IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 128,647

In the Interests of J.N.N. and J.P.N.,
Minor Children.

SYLLABUS BY THE COURT

The Supreme Court's discretionary review of a summary petition under Rule 8.03A (2026 Kan. S. Ct. R. at 61) is only appropriate when controlling authority is dispositive of the entire appeal or no substantial question is presented by the appeal. When these requirements are not met, a summary petition will be denied.

Review of the judgment of the Court of Appeals in an unpublished opinion filed February 6, 2026. Appeal from Sedgwick District Court; MICHAEL HOELSCHER, judge. Oral argument held September 15, 2026. Opinion filed November 13, 2026. Summary petition for review dismissed as improvidently granted.

Laura E. Poschen, of Poschen Law, LLC, of Wichita, argued the cause and was on the brief for appellant natural mother.

Kristi D. Allen, assistant district attorney, argued the cause, and *Marc Bennett*, district attorney, was with her on the brief for appellee.

The opinion of the court was delivered by

WALSH, J.: This appeal offers us the opportunity to clarify the very limited application of the summary petition for review mechanism set out in Supreme Court Rule

8.03A (2026 Kan. S. Ct. R. at 61). We ultimately dismiss the petition as improvidently granted because it fails to meet the limited circumstances that Rule 8.03A is designed for.

FACTUAL AND PROCEDURAL BACKGROUND

We need not recite the facts of the underlying case here; they are unchallenged and are accurately set forth in the Court of Appeals' opinion below. Briefly, after the district court terminated J.N.'s (Mother) parental rights as to her children J.N.N. and J.P.N. (collectively, Children), a panel of the Kansas Court of Appeals affirmed. *In re J.N.N.*, No. 128,647, 2026 WL 320185 (Kan. App. 2026) (unpublished opinion). The panel concluded that, based on the record, clear and convincing evidence supported the district court's findings that (1) Mother was unfit under K.S.A. 38-2269(b)(7), (b)(8), (b)(9), and (c)(3); (2) Mother's unfitness was unlikely to change in the foreseeable future; and (3) termination was in the best interests of the children. 2026 WL 320185, at *8-11.

Taking issue with only the foreseeability determination, Mother sought review in this court by way of a summary petition for review under Rule 8.03A, rather than a standard petition for review of a Court of Appeals decision under Supreme Court Rule 8.03 (2026 Kan. S. Ct. R. at 54). We granted the petition and have jurisdiction. K.S.A. 60-2101(b) (Supreme Court has appellate jurisdiction to review decisions of the Court of Appeals); K.S.A. 20-3018(b) (aggrieved party may petition the Supreme Court for review of decisions of the Court of Appeals); K.S.A. 38-2273(a) (authorizing appeals from terminations of parental rights under the Revised Kansas Code for Care of Children).

ANALYSIS

Supreme Court Rule 8.03 sets out the general mechanism by which a party may seek the Supreme Court's discretionary review of a decision of the Court of Appeals. "In lieu of" a petition for review under Rule 8.03, a party may petition the Supreme Court to

"summarily consider" one or more issues raised before the Court of Appeals under limited circumstances: "when controlling authority is dispositive of the entire appeal or no substantial question is presented by the appeal." Rule 8.03A(a) (2026 Kan. S. Ct. R. at 61). The petitions contemplated under Rules 8.03 and 8.03A are functionally distinct and are not interchangeable. See, e.g., Rule 8.03(b)(5).

Review under Rule 8.03A is *only* appropriate "when controlling authority is dispositive of the entire appeal or no substantial question is presented by the appeal." When these requirements are not met, a summary petition will be denied.

Mother's summary petition invokes the words of the rule by claiming that controlling Kansas authority is dispositive of the issues presented and that no substantial question exists because the panel's decision "conflicts with settled law governing parental unfitness and foreseeability." Mother further "asks the [Supreme] Court to apply settled precedent governing evidentiary sufficiency of a foreseeability finding."

Specifically, the issue as framed by Mother is:

> "Whether a finding that a parent's unfitness is unlikely to change in the foreseeable future can stand as a matter of law given K.S.A. 38-2269(a) and *In re M.S.*, 56 Kan. App. 2d 1247 (2019), where the parent exercised sustained, unsupervised parenting time without incident and no evidence demonstrated deterioration or danger during that time."

Although Mother frames the issue as a legal question that has already been answered in her favor by existing law, Mother's statutory and case citations do not demonstrate that "controlling authority is dispositive," or that "no substantial question is presented." See K.S.A. 38-2269(a) (setting out factors to be considered for termination of parental rights, stating that, when a child has been adjudicated to be a child in need of care, "the court may terminate parental rights or appoint a permanent custodian when the

court 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(g)(1) (also requiring court to consider whether termination is in the best interests of the child).

In re M.S., a Court of Appeals decision that is not binding on this court, stands for the unremarkable (and unhelpful to Mother) proposition that "our courts may look to the parent's past conduct as an indicator of future behavior." *In re M.S.,* 56 Kan. App. 2d 1247, 1264, 447 P.3d 994 (2019) (affirming that children's young ages, lack of real parental relationship between mother and one child, and Mother making little to no progress during the 31 months between the CINC proceedings and the termination hearing, together, constitute clear and convincing evidence that parental unfitness was unlikely to change in foreseeable future). *In re M.S.* is not "dispositive of the entire appeal."

Simply put, no Kansas authority holds that evidence of sustained, unsupervised, and safe parenting time necessarily precludes a finding that a parent's unfitness is unlikely to change in the foreseeable future. Because controlling authority does not dictate a different outcome and because she does raise questions of substance, Mother's argument does not meet the requirements for review of a Rule 8.03A summary petition.

Nor will we answer a question different than the one raised, including whether the Court of Appeals erred in concluding that a rational factfinder could have found the district court's foreseeability determination highly probable—i.e., supported by clear and convincing evidence. See Rule 8.03A(b)(4)(C)(i) (2026 Kan. S. Ct. R. at 62) (the Supreme Court "will not consider issues . . . not presented or fairly included in the summary petition for review"); see also *In re K.W.D.*, 321 Kan. 100, 110, 573 P.3d 221 (2025) (setting out standard of review of termination orders).

Mother's efforts to distinguish the facts of *In re M.S.* from those here and her challenge to the sufficiency of the evidence supporting the district court's foreseeability findings betray the merits focus of her request for review.

We note that, following oral argument, the State filed a motion for additional briefing, seeking to address "the sufficiency of the language of the district court for the foreseeable future finding." Mother responded that additional briefing was unnecessary because "Mother's requested disposition remains based on the sufficiency challenge raised throughout this appeal." But these arguments are not properly presented—and relief cannot be granted—through the Rule 8.03A summary petition mechanism, which is not designed for fulsome review of evidentiary sufficiency arguments. We therefore deny the State's motion for additional briefing and note Mother's response.

Because Mother's petition does not meet the limited circumstances for review under the Rule 8.03A mechanism, we deem Mother's summary petition improvidently granted. See *In re Estate of Brenner*, 306 Kan. 429, 430, 394 P.3d 857 (2017) (The determination that a petition was improvidently granted "is identical in effect to a denial of the petition for review in the first instance, and a 'denial of a petition for review imports no opinion on the merits of the case.'"). We do not disturb the judgment of the Court of Appeals affirming the judgment of the district court.

Summary petition for review dismissed as improvidently granted.