

NOT DESIGNATED FOR PUBLICATION

No. 125,601

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Interests of K.B., K.B., and M.B.,  
Minor Children.

MEMORANDUM OPINION

Appeal from Franklin District Court; ERIC W. GODDERZ, judge. Opinion filed April 28, 2023.  
Affirmed.

*Kathryn S. Polsley*, of Ottawa, for appellant natural mother.

*Kimberly Robinson*, deputy county attorney, and *Brandon L. Jones*, county attorney, for appellee.

Before ISHERWOOD, P.J., SCHROEDER, J., and TIMOTHY G. LAHEY, S.J.

PER CURIAM: The natural mother (Mother) of Kha.B., Kho.B., and M.B. (the children) timely appeals the termination of her parental rights, raising two issues: (1) The district court erred by not granting her request for a continuance of her termination of parental rights hearing; and (2) the district court erred in finding Mother unfit and terminating her parental rights on the basis appropriate public or private agencies made reasonable efforts to reintegrate the children. Based on our extensive review of the record, we observe no error by the district court in denying Mother's motion for continuance. We also find clear and convincing evidence supported the district court's findings of unfitness and its decision to terminate Mother's parental rights was in the best interests of the children. Therefore, we affirm.

## FACTS

In October 2020, the State filed three separate petitions to adjudicate Kha.B., Kho.B., and M.B. as children in need of care and requested ex parte orders of protective custody. The State alleged the Department for Children and Families (DCF) received a report of truancy related to the children's half-sibling, E.M. DCF tried to visit with Mother, but Mother would not allow DCF into her home or to see any of her children besides E.M. E.M. and a fifth child were later reintegrated with their fathers and are not subject to this appeal. Information surfaced Mother was living with her grandfather, who was selling the house, forcing Mother and the children to leave. Mother had nowhere to go. DCF went to the home to try to locate Mother, and Mother would not provide any information about where they were staying but said they were moving to Oklahoma.

DCF eventually received a phone call from a woman stating the children had been staying with her and her fiancé for over a week. The fiancé was a registered sex offender. The State alleged Mother was attempting to hide her children from DCF. The natural father (Father) was in Franklin County jail during this time.

The district court determined the children were likely to sustain harm if not immediately removed from the home and issued ex parte orders for the children to be placed in the protective custody of the Secretary of DCF. The district court also appointed a guardian ad litem for the children. In December 2020, the district court adjudicated the children as children in need of care and continued their custody with DCF.

The district court held a review hearing in April 2021 and issued a restraining order against Father forbidding him from having direct or indirect contact with Mother or the children. The district court held a permanency hearing in October 2021 to determine the parents' progress in achieving their permanency plan goals. Reintegration was still a

viable goal at that time, but the children were to remain in out-of-home placement and the parents would be allowed visitation at the discretion of the TFI child welfare agency (TFI) case manager.

The district court held another permanency hearing in March 2022 and found reintegration was no longer a viable goal. Soon after, the State filed motions for finding of unfitness and termination of parental rights for all three children. The State alleged Mother and Father were unfit by reason of conduct or condition, rendering them unable to properly care for the children, and such circumstances were unlikely to change in the foreseeable future.

The district court held a termination hearing on the State's motions in June 2022. Mother requested a continuance, asserting the renewal of her driver's license after about three years would change everything in her ability to actively participate in the required reintegration program. The State opposed Mother's request for a continuance. The district court noted it had a lot of concerns over Mother's failure to follow through with case plan goals and took the motion under consideration but proceeded with the termination hearing. The district court explained it would listen to the evidence and, if it believed obtaining a license would help Mother facilitate completion of the case plan goals in the near future, then it would consider holding off on disposition.

The State called three witnesses at the termination hearing: Mother's two TFI case managers and Mother's Bert Nash Community Mental Health Center case manager.

*Laura Bradley's testimony*

Mother's first TFI case manager, Laura Bradley, testified she was assigned to Mother's case when the children were removed from the home in October 2020. Mother's case plan tasks included maintaining safe and stable housing; obtaining stable

employment; having transportation and providing proof of a valid driver's license, insurance, and registration; undergoing a mental health intake and following recommendations; engaging in domestic violence services; and undergoing family therapy with her children.

Mother initially had an apartment in Lawrence and provided TFI with a copy of the lease but failed to maintain her housing. Mother also completed her intake and participated in mental health services through Bert Nash Community Mental Health Center, engaged in domestic violence services, and completed parenting classes. Mother claimed she obtained a job at Perkins and later at American Eagle but never provided pay stubs. Mother's driver's license was suspended throughout the case until shortly before the termination hearing. Mother was also provided an option to undergo family therapy services in her home.

TFI initially allowed Mother supervised visits with her children, and she eventually progressed to overnight stays when she had suitable housing. At one point, Mother had the children for about two weeks due to an emergency disruption with placement and bad weather. There were no concerns with the children's safety during that time.

Mother was involved in a few domestic violence incidents throughout the case, some of which occurred in front of the children and reverted Mother back to supervised visits. TFI initiated a safety plan with Mother in which no other adults were allowed around the children, but Mother violated the terms of the safety plan by allowing Father to participate in a visit when he was not permitted contact with the children.

Mother had also cancelled some of her visits with the children because of transportation issues. Before Mother's case was transferred to another TFI case manager, there were concerns about Mother's drug use.

*Andrea Myers' testimony*

In June 2021, TFI transferred Mother's case to Andrea Myers for case supervision. Myers was aware Mother had moved to Topeka. Myers performed a walk-through of the home and found it appropriate for the children. However, Mother never provided a copy of the lease. Mother told Myers she was employed and participating in domestic violence services but, again, provided no verification. As TFI had learned of possible substance abuse, Myers required Mother to provide drug screens and attend drug and alcohol treatment. Mother no-showed for many of her drug screens. Myers received verification from Mother's drug and alcohol treatment provider explaining Mother had only been seen twice. Mother successfully completed a parenting class.

In October 2021, Mother was evicted from her home in Topeka because she had not paid rent for three months and attempted to put in a fraudulent money order. Mother later reported living in Lawrence but would not provide TFI with a location. Mother never started family therapy even though she was provided an option to undergo such services in her home. Mother also no-showed to some of her visits with her children because she did not have transportation. Myers testified visits were generally cancelled if there was no notification from the parent ahead of time to allow TFI time to provide transportation.

*Bonnie Castro's testimony*

Bonnie Castro, Mother's community outreach case manager at Bert Nash, also testified at the termination hearing. Castro testified she began working with Mother in fall 2020 and helped Mother engage in substance abuse services and helped Mother get housing, benefits, and community resources. Castro explained Mother felt she could not work and wanted to apply for disability benefits because of a traumatic brain injury and bipolar disorder. Castro helped Mother apply for disability benefits but, to Castro's

knowledge, Mother did not receive the benefits. Mother needed subsidized housing, assistance with a food stamp application, and support to remain sober. TFI initially began Mother's drug screenings through Bert Nash, all of which were negative, before switching to a different agency.

When Mother lived in Lawrence, Castro would go to Mother's house for their appointments. Castro explained Mother tried to work a few times, but her ability to work was impacted from the side effects of her traumatic brain injury, which occurred during a domestic violence incident with Father. However, Mother failed to provide Castro with her medical records to support her disability application based on her brain injury.

Castro noted her interactions with Mother had changed significantly after Mother's head injury due to memory loss. Mother would no-show for appointments more often after the alleged brain injury, and Mother's engagement level with respect to her mental health issues decreased from about 75 percent engagement to about 50 percent engagement. Mother was ultimately discharged from Bert Nash in November 2021 because of her history of no-shows and cancellations.

#### *Mother's testimony*

Mother's testimony focused on the fact her driver's license was recently reinstated which would make a tremendous difference in her ability to make appointments, participate in the reintegration program, and obtain a job while another disability application was pending. Mother also claimed the agencies did not work with her sufficiently to support her reintegration efforts.

*District court's findings*

In denying Mother's motion for continuance, the district court explained:

"The Court is not going to continue this matter. I've heard more than enough evidence today to support the actual motion that was filed in this particular case.

. . . .

"As was just stated the case was filed in October of 2020, which is over a year and a half ago and the children have been in out-of-home placement since that time. And there has basically been zero progress made in regards to the case plan goals in this case by either one of the parents."

The district court found Mother and Father unfit by reason of conduct or condition, rendering them unable to care properly for their children, and the conduct or condition was unlikely to change in the foreseeable future. The district court terminated both parents' parental rights, finding termination in the best interests of the children.

Father does not participate in this appeal. Additional facts are set forth as necessary.

ANALYSIS

*We Observe No Abuse of Discretion in the Denial of Mother's Request for a Continuance of Her Termination of Parental Rights Hearing*

Mother argues the district court should have granted her motion for continuance because she had made progress in her case plan by obtaining necessary transportation. Specifically, Mother contends the district court erred in failing to grant her a continuance to work on case plan tasks because she had her driver's license reinstated and could

transport herself to and from counseling appointments, visitations with the children, and potential employment opportunities.

A parent has a constitutionally recognized fundamental right to a parental relationship with his or her child. See *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). The district court has substantial discretion in controlling the proceedings before it, which includes the discretion to decide whether to grant a request for a continuance. See *In re Adoption of J.A.B.*, 26 Kan. App. 2d 959, 964, 997 P.2d 98 (2000). We review the district court's decision for abuse of discretion and reverse "only when no reasonable person would take the view adopted by the district court." *In re J.A.H.*, 285 Kan. 375, 384-85, 172 P.3d 1 (2007). The party asserting an abuse of discretion bears the burden of proving the district court abused its discretion. *Northern Natural Gas Co. v. ONEOK Field Services Co.*, 296 Kan. 906, 935, 296 P.3d 1106 (2013).

Cases involving the termination of parental rights should be disposed of without unnecessary delay, and a continuance should be granted only if the district court finds it is in the best interests of the child and only when good cause is shown. K.S.A. 38-2246; K.S.A. 38-2267(a). The district court "must consider all circumstances, particularly such matters as the applicant's good faith, his showing of diligence, and the timetable of the lawsuit." *In re J.A.H.*, 285 Kan. at 385. The district court's discretion to grant a continuance "is bound by due process requirements that interested parties be afforded an opportunity to present their objections, which includes a reasonable time to prepare a defense to the litigation. *In re H.C.*, 23 Kan. App. 2d at 961." *In re L.F.*, No. 124,157, 2022 WL 1122691, at \*7 (Kan. App. 2022) (unpublished opinion). Parents are not guaranteed unlimited continuances in a child in need of care case. 2022 WL 1122691, at \*6-7.

Mother cites the standard of review for the termination of parental rights as clear and convincing evidence the parent's rights should be terminated. While this standard of review applies to termination of parental rights, the State correctly points out Mother relied on the incorrect standard of review for a motion for continuance. The correct standard of review for the denial of a motion to continue a termination hearing is an abuse of discretion. *In re J.A.H.*, 285 Kan. at 384-85.

Mother contends her case plan tasks included maintaining stable income, housing, and transportation, as well participating in therapy and parenting classes. Mother argues she worked toward achieving those case plan goals for months after the children were taken into custody in October 2020. Mother was convicted in January 2022 of driving while a habitual violator and asserts her most challenging case plan task related to transportation as she was unable to reinstate her license, which affected her ability to achieve other case plan tasks. The record reflects Mother's driver's license was reinstated before the termination hearing, and she argues the reinstatement "constituted a change and paved the way for more substantial changes in the foreseeable future."

At the beginning of the termination hearing, the district court explained:

"The Court has a lot of concerns regarding, you know, the mother's failure to follow through with the case plan goals. The Court will take the motion for continuance under consideration and listen to the evidence today.

"After listening to the evidence today, if the Court believes that her obtaining a driver's license is going to help her facilitate completion of the case plan goals in this case in the near future, the Court will consider holding off on disposition on the motion until a later time. But from my review of the motion in this particular case, and with the failure of the mother on a lot of these case plan goals, the fact that she has her driver's license is not going to remedy the problems that are in this case.

"So the Court is not going to grant the continuance at this time. We'll go ahead and have the hearing."

At the end of the hearing, the district court did not explicitly state the continuance was denied in the best interests of the children. It explained the continuance was denied as there was more than enough evidence to support the motions for finding of unfitness and termination of parental rights. The district court noted the children had been in out-of-home placement for over a year and a half, Mother failed to provide proof of a stable home or employment, and Mother stopped going to counseling.

While Mother had completed a parenting class, she was involved in two relationships involving domestic violence, one of which allegedly resulted in a traumatic brain injury, though there was no medical evidence to support the claim. Mother also had ongoing substance abuse issues and refused hair follicle testing even when TFI would provide transportation. Mother was not completing case plan tasks even when TFI offered transportation. In fact, Mother argues she struggled to make appointments and complete case plan tasks because she did not have a valid driver's license, but the record reflects Mother, without the benefit of a valid driver's license, continued to drive her vehicle throughout her case. Because a reasonable person could agree with the district court's decision, Mother has failed to establish the district court abused its discretion in denying Mother's request for a continuance of her termination of parental rights hearing.

*The Appropriate Public or Private Agencies Made Reasonable Efforts to Reintegrate the Children*

Mother argues the district court merely checked the box in the journal entry indicating reasonable efforts had been made by appropriate agencies to reintegrate the children into the family but made no such finding. The State responds (1) the district court need not use the term "reasonable efforts" in making such finding, (2) the district court also terminated parental rights on other factors, and (3) Mother's counsel approved the journal entry as filed.

As provided in K.S.A. 38-2269(a), the district court must find "by 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 the circumstances are "unlikely to change in the foreseeable future." In reviewing a district court's termination of parental rights, we view all evidence in the light most favorable to the prevailing party to determine whether a rational fact-finder could have found it highly probable by clear and convincing evidence that parental rights should be terminated. *In re K.W.*, 45 Kan. App. 2d 353, 354, 246 P.3d 1021 (2011). In making this determination, we do not "weigh conflicting evidence, pass on credibility of witnesses, or redetermine questions of fact." *In re B.D.-Y.*, 286 Kan. at 705.

K.S.A. 38-2269(b)-(e) lists nonexclusive factors the district court may rely on to determine a parent is unfit. Any one of those factors alone may be grounds to terminate parental rights. K.S.A. 38-2269(f). Here, the State raised seven statutory factors in its motion for a finding of unfitness and termination of parental rights related to Mother. The district court based its determination on four of the seven statutory factors the State raised:

- 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;"
- K.S.A. 38-2269(c)(2)—"failure to maintain regular visitation, contact or communication with the child or with the custodian of the child;" and
- K.S.A. 38-2269(c)(3)—"failure to carry out a reasonable plan approved by the court directed toward the integration of the child into a parental home."

Mother appeals only one of the four statutory factors—reasonable efforts by appropriate agencies under K.S.A. 38-2269(b)(7)—the district court relied on in finding

Mother unfit and terminating her parental rights. Because Mother does not challenge the district court's termination on the other three statutory factors, Mother waives and abandons such issues on appeal. See *State v. Arnett*, 307 Kan. 648, 650, 413 P.3d 787 (2018) (issue not briefed deemed waived or abandoned). We affirm the district court's findings on the three statutory factors Mother abandoned and does not raise on appeal—K.S.A. 38-2269(b)(8), (c)(2), and (c)(3)—each of which alone is grounds to terminate her parental rights. With Mother's failure to challenge those three grounds for termination, we find them more than sufficient to support the district court's findings to terminate Mother's parental rights. See *In re C.A.D.*, No. 115,861, 2016 WL 7324497, at \*4 (Kan. App. 2016) (unpublished opinion) ("[W]e conclude the parents' appeal necessarily fails because even if the district court erred when it did not determine whether the appropriate presumption of unfitness was found pursuant to K.S.A. 60-414[a] or [b], the alternative statutory basis cited by the district court to justify termination . . . was not appealed, and this makes unnecessary our review of the parents' first issue. The alternative basis for termination of parental rights—which the parents do not challenge on appeal—is a conclusive, final judgment.").

In reviewing Mother's appeal of the unfitness finding under K.S.A. 38-2269(b)(7), we find her argument fails under the facts of this case. "The purpose of the reasonable efforts requirement is to provide a parent the opportunity to succeed, but to do so the parent must exert some effort." *In re M.S.*, 56 Kan. App. 2d 1247, 1257, 447 P.3d 994 (2019). "Agencies must expend reasonable efforts toward reintegration but need not make 'a herculean effort to lead the parent through the responsibilities of the reintegration plan.'" *In re H.M.*, No. 124,961, 2022 WL 12121175, at \*6 (Kan. App. 2022) (unpublished opinion).

TFI submitted multiple court reports detailing Mother's case plan tasks along with Mother's progress. TFI provided Mother an opportunity to undergo family therapy services with her children in which the provider would come into Mother's home,

eliminating the need for transportation. Though the children were in out-of-home placement, TFI would have brought the children to Mother for therapy sessions.

TFI noted Mother's home in Lawrence and later in Topeka were appropriate for the children and specifically testified to doing a walk-through of the Topeka home. TFI also supervised Mother's visits with the children. In fact, while Mother had the children for a few weeks during an emergency disruption with placement, TFI spoke with Mother almost every day. Mother claims the children should have been reintegrated at that point as the extended stay had proved successful. Mother is incorrect in asserting the testimony was clear and undisputed the children were placed with her. Rather, the children were temporarily with Mother for approximately two weeks due to unforeseen circumstances with the children's placement and bad weather conditions. The children were then placed with a new foster family.

Throughout the case, TFI regularly communicated with Mother's case manager at Bert Nash to ensure Mother's compliance with case plan goals. After Mother was involved in a domestic violence incident with her boyfriend in front of the children, TFI initiated a safety plan disallowing other adults to be around the children. Mother did not follow the safety plan.

Mother's Bert Nash case manager, Castro, testified she helped Mother apply for disability benefits and subsidized housing. While Mother lived in Lawrence, Castro went to Mother's home to conduct appointments, though this was not an option when Mother moved to Topeka. While Mother was between housing, Castro told Mother about The Willow Domestic Violence organization and a shelter in Lawrence, but Mother did not want to live in community living. Castro referred Mother to a therapist and gave her a chance to work with the homeless outreach team. Mother never followed through. Castro also testified she accommodated Mother after her head injury by setting up primary care for Mother at Lawrence Memorial Hospital and would send text reminders about

appointments. Mother never followed up after her first visit at the hospital and was later discharged from Bert Nash for no-shows and cancellations.

There is clear and convincing evidence TFI and Bert Nash provided reasonable efforts for Mother to work toward reintegration with the children. The agencies were not required to make "a herculean effort" to lead Mother through the responsibilities of the reintegration plan. See *In re H.M.*, 2022 WL 12121175, at \*6. And, despite reasonable efforts by appropriate public or private agencies, Mother failed to exert the necessary effort. Though Mother completed a parenting class and initially worked toward case plan goals, she had an unstable history of employment, housing, and following through with other case plan goals. Mother alleged she suffered from a traumatic brain injury and memory loss but provided no medical evidence of such.

Upon a complete review of the record, we find clear and convincing evidence to support the district court's determination that Mother's failure to complete case plan goals led to a failure of reintegration despite reasonable efforts by appropriate agencies, and the decision to terminate Mother's parental rights was in the best interests of the children. See K.S.A. 38-2269(b)(7); K.S.A. 38-2269(g)(1).

Affirmed.