NOT DESIGNATED FOR PUBLICATION

No. 126,758

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

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

MEMORANDUM OPINION

Appeal from Crawford District Court; MARY JENNIFER BRUNETTI, judge. Submitted without oral argument. Opinion filed May 17, 2024. Affirmed.

Amy M. Ross, of Columbus, for appellant natural mother.

Reina Probert, county attorney, for appellee.

Before ARNOLD-BURGER, C.J., CLINE and COBLE, JJ.

PER CURIAM: T.B. (Mother) appeals the termination of her parental rights to her daughter, K.M.L., arguing insufficient evidence supports the district court's determination that she is presumptively unfit based on K.S.A. 38-2271(a)(5) and unfit based on several factors provided in K.S.A. 38-2269. Mother also raises a due process claim. Finding no error, we affirm.

PROCEDURAL AND FACTUAL BACKGROUND

The State initiated proceedings to find K.M.L. a child in need of care within 48 hours after her birth. Mother had apparently arranged for K.M.L. to be adopted by M.A., who lived in New Mexico. Mother voluntarily relinquished her parental rights to M.A. and left the hospital 12 hours after giving birth to K.M.L. But since K.M.L.'s natural father (Father) did not show up to the hospital to relinquish his parental rights, child

protective services determined the hospital could not release K.M.L. to M.A. Hospital staff eventually released K.M.L. to temporary police custody after M.A. had to return home to New Mexico. Later, W.W., who had custody of K.M.L.'s two older siblings, agreed to take over as K.M.L.'s temporary caregiver.

A few days later, the district court appointed a guardian ad litem for K.M.L. and held a temporary custody hearing via Zoom. Mother and Father both appeared at the hearing without representation, but they each requested counsel be appointed to represent them in the proceedings. The court appointed separate counsel for Mother and Father and granted temporary custody of K.M.L. to the Kansas Department for Children and Families. The court granted Mother and Father supervised visits with K.M.L. and ordered that they be assigned case plan tasks.

That same day, TFI Family Services (TFI) contacted K.M.L.'s parents and scheduled an in-person initial family meeting on October 11, 2021. At this meeting, Mother admitted using drugs while pregnant with K.M.L. and both parents reported they did not have the resources to care for her. TFI reports both parents were homeless at the time of this meeting. The parents completed assessments which showed they both needed mental health and drug and alcohol services.

A few days later, the TFI case team met with both parents and gave them "a list of resources, applications for said resources, [and] put in referrals for a Parent Partner and Kansas Family Advisory Network." The case team also gave the parents a $20 gift card to Wal-Mart so they could get food. The case team went over the results of their assessments with the parents and educated the parents about where they could start obtaining services. TFI assigned the following case plan tasks to the parents:

- Complete a drug and alcohol assessment and follow all recommendations;
- Complete a mental health assessment, follow all recommendations, and take prescribed medications;
- Take random urinalysis (UA) tests when requested;
- Document and celebrate, with the assistance of a case manager and others, progress in case plan tasks;
- Apply for Section 8 housing;
- Obtain stable employment;
- Provide necessary documentation regarding work, housing, etc.;
- Apply for other necessary assistance, e.g., food stamps and income assistance;
- Maintain contact with the case plan team; and
- Complete 15 parenting classes.

As of January 13, 2022, neither parent had completed a UA test nor had they started substance abuse counseling or completed a mental health assessment. They were both still homeless and living in a tent. The parents reported they had applied for housing assistance and were on the waitlist but did not provide any supporting documentation to TFI. They also reported they were denied food stamp assistance but did not provide a denial letter. Neither parent provided documentation of working on other case plan tasks, such as paycheck stubs (other than one from Mother, who reported that she worked at a Wendy's restaurant).

In February 2022, the district court adjudicated K.M.L. as a child in need of care based on K.S.A. 38-2202(d)(2) and (d)(5), ordered out of home placement, and designated reintegration as the case plan goal. Following a permanency hearing in September, the district court found reintegration still viable and ordered that it continue as the case plan goal.

TFI filed regular reports with the court of the parents' progress in completing their case plan tasks and remaining in contact with the case team. These reports revealed the parents did not remain in regular contact with TFI, and they regularly missed case plan meetings, scheduled supervised visitation with K.M.L., and their UA tests.

Termination Proceedings

In March 2023, the State moved the district court to find Mother and Father unfit based on several statutory provisions and terminate their parental rights. The district court held a termination hearing on July 17, 2023. Mother and Father appeared in person and were represented by counsel. Mother and two TFI case workers, Britanny Tunnell and Lorree Walters, testified at the hearing.

Collectively, the case workers identified Mother's drug and alcohol use as the primary barrier to her ability to complete her case plan tasks. Both recounted how Mother would tell them she made appointments to address her drug and alcohol use and for mental health treatment but would not follow through or provide confirmation that she had attended such appointments. Tunnell testified that Mother tested positive for methamphetamine and amphetamine in January and methamphetamine, amphetamine, and MDMA in March 2023. She said neither parent provided a negative UA test result during the entire year of 2023. Walters explained that Mother never had any unsupervised visits with K.M.L. because she continuously failed or refused to take UA tests.

The case workers also discussed the parents' housing and financial instability. While the parents initially received assistance from Catholic Charities in paying the rent for an apartment, they exhausted that resource. Tunnell testified that most of the time she worked with the parents they were "couch surfing," that is, staying on friend's couches. And Mother told Tunnell that she worked at Burger King but for only three hours each day.

As for TFI's efforts to assist the parents, both case workers testified the agency offered and/or provided all necessary resources to the family and offered the family all the programs available to them. They explained how they tried to address Mother and Father's housing and other financial issues, including those related to their utility bills. But the parents failed to provide necessary documentation, including receipts, copies of the bills, or paycheck stubs, to allow such assistance. As for transportation, both case workers testified TFI gave Mother rides when she asked, including to case plan meetings and visits. Walters testified Mother did not seem to have trouble asking for rides, mentioning various occasions on which Mother had received rides for personal reasons such as to HUD housing or the police station. They testified that Mother did not ask for additional transportation assistance, but had she asked, TFI would have provided it.

Mother maintained that, along with inpatient treatment, she attended individual outpatient treatment for mental health and drug and alcohol use. But she admitted she did not attend all her mental health appointments, claiming she did not have health insurance and could not afford to pay for them. She also testified that she completed some but not all of her assigned parenting classes and failed to show up for around 52 UA tests. Mother also admitted that she tested positive for methamphetamine and amphetamines at least five times and that some of these tests occurred after she completed her inpatient treatment.

As for work, Mother testified that she was employed throughout this case, working for various fast-food restaurants. She also said she was scheduled to start her first day working for another fast-food restaurant the day after the termination hearing. Mother provided inconsistent testimony about her housing situation during the case but admitted that she told TFI at one point she was "bouncing from place to place." She claimed she always provided the agency with an updated address. She also explained that she recently applied for public housing and received notice that she was approved and placed on a waitlist.

Mother testified she stopped asking TFI for help because she felt she was "shut down by TFI every time" she asked. She claimed TFI never provided financial assistance and instead TFI told her that she had exceeded her funds. As for rides, she testified at one point that TFI gave her a ride to the police station to make a police report. Later, she claimed the only time TFI offered her a ride was to and from her supervised visits. And while she claimed she missed UAs at times due to transportation issues, she admitted she did not have that issue every time she missed a UA test.

Summing up her commitment toward reintegration, Mother testified that she was still willing to adjust her circumstances as necessary to maintain her sobriety, housing, and employment. She also testified that she attended visits with K.M.L. and felt that they went "[g]reat." Mother admitted that she missed several scheduled visits, including one in April 2023 and three back-to-back visits between May 30 and June 13. She agreed that she missed these visits because she did not confirm them. Still, Mother suggested that TFI should be faulted for her inability to attend those visits.

Termination Decision

The district court ultimately granted the State's request to terminate Mother and Father's parental rights. The district court found K.M.L. had been in out-of-home placement for over a year and the parents "substantially neglected or willfully refused to carry out a reasonable plan, approved by the court, directed toward reintegration." The district court thus applied the presumption of unfitness provided in K.S.A. 38-2271(a)(5). The district court also found clear and convincing evidence showed the parents were unfit and unlikely to change in the foreseeable future based on K.S.A. 38-2269(b)(3), (b)(7), and (b)(8). In this regard, the district court found that Mother and Father did not maintain their sobriety, obtain suitable housing, or progress to unsupervised visits. The district court also found that "one or more of the factors listed in K.S.A. 38-2269(c)" applied.

Finally, after considering K.M.L.'s physical, mental, and emotional health, the district court found termination conformed with K.M.L.'s best interests.

Mother timely appeals.

REVIEW OF MOTHER'S APPELLATE CHALLENGES

Did the district court err in terminating Mother's parental rights?

On appeal, Mother challenges the district court's findings under K.S.A. 38-2271 and K.S.A. 38-2269(b)(7) as factually unsupported. In this regard, she argues the evidence showed that she worked toward and completed some reintegration tasks, so she did not "substantially neglect[] or willfully refuse[]" to complete her case plan under K.S.A. 38-2271(a)(5). She also claims that the circumstances did not implicate K.S.A. 38-2269(b)(7) because TFI refused to provide reasonable assistance. Mother also raises a due process claim, arguing the district court did not give her a chance to rebut the presumption of unfitness under K.S.A. 38-2271(a)(5).

Standard of Review and Basic Legal Principles

A parent has a constitutionally recognized fundamental right to a parental relationship with his or her child. *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). This court reviews the district court's decision to terminate parental rights by considering "whether, after review of all the evidence, viewed in the light most favorable to the State, it is convinced that a rational factfinder could have found it highly probable, *i.e.*, by clear and convincing evidence," that a parent's rights should be terminated. 286 Kan. at 705; *In re K.H.*, 56 Kan. App. 2d 1135, 1139, 444 P.3d 354 (2017). When reviewing these decisions, we do not "weigh conflicting evidence, pass on the credibility of witnesses, or redetermine questions of fact." 56 Kan. App. 2d at 1139. The party

asserting an abuse of discretion bears the burden of proof. *Northern Natural Gas Co. v. ONEOK Field Services Co.*, 296 Kan. 906, 935, 296 P.3d 1106 (2013).

K.S.A. 38-2269(b)-(e) lists nonexclusive factors the district court may rely on to determine a parent is unfit. The existence of any single factor may be sufficient to establish grounds for termination of parental rights. K.S.A. 38-2269(f). Termination requires "clear and convincing evidence that the parent is unfit by reason of conduct or condition," making him or her "unable to care properly for a child" and that the circumstances are "unlikely to change in the foreseeable future." K.S.A. 38-2269(a).

After finding a parent unfit and that the conditions demonstrating that unfitness are unlikely to change in the foreseeable future, the district court must then determine whether a preponderance of the evidence demonstrates that termination of the parental rights is in the best interests of the child. K.S.A. 38-2269(g)(1); *In re R.S.*, 50 Kan. App. 2d 1105, 1116, 336 P.3d 903 (2014). In making that determination, the court gives primary consideration to the physical, mental, and emotional needs of the child. K.S.A. 38-2269(g)(1).

When summarized, these rules establish that before a district court may terminate parental rights, it must find by clear and convincing evidence that (1) the parent is unfit, (2) the conduct or condition which renders the parent unfit is unlikely to change in the foreseeable future, and (3) by a preponderance of evidence that termination of parental rights is in the best interests of the child. K.S.A. 38-2269(a), (g)(1); *In re R.S.*, 50 Kan. App. 2d at 1116. If the district court makes its finding of unfitness based on a presumption of unfitness as defined by K.S.A. 38-2271(a), the burden of proof shifts to the parent "to rebut the presumption of unfitness by a preponderance of the evidence." K.S.A. 38-2271(b). If the parent cannot rebut the presumption by showing "proof that the parent is presently fit and able to care for the child or that the parent will be fit and able to

care for the child in the foreseeable future," the district court shall then continue with termination proceedings under K.S.A. 38-2266. K.S.A. 38-2271(b).

Sufficiency of Appellate Briefing

The district court found that the State proved Mother was presumptively unfit based on K.S.A. 38-2271(a)(5), and unfit based on four of the factors listed in K.S.A. 38-2269, including:

- K.S.A. 38-2269(b)(3)—the use of intoxicating liquors or narcotic or dangerous drugs of such duration or nature as to render the parent unable to care for the ongoing physical, mental, or emotional needs of the child;
- K.S.A. 38-2269(b)(7)—failure of reasonable efforts made by appropriate public or private agencies to rehabilitate the family;
- K.S.A. 38-2269(b)(8)—lack of effort on the part of the parent to adjust the parent's circumstances, conduct, or conditions to meet the needs of the child; and
- K.S.A. 38-2269(c)—additional factors considered when a child is not in the physical custody of a parent, including those related to care giving, visitation, completion of a case plan, and payment of costs and other care.

K.S.A. 38-2271(a)(5) provides a presumption of unfitness when the child has been in an out-of-home placement for one year or longer, and the parent has substantially neglected or willfully refused to carry out a court ordered reintegration plan, which shifts the burden of proof to rebut the presumption to the parent.

Along with K.S.A. 38-2271(a)(5), the State asked the district court to apply K.S.A. 38-2271(a)(6). This provision requires at least two years of out-of-home placement and

does not include the "substantially neglected or willfully refused" language used in subsection (a)(5):

> "(A) the child has been in an out-of-home placement, under court order for a cumulative total period of two years or longer; (B) the parent has failed to carry out a reasonable plan, approved by the court, directed toward reintegration of the child into the parental home; and (C) there is a substantial probability that the parent will not carry out such plan in the near future." K.S.A. 38-2271(a)(6).

In her appellate brief, Mother challenges the district court's findings related to K.S.A. 38-2271 and K.S.A. 38-2269(b)(7). Mother does not, however, challenge the district court's findings under K.S.A. 38-2269(b)(3) or (b)(8). She also does not provide an argument challenging the district court's foreseeable future or best interests findings.

Because Mother did not brief these arguments, they may be deemed waived or abandoned. See *In re Adoption of Baby Girl G.*, 311 Kan. 798, 803, 466 P.3d 1207 (2020). Also, a finding of unfitness may be supported by a single factor under K.S.A. 38-2269(b)—see K.S.A. 38-2269(f)—so Mother's error poses a potential threat to her overall appeal. Cf. *State v. Novotny*, 297 Kan. 1174, 1180, 307 P.3d 1278 (2013) (when a district court provides alternative bases to support its ruling on an issue and an appellant fails to challenge the validity of both alternative bases on appeal, an appellate court may decline to address the challenge to the ruling). We, however, elect not to impose such a consequence. We find that although minimally, Mother sufficiently challenges the district court's findings under K.S.A. 38-2269(b)(3) or (b)(8) by arguing facts related to her drug and alcohol use and the party who should be faulted for her failure to complete her case plan. Therefore, we will still review her claims.

A. *Sufficient evidence supports the presumption of unfitness.*

Mother does not argue and thus tacitly agrees that K.M.L. was in out-of-home placement for at least one year as K.S.A. 38-2271(a)(5) requires. She instead argues only that the State failed to prove she "substantially neglected or willfully refused" to carry out a reasonable reintegration plan. As support, Mother notes that she completed a drug and alcohol assessment and received inpatient treatment. She also relies on her testimony stating she participated in some outpatient treatment, continued consulting with a doctor for her medication management, and scheduled an appointment to reengage in treatment and mental health services. Mother also testified that she maintained employment throughout the pendency of this case and attended several visits with K.M.L. And she claims she had suitable housing at times and recently secured a place on a waitlist for housing assistance.

Even so, the record contains conflicting evidence—some of which includes Mother's own testimony—and the district court made a credibility finding against Mother. Tunnell testified that Mother reportedly struggled to obtain stable housing and for most of the time was homeless or "couch surfing." Mother also testified that although she recently secured a job, she had not yet started in that position. And Walters received no proof that Mother attended any treatment other than the inpatient treatment she attended before relapsing. Tunnell also explained that Mother did not provide proof that she attended any treatment during her time working on this case, beginning in December 2022. She also did not provide any negative UA test results.

Noting this conflicting evidence, the district court made the following credibility finding against Mother:

> "The court did not find [Mother's] testimony to be truthful as she was visibly hostile when questioned by the petitioner, which might be expected given the nature of

> the proceedings. The Court is of the opinion that [Mother's] testimony was not trustworthy, it was peppered with exaggerations and falsehoods designed to deflect and cast blame upon TFI rather than with the parents."

We cannot make a new or different credibility finding on appeal. *In re K.H.*, 56 Kan. App. 2d at 1139.

Mother correctly notes that she completed some case plan tasks, but the record suggests these efforts were fleeting. Walters explained that "the major barrier" to Mother's successful reintegration with K.M.L. was her drug and alcohol use. Mother received some treatment but relapsed and failed to remain sober. This affected her ability to complete her other reintegration tasks. This and the remaining evidence showing Mother failed to participate in her case plan in any significant way supports the district court's application of the presumption under K.S.A. 38-2271(a)(5). Cf. *In re K.L.*, No. 124,873, 2022 WL 4391222, at *10-11 (Kan. App. 2022) (unpublished opinion) (holding the same in factually similar circumstances when reviewing a ruling based on K.S.A. 38-2271[a][5] presumption of unfitness).

B. *Mother does not establish a due process violation.*

Mother also claims the district court did not afford her procedural due process before terminating her parental rights based on K.S.A. 38-2271(a)(5).

To establish a due process violation, Mother must show she was "'both entitled to and denied a specific procedural protection.'" *In re P.R.*, 312 Kan. 767, 784, 480 P.3d 778 (2021). "'[W]hether due process was provided under specific circumstances raise[s] [an issue] of law'" subject to unlimited appellate review. *In re Care & Treatment of Ellison*, 305 Kan. 519, 533, 385 P.3d 15 (2016).

The termination of parental rights must satisfy procedural due process. See *In re E.K.*, No. 125,688, 2023 WL 4677009, at *5-6 (Kan. App. 2023) (unpublished opinion) (holding a parent must be apprised of what the State intends to prove in establishing unfitness); see also *In re Adoption of A.A.T.*, 287 Kan. 590, 600, 196 P.3d 1180 (2008) ("If life, liberty, or property is at stake, procedural due process requires . . . notice . . . and [a meaningful] opportunity to be heard regarding the deprivation."). Likewise, statutory presumptions of unfitness "must be applied in a manner that comports with procedural due process." *In re K.R.*, 43 Kan. App. 2d 891, 898, 233 P.3d 746 (2010). "The better practice is for the court to conduct a pretrial conference and file a final pretrial order that clearly and unequivocally provides notice that a statutory presumption will be asserted against the parent." 43 Kan. App. 2d at 899. This is not a requirement, however, and we will not reverse unless a parent is "truly surprised by the assertion of the presumption." 43 Kan. App. 2d at 898.

At the close of the termination hearing, the district court found the State met its burden of proving Mother was presumptively unfit under K.S.A. 38-2271(a)(5). The district court informed Mother that the burden of proof shifted to her to rebut the finding: "[T]he presumption will shift at this point. The Court is satisfied that the State has met its burden for the presumption to shift." The district court then asked Mother's counsel whether she intended to rest her case. Counsel agreed that Mother did not have any additional evidence to present.

Mother argues that by proceeding this way, the district court precluded her from presenting a rebuttal. Although not explicitly, Mother suggests the district court should have afforded her a separate hearing to make her argument. We disagree and note that Mother does not provide legal support for this claim.

The State referenced K.S.A. 38-2271(a)(5) and provided relevant facts in its motion to terminate Mother's parental rights and thus put Mother on notice that the

presumption would be raised at the hearing. Cf. *In re M.G.*, No. 115,007, 2016 WL 4159902, *8-9 (Kan. App. 2016) (unpublished opinion) (listing all statutory factors for unfitness in K.S.A. 38-2269 in termination motion and identifying only cursory factual support deprived parent of constitutional due process). The district court relied on the same statute and supported its ruling with several factual findings. See *In re K.H.*, No. 121,364, 2020 WL 2781685, at *7 (Kan. App. 2020) (unpublished opinion) (parent denied constitutional due process when district court relied on ground of unfitness not alleged in motion to terminate). The district court also provided Mother an opportunity to be heard on the State's motion at the termination hearing, and Mother testified. And the district court invited Mother to present additional evidence at the end of the hearing, but Mother declined.

Mother thus fails to show that the district court deprived her of procedural due process. Nothing in the record suggests that Mother was surprised by the district court's application of the presumption. See *In re M.B.*, No. 125,841, 2023 WL 5163298, at *12-13 (Kan. App. 2023) (unpublished opinion) (finding no evidence that parent was surprised by the district court's application of presumption in K.S.A. 38-2271[a][5] at trial where State's relied on the statute in its original motion but relied on K.S.A. 38-2271[a][6] in an amended motion), *rev. denied* 318 Kan. ___ (2024). Mother also did not object to the process used in the district court. Cf. *In re K.R.*, 43 Kan. App. 2d at 897-99 (finding despite State's failure to put parent on notice of intent to rely on K.S.A. 38-2271[a][5] at trial, the appellant failed to show surprise because district court made a previous ruling regarding reintegration based on the time that the children were in of out-of-home placement and parent failed to object at trial).

Conclusion on Presumption of Unfitness

We find no error in the district court's procedure or application of K.S.A. 38-2271(a)(5). Because Mother does not attempt to challenge the district court's finding that

she will not be fit to care for K.M.L. in the foreseeable future or that termination of her parental rights is in K.M.L.'s best interests, we could end our analysis here. See K.S.A. 38-2269(g)(1). We will, however, address the other factors that the district court relied on in terminating Mother's parental rights.

C. *Mother shows no error in application of K.S.A. 38-2269(b) factors.*

1. *Use of Drugs and Alcohol*

Mother argues that she made continuous efforts to obtain sobriety but does not contest that she failed to remain sober through these proceedings. In *In re J.W.B.*, No. 123,606, 2021 WL 3469198, at *7 (Kan. App. 2021) (unpublished opinion), this court recognized that drug use alone is not enough to find a parent unfit to care for their children. But the panel added that where, as here, the district court considered the negative effect of the substance use on the completion of a reasonable case plan, the decision to terminate may be sound. 2021 WL 3469198, at *7. We agree and find clear and convincing evidence supports the district court's inclusion of Mother's drug and alcohol use as a reason to terminate her parental rights under K.S.A. 38-2269(b)(3).

2. *Failure of Reasonable Efforts by Agencies*

K.S.A. 38-2269(b)(7) supports finding a parent unfit where the district court finds a "failure of reasonable efforts made by appropriate public or private agencies to rehabilitate the family." Mother argues that TFI did not provide reasonable efforts, so the district court improperly relied on this factor in finding her unfit to parent K.M.L. Mother asserts that she asked for help but was denied it, and TFI failed to offer the assistance she needed to complete her case plan tasks. Specifically, Mother claims that she was denied help with her utility bills and application fees that she incurred when applying for housing assistance. Mother also maintains that TFI should have offered to transport her to

UA testing and other appointments or given her a gas card. She adds that Tunnell never performed a walkthrough of any of her residences.

Walters testified that TFI had a budget set to support a request for assistance with Mother's various financial issues. Mother, however, did not provide the necessary receipts or bills that would allow TFI to fulfill their offers to help her. Walters also explained that TFI gave Mother rides to visits and to the police station to report her stolen rent. Walters also explained that TFI would have provided additional transportation to UA testing if Mother had asked. And Walters testified that TFI readily offered Mother several resources and that she was unaware of any other resources that the agency could have offered. Tunnell likewise testified that TFI offered several forms of help, but Mother did not follow through by providing the documents necessary to provide that help.

The district court thus properly found that TFI offered ample assistance but did not receive the necessary documents to follow through. Additionally, Mother and Father exhausted their resources through TFI's "Parent Partner," which provided food and housing assistance. The district court also found Mother's argument about walkthroughs moot because Mother did not maintain any residence which would have warranted consideration of any walkthrough.

Based on our review of the record, we find sufficient support for the district court's reliance on K.S.A. 38-2269(b)(7).

3. *Lack of Effort to Adjust Circumstances*

The failure of a parent to adjust his or her circumstances, conduct, or conditions to meet the needs of a child is grounds for termination of parental rights. K.S.A. 38-2269(b)(8). We have already discussed Mother's efforts but add that her last-minute

efforts to adjust to her circumstances by, e.g., applying for housing assistance, were obviously unpersuasive to the district court. Clear and convincing evidence supports the district court's conclusion. See *In re I.D.*, No. 121,292, 2019 WL 6795865, at *4 (Kan. App. 2019) (unpublished opinion) (similarly rejecting last-minute efforts when applying this factor).

4. *Foreseeable Future and Best Interests*

Courts liberally construe the Revised Kansas Code for Care of Children to "acknowledge that the time perception of a child differs from that of an adult and to dispose of all proceedings under this code without unnecessary delay." K.S.A. 38-2201(b)(4). The foreseeable future is examined from the child's perspective because children have a different perception of time than adults, and a child has a right to permanency within a time frame reasonable to them. *In re E.L.*, 61 Kan. App. 2d 311, 328, 502 P.3d 1049 (2021). In assessing whether a parent's unfitness is "'unlikely to change in the foreseeable future,'" the district court may look to a parent's past conduct as an indication of future conduct. 61 Kan. App. 2d at 328. In considering a child's best interests, the court should place the most weight on the physical, mental, and emotional health of the child. K.S.A. 38-2269(g).

The district court correctly found that K.M.L. has been out of Mother's home and in someone else's care since her birth in September 2021. The district court also based its ultimate decision on K.M.L.'s likely comprehension of time and properly considered K.M.L.'s physical, mental, and emotional needs. The district court's factual findings are sufficiently supported, which in turn support the district court's legal conclusion. We thus affirm the termination of Mother's parental rights.

Affirmed.