

NOT DESIGNATED FOR PUBLICATION

No. 125,480

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Interest of B.W., a Minor Child.

MEMORANDUM OPINION

Appeal from Johnson District Court; ERICA K. SCHOENIG, judge. Opinion filed April 28, 2023.  
Affirmed.

*Richard P. Klein*, of Lenexa, for appellant natural mother.

*Shawn E. Minihan*, assistant district attorney and *Steven M. Howe*, district attorney, for appellee.

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

PER CURIAM: Two years after her son, B.W., was placed in the custody of the Kansas Department for Children and Families (DCF) as a child in need of care, Mother stipulated to being unfit to parent B.W. based on her failure to carry out a reasonable plan directed toward reintegrating B.W. into her home. Ultimately, and after an extended period to complete reintegration tasks, the district court terminated Mother's parental rights because her stipulated unfitness was unlikely to change in the foreseeable future. Because the district court did not err in terminating Mother's right to parent B.W. and it did not abuse its discretion in finding termination was in B.W.'s best interests, we affirm.

FACTS

One week after Mother gave birth to B.W., the State filed a petition alleging B.W. was a child in need of care because DCF was told that B.W. was a substance abused

infant, who was being treated for withdrawal symptoms in the hospital's neonatal intensive care unit. Mother tested positive for marijuana at B.W.'s birth, admitting to frequent use during her pregnancy, and she admitted to being addicted to drugs since she was 17 years old. According to the report submitted to DCF, Mother stated she last used methamphetamine about six months prior but had been clean of all substances—except marijuana—for four months. Mother also stated she was receiving substance abuse treatment.

DCF worker Catelyn Smith spoke with hospital employees, who expressed concern over Mother's ability to care for B.W. The hospital's social worker reported Mother appeared to lack stability and provided conflicting statements regarding her living situation. The social worker told Smith that she had previously worked with Mother and her other children and told Smith that Mother had a criminal history and issues with substance abuse—specifically alleging Mother had inconsistent sobriety issues regarding opioids, methamphetamine, and marijuana. According to the petition, Mother reportedly attended outpatient substance abuse treatment and she claimed she was ready to continue her sobriety to remain with her son.

The State's petition also delineated Mother's criminal history, and her history with DCF. Notably, the State alleged Mother's rights had previously been terminated as to two of her children, and a third child was in DCF custody. Later at the termination hearing, an employee with KVC Kansas—a private, nonprofit services that assists families—testified Mother had four children, in addition to B.W. Each child was born with illegal substances in their system and each child was removed from Mother's care. Mother relinquished her parental rights to two of the children, one child remained in DCF custody, and the fourth child died after being born with significant medical anomalies that required life support and pain management.

On the same day the petition was filed, the district court removed B.W. from Mother's care and appointed DCF temporary custody. One month later, Mother was convicted of misdemeanor theft after she stole firearms from the couple whose home she was residing. Mother was incarcerated at the county jail on multiple occasions during this time, for a total of approximately six months from September 2019 through July 2020.

Apparently while incarcerated at the county jail on October 7, 2019, Mother submitted a statement of no contest and the district court determined that B.W. was a child in need of care. Unknown father did not appear. The district court ordered reintegration as the disposition goal and further ordered Mother to complete a four-month reintegration plan. The plan included reintegration tasks involving Mother's home environment, employment, parenting skills, her issues with substance abuse and criminal history, visitations with B.W., and general tasks such as remaining in contact with KVC. Mother's case manager with KVC testified that over the following months, Mother continued to struggle with substance abuse, did not attend visits with B.W., did not stay in contact with KVC, and did not have a stable place to live.

On April 28, 2020, the State moved for termination of Mother's parental rights. A few months later, and a little over one year after B.W.'s birth, on July 15, 2020, Mother was imprisoned after her probation was revoked. While imprisoned, Mother had nine virtual visits with B.W, which were mostly unsuccessful due to B.W.'s young age and his hesitance to participate in the virtual meetings. Mother completed a six-month substance abuse program and a parenting class while incarcerated. Mother later testified that she read many self-help books and she made B.W. a video recording of herself reading a book. She sent the book and a teddy bear to B.W. Mother was released from prison on May 27, 2021.

Mother moved into an Oxford House in Olathe upon her release. Oxford Houses are "independent self-run homes for recovery." At trial, an employee of the Oxford House

in Merriam described the houses: "They are just a group of individuals with the common goal of recovery and agreed rules to operating . . . . Everyone pays their equal share of expense, and the house is run on a democratic basis." In the 10 months between her release and her termination trial, Mother lived in three Oxford Houses, one private residence, and one transitional home. When the trial began, Mother had been living in a transitional housing program for just over one week.

Mother obtained employment at Centrinex, LLC as a customer service representative upon her release from prison, and she remained employed when the termination hearing occurred. Mother's workweeks were day shifts from Tuesday to Saturday. Mother worked a second job for a couple of months to earn extra income.

A couple of months after her release, Mother stipulated to her unfitness as defined by K.S.A. 38-2269(c)(3), but she did not stipulate that her condition of unfitness was unlikely to change in the foreseeable future. Based on Mother's stipulation and her case plan progress, KVC agreed to offer Mother a second reintegration plan despite the case disposition being set for termination. As a result, the district court found Mother was unfit to parent B.W. after accepting her stipulation of unfitness based on her failure to carry out a reasonable plan for reintegration—as defined by K.S.A. 38-2269(c)(3)—and extended the reintegration plan for 90 days.

The new reintegration plan focused on Mother's home environment, her issues with substance abuse, visitations with B.W., and general tasks such as maintaining contact with KVC and compliance with court orders and safety plans. The plan was effective for 90 days, with the start date of August 17, 2021.

On April 1, 2022, the State again moved for termination of Mother's parental rights based on Mother's failure to carry out a reasonable plan approved by the court directed toward the reintegration of B.W. into Mother's home. A few months later, the

district court held a two-day termination hearing. At the hearing, the State presented the testimony of multiple witnesses.

Dylan Schultz, Mother's first case manager at KVC, testified to Mother's behavior immediately following B.W.'s birth. According to Schulz, Mother made little progress toward reintegration while he assisted as her case manager. Mother did not attend visits with B.W., she failed to take requested urinalysis tests, she did not communicate with KVC, and she was in and out of jail. Notably, Schultz identified Mother's "primary issues" as her drug use, visitation attendance, and "not having a place to live, being borderline homeless."

Antonio Best was Mother's second KVC permanency case manager who began working with Mother while she was imprisoned in September 2020. As her current case manager when the termination occurred, Best testified to Mother's successes and failures regarding her second reintegration plan upon her release from prison. To summarize, Best testified Mother was successful in maintaining sobriety and employment, but her behavioral patterns indicated Mother was unlikely to prioritize B.W.'s needs, and unlikely to find stable housing, in the foreseeable future. Notably, both Mother and the State recognized Best was a strong advocate for Mother.

The State also presented the testimony of a "PMTO" therapist at KVC, Kimberly Vaughn. According to Vaughn, PMTO is a parent education model that combines education and family therapy. Vaughn began working with Mother on a six-month program in late January 2022, and Vaughn expected Mother to complete the program by July 2022. Vaughn testified that while Mother's housing situation and lack of communication caused some issues with scheduling appointments, Mother has made a positive effort in the program.

Kimberly Keen, an employee at the Merriam Oxford House, testified generally to the purpose, structure, and rules of Oxford Houses. As an employee of the Merriam Oxford House during Mother's residence, she also testified to Mother's unhappiness living at the house, and the situation leading up to Mother's voluntary departure.

Best's supervisor at KVC, Olia Caps, had been a permanency supervisor at KVC for over six years and testified she was familiar with Mother's current and previous termination cases. Caps testified Mother had shown some progress since her release from prison, but her patterns showed progress was unlikely to continue. Caps stated, "I've seen periods where [Mother] is doing well, doing what she needs to do, and then begins to take missteps and, kind of, slide backward back into old patterns of instability, inconsistency." Like Best, Caps identified Mother's instable housing and failure to prioritize B.W. as her most significant concerns regarding Mother's fitness.

The State's last witness, Deborah McCurn, had been working as a court-appointed special advocate (CASA) with Mother's children since Mother's first child was born in 2016. Having been involved in every child in need of care case regarding Mother's children, McCurn testified she "[p]robably" knew Mother's background better than any other witness. McCurn provided testimony about Mother's third child, who had since passed, and the child's multiple abnormalities that required constant life support. She also testified to Mother's unwillingness to communicate with McCurn, claiming McCurn was biased against her. McCurn testified Mother's current situation was not "totally different" than in her previous cases because "we just have so much instability still." She pointed to Mother's lack of permanent housing, contradictory statements, failure to go along with KVC plans, and "chaos involving the visits," to support her opinion.

On the second day of trial, Mother testified on her own behalf. Mother testified to the classes she completed while in prison and her successes in maintaining sobriety and employment. She testified to the barriers she encountered while seeking stable housing,

such as background checks and large deposits, and made claims she was uncomfortable living in Oxford Houses because of the type of women living in the houses and an alleged sexual harassment of an employee. Mother conceded to living in three Oxford Houses, one private residence, and one transitional living home over the 10 months since being released from prison. Additionally, Mother testified about the issues KVC staff identified regarding her visitations with B.W. Mother admitted to running errands with B.W. during scheduled visits, but she claimed Best was aware and she stopped taking him on errands after KVC approached her about it.

A few weeks after the two-day termination hearing, the district court found B.W.'s father could not be determined and terminated the parental rights of the unknown father based on his unfitness for the foreseeable future under K.S.A. 38-2269(d). The district court proceeded to terminate Mother's parental rights, finding her unfit under K.S.A. 38-2269(c)(3), and which conduct or condition was unlikely to change in the foreseeable future pursuant to K.S.A. 38-2269(a)(1). The district court reasoned that despite Mother's progress in her reintegration plan, Mother had not provided suitable housing, she failed to prioritize B.W.'s needs, and she lacked insight into her past and conduct. Viewing Mother's unfitness from B.W.'s perspective, the district court found B.W. "should not have to wait any longer for permanency" after being in DCF custody for three years. And giving primary consideration to B.W.'s mental, physical, and emotion health, the district court found it was in B.W.'s best interests to terminate Mother's parental rights.

Mother appeals.

## ANALYSIS

*Did the district court err in finding Mother's unfitness was unlikely to change in the foreseeable future?*

On appeal, Mother claims the district court erred in terminating her parental rights of B.W. Although Mother stipulated that she was an unfit parent, she argues that the district court erred in finding that her unfitness was unlikely to change in the foreseeable future. The State argues that the district court's finding regarding Mother's unfitness in the foreseeable future was supported by clear and convincing evidence.

A district court may terminate parental rights when it "finds by clear and convincing evidence that the parent is unfit by reason of conduct or condition which renders the parent unable to care properly for a child and the conduct or condition is unlikely to change in the foreseeable future." K.S.A. 38-2269(a). K.S.A. 38-2269(b) contains a nonexclusive list of factors for the district court to consider when determining if a parent is unfit. K.S.A. 38-2269(c) contains additional factors to consider when the child is not in the physical custody of a parent.

The termination of parental rights requires the district court to make three findings: (1) The parent is unfit as defined by Kansas law; (2) the parent's unfitness is unlikely to change in the foreseeable future; (3) and the termination of parental rights is in the child's best interests. See K.S.A. 38-2269(a) and (g)(1). As noted, Mother stipulated to the first finding and does not dispute that finding on appeal.

Mother has a constitutionally protected liberty interest in her relationship with B.W. Given its importance, that right has been deemed fundamental. See *In re M.S.*, 56 Kan. App. 2d 1247, 1255, 447 P.3d 994 (2019). A district court may dissolve the legal bonds between parents and children "only upon clear and convincing proof of parental unfitness." 56 Kan. App. 2d at 1255.

When reviewing a district court's determination that a parent will remain unfit for the foreseeable future,

"an appellate court asks whether, based on the full evidentiary record considered in a light favoring the State as the prevailing party, a rational fact-finder could have found that decision 'highly probable, *i.e.*, [supported] by clear and convincing evidence.' *In re B.D.-Y.*, 286 Kan. [686, 705, 187 P.3d 594 (2008)]." 56 Kan. App. 2d at 1255-56.

Appellate courts do not weigh evidence, pass on witness credibility, "or otherwise independently decide disputed questions of fact." 56 Kan. App. 2d at 1256. Any conflicts of evidence are resolved in the State's favor. 56 Kan. App. 2d at 1256.

We use "child time" to measure the foreseeable future because children perceive time differently than adults. K.S.A. 38-2201(b)(4). "[C]hildren experience the passage of time in a way that makes a month or a year seem considerably longer than it would for an adult, and that different perception typically points toward a prompt, permanent disposition." 56 Kan. App. 2d at 1263.

Additionally, courts may look to a parent's past conduct as an indicator of future behavior. 56 Kan. App. 2d at 1264. K.S.A. 38-2269(b) provides a list of nonexclusive factors for a district court to consider when determining unfitness and its likelihood to change in the foreseeable future. Here, as Mother stipulated, the district court found Mother was unfit to parent B.W. under K.S.A. 38-2269(c)(3), which states a court shall consider a parent's "failure to carry out a reasonable plan approved by the court directed toward the integration of the child into a parental home" when the child is not in the physical custody of the parent.

After finding Mother to be an unfit parent, the district court found Mother's unfitness was unlikely to change in the foreseeable future despite some progress in her

case plan. The district court focused on Mother's lack of stable housing and lack of insight into the conditions of her life that have caused B.W. to remain in DCF custody. The district court found that despite KVC's assistance, Mother "is essentially today where she was when [B.W.] was born." The district court reasoned:

"When this case was filed in June of 2019, [M]other was homeless and addicted to drugs. At that time, her plan was to obtain temporary housing at Hillcrest. Today, her plan is to reside at Hillcrest and their transitional program until she can afford to move into an apartment.

. . . .

"The evidence presented reveals that during the pendency of this case, when [M]other was not incarcerated, she has changed residences and moved every 90 to 120 days.

"The evidence presented also revealed that all of the places [M]other has resided over the past three years have been temporary housing."

Viewing Mother's lack of housing from B.W.'s perspective, the district court found that "[B.W.] has been in DCF custody a total of 36 months, and there is no anticipated time when it is expected that [M]other will attain permanent housing. When considering [M]other's current circumstances and her past history, we just have hope and a plan that may result in permanent housing." Relying on an opinion from this court, the district court emphasizes that the case "must be judged mostly upon action, not intention." See *In re A.A.*, 38 Kan. App. 2d 1100, 1105, 176 P.3d 237 (2008) ("But we must judge these cases based mostly upon actions, not intentions, and we must keep in mind that a child deserves to have some final resolution within a time frame that is appropriate from that child's sense of time.").

The district court also relied on guidance from this court to find it could "reasonably look to the past conduct of a parent as being indicative of future behavior." See *In re K.L.B.*, 56 Kan. App. 2d 429, 447, 431 P.3d 883 (2018). Based on Mother's past

conduct, it found her lack of insight and previous interactions with DCF were indicative of future behavior:

"Mother had three other children, and two have been adopted by other families, including [B.W.]'s brother, who was adopted by the foster parents, and [B.W.'s] other brother died while in DCF custody during a Child In Need of Care case that has been pending for more than two years.

"Mother struggles with housing stability in those cases, drug addiction, and became pregnant two times while another child was in DCF custody. In this case, [M]other is to be commended her getting clean and sticking to it. But her lack of insight, which was apparent during her own testimony during the trial, proves that her inability to acknowledge her past so that she can make permanent changes for [B.W.] absolutely affects her ability to achieve stability and permanency for [B.W] and to get him home with her.

"One question the Court has laid, is how much longer should [B.W.] have to wait? Mother has been given multiple opportunities to complete two reintegration plans in this case, and other reintegration plans in the past sibling cases. But she has yet to complete one reintegration plan for any of her children over a period of more than six years when considering the sibling cases.

"The Court finds that [B.W.] should not have to wait any longer for permanency. It is not reasonable to expect [B.W.] to keep waiting for permanency when accessing foreseeable future using child or [B.W.'s] time. Three years have passed in this case and for [B.W.], and the Court still has no idea when [B.W.] may go home with [M]other."

Mother argues that the district court erred in making these findings because the evidence showed Mother "is not irredeemably unfit." But the full evidentiary record, when considered in a light favoring the State as the prevailing party, shows a rational fact-finder could have found the district court's foreseeable future decision was supported by clear and convincing evidence. See *In re M.S.*, 56 Kan. App. 2d at 1255-56.

Notably, Mother successfully completed certain case plan tasks upon her release from prison. Mother maintained stable employment at Centrinex, LLC since June 2021.

Mother also maintained her sobriety. Apart from a few delayed tests, Mother completed all the urinalysis tests requested by KVC. And Best testified that he was never concerned about Mother's sobriety. Best also testified that Mother maintained reliable transportation and stayed in regular contact with KVC.

Despite Mother's success in maintaining employment and sobriety, the record shows Mother failed to complete the majority of the remaining case plan tasks. The district court focused on Mother's failure to maintain stable housing, both in this case and her previous termination cases, to support its foreseeable future finding.

### *Housing*

Best testified Mother did not have consistent, stable housing. She relocated regularly and never stayed in any residence more than three or four months. Upon her release from prison, Mother "had a plan and was ready to hit the ground running" with a residence lined up at the Olathe Oxford House. According to Best, and several other witnesses, Oxford Houses are democratically run group houses that offer a safe environment for women to live and maintain sobriety. The houses offer reduced rental rates and equal share of expenses. Each house makes its own rules, and members can be voted out of the house. Mother lived at the Olathe Oxford House from May 2021 to August 2021, when the other members voted her out of the house for disruptive behavior.

After she was kicked out, Mother attempted to live with a man that failed KVC's background check due to a recent sexual assault conviction regarding a juvenile. After leaving that residence, Mother stayed with friends and family for a few months before moving into the Merriam Oxford House in November 2021. Mother voluntarily moved out of the Merriam Oxford House approximately three months later, in February 2022, against Best's advisement to remain living there. Best testified he "begged" Mother to stay at the Merriam Oxford House because housing instability was KVC's biggest

concern. Best thought Mother agreed to stay, but he later found out Mother moved without telling him.

Mother moved into a private residence after leaving the Merriam Oxford House. According to Best, Mother attempted to provide a lease for the purposes of placement and reintegration, but KVC determined placement was not proper at this residence because the resident offering the lease did not own the property and therefore had no legal right to lease the property. Best told Mother that KVC would not support reintegration at this home in March or April, "way before she decided to look at transitional housing." Nevertheless, Mother remained living at the private residence for two months—despite KVC refusal to allow visitations or reintegration at the residence—until she moved into Hillcrest transitional housing about one month before the termination hearing. Best described the transitional housing program as "temporary housing until an individual finds a place that they can afford" while also assisting with cost of living, permanence, and financial savings. According to Best, Mother's residence at Hillcrest was proper for visits, but not reintegration due to the size.

Best testified that despite Mother's progress in other case plan tasks, Mother had failed to find stable housing. Mother's stays at the Oxford Houses were the only safe, stable, and appropriate placements. And Mother voluntarily left such appropriate placement four months before the termination hearing.

Mother's argument on appeal regarding her lack of stable housing largely mirrors her testimony at the termination hearing. Mother argues various factors, such as her felony conviction and KVC's interference, created barriers to finding suitable housing. She contends she never intended to stay in residences such as Oxford Houses on a permanent basis because such placements are not good for reintegration. She only lived in Oxford Houses at KVC's request. On appeal, Mother also argues that the district court erred in finding Mother at fault for moving every 90 to 120 days because such finding

"presumes that moving every 90 to 120 days is somehow harmful or not good for a child or family."

In response, the State provides some support from various children's health articles suggesting instable housing impacts young children. But regardless of Mother's claim of improper presumptions, the record shows Mother nevertheless failed to meet the requirements of her case plan and Mother's failure was unlikely to change in the foreseeable future.

Mother has never maintained a safe, stable, and appropriate home environment for B.W. When B.W. was born and before her imprisonment, Mother was "borderline homeless." After her release from prison, Mother lived in at least three Oxford Houses, one private residence, and one transitional home. When the trial started, Mother had been living in a 90-day transitional home program for about one month. According to Mother, the transitional housing program assists residents in saving money and finding a new place to live within 90 days. Despite this deadline, Mother had yet to save money or submit applications for a rental when trial started. Mother testified she was not financially ready to support renting her own place, but she was confident she would have "plenty" of money saved by the time she left the transitional housing program.

The district court was not persuaded by Mother's arguments below, and this court will not reweigh such evidence in Mother's favor. *In re M.S.*, 56 Kan. App. 2d at 1256. In addition to failing to maintain stable and appropriate housing by moving every three to four months, the record shows Mother failed to complete other case plan tasks related to B.W.'s home environment. Mother did not notify KVC within 72 hours of changing her addresses and she did not submit additional budget forms as requested by KVC.

The district court did not err in finding that Mother's failure to maintain safe, stable, and appropriate housing was unlikely to change in the foreseeable future. Mother

has not maintained stable housing since B.W.'s birth, and she did not provide an indication her housing instability would change in B.W.'s foreseeable future.

### *Visitations*

Mother's case plan required her to "participate in visitation and follow all KVC visitation guidelines." The district court did not make many findings regarding Mother's visitation case plan tasks, but it did find that she had yet to complete overnight visits with B.W. and noted that Mother's pregnancy and housing instability created "additional complexities."

Before her imprisonment, Mother failed to make visits with B.W. and the visits never progressed to more than supervised, one-hour visits. McCurn offered to facilitate more visits for a bond to form between Mother and B.W., but those visits slowly disintegrated after Mother quit scheduling visitations. Upon her imprisonment, KVC offered 30-minute virtual visitations, but such visits were largely unsuccessful. B.W. was less than two years old during the virtual visits, and lacked a bond with Mother, so the visits never lasted longer than 10 minutes.

Upon her release, visitations were set at weekly, one-hour visits. Soon after, visits progressed to two hours while Mother was living in the Olathe Oxford House. Best reasoned Mother and B.W. needed more time to bond, and Mother's residence provided a place to take B.W. during visits. When Mother expressed her desire to move out of the Olathe Oxford House, Best requested Mother stay at her residence because she was making progress with visits. Even so, Best found out later Mother had already moved out of the Olathe Oxford House. And Best testified that Mother's living arrangements after moving out of the Olathe Oxford House were not appropriate for visitations or placement.

Best testified that when Mother moved into the Merriam Oxford House in November 2021, after couch surfing for a while, "it seemed like things were going well." Mother had the same job, and visits were going "pretty good," so Best increased visitations to four hours. And eventually the visits were increased to six hours. Best testified that around this time, Mother's prioritization of B.W. during visits "was kind of a 50-50 thing." Best testified that there were times he saw Mother prioritizing B.W., but other times Best felt Mother "had other stuff on her mind or other things she needed to get accomplished at the same time."

Mother's prioritization of B.W. during visitations was an ongoing theme throughout the termination hearing. The State's evidence regarding visitations focused on Mother's inappropriate use of her visitation time with B.W. The State's witnesses, including Best, testified Mother ran errands during her visitations with B.W., such as taking B.W. to Mother's doctors' appointments, the laundromat, and the car mechanic. Best reasoned Mother's use of her visitation time to run errands was inappropriate because it cannot provide a bonding experience for Mother and B.W. And Best was concerned that running errands showed Mother's inability to prioritize B.W.'s needs during visitations, which he addressed with Mother.

Best sympathized with Mother's situation as a working, single parent, and he testified that he advocated for Mother by rescheduling visits so that Mother had time to complete her errands before or after her scheduled visits with B.W. During her testimony, Mother conceded to running errands during visits, but justified her actions by stating Best was aware of her plans. And she testified she stopped running errands during visitations after KVC told her it was inappropriate. Best testified that he was never concerned with B.W.'s safety during visits, he was mostly concerned with Mother's lack of planning with the visits and "mak[ing] sure that [Mother] is where she's supposed to be."

In addition to inappropriate visitation activities, the State presented evidence to show Mother did not prioritize her scheduled time with B.W. For example, the Merriam Oxford House suffered a COVID-19 outbreak while Mother was living at the house in January 2022. As a result, a church group paid for Mother to stay at a hotel for five days. KVC later found out Mother had spent much of this time with an unknown guest. Mother was scheduled to have one visitation with B.W. during her stay at the hotel, which she attempted to reschedule for the next day. After KVC denied rescheduling the visit, Mother picked B.W. up from daycare without authorization the next day.

During her testimony, Mother claimed she wanted to reschedule her visit to the next day because the Oxford House was reopening from quarantine that day and she wanted to have a place to take B.W. during their visit. But she admitted that she did not take B.W. to the Oxford House after she picked him up from daycare, and instead, she ran errands and had car work done.

Also, while testifying, Mother claimed the visit was rescheduled, not missed, despite Best's testimony that Mother picked B.W. up from daycare without authorization on that day. But even so, Mother dropped B.W. off early after picking him up without authorization.

In this vein, the State presented evidence to show Mother had a pattern of requesting more time with B.W. but dropping him off before the visit was scheduled to end. Best testified Mother dropped B.W. off early during visits on five occasions. And this pattern continued up until the time of Mother's termination trial.

In March 2022, while Mother was living in an unapproved private residence, visitations were reduced to four hours. Mother was required to submit written plans for the visitation that required Best's approval. Best testified that at this time, he was the only employee who trusted Mother to complete a four-hour, unsupervised visit in the

community. Mother's pattern of retuning B.W. an hour early, sometimes without feeding him lunch, continued into April 2022. Mother learned she was pregnant around this time.

In April 2022, B.W.'s foster mother and the CASA representative had concerns about visits. In addition to being dropped off early, and concerns regarding where Mother was taking B.W. during visits, B.W. was experiencing separation issues that caused poor responses. B.W. struggled with being distant from his foster mother for too long and experienced night terrors.

From April 2022 to May 2022, Mother continued to have scheduling conflicts and last-minute changes that shortened her visitations. Because Monday was Mother's only weekday off from work, Mother scheduled prenatal appointments or continued to run errands. Best testified that he approached Mother about this behavior, informing her that it would "look better" to prioritize B.W. over her own need during scheduled visits.

Mother's behavior continued until Memorial Day 2022, a few weeks before the trial, when Mother ended her visit early. Best testified that B.W.'s foster mother was late dropping B.W. off so he granted more time to Mother. But after B.W. was being rambunctious and rebellious at the mall, Mother called foster mom to return B.W. Despite it being his day off, Best spoke with foster mom and Mother and determined that Mother wanted to drop B.W. off early, despite Best's work to grant Mother more time. Mother attempted to dispute this situation during her testimony, but she did not address Best's testimony that he permitted Mother more time on this day, and the record on appeal does not include the text message that allegedly showed Mother dropped B.W. off on time.

Caps reasoned that Mother's failure to prioritize B.W. was reflected in her visits with B.W. In addition to the issues with scheduling and running errands, Mother was "not

spending that time really bonding and playing with [B.W.]." McCurn had the same concerns.

Clear and convincing evidence supports the district court's finding that Mother's visitations never progressed to overnight stays, and her housing and pregnancy created additional complexities for her visits. The record shows that despite Mother's success in attending most of the visits, Mother did not carry out her case plan tasks of participating and following "all KVC visitation guidelines" and such behavior was unlikely to change in the foreseeable future. Mother continually ran errands during her scheduled time with B.W., against the guidance of KVC, which prevented her from forming a bond with B.W. And when the trial started, Mother's need to run errands during her time off from work was unlikely to change given her pregnancy and strict working hours. The State's evidence also shows Mother's pattern of requesting more time with B.W., and then returning early, was unlikely to change in the foreseeable future given Mother showed such behavior a few weeks before trial.

### *Unfitness*

On appeal, Mother only challenges the State's evidence regarding her lack of stable housing and visitations. Mother briefly challenges the district court's reference to Mother's behavior before the second reintegration plan, but she does not challenge the district court's use of past behavior as being indicative of her future behavior. See *In re K.L.B.*, 56 Kan. App. 2d at 447. In essence, Mother's argument on appeal suggests that we reweigh the evidence to find Mother completed enough case plan tasks to warrant reintegration into her home.

Despite Mother's arguments to the contrary, a review of the record shows clear and convincing evidence supported the district court's ruling that Mother's unfitness was unlikely to change in the foreseeable future. Using "child time" to measure the

foreseeable future, and judging Mother's case upon actions and not intentions, clear and convincing evidence shows Mother has not had stable housing since B.W. was born. See *In re M.S.*, 56 Kan. App. 2d at 1263. After her release from prison, Mother moved every three to four months and voluntarily left residences that were appropriate for placement or reintegration. When the trial began, Mother did not have an appropriate home for reintegration, and she admitted to lacking sufficient funds to support a move to a residence where B.W. could be reintegrated into Mother's home. Mother's testimony showed she believed her transitional home program would help her save enough money in a few months, but Mother has not been successful in such endeavors and Mother's history with Oxford Houses shows she has a pattern of leaving such environments regardless of whether staying is proper for reintegration.

There is no evidence, except for Mother's testimony, to support her contention that she maintained stable housing to support reintegration. Mother's lack of stable housing also affected other case plan tasks, such as visitations. And as the district court found, Mother's lack of insight during her testimony showed she does not have the ability to make permanent changes for B.W.'s benefit.

When the trial started, B.W. was three years old and had been living with his foster placement his entire life. Over the 10 months before termination, Mother had lived in three Oxford Houses, one private residence, and had just moved into a transitional home. As Best testified, Mother has shown some progress, but her housing situation shows she is "back to where we were" before she was released from prison. Mother moved into an Oxford House upon her release and after four other temporary stays, she remains in a transitional home program. The State's evidence showed Mother failed to maintain a safe, stable, and appropriate home environment as required by her case plan, and the district court did not err in finding it was unreasonable for B.W. to wait any longer for Mother to show she is capable of reintegrating B.W. into her home.

*Did the district court abuse its discretion in finding termination was in B.W.'s best interests?*

Next, Mother argues that the district court abused its discretion by ruling that termination of her parental rights was in B.W.'s best interests. She argues that in making this finding, the district court gave "minimal consideration" to B.W.'s physical, mental, or emotional needs. Mother asserts the best course of action for her child was reintegration into her home. The State argues that the district court did not abuse its discretion given B.W.'s young age, the length of time since his removal, Mother's lack of stable housing, and B.W.'s success at his foster placement.

Once a district court determines a parent is unfit and that unfitness is unlikely to change in the foreseeable future, it must determine if termination is in a child's best interests. K.S.A. 38-2269(a) and (g)(1). Indeed, one of the propositions of law relied upon by the court is the following: "In making the determination, the court shall give primary consideration to the physical, mental and emotional health of the child. If the physical, mental or emotional needs of the child would best be served by termination of parental rights, the court shall so order." K.S.A. 38-2269(g)(1).

A district court's decision that termination of parental rights is in the best interests of the children is reviewed for abuse of discretion. A district court abuses its discretion if: (1) no reasonable person would agree with its ruling; (2) it commits an error of fact; or (3) it commits an error of law. See *In re M.S.*, 56 Kan. App. 2d at 1264. Mother does not allege the district court committed a factual or legal error. The party asserting the district court abused its discretion bears the burden of showing such abuse of discretion. *Gannon v. State*, 305 Kan. 850, 868, 390 P.3d 461 (2017).

In giving primary consideration to the physical, mental, and emotional health of the children, "the court must weigh the benefits of permanency for the children without

the presence of their parent against the continued presence of the parent and the attendant issues created for the children's lives." *In re K.R.*, 43 Kan. App. 2d 891, 904, 233 P.3d 746 (2010). The district court should consider the nature and strength of the relationships between the children and the parent and the trauma that termination may cause the children and weigh those considerations against further delay in finding permanency for the children. 43 Kan. App. 2d at 904.

Here, a reasonable person could agree with the district court's ruling that termination of Mother's parental rights was in B.W.'s best interests because he needs permanency. Best testified that he believed termination was in B.W.'s best interests. It had been over three years since B.W. was removed from Mother's care. And B.W.'s entire life has been spent with his foster family, including one of his half-siblings that was adopted by his foster family. The testimony shows B.W. has a strong bond with his foster family but not with Mother. And B.W. struggles with separation from his foster mother. While Mother was successful in maintaining employment and sobriety, she never found stable, permanent housing. After his visits with Mother, which mostly occurred in the community due to Mother's housing, B.W. struggled with distancing himself from his foster mother and experienced night terrors. As Best testified, B.W. needs a stable place to live with known adults as authority figures or caregivers.

As the district court determined, this court "must judge these cases based mostly upon actions, not intentions, and we must keep in mind that 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 at 1105. Based on the evidence at the hearing, we conclude that the district court did not abuse its discretion in ruling that the termination of Mother's parental rights was in B.W.'s best interests.

Affirmed.