

NOT DESIGNATED FOR PUBLICATION

No. 125,732

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Interest of D.S.,

A Minor Child.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; MICHAEL J. HOELSCHER, judge. Opinion filed June 2, 2023. Affirmed.

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

*Kristi D. Allen*, assistant district attorney, and *Marc Bennett*, district attorney, for appellee.

Before HURST, P.J., HILL and PICKERING, JJ.

PER CURIAM: After deciding that the father of D.S., a ten-year-old boy with Down Syndrome, had in two years made no progress in cleaning his filthy home, or changing his circumstances to provide a safe, clean home for his son, the district court terminated his parental rights. Father appeals that termination order, claiming insufficient evidence supports the court's holding. He argues that his failure to make any progress on cleaning and repairing his home was because Saint Francis Ministries, the contractor for the Department for Families and Children, failed to help enough so he could improve his home and provide for his son.

But improvement of an environment requires effort as well as desire. Our review of this record reveals no real effort by Father to change his circumstances. The home was just as bad at the end of this case as it was at the start. Sufficient competent evidence in

this record supports the district court's termination of Father's parental rights. That termination is in the child's best interests. We affirm.

*A boy with Down Syndrome, unable to communicate, knocks on a stranger's door.*

In September 2019, ten-year-old D.S. wandered to an apartment door and knocked. The person inside could not communicate with him and called the police. The responding Wichita police officer who placed the boy in protective custody described D.S. as wandering alone wearing only a dirty shirt and a soiled pull-up diaper. At the time, Father was hospitalized, and D.S. was staying with his adult sister.

*D.S. moves from police custody to State custody.*

The court placed D.S. in temporary custody of the Department and ordered him to remain in out-of-home placement until further order of the court. In September 2019, the State petitioned the district court to find that D.S. was a child in need of care.

Shortly after the court placed D.S. into the Department's custody, a case worker for the Department, Maliyah Edmond, visited Father's home. Edmond observed the porch was in a cluttered, dirty, and unsafe condition with piles of trash, car tires, baby furniture, tools, and a propane tank on it. Edmond further noticed a strong odor of urine and feces when Father answered the door. This odor emanated from the home as well as Father's person. Edmond told Father because of the concerns in the case, she would need to see the condition of his home. But Father refused and told Edmond she could not come inside without a warrant. Edmond advised Father the items on the porch made it unsafe for a child, to which Father responded that bicycles are not safe for children either.

Father did not contest the allegations in the State's petition, and accordingly, the court adjudicated D.S. to be a child in need of care.

Reintegration efforts achieved little, and D.S. remained in the Department's custody throughout the pendency of this case. Seeing that there was no progress, in January 2020, the district court found reintegration was no longer a viable option. After that finding, the State moved to terminate Father's parental rights.

About two years after D.S. was placed in police protective custody, the court held the termination hearing. Three employees from Saint Francis Ministries and D.S.'s foster mother testified for the State. Father testified on his own behalf.

The district court found Father was unfit and terminated his parental rights to D.S. The district court found Saint Francis Ministries had made reasonable efforts in working toward reintegration, but those efforts did not succeed. See K.S.A. 38-2269(b)(7). The district court also found Father failed to adjust his conduct, condition, or circumstances to meet D.S.'s needs, and Father failed to carry out a reasonable, court-approved reintegration plan. See K.S.A. 38-2269(b)(8) and (c)(3).

The district court found that much of Father's testimony lacked credibility. The court found Father was unfit and the conduct or condition rendering Father unfit was unlikely to change in the foreseeable future, so termination of Father's parental rights was in D.S.'s best interests.

Father raises two issues on appeal. He argues the State failed to prove by clear and convincing evidence that he was unfit as a parent and that he would remain unfit for the foreseeable future. Father also contends that the court erred when it ruled that termination of his parental rights is in the best interests of D.S.

In order to rule on these issues, a summary of the witnesses' testimony is helpful. We begin with the Saint Francis Ministries caseworkers.

Araceli Martinez, a permanency specialist, testified she was assigned to D.S.'s case for about nine months. Martinez believed the case was filed because of the condition of Father's home. Martinez met with Father to discuss court orders and completed two walk-throughs of his home. But Martinez was only able to do so after the district court ordered Father to allow Martinez into his home. Martinez noted the home was very cluttered and dirty. There were spiderwebs and clumps of dust throughout the house. The entrance to the home was blocked by tree branches, and the door into the home could not be fully opened because a cot Father slept on partially blocked the door. It was hard to walk through the home because of the clutter. The food in the refrigerator appeared spoiled with black spots on it. There were also tools in the kitchen Martinez believed would be dangerous for D.S. to have access to. And there was no space in the kitchen to sit down to eat.

Martinez further observed the home smelled strongly of urine, with five cats, four kittens, and one dog residing in the home. The bathroom was functional but difficult to enter because of clutter. There were several boxes in the living room during Martinez' first visit, which Father said he would dispose of. That said, on her second walk-through, Martinez noted the boxes were still there and there was not enough space for Father and D.S. to sleep in the living room as Father planned. Martinez noted the kitchen was cleaner on her second visit.

Eventually, a new case manager took over. At that time, Father still needed to complete a clinical assessment and fix the unsafe and unsanitary conditions of his home. Martinez acknowledged she had recommended Father be given more time to work on his case plan tasks at a hearing 16 months earlier, but if Father's home remained in the same condition as her second walk-through, she would have recommended terminating his parental rights. Martinez also testified that Father had completed parenting classes recommended by Saint Francis Ministries but said he did not feel they were beneficial and only completed them because of the district court's orders.

Next, permanency specialist Konner Thompson was assigned to D.S.'s case in December 2020. Thompson conducted two walk-throughs of Father's home: one on June 28, 2021, and another on August 11, 2021. In her first walk-through, Thompson observed the home was very cluttered. There was an odor on the left side of the house. The room Father said would be D.S.'s bedroom had no sheetrock on the walls, and there was no electricity on that side of the house. Thompson could not go into one of the rooms in the house, which Father said was a storage room, because it was too hard to reach. The bathroom was very dirty. It had working water but no electricity; the lights were powered by extension cords. Thompson also observed the floor around the toilet was very thin because of water damage.

Thompson further observed the kitchen was extremely cluttered. The kitchen table was in the back of the room and was covered with various items. There were two chairs in the middle of the kitchen but no table space to eat on. In the living room, there was a full-size bed where Father slept, with some tools stacked in a corner. Thompson did not believe the house met minimal standards at her first walk-through. She discussed with Father the things he needed to do to fix his home. Father said he knew what he needed to do and planned to start with D.S.'s room. Father said he had some help lined up to do so, but his help always fell through. Thompson did not recall whether Father explained why the electricity was off or what his plan was to fix it.

On her second walk-through, Thompson saw no change in the condition of Father's home. Father did not explain why it had not been fixed or what he planned to do. Thompson asked Father if he had plans to move to an apartment as had been discussed at an earlier court hearing. Father said he had not applied to live at any apartments and was having trouble finding one to move into as most apartments would not accept pets. Father also said he was having problems with transportation. Thompson offered to give Father a ride to look at apartments or provide him with a bus pass, but Father declined both offers.

Thompson also supervised visits between Father and D.S. at Saint Francis Ministries. Thompson noted there was often little interaction between Father and D.S. and Father would often use his phone to entertain D.S. without much conversation. Thompson felt the visits went better when D.S.'s adult sister accompanied Father to the visits because D.S. enjoyed interacting with his sister. Thompson was very concerned about the lack of engagement between Father and D.S. when D.S.'s sister did not come along. Thompson said it was particularly concerning because D.S. did not have good verbal communication, so there was not much to go off in assessing their interactions. It appeared to Thompson that Father would only make sure D.S. was engaged in the movie he was watching and that he had food. Thompson supervised other visits between D.S., Father, and D.S.'s sister at a park. Thompson observed D.S. and his sister would play and wander around the park while Father mostly sat at a table. The visits never progressed beyond one-hour supervised visits either at Saint Francis Ministries' offices or places in the community because of the condition of Father's home and D.S.'s short attention span.

Thompson felt the primary obstacle to reintegrating D.S. into Father's home was Father fixing his home or finding other appropriate housing. This was something she communicated to Father throughout her involvement in the case and had seen essentially no progress in that time. Thompson recommended termination of Father's parental rights based on the lack of any changes in the conditions of the home. Thompson did not believe Father would fix the issues with his home if given more time. She felt it was in D.S.'s best interests to remain with his foster mother with a permanency goal of adoption.

Then, Olivia Balderas, a reintegration supervisor, testified that she had been involved in the case since July 2020. Balderas was Thompson's supervisor, and they met monthly to discuss the status of the case. Balderas likewise believed the foremost issue in the case was the condition of Father's home, which she had discussed with Father. Although the agency did not have many resources available to help repair his home, Balderas twice advised Father of the agency's care portal. But Father said he knew what

he needed to do and did not want any assistance. Father never asked for any assistance with his home afterward. Balderas also supervised one visit between Father and D.S. because of concerns of Father falling asleep during prior visits. Balderas observed Father fall asleep twice during the one-hour visit and warned him if he did so again, the visit would be cancelled. Balderas recommended termination of Father's parental rights because the condition of his home had not changed in nearly two years. Balderas testified there was nothing further Saint Francis Ministries could do to help Father other than cleaning and repairing the house for him. Balderas also did not believe Father was capable of adequately caring for D.S. given D.S.'s special needs.

In addition to the agency witnesses, the State called the foster mother to testify.

The foster mother testified that D.S. had been in her care since he was taken into state custody. D.S. needed 24-hour care due to his special needs. She was teaching D.S. how to bathe himself but had to stay with him or he would get out of the bathtub and wander around the house. D.S. had to take two baths every day because he was still wearing pull-up diapers and had a difficult time with potty-training. D.S. took medication twice daily and needed to be taken to doctor appointments for his medication every three months. D.S. also required regular follow-up visits with another doctor because he had tubes in his ears. The foster mother had to constantly supervise D.S. to keep him from wandering off.

*Father's testimony lacks any sense of urgency.*

Father testified on his own behalf. He said he was curious about why the Department workers came to his house. He felt he had "done nothing wrong. Absolutely nothing." Father believed his home was appropriate and had been for 10 years. Father admitted he knew he could not do the repairs himself and needed to have a contractor come in to do the work. Father acknowledged he would need to get an apartment to live

in while the work was being done, but he had not found a place with reasonable rent near his house. Father had not spoken with a contractor or tried to secure funding for the work.

The condition of his home did not concern him. Father explained he turned off the electricity to part of his house because he had to remove sheetrock from D.S.'s room and there were exposed wires in the room. While he admitted he had a cockroach problem in his home and the black spots on the walls were from the cockroaches, he had addressed the problem by letting "a specific type of spider [into his house], and they have decimated the roach problem." Father did not know what type of spider it was.

He claimed the cobwebs in his house were from the spiders, but he had since "bombed the house for spiders. Didn't get them all, which [he] knew it wouldn't." Father said he stored tools in his house because he felt anything of value would be stolen from his garage. Father was not worried about D.S. having access to his power tools because they were all stored in cases. Father was not concerned with D.S. having access to hand tools because he felt D.S. needed to learn to use them.

He did admit that he had made little progress on his home in the almost two years the case had been ongoing because his adult daughter needed to move in with him for six months and did not help him with his home. Father said those other commitments such as attending parenting classes, cooking for himself, and taking care of his adult daughter's health issues prevented him from making more progress. Father said he hired someone to help clean his home but it fell through and he did not trust professional cleaning companies to come into his home. Father also testified he fell and tore his rotator cuff about two months before the termination hearing and was scheduled to have surgery the day after the hearing. Rehabilitation for his shoulder was expected to take between six and nine months.

In a safety move, Father testified he had installed a third lock on his front door above where D.S. could reach to prevent him from leaving the house unsupervised. When asked about the wisdom of locking the boy inside, Father advised that if there was an emergency D.S. would have to break a window to get out. But he felt D.S. could do so because "[h]e sees it all the time on TV."

Father had no concerns about being unable to bathe D.S. while he recovered from surgery because Father believed D.S. could have bathed himself and had done so before being taken into custody. Father said he planned to leave D.S. in the house when he had to go out to mow his lawn or take care of other things. Father felt D.S. would be fine in the house alone and had no concerns about the exposed wires because the power was off.

*How we must approach this analysis.*

The statute, K.S.A. 38-2269(a), directs that a 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," before terminating parental rights.

In turn, when we review 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. 686, 705, 187 P.3d 594 (2008).

The controlling law, K.S.A. 38-2269(b)-(e), lists nonexclusive factors the district court may rely on to determine a parent is unfit. Proof of any one of those factors alone

may be grounds to terminate parental rights. K.S.A. 38-2269(f). Here, the State raised three statutory factors in its motion for finding of unfitness and termination of parental rights:

- 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)(3)—failure to carry out a reasonable plan approved by the court directed toward the integration of the child into a parental home.

*We first review the issue of reasonable efforts.*

Father claims that Saint Francis Ministries did not make reasonable efforts because it did little to help fix his house and facilitate visits with D.S. He asserts that it did not provide more help or refer him to other resources to fix his house, such as Habitat for Humanity, the Department for Housing and Urban Development, federal grants, or the City of Wichita's home repair program. Father further complains he could not make more progress because he was denied unsupervised in-home visits because of the condition of his home.

Efforts of state agencies are no substitute for efforts of a parent here. We agree with a panel of our court that held, "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 the agencies 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). Parenting is hard work—not just a reward from a state agency.

Here, the caseworkers repeatedly told Father what he needed to do to fix his home, but the conditions of the home remained largely unchanged for nearly two years. The agency, through the work of Saint Francis Ministries, made reasonable offers to Father to help him look for an apartment or to access the care portal through which he may have been able to get help to fix his home. But Father refused those offers. The agency did not need to make a "herculean effort" to lead Father through the responsibilities of the reintegration plan. See *In re H.M.*, 2022 WL 12121175, at \*6.

There is clear and convincing evidence that Saint Francis Ministries provided reasonable efforts to lead Father through the responsibilities of the reintegration plan to provide Father an opportunity to succeed. The biggest obstacle to reintegration was the condition of Father's home. Unfortunately, Father was unwilling to accept their reasonable offers to help find a suitable place for Father to live with D.S. And Father did not remedy the bulk of the issues with his home through the pendency of this case. Accordingly, Father's visits with D.S. were indeed limited because the caseworkers concluded his home was unsafe for D.S. to have longer or unsupervised visits. The record shows that their conclusion was reasonable, considering the unique characteristics of D.S. and the dreadful condition of the home.

*We review the record on Father's efforts.*

Father argues the district court erred in finding a lack of effort on his part to change his circumstances, conduct, or condition to meet D.S.'s needs. He argues that he "demonstrated throughout the case he was trying to adjust his circumstances, conduct, and conditions to meet the needs of [D.S.]" He notes his interactions with the caseworkers improved over the course of the case and he completed all case plan tasks other than fixing his house.

Introducing spiders into your home to decimate the roach infestation is not a reasonable example of decent home ownership. Simply put, his house was not in an appropriate condition for D.S. to live in safely. And Father's caseworkers did not believe he would fix the issues with his home if given more time. Having made no progress in two years, a conclusion that he is unable or unwilling to improve his home is reasonable.

Father also asserts that he did everything required under his case plan other than fixing the conditions of his home. Again, he faults Saint Francis Ministries for not providing more assistance to fix his house. Father fails to acknowledge the fact that he declined offers to help with transportation to find an apartment and further declined additional help available through the care portal. While Father knew of the issues with his home during the two years in which this case was ongoing, he failed to do anything to fix it, other than installing a lock higher up on the door where D.S. could not reach it.

Father acknowledged he needed a contractor to help do the work and needed a loan to pay for it, but he had not spoken with a contractor or tried to obtain a loan at the time of the termination hearing. Father also understood he needed help cleaning the house but refused to let professional cleaning services come into his home due to his distrust of others. From our review of this record, we hold that the district court properly determined Father failed to carry out a reasonable court-approved reintegration plan.

The district court properly determined Father was unfit under K.S.A. 38-2269(b)(7), (b)(8), and (c)(3), and the conduct or condition rendering Father unfit was unlikely to change in the foreseeable future.

*We review the question of D.S.'s best interests.*

There is an order to this process. Upon making a finding of unfitness of the parent, the district court "shall consider whether termination of parental rights . . . is in the best interests of the child. In making the determination, the court shall give primary

consideration to the physical, mental and emotional health of the child." K.S.A. 38-2269(g)(1). The district court makes the best-interests determination based on a preponderance of the evidence, which is essentially entrusting the district court to act within its sound judicial discretion. See *In re R.S.*, 50 Kan. App. 2d 1105, 1115-16, 336 P.3d 903 (2014). We review a district court's best-interests determination for an abuse of discretion,

"which occurs when no reasonable person would agree with the district court or the district court premises its decision on a factual or legal error. In determining whether the district court has made a factual error, we review any additional factual findings made in the best-interests determination to see that substantial evidence supports them. [Citation omitted.]" 50 Kan. App. 2d at 1116.

The party asserting the district court abused its discretion bears the burden of showing such abuse of discretion. *Northern Natural Gas Co. v. ONEOK Field Services Co.*, 296 Kan. 906, 935, 296 P.3d 1106 (2013).

In reviewing the district court's termination of parental rights, we view all the evidence in the light most favorable to the State 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 at 354. Again, we do not weigh conflicting evidence, pass on the credibility of witnesses, or redetermine questions of fact. *In re B.D.-Y.*, 286 Kan. at 705.

*Our review begins with the foster mother's testimony.*

Each case is different and the foster mother's testimony is illuminating about the nature of this young boy. She has had him in her custody since he was found by the police knocking on a stranger's apartment door. With his Down Syndrome, this child presents some special concerns. He is not toilet trained although his foster mother is

trying hard to achieve that goal. He must bathe twice a day, at least, and he is learning to wash himself. The trouble is that he becomes distracted and can wander off. This inattention requires constant vigilance. His physical safety is a real concern because of this.

Father claims he had a strong bond with D.S. but the caseworkers observed that D.S. was excited to see his foster mother at the end of visits and would have to be prompted to say goodbye to Father. The caseworkers also noted a lack of interaction between Father and D.S. and even noticed Father falling asleep during visits.

The caseworkers both believed D.S. required constant care, supervision, and stability in his life, which Father could not provide. And D.S. was receiving proper care and supervision from his foster mother. Father's own testimony reflected that he believed D.S. could bathe himself and felt it would be appropriate to leave D.S. in the house unsupervised when Father did yard work.

We find no error of fact or law underlying the district court's decision. And the district court's decision was reasonable in the light of this record. A reasonable fact-finder could conclude it was in the best interests of D.S.'s physical, mental, and emotional health that Father's parental rights be terminated. Father fails to establish an abuse of discretion by the district court in terminating his parental rights.

Affirmed.