that she could provide a stable and nurturing home to D.M. within eight or nine months of the termination hearing. As addressed above, it is the role of the district court—not an appellate court—to weigh the evidence. Regardless, even assuming Mother

adequately rebutted the statutory presumption, we again note that the district court expressly found that the State proved its allegations of unfitness under three additional statutory factors by clear and convincing evidence.

Statutory Findings of Unfitness

K.S.A. 38-2269(b)(1)

Under K.S.A. 38-2269(b)(1), termination is appropriate if a parent's "[e]motional illness, mental illness, mental deficiency or physical disability [are] of such duration or nature as to render the parent unable to care for the ongoing physical, mental and emotional needs of the child." A review of the record on appeal confirms that Mother has been diagnosed with a moderate intellectual disability, dependent personality disorder, and persistent depressive disorder. The record also reflects that Mother has an IQ of 48 and the mental age of approximately a six and one-half-year-old child. Likewise, the record shows that Mother's mental deficiency is such that it has rendered her unable to appropriately exercise judgment and unable to meet D.M.'s physical and emotional needs. We find this evidence to be both clear and convincing.

Even though Mother objected to the admission of Dr. Dirks' mental health evaluation at the evidentiary hearing because she was deceased and unable to testify, she did not designate the admission of this evidence at trial as an issue on appeal. Rather, Mother mentions it only in passing in her challenge to the sufficiency of the evidence. A point raised incidentally in a brief and not argued in it is deemed waived or abandoned. *Russell v. May*, 306 Kan. 1058, 1089, 400 P.3d 647 (2017). Likewise, a failure to support a point with pertinent authority or failure to show why a point is sound despite a lack of supporting authority or in the face of contrary authority is like failing to brief the issue. *In re Adoption of T.M.M.H.*, 307 Kan. 902, 912, 416 P.3d 999 (2018). Thus, we find Mother

waived any challenge to the admissibility of the parenting and psychological evaluation by failing to adequately brief the issue.

Certainly, Dr. Dirks' evaluation of Mother is significant and supports the district court's finding of unfitness. But there is also a substantial amount of additional evidence in the record on appeal to support the district court's decision. Specifically, multiple caseworkers and other professionals working with Mother testified regarding their concerns about her inability to perform parenting tasks and to exercise appropriate judgment to keep D.M. safe. These witnesses also testified that Mother struggles to bond and appropriately engage with D.M.

In addition, the testimony as well as documentary evidence reveal that Mother has a history of becoming involved in abusive relationships and has allowed individuals engaged in illegal activities to interact with her children. The record also contains evidence that Mother does not understand why those who abuse her should not be allowed to be around her children. Likewise, the record contains evidence establishing that Mother has a history of quickly becoming involved in relationships with men and that during such relationships, her children are no longer a priority.

Notably, Graham expressed concerns about the potential for neglect if D.M. was returned to his Mother's care. Similarly, Trayer testified that in her opinion, Mother would always need the presence of others to be able to safely parent her children. Further, Meyer testified that she was never comfortable with authorizing Mother to move from supervised to unsupervised visits with D.M. because of concerns for his safety.

The record also reflects that Mother had received inpatient psychiatric treatment just a few months before the termination hearing. Despite all these serious mental health and developmental concerns, Mother had repeatedly failed to work with a therapist to

address these concerns. Hence, we find that the district court's conclusion that Mother is unfit under K.S.A. 38-2269(b)(1) is supported by clear and convincing evidence.

K.S.A. 38-2269(b)(7)

Pursuant to K.S.A. 38-2269(b)(7), termination of a parent's rights is also appropriate if reasonable efforts made by appropriate public or private agencies have failed to rehabilitate the family. In her brief, Mother argues that the efforts made during the CINC case were not reasonable in light of her cognitive limitations. Mother also suggests that her disability was not reasonably accommodated with additional support to assist her in rehabilitating her family and in integrating D.M. into her home.

Although the record reflects that Mother loves D.M. and truly desires to parent him, she has unfortunately been unable to gain the necessary skills to fulfill the case plan for integration. Specifically, the record shows that Mother received help from both Kaw Valley Center and Bert Nash in an attempt to assist her in developing the skills necessary to appropriately parent her son. The record also reveals that several different programs and approaches were attempted to help Mother gain the skills she needed to successfully parent D.M.

Trayer testified about her efforts to work with Mother to help her gain parenting skills. Although the parenting program generally lasts for 4 months, Trayer adjusted the program for Mother to extend over 10 months in order to accommodate her disability. Trayer further testified that she then provided Mother with another 10 months of services in the hope that she could successfully complete the case plan leading to reintegration.

The record also shows that Mother's case manager referred her to the Healthy Moms program. Unfortunately, Mother stopped participating in the program after only two sessions. The record reflects that Mother's caseworkers then tried to accommodate

her needs by working on parenting skills during her visitation with D.M. In particular, the caseworkers testified that they attempted to explain things slowly and clearly to Mother in order to help her understand the skills necessary to successfully parent her young son. In addition, the caseworkers helped provide financial—as well as financial management—resources to Mother and arranged transportation for her visits with D.M.

Even though Mother made progress at times, the caseworkers testified that they never felt Mother had gained the skills necessary to move from supervised to unsupervised visits with D.M. or to safely integrate him into Mother's home. In fact, after working with Mother for a significant period of time, Trayer testified that it was her opinion Mother would never be able to successfully care for D.M. without additional people in the home to help her meet his needs and keep him safe. As Battenberg pointed out, social service agencies have no access to a 24-hour support person to help care for children.

Perhaps Kaw Valley Center could have done more to help Mother find a therapist. But the record shows that the caseworkers made repeated attempts to try to help meet this case plan task. Yet Mother either declined their help or indicated that she was making arrangements with Bert Nash. The record also reflects that Mother declined help to address domestic violence issues, failed to attend parenting programs made available to her, and missed some of her visitation sessions with D.M. Regrettably, a review of the record reveals that Mother failed to fully avail herself of assistance offered to her and, as such, she has not shown that inadequate accommodations impeded her ability to develop the parenting skills necessary for integration. See *In re A.P.*, No. 122,288, 2020 WL 3481474, at *7-8 (Kan. App. 2020) (unpublished opinion) (rejecting argument that KVC discriminated on the basis of disability when the record shows that the various agencies provided meaningful support services in an attempt to rehabilitate the family).

The record reveals that Mother made progress on some of the tasks assigned in the case plan, but she was unable to develop the skills necessary to safely parent D.M. The requirement is not that public or private agencies be successful in their efforts because that depends on various factors over which they have no control. Instead, the statute requires that public or private agencies provided reasonable efforts to rehabilitate the family. See *In re M.S.*, 56 Kan. App. 2d 1247, 1257-58, 447 P.3d 994 (2019). Many of Mother's arguments focus on public policy questions that fall within the authority of the legislative branch and are outside the authority of the judicial branch to decide. Thus, based on our standard of review, we find there is clear and convincing evidence in the record to support the district court's conclusion that Mother is unfit under K.S.A. 38-2269(b)(7).

K.S.A. 38-2269(c)(3)

Additionally, the district court concluded that Mother is unfit under K.S.A. 38-2269(c)(3). This statute provides that termination is appropriate if the State can establish that the parent failed to carry out a reasonable case plan—approved by the district court—that is directed at integration of a child into the parental home. Based on our review of the record on appeal, we find that there is clear and convincing evidence to support the district court's finding that Mother failed to carry out the tasks set forth in the case plan.

In particular, we find that the record contains clear and convincing evidence to establish that Mother failed to secure stable and safe housing in a timely fashion; and failed to participate in vocational rehabilitation. Also, we find that there is clear and convincing evidence in the record to show that Mother has failed to attend numerous appointments for both her and the children and failed to secure a responsible representative payee for her social security benefits. Likewise, the record establishes that at times Mother has been inconsistent with her visits with D.M. and that she has been

unable to move from supervised visits to unsupervised visits. So, our review of the record on appeal confirms that the district court's finding that Mother has failed to complete crucial components of the integration plan is supported by evidence that is both clear and convincing.

Unfitness Unlikely to Change in Foreseeable Future

Next, Mother contends that the district court erred in concluding that her unfitness was unlikely to change in the foreseeable future. K.S.A. 38-2269(a) provides that once a district court concludes that a parent is unfit, the State must then prove by clear and convincing evidence that the conduct or condition rendering the parent unfit is unlikely to change in the foreseeable future. In making this determination, Kansas courts measure time from the child's perspective and not from that of the parents because "time perception of a child differs from that of an adult." *In re S.D.*, 41 Kan. App. 2d 780, Syl. ¶ 9, 204 P.3d 1182 (2009); see K.S.A. 38-2201(b)(4).

"[A] child deserves to have some final resolution within a time frame that is appropriate from that child's sense of time." *In re A.A.*, 38 Kan. App. 2d 1100, 1105, 176 P.3d 237 (2008). Moreover, children have the right to permanency in a time frame reasonable to them. And "when a child is very young and lacks any real relationship with the parent . . . this factor is particularly significant." *In re E.L.*, 61 Kan. App. 2d at 329. In making this determination, courts may look to the parents' past conduct as indicative of future behavior. 61 Kan. App. 2d at 328. Although the statute does not define "foreseeable future," panels of our court have considered periods of time as short as seven months as too long to be the foreseeable future from a child's perspective. *In re S.D.*, 41 Kan. App. 2d at 790.

Here, Mother essentially asks us to reweigh the evidence presented to the district court. She points to her own testimony in which she estimated that she would probably be

ready to care for D.M. in her home within eight or nine months. Mother also points to services that she has identified in Missouri that may be able to support her in providing a safe and stable home for D.M. in the foreseeable future. She also argues that she was not given the chance to truly demonstrate her parenting skills beyond the interactions that occurred during short, supervised visits. Further, she argues that she had appropriately interacted with D.M. during the visits and that she had tried to comply with the instructions given to her by the caseworkers.

Once again, the role of this court is not to reweigh the evidence but to review the record on appeal—in the light most favorable to the State—to determine whether there is clear and convincing evidence to support the district court's conclusion. Based on our review of the record, we see that D.M. was placed in DCF's custody within a few days following his birth in November 2020, and that he has remained out of the home throughout this case. At the time of the final termination hearing in August 2022, D.M. had been in a foster home for over 20 months.

We appreciate that Mother may sincerely believe that she could safely care for D.M. in her home within eight or nine months if she is able to receive additional support. Even so, as the State accurately points out, even if it would be possible for Mother to receive additional support and to meet the other requirements of the case plan within 8 months, this additional time would constitute 40% of D.M.'s life at the time of the termination hearing.

Moreover, by the time the district court convened the termination hearing, Mother had already been working with DCF and various agencies for over four years. Sadly, she was unable to make sufficient progress over that time to allow her to parent D.M. or her other children. As stated above, it was appropriate for the district court to look to Mother's past conduct as indicative of future behavior. Consequently, viewing the evidence in a light most favorable to the State, we find clear and convincing evidence to

support the district court's findings that Mother's unfitness was unlikely to change in the foreseeable future.

Best Interests of the Child

Finally, Mother challenges the district court's finding that termination of her parental rights is in D.M.'s best interests. Once a district court finds that a parent is unfit and that the unfitness is unlikely to change in the foreseeable future, it must then determine whether the termination of parental rights is in the best interests of the minor child. K.S.A. 38-2269(g)(1). In her brief, Mother argues that the district court merely made a cursory finding that the termination of her parental rights is in D.M.'s best interests. Even so, because Mother did not object to the district court's findings, we presume that the district court made all findings necessary to support its decision. *In re Marriage of Knoll*, 52 Kan. App. 2d 930, 941, 381 P.3d 490 (2016); see *In re L.B.*, No. 123,869, 2021 WL 5502944, at *23 (Kan. App 2021) (unpublished opinion) (mandate issued January 4, 2022).

K.S.A. 38-2269(g)(1) provides that in making this determination, the district court is to give primary consideration to the physical, mental, or emotional health of the child. The determination of the best interests of the child is entrusted to the district court's sound judicial discretion. As such, our review of this determination is for an abuse of discretion. *In re M.S.*, 56 Kan. App. 2d 1247, 1264, 447 P.3d 994 (2019); *In re K.R.*, 43 Kan. App. 2d at 903. A district court abuses its discretion if it bases its decision on an error of fact or law or if no reasonable person would agree with its decision. *In re P.J.*, 56 Kan. App. 2d 461, 465, 430 P.3d 988 (2018).

Considering the evidence in the record on appeal, we conclude that the district court appropriately exercised its discretion in determining that the termination of Mother's parental rights is in D.M.'s best interest. In particular, we find that a rational

fact-finder could determine that delaying permanency in this case would not be in D.M.'s best interests. Further, reading the district court's order as a whole, we find that its conclusion regarding D.M.'s best interests is supported by the factual findings addressed throughout the eight-page order. See *In re L.B.*, 2021 WL 5502944, at *22 ("A fair reading of the court's termination order showed that the court's fact-findings within the order were interrelated and supported its ultimate finding that termination of [the parent's] parental rights was in the children's best interests.").

CONCLUSION

Viewing the record on appeal in the light most favorable to the State, we find clear and convincing evidence to support the district court's finding that Mother is unfit because of conduct or condition which renders her unable to properly provide care to D.M. Likewise, we find clear and convincing evidence to support the district court's finding that the conduct or condition that makes Mother unfit to properly provide care to D.M. is unlikely to change in the foreseeable future when viewed from the perspective of the child. Finally, we find that the district court did not abuse its discretion in ruling that termination of Mother's parental rights was in D.M.'s best interests. We, therefore, affirm the district court's order terminating Mother's parental rights.

Affirmed.