

NOT DESIGNATED FOR PUBLICATION

No. 126,129

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

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

MEMORANDUM OPINION

Appeal from Cowley District Court; NICHOLAS M. ST. PETER, judge. Opinion filed September 15, 2023. Affirmed.

Anna M. Jumpponen, of SJ Law, L.L.C., of Wichita, for appellant natural mother.

Ian T. Otte, deputy county attorney, for appellee.

Jennifer Anne Passiglia, of Law Office of Jennifer Passiglia, of Winfield, guardian ad litem.

Before WARNER, P.J., GARDNER and HURST, JJ.

PER CURIAM: This appeal arises after the district court granted temporary custody of S.W., a young child, to her Father during an ongoing child-in-need-of-care (CINC) case. S.W.'s Mother challenges that decision, claiming the child's temporary placement with Father, who lives in Ohio, will make it difficult for S.W. to remain in contact with Mother and S.W.'s siblings. Mother also questions whether Father is prepared and equipped to address S.W.'s needs. After carefully reviewing the facts of the case, we find the district court did not abuse its discretion in placing S.W. with Father while the CINC case is pending. We therefore affirm the court's decision.

FACTUAL AND PROCEDURAL BACKGROUND

In May 2022, the State filed a petition requesting a judicial determination that S.W. was a child in need of care. The factual allegations in the CINC petition focused on Mother, with whom S.W. lived shortly before the petition was filed. Father lives in Ohio.

The petition indicated that Wichita police officers had recently responded to a call about a suicidal person, later identified as Mother. Upon the officers' arrival, Mother expressed suicidal ideations but stated she had no intention of killing herself. While police were investigating the situation, they learned that Mother was homeless. They also learned that Mother had made several concerning statements about S.W. and her siblings, including a text message from Mother stating that "she was going to drown her kids, give them away to someone[,] or 'drop-kick' her daughters."

According to the petition, S.W.'s wellbeing would be at "high risk" if she remained with Mother. The petition claimed that Mother struggled with "suicidal ideations, insomnia, depression, anxiety, panic disorder, anger management issues, PTSD, and possibly a personality disorder that she is medicating with marijuana use and a PRN medication." The petition noted Mother was seeking mental-health treatment, but she had declined various parenting services the Kansas Department for Children and Families had offered her. The petition did not contain any allegations regarding Father, other than stating that S.W. was currently without sufficient care or control to protect her mental, physical, and emotional health.

Neither Mother nor Father contested the allegations in the petition. The court thus found that S.W. was a child in need of care. She and her sister were placed in the home of a family member of the sister's father (who was not S.W.'s Father), and the court appointed a guardian ad litem to represent S.W.'s interests.

As the case progressed, caseworkers learned that S.W.'s sister, who had been the subject of a previous CINC case when she was very young, had abused S.W. This abuse began when the children were living with Mother (before the current CINC case) and continued when they were living in the Department-supervised placement. The State filed an amended petition, alleging that S.W.'s parents had not protected her from this abuse.

The amended petition also stated that S.W.—who was then six years old—had a history of suicidal ideation, had made plans to kill herself, and was hospitalized for a period in March 2022. When in the hospital, S.W. informed health workers that she had tried to take her life because of things her sister had said or done. Upon S.W.'s discharge, the hospital recommended that S.W. receive professional help to manage her medication and behavior and that she see a pediatrician. The petition stated that, to date, none of these appointments had been made "by either Mother or Father."

Father's request for custody

From the earliest stages in the case, Father indicated a wish for S.W. to live with him in Ohio. At a hearing in June 2022, Father appeared remotely via Zoom and stated through counsel that he would like S.W. to live with him. The district court took Father's request under advisement, as there were a number of steps that had to be completed before that change could be made. In particular, the court and supervising caseworkers needed to be comfortable that Father could care for his daughter and had a stable home and income. Father also had to have a plan to provide S.W. with the mental-health treatment she needed, especially in light of the allegations in the amended petition.

The district court revisited Father's request—for S.W. to live with him in Ohio—at a dispositional hearing a little over a month later. Father explained that S.W. had stayed with him for two summers and that the two shared a bond. Father had been able to handle S.W.'s difficult behaviors when he cared for her in the past and

understood what it would mean to provide care long term. Father also stated that his parents and other family members lived nearby and could support Father and S.W. during the transition.

Father noted that his background check was largely clean, showing only a traffic misdemeanor. Father had recently provided a hair-follicle drug test that did not indicate the presence of any illegal substances, and he did not have a history of drug use. At the time of the hearing, Father was transitioning from his seasonal landscaping job to one with Amazon that was more consistent and better paying.

At the district court's request, S.W.'s guardian ad litem provided additional background regarding an appropriate placement for the child. The guardian ad litem stated that she had serious concerns about Mother's ability to care for S.W., but her information on Father was limited (since he lived in Ohio):

- The guardian ad litem observed that Mother has a significant history of trauma. Mother had multiple relationships with different men—at least two which were abusive—and Mother had three children with three different fathers. On the whole, the guardian ad litem stated that Mother experienced a pattern of "unstable housing, criminal conduct, criminal behavior, drug use, exposure of the children to domestic violence, exposure to substance abuse and everything that comes with that, lack of . . . employment, and domestic violence."
- The guardian ad litem admitted that she knew very little about Father. But she noted that her "research [had] not shown anything significant" to indicate Father was a safety concern—"only thing [her] records show[ed] was a traffic offense and maybe he failed to pay a ticket." Father had provided some documentation of new steady employment. Neither the guardian ad litem nor the caseworkers had been able to visit Father's home, since he lived in Ohio,

but some caseworkers had performed an electronic walkthrough and did not see any items that concerned them.

The guardian ad litem emphasized her belief that regardless of S.W.'s placement, the case file should remain open to allow supervision by the Department and the caseworkers. The guardian ad litem also believed that regardless of where S.W. lived, there should be plans to provide S.W. with mental-health treatment and to allow S.W. to have a relationship with her siblings.

To address these concerns, Father noted that he had compiled a list of pediatricians, dental providers, schools, transportation to school, and other resources like sports at the YMCA that he had researched and identified for S.W. if she came to live with him. Father indicated that he was willing to develop a plan to address S.W.'s mental health, though he did not believe that it could be solidified before the court rendered its placement decision. And although placement with Father would mean that S.W. lived in a different state, Father claimed that he would not cut off any family or siblings. Father suggested that S.W. could use FaceTime to stay connected. Father also had family in Kansas and would sometimes travel there to visit them.

For her part, Mother acknowledged her challenges—most notably, her mental health and housing instability—but stated she hoped to reintegrate with all three of her children. Having personally been in foster care when she was younger, Mother was concerned with making sure she could visit her children and with keeping her children together.

Placement with Father in Ohio

After hearing from the parties and the guardian ad litem, the district court granted Father's request and ordered that S.W. should live with Father as the CINC

case progressed. In doing so, the court emphasized that Father needed to develop a more concrete plan to address S.W.'s mental health. The court stated it believed that Father would take those steps:

"I don't see anything about [Father's] history that would make me believe that he is not capable of providing care for his child. He appears to have everything in place. While there are always concerns about unknowns the fact of the matter is, that there is just nothing there, in terms of his drug test or anything else, that would lead the Court to be able to say in my view, that he is not entitled to have rights to his child."

The court's journal entry summarized this ruling, finding that "Father is ready, willing, and able to accept placement of [S.W.]." Mother appeals.

DISCUSSION

CINC proceedings, at their core, seek to balance parents' rights in relation to their children with the children's needs to be protected and cared for. When a CINC petition is filed, the district court must adjudicate whether the child named in the petition is in need of care. The case then proceeds to a disposition hearing—or a series of disposition hearings—to assess and monitor "the safety and well being of the child." K.S.A. 38-2253(a). The court's role may require it to approve a case plan that "sets forth the responsibilities and timelines necessary to achieve permanency of the child" and enter other orders regarding the "custody of the child." K.S.A. 38-2253(a)(1), (2). This appeal concerns the second category of actions: the district court's ruling that Father would have custody of S.W. (in Ohio) while the CINC case progressed.

Broadly speaking, a district court considering a custody placement in a CINC case has discretion to order that the child remain in the original home, be placed in foster care, or be placed in some other living situation. See *In re P.J.*, 56 Kan. App. 2d 461, 465, 430 P.3d 988 (2018). The court's discretion must be exercised through the lens of considering

what custody arrangement would be in the child's best interests. 56 Kan. App. 2d at 465. And, at minimum, this best-interests assessment must evaluate:

- "(1) The child's physical, mental and emotional condition;
- "(2) the child's need for assistance;
- "(3) the manner in which the parent participated in the abuse, neglect or abandonment of the child;
- "(4) any relevant information from the intake and assessment process; and
- "(5) the evidence received at the dispositional hearing." K.S.A. 38-2255(a).

If the district court decides that the child should be placed with one or both parents, the court may condition that custody arrangement on the parents' compliance with or completion of additional requirements "to assure the proper care and protection of the child." K.S.A. 38-2255(b). But the court need not do so.

Recognizing the important role of the district court—and the district court's discretion—in sorting through the difficult and often contentious circumstances surrounding these decisions, appellate courts will not reverse a district court's placement order unless the order results from an abuse of that discretion. A court abuses its discretion when it rules in a way that no reasonable person would or bases its decision on a factual or legal error. 56 Kan. App. 2d at 465-66. To the extent the district court's placement order is rooted in factual findings about disputed evidence, we defer to those findings if they are supported by substantial competent evidence. 56 Kan. App. 2d at 466.

Mother's appeal challenges the district court's decision to place S.W. with Father in two ways. First, she raises a procedural claim, asserting that the district court was required to articulate its findings on each of the factors listed in K.S.A. 38-2255(a). Second, she challenges the placement decision on the merits, asserting that the decision was unsound because of the open questions about Father's ability to care for S.W. in Ohio. We are not persuaded by either argument.

Mother first argues that the district court erred by not fully articulating its factual findings and reasoning that supported its decision to place S.W. in Father's custody. Mother asserts that because K.S.A. 38-2255(a) lists several factors a district court must consider when evaluating what placement is in the child's best interests, it logically follows that it must clearly articulate its findings and conclusions for each factor. But unlike other statutes or court rules that require courts to clearly articulate their factual findings and legal reasoning, K.S.A. 38-2255 contains no such requirement. Compare, e.g., Supreme Court Rule 165(a) (2023 Kan. S. Ct. R. at 234) (requiring the court to "state its findings of fact and conclusions of law" after a bench trial) with K.S.A. 38-2255 (containing no similar requirement).

And to the extent Mother argues in favor of a rule requiring a written decision articulating the court's findings and conclusions, such an extra-statutory requirement would further delay the process that seeks to provide safety and care to children during CINC proceedings. In short, nothing in Kansas law required the district court to further articulate its rationale for placing S.W. with Father.

Mother next argues that the district court's ruling that "Father is ready, willing, and able to accept placement of [S.W.]" was not reasonable in light of the evidence and argument presented at the disposition hearing. In particular, Mother argues that because Father lived in Ohio, the caseworkers and guardian ad litem had not been able to fully vet his fitness or ability to care for S.W. or his ability to provide the child with the mental-health treatment she needs. Given these open questions, Mother argues the district court's decision was not an appropriate exercise of the court's discretion. We disagree.

Our review of the disposition hearing shows that the district court considered the factors in K.S.A. 38-2255(a). Turning first to S.W.'s need for mental-health treatment, the

district court heard testimony from S.W.'s guardian ad litem, Mother's attorney, Mother, and Father's attorney. It also considered a letter from Father, Father's hair-follicle test, a report from S.W.'s guardian ad litem, S.W.'s KVC hospital records, and a court report from TFI including Father's background check. The district court was made aware of S.W.'s medical and emotional condition. The court received S.W.'s medical records, noting that she was hospitalized while in Mother's custody, in part, because S.W. expressed suicidal thoughts and had attempted suicide. The hospital report reflected that S.W. was emotionally unstable when encountering distress, leading to "suicidal ideation and self-harming behaviors." The district court thoroughly considered S.W.'s need for assistance and made it clear to Father that Father needed to arrange the treatment S.W. needed. The record shows that the district court believed the treatment could be arranged. And the guardian ad litem believed the treatment could be set up relatively quickly.

Mother asserts that the district court should not have allowed S.W. to be placed out of state without an Interstate Compact on Placement of Children—an administrative arrangement that would have allowed a social-service agency in Ohio to supervise and monitor Father and S.W. But this was not required because the district court was not moving the CINC case to Ohio—it retained jurisdiction over the CINC case as it progressed.

The court also indicated in its ruling that there had not been a showing that this level of supervision was necessary if S.W. lived with Father. This CINC petition arose from an acute emergency triggered by Mother's mental-health crisis. The petition did not allege that Father had been deficient as a parent, except to the extent he had not protected S.W. from Mother's crisis or from the abuse of her sibling since he lived outside the state. The court received information showing that Father had no known relevant criminal history or other issues that would hamper his ability to provide for his daughter. The two had a positive relationship and had spent significant time together. Father was willing—

indeed, requested—to have S.W. live with him, had obtained more stable employment, and had a family structure in place for support.

Mother argues that the district court failed to consider whether Father should have stepped in sooner to protect S.W. from Mother, considering S.W. spent two summers with Father and shared a bond with him. But we do not find this argument compelling, especially because the allegations in the original CINC petition arose from Mother's quickly escalating mental-health crisis. Mother also asserts the district court failed to consider that Father abandoned Mother when she was two months pregnant with S.W. But the court explicitly noted that fact at the disposition hearing and took it into account when rendering its decision.

Mother does not argue that a different placement would be better for S.W. Instead, Mother explained that, given her own history, Mother did not want to be separated from S.W. or to have S.W. separated from her siblings. Our review of the record shows that the district court understood those concerns but balanced them against Mother's current inability to care for S.W. and the allegations relating to S.W.'s abuse by her sister. Given these considerations—and Father's relationship with S.W. and desire to care for her—the district court did not abuse its discretion when it placed S.W. with Father as the CINC case progressed.

Affirmed.