

NOT DESIGNATED FOR PUBLICATION

No. 126,072

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Interests of  
A.S., D.S., and D.S.,  
Minor Children.

MEMORANDUM OPINION

Appeal from Shawnee District Court; PENNY R. MOYLAN, judge. Opinion filed September 29, 2023. Affirmed.

*Rebekah A. Phelps-Davis*, of Phelps-Chartered, of Topeka, for appellant.

*Morgan L. Hall*, deputy district attorney, and *Mike F. Kagay*, district attorney, for appellee.

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

PER CURIAM: C.M. (Father) appeals the district court's decision terminating his parental rights to three of his biological children. Father challenges the sufficiency of the evidence supporting the district court's findings about his unfitness and the unlikelihood of that unfitness to change in the foreseeable future. Having reviewed the record, we find no error and affirm.

*Factual and Procedural Background*

In September 2019, the State filed a child in need of care (CINC) petition for five children. Of these five children, Father is the biological parent of three children (D.S. and D.S., who are twins, and A.S.). A.S. was 1 year old and the twins were 10 days old. The petition alleged that the children lacked adequate parental care and may have been subjected to abuse or neglect. The district court issued an ex parte order of protective

custody, authorizing out-of-home placement and later granted temporary custody to the Secretary of the Department for Children and Families (DCF).

The district court held an initial review hearing in October 2019. Father did not appear because he was incarcerated based on an alleged probation violation. Father later entered a no contest statement to the State's allegations in December 2019.

The district court adjudicated the children as CINC and determined that the permanency plan for Father's case was reintegration. Father's case plan tasks required him to obtain and maintain suitable housing and a legal source of income. He also needed to complete parenting classes and drug tests, maintain regular communication, and sign certain release forms. The district court later ordered Father to complete RADAC (Regional Alcohol and Drug Assessment Center) and mental health assessments and follow their recommendations.

In July 2021, after more review hearings, the district court determined that reintegration was no longer a viable goal and amended the goal of the permanency plan from reintegration to adoption.

The district court held a hearing on September 21, 2022, to consider the State's motion to terminate Father's parental rights. Two days before the hearing, Mother voluntarily relinquished her parental rights to each of her children.

### *Termination Hearing*

The State alleged in its motion that Father's parental rights should be terminated based on multiple factors, including Father's use of intoxicating liquors or narcotic or dangerous drugs, and his felony convictions and imprisonment. As support for its motion, the State presented testimony and other evidence of Father's lack of progress toward

reintegration, his failure to maintain regular contact with DCF or visitations with the children, his felony and misdemeanor convictions, and his terms of incarceration over the span of the three-year case.

*Facts Supporting Requests to Initiate CINC Proceedings*

DCF supervisor, Cassidy Miller, testified and detailed DCF's initial interactions with Mother and Father. Miller testified that she first became involved in fall 2019, when she investigated a report of child abuse at Father's home. When confronted with the allegation, Mother and Father denied knowing about the report of physical abuse and denied the allegation. Miller later learned about a second DCF report alleging that D.S. and D.S. tested as having several drugs—including cocaine, opiates, codeine, morphine, hydrocodone, marijuana, and Tramadol—in their systems at birth. When Miller spoke with Mother after the delivery, Mother admitted using THC but denied using "anything besides medication that she was prescribed" by her doctor. Miller also talked to Mother about family preservation services, yet Mother did not commit to any services. Knowing that the twins would be in the hospital for a while, Miller did not pursue the issue and returned to talk to Mother later.

Miller also testified that according to some hospital staff, there was concern that Father "came on very strongly towards hospital staff . . . [and] was frustrated with . . . the level of care [D.S. and D.S.] were receiving." Father was also observed saying "'[s]hut the fuck up,' or, '[c]hill out'" to one of the twins. When asked if Miller had encountered a similar anger from Father, she testified that she had:

"[W]hen we received the court order temporarily removing the children from the home, my supervisor . . . and I went up to the hospital where mother and father and some other family members and friends were visiting to serve the court order, and things got really heated. Law enforcement had to call for backup. A lot of the individuals, including father,

were very, very upset that we were there with the court order and they tried, you know, plowing past us.

. . . .

"I would say it was more intense, more aggressive than . . . standard removals."

Miller testified that she first spoke with Father at his house on September 17, 2019. Father denied knowing about Mother's drug use and refused family services or to allow a walkthrough of his home. He agreed to take a urine analysis (UA) to test for drug use but did not want to do a hair follicle test. Miller scheduled a test for Father, but he never showed. Miller also spoke to Mother again on September 18. She too refused to commit to family services or a walkthrough of her home. Mother agreed to take a UA but, like Father, never completed that test.

Miller testified that when A.S. was born, similar tests showed that she had THC in her system. A.S.'s two older siblings were also reported for truancy issues. Based on these allegations and the information showing the need to assist the twins, DCF filed an application for a CINC petition.

#### *Initial Interactions with Case Manager and Father's Incarcerations*

KVC Behavioral Healthcare (KVC) employee Samantha Zeller was the case manager throughout the district court proceedings. At the termination hearing, she testified that she was mainly concerned with the allegations of abuse against A.S. and the parents' drug use. Zeller determined that more than anything, she needed to address Mother's and Father's drug abuse. Zeller also noted that Mother and Father had criminal histories.

Zeller testified that Father was a no show to his initial intake meeting. Zeller later learned that Father had violated the terms of his probation and was in jail, where he

remained from October 2019 to March 2020. Zeller got Father's phone number from Mother and contacted Father after his release and told him about the general tasks and expectations of his reintegration plan.

After Father's March 2020 release from jail, he and Mother committed felony offenses. The State charged both with aggravated robbery, alleging that the couple committed armed robbery of different restaurants. Father eventually pleaded guilty to robbery and attempted robbery and received a 48-month prison sentence. Father was initially ordered to report to prison on April 1, 2022, but after some sort of documentation error, Father was bonded out of his sentence until June 2022.

*Father's Progress in Completing Case Plan Tasks and Maintaining Contact*

As for Father's case plan tasks, Zeller testified that she reviewed these tasks with Father at least four times and that Father understood the tasks.

Discussing visitation, Zeller testified that Father first participated in visits with the children in November 2020. Father was supposed to attend weekly visits but made it to "only a handful." He had six visits with his children from 2019, when this case began, until June 2022, when he began serving his prison sentence. The COVID-19 pandemic forced one in-person visit to be rescheduled as a Zoom visit, and bad weather forced the cancellation of another visit. Father also missed a couple other scheduled visits without explanation.

Following a community review board meeting, in April 2021 the district court ordered Father to complete two consecutive clean UAs before any other visitation. Father completed a hair follicle test in September 2021, which showed use of cocaine and hydrocodone. These results also established to Zeller that Father used drugs after the CINC petition was filed and that Father's "sobriety . . . was still a present concern."

Father eventually provided two consecutive clean UAs to regain access to his visitation with the children in March 2022, almost one year after being ordered to do so.

Between March and April 2022—when Father first needed to report to prison to begin serving his 48-month sentence—DCF offered Father at least two visits. Father attended both visits, the last on March 31, 2022. Eric Alvarez, the children's family support worker, supervised these visits. He testified that Father was timely in his attendance and provided snacks for the children. Father, however, interacted very little with the children, and seemed angry and upset during the second visit. Also, A.S. attended only the second visit.

As for Father's communications, Zeller testified that despite giving Father her contact information, which stayed the same during the case, Father did not stay in consistent contact with her. She explained that she generally initiated the contact with Father but admitted that Father sometimes contacted her first. Zeller also testified that Father's communication skills improved towards the beginning of 2022, and she met with Father in person two times. But Father did not contact Zeller during the time that he was released on bond from his 48-month sentence—between April and June 2022.

Zeller also testified that Father reported two addresses to DCF, and that his most recent address report came from his girlfriend. But Father never submitted appropriate documentation to prove that he had sufficient housing. Similarly, Father submitted pay stubs, reporting that he was lawfully employed but never provided Zeller with a document naming his employer, so Zeller was thus unable to verify whether Father had a legal source of income.

Father also failed to provide proof of a RADAC assessment. After Father tested positive for drug use based on his hair follicle test, he was ordered to complete this

assessment. Father reported to Zeller that he completed this task but again he submitted no documented proof. He likewise failed to complete a mental health assessment.

### *Facts Surrounding Foster Placements*

Zeller, Alvarez, and the twins' foster mother (J.L.) testified about the children's foster placements and improvements after being removed from Father's care. The twins were placed with a foster home together. But A.S. was placed in a different foster home, with her two older siblings.

The twins suffered significant withdrawal symptoms after they were first removed from Mother and Father's care but eventually recovered and began developing at a healthy rate. Zeller also testified that by the termination hearing, the twins' foster placement was a viable adoptive resource.

Zeller's testimony indicated that A.S. was doing well in her placement but she showed some signs of aggression. A.S. was therefore attending therapy, which Zeller testified would be vital to her continued health. A.S.'s foster placement was not a viable adoptive resource but agreed to continue fostering her until DCF could find such a resource. Zeller, however, explained that before DCF could explore adoption options for A.S., the district court needed to terminate Father's parental rights.

### *Recommendations Regarding the Foreseeable Future and Best Interests*

Zeller testified that it was in the children's best interests to terminate Father's parental rights. She explained that the

"[r]easons for referral have not been adequately addressed. The children have been in care for an extended period of time due to lack of progress on case plan tasks. And that

the parents are incarcerated for lengthy periods of time due to charges they accrued while the children were in care."

Even if Father's rights were not terminated and he was released from prison after his years-long sentence, Zeller did not believe that the children would successfully reintegrate into Father's home. As support, Zeller claimed that if Father completed all the necessary reintegration tasks, it would likely still take at least 6 to 12 months after Father's release from prison for him to meet these requirements.

### *Father's Evidence and Testimony*

Father cross-examined each of the State's witnesses. In his cross-examination of Zeller, Father submitted a document indicating that he had completed a mental health assessment, which Zeller testified she had not seen before. Father also questioned Zeller about the adequacy of her efforts to contact him and improve the consistency of their communications, particularly when Father was incarcerated. Zeller testified that she had met with Father in prison at least one time and had called him several times.

Father's cross-examination of Zeller also suggested, though somewhat vaguely, that the recommendation regarding UAs as a prerequisite to visitation may have been mainly made with Mother in mind. To this Zeller conceded that the recommendation may not have specifically referenced Father. Zeller also agreed that Father was limited in the tasks he could complete while incarcerated. Zeller likewise conceded that she had not received reports about what, if any, programs or drug tests that Father may have completed since being incarcerated. She also admitted that Father tried to maintain at least some contact with her or her office while in and out of jail.

Father also testified at the termination hearing, as did his mother (Grandmother). Grandmother testified that she would act as placement for the children. But after

contacting Grandmother, DCF determined that she was not a viable placement option because she lived in a two-bedroom apartment in Oklahoma.

In his testimony, Father explained that he was housed in the El Dorado Correctional Facility, with an earliest release date of February 19, 2025. He testified that around the time that the twins were born, he lived in a house in Topeka with two other people and worked at Hardee's. Mother was pregnant but lived in a separate house with her new partner. And when Father was released from his jail sentence in March 2020, he rented an apartment with his new girlfriend and reported that address to DCF.

Father claimed that no one from KVC visited him while he was incarcerated. He also explained that although he could make calls, he could not receive calls while incarcerated. He testified that he had written several letters to KVC employees and the children.

Father also testified that he planned to change his behavior and to contact KVC to start working on reintegration tasks upon his release from prison. He also planned to move to Oklahoma to live with his family or girlfriend. Somewhat related, Father also testified that he had told Grandmother about DCF obtaining custody of the children sometime in 2020 and that she had agreed to help take care of the children pending their reintegration. He also believed that Grandmother and other family members could provide the children with the permanency that they needed.

On cross-examination, Father admitted that he had received one disciplinary write-up since entering prison. Contrary to this admission, prison reports showed that Father had received at least two write-ups and had committed several more infractions than he first admitted to.

Father also agreed with the State's attorney that because the children had been in DCF custody for three years, it was not in their best interests to allow the reintegration plan to continue for another three-plus years to allow him time to complete the tasks that Zeller testified to. Still, he demanded that he was still willing to pursue his parental rights because he wanted the children home. He also agreed that it would be important for A.S. to continue receiving support for her behavioral issues. He disagreed, however, that it was in the twins' best interests to be adopted by their foster parents. Father believed it was more important that they stay with biological family members.

### *Termination Decision*

The district court took judicial notice of Father's previous cases, including his felony case, and Father's 48-month sentence. At the close of the hearing, the court took the matter under advisement. Its later written order found Father unfit based on five factors: K.S.A. 38-2269(b)(5), (b)(8), (b)(9), (c)(2), and (c)(3). The district court also found that Father's unfitness was unlikely to change in the foreseeable future, and that termination was in each child's best interests.

Father appeals.

### *Did the District Court Err by Terminating Father's Parental Rights?*

A parent has a constitutionally recognized right to a parental relationship with his or her child. See *Santosky v. Kramer*, 455 U.S. 745, 753, 758-59, 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 right is a constitutionally protected liberty interest. See *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000) (fundamental liberty interest). As a result, the State may terminate the legal bond between a parent and child only upon clear and

convincing proof of parental unfitness. K.S.A. 38-2269(a); *Santosky*, 455 U.S. at 769-70; *In re R.S.*, 50 Kan. App. 2d 1105, Syl. ¶ 1, 336 P.3d 903 (2014).

When the district court adjudicates a child to be in need of care, the court may terminate parental rights if 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(a).

"When this court reviews a district court's termination of parental rights, we consider whether, after review of all the evidence, viewed in the light most favorable to the State, we are convinced that a rational factfinder could have found it highly probable, i.e., by clear and convincing evidence, that the parents' right should be terminated.' In making this determination, an appellate court does not weigh conflicting evidence, pass on the credibility of witnesses, or redetermine questions of fact. [Citations omitted.]" *In re K.H.*, 56 Kan. App. 2d 1135, 1139, 444 P.3d 354 (2019).

The district court must also determine whether termination is in the child's best interests. K.S.A. 38-2269(g)(1). This determination must be supported by a preponderance of the evidence, and this court reviews that determination for abuse of discretion. An abuse of discretion occurs when no reasonable person would agree with the district court or the district court premised its decision on a factual or legal error. *In re R.S.*, 50 Kan. App. 2d at 1115-16.

The Revised Kansas Code for Care of Children provides that a district court may terminate parental rights after the court adjudicates the child to be a CINC. K.S.A. 38-2269(a). The statute lists nonexclusive factors the court must consider in determining the parent's unfitness. K.S.A. 38-2269(b) and (c). Any one of the factors in K.S.A. 38-2269(b) or (c) may, but does not necessarily, establish grounds for termination of parental rights. K.S.A. 38-2269(f).

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." K.S.A. 38-2269(g)(1). This remains so even if the district court relies on a statutory presumption. See *In re K.P.*, 44 Kan. App. 2d 316, 321, 235 P.3d 1255 (2010). In making its best interests decision, the court must focus its consideration on the physical, mental, and emotional needs of the child. K.S.A. 38-2269(g)(1).

*Father's Misplaced Emphasis on Alleged Lack of Agency Efforts*

Father mainly contends that the record did not show that his incarceration or actions established that he was unfit. Instead, Father asserts that he was found unfit only because KVC failed to provide adequate efforts and resources to allow him to work toward reintegration. Father argues:

- KVC did not give him reasonable notice of his case plan tasks as no one contacted him while he was serving his 12-month sentence in his probation violation case;
- Zeller first met with him on July 15, 2021, and that KVC recommended that the case plan goal change from reintegration to adoption that same month, depriving him of any meaningful time to work toward reintegration;
- The State did not file its CINC petition on the basis of his incarceration, as defined in K.S.A. 38-2269(b)(5);
- Father received far fewer agency efforts than Mother did during her incarceration;
- The record fails to show that the recommendation from the children's therapist that visits be temporarily stopped in June 2022 stemmed from any of his, rather than Mother's, actions;

- KVC failed to contact Grandmother earlier in the CINC proceedings;
- Father maintained sufficient contact with KVC and completed UAs, a mental health evaluation, a RADAC assessment, and parenting classes;
- Father made reasonable plans about reintegration efforts that he vowed to carry out when released from prison.

Father claims that based on this evidence, a reasonable person would have made a negative finding against the State under K.S.A. 38-2269(b)(7) (the failure of reasonable public or private agency efforts to rehabilitate the family), finding the agency's efforts unreasonable. But the district court did not find against Father based on this factor, so Father's refutation of it is immaterial. We also note that Father mischaracterizes some of the evidence presented at the termination hearing. For example, although Father claims that no one set case plan tasks or met with him about his case plan tasks until July 15, 2021, the record shows that Zeller scheduled a meeting to discuss the case plan with Father on November 27, 2019, met with Father over the telephone and discussed his case plan in March 2020, and further reviewed Father's case plan tasks with Father on at least two other occasions and ensured that Father understood the requirements.

And although Father references KVC's handling of his request for placement with Grandmother, Father does not argue that the court should have appointed a permanent custodian rather than terminate his parental rights. See K.S.A. 38-2269(g)(3) (court may consider appointing permanent custodian rather than terminating parental rights). Because Father does not brief this issue, we consider it waived or abandoned. *In re Adoption of Baby Girl G.*, 311 Kan. 798, 803, 466 P.3d 1207 (2020).

## *Factors Supporting the District Court's Termination Decision*

The district court found Father unfit under the following statutory provisions:

- K.S.A. 38-2269(b)(5)—Receipt of a felony conviction and imprisonment;
- K.S.A. 38-2269(b)(8)—A lack of effort by the parent to adjust the parent's circumstances, conduct, or conditions to meet the needs of the child;
- K.S.A. 38-2269(b)(9)—When the child has been in the custody of the secretary and placed with neither parent for 15 of the most recent 22 months beginning 60 days after the date on which the child was removed from parent, finding one or more of the factors listed in subsection (c) of the statute apply;
- K.S.A. 38-2269(c)(2)—When a child is not in the physical custody of a parent, the 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)—When a child is not in the physical custody of a parent, the failure to carry out a reasonable plan approved by the court directed toward the integration of the child into a parental home.

Father challenges the sufficiency of the evidence supporting each of these factors. We thus examine whether the district court's findings are supported by clear and convincing evidence.

### *Father's Felony Conviction and Incarceration*

Imprisonment for a felony does not require automatic termination but it alone can result in termination of parental rights. See K.S.A. 38-2269(b)(5); *In re K.L.B.*, 56 Kan. App. 2d 429, 447, 431 P.3d 883 (2018). Father does not challenge the district court's finding that he received a felony conviction after this case began and is incarcerated

based on that conviction. Father admitted that he was incarcerated for a substantial portion of the CINC proceedings and would remain in prison until at least February 19, 2025.

Father claims that because the State did not rely on this factor when it filed its CINC petition, and he was not incarcerated on that date, the district court erred by applying this factor at the termination phase of these proceedings. But the State correctly notes that Father went to jail just four days after the State filed its petition. More importantly, K.S.A. 38-2269(b)(5) requires a present showing of incarceration. See *In re S.T.*, No. 121,376, 2019 WL 6795836, at \*3 (Kan. App. 2019) (unpublished opinion) (grounds for termination under incarceration factor requires an "actual conviction and present incarceration"). So nothing in the statute limits incarceration to the date a CINC petition is filed.

Father also claims that the district court should have weighed his incarceration as a mitigating factor rather than an aggravating factor, citing *In re I.H.*, No. 122,552, 2020 WL 3885920, at \*6 (Kan. App. 2020) (unpublished opinion) ("Imprisonment may serve as a mitigating factor if it limits the parent's ability to fulfill their customary parental duties."). But there, the panel found that

"imprisonment may constitute a significant negative factor, 'such as where it has impeded the development of a relationship between the parent and the child, where the parent has been incarcerated for the majority of the child's life and the child spent the time in the State's custody, and where the incarceration would cause further delay in the proceedings that isn't in the child's best interests.'" 2020 WL 3885920, at \*6.

The *In re I.H.* panel found clear and convincing evidence that father's incarceration made him unfit to properly care for his children. 2020 WL 3885920, at \*7.

Applying the same basic principles, we find support for the district court's decision here. When the State petitioned, A.S. was 1 year old and the twins were 10 days old. Police first arrested Father when the twins were just five or six days old. By the date of the termination hearing, the children were four and three years old. Father admits that he did not establish a bond or relationship with the twins and that A.S. requires specific care for her behavioral concerns. And throughout the three-year span of this case, Father visited the children only six times. The twins' foster placement testified that these visits were traumatizing to them and that they cried throughout it.

Ignoring these facts, Father still suggests that his incarceration entitled him to some type of deference. But the determination whether, within the context of the case, incarceration weighs as a positive or negative factor is a determination for the trial court. See *In re M.H.*, 50 Kan. App. 2d 1162, 1172, 337 P.3d 711 (2014). And this court consistently rejects these generic claims, as "a person in prison typically cannot provide the physical supports associated with parenting a child . . . [nor] offer any sort of continuing moral or emotional direction for the child, let alone daily or otherwise routine positive interactions." *In re A.P.*, No. 121,537, 2020 WL 499816, at \*4 (Kan. App. 2020) (unpublished opinion). See *In re B.C.*, No. 125,199, 2022 WL 18046481, at \*4-5 (Kan. App. 2022) (unpublished opinion) (rejecting argument when father received a felony conviction for robbery during pendency of CINC proceedings in the district court and was sentenced to a five-year prison term), *rev. denied* 317 Kan. \_\_\_\_ (March 28, 2023).

Based on our review of the record, we find clear and convincing evidence supporting the district court's application of K.S.A. 38-2269(b)(5) against Father.

#### *Failure to Make Necessary Efforts to Adjust Circumstances*

The record also supports the district court's finding under K.S.A. 38-2269(b)(8) that Father is unfit for failing to make necessary efforts to adjust his circumstances. The

most significant aspects of Father's circumstances that the State focused on included Father's continued criminal conduct, his drug use, and his lack of significant interactions with his three young children. To his credit, Father provided two clean UAs to regain visitation with the children. He also provided the district court with a copy of a drug assessment and a certificate of completion of drug abuse treatment from Valeo Behavioral Healthcare at the termination hearing. But Father's hair follicle test in September 2021 showed that Father used cocaine and other drugs, and Father did not provide clean UAs and completed a drug assessment until March 2022, about two and a half years after this case began. Father thus continued to use drugs throughout much of these proceedings, which in turn gravely affected his ability to visit his children.

Additionally, as the district court emphasized, after serving his sentence for his probation violation, Father refused to change his behavior to ensure that he could stay out of prison to care for the children:

"Father chose to commit two felonies during the pendency of this case. These felonies were committed almost immediately after Father had been given a second chance when released early from his misdemeanor sentence. Instead of taking advantage of this act of grace and using it to better himself and work toward reintegrating with his children, Father chose to commit additional crimes."

Disciplinary reports against Father while serving his current sentence likewise show that Father continues to conduct himself in a way that could extend his time in prison and away from the children.

Reviewing the evidence in the light favorable to the State, we agree with the district court that clear and convincing evidence shows that Father was unfit under K.S.A. 38-2269(b)(8).

*Failure to Maintain Contact and Carry Out a Reasonable Case Plan*

Father does not challenge that the children were in custody of the Secretary long enough to trigger application of K.S.A. 38-2269(b)(9). But Father claims that the district court erred in finding that he failed to maintain regular visitation, contact, or communication or carry out a reasonable plan as required under K.S.A. 38-2269(c)(2) and (c)(3).

But as explained above, the record contains clear and convincing evidence supporting the district court's finding that Father failed to satisfy the terms of the permanency plan or maintain appropriate contact by the termination hearing. Although Father claimed he had completed some tasks, he failed to provide KVC with any documents showing he had done so. He also had contact information for KVC workers yet generally did not initiate communications. He visited his children only six times in three years and did not interact with them during these visits.

Even assuming that Father completed some of his case plan tasks, we affirm the district court's findings under K.S.A. 38-2269(b)(9), (c)(2), and (c)(3). Reviewing the evidence in the light favorable to the State, we find clear and convincing evidence that Father was unfit as defined under these factors.

*Foreseeable Future*

Father argues that he is willing and has made plans to complete reintegration tasks when he is released from prison, so the district court erred by finding his unfitness was unlikely to change in the foreseeable future. He also claims that the district court should have given greater weight to the lack of resources KVC offered him and KVC's failure to place the children with Grandmother.

In determining whether parental rights should be terminated, Kansas "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). The district court thus properly considered Father's past conduct as such an indicator here. Father's criminal history and repeated failures to take initiative to complete his case plan tasks over a three-year period indicates that he is unlikely to change in the foreseeable future.

And courts use "child time" when assessing the foreseeable future. *In re M.S.*, 56 Kan. App. 2d at 1263. We examine the foreseeable future from the child's perspective because children have a different perception of time than adults and have a right to permanency within a time frame reasonable to them. *In re M.H.*, 50 Kan. App. 2d at 1170-71. K.S.A. 38-2201(b)(4) acknowledges that children experience the passage of time differently than adults, making a month or a year seem much longer than it would for an adult. This difference in perception points to a prompt and permanent disposition. *In re M.S.*, 56 Kan. App. 2d at 1263.

Thus, in acknowledging the children's time perception, the district court needed to dispose of these proceedings without unnecessary delay. See K.S.A. 38-2201(b)(4). Given the young ages of the children, their length of time in out-of-home placements, and the projected amount of time that Father would still need to restart reintegration tasks, we find that the district court did not enter a premature ruling and instead properly avoided unnecessary delay.

Father cites *In re A.J.*, No. 124,854, 2022 WL 15549863, at \*5 (Kan. App. 2022) (unpublished opinion), as support for his general argument that the district court's foreseeable future finding is erroneous. But in *In re A.J.*, this court overturned an order terminating a father's parental rights based on the district court's lack of findings about the father's ability to change in the foreseeable future and its flawed focus on criminal charges the father faced. Similar to this case, the father in *In re A.J.* had an extensive

criminal history, faced pending criminal charges, and was incarcerated at the time of his termination hearing. A panel of this court found that these facts supported the district court's finding that the father was unfit but not necessarily that he was unlikely to change in the foreseeable future. Because the district court's ruling did not state why it believed Father's unfitness would remain unchanged, and it was too early for the district court to make a foreseeable-future determination that relied on the pending charges alone, the panel reversed the termination decision and remanded for further proceedings. *In re A.J.*, 2022 WL 15549863, at \*5-7.

Not so here. The district court specifically found that Father was unlikely to change in the foreseeable future, and it gave sufficient factual findings to support its conclusion. The district court found that Father committed multiple offenses throughout these proceedings and in doing so, deprived himself of an opportunity to change in the foreseeable future. Father committed two felonies directly after he was released from his sentence in his probation violation case. The district court also based its decision on the children's ages and amount of time in out-of-home placement. Father also admitted that he did not have significant relationships with the twins. And he accrued several infractions while in prison, indicating that he might not receive an early release date. The district court weighed Father's testimony that he plans to better himself after his release from prison, and we cannot reweigh that testimony.

We thus find clear and convincing evidence that Father's unfitness was unlikely to change in the foreseeable future.

### *Best Interests*

We next address whether the district court abused its discretion in finding that termination of Father's rights is in each child's best interests. See *In re R.S.*, 50 Kan. App.

2d at 1116. In making this decision, the district court must mainly consider the child's physical, mental, or emotional health. K.S.A. 38-2269(g)(1).

Father contends:

- The children are very young, so they should not be removed from a parent's care;
- He loves the children, has a bond with A.S., and was working to bond with the twins;
- KVC failed to properly support his reintegration efforts;
- KVC should have temporarily placed the children with Grandmother; and
- He intends to make vigorous efforts toward reintegration after his release from prison.

These points fail to show an abuse of discretion, so we have no basis to set aside the district court's best interests finding. See *In re R.S.*, 50 Kan. App. 2d at 1115-16. An abuse of discretion occurs when no reasonable person would agree with the district court or the district court premised its decision on a factual or legal error. *In re R.S.*, 50 Kan. App. 2d at 1115-16. We find no legal or factual error here, and a reasonable person could agree with the district court's decision. The children spent most of their lives out of Father's care. They have obtained a level of permanency with their foster placements that they had lacked; the twins are well on their way toward adoption proceedings. Yet Father would need an estimated minimum of three more years to complete a reintegration plan.

Affirmed.