NOT DESIGNATED FOR PUBLICATION

No. 126,265

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Interest of A.E.,
a Minor Child.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; GREGORY D. KEITH, judge. Opinion filed August 18, 2023. Affirmed.

Jordan E. Kieffer, of Jordan Kieffer, P.A., of Bel Aire, for appellant natural father.

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

Before MALONE, P.J., GARDNER and COBLE, JJ.

PER CURIAM: L.H. (Father) appeals the district court's order finding him unfit as a parent and finding that it was in the best interests of his child, A.E., to terminate his parental rights. We find the district court's decision is supported by clear and convincing evidence, and that the district court did not abuse its discretion when it found that it was in A.E.'s best interests to terminate Father's parental rights. As a result, we affirm the district court's decision.

Factual and Procedural History

In July 2018, A.E. and his two siblings—who are not subject to this appeal—were placed in custody of the Department for Children and Families (DCF). About a month earlier, DCF received an intake that alleged physical neglect and abuse of A.E. and the

two other siblings. The intake also relayed concerns about the condition of the home that Mother had. The intake alleged Mother's home had many bugs, animal feces, and urine throughout.

Mother did not cooperate with DCF requests to complete drug testing, home visits, or interviews. Even so, DCF located the children with maternal grandmother. DCF then performed drug testing on the youngest sibling, but not A.E. or his other brother because they did not have enough hair for testing. The results of the drug testing indicated that the youngest child tested positive for amphetamine, methamphetamine, and marijuana. After receiving the results of the drug testing, DCF determined an emergency existed that required removing the children from Mother's home.

During the investigation, maternal grandmother provided DCF with information about A.E.'s father. Based on that information, DCF tried to contact Father by telephone but could not reach him.

The State filed a child in need of care (CINC) petition shortly after A.E. was placed in DCF custody. The petition alleged that living with Mother was not appropriate for A.E. based on Mother's failure to provide a safe and stable living environment. The petition alleged that Mother had been evicted multiple times, had a history of substance abuse, had many previous convictions, and did not cooperate with DCF and law enforcement during their investigation.

The petition also alleged that Father was not an adequate placement for A.E. because paternity had yet to be established. The petition also alleged Father had failed to provide a safe and stable environment for A.E. Nor had Father provided for A.E.'s physical, financial, or emotional well-being. DCF also did not know how to locate Father because it did not have adequate information.

The day after the CINC petition had been filed, the district court held a temporary custody hearing. Father had been appointed counsel for the hearing, but he did not appear. Following this hearing, the district court ordered A.E. to remain in temporary DCF custody in an out-of-home placement.

In October 2018, the district court held an adjudication hearing. Father appeared at the hearing via telephone and entered a no contest statement about the CINC petition. At the end of the hearing, the district court ordered A.E. to be placed in DCF custody. The district court also ordered A.E. to remain in an out-of-home placement, though DCF was given discretion to place A.E. with a parent with 10 days' notice to all parties.

In March 2019, the district court ordered paternity testing for Father and A.E. At a permanency hearing in August 2019, the results of the testing were entered as one of the State's exhibits. About a month after the permanency hearing, the State filed an amended CINC petition. In the amended petition, the State corrected Father's information and listed him as A.E.'s father. The amended petition also explained that Mother did not provide DCF with accurate information about Father when the case was filed.

In November 2019, the district court held an adjudication hearing regarding Father. Again, Father appeared at the hearing via telephone and entered a no contest statement for the State's amended CINC petition. At the hearing, the district court found that Father was A.E.'s biological father based on the genetic testing. The district court also found that Father had yet to complete any court orders, though the district court stated it did not hold this against Father at that point. Even so, the district court adjudicated A.E. as a child in need of care as to Father and ordered A.E. to remain in DCF custody in an out-of-home placement.

In February 2020, the State filed a motion for finding of unfitness and termination of parental rights. The motion also explained that Father contacted Saint Francis

Ministries (SFM) in August 2018 and reported he was interested in reintegrating A.E. into his home in Kansas City, Missouri. Father also reported that A.E. had lived with him from November 2017 to April 2018, but Mother took A.E. from Father and took A.E. to Wichita with her. Father's attempts to contact Mother so he could see A.E. failed. SFM then advised Father of his court orders and encouraged him to complete them in a timely manner.

Following this conversation, SFM could not contact Father until March 2019. When SFM made contact, Father said he would maintain contact with SFM going forward. Though Father reported that he had not completed any court orders, he stated his willingness to do whatever was necessary to reintegrate A.E. into his home.

As for Father, the February 2020 motion alleged he was unfit under multiple statutory factors, including K.S.A. 38-2269(b)(7), (b)(8), and (c)(3). K.S.A. 38-2269(b)(7) concerns the "failure of reasonable efforts made by appropriate public or private agencies to rehabilitate the family." K.S.A. 38-2269(b)(8) concerns Father's lack of effort to adjust his "circumstances, conduct or conditions to meet the needs of the child." And K.S.A. 38-2269(c)(3) concerns Father's "failure to carry out a reasonable plan approved by the court directed toward the integration of the child into a parental home."

In November 2020, the State filed a second amended CINC petition and an amended motion for finding of unfitness and termination of parental rights. The filing stated, among other things, that Father's placement assessment had been denied due to Father's noncompliance with the process. The filing also stated that Father had yet to complete any court orders.

In April 2021, the State filed a second amended motion for finding of unfitness and termination of parental rights. Along with the statutory factors previously mentioned, the second amended motion alleged more factors of unfitness regarding Father; namely,

K.S.A. 38-2269(b)(9) and (c)(2), which concern where A.E. had been in custody and Father's failure to maintain visitation, contact, or communication with A.E., respectively. The motion also asked the district court to apply the presumption of unfitness under K.S.A. 38-2271(a)(6) because A.E. had been in an out-of-home placement for more than two years.

In September 2021, the district court ordered Father to complete another placement assessment. At a permanency hearing in October 2021, the district court ordered Father and A.E. to complete a parent/child assessment and determined that visitation should be therapeutically driven.

In July 2022, the district court held the termination hearing. Araceli Martinez, a permanency specialist with SFM, testified first. Martinez said she began working on A.E.'s case in October 2018, roughly three months after the case began. After originally being assigned to A.E.'s case, Martinez remained as the assigned permanency specialist.

Martinez said she first spoke with Father in March 2019, between eight and nine months after the case began. That said, Martinez acknowledged that Father had spoken with the case worker assigned to A.E.'s case before Martinez had been assigned. During their initial conversation, Martinez said she and Father spoke about court orders and what Father needed to do to achieve reintegration. Martinez and Father also spoke about visitation, but Father told Martinez he could not afford to visit A.E. because he lived in Kansas City. At one point, SFM offered to provide transportation assistance to Father, but Father declined.

Martinez then explained that Father did not make contact again until April 2019. Again, Martinez and Father discussed the court's orders. Martinez also said Father requested a placement assessment, and Martinez submitted the request in November 2019. Martinez said the placement assessment could not be requested until that time

because genetic testing had yet to be completed. In February 2020, the request was denied for lack of contact from Father, and for Father's failure to timely complete the required documentation. When Martinez informed Father the request had been denied, Father claimed he had completed all the requirements he was asked to.

In February 2020, Father also began having visitations with A.E., which continued until December 2020, when the visitations were discontinued due to Father's lack of attendance. When visitations first started, they took place over Skype or Zoom and lasted about 30 minutes. Martinez said a family support worker had to encourage A.E. to speak with Father when visitations began. Martinez also explained that visitations did not occur sooner because Father did not maintain regular contact with SFM.

Father's lack of consistency regarding contact was a consistent theme throughout the case. Martinez noted that Father had changed phone numbers during the case, but he never informed SFM of the change. From April 2020 to February 2021, Martinez said SFM lost contact with Father. Since February 2021, Martinez said Father maintained more consistent contact with SFM until approximately April 2022, which was the last time SFM had contact with Father.

Martinez also testified that Father's only consistent span of visitation occurred from July 2021 through September 2021. Other times, visitations were inconsistent because Father failed to maintain contact with SFM. Throughout the case, Father went to Wichita for an in-person visit only one time because Father said he could not afford to do more trips. Martinez thought the in-person visit went well because A.E. engaged with Father during it, but afterward A.E. later told a family support worker that he did not want to move in with Father because that would separate him from his brother. Following the in-person visit in September 2021, A.E. requested that he have no more visits with Father. Since then, the only contact Father had with A.E. took place during two

therapeutic visits, which occurred in November and December 2021. After the therapeutic visits, A.E. and Father had no more contact.

As for case plan tasks, Martinez said Father completed a parenting class in March 2021, which was his first completed task. Martinez believed that it took Father so long to start completing case plan tasks because he originally did not believe he needed to complete any to have A.E. live with him. Since March 2021, Father completed other case plan tasks, including a clinical assessment. The clinical assessment did not have any recommendations, but during the assessment Father denied any drug use. That concerned Martinez because Father had a hair follicle test that tested positive for marijuana. But Father explained that he had a medical card for marijuana and used it to help with anxiety. Father also provided SFM with proof of the medical card.

When asked about employment, Father told Martinez he had a job through a temp agency, but every time Martinez asked for verification, Father provided none. As such, Martinez said Father never provided verification of employment during the entire case. Martinez also said she was unaware of any financial support that Father provided for A.E. Similarly, Martinez was unaware as to whether Father sent A.E. any gifts, cards, or letters. Nor did Father participate in any of A.E.'s medical appointments.

Martinez testified that Father continued to live in Kansas City, Missouri, when the termination hearing took place. Father's mother and two of Father's other children resided with him in that residence. Martinez said Father had moved twice during the case. Father did not provide Martinez with notification that he had moved either time. Martinez said she learned Father had moved because every time she submitted a placement assessment, she verified his address beforehand. Father also failed to provide Martinez with a lease for any of his residences. That said, Martinez had completed a virtual walkthrough of Father's residence and concluded the residence was appropriate for A.E. and had space for him.

Ultimately, Martinez did not recommend reintegrating A.E. into Father's home. Instead, she recommended terminating Father's parental rights because she did not believe Father could change his actions in the foreseeable future. Martinez said Father had shown he could meet some of A.E.'s needs, but his lack of consistency with contact, his tardiness in completing case plan tasks, and the fact that other case plan tasks remained unfinished made Martinez believe termination would be in A.E.'s best interests.

After Martinez, SFM reintegration supervisor Amanda Galloway testified. Galloway had been assigned to A.E.'s case since November 2021, but she said she had the chance to review the entire case file before being assigned. Part of Galloway's responsibilities as reintegration supervisor were to conduct monthly staffing meetings, during which SFM employees would discuss the status of the case. Galloway noted that the case had been pending for a long time, and she believed it had reached somewhat of a standstill. Like Martinez, Galloway also recommended that Father's parental rights be terminated. Galloway believed that A.E. should achieve permanency through adoption with his foster family.

If Father's rights were not terminated, Galloway said he would have to comply with all court orders, provide proof of a lease, provide proof of employment, follow through with all expectations of the placement assessment, and participate in all recommendations from A.E.'s therapists so that visitations could progress. Galloway also said Father would have to show consistent follow-through with these tasks for a period of 9-12 months. Based on her familiarity with the case, Galloway did not believe Father could make the necessary changes in the foreseeable future. Galloway also noted the concept of child time and said if A.E. did not achieve permanency then he could struggle with development and schooling, among other things. At the time of the termination hearing, the case had been pending for about four years, which was roughly half of A.E.'s life.

Syreeta Pryor, a former SFM employee, also testified. Pryor said she had worked for SFM for three years, then left for six months before returning to SFM and working from 2018 to November 2021. During her time at SFM, Pryor worked on A.E.'s case. Pryor worked as a family support worker, which required her to schedule parental visits. Pryor said Father did not consistently maintain contact with A.E. via telephone or online visits, though there were periods of time when Father was consistent. When Father visited with A.E. over the phone, Pryor testified that A.E. would not engage with Father. When Father asked questions, A.E. would give brief responses. A.E. also did not engage much with Father's other children when they spoke during the visits.

Pryor discussed A.E.'s lack of engagement with Martinez, and they tried to craft solutions to the problem. Pryor recalled suggesting longer phone calls so Father would have more of a chance to speak with A.E. Pryor also recalled discussing in-person visitation because A.E. told her that he preferred in-person visits. But like Martinez, Pryor said only one in-person visit took place because Father said he could not do more in-person visits for financial reasons.

A.E.'s foster father, M.B., also testified. M.B. said he had been A.E.'s, as well as A.E.'s brother's, placement the entire time they had been in DCF custody. M.B. also said he monitored visits between Father and A.E. When the visitations began via phone calls, M.B. would put the phone on speakerphone and sit next to A.E. while Father and A.E. spoke. Similarly, when the visits moved to online, M.B. would sit beside A.E.

M.B. said A.E. struggled to remain engaged during the phone and online calls. M.B. would usually have to remind A.E. to stay engaged in the conversations. M.B. said A.E. would sometimes be mildly irritated when a phone call occurred because it required him to sit still for roughly 30 minutes. But aside from this, M.B. thought the visits went well. A.E. and Father would talk about A.E.'s life, and Father would ask A.E. how his day went, how he liked school, and what he had been doing lately. That said, M.B.

noticed a change in A.E.'s behavior following the in-person visit in September 2021. After that visit, M.B. said A.E. began viewing the visits as a threat to his current situation living with M.B. and his brother instead of a normal interaction with Father. M.B. believed A.E. started thinking this way because he had not been fully aware of the situation. But following the in-person visit, M.B. explained the situation more and told A.E. about the possible outcomes.

Following the in-person visit, M.B. testified that Father and A.E. had two or three online visits and two therapy visits. M.B. monitored the online visits and said they did not go well. During the online visits, A.E. was angry and sad, and A.E. tried to tell Father he did not want to live with him instead of M.B. and his brother. A.E. also expressed anger at the fact that Father did not exert adequate effort to regain custody of him once he had been removed from Mother's home. M.B. also said that after the second therapy visit, the therapist called him and said there would be no more therapy visits going forward. Soon after, SFM also informed M.B. that contact between Father and A.E. would not occur unless A.E. requested it.

M.B. also testified that Father would call when a call had not been scheduled, and M.B. originally allowed that to happen. But that eventually changed after M.B. thought Father was not putting in adequate effort, and M.B. told Father he needed to call during the scheduled time. M.B. characterized Father's attendance on the visits as sporadic. M.B. said at times Father would be consistent for a few weeks before missing visits for a couple of months, and this pattern continued throughout the case. At some point, Father accused M.B. of not answering the online calls for visitation, which M.B. denied. Following this accusation, SFM supervised four online visits, which made Father remain consistent for a time until he missed the fourth call. M.B. also invited Father to come to his home, but Father refused.

Nicholas Ries, a licensed clinical marriage and family therapist, testified that he had been A.E.'s therapist. He began working with A.E. in October 2021 because SFM sought a mental health evaluation. During the initial meeting, Ries said A.E. expressed concern about Father coming back into his life. Based on the meeting, Ries diagnosed A.E. with adjustment disorder due to the concerns A.E. expressed.

Ries continued to meet with A.E. every two weeks following the first meeting until April 2022. During the sessions, Ries would work with A.E. so he could better understand how the events in his life affected his thoughts, emotions, and behaviors. Ries said A.E. eventually began to verbalize his feelings, though there were also times when A.E. regressed.

Sandra Kelliher, a reintegration therapist with SFM, testified after Ries. Kelliher observed the two therapeutic visitations between Father and A.E. Before he started visitations, Father completed parental assessments for Kelliher. One assessment indicated that Father had what was considered normal stress levels. Another assessment indicated that Father may have trouble handling parental stress. Following these assessments, the therapeutic visitations were arranged.

The first session lasted one hour, during which Kelliher observed A.E. and Father participating in interactive activities so Kelliher could gauge how the two interacted. During one of the activities, Father left the room so A.E. could speak with Kelliher. During that conversation, A.E. expressed anger toward Father. After doing so, Kelliher escorted A.E. out of the room so he could calm down before interacting with Father again. Kelliher also observed that Father had difficulties engaging with A.E.

According to Kelliher, A.E. regressed during the second therapeutic visit. A.E. would not interact in any activities and would not talk with or look at Father for periods of time. After the visit, Kelliher concluded that no additional therapeutic visits needed to

occur based on A.E.'s and Father's interactions. When asked about recommendations Kelliher made to Father after the therapeutic visits, Kelliher said Father stated family therapy would be hard for him to do because he lived far away. Kelliher also said Father did not reveal a willingness to adjust his circumstances to meet A.E.'s needs. Because of this, Kelliher did not believe Father could meet A.E.'s emotional needs. And when asked about a potential future visit, Kelliher did not recommend it based on A.E.'s anxiety, stress, and reactions during the previous visits.

Kelliher also testified that A.E. had bonded very well with his foster family. She believed it would be traumatic for A.E. to have to move again, because he had experienced some instability throughout his childhood. Kelliher also said it would be difficult to move forward with reintegration if A.E. and Father could not make it through therapeutic visits.

Father also testified at the termination hearing. He said he lived in Kansas City, Missouri, with a son and daughter. He also denied that his mother lived with them in their residence. Father also claimed that he had provided SFM with verification regarding his address. Similarly, he said he had a telephone and had provided SFM with his phone number. Father said he last spoke with SFM in April or May 2022, but he claimed he had tried to get ahold of SFM other times to no avail.

Father said he had a valid Missouri driver's license. Father also said he had a vehicle, but the starter on the vehicle had recently gone out, which explained why he appeared at the termination hearing online instead of in person. Since his vehicle did not work, he took public transportation in Kansas City until his car could get fixed. Father claimed that SFM had never offered to provide transportation assistance, which frustrated him because he explained to SFM many times how difficult it would be for him to travel to Wichita. Father said he never asked SFM for transportation assistance because he did

not know it was available. Had he known it was available, Father claimed he would have used the resource so he could have seen A.E. more often.

At the time of the termination hearing, Father said he was unemployed but had worked sporadically for a temp agency. Father claimed he had lost a few jobs because of his obligations with this case. Whenever he had a job, Father claimed he worked full-time at least six days per week. But since his vehicle no longer worked, Father had not been working because he used the vehicle to commute. In the six months before the termination hearing, Father said he had two jobs, which each lasted about one or two months. The pay Father would receive from the jobs would fluctuate depending on what job he did. Father also claimed he had applied to many jobs during this case. Aside from the income derived from the temp agency, Father said he would make money cutting hair and doing lawn work with a relative.

As for previous convictions, Father originally denied being aware of any. But when asked why one of the placement assessments listed a 2011 conviction, Father said he thought that conviction was no longer on his record due to how long ago it occurred. Father said that he got convicted for possession of a hallucinogenic because he rode in a vehicle with someone who had marijuana in the car. Father also said he did not mention that conviction because he lived in a state where he had a medicinal marijuana card.

Father claimed he only used marijuana when he experienced anxiety. Even then, Father said he did not use marijuana often. Father denied using any other substances, but he said he would occasionally consume alcohol. Father said he had never been told he had a substance abuse problem, but his parents sent him to a drug class for marijuana when he was a teenager. But Father said the drug class was voluntary and did not come about as part of an arrest or conviction.

At the time of the termination hearing, Father said he was not in therapy. He said he was waiting to hear back from SFM before he continued therapy. That said, Father claimed he had participated in two individual therapy sessions.

As for A.E., Father said the CINC proceedings came about because Mother had been using drugs and had an abusive boyfriend. Father also knew that Mother's house had been considered unfit for the children. Before this case, Father was unaware of Mother's drug problem. Father also said he found out about the case in March 2019 from the courts and maternal grandmother. Since then, Father said he had received and read a copy of the CINC petition for A.E.

Father believed he had addressed the issues outlined in the CINC petition. He claimed he had materially complied with everything he had been asked to do. That included providing documentation regarding his housing, which he said he provided via email or fax. Similarly, Father claimed he had provided SFM with verification of his employment with the temp agency, though he admitted he had not provided any pay stubs. As for other tasks, Father said he completed therapy, did DNA testing, completed a parenting class, completed a physical, and completed a mental evaluation. He claimed that he also completed all the necessary paperwork regarding the placement assessments. Father also said he was not given any resources to help him complete these tasks, even though he requested assistance.

When asked about contact with SFM, Father said nobody contacted him regularly. Instead, Father would initiate contact, and he said he reached out to SFM once or twice a week to discuss the status of the case. Father had a similar explanation for visits. Once the visits started to occur, they went well. Father said the visits continued for about four or five months before the foster family stopped answering his phone calls. Father also denied ever missing any of the scheduled visits between him and A.E. When he and A.E. spoke, Father said he would ask A.E. about his day, about sports, about school, and

similar subjects. Father said the last visit between him and A.E. took place in November 2021, after which SFM informed Father they were stopping visits until further notice. During their conversations, Father felt that A.E. had been coached by the foster family.

Father also said A.E. lived with him for roughly six months before the case. Father wanted A.E. to continue living with him, but Mother and maternal grandmother told Father he had to return A.E. to Mother's custody around April 2018. He said Mother and maternal grandmother threatened to call police if he did not do so. Since paternity had not been established, Father allowed maternal grandmother to take A.E. from Kansas City to Wichita. When asked whether he ever tried to file for custody, Father said he tried during the first couple years of A.E.'s life, but he had not been able to because Mother lived in Texas. Even so, maternal grandmother would often allow Father to see A.E. when they came to Kansas.

When asked about A.E.'s school, Father said he did not know where A.E. attended because he was never given that information. Similarly, Father claimed he was never given information about A.E.'s medical providers. Father said he did not request that information because he could not get ahold of anyone to ask.

As for financial support, Father said he paid child support. He also claimed he gave A.E. toys during their visits, but he said he had been unable to provide more assistance because he did not know A.E.'s address. At one point, Father asked SFM whether he could send A.E. something, but SFM did not give him any response. He also said SFM never told him that he could give SFM things addressed to A.E.

When asked whether he would do anything differently if the district court gave him more time for reintegration, Father again said he had fully complied with every request. When told that A.E. had spent roughly half his life in foster care, Father argued that A.E. should never have been put there. But Father also acknowledged that he would

have more time to bond with A.E. if the district court gave him more time. Father also stated a willingness to continue therapy with A.E. going forward. Similarly, he expressed his love for A.E. and said he would continue to work to reintegrate him.

At the end of the termination hearing, the district court issued its ruling. In doing so, the district court stated it found the foster father very credible. Similarly, the district court found the testimony from the SFM employees and Ries credible. That said, the district court did not find Father's testimony credible because he provided evasive, nonresponsive, and contradictory answers. The district court also noted that Father did not maintain consistent contact with SFM, did not accept assistance to attend more visitations in person, had two placement assessments denied because he did not comply with the requirements, continued to blame Mother for what happened rather than take responsibility, failed to bond with A.E., and generally failed to follow through with case plan tasks and other aspects of the case. For these reasons, the district court found Father unfit and terminated his parental rights to A.E.

Father timely appeals.

LEGAL ANALYSIS

The district court did not err in finding Father unfit and terminating his parental rights.

On appeal, Father argues the district court erred when it terminated his parental rights, asserting that insufficient evidence supports the district court's decision.

A parent has a fundamental liberty interest protected by the Fourteenth Amendment to the United States Constitution to make decisions regarding the care, custody, and control of the parent's child. Before a parent can be deprived of the right to the custody, care, and control of a child, a parent is entitled to due process of law. But

this fundamental right to parent is not without limits. *In re P.R.*, 312 Kan. 767, 778, 480 P.3d 778 (2021). Because child welfare is a matter of state concern, the State may assert its interest "through state processes designed to protect children in need of care." *In re A.A.-F.*, 310 Kan. 125, 146, 444 P.3d 938 (2019).

When reviewing a finding of parental unfitness, this court must determine, after reviewing all the evidence in a light most favorable to the State, whether a rational fact-finder could have found the determination to be highly probable—by clear and convincing evidence. See *In re B.D.-Y.*, 286 Kan. 686, 705, 187 P.3d 594 (2008); *In re K.P.*, 44 Kan. App. 2d 316, 318, 235 P.3d 1255 (2010). In making this determination, "the appellate court does not weigh conflicting evidence, pass on credibility of witnesses, or redetermine questions of fact." *In re B.D.-Y.*, 286 Kan. at 705.

Under K.S.A. 38-2269(a), the State must prove a 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." The statute provides district courts with a nonexclusive list of factors to consider when determining unfitness. K.S.A. 38-2269(b)-(c). Clear and convincing evidence of a single statutory factor under K.S.A. 38-2269(b) can be a sufficient basis for a district court's determination that a parent is unfit. K.S.A. 38-2269(f).

Here, the district court found that the evidence supported termination of Father's parental rights under K.S.A. 38-2269(b)(7)-(b)(9), (c)(2), and (c)(3). The district court also found that the presumption under K.S.A. 38-2271(a)(6) applied, and Father failed to rebut the presumption.

Ordinarily, this court would analyze each factor the district court relied on to support its ruling. But as the State points out, Father's brief fails to challenge the district court's findings under K.S.A. 38-2269(b)(9), (c)(2), and (c)(3). Nor does Father challenge

the district court's application of the presumption of unfitness under K.S.A. 38-2271(a)(6). As a result, we will not address the district court's findings under those subsections because Father has abandoned any argument to the contrary. See *In re Marriage of Williams*, 307 Kan. 960, 977, 417 P.3d 1033 (2018).

Because clear and convincing evidence of a single statutory factor under K.S.A. 38-2269(b) can be a sufficient basis for a district court's determination that a parent is unfit, Father's abandonment of the issues previously mentioned would allow this court to simply affirm the district court's findings and move to the foreseeable future and best interests inquiries. K.S.A. 38-2269(f). Even so, we will address the district court's findings pursuant to K.S.A. 38-2269(b)(7) and (b)(8).

K.S.A. 38-2269(b)(7)

A district court may terminate a parent's rights to his or her child if clear and convincing evidence shows that the reasonable efforts made by public or private agencies to rehabilitate the family have failed. K.S.A. 38-2269(b)(7). "The language in K.S.A. 2019 Supp. 38-2269(b)(7) imposes an obligation upon the relevant social service agencies to expend reasonable efforts toward reintegrating the child with his or her parents." *In re A.P.*, No. 121,913, 2020 WL 3022868, at *10 (Kan. App. 2020) (unpublished opinion). This requirement provides "'a parent with 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); *In re. A.P.*, 2020 WL 3022868, at *10.

A consistent theme throughout the case was Father's inconsistency regarding contact with SFM. When Martinez and Father first spoke, Martinez explained what he needed to do to achieve reintegration. But after speaking with Father for the first time in March 2019, Father did not contact Martinez again until approximately a month later. The sporadic contact continued throughout the case. Martinez noted that Father had

changed phone numbers during the case, but he never informed SFM of the change. From April 2020 to February 2021, Martinez said SFM lost contact with Father. Since February 2021, Martinez said Father maintained more consistent contact with SFM until approximately April 2022, which was the last time SFM had contact with Father.

Martinez also testified that Father's only consistent span of visitation occurred from July 2021 through September 2021. Other times, visitations were inconsistent because Father failed to maintain contact with SFM. M.B. and Pryor also testified to Father's lack of consistency regarding attending visitations. Throughout the case, Father went to Wichita for an in-person visit only one time in September 2021 because Father said he could not afford to do more trips. Martinez said SFM tried to provide Father with assistance regarding transportation, but he declined.

When Martinez asked Father to complete the necessary paperwork for the placement assessments, he failed to timely do so. Father also failed to provide SFM with any sort of verification regarding a lease or proof of employment throughout the case. When Father changed residences, he also failed to inform SFM of his change of address.

Regarding other case plan tasks, Martinez testified that Father completed some tasks, such as a clinical assessment and a parenting class. But Father did not start completing tasks until March 2021, or roughly three years after the case began. Martinez said that while Father had shown he could meet some of A.E.'s needs, his lack of consistency with contact, his tardiness about the completion of case plan tasks, and the fact that other case plan tasks remained unfinished made Martinez believe termination would be in A.E.'s best interests. As stated above, K.S.A. 38-2269(b)(7) requires parents to exert some effort, and Father did not exert the necessary effort during the case. See *In re A.P.*, 2020 WL 3022868, at *10.

In sum, the district court did not err by relying on K.S.A. 38-2269(b)(7) when terminating Father's parental rights.

K.S.A. 38-2269(b)(8)

A district court may terminate a parent's rights to his or her child if clear and convincing evidence shows a "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(b)(8).

Many findings under the previous subsection also apply to this subsection. These include Father's lack of consistency maintaining contact with SFM during the case, and Father's lack of consistency regarding visitations. As stated above, Father lived in Kansas City, Missouri, while A.E. resided near Wichita. Even though SFM offered Father transportation assistance so he could see A.E. in person, Father did not accept the assistance. Thus, visitations occurred via telephone or online except for the one in-person meeting in September 2021 and the two therapeutic visitations. Neither therapeutic visitation went well, according to Kelliher. The interactions between the two during the therapeutic visits led Kelliher to believe Father could not meet A.E.'s emotional needs. And after the two therapeutic visits, SFM told Father that future visits would be suspended.

Father also lacked any sort of consistent employment throughout the case. Though he claimed to have work through a temp agency, he never provided SFM with proof of that. Nor did he ever provide any pay stubs to verify he had income. And Martinez testified that she was unaware of any gifts, cards, or letters Father sent to A.E. during the case. Similarly, Father never provided SFM with proof of a lease for his residence.

In sum, the district court did not err by relying on K.S.A. 38-2269(b)(8) when terminating Father's parental rights.

Father's conduct or condition is unlikely to change in the foreseeable future.

Besides determining whether a parent is presently unfit, a district court must also determine whether the conduct or condition is unlikely to change in the foreseeable future. K.S.A. 38-2269(a).

> "When assessing the foreseeable future, this court uses 'child time' as the measure. The Revised Kansas Code for Care of Children—K.S.A. 2018 Supp. 38-2201 et seq.—recognizes that children 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. K.S.A. 2018 Supp. 38-2201(b)(4); *In re M.B.*, 39 Kan. App. 2d 31, 45, 176 P.3d 977 (2008); *In re G.A.Y.*, No. 109,605, 2013 WL 5507639, at *1 (Kan. App. 2013) (unpublished opinion) ('"child time"' differs from '"adult time"' in care proceedings 'in the sense that a year . . . reflects a much longer portion of a minor's life than an adult's')." *In re M.S.*, 56 Kan. App. 2d at 1263-64.

This court has stated that "[t]he best indicator of future performance is past performance. Accordingly, courts can consider a parent's past history as evidence regarding the reasonable likelihood of any change in parental fitness. See *In re Price*, 7 Kan. App. 2d 477, 483, 644 P.2d 467 (1982)." *In re S.A.*, No. 123,556, 2021 WL 4224894, at *9 (Kan. App. 2021) (unpublished opinion), *rev. denied* 315 Kan. 968 (2022).

To recap, A.E. was born in June 2013. This case began in July 2018 and continued for about four years until the district court terminated Father's parental rights. This meant that A.E. had spent nearly half of his life in DCF custody. As explained above, Father made little progress during the four years of the case. And since the foreseeable future is

measured in "child time," this passage of time would have been perceived considerably longer for A.E. than for Father. See K.S.A. 38-2201(b)(4); *In re M.S.*, 56 Kan. App. 2d at 1263.

In sum, given Father's inability to progress throughout the case, the district court did not err by concluding Father's conduct or condition would not change in the foreseeable future.

The district court did not abuse its discretion in concluding termination was in A.E.'s best interests.

Upon making a finding of unfitness of the parent, "the court shall consider whether termination of parental rights as requested in the petition or motion 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). This decision is within the sound discretion of the district court, and the district court makes that decision based on a preponderance of the evidence. See *In re R.S.*, 50 Kan. App. 2d 1105, 1116, 336 P.3d 903 (2014).

An appellate court reviews the district court's best-interests decision for an abuse of discretion. A district court exceeds its broad latitude if its ruling is based on an error of law or an error of fact or is arbitrary, fanciful, or unreasonable. *In re R.S.*, 50 Kan. App. 2d at 1116. Since Father does not point to an error of law or fact, the question becomes whether no reasonable person would come to the same conclusion. See 50 Kan. App. 2d at 1116.

Father's brief devotes essentially no argument on this issue. Aside from stating the standard of review, Father only argues that A.E. "was still quite young and had many years of childhood remaining, during which Father could continue to bond to him and be

a significant part of his life. Accordingly, [A.E.'s] best interests would be served by allowing Father to achieve reintegration and be a part of his childhood."

This argument is not sufficient. Points raised incidentally in a brief and not argued in it are considered waived or abandoned. See *Russell v. May*, 306 Kan. 1058, 1089, 400 P.3d 647 (2017). Father's lack of argument on this issue, paired with the absence of any legal authority—aside from the standard of review—does not warrant review on this issue. Thus, the district court's findings on this issue will not be disturbed on appeal, and we affirm the district court's judgment terminating Father's parental rights.

Affirmed.