NOT DESIGNATED FOR PUBLICATION

No. 125,724

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Interests of D.G., U.G., C.A., and D.G.,
Minor Children.

MEMORANDUM OPINION

Appeal from Johnson District Court; ERICA K. SCHOENIG, judge. Opinion filed July 21, 2023. Affirmed.

Richard P. Klein, of Lenexa, for appellant Father.

Dennis J. Stanchik, of Shawnee, for appellant Mother.

Shawn E. Minihan, assistant district attorney, and *Stephen M. Howe*, district attorney, for appellee.

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

PER CURIAM: M.A. (Mother) and D.G. (Father) appeal the district court's unfitness findings and termination of their parental rights to their children D.G. Jr., U.G., C.A., and Di.G. Both parents claim there is not sufficient evidence to support the district court's conclusion that they are unfit and that the circumstances giving rise to that finding are unlikely to change in the foreseeable future. Mother and Father also argue it was unreasonable for the court to find that termination of their parental rights was in the children's best interests. Following a thorough review of the record, alongside the parents' claims, we find no error and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and Father are the biological parents of five children, D.G. Jr., C.A., U.G. Di.G., and B.G. However, Mother gave birth to B.G. in Missouri, so she is not part of this Kansas child in need of care (CINC) proceeding.

Initiation of this Case

In April 2019, the State filed petitions requesting that two-week-old U.G., three-year-old C.A., and one-year-old D.G. Jr. each be adjudicated a CINC. Mother gave birth to Di.G. a year later and despite the ongoing case with her other three children, the parents never disclosed the pregnancy to the appropriate agencies but instead told KVC Mother was having surgery. While speaking with Mother at the hospital, Kansas Department for Children and Families (DCF) worker, Tiffany Crabtree presumed that Mother did not receive appropriate prenatal care despite Mother's assertions that she drove back and forth from Texas to receive such care. Crabtree also noted that Father was present at the birth, but he did not engage with anyone, and Crabtree believed that Father seemed "'tuned out.'" Accordingly, two days after Di.G. was born, the State filed a separate petition on the infant's behalf. Each of the filings largely set forth the same allegations, that Mother struggled with a considerably pervasive substance abuse issue, mostly with amphetamines, methamphetamines, and opiates, and could not resist its pull during at least two of her pregnancies. Her dependency resulted in significant health issues for D.G. Jr. who tested positive for opiates at birth, and U.G., who was born prematurely with a lung condition that required consistent monitoring. The petitions also noted that DCF previously removed C.A. and D.G. Jr. from Mother and Father's care based on their "prior history, substance abuse concerns, and lack of utilities in the home," and outlined Mother's criminal history and probation violations.

U.G.'s medical condition required the parents to agree to participation in a safety plan before he could be discharged from the hospital. The plan contemplated the terms below would be met:

- Mother will inform hospital of U.G.'s doctor or request help in setting up appointments;
- both parents will take U.G. to the doctor, and maintain communication with his pediatrician as well as having medical records sent to hospital;
- both parents will follow and show an understanding of the importance of the instructions and directives given by nurses that relate to U.G.'s health needs, including the signs of hypoxia and malnutrition, providing emergency care if U.G. stops breathing or becomes hypoxic;
- both parents will comply and participate with Children's Mercy home healthcare recommendations; and,
- Father will act as U.G.'s primary caregiver.

DCF social worker Monica McGlory shared independent phone conversations with Mother and Father and walked away satisfied that both understood the terms of the safety plan. But that plan never materialized as intended. Within a few days after U.G.'s discharge from the hospital, the parents failed to take the infant to his required wellness check-ups and Father canceled his home healthcare appointment. Mother and Father also declined to allow home health services into their home or obtain CPR training; both refusals were significant given the serious nature of U.G.'s malady. DCF's repeated phone calls and efforts to visit the parents at the hotel room where they lived were also rebuffed. The agency eventually learned that Mother was arrested and jailed roughly three days after U.G. was discharged.

Adjudication

Mother and Father filed no contest statements to the State's allegations regarding the children. The district court accepted these statements and a stipulation from the appointed guardian ad litem (GAL) and granted the State's request for protective custody of the children. The district court ultimately adjudicated each child a CINC.

As alluded to above, the initial steps with respect to these three children were well underway by the time Di.G. was born, and the State filed its petition regarding her. It later amended that petition to include requests for the court to adjudicate Di.G. a CINC, make findings of unfitness, and terminate Mother and Father's parental rights. The petition was granted and Di.G. was adjudicated a CINC on the same date that the court terminated Mother's and Father's parental rights to the other three children.

Review Hearing and Initiation of Termination Proceedings

The district court initially instituted six-month reintegration plans for Mother and Father in D.G. Jr.'s, C.A.'s and U.G.'s cases. Yet it declined to find reintegration viable with respect to Di.G.'s so it did not approve such a plan in that case.

Reintegration with the first three children was the goal throughout much of 2020 as the parents exhibited adequate progress with their case plan requirements. Early the following year, the State moved to terminate Mother and Father's parental rights, but the district court again found that the parents were making sufficient strides toward reintegration. The court also noted, however, that its finding was "(p)ending presentation of evidence on the State's pending motion [to terminate parental rights.]"

A few months later, the court entered an order granting provisional placement of the children with Mother and Father at their home in Raytown, Missouri, pursuant to the

Interstate Compact for Placement of Children (ICPC). But the parents missed the deadline to file this request in Missouri, so the ICPC request was rejected. The court filed a second similar provisional placement order about four months later, but it coincided with the time that Mother gave birth to B.G. Missouri child services took emergency custody of B.G. upon her birth so this placement request was also rejected.

Trial

The district court moved forward with an evidentiary hearing on the State's motion to terminate Mother's and Father's parental rights to their four children. The State presented testimony from several witnesses, including:

- Shannon Sundberg—the children's foster placement;
- Clarissa Johnson—a KVC therapist that the children and Sundberg visited weekly;
- Madeline Ford—the KVC permanency supervisor;
- Stephanie Martin—the appointed KVC case manager from December 2019 to October 2021;
- Alexandria Zodell—the KVC case manager appointed after October 2021;
- Tiffany Crabtree—a social worker at the Overland Park Regional Medical Center;
- Shannon Austin—a child welfare worker with Cornerstones of Care in Missouri; and
- Matthew Glen Lyons—an employee at Test Smartly Labs.

In an effort to offer a thorough overview of the case, a summary from each witness follows, except for that testimony provided by Austin and Lyons as their experiences were adequately encapsulated in the testimonies offered by other witnesses.

Shannon Sundberg

Sundberg provided testimony about the children's health and welfare. She described their daily schedules, explained that they visit their doctor regularly and stated she attends weekly family therapy sessions to ensure certain special needs are met for D.G., Jr. and C.A. She also ensured that U.G. received his necessary medical care and as a result, he was eventually cleared of the swallowing difficulties and various other health issues he suffered from when he first arrived at her home. According to Sundberg, the children were healthy and shared a typical sibling relationship. On cross-examination, Sundberg stated that neither Mother nor Father provided her with any assistance.

As for visitations, Sundberg explained that when they first started visiting Mother and Father, the children would get sad and sometimes have tantrums. Even so, they eventually adapted and were able to leave each visit without any issues so that when the trial began, the children were typically delighted to see their parents. Sundberg also testified that Mother and Father appropriately cared for the children during visits and never hit or yelled at them. Finally, Sundberg testified that she would be willing to be a permanent placement for the four children.

Clarissa Johnson

Johnson diagnosed D.G., Jr. and C.A. with developmental trauma disorder, a condition that mimics post-traumatic stress disorder (PTSD), but which manifests as a result of continuous trauma and causes a person to exhibit pervasive behavioral struggles, such as the inability to get along with others. Johnson conducted weekly therapy visits with both children and explained that as to D.G. Jr. specifically, the condition prevented him from identifying or communicating the cause of his anger, so he got mad more quickly than other children his age and acted out. C.A. lashed out physically and orally and also struggled to trust or listen to anyone.

Johnson believed permanency and consistency were key for the two children and asserted that their caregiver needed to offer an intentionally structured environment similar to Sundberg's. She declined to attribute the children's trauma to Mother or Father because she never met either parent, so such an assessment was not possible.

Madeline Ford

Ford testified about the parent's progress toward reintegration. She supervised each of the four case managers assigned to the case, including the two most recently involved with the family—Stephanie Martin and Alexandria Zodell.

According to Ford, Father had a longstanding position with the United States Postal Service (UPS) and in May 2021, the parents bought a home in Raytown, Missouri, that Ford believed was suitable for the children. But because Missouri officials rejected both ICPC requests filed in this case, the residence was not an option for any of the couple's children. Ford also noted that Missouri returned B.G. to Mother and Father after a brief placement outside the home but she was taken back into state custody several months later after concerns surfaced regarding Mother's drug use and falsified documents. Ford testified that Shannon Austin, a case manager in B.G.'s Missouri case, notified Zodell that Mother submitted false information about drug tests and assessments, as well as parenting classes. Zodell later realized that Mother submitted similarly false documentation in Kansas.

Ford identified the primary concerns here as Mother's continued drug use and dishonesty with KVC. She described Father as a "passenger" but noted that he continued to visit the children while Mother was in jail for 250 days and demonstrated appropriate parenting skills throughout that time.

Stephanie Martin

Martin acted as the KVC case manager from December 2019 to October 2021. She testified that when she started, this case involved D.G. Jr., C.A, and U.G. with a goal of reintegration. Then, in October 2020, Mother gave birth to Di.G. without ever notifying Martin that she was pregnant. Thus, Martin also did not know whether Mother received appropriate prenatal care. Still, Martin continued to assist with the reintegration process after Di.G.'s birth.

Martin testified that initially, she met with Mother routinely and both parents participated regularly in visitation with the children, but Martin had little contact with Father. Her primary concern was Mother's drug use and the family's living situation. Martin explained that Mother and Father were living in an extended stay hotel with their children, which was not large enough for six family members.

Martin also recalled that before Di.G.'s birth, Mother and Father progressed to four-hour unsupervised visits with D.G. Jr., C.A., and U.G., but after Di.G.'s birth, they were restricted to one-hour supervised visits. She assured the district court that the visitation restrictions were already slated to occur and did not arise as a consequence of Di.G.'s unexpected birth.

Martin informed the court that around the time her involvement with the case drew to a close she received a report from DCF that Mother was pregnant again and recently tested positive for methamphetamine. When Martin asked Mother about the pregnancy, she adamantly denied it. On cross-examination, Mother's attorney suggested that Martin inhibited Mother's ability to visit or care for Di.G. when she was in the NICU. Although Martin conceded that Mother was given limited access to Di.G. in the NICU, she explained that the restrictions were largely caused by the hospital's visitation rules during the Covid-19 pandemic.

Alexandria Zodell

Zodell's involvement in the case commenced in October 2021. She testified that when she first met with Mother, Mother agreed to take a pregnancy test despite adamantly denying that she was pregnant. Mother presented Zodell with a negative pregnancy test result. But Mother followed up with a blood test at the hospital which yielded a positive result. Mother gave birth to B.G. roughly one month later.

As to visitation and case plan tasks, Zodell testified that Mother and Father were allowed one-hour supervised visits with the children which they regularly participated in, so they progressed to one overnight visit. But that after DCF learned about B.G., the parents were no longer permitted to have overnight visits. According to Zodell, Mother's case plan tasks included a mental health assessment, completion of recommended therapy, regular UA's, obtaining necessary drug treatment, and resolving her ongoing legal issues, including the successful completion of probation. But Mother submitted positive UA's and missed several others, which were processed as positive results. She also provided Zodell with documentation showing she passed toenail and hair follicle tests through Test Smartly Labs but an official from that lab confirmed that the information Mother submitted was false. The documents Mother provided to reflect that she completed her required parenting classes were also fabricated and she falsely asserted to Missouri authorities that she was on track to regain custody of her four children in this case.

Zodell testified that Father was engaged with the children during visits, and they enjoyed being around him, but she had very little personal contact with him throughout this case. According to Zodell, Mother was the children's primary caregiver while Father worked but their intention was to complete their reintegration plans as a couple. Zodell explained that while the parents lived in a house in Raytown, even if DCF approved the residence as suitable for the children, the decision to allow placement there was

Missouri's. And because Missouri denied two ICPC requests, Zodell believed that such placement was no longer an option.

Finally, Zodell testified that she believed termination of Mother and Father's parental rights was in the children's best interests. She recommended going forward with adoption proceedings with Sundberg.

Tiffany Crabtree

Crabtree testified and described her experience at the hospital following Di.G.'s birth. Crabtree conducted a routine psychosocial assessment of Di.G. because she was born prematurely and there was a concern Mother did not receive prenatal care. She testified that Mother was interested in parenting Di.G. and seeing her in the NICU and was "very tearful" when separated from the infant.

Mother and Father's Evidence and Mother's Testimony

Mother presented testimony from KVC therapist, Ally Vaughn, and Mark D. Leavell, the therapist she shared with Father. Mother also testified personally but Father did not.

Ally Vaughn

DCF referred Mother to Vaughn in late 2021 and the two met on a weekly, then every two weeks, basis for several months. According to Vaughn, Mother did not miss any of her scheduled appointments. Vaughn focused on Mother's self-destructive behaviors and believed she exhibited a measure of improvement during their time together.

Mark Leavell

Leavell testified that he started working with Mother and Father as part of B.G.'s Missouri case. They actively participated in individual therapy for several months then shortly before trial, started couples counseling. According to Leavell, Mother exhibited indications of childhood trauma which can cause sufferers to resort to a fight or flight response when faced with intense conflict or emotionally charged situations. Such individuals experience difficulty trusting others and struggle with stability in many aspects of their life. Mother reported symptoms of depression and anxiety which seemed to align with the manifestations of trauma described by Leavell.

Leavell testified that through treatment, Mother hoped to develop better coping strategies for her depression and anxiety, and meaningfully address her drug dependency. Regarding the latter however, Leavell testified that Mother initially denied any use of methamphetamine and blamed her diet pills for any positive test results. But shortly after Missouri officials removed B.G. from the parents' care, Mother acknowledged that addictive behavior often involves dishonestly. Even so, Mother consistently denied using methamphetamine which was a significant concern for Leavell. Also, over the course of his 20 years' experience, he had never seen someone falsify parent class certifications, a degree of falsehood he found problematic.

In Father's counseling sessions with Leavell, Father explained that being a stable provider and offering a strong support system to one's spouse are marks of a good husband. When discussing Mother's substance abuse, Father held fast to Mother's theory that her diet pills, not illicit drugs, were the root cause of her failed UAs. This response and Father's overall acceptance of Mother's excuses gave Leavell cause for concern.

In summarizing Mother and Father's overall mental state at trial, Leavell testified that the parents were making progress both individually and as a couple. He remarked

that Mother needed to attend a substance abuse program together with continuing therapy with him.

Mother

Mother testified that at the time of trial, she and Father lived in a suitable five-bedroom, two-bathroom home. She explained that medical issues prevented her from working full-time so she intended to be a stay-at-home Mother.

Mother continued to deny that she used amphetamines, methamphetamines, opiates, or other illegal substances and blamed her weight loss and asthma medications, Desoxyn and Bronkaid, for her positive test results. Yet she also testified that she would participate in substance abuse treatment. Mother asserted that she did not tell Father about her positive drug test results or missed drug tests, nor did she disclose to him that she submitted falsified documents to the agencies.

Mother also testified that she had no complaints or concerns about Father's care of the children. Rather, he fed and bathed the children and helped with the evening routine to get them into bed. Father also cared for C.A. and Di.G. alone when Mother was in jail in February 2019.

The District Court's Ruling

The district court ultimately concluded that Mother was unfit based on K.S.A. 38-2269(b)(3), (b)(7), (b)(8), and K.S.A. 38-2269(c)(3), and determined Father was unfit under K.S.A. 38-2269(b)(7), (b)(8), and K.S.A. 38-2269(c)(3). With regard to U.G. specifically, the court also found the parents unfit pursuant to K.S.A. 38-2269(b)(4). The court also determined that the issues underlying its unfitness findings were unlikely to

change in the foreseeable future and therefore, termination was in the children's best interests.

Mother and Father timely bring their case to us for an analysis of whether the district court reached its unfitness findings and conclusion for termination in error.

The district court properly concluded that Mother's and Father's conduct rendered them unfit, and the situation was unlikely to change in the foreseeable future, therefore, the children's best interests warranted termination of their parental rights.

A parent enjoys a constitutionally recognized fundamental right to a parental relationship with his or her child. See *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); *In re B.D.-Y.*, 286 Kan. 686, 697-98, 187 P.3d 594 (2008). Accordingly, parental rights for a child may be terminated 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, 1113, 336 P.3d 903 (2014).

As provided in K.S.A. 38-2269(a), the district court must find "by clear and convincing evidence that the parent is unfit by reason of conduct or condition," making him or her "unable to care properly for a child" and the circumstances are "unlikely to change in the foreseeable future." When reviewing a finding of parental unfitness, this court must determine, after considering all the evidence in a light favoring the State, whether the evidence was sufficient to support the court's decision—that is, whether a rational fact-finder could have found it highly probable that the parent was unfit. *In re B.D.-Y.*, 286 Kan. 686, Syl. ¶ 4. In making this determination, we do not "weigh conflicting evidence, pass on credibility of witnesses, or redetermine questions of fact." 286 Kan. at 705.

CINC actions, brought under the Revised Kansas Code for Care of Children, K.S.A. 38-2201 et seq., stem from the State's interest in protecting the safety and welfare

of children within its jurisdiction. See K.S.A. 38-2201(a) (proceedings under the Code "deemed to be pursuant to the parental power of the state"); and K.S.A. 38-2201(b)(1) ("safety and welfare of a child to be paramount in all proceedings under the code").

Once a child has been adjudicated as a CINC, a court may then terminate parental rights if the State proves three elements by clear and convincing evidence: (1) the parent is unfit; (2) the conduct or condition which renders the parent unfit is unlikely to change in the foreseeable future; and (3) termination of parental rights is in the best interests of the child. K.S.A. 38-2269(a), (g). The statute lists nonexclusive factors the district court will consider in making its determination of fitness. K.S.A. 38-2269(b)(1)-(9), (c)(1)-(4). These factors may amount to unfitness singularly or in combination, and any one of the factors may, but does not necessarily, establish grounds for termination of parental rights. K.S.A. 38-2269(f).

Mother shows no error in the district court's findings regarding her unfitness and potential for change in the foreseeable future.

Again, the district court cited the following statutory provisions in finding Mother unfit to parent D.G. Jr., C.A., U.G., and Di.G.:

- K.S.A. 38-2269(b)(3)—the use of intoxicating liquors or narcotic or dangerous drugs of such duration or nature as to render the parent unable to care for the ongoing physical, mental or emotional needs of the child;
- K.S.A. 38-2269(b)(7)—the failure of reasonable efforts made by appropriate public or private agencies to rehabilitate the family;
- K.S.A. 38-2269(b)(8)—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; 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.

Additionally, the district court found Mother unfit to parent U.G. based on K.S.A. 38-2269(b)(4)—physical, mental, or emotional abuse or neglect or sexual abuse.

Mother does not explicitly take issue with the district court's finding that she was unfit based on these factors. Rather, it is her contention that the district court's conclusion that she was unlikely to become fit in the foreseeable future is not supported by clear and convincing evidence. As support, Mother highlights the fact that as of the date of trial, she and Father obtained suitable housing and transportation and regularly attended visitation. Mother acknowledges that her drug addiction played a significant role in the district court's conclusion but questions the soundness of that focus given her completed mental health assessment, progress in acknowledging her addiction during sessions with Leavell, and willingness to undergo treatment. Mother implores us to view recovery as a cyclical process rather than lineal, particularly in situations like hers where the case managers purportedly "did nothing to assist [her] with the avoidance and defense mechanisms . . . [that she] learned to rely on when dealing with her substance use disorder."

We are not persuaded. Rather, a thorough review of the record leaves us satisfied there is sufficient support for the district court's findings regarding Mother's lack of foreseeable change. In short, the district court found that Mother's substance abuse issues dated back to at least 2013, as shown by her criminal history. The district court also noted that Mother was on probation at the time of the termination hearing and that she had already violated her probation and continued to use drugs. This violation on the heels of two previous revocations and reinstatements, Mother's multitude of missed and failed

drug tests, falsified drug test reports, and refusal to undergo drug assessments or make efforts to address her substance abuse issues were critical factors in the court's decision.

Additional layers in the court's factual foundation include its observations that despite considerable effort from DCF and KVC to rehabilitate Mother and help her achieve reintegration with her children, Mother deceived her case workers about her pregnancies, drug use, and educational and therapeutic efforts. She also failed to abide by the medical safety plan she specifically consented to for U.G. The court also found that although Mother and Father bought a home in Missouri, their decision to move to another state hindered Mother and Father's ability to rehabilitate and it was unclear when or if the children would even ever be approved for placement there. Finally, the court noted that Mother failed to complete her case plan tasks despite being graced roughly 40-months, or over three years, to do so. Thus, we find no dispute with the court's conclusion that Mother was not likely to achieve the level of fitness required to parent the children in the foreseeable future.

We have no qualms with Mother's assertion that she made reasonable progress toward reintegration by completing some tasks. But the undisputable fact remains that she never stopped using illegal drugs and steadfastly denied she suffered from any substance abuse. Again, two different case managers, Zodell and Ford, testified that Mother failed and missed several drug tests and failed to take drug assessments or follow treatment recommendations. And Leavell's testimony establishes that Mother continues to adamantly deny ever even using illegal drugs despite multiple failed drug tests. This provides clear and convincing evidence that Mother not only used drugs but also neglected to acknowledge her drug use, which demonstrates that a significant impediment toward reintegration still existed and would continue to exist, thus further supporting the district court's decision. See *In re M.S.*, 56 Kan. App. 2d 1247, 1258-59, 447 P.3d 994 (2019) ("[T]he State need not provide direct evidence that a parent's drug use is in and of itself harmful to a child where clear and convincing evidence shows that the parent's

failure to acknowledge his drug issues creates a significant impediment towards reintegration.").

We also find that the district court's assessment of the foreseeable future and Mother's ability to change in "child time" was accurate. See *In re M.S.*, 56 Kan. App. 2d at 1263. Kansas courts have long held that the foreseeable future is examined from the child's perspective because they process the passage of time differently than adults and have a right to permanency within a time frame that aligns with that perspective. See *In re M.H.*, 50 Kan. App. 2d 1162, 1170-71, 337 P.3d 711 (2014). 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 demands a prompt disposition. *In re M.S.*, 56 Kan. App. 2d at 1263.

C.A. was three and one-half years old, D.G. Jr. was one and one-half years old, U.G. was two weeks old and Di.G. was two days old when the State initiated CINC proceedings on their behalf. The district court correctly concluded from this that Di.G. and U.G. spent almost their entire lives in out of home placement during the three years that Mother failed to complete a reasonable reintegration plan. Because the evidence established that Mother still had significant hills to climb with respect to therapy and drug treatment but had yet to even acknowledge the need for the same, the district court did not err in finding Mother's unfitness was unlikely to change in the foreseeable future.

The record equally supports the district court's findings regarding Father's unfitness and likelihood of improvement in the foreseeable future.

Except for the drug use element, the district court relied on the same factors to support its conclusion that Father was unfit to parent D.G. Jr., C.A., U.G. and Di.G. as it did for Mother:

K.S.A. 38-2269(b)(4)—physical, mental, or emotional abuse or neglect or sexual abuse;

- K.S.A. 38-2269(b)(7)—the failure of reasonable efforts made by appropriate public or private agencies to rehabilitate the family;
- K.S.A. 38-2269(b)(8)—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; 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 to support the district court's unfitness findings and its determination that he was unlikely to become so in the foreseeable future. While his challenge is directed at the efficacy of the evidence, our ability to analyze his claim is constrained by his failure to establish a record that includes the documents the State offered at the hearing which the court then relied on in arriving at its conclusion. Specifically, he has neglected to build an appellate record for his case that includes trial exhibits or permanency transcripts, and as the appellant, Father bore the burden to designate a record sufficient to establish the error that he claims occurred on appeal. Thus, we may presume that those exhibits and transcripts contained the necessary information to support the district court's conclusions. See *In re A.A.-F.*, 310 Kan. 125, 141-42, 444 P.3d 938 (2019). It follows then that if the record on appeal is not enough to show error, Father's claim necessarily fails. See *Friedman v. Kansas State Bd. of Healing Arts*, 296 Kan. 636, 644, 294 P.3d 287 (2013); *In re M.L.,* No. 122,730, 2020 WL 7413773, at *4 (Kan. App. 2020) (unpublished opinion). Despite these documentary deficiencies we are nevertheless satisfied that the record supports the determinations made by the district court concerning Father's fitness and his ability to parent the children in the foreseeable future.

It is well understood that agencies must expend reasonable efforts toward reintegration but need not make "a herculean effort to lead the parent through the responsibilities of the reintegration plan." *In re B.T.*, No. 112,137, 2015 WL 1125289, at *8 (Kan. App. 2015) (unpublished opinion). The district court found that KVC made reasonable efforts to contact and assist Father, but that a lack of engagement on Father's part resulted in the failure of KVC's efforts. "'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.' [Citation omitted.]" *In re M.S.*, 56 Kan. App. 2d at 1257.

Our review of the record reveals the lack of a coordinated effort between Father and the agencies or service providers assigned to help the family navigate the reintegration process. It is not readily ascertainable whether the root cause of Father's resistance was a lack of desire or lack of trust, but the fact remains they were not working in concert to achieve a common goal. As we noted at the outset of this opinion, the CINC proceedings involving D.G., Jr., C.A., and U.G. were initiated first and were underway for several months at the time Di.G. was born. Yet despite DCF's and KVC's ongoing involvement with the family in relation to the other children, the parents intentionally concealed Mother's pregnancy with Di.G. from those agencies and attempted to pass the impending birth off as a surgery. The agencies only learned of the infant's arrival by virtue of a conversation with Mother's probation officer. This in turn begged the question of whether the parents sought prenatal care or had the necessary resources to care for an infant. History then repeated itself in short order with their efforts to conceal Mother's pregnancy of B.G. a year later. The parents welcomed B.G. during the ongoing CINC cases involving their four other children after repeatedly and adamantly denying that Mother was pregnant again. The pregnancies are not the issue. It is the persistent deceit and dishonesty on the part of the parents that reflects a failure of the agencies' efforts to get them on a better road to parenting their children. Without a transparent, free flow of information, and appreciation for why the dialogue is critical, Father deprived the agencies of the ability to adequately address his needs.

The parents were also required to obtain suitable housing. Even though the cases involving their children were rooted in Kansas, the couple secured a home in Missouri without first consulting the agencies or Missouri authorities to determine whether the children would ever be permitted to live there. The parents' unwillingness to work with the agencies regarding such a monumental issue in the case is concerning, particularly where Missouri denied two of the parents' previous ICPC requests.

Father implores us to view his case as one in which the agencies solely devoted their energy to assisting Mother with her substance abuse issues and were simply content to allow him to flounder alongside without offering individualized resources tailored to him. The difficulty with this argument is that aside from the housing and transportation issues that they would necessarily tackle as a married couple, Father is inextricably intertwined in Mother's drug dependency, particularly given the parents' mutual agreement to satisfy the reintegration requirements as a consolidated front. The agencies directed efforts and resources to the parents for 40 months. Mother and Father lived under the same roof throughout the case, sometimes in a single hotel room, yet Mother's addiction remained just as pervasive throughout the duration and gave rise to additional legal troubles. There is no evidence Father assumed an authoritative stance with respect to their case obligations and sought to help Mother break the cycle which erected a key hurdle in their quest to reunite their family. Rather, her penchant for dishonesty bled into his own behaviors and he also walked in lockstep with her position that she was not actually battling addiction, but diet pills were to blame for her consistently positive test results.

It cannot be denied that Mother's actions greatly affected Father's circumstances and the conditions of the family's home. That was the environment in which they lived. But it is equally true, as shown by the record, that DCF and KVC made reasonable efforts to rehabilitate the family through resources available to both parents. The agencies attempted to communicate with Father directly and he was largely non-responsive. Father

does not have the luxury of rebuffing their efforts and then laying the blame of failure at their feet. They also required that Father complete parenting classes. He declined to do so. Yet when Mother submitted her certificate falsely attesting to the fact she completed such classes, she also submitted a similar one on Father's behalf. KVC provided consistent efforts to assist the couple and address Mother's substance abuse issues, efforts which also served to benefit Father by improving his likelihood of reintegrating his children into the home he and Mother shared. But both parents were resistant to the agencies' involvement and to some extent, Father essentially enabled Mother to continue with her destructive lifestyle.

Finally, we have not overlooked the visitation component of Father's case. His willingness to engage with the children in that capacity and the positive behavior exhibited by them during their time together is a relevant, favorable factor. But truly, there has never been any question whether Father loved the children. That emotional tie between them simply is not enough to overcome the deficiencies that arose here due to the parents' unwillingness to cooperate with the assigned agencies to ensure the children also had the stability they were entitled to.

Again, Father told Leavell that to be a good husband he needed to be a stable provider and a strong support system for Mother. Unfortunately, the record bears out that he exhausted efforts to support Mother at the expense of his children's well-being. He was never able to strike a balance between those two responsibilities After over three years of waiting to be the priority, the children must be granted permanency. While some changes occurred with respect to the parents' physical residence and transportation, the more critical component—the unstable family dynamic, remained the same. Mother and Father shared the same home, sometimes in the form of a single hotel room, yet Mother's addiction remained just as pervasive from the beginning of the case to its end and consistently gave rise to other legal troubles for her. Neither parent took affirmative steps to fix what was broken and as a result, the face of the case that resulted in the children's

placement in State's custody was largely unchanged three years later. Under K.S.A. 38-2269(b)(8), a district court may terminate a parent's rights to his or her child if there is clear and convincing evidence of 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." This case illustrates that lack of effort to adjust the parent's circumstances and conditions of the home.

Finally, the district court also found that Father abused or neglected U.G. by failing to abide by the safety plan that the parents were required to agree to at the hospital for the infant to be discharged. On this matter the court made these remarks:

> "As to [U.G] in case 19JC253, he was born prematurely with a medical condition that affected his ability to swallow and eat. Hospital staff, including nurses and doctors, made efforts to provide needed medical services to the parents and to [U.G] so that [U.G] could be released from the hospital with the parents and so that [U.G] could also receive the medical care that he needed.
>
> "DCF worked with the parents on a safety plan so that [U.G] could be safely released to the care of his parents. Both parents rejected these reasonable efforts by failing to attend . . . scheduled medical appointments one week after [U.G] was released from the hospital and by not following the safety plan.
>
> "The Court finds that the reason and excuse given by mother under oath for missing the medical appointments is not credible. Then the parents, through father's communication, rejected home health services for [U.G] and father told medical staff not to contact the family again."

Father argues that "[m]issing a medical appointment and not cooperating with service providers may be grounds for removal and a subsequent child in need of care finding, but none of those facts on their own are physical, mental or emotional abuse or neglect." We disagree. Because of the significance of U.G.'s diagnoses, and the fact the child largely overcame the issues upon receiving proper medical care while in Sundberg's

custody, we find that the district court properly concluded that Father's actions surrounding these events constituted abuse or neglect pursuant to K.S.A. 38-2269(b)(4).

The trial transcripts and remaining portions of the record made available to us suggest that clear and convincing evidence supports the district court's findings about Father's fitness to parent his four children. Further, the district court's observations concerning Father's decision to move the family residence to Missouri despite two ICPC denials, his lack of independent engagement in reintegration efforts, and his acquiescence to Mother's drug use and dishonesty throughout the over three-year lifespan of the case, provide adequate support for the court's conclusion that Father's unfitness to parent his children was not likely to shift in a more positive direction in the foreseeable future.

Best Interests Findings

We also separately address whether the district court abused its discretion in finding that termination of the parents' rights is in the children's best interests. See *In re R.S.*, 50 Kan. App. 2d at 1116. After finding a parent unfit, a district court must determine whether termination of parental rights is "in the best interests of the child." K.S.A. 2020 Supp. 38-2269(g)(1). This assessment gives "primary consideration to the physical, mental and emotional health of the child" and involves weighing termination against the parent's continued presence. K.S.A. 2020 Supp. 38-2269(g)(1); *In re K.R.*, 43 Kan. App. 2d 891, Syl. ¶ 7, 233 P.3d 746 (2010). Because determining what is in a child's best interests only requires a preponderance of evidence and is inherently a judgment call, this court will only overturn a district court's best-interests determination when it constitutes an abuse of discretion. *In re R.S.*, 50 Kan. App. 2d 1105, Syl. ¶ 2. A district court exceeds the broad latitude it is afforded if no reasonable person could agree with its decision or if its conclusion turned on a factual or legal error. See 50 Kan. App. 2d at 1118.

Mother specifically claims that the district court disregarded the "ill effects" that the children would suffer from the decision to terminate her parental rights. We find the contrary to be true and note that the district court properly considered the effects that its decision would have on the children before ultimately concluding that termination was most appropriate under the circumstances. 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 at 1264. In doing so here, the district court took judicial notice of several criminal cases, which showed Mother's lengthy struggle with substance abuse issues. These cases and Mother's probationary status also established that Mother continued to use drugs throughout the life of this case. And together with the false documentation that Mother submitted during these CINC proceedings, Mother committed multiple "crimes of dishonesty"—including thefts and providing false information to law enforcement. The district court thus properly found that Mother had a pattern of deceptive behavior, which "served as a road block to this family reuniting."

For Father's part, he challenges the court's allegedly unsubstantiated conclusion that Father "would leave the parenting to Mother," and also contends the court neglected to afford any consideration to the physical, mental, or emotional needs of the children. As with Mother's claims, we find Father's are likely belied by the record. The court's ruling included the following observations:

> "The Court has given primary consideration to the physical, mental and emotional health of these children. Permanency for [C.A., D.G. Jr., and U.G.] has not been achieved in the more than three years that these cases have been impending. Permanency for [Di.G.] has not been achieved in the 22 months since her birth.
>
> "As stated by the children['s] Guardian Ad Litem, this Court finds that the children deserve permanency. And right now, they are all waiting on a shelf for their parents to bring them home.

"The Court has considered that the current placement where all four children reside together is a willing, adoptive resource for the children.

"This is a heartbreaking case. And without question, both parents love the children. The Court has considered the testimony of Ms. Johnson, the therapist for [C.A. and D.G. Jr.], and that these children need a structured and consistent routine and a permanent and consistent home. Ms. Johnson testified that in working with Placement, that she believes Placement can provide to the children what they need for their physical, mental and emotional health.

"The evidence presented raises considerable concern by the Court that mother is unable to address her own substance abuse and behavioral issues, so how will she also provide the children what they need for their physical, mental and emotional health.

"And that father will be unable to provide the structure and consistency the children need, and will leave the parenting to mother, as evidenced by the past history of the parties and mother's testimony that she is the parent to primarily care for the children in their household.

"The evidence also reveals that the children are bonded with Placement. And after 40 months, [U.G. and Di.G.] have lived with and been cared for by Placement for the entirety of their lives.

"When considering all evidence presented during this trial, the Court finds that the best interest of these children [is] served by the termination of both parents' rights."

Given our comprehensive review of the record, including Mother's unrefuted testimony that she was unable to work and would therefore be the primary caregiver, alongside the court's findings, we conclude the parents have failed to carry their burden to establish that the district court's decision concerning termination was unreasonable and one with which no reasonable person would agree. Accordingly, we have no basis to set aside its finding. *See In re R.S.*, 50 Kan. App. 2d at 1115-16.

CONCLUSION

We hold that the district court reached the appropriate conclusion regarding the parents' fitness to care for their children under K.S.A. 38-2269(b)(3), (b)(4), (b)(7), and (b)(8) and K.S.A. 38-2269(c)(3) for Mother and K.S.A. 38-2269(b)(4), (b)(7) and (b)(8) and 38-2269(c)(3) for Father because those decisions were supported by clear and convincing evidence. The district court's decision on termination of Mother's and Father's parental rights was also a sound exercise of the court's discretion and consistent with the children's best interests.

Affirmed.