

NOT DESIGNATED FOR PUBLICATION

No. 126,340

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Interests of H.H. and A.H.,  
Minor Children.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; MICHAEL J. HOELSCHER, judge. Submitted without oral argument. Opinion filed December 8, 2023. Affirmed.

*Jordan E. Kieffer*, of Jordan Kieffer, P.A., of Bel Aire, for appellant natural mother.

*Denise Donnelly-Mills*, of Donnelly-Mills & Hobson LLC, of Wichita, for appellee.

Before ARNOLD-BURGER, C.J., SCHROEDER and WARNER, JJ.

WARNER, J.: The natural Mother of twin girls challenges the district court's decision to terminate her parental rights. Mother argues that the evidence presented to the district court was not sufficient to support its findings that she was unfit to parent the children and that her unfitness was likely to continue for the foreseeable future. She also contests the district court's conclusion that termination was in the children's best interests. After carefully reviewing the record and the parties' arguments, we affirm the district court's judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The twin girls who are the subject of these consolidated cases were born in August 2021. While Mother was pregnant with the twins, her parental rights to two other children had been terminated—largely due to Mother's chronic drug use and addiction to

methamphetamines, as well as other issues relating to housing, employment, and the children's safety. The court found that these concerns rendered Mother unfit to parent the two other children at that time and for the foreseeable future.

The twins here were born a few months after that earlier termination decision. At the time of their birth, Mother tested positive for methamphetamine and amphetamine, and the twins tested positive for Ambien. The identity of the twins' father was unknown and has remained unresolved throughout the pendency of this case.

### *The Guardianship Case and Plan*

Shortly after the twins' birth, Andrea Dixon—the executive director of Faith Builders, who had taught Mother in a parenting class in the previous termination cases—was appointed their guardian with Mother's consent. A few days after the guardianship actions were initiated, the State petitioned to have both girls adjudicated children in need of care (CINC). Dixon filed reports in each case. But while those CINC cases remained pending, it appears that the State allowed the twins' needs to be primarily addressed through the guardianship cases.

The twins remained in the hospital for several days after their birth. When they were discharged in September 2021, they were placed with a foster family. They have lived with Foster Parents and their two sons since that time.

The court in the guardianship case approved a plan to help Mother get to a position where she could successfully care for the twins. That guardianship plan required Mother to complete a drug and alcohol abuse evaluation and follow its recommendations; consent to random drug testing; complete individual counseling; complete a parenting class; attend visitation consistently; complete a budget; gain employment to pay off previous fines; and get her driver's license reinstated. The plan's main focus was treating

Mother's drug use and addiction and providing counseling and mental health treatment. Dixon assisted Mother in applying for jobs by providing transportation to job interviews. And Faith Builders provided Mother with some furniture (such as a crib the twins could share), clothing, diapers, food, and other supplies.

Unfortunately, the focus of the guardianship plan—drug treatment—was not successful. In the year after the twins' birth, Mother submitted to drug testing several times, either through a urinalysis assessment (UA), which assesses recent or concurrent drug intake, or through a hair follicle test, which assesses longer-term intake. Only two UA tests, both within the first few months of the twins' birth, were negative for drug use. All other tests showed that Mother had been using methamphetamine or amphetamines.

From the outset, the guardianship plan recommended that Mother receive inpatient treatment for her drug addiction, but Mother did not do so because she was unsure who would care for her dog. She agreed instead to attend intensive outpatient treatment. Yet for various reasons, she only attended a few treatment sessions and did not complete the rehabilitation program.

Mother also struggled with maintaining housing and gaining employment. In the year after the twins' birth, Mother lived with friends or in a hotel. She was also unemployed, except for a three-day stint as a bartender that ended when Mother missed work due to a COVID exposure.

### *The Foster Parents Seek to Terminate Mother's Parental Rights*

In August 2022, the Foster Parents filed this case—distinct from the guardianship and CINC cases—seeking to terminate Mother's right to parent the twins. See K.S.A. 38-2266(a) ("any party or interested party may request that either or both parents be found unfit and the parental rights of either or both parents be terminated or a permanent

custodian be appointed"). The Foster Parents alleged that Mother had not complied with court orders, remained drug free, sought substance-abuse and mental-health treatment, found employment, or adjusted her life to meet the twins' needs. Based on these circumstances, the Foster Parents asked the district court to find Mother unfit as a parent and terminate her parental rights.

Mother had been attending supervised visitations with the twins once or twice per week throughout the guardianship case. But though Faith Builders had previously worked with Mother to set up visitation appointments and provide transportation to some of those appointments, Mother stopped attending those sessions after the Foster Parents filed their petition. She also stopped submitting to periodic drug testing and generally stopped communicating with Dixon. She did, however, find a house where she could live with her children and her dog, who had recently had puppies.

The district court held an evidentiary hearing on the Foster Parents' termination motion in October 2022. The day of the hearing, Mother tested positive for methamphetamine. When asked about this test result on direct examination, Mother explained that the person who previously lived in her house used methamphetamine and Mother had been attempting to clean the home. The district court apparently did not find this explanation to be credible.

Mother, Dixon, and Foster Mother testified at the hearing. Each person provided detailed testimony because determining parental fitness and assessing children's interests require an understanding of the surrounding facts. Instead of repeating this testimony in exhaustive detail, we will highlight the salient themes and address other facts as they become necessary.

Mother explained that she had not pursued inpatient drug treatment after the twins' birth because she could not find someone to watch her dog and was concerned about

losing her residence if she left for a long time. She attempted outpatient treatment but had trouble finding transportation to the appointments; Mother could not drive, and her only transportation was an acquaintance who could only drive her after 4 p.m. Although she admitted that Faith Builders had offered to provide her with a monthly bus pass, Mother explained that she had back pain that prevented her from walking to the bus stop. Mother stated that she had been a habitual user of methamphetamine since 2018.

Mother indicated that she was looking to make changes at the time of the hearing. She had found someone to watch her dog and was working with a pet-rescue organization to rehome her puppies for adoption. She stated that she had an appointment the following month to talk with someone at an inpatient drug treatment center about possibly enrolling in that program. She also stated that she had completed some of the tasks in the guardianship plan and had been given several items of furniture and clothing for the twins, including a crib and diapers. She stated that she loved her children and enjoyed visiting them, but transportation had been a problem. And she stated that she had not attended visitation sessions after the termination petition was filed because she felt there was little interest in helping her reintegrate with the twins.

Dixon testified that Faith Builders had been focused from the outset on helping Mother reunite with the children. The organization worked with Mother to create a guardianship plan and provided Mother with food, furniture, and supplies. It also encouraged her to seek drug treatment, but those efforts had not been successful. According to Dixon, Mother completed some of the tasks in the guardianship plan, but she was unable to comply with the central points of the plan because of her continued drug use, inability to participate in other mental-health programs, and failure to prioritize visitation with the twins. Dixon testified that she believed the children needed permanency, and Foster Parents would provide a stable home for them.

Foster Mother testified that she and her husband had been working with Faith Builders for approximately five years and had been licensed foster caregivers for approximately a year. In the past, the Foster Parents had provided respite care—helping young parents care for children for short periods of time. At the time of the hearing, the Foster Parents had two biological children and had been caring for the twins almost since they were born.

Foster Mother testified that she had spent countless hours with Mother and had always been willing to work with Mother. She had transported the children to the visits with Mother for the first eight months and had provided Mother with clothes, toiletries, and other items whenever Mother needed them. But Foster Mother believed that the children needed permanency in their lives, and she thought it would be in the children's best interests if Mother's parental rights were terminated. Foster Mother explained that the twins were doing very well and that she and her husband would like to adopt them.

At the close of the hearing, the district court took the matter under advisement. A few weeks later, it announced its ruling at a hearing. The court found that much of Mother's testimony was not credible. The district court also concluded that Mother's issues regarding addiction, housing, and employment had not changed in any meaningful way since the district court terminated her parental rights to her older children in May 2021. The court emphasized that Mother's drug use and addiction—which was present when the children were born in 2021—had not been addressed in any meaningful way, demonstrated by Mother's UA testing positive for methamphetamine the day of the evidentiary hearing.

Given these circumstances, the district court found that the twins were children in need of care. The court then found that the Foster Parents had shown Mother's unfitness to care for the twins by clear and convincing evidence and that this unfitness was likely to

continue for the foreseeable future. And the court found that the children's best interests were served by terminating Mother's parental rights. 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 or other party seeking termination has proved that the parent is unfit, that this unfitness 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, this court determines 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 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 abuses its discretion 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).

Mother challenges the district court's decision to terminate her parental rights in two ways. She asserts that the evidence presented was not sufficient to show that she was and will continue to be an unfit parent. And she argues that the court abused its discretion in finding that it was in the twins' best interests to terminate her parental rights.

#### *Present and Future Unfitness*

Before terminating parental rights, a district court must determine whether a parent is unfit—that is, whether the parent engages in conduct or has a condition that renders him or her "unable to care properly for a child"—and whether that unfitness is "unlikely to change in the foreseeable future." K.S.A. 38-2269(a). To assess a person's fitness as a parent, the district court considers, among other things, the several factors listed in K.S.A. 38-2269(b) and (c). Depending on the facts and circumstances of each case, evidence of any of these factors can be enough to support a finding of parental unfitness. K.S.A. 38-2269(f).

A court evaluates the "foreseeable future" from a child's perspective. *In re R.S.*, 50 Kan. App. 2d at 1117. This is because children have a different perception of time—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 1247, 1263, 447 P.3d 994 (2019); see K.S.A. 38-2201(b)(4). A court can look to a parent's past conduct as a predictor of the foreseeable future. 56 Kan. App. 2d at 1264; *In re Price*, 7 Kan. App. 2d 477, 483, 644 P.2d 467 (1982).

The district court found that the evidence showed Mother's unfitness under K.S.A. 38-2269(b)(3), (b)(7), (b)(8), (b)(9), (c)(1), (c)(3), and (c)(4). Mother correctly points out that one of these statutory bases—K.S.A. 38-2269(b)(9)—does not apply, as that section governs situations where a child has been living outside the parental home for 15 of the last 22 months, and the twins were not yet 15 months old. Mother also argues that the evidence does not support the district court's findings regarding Mother's housing (K.S.A. 38-2269[c][1]) and her ability to financially support the twins (K.S.A. 38-2269[c][4]). And Mother points out that she plans to pursue drug treatment and has made steps to care for the twins, which she argues demonstrates her future fitness as a parent.

While we appreciate Mother's recognition that she needs to make changes in her life, it is not the role of an appellate court to reweigh the evidence presented to the district court. Nor are we in a position to reassess witnesses' credibility. Rather, we must determine whether there is evidence in the record to support the district court's finding that Mother is presently unfit to care for the children and that this unfitness will continue for the foreseeable future. Our review of the record shows that the court was primarily troubled by Mother's continued methamphetamine use and failure to seek treatment, attend counseling sessions, and develop relationships with the twins. There is ample evidence in the record to support the district court's findings on these matters.

Since 2018, Mother has struggled with methamphetamine abuse. When the twins were born, Mother tested positive for amphetamine and methamphetamine and the twins tested positive for Ambien. Following the twins' birth, Mother participated in an intensive supervision outpatient treatment for a few visits, but she never finished the program. As of the hearing on the Foster Parents' termination request, Mother had not completed any sort of drug treatment.

The twins' appointed guardian, Andrea Dixon, testified that, while Mother initially complied with the testing, Mother had stopped doing so in the months before the hearing.

Dixon also testified about the email she received from the testing facility in May 2022, which stated that Mother provided a sample that did not meet the test's temperature requirements, calling into question its authenticity. Finally, throughout the case, Dixon said Mother had only tested negative for drugs twice. The district court did not err by finding that Mother's habitual drug use rendered her unfit under K.S.A. 38-2269(b)(3).

Mother likewise had not taken steps to change her conduct to allow her to care for the twins, despite the efforts by Faith Builders to provide treatment, transportation, food, and supplies. The court found that the caseworkers had engaged in reasonable efforts to rehabilitate Mother with the twins, through drug treatment, counseling, and supervised visitation, but that those efforts had failed, particularly because of Mother's failure to curb her drug use and attend the counselling and visitation sessions. See K.S.A. 38-2269(b)(7), (b)(8), (c)(3).

And although Mother points out that there was testimony contrary to the district court's findings regarding her lack of stable housing and inability to provide financial support, there was evidence presented to support those findings. Mother had only recently moved into a house when an acquaintance who previously lived there—and who also used drugs—had entered a treatment program. Mother indicated that she had applied for disability payments and had some other limited income, but she had not yet been able to secure a job and her transportation options were extremely limited.

The district court also took judicial notice of the previous CINC cases involving Mother, which resulted in termination of her parental rights to other children while she was pregnant with the twins. Those terminations primarily resulted from Mother's methamphetamine addiction. Despite having her parental rights terminated in those cases, Mother apparently did not take meaningful steps to address her drug use—either before the twins were born or after they were placed in foster care. Though Mother claims she has now decided to pursue drug treatment, she had not taken any concrete steps toward

that goal at the time of the evidentiary hearing and also tested positive for methamphetamine at that time—even though Mother knew from experience that continued drug use could lead to the termination of her parental rights.

As we have noted, Mother also argues that the Foster Parents sought to terminate her parental rights only about a year after the twins were born, and the evidentiary hearing on that request took place when they were under 14 months old. She asserts 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 October 2022 hearing, these cases had been pending for over 13 months, during which Mother had not taken any steps or made any 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.

### *Best Interests of the Children*

Once someone seeking termination has shown a person's parental unfitness by clear and convincing evidence, 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). We defer to the district court's assessment, based on the district judge's observation of the witnesses and evidence-based judgment, as long as the district court does not abuse its discretion. *In re R.S.*, 50 Kan. App. 2d 1105, Syl. ¶ 2.

In her final argument on appeal, Mother asserts that the district court erred when it found that it was in the twins' best interests to terminate Mother's parental rights. Mother again points out that the twins were just over a year old at the time of the evidentiary hearing and notes that her supervised visits with them had gone well. She argues that the twins' interests would be better served if they were allowed to have a relationship with their biological mother.

While none of the parties questioned Mother's affection for the twins and her desire to be reunited with them, the district court did not abuse its discretion when it found that the twins' best interests weighed in favor of terminating Mother's rights. The twins had spent their entire lives in foster care, primarily due to Mother's continued drug use. And despite Mother's arguments before the district court and on appeal, the district court was properly within its discretion when it found that Mother's continued drug use was harmful to the twins. The twins were born with drugs in their systems, and one of them had to remain in the hospital for weeks after being born. 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 the Foster Parents and separation from Mother was best for the twins' physical, mental, and emotional health.

We recognize—as did the district court—that Mother made some positive changes in her life during these proceedings. But Mother's continued drug use rendered her unfit to parent the twins. 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 the other evidence presented at the hearing, the district court did not abuse its discretion when it found terminating Mother's parental rights was best for the twins.

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

Affirmed.