KBA KANSAS ANNUAL SURVEY

FAMILY LAW CHAPTER

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I. INTRODUCTION

This chapter covers published and unpublished decisions of the Kansas appellate courts between March 1, 2022, and March 1, 2023.

II. PUBLISHED DECISIONS

A. Kansas Supreme Court

In the Int. of N.E., 316 Kan. 391, 516 P.3d 586, 2022 (2022): N.E. was four months old when the State took her into protective custody and placed her with a foster family. Over the next year and a half, the District Court held child-in-need-of-care (CINC) proceedings under the Revised Kansas Code for the Care of Children (Revised Code), K.S.A. 38-2201 et seq. During those proceedings, N.E.'s grandmother sought custody of N.E. When the District Court denied Grandmother's request, she appealed to a panel of the Court of Appeals, which dismissed the appeal for lack of jurisdiction. The Kansas Supreme Court granted Grandmother's petition to review the panel's jurisdictional holding.

The Revised Code's appellate jurisdiction statute, K.S.A. 38-2273(a), limits which District Court decisions may be appealed in a CINC proceeding. That jurisdictional statute, as construed under its precedent in *In re N.A.C.*, 299 Kan. 1100, 329 P.3d 458 (2014), bars appellate review of each of the District Court orders from which Grandmother has appealed. The doctrine of stare decisis warranted the Supreme Court's continued adherence to *In re N.A.C.* Thus, the Kansas Supreme Court affirmed the judgment of the Court of Appeals and dismissed the appeal for lack of jurisdiction.

B. Kansas Court of Appeals

Schwarz v. Schwarz, 62 Kan. App. 2d 103, 506 P.3d 950 (2022): Mother of two minor boys challenges the District Court's order giving her sons' paternal grandmother (Grandmother) visitation rights under K.S.A. 2018 Supp. 23-3301. First, the Court of Appeals found that there is subject matter jurisdiction because according the *Frost* case, provisions in article 23 such as K.S.A. 2019 Supp. 23-3303 show a legislative policy of preserving grandparent rights, and they are not limited to divorce cases. In this article, the Legislature has given grandparents all the tools needed to enforce their visitation rights, not limit them. Therefore, Grandparents may bring

visitation cases as independent actions. Second, the Court of Appeals affirmed the District Court's granting of Grandmother's visitation with the grandson.

Here, Grandmother alleged in her petition that she had a substantial relationship with her grandchildren, which included "babysitting the children and taking them on vacations [before Father's death.]" In her reply, Grandmother provided a laundry list of activities she had participated in with the grandchildren. Alternatively, Mother asked the court to allow her, as a fit parent, to decide whether and to what extent Grandmother should have visitation with the children. The GAL recommended a grandparent visitation plan which called for family therapy between Grandmother and the grandchildren for so long as the therapist deemed necessary and up to two hours of visitation per month, after which Grandmother would have visitation one Saturday or Sunday per month for up to eight hours. Grandmother agreed with the GAL's recommendation. Mother's proposed visitation schedule was that Grandmother should currently have zero visitation with the grandchildren and that Mother "may determine at some time that it is appropriate for the children to interact with Grandmother. Several of Mother's complaints related to conduct that predated Father's death and were not found sufficient at the time to deprive Grandmother of contact with her grandchildren. Under the circumstances, denying the grandchildren any access whatsoever to Grandmother is not a balanced response to Grandmother's conduct. It unreasonably denies the grandchildren the benefits of maintaining a relationship with Grandmother and with their paternal extended family. Thus, the appellate court found no error in the District Court's finding.

Int. of A.P., 62 Kan. App. 2d 141, 506 P.3d 988 (2022): Father argues that the notice he received by certified mail concerning the termination of his parental rights hearing was legally defective because someone other than him signed for its receipt. The State sent a copy of its motion to terminate parental rights and the notice of the hearing to Father by certified mail. The State's first envelope was returned undelivered with an indication that Father had moved to a different address. The State then sent the documents to the new address, again by certified mail. This time, the envelope was received—delivered to stepmother K.S.A. 2020 Supp. 60-303 does not include any restrictive requirement beyond that the envelope be "addressed to the person to be served" and result in a return receipt. Additionally, the legislature has specifically indicated that service by certified mail is sufficient. Thus, service was valid when the State sent Father the notice of the termination hearing via certified mail addressed to Father at his residence and obtained a return receipt. The fact that Stepmother appears to have signed the return receipt does not render that service defective.

Matter of Marriage of Lewis & Bush, 62 Kan. App. 2d 284, 513 P.3d 494 (2022): The parties divorced in 2012 and share one daughter, born in 2004. In May 2020, a physical altercation occurred between the child and Bush's wife, prompting Lewis to file a motion to modify parenting time and child support. Several months later, Lewis filed a motion to extend child support beyond the child reaching the age of majority as the child remained in high school. The District Court found a material change in circumstances had occurred and entered new orders as to parenting time and child support. While this case has been on appeal, the child reached the age of majority in April 2022. As a result, the court has lost jurisdiction to enter any

orders concerning custody and parenting time. Moreover, because Bush, as the appellant, has failed to supply the transcript of the trial, the court must reject his appeal of the District Court's child support orders. Even though Bush's child support obligation extends past the age of majority and into the child's 19th year of life (because she was held back a year in school), there is no provision extending the District Court's jurisdiction over parenting time even if Bush's child support obligation is extended. Therefore, without the trial transcript and the court not having jurisdiction over the child, it affirmed the District Court.

In re Parentage of E.A., 62 Kan. App. 2d 507, 518 P.3d 419 (2022): Denied interested party status by the adoption court in his grandson's adoption, D.A. filed this Kansas Parentage Act action. In this case, Grandfather claims to be the "father" of E.A. due to his extensive history of fulfilling that role in the young boy's life. During those six years, E.A. has lived in Grandfather's home as Grandfather's son. Despite this history, the District Court, relying on the adoption court's ruling, denied Grandfather's motion for summary judgment based on res judicata and collateral estoppel and dismissed the case. Grandfather appeals.

In accordance with a recent Supreme Court ruling, the Court of Appeals found that Grandfather's claim of paternity fails because it is untimely. He did not claim paternity at the time of the boy's birth. He made the claim later. The court concluded that a collateral attack upon an adoption proceeding should not be permitted in order to avoid inconsistent judgments of parentage from two courts. The resolution of such issues should be made in the adoption case. The Kansas Court of Appeals therefore affirmed the District Court's denial of summary judgment and dismissal of the case.

III. UNPUBLISHED DECISIONS

A. Kansas Court of Appeals

Ex rel. W.G. & A.G., No. 124,227, 124,228, 2022 WL 628141 (Kan. App. March 4, 2022) (Unpublished): Mother argues the District Court's journal entry of termination is improper, alleging it is inconsistent with the District Court's findings on the record at the termination hearing. Mother also argues the District Court failed to make a finding the conduct or condition rendering her unfit was likely to continue for the foreseeable future and that termination of her parental rights was in the children's best interests. At the termination hearing, the District Court explained Mother was unfit because of ongoing substance abuse issues, her failure to adjust her circumstances to meet the needs of the children, her limited contact with the children during the 16 months they were in an out-of-home placement, and her failure to follow through on several case plan tasks. Here, the journal entry was consistent with the District Court's oral findings, and Mother fails to demonstrate any requirement a civil journal entry must conform exactly to the District Court's findings on record. Further, during the pendency of the proceedings, Mother either failed to change her circumstances or make lasting progress in case plan tasks. Based on Mother's failure to make any meaningful change in her ability to properly provide care for the children, the District Court did not abuse its discretion in finding that termination was in the children's best interests.

Ex rel. K.G. & R.G., No. 123,995, 123,996, 2022 WL 815709 (Kan. App. March 18, 2022) (Unpublished): The Father of K.G. and R.G. appeals the District Court's termination of his parental rights. Father argues the District Court's finding of unfitness was not supported by clear and convincing evidence and that the District Court abused its discretion in finding that terminating his parental rights was in the best interests of the children. The appellate court found unfitness because Father was in prison for the criminal harm he inflicted upon K.G., there was a lack of contact with his children due to his imprisonment, and Father's drug free for 25 months was insignificant because he was under direct supervision the entire time. Further, a rational fact-finder could have found Father's circumstances were unlikely to change in the foreseeable future based on his extensive drug abuse history. Lastly, based on the letter from K.G.'s therapist recommending no contact with Father, R.G.'s letter begging for no contact with Father, and the testimony from Father's case managers, it was in the best interest of the children to terminate Father's parental rights.

In re Clark, No. 123,233, 2022 WL 881722 (Kan. App. March 25, 2022) (Unpublished): Nancy Clark, the ex-wife of Kenneth M. Clark, has appealed. Because the District Court made substantive legal mistakes and short-circuited the hearing process in arriving at the property division, the District Court was reversed and the case remanded for further proceedings.

Kenneth filed a divorce petition in 2002 and obtained an order requiring him to pay $1,247 a month in temporary child support and $1,600 a month in temporary maintenance. The order gave Nancy primary physical custody of the couple's five children and possession of the family residence, along with the obligation to pay the mortgage. Later in 2002, the District Court entered a decree of divorce dissolving the marriage but reserved rulings on permanent support and maintenance and the division of the couple's assets and liabilities. Kenneth never paid temporary child support or temporary maintenance and instead made the mortgage payments on the family home and covered other expenses. Kenneth described the switch as an "agreement" with Nancy. She disputes that characterization and contends she neither so agreed nor intended to relieve Kenneth of his obligation to pay temporary support and maintenance. The District Court found Kenneth had no present liability for the unpaid temporary maintenance and was entitled to a setoff against the unpaid temporary child support for the mortgage payments he had made. The Court of Appeals found the District Court made a substantial error deviating from the governing legal framework in concluding the unpaid temporary maintenance Kenneth had been ordered to pay Nancy was subject to the dormancy and discharge rules for judgments.

The statutory dormancy and cancellation provisions apply to final money judgments. The payments Kenneth owed Nancy were temporary—they continued until modified or until a final judgment settling the couple's property rights and fixing permanent maintenance (if any) was entered. In turn, a divorcing spouse's obligation for temporary maintenance does not become dormant or dischargeable under K.S.A. 2020 Supp. 60-2403(a)(1). Without an evidentiary hearing, as requested by Nancy, the District Court could not have fairly concluded Nancy accepted the mortgage payments as a complete substitute for the maintenance and support, meaning she had waived her right to pursue any delinquency. On remand, the District Court should hold an evidentiary hearing to determine if the parties had an agreement

about Kenneth substituting mortgage payments for his obligation to pay temporary maintenance and support and, if so, the scope of the agreement. Additionally, a divorcing husband and wife cannot agree between themselves to reduce or eliminate with court-ordered child support. Thus, the District Court could not have given legal effect to any purported agreement Kenneth and Nancy struck to substitute the mortgage payments for the temporary child support.

In re Farha, No. 123,483 123,696, 2022 WL 1052201 (Kan. App. Apr. 8, 2022) (Unpublished): Husband appeals the division of marital property in his divorce from wife. He claims the court inequitably divided their business interests and attributed incorrect values to their property in doing so. During trial, Farha used Oaks' financial statements as her evidence of the values of the parties' business interests. Oaks testified that he had provided the numbers on the financial statements "based on appraisals from certified appraisers." Pertinent to the division of their assets is the fact that Farha and Oaks both testified Oaks had a poor relationship with Farha's family. This is significant because members of Farha's family had a financial interest in five of the parties' business interest. Oaks agreed with Farha's valuation of six of the business interests, but Oaks disagreed on the value of the other business interests. He testified that based on their fair market value, but he did not have any documentation to support such values. The court totaled the assets awarded to Farha and Oaks and found a difference of $328,796 in favor of Oaks. The court ordered Oaks to make an equalizing payment to Farha in the amount of $164,398. Oaks appeals this finding.

Oaks argues the trial court assigned unreasonably high values to the assets it granted to Farha and unreasonably low values to the assets awarded to him. However, a property division need only be equitable, not equal. He also argues the financial statements did not provide substantial competent evidence for the trial court to reasonably value the parties' business interests. The trial court explained it valued these business interests based on the financial statements Oaks provided to the banks. Before trial, Oaks admitted (by court order because he failed to respond to discovery) that certain financial statements were true, correct, accurate, and submitted to the banks with the intent that the banks would rely on such information. At trial, Oaks acknowledged his admissions and testified that he had provided the numbers on the financial statements "based on appraisals from certified appraisers." Thus, the trial court had substantial competent evidence to value the business interests without expert testimony because Oaks' pretrial admissions made the expense of an expert unnecessary.

Additionally, a reasonable person could agree with the trial court's decision to divide the assets the way it did rather than split each evenly. Since Oaks had such a hostile relationship with Farha’s family, the court noted that the interests awarded to Farha were the Farha family businesses. The remaining business interests were awarded to Oaks. In awarding Clear Data to Oaks, the court noted that Oaks had at one point held a pivotal role in that company. To sum up, the trial court took a legally proper and reasonable approach to the division and evaluation of these business interests. It used the evidence presented by the parties to make its valuation and division decisions. Therefore, the appellate court affirmed the District Court’s divisions of the business interest of the parties. the court divided the business interests of the parties equitably and assessed values supported by evidence.

In re Marriage of Hardin, No. 123,789, 2022 WL 1052412 (Kan. App. Apr. 8, 2022) (Unpublished): This is an appeal from a divorce action between Logan Hardin and Chelsea Hardin. After hearing evidence, the District Court issued a ruling granting the divorce and dividing their marital property. Logan then sought to alter or amend the District Court's judgment, which the District Court denied. At Chelsea's request, the District Court also imposed a sanction against Logan for filing a frivolous motion. Logan now appeals, challenging the District Court's property division and the imposition of the sanction.

First, Logan claims the District Court erred as a matter of law by misunderstanding the statutory definition of marital property. It is well established that "[a] trial court is not obligated to award to each party 9 all property owned by such party prior to the marriage, or property inherited or received by gift during the marriage. Next, Logan contends the District Court erred as a matter of fact by misstating his testimony about the absence of a prenuptial agreement. Because Logan did not obtain a prenuptial agreement from Chelsea guaranteeing his right to keep all premarital property after a divorce, the law did not guarantee his demand to have his premarital contributions to the Wells Fargo account awarded to him. Logan also contends the District Court erred as a matter of law by not relying on the length of the marriage as a major factor in its property division ruling. For us to reject the District Court's division, Logan had to persuade us that no reasonable person would have acted as the District Court did here. Because the Court of Appeals could not make that finding, there was no abuse of discretion by the District Court with its property division order.

Lastly, the District Court found that a sanction was appropriate simply because Logan had not persuaded the District Court that the property division ruling should be reconsidered. The Court of Appeals disagreed with such a conclusion. If that were true, any unsuccessful motion to alter or amend the judgment of a District Court's ruling made under an abuse of discretion standard would be subject to sanctions. Thus, the Court of Appeals affirmed the District Court's property division but reversed the sanctions.

In re Soebbing, No. 124,003, 2022 WL 1053299 (Kan. App. Apr. 8, 2022) (Unpublished): Soebbing and Lesser divorced and agreed in their settlement agreement to make major decisions such as where the children attend school together. The settlement agreement also indicated that the parties agreed to equally split their children's post-high school education expenses, which included tuition, books, fees, and room and board. Lesser appeals the District Court's finding that he is responsible for his daughters masters and medical education expenses. The court found that the parties are bound by the broad language they used in making the agreement and found that due to the daughter reaching the age of majority, Soebbing no longer had a duty to communicate with Lesser regarding their children's education choices.

Ints. of L.B., 507 P.3d 561 (Kan. Ct. App. 2022) (Unpublished): Father of L.B. and O.B.—challenges the District Court's decision to terminate his parental rights. The court found that Father, was unfit based on several statutory factors, stemming in part from Father's disappearance, arrest, jail time, and potential criminal culpability while this case was pending. Further, the court found there was sufficient evidence presented at the termination hearing to support the District Court's conclusion that the circumstances that led to Father's unfitness were

unlikely to change for the foreseeable future and that terminating his rights was in the children's best interests. The appellate court affirmed the District Court's findings.

In the Ints. of I.O., No. 124,382, 2022 WL 1052702 (Kan. App. Apr. 8, 2022) (Unpublished): Mother appeals the District Court's decision to terminate her parental rights. Mother had placed I.O. in an unwholesome environment with relatives, had beaten her at least once, and had been repeatedly emotionally abusive of the child when she was supposed to be working toward family restoration. Thus, the evidence essentially demonstrated Mother made no substantive progress toward restoring the family during the two-and-half years this case had been on file. As a result, Mother was ill equipped to parent either child and offered no tangible indication she would be able to do so going forward. The appellate court affirmed the District Court's findings.

In the Interest of L.F., No. 124,157, 2022 WL 1122691 (Kan. App. Apr. 15, 2022) (Unpublished): Father appeals the District Court's termination of his parental rights, claiming his due process rights were violated by the State's failure to provide him with earlier personal service of process and the District Court's denial of his motion for a second continuance. The State personally served Father, while he was in custody, with process on May 11, 2021, about a week prior to the scheduled hearing, even though the State already served by publication from the Court's approval. Kansas law does "not require additional service to any party or interested party who could not be located by the exercise of due diligence in the initial notice of the filing of a petition for a child in need of care." K.S.A. 2020 Supp. 38-2267(b)(3). Here, the State met the statutory minimum requirements to ensure Father had notice and opportunity to prepare and present a defense to the proceedings and his due process rights were not violated. Additionally, by the time of his request for a second continuance, the case had been pending for 25 months—about a third of L.F.'s life. A reasonable person could conclude a second continuance was not in the best interest of the child. Thus, the district did not abuse its discretion in denying Father's request for a second continuance of the termination proceedings when such continuance was not requested to allow him to prepare for trial and would not be in L.F.'s best interest.

In re Parrish, No. 124,343, 2022 WL 1122692 (Kan. App. Apr. 15, 2022) (Unpublished): During the divorce proceedings, Mick Lerner and the Lerner Law Firm (Lerner) represented Pippen. After the District Court issued the divorce decree, but while various post-decree motions were pending, Lerner sought to withdraw from the divorce case. In response, Pippen filed a "motion to set and allow a reasonable fee pursuant to the KRPC 1.5(e) ," arguing the attorney fees Lerner claimed Pippen owed were unreasonable. Pippen filed this appeal, with Lerner as the appellee, seeking a ruling on whether the District Court had jurisdiction to address his motion for attorney fees. The Court of Appeals found that it lacked appellate jurisdiction under K.S.A. 2020 Supp. 60-254(b) to address the merits of Pippen's appeal because Lerner is not a party to the divorce action and because the District Court never entered a "final judgment" on any claim involving the reasonableness of the attorney fees.

B.R.M. v. M.B.W., No. 124,451, 2022 WL 1123666 (Kan. App. Apr. 15, 2022) (Unpublished): M.B.W., the mother of B.R.M, appeals the decision of the District Court changing primary residential custody of the child from her to R.D.M., the child's father. The

District Court found that M.B.W. regularly failed to both inform R.D.M. about the child's activities and solicit his input about decisions affecting her. The District Court found M.B.W. often didn't share information unless R.D.M. made specific inquiries and that lack of openness significantly impeded adequate coparenting. The District Court concluded that process would be more candid and cooperative and, thus, more effective if R.D.M. had primary residential custody of B.R.M. Thus, the District Court recognized and applied the statutory factors outlined in K.S.A. 2020 Supp. 23- 3203(a). Given that especially deferential standard and the lack of anything in the record patently rendering one parent markedly superior to the other, the Court of Appeals affirmed the District Court.

In the Interest of A.E., No. 124, 351, 2022 WL 1197329 (Kan. App. Apr. 22, 2022) (Unpublished): Father appeals the District Court's adjudication of his child, A.E., as a child in need of care (CINC) claiming that the child had adequate support and should not have been placed in custody of the State. Father's only contention is that A.E. was not a child in need of care "because [A.E.] was in a placement that the father could have arranged himself" and had "a very strong family support group on both her mother and her father's side that were never contacted." However, Father fails to identify the applicable standard of review for this dispositional argument. Additionally, Father, who was incarcerated at the time, did not dispute that Mother was unable to provide adequate care for A.E. or that he was unable to accept placement of A.E. Father did not dispute that Mother hit A.E. with a hairbrush and left bruises or that A.E. was afraid of Mother. Therefore, there was clear and convincing evidence to support the District Court's adjudication of A.E. as a child in need of care.

In re Swisher, No. 123,915, 2022 WL 1511254 (Kan. App. May 13, 2022) (Unpublished): Mother appeals the trial court's modification of parenting time. There is not sufficient evidence of a material change of circumstances and that there is not sufficient evidence of the best interests of D.S. to justify a change in Mother's parenting time. Here Father proposed reduced Mother's spring break time from a full week to a long weekend. Mother's parenting time over the summer would also be reduced and coordinated around D.S.'s activities, conditioning, schooling, practices and employment. The trial court held a nonevidentiary hearing on Father's motion to amend parenting time and granted the modification of parenting time. However, the child's summer conditioning football program is not sufficient evidence of a material change of circumstances and that there is not sufficient evidence of the best interest of the child to justify modifying Mother's parenting time. Thus, the trial court's order modifying Mother's summer parenting time with D.S. was reversed and remanded with directions to hold an evidentiary hearing.

In re S.A.P. & K.N.P., No. 124,426 124,427, 2022 WL 1511280 (Kan. App. May 13, 2022) (Unpublished): Stepmother petitioned to adopt her husband's two minor children, arguing that Mother's consent was unnecessary because Mother had failed to parent the children for the last two years. The District Court found Stepmother failed to meet her burden of proof. Stepmother appeals the District Court's dismissal of her petition. Although Mother failed to reach out to the children through either phone or email after the initial supervised visits in 2019, nor

pay child support, does not mean mother failed or refused to assume parental duties for the two-year period. Affirm.

In re O'Malley, No. 123,910, 2022 WL 1596980 (Kan. App. May 20, 2022) (Unpublished): Joseph O'Malley appeals the trial court's divorce decree. Joseph and Jalyn O'Malley signed a premarital agreement in 1999. The trial court ruled that Jalyn did not voluntarily execute the premarital agreement. The trial court also ruled that the agreement was unconscionable and unenforceable because Jalyn did not receive the advice of independent counsel and had no understanding of the legal significance of the document she was signing. The trial court also found that the Agreement did not adequately disclose joseph's financial obligations, as he only disclosed assets and no liabilities. Thus, the trial court did not enforce the premarital agreement when it divided marital property. Joseph argues that the trial court's division of marital property was incorrect because it was based on incorrectly excluding evidence of the premarital agreement. However, even if the Agreement was enforceable, the Agreement did not specify how any subsequently acquired property (during the marriage) was to be treated. Therefore, the trial court could divide marital assets not accounted for in the Agreement in a just and reasonable manner. The appellate court found that the District Court correctly identified and divided the remaining property.

In re S.G., No. 124,050 124,051, 124,052, 2022 WL 1701626 (Kan. App. May 27, 2022) (Unpublished): Mother, the biological mother of S.R.G., S.G., N.G., and M.G., appeals the District Court's decision terminating her parental rights. Mother argues only that the State did not give proper notice of the proceedings under the Indian Child Welfare Act (ICWA). The District Court found that the State used due diligence to identify and provide notice to all the tribes of which there was reason to know the Children may have been a member or were eligible for membership. Mother signed an affidavit on Indian heritage, attesting that she was an enrolled member of a federally recognized Indian tribe or Alaska native village and that the Children may be associated with the Apache tribe. The Apache Tribe of Oklahoma sent a letter stating that the Children and family members were not in the enrollment records for the Apache Tribe of Oklahoma. The State later sent a revised notice to more than 20 entities, including Apache tribes in multiple states. This notice had updated information on the Children's place of birth; information on S.G. and N.G.'s father—M.G.'s father was still unknown; all known information on the Children's grandparents, including Mother's biological mother, Mother's biological father, and father's biological mother; all known information on the Children's great-grandparents, including Mother's biological grandmothers and grandfathers. Again, every response the State received said that the Children were not enrolled or eligible for enrollment. Thus, the State used due diligence to identify and provide notice to all the tribes of which there was reason to know the Children may have been a member or were eligible for membership.

In the Int. of Z.J., No. 124,350, 2022 WL 1837015 (Kan. App. June 3, 2022) (Unpublished): Father appeals the termination of his parental rights to his toddler son, Z.J. Father argues the District Court's finding of unfitness was not supported by clear and convincing evidence. Ultimately, Father failed to maintain regular visitation, contact, or communication with Z.J., Father did not have his own residence, and that Father and Mother were involved in a

domestic disturbance shortly before the trial began, which caused Mother to be injured. There was sufficient evidence to support the District Court's finding that DCF made reasonable efforts to rehabilitate Father with Z.J. and that those efforts failed. Based on the record, it seems that Father spent most of the case either in custody or traveling around the country as part of his self-employed business. He did little to nothing to advance his case plan goals, seek drug treatment, or spend consistent time demonstrating his ability to parent. Because there was clear and convincing evidence to support this finding, the District Court did not err in determining Father was an unfit parent.

In the Interest of J.H., No. 124,714 2022 WL 1837020 (Kan. App. June 3, 2022) (Unpublished): Father appeals the termination of his parental rights to his 12-year-old son, J.H. Father argues the District Court's finding of unfitness was not supported by clear and convincing evidence. At the end of termination, Father had not completed drug testing, had no idea what medications J.H. was taking, never provided any paystubs or proof of employment, failed to have stable housing, failed to communicate with J.H. because he could not obtain three clean drug tests to see J.H., and he had no plans after his release from jail. Thus, failure to provide that the parent is presently fit and able to care for the child now or will be fit in the foreseeable future mandates the termination of parental rights.

Fox v. Ozkan, No. 123,643, 2022 WL 2188027 (Kan. App. June 17, 2022) (Unpublished): Father appeals an order to pay a share of his children's medical expenses and an award of attorney fees to his former wife. She raises two procedural bars to the appeal: that the appellate court lacked jurisdiction due to his defective notice of appeal, and that he has acquiesced in the judgment since he has already paid the full amount through an income withholding order. The issues addressed in Ozkan’s motion to reconsider, and raised on appeal, were the same issues addressed in this judgment. It was a motion asking the court to reconsider its underlying judgment. Thus, the court has jurisdiction to consider this judgment on any issues referenced in the order denying Ozkan’s motion to reconsider. Acquiescence to a judgment—which cuts off the right of appellate review—occurs when a party voluntarily complies with a judgment by assuming the burdens or accepting the benefits of the judgment contested on appeal. Although the appellate court need not strictly apply the acquiescence rule since the judgment at issue involves reimbursements for their children's medical expenses, it appears Ozkan did voluntarily comply with the judgment under these facts. Ozkan was given notice of the income withholding order. He admits he knew about the order. He filed nothing to stay the order. He did nothing to stop his payment of the judgment. Therefore, Ozkan voluntarily acquiesced in the judgment and cannot now appeal.

In the Interest of L.B., No. 124,538, 2022 WL 2392681 (Kan. App. July 1, 2022) (Unpublished): Mother of the minor child, L.B., appeals the termination of her parental rights. After Mother failed to appear at the termination hearing, the State of Kansas proffered its evidence regarding Mother and the District Court entered what it characterized as a "default judgment" against her. Mother contends her trial counsel was ineffective for failing to seek to set aside the termination order. Because there was no evidentiary hearing in the District Court on the issue of ineffective assistance of counsel, the appellate court reviewed the record to determine

whether relief can be granted using a de novo standard. An appellate court is not obligated to sua sponte remand for an evidentiary hearing if the record is insufficient to allow the claim to be addressed without further findings and the appellant has not requested a remand to the District Court. Here, both conditions—insufficiency of the record and lack of request for remand—apply. Given Mother's lack of request for remand and the insufficiency of the record on appeal, there is no basis for remanding this case to the District Court for further consideration of Mother's claim of ineffective assistance of trial counsel. Thus, the District Court is affirmed.

In the Interest of A.M., No.124,640, 2022 WL 2392689 (Kan. App. July 1, 2022) (Unpublished): Father appeals the termination of his parental rights to A.M. and the finding that he would remain an unfit parent for the foreseeable future. Throughout the case, Father consistently tested positive for drugs, missed drug tests, failed to provide proof of employment, and failed to obtain stable housing. Therefore, the record shows that Father made little to no significant progress on his case plan both before and after he was incarcerated. The time needed to ensure that he would be able to continue his sobriety into the foreseeable future was longer than would be reasonable given the time A.M. has been in out-of-home placement and her need for current permanence and stability. Thus, the District Court's finding is affirmed.

In the Interest of S.C., No. 124,374, 2022 WL 2543681 (Kan. App. July 8, 2022) (Unpublished): Mother appeals the District Court's order finding her unfit as a parent and finding that it was in the best interests of her three children to terminate her parental rights. Mother has engaged in a pattern of noncompliance with urinalysis testing since January 2020. There is nothing to suggest the caseworker, or any other KVC employee, did anything but try to assist Mother with reintegration. Despite the efforts made by KVC and caseworker, Mother failed to adequately progress through the reintegration plan because many of the problems that existed at the beginning of the case continued to exist at the time of the termination hearing. Further, the record demonstrates that Mother never had a job nor provided prof of any legal form of transportation. As a result, Mother would be unable to reintegrate the children into her home in the foreseeable future, especially when viewed in "child time." The evidence supported a finding that Mother was abusing drugs and refusing to seek help—even though she knew it was a prerequisite to having her children returned to her care. Therefore, the evidence supported that Mother was unfit and termination would be in the best interest of the children.

R.W. v. C.M., No. 123,469 2022 WL 2904029 (Kan. App. July 22, 2022) (Unpublished): : R.W. appeals from the denial of her petition for a protection from stalking (PFS) order. The District Court found that R.W. failed to meet her burden of proof and dismissed the petition. On appeal, R.W. first argues that the District Court erred by not issuing temporary orders based on the evidence presented. That issue was rendered moot by the issuance of the District Court's final order. The second issue is the question of whether the District Court can consider successive requests for temporary protection orders based on facts arising after the original petition is an issue of public importance capable of repetition. The District Court erred in finding that it could not entertain a successive request for temporary protection orders based on new facts. Because the Protection from Stalking Act is to be liberally construed, K.S.A. 2020 Supp. 60-31a05 should be broadly construed and it does not specifically forbid successive requests for temporary orders

unlike motions in K.S.A. 2020 Supp. 60-1507(c). Yet the error was harmless because the court did issue a final order. R.W. also argues that the District Court erred when it held that it could not sequester witnesses in PFS proceedings. This was an error because the power to sequester witnesses, including PFS proceedings, falls within the broad discretion of the District Court. But the error was harmless because there is no indication that any of the witnesses' testimony was impacted by the District Court's refusal to sequester. Finally, R.W. argues that she presented sufficient evidence to support her case. Many of the facts, however, are controverted, and the appellate court cannot reweigh evidence.

In re English, No. 124,408, 2022 WL 2904071 (Kan. App. July 22, 2022) (Unpublished): Nicole English now timely appeals the District Court's division of the marital estate. However, the District Court did not err in the manner it apportioned the martial estate. Nicole does not argue the division of property was unjust or unreasonable—she instead focuses on her constitutional and misconduct arguments. Yet, there is no evidence to suggest the District Court was biased, committed misconduct, or violated Nicole's rights when it divided the property. The District Court explicitly stated it considered the factors set out in K.S.A. 2021 Supp. 23-2802 to make the division of the marital estate. Nothing in the record suggests otherwise. Nicole also argues the District Court erred in the amount it awarded for spousal maintenance because it considered the length of their relationship as opposed to the length of their marriage. When considering whether to award spousal maintenance, the District Court may consider factors similar to those set forth in K.S.A. 2021 Supp. 23-2802(c). Here, the District Court considered all the factors involved in this case. Therefore, Nicole has failed to meet her burden to show the District Court abused its discretion in its spousal maintenance award.

In re Daon, No. 124,487, 2022 WL 3330127 (Kan. App., Aug. 12, 2022) (Unpublished): A divorced couple, Emmanuel Daon and Maria K. Stewart, disagree about the distribution of funds from two 529 education accounts they created to benefit their two sons. Stewart contends that money from the account for their older son, Alexander, should be distributed to him now that he has attained the age of majority and is attending college. Daon argues that he should retain the money as his own property and that he has sole discretion on how the money is to be spent. When the parties submitted this question to the divorce court, it was concerned about turning over a large amount of money to a young man, and ruled for Daon. Stewart appeals. The Court of Appeals held that Stewart's interpretation is correct and reversed the District Court. The parties agreed on the following provision: “Any § 529 or Uniform Gift to Minors Accounts existing for the benefit of the minor children are to be held in constructive trust for the children with Mother and Father distributing the funds as they agree to be in the children's best interests until such time as the funds belong to the children (i.e., Uniform Gifts to Minors Act accounts or reaching majority under the terms of the original conveyance).” The court of appeals found, that is a carefully drafted agreement and if the parties wanted to delay turning these funds over to their sons, they could have said so, but they did not. Thus, the Court of Appeals interpreted the contract to mean the money should be turned over to Alexander when he reaches the age of majority. Accordingly, it reversed the District Court.

In the Interest of K.H., No. 124,349, 2022 WL 3569319 (Kan. App. Aug. 19, 2022) (Unpublished): The appellant—the natural mother of three minor children— challenges the District Court's decision to terminate her parental rights. For the first time on appeal, Mother, who is Black, claims that the State's caseworkers violated her right to equal protection of the law because they disproportionately seek to terminate the parental rights of Black parents when compared with other racial or ethnic groups. The court correctly found Mother unfit based upon her mental or emotional illness that rendered her unable to care for the children's needs, her physical abuse on the children which resulted in abuse-related offenses and other crimes demonstrating her violence or aggression, her failure to complete or participate in multiple therapy sessions or take other actions to meet the case-plan goals, and her failure to make changes to allow her to support K.R.T's autism. Mother had the burden of convincing the court that her equal-protection claim "involves only a question of law arising on proved or admitted facts" or consideration that this claim "is necessary to serve the ends of justice or to prevent the denial of fundamental rights." Mother cites various sources opining that, on a national level, Black children are more likely to enter foster care and Black parents are more likely to have their parental rights terminated. But she has not shown this to be true in Kansas. Nor has the State had any opportunity to present evidence that may be tested and weighed by a finder of fact. Without this evidentiary submission and assessment, the record did not permit the appellate court to meaningfully review Mother's equal-protection challenge.

In re Martin, No. 124,721, 2022 WL 4115581 (Kan. App. 2022) (Unpublished): This appeal arises from a divorce proceeding and involves payment of the couple's credit card debts. The District Court ordered Kelli Martin to pay certain debts while the divorce was pending and in the final decree. Kelli did not comply with these orders, causing Mark Martin to file two motions for contempt for her violation of the temporary orders and another motion to enforce her payment obligations under the final decree. Mark testified he paid these debts to preserve his credit rating. He sought a judgment against Kelli to reimburse him for these payments and his attorney fees and asked the court to hold Kelli in contempt. The District Court characterized Mark's payments as a "gift" and denied his motion. However, the District Court lacked jurisdiction to modify the distribution of debt under its final property division order. Under the final decree, the court ordered Kelli to pay all the debt on the Barclay card, which was around $25,000, as well as the debt on the Sam's card. Mark testified that he settled and paid off the Barclay debt and he also paid off the Sam's card debt. By finding these payments were a gift and not requiring Kelli to reimburse Mark (as the final decree ordered her to do), the District Court significantly altered the division of debts under the divorce decree, effectively shifting this debt to Mark. As a result, this action was a modification of the decree, which the court had no jurisdiction to make. The court also erred in not entering a judgment against Kelli for Mark's payments on the Barclay and Sam's card. Thus, the appellate court reversed the District Court's decision and remand to reconsider its ruling on the contempt issue.

In the Ints. of K.M. & T.C., No. 124,825, 2022 WL 4281996 (Kan. App. Sept. 16, 2022) (Unpublished): In 2018, District Court adjudicated K.M. and T.C. as CINC and removed the children from Mother's custody due to mother testing positive for methamphetamines, marijuana, amphetamines, and PCP. The family was reintegrated in 2019 but the children were

removed three months later due to a domestic violence issue with one of the children's father. In 2021, the Court found that the best interest of the children demanded termination of Mother's parental rights. The Court of appeals affirmed the finding that Mother's termination was in the best interest of the children based upon the evidence provided by the five witnesses the State presented at trial. The court found mother's termination of parental rights was supported by clear and convincing evidence and not an abuse of discretion due to mother failing to make meaningful progress toward completing her reintegration tasks, such as providing liable transportation for herself and her children, showing commitment to address her considerable mental health issues, proving the ability to care for her child that requires higher-than-average care. Affirm.

In re Marriage of Williams, No. 123,395, 2022 WL 4281725 (Kan. App. Sept. 16, 2022) (Unpublished): Husband and Wife were divorced in 2012 and Husband was ordered to pay $2,000 per month in child support. During the years of 2015, 2016, and 2017, Husband earned $700,000 in additional income over the course of three years and failed to report the significant change in circumstances. In 2018, Husband's income decreased and he filed a Motion to modify child support. During discovery it became apparent that Husband failed to report his income increase over the previous three years. The District Court issued sanctions on the Husband equal to what he should have paid in child support during those three years and calculated that number using an extended-income formula. Husband appealed the sanctions arguing the Court's ability to impose those sanctions and the legality of the sanctions. The Court of Appeals affirmed the District Court's decision based on Guidelines section V.B.1. which state that Kansas law imposes an affirmative obligation to notify any changes in financial circumstances. (2022 Kan. S. Ct. R. at 131). Additionally, the Court emphasized that the District Court did not order retroactive child support, but rather the Court imposed sanctions. Lastly, the Court emphasized the validity of the sanctions by pointing to the fact that District Courts have broad discretion when imposing sanctions and may use whichever formula to calculate appropriate sanctions.

In re Parentage of A.K., No.124,288, 2022 Kan. App. LEXIS 35 (Kan.App. Sept. 16, 2022) (Unpublished): A.M. and K.K. began a four-year romantic relationship when they were minors. The two young women started living together. In early 2013, K.K. had an affair with W.S. and became pregnant. K.K. gave birth in November 2013. A.M. and her mother were present in the room at the birth, and A.M. cut the umbilical cord. A.M. took time off from work to be with K.K. and the baby following the birth. A.M. referred to the child on Facebook as "[m]y girlfriend's and I['s]" child. The child was given A.M.'s last name on the original birth certificate. No father was listed on the birth certificate. A.M. said she was not permitted to sign the birth certificate because she was not biologically related to the child. The parties later ended their relationship in 2015.

K.K. met Q.K. when the child was just over a year old. In 2016, K.K. had a son with Q.K. They moved in together and married. Q.K. is not biologically related to the child that is the subject of this case. He did not meet the child until she was about 18 months old. K.K. started temporarily denying A.M. access to the child in 2015 for a few days to two weeks at a time. Then, in January 2018, K.K. stopped A.M.'s visitation with the child. Also in 2018 K.K. and

Q.K. changed the child's last name on her birth certificate in Missouri and they added Q.K. on the birth certificate as the child's father. Q.K. prepared a petition for a stepparent adoption of the child but did not file it. In March 2018, A.M. petitioned the District Court for a determination of parentage. The District Court found that A.M. did not create a presumption of parentage. A.M. appealed and the Court of Appeals remanded for reconsideration of A.M.'s parentage.

The District Court here, on remand from the Kansas Court of Appeals, found circumstances had created two conflicting presumptions under the Act. First, the petitioner, A.M., had established a presumption of parentage based on the circumstances before and after the child's birth. Second, the District Court found that Q.K., the birth mother's husband, had established a presumption of parentage because after the child's birth, he married the child's birth mother and, with his consent, he was named as the child's father on the child's Missouri birth certificate. And the child has been living with him as part of his family since his marriage.

The court weighed the presumptions, considered the circumstances, and held that Q.K. had the weightier presumption. The court decided that it was in the child's best interests to hold that Q.K.'s presumption prevailed. The Kansas Parentage Act recognizes claims of parentage, not only based on genetics but also based on a child's circumstances. These circumstances give rise to statutory presumptions of parentage, and sometimes two presumptions can conflict. In a case of conflicting presumptions, a court must decide which presumption is based on weightier considerations of policy and logic and account for the best interests of the child. The District Court did exactly what the Act calls for—to weigh conflicting presumptions and rule for the prevailing party. The Court of Appeals found no error by the District Court and affirmed.

Matter of Marriage of Holliday, No. 124,116, 2022 WL 4391026 (Kan. App. Sept. 23, 2022) (Unpublished): The parties divorced in 2009 and the court held that the wife was entitled to half of the husband's retirement account. The divorce decree stated that "A QDRO shall be prepared by the wife to effectuate this division within 60 days of the filing of this decision." The wife never filed a QDRO. 12 years later in 2021, husband retired and moved to extinguish wife from the judgment for failing to file a QDRO or renewal affidavit. In return, the wife mailed the decree to KPERS. At trial, a staff attorney for KPERS testified that because KPERS is not governed by ERISA, they did not need a QDRO and only needed a divorce decree to divide the account. The trial court held that because KPERS is a retirement plan not governed by ERISA, which requires a QDRO, a QDRO was not necessary and the account should be split evenly. The husband appealed. However, a retirement account can become dormant and expire with the passage of time. A judgment is active for 5 years, if nothing is done with it, it becomes dormant. Once it is dormant for 2 years, and it is not revived, the judgment debtor can seek its release under K.S.A. 60 -2403(a)(1). If this is satisfied, the court must release judgment. Here, because wife did not take action for 12 years, the judgment became dormant and expired. Thus, the court of appeals found that wife could not collect husband's retirement.

In the Matter of the Marriage of Shafer., No. 124,529, 2022 WL 4390875 (Kan. App. Sept. 23, 2022) (Unpublished): Wife appealed the District Court's denial of her motion seeking clarification of the decree it entered in 2006 following her divorce from her former husband. The parties divorced in 2005. The District Court filed the divorce decree in 2006 which stated that the

wife would receive a share of Husband's Army Reserve and National Guard retirement pay, equal to "50% of months of marriage divided by the total months in the Reserves [and Guard]." However, the precise length of the parties' marriage was not readily discernible from either the decree or the division of assets. Husband retired from the service around 15 years after the divorce was finalized and wife provided copies of the decree along with the court's division of assets to the Army Reserve accounting services. The accounting services denied her request because neither document identified the length of time, in months, that the parties were married. Wife filed a motion for clarification requesting that the court refine its earlier order by identifying the number of months the parties were married. The court found that K.S.A. 60-260(b) required her to bring her request within one year of entry of the judgment. Because the decree addressing the division of Husband's military retirement pay contained an incomplete calculation mechanism, the order was not susceptible to enforcement and was therefore not subject to dormancy. The District Court erred in classifying the decree as a final judgment subject to dormancy and was without jurisdiction to rule on the wife's motion. The Court of Appeals reversed and remanded for the wife to have a hearing where the merits of her claim can be afforded proper consideration.

Ints. of K.L., No. 124,873, 2022 WL 4391222 (Kan. App. Sept. 23, 2022) (Unpublished): Appeal arises from an order under the Revised Kansas Code for Care of Children (KCCC), K.S.A. 38-2201 et seq., terminating the parental rights of Mother as to K.L. and T.L., Father as to T.L., and unknown fathers of K.L. Parties claim that the fathers were denied due process rights, that the court erred in applying the statutory presumption under K.S.A. 38- 2271(a)(5) (parental unfitness). Father and Mother were married at the time of K.L.'s birth and Father signed the birth certificate as K.L.'s father. Eight months after K.L. was born and placed in DCF custody, Father questioned K.L.'s paternity. In September 2020 the District Court ordered genetic testing to determine whether Father was K.L.'s biological father. After testing revealed that Father was not K.L.'s biological father, the court appointed LeBlanc to represent all unknown fathers of K.L. Mother then identified A.C. as a potential biological father for K.L. The next month, the court conducted a permanency hearing. LeBlanc appeared on behalf of unknown fathers. No unknown fathers appeared at the hearing. On the day before the hearing, LeBlanc filed a motion for a continuance because his wife was in labor. Instead, on the day of the hearing, LeBlanc's law partner, Charles Peckham, appeared. At the hearing, Peckham appeared and stated that no fathers have appeared, and stated that the potential father has said he does not wish to raise the child and believes it is in the child's best interest to be adopted. The court then dismissed Mr. Peckham from the hearing because his representation was no longer needed at the hearing.

The appellate court found that the fathers were not denied due process because they were noticed by publication and there was no objection by counsel for the State's proffered evidence at the hearing. The appellate court affirmed the finding of parental unfitness and found that the one-year time frame under K.S.A. 38-2271(a)(5) is not a deadline that the court must adhere to in every CINC case because meeting it does not automatically trigger a termination of parental rights. Lastly, the parents argued that there was insufficient evidence for termination of their parental rights. The court found that the State had proven Mother and Father were unfit based on the statutory factors in K.S.A. 38-2269(b)(3), (b)(7), and (b)(8).

Ints. of K.R., No. 125,054, 2022 WL 4588399 (Kan. App. Sept. 30, 2022) (Unpublished): At the end of an evidentiary hearing, the Sedgwick County District Court found A.A.'s three children to be in need of care and ordered they remain in the legal custody of the Kansas Department for Children and Families (DCF), as a local social service agency implemented a plan for reunification of the family. A.A. has appealed the ruling and asserts insufficient evidence supports the District Court's determination. The Court conclude the record establishes appropriate statutory grounds for the District Court's conclusion as to each child and affirmed. In 2021 all three children were removed from the home when 2 or the 3 minor children (age 5 and age 10) tested positive for methamphetamine. A.A.'s youngest child, A.S. who was five years old, had significant developmental delays, was nonverbal, and not potty trained. Further, physicians testified that A.A. was engaging in medical child abuse, which involves a parent or caregiver repetitively seeks unnecessary and often invasive examinations or treatments for a child despite assurances from healthcare providers the child requires no such care. Additionally, The State established that A.A. refused to take at least two drug tests after her children were removed to DCF's custody. At the hearing, A.A. testified that she did not use drugs or alcohol and offered no explanation as to how A.S. or T.A. might have tested positive. Thus under, K.S.A. 38-2202(d)(1), (2), (3), and (11) the appellate court found that all three children were deemed to be children in need of care.

Matter of Adoption of H.S., No. 124,583, 2022 WL 4587619 (Kan. App. Sept. 30, 2022) (Unpublished): Father appealed the trial court's decision to terminate his parental rights and allow N.P. (Stepfather) to adopt H.S. (the child). Father argues that the trial court erred in concluding that he failed to assume the duties of a parent for two years immediately preceding the filing of the adoption petition. Also, Father contends that the trial court erred when it failed to address interference with visitation and contact by S.P. (Mother) and erred in its factual findings. In 2014, Mother married Stepfather and moved to Kansas with the child. The California court granted Father monthly parenting time, with Mother to pay Father's travel expenses. Father never paid for child support and had only 50 visits with the child from 2014 to 2017 in Kansas. Under K.S.A. 2021 Supp. 59-2136(h)(3), the trial court may presume the failure or refusal to assume parental duties listed at (h)(1)(G) if the father has knowingly not paid a substantial portion of his court-ordered child support for those two years when financially able to do so. Father did not pay child support for more than two consecutive years immediately preceding when Stepfather filed his adoption action and argued that he had an arrangement where he would pay his own travel expenses instead of paying child support, but this was never supported by evidence. Further, Father's contact via phone calls was insufficient to rebut the presumption and the court found there was not sufficient evidence showing alienation by Mother. Thus, under K.S.A. 2021 Supp. 59-2136(h)(3), the court affirmed the District Court's decision to terminate Father's parental rights.

In re Parentage of C.R., No. 124,696, 2022 WL 4588547 (Kan. App. Sept. 30, 2022) (Unpublished): P.R. was incarcerated when C.R. was conceived and born but was released within a few months after C.R.'s birth. Mother, O.B., knowingly and voluntarily named P.R. on C.R.'s birth certificate and gave him P.R.'s last name, and P.R. established a parental relationship with the child. P.R. is also the natural and legal father of two older children he shares with O.B.

During a hearing in 2017, despite P.R. acknowledging on the record that he was not C.R.'s biological father, the District Court determined P.R. to be C.R.'s legal father because of their established relationship, the intention of O.B. regarding that relationship, and that O.B. and all the children lived with P.R.'s parents for a period including the time surrounding C.R.'s birth. Three years later, J.P. claimed to be C.R.'s known biological father, with 2 genetic testing to prove as much, and although he had intermittent contact with C.R. from shortly after his birth to the date of intervention, J.P. contended he had received no notice of the earlier paternity proceeding. The District Court set aside its earlier order, conducted a second paternity hearing, and determined J.P. to be C.R.'s legal father. P.R. appeals. Under K.S.A. 2021 Supp. 23-2211(a) the first paternity order was void for lack of subject matter jurisdiction because J.P. as the known, presumed biological father of C.R. was not made a party to the paternity action. The District Court's determination of J.P.'s paternity was an abuse of discretion because it failed to properly employ the standard set forth in K.S.A. 2020 Supp. 23-2208(c) to the competing presumptions of paternity, and did not fully apply the appropriate legal standard to the facts presented. Thus, the appellate court reversed the District Court's decision to designate J.P. the legal father of C.R. and remands the matter to consider the policy aspect of K.S.A. 2020 Supp. 23-2208(c) and the factors for the best interest of the child.

Int. of G.P., No. 124,862, 2022 WL 5290300 (Kan. Ct. App. Oct. 7, 2022) (Unpublished): Father of G.P. appeals from the District Court's termination of his parental rights, arguing the District Court's finding of unfitness was unsupported by the evidence. The evidence reflects clear and convincing evidence to support the District Court's order to terminate Father's parental rights. The court of appeals affirmed. Father had a drug abuse issue and failed to make reasonable progress toward reintegration with the child. Thus, the District Court properly determined Father was unfit and his conduct or circumstances causing his unfitness were unlikely to change in the foreseeable future; therefore, termination of Father's parental rights was in G.P.'s best interests.

In re D.S., No. 124,563, 124,264, 124,565, 2022 WL 12144472 (Kan.App. Oct. 21, 2022) (Unpublished): Mother and Father appeal the termination of their parental rights to their three children, all of whom share the initials D.S. Mother claims the District Court erred when it moved forward with the termination hearing rather than continue the matter indefinitely to await her psychological stabilization following her involuntary commitment to Osawatomie State Hospital. However, a continuance may be granted only when it is in the best interests of the children to do so, and termination cases must be resolved in "child time" not "adult time." Here, the children were not in the parent's custody or under their care for nearly two years. During that time, neither parent made meaningful progress in their respective reintegration plans. A presumption of unfitness manifests when a parent's child has been in an out of-home placement under a court order for a cumulative total period of one year or longer and the parent has substantially neglected or willfully refused to carry out a reasonable plan, approved by the court, directed toward reintegration. The appellate court found that the District Court did not err in denying Mother's request for a continuance and that there was no abuse of discretion in the District Court's decision to terminate Mother's and Father's parental rights and affirmed its judgment.

In re H.M., No. 124,961, 2022 WL 12121175 (Kan.App. Oct. 21, 2022) (Unpublished): Mother appeals the District Court's decision terminating her parental rights over H.M. Mother claims the District Court's findings of her unfitness are not supported by clear and convincing evidence. She also claims that termination of her parental rights was not in H.M.'s best interests. The appellate court affirmed that Mother was unfit based on her history of using methamphetamine, and despite reasonable efforts by SFM Mother failed to exert the necessary effort with respect to her drug use. Further, a rational fact-finder could find it was in H.M.'s best interests to terminate Mother's parental rights based on her drug use, multiple relapses, and H.M.'s positive drug test for methamphetamine.

In the Interest of A.J., No. 124,854, 2022 WL 15549863 (Kan.App. Oct. 28, 2022) (Unpublished): the natural father of A.J. challenges the District Court's decision to terminate his parental rights. The District Court found Father, was unfit to parent A.J. and would remain unfit for the foreseeable future because he had not adjusted his circumstances to care for his daughter. These findings were largely rooted in the fact that Father, who has an extensive criminal history, was arrested for and charged with additional crimes while this case was pending. However, while Father's pending charges and criminal history may provide evidence of current unfitness, they do not, by themselves, show by clear and convincing evidence that Father's unfitness is unlikely to change for the foreseeable future. Father might be convicted of the charges and sentenced to a prison term, as the District Court apparently assumed would occur. But Father might also not be convicted of those charges after a trial, or the charges might be resolved through a plea or in some other way. Thus, the unknowns surrounding Father's pending charges means that the State had not shown by clear and convincing evidence that Father's lack of effort—a result of his being in jail—was unlikely to change in the foreseeable future. The District Court erred and the Court reversed and remanded the District Court's ruling.

Ex rel. D.J., No. 125,125, 125,126, 125,127, 2022 WL 16704692 (Kan.App. Nov. 4, 2022) (Unpublished): The District Court found by clear and convincing evidence that Mother was unfit, that her unfitness was unlikely to change in the foreseeable future, and that termination of Mother's parental rights was in the children's best interests. Mother appeals. Although Mother completed court orders during the 18-month pendency of the children's cases, she did not make any lasting progress in the area that presented her biggest hurdle in parenting her children, which was her sobriety. Mother failed to show a concerted willingness to address her addiction issues. Mother's long history of substance abuse, coupled with her use of methamphetamine only a week before trial, showed that she was either not willing or not able to comply in the foreseeable future. Thus, the District Court properly terminated Mother's parental rights.

L.S. v. C.S., No. 124,943, 2022 WL 16842723 (Kan.App. Nov. 10, 2022) (Unpublished): The District Court granted L.S. and her daughter, W.S., final protection from stalking (PFS) orders against each of L.S.'s parents, C.S. and E.S., who are both residents of Alabama. After fleeing her parents' house in January 2021, L.S. moved across the country to Montana. Her parents filed legal actions in both Alabama and Montana to gain custody of their granddaughter and to force their daughter to return home. But L.S. and the child soon left Montana and moved

to Kansas. Once in Kansas, L.S. filed PFS petitions against each of her parents, alleging they were engaging in a continual course of conduct and abusing the legal system by trying to force her back to Alabama. C.S. and E.S. filed limited appearances to argue that the District Court lacked personal jurisdiction over them because none of the alleged acts occurred in Kansas and they had no contact with the state. The District Court found it had personal jurisdiction over the defendants and granted a final PFS order against each parent. C.S. and E.S. appeal, challenging the District Court's finding of personal jurisdiction and the sufficiency of the evidence supporting the PFS orders. Here, the court lacked personal jurisdiction over C.S. and E.S. because all conduct alleged occurred in Montana or Alabama before L.S. moved to Kansas and the allegation of injury by an out-of-state defendant to a resident in Kansas does not necessarily establish minimum contacts. Therefore, the District Court lacked personal jurisdiction over the nonresident defendants under the Kansas long-arm statute, K.S.A. 2021 Supp. 60-308, and their ruling was reversed and the final PFS order was vacated and voided for lack of personal jurisdiction.

In re Marriage of Holmes and Gagel, No. 125,035, 2022 WL 17072290 (Kan. App. Nov. 18, 2022) (Unpublished): On appeal, Holmes contends that the District Court erred by not terminating or decreasing his agreed-upon maintenance obligation. The parties voluntarily entered into a property settlement agreement that addressed the issue of maintenance. At the time the parties entered into the agreement Holmes was temporarily unemployed, so the parties used his income prior to filing. On May 2019, the District Court entered a decree of divorce. In the agreement, the parties agreed that Holmes would pay spousal maintenance in the amount of $1,900 per month until one of the first occur: either parties' death; Gagel's remarriage; or October 30, 2023. In 2020, Holmes filed a motion to terminate maintenance, or in the alternative to decrease maintenance because there was a material change in circumstances such as his monthly income decreased, Gagel's income increased, and Gagel was cohabitating with her boyfriend. The District Court denied Holmes' motion. The Court found there to be substantial competent evidence that Holmes' decrease in income was only by 3% and that Gagel's income was proof maintenance was serving its purpose to allow her the ability to provide for herself. Thus, The appellate court affirmed and found there to be substantial competent evidence that none of three events occurred in the agreement.

Ex rel. A.S., No. 124, 719 2022 WL 17174556 (Kan.App. Nov. 23, 2022) (Unpublished): Mother appeals the termination of her parental rights for her two children. She claims that there is insufficient evidence to support the District Court's finding that she is unfit and the court erred when it concluded that it is in the best interests of the children to terminate her parental rights. Mother has engaged in drug use for a majority of the case and had not maintained sobriety for longer than three months. Once the pandemic limited her in-person contact with St. Francis, she could not sustain contact with the child and from 2020 -2021 she failed to submit a single negative drug test or make progress on her case plan. Ultimately, Mother's steps to work on her case plan do not justify reversal of the District Court's decision.

In re E.E.B., No. 124,937, 2022 WL 17172068 (Kan.App. Nov. 23, 2022) (Unpublished): E.K. wanted E.E.B. vaccinated against COVID-19 in late 2021; A.B. did not. Called upon to

settle the conflict, the District Court relied on a dispute resolution mechanism the parents had previously accepted requiring them to resolve any disagreements over vaccinations, including for COVID-19, by deferring to the recommendation of the child's regular pediatrician. The District Court ordered E.E.B. be vaccinated, consistent with the parents' accepted process and the physician's recommendation. A.B. now challenges the ruling as a violation of her rights protected in the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

Here, parent coordinator made the following recommendation "For all vaccinations, including COVID-19, the parties should follow the recommendations of the existing primary care provider. If the parties disagree about what the primary care provider says, they should ask for that in writing and provide it to Parent Coordinator." Neither party objected to the recommendation on vaccinations. Two weeks after receiving the parenting coordinator's recommendations, E.K. filed a motion to have E.E.B. vaccinated against COVID-19, citing the position of the child's pediatrician favoring vaccination. A.B. filed a response which provided her own risk-benefit assessment of vaccinating E.E.B. that differed from the pediatrician's. The court granted E.K.'s motion to vaccinate the child. A.B. appeals. Here, the outcome of the court was not a product of a governmental directive independently mandating that E.E.B. be vaccinated; rather, the court used the reasonable method that the parties had already accepted for themselves to resolve any disputes they might have about vaccinating the child. By deploying an existing dispute resolution mechanism the parents adopted, the District Court neither intruded on nor impermissibly compromised their constitutional rights. Deferring to the pediatrician did not deprive A.B. of a liberty interest requiring additional procedural due process protections. The District Court's ruling is affirmed and there is no constitutional error.

In re S.M., No. 124,948, 2022 WL 17174500 (Kan.App. Nov. 23, 2022) (Unpublished): Mother appeals the District Court's order finding her an unfit parent and finding it in the best interest of her child, S.M., to terminate her parental rights. There was clear and convincing evidence presented to the District Court that Mother has mental health issues that render her unable to care for S.M. Further, DCF has had custody of S.M. for his entire life and during that time Mother had to be admitted to a psychological hospital twice and had been admitted to psychological hospitals more than 20 times in the previous 15 years. Due to Mother's mental health, she failed to progress with visitation. As a result, Mother is unable to reintegrate S.M. into her home in the foreseeable future viewed in "child time." Therefore, the District Court did not err on finding Mother unfit and that her conduct or condition is unlikely to change in the foreseeable future.

Int. of J.M., No. 125,103, 2022 WL 17545606 (Kan. App. Dec. 9, 2022) (Unpublished): Father appeals the District Court's finding that he is unfit and erred in finding termination of his parental rights were in the best interest of the child, J.M. During the two years the CINC case was open, Father only had one negative hair follicle test with the reaming being either positive or refusal, and inconsistent UA results. The District Court found Father to be unfit under K.S.A. 38-2269(b)(3),(5),(7), and (8). Specifically, the District Court found: Father's drug use rendered him unable to care for J.M.; he had a felony conviction; Father lacked effort to address his drug issues despite Saint Francis' reasonable rehabilitation efforts; and Father lacked effort to adjust his

circumstances to meet J.M.'s needs. The court of appeals affirmed the determination that Father was unfit and that termination was in the best interest of J.M. because of the Father's consistent drug use, as seen through his inconsistent UA tests and positive hair follicles, and failure to make an effort to address his drug use, which cast doubt on the Father's ability to give J.M. stability.

In re M.T., No. 125,230, 2022 WL 17545605 (Kan. Ct. App. Dec. 9, 2022) (Unpublished): Father appeals the District Court's findings to terminate his parental rights and finding that he is unfit. During the year and half that this CINC case was open, Father was incarcerated for criminal threat and harassment by telephone to the Mother and the SFM caseworker, and again later incarcerated for violation of probation, which meant he spent only 2-3 months not incarcerated while the CINC case was pending. The District Court found Father unfit under K.S.A. 38-2269(b)(5), (7), (8), and K.S.A. 38-2269(c)(2) and (3). The court of appeals affirmed finding that there was no evidence Father had a strong relationship with M.T. or tried to develop one when he was not incarcerated, that his unfitness due to his felony convictions would continue into the foreseeable future, that SFM's reasonable efforts failed and Father failed to carry out a reasonable parenting plan, he had no plans and was unwilling to create a stability for M.T., and that termination was in the best interest of the child.

In re Lucas, No. 125,233, 2022 WL 17729317 (Kan.App. Dec. 16, 2022) (Unpublished): James Lucas appeals from the District Court's decision to deny his motions seeking sanctions under K.S.A. 2021 Supp. 60- 211(c) against his ex-wife, Pamela Lucas, and her attorney, Ellen Goldman. He also appeals from the District Court's decision to grant his ex-wife's request for sanctions against him. The District Court entered its judgment in the divorce action on August 16, 2019 and James later filed a motion for sanctions against Pamela in regards to the divorce action on August 16, 2021. The District Court found that James' motion for sanctions was untimely and ordered sanctions in the amount of $1,057.50 to be entered against James because his motion for sanctions against Pamela was filed for an improper purpose and because a good faith basis did not exist for the filing. On appeal, the Court concludes that the District Court did not err in determining that James' requests for sanctions were untimely and that the District Court did not abuse its discretion in granting Pamela's request for sanctions in defending this matter. Based on the plain language of K.S.A. 2021 Supp. 60-211(c), the deadline for James to seek sanctions against Pamela or Goldman expired 14 days after the District Court entered its judgment in the divorce action on August 16, 2019. Here, the 14 days allowed by K.S.A. 2021 Supp. 60-211(c) passed nearly two years before he filed his motions seeking sanctions. Therefore, James' motion was untimely and the District Court is affirmed.

In re G.P., No. 125,111, 2022 WL 17953854 (Kan.App. Dec. 23, 2022) (Unpublished): Mother seeks to reverse the termination on appeal for two reasons: (1) She contends the District Court wrongly denied her motion for a continuance to retain private counsel to replace appointed counsel and (2) she contends clear and convincing evidence does not support the District Court's findings of her parental unfitness. During G.P.'s CINC case, Mother never suggested her appointed attorney was somehow deficient or unprepared for her termination hearing. Instead, Mother's only argument before the District Court was that she should be granted the continuance so she could hire private counsel to replace her appointed counsel. Because Mother never

suggested she had some justifiable dissatisfaction with her appointed attorney to support her continuance motion, she did not prove there was good cause to continue the hearing or that a continuance was in G.P.'s best interests. The Court affirmed that Mother is unfit based on her failed, missed, or tampering with many drug tests, her delay to complete a RADAC test, her inconsistently attended outpatient individual and group therapy as recommended by the test, and her continued use of illegal drugs and excuses for her illegal drug use. Additionally, nearly two years later, after her termination hearing was already underway, Mother's housing still contained drugs, drug paraphernalia, and multiple neglected animals and she substantially neglected to follow her reintegration case plan task of obtaining legal stable employment. Thus, Mother's serious, ongoing substance abuse and housing problems constituted clear and convincing evidence that Mother was currently, and in the foreseeable future, is unfit to parent G.P. and it was in G.P.'s best interests for the District Court to terminate Mother's parental rights.

In the Int. of I.S., No. 124,945, 2022 WL 17930285 (Kan.App. Dec. 23, 2022) (Unpublished): Father appeals the District Court's decision to terminate his parental rights to his son, I.S. Father claims that his trial counsel rendered ineffective assistance. He asserts that trial counsel failed to request a continuance at the termination hearing after he allegedly told Father one would be requested. If counsel had secured a continuance, Father argues he would have had more time to establish his ability to parent I.S. Father claims he tested positive for Covid-19 two days before the termination hearing, which he allegedly told trial counsel. In response, trial counsel allegedly told Father that a continuance would be requested and Father did not need to appear. Father cannot establish deficient performance based on the record. Instead, the record reflects that Father's trial counsel told the District Court Father had not been in contact, and Father had not given any instructions regarding how to proceed. Without any evidence to support his claim, he has failed to meet his burden of proof to establish his attorney's ineffectiveness. Father also cannot establish prejudice. Given Father's lack of effort in the case after I.S. was placed in DCF custody and after paternity had been established, it is anything but a foregone conclusion that any continuance would have been granted—particularly with no proof of Father's claimed health status. Therefore, father’s counsel was not ineffective and the appellate court affirmed the finding of terminating Father’s parental rights.

In re Parentage of M.F., No. 124,911, 2022 WL 17940783 (Kan.App. Dec. 23, 2022) (Unpublished): This is an appeal of an order that denied any relief to the petitioner, K.L., who seeks a court declaration of her parentage of a young girl, M.F. A close examination of the issues she raises reveals that K.L. is asking us to reweigh the evidence and reverse the trial court.

K.L.'s initial petition was denied by the District Court. K.L. appealed to the Kansas Court of Appeals and the District Court's decision was affirmed. Upon review, the Kansas Supreme Court reversed both courts and remanded the case to the District Court with directions to use the correct legal test. Upon remand, the District Court at first granted relief to K.L. but later reversed its order upon a motion for reconsideration filed by T.F., the birth mother of M.F. Now, K.L. appeals the District Court’s order.

After remand the District Court found that K.L. met her burden to show she notoriously recognized maternity of M.F. when she was born and established a presumption of paternity. The

court also found that T.F. could not rebut that presumption because T.F. was not married or cohabitating with another person during the pregnancy or when the child was born, no other person openly acknowledged their parentage, no decree establishing conflicting parentage was produced, no duty of another person to support the child was established, and T.F. consented to K.L.'s maternity and some degree shared parenting when the child was born. When T.F. moved for reconsideration she argued that she could rebut the presumption of maternity by presenting clear and convincing evidence that no such relationship existed, which the court agreed it had failed to analyze whether she rebutted the presumption by clear and convincing evidence.

If the party seeking a parent-child relationship succeeds, the burden shifts to the other party to rebut the presumption by clear and convincing evidence, by court decree establishing paternity of someone else, or by applying K.S.A. 23-2208(c), when there are competing presumptions. If the presumption is rebutted, the burden shifts back to the party seeking establishment of a parent-child relationship, who then has the burden of going forward with the evidence and proving a parent-child relationship by a preponderance of the evidence. The court must also be persuaded that the birth mother, at the time of the child's birth, consented to share her due process right to decision making about her child's care, custody, and control with the woman claiming parentage.

The District Court said that the great weight of the witness testimony supported T.F.'s claims that she made the decision to have a child and found T.F. more credible in her assertions than K.L. When viewed in the light most favorable to T.F., that finding is highly probable. K.L. essentially asked the appellate court to reweigh the evidence in her favor and find her more credible. Appellate courts do not weigh conflicting evidence or pass on the credibility of witnesses. Therefore, the Kansas Court of Appeals found that the District Court did not err by finding that T.F. rebutted K.L.'s presumption of parentage by clear and convincing evidence, nor did the District Court err in finding that K.L. failed to meet her burden of proof.

In re B.C., No. 125,199, 2022 WL 18046481 (Kan. App. Dec. 30, 2022) (Unpublished): Father of B.C. appeals the decision of the District Court terminating his parental rights. Father and B.C.'s Mother were not married, and he provided no financial support before or after the child's birth and had only limited contact with the child before he went to prison for aggravated robbery. He remained in prison when the termination hearing was held and presumably is still incarcerated. As a prisoner serving a lengthy sentence, Father was unable to perform the core functions of a parent and could not carry out a reasonable plan designed to allow him to do so, rendering him legally unfit. Those circumstances were unlikely to change in the foreseeable future. And given the lack of any meaningful relationship between Father and B.C., termination—opening up a ready adoption option— advanced the child's best interests. We, therefore, affirm the District Court.

In the Int. of H.A., No. 125,170, 2023 WL 117709 (Kan. App. Jan. 7, 2023) (Unpublished): Mother appeals the District Court's decision terminating her parental rights to her biological child H.A. Mother challenges only two determinations under the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1901 et seq. (2018): that the State made "active efforts" to reunify the family, and that the evidence proved beyond a reasonable doubt that her continued custody of

H.A. will likely result in serious emotional or physical harm to H.A. Here, Mother waited more than a year to make any significant efforts of her own. Further, the record shows that the case managers' efforts, viewed collectively, were reasonable and active under the circumstances. The case worker repeatedly consulted the Comanche Nation to discuss visitation and other basic CINC matters for Mother. The case worker also got a list of father's extended family members for possible placement from the Comanche Nation Indian Child Welfare Advocate whose job it was to assure H.A.'s case complied with ICWA. Additionally, the director that oversaw the Indian Child Advocate testified that she was convinced that Mother's long history of drug abuse and her decision to surround herself with other drug abusers showed that Mother generally lacked the skills necessary to parent H.A. Turner also found Mother's actions conflicted with the Comanche Nation's practice of honoring their children. Therefore, the appellate court affirmed the District Court's finding that the evidence showed beyond a reasonable doubt that Mother's continued custody of H.A. was likely to result in serious emotional or physical damage to her.

In re A.M., No. 125, 298 2023 WL 176722 (Kan. App. Jan. 13, 2023) (Unpublished): Father appeals the District Court's determination that his minor daughter, A.M., is a child in need of care. On appeal, Father contends that the State did not present clear and convincing evidence to establish that A.M. is a child in need of care. There were allegations from the State that A.M. was without adequate parental care or control and had been physically, mentally, or emotionally abused or neglected. Father had mental health concerns, which he dubbed as bipolar, and refused to use medication for his mental health. Father also refused to submit to drug testing after and when he finally agreed to a hair follicle he tested positive for amphetamines and methamphetamine. The District Court found that under K.S.A. 38-2202(d)(1), A.M. lacked adequate parental care, control or subsistence, and the condition is not solely due to a lack of financial means. Second, the District Court found that under K.S.A. 38-2202(d)(2), A.M. is without the care or control necessary for her physical, mental, or emotional health. Finally, the District Court ruled that under K.S.A. 38-2202(d)(3), A.M. has been physically, mentally, or emotionally abused or neglected or sexually abused. The court affirmed termination of parental rights based on the physical abuse, father's refusal to take medication, father's use of meth, and the father's co-dependency on the child for her take on the parent role.

Ex rel. R.S. & C.S., No. 125,263, 2023 WL 176656 (Kan. App. Jan. 13, 2023) (unpublished)*.:* Mother and Father appeal the termination of their parental rights over R.S. and C.S. They claim the District Court's findings of unfitness were not supported by clear and convincing evidence, and that the termination of their parental rights was not in the best interests of the children. The affidavit attached to the petitions for CINC detailed various reports of alleged physical abuse or neglect by both parents since 2017. Mother suffered from a Traumatic brain injury, which limited her ability to provide adequate care for the children. During home visits, the case workers observed signs of poor hygiene, malnutrition, and improper living conditions. Father was incarcerated on a parole violation. Mother and Father worked separately on case plan tasks for most of the case because of a no-contact order put in place as a condition of Father's parole. The District Court announced it was finding Mother unfit but noted that it could not find Father unfit because the evidence showed Father had "not had much an opportunity" to work toward reintegration with Mother due to his parole conditions. Less than

one month later, Father violated parole and was incarcerated again. At the hearing in April 2022, the court terminated both parental rights under mental illness or deficiency of such duration or nature to render either parent unable to care for the children, K.S.A. 38-2269(b)(1); physical abuse or neglect, K.S.A. 38-2269(b)(4); conviction of a felony and imprisonment, K.S.A. 38-2269(b)(5); failure of reasonable efforts made by appropriate agencies to rehabilitate the family, K.S.A. 38-2269(b)(7); lack of effort to adjust the circumstances, conduct, or conditions to meet the children's needs, K.S.A. 38-2269(b)(8); and one or more factors listed in K.S.A. 38-2269(c) applied as a result of actions or inactions by the parents and the children were in State custody for 15 of the most recent 22 months, K.S.A. 38- 2269(b)(9). The court affirmed finding that because of mother's TBI she is unfit and it was unlikely to change and that father was unfit due to his inability to comply with parole conditions, which affected his ability to parent his children and this was in the best interest of the children.

In re Pretz, No. 125,000, 2023 WL 334685 (Kan. App. Jan. 20, 2023) (Unpublished): Dawn and Benjamin Pretz are divorced. When a hearing officer granted Benjamin's motion to reduce child support, Dawn filed a motion for relief from judgment in the District Court after failing to seek timely review of the hearing officer's ruling. Once the District Court denied Dawn's motion for relief, she filed a new motion to modify child support, citing errors in the hearing officer's decision to reduce child support as a way to find a material change of circumstances. The District Court found that the issues raised in Dawn's motion were res judicata based on the previous rulings and denied the request for modification. Dawn appeals. The law of the case doctrine is a discretionary policy by courts to refuse relitigation of issues decided in a previous stage of the *same* case. Here, the District Court's primary conclusion on Dawn's current motion for modification was that she failed to properly appeal or seek review of the previous modification, not that she explicitly raised the issues on the prior motion. Stated another way, by failing to challenge the previous modification under the proper procedure, Dawn waived any further challenge to that ruling. Therefore, the law of the case doctrine applies to preclude Dawn from raising most of the arguments in support of her motion to modify child support. As a result, the District Court did not abuse its discretion in denying Dawn's motion for review of the hearing officer's decision to deny her motion to modify child support. Further, there must be some change in circumstances that occurs after the court has entered a child support order. However, Dawn failed to allege any change in facts or circumstances that have arisen since the hearing officer entered his previous modification order to warrant further modification. Thus, the Court found no abuse of discretion by the District Court in denying Dawn's motion to review the hearing officer's decision on her motion to modify child support.

A.W., No. 125,129, 2023 WL 598370 (Kan. App. Jan. 27, 2023) (unpublished): Mother appeals the District Court's decision that her son is a child in need of care (CINC). Mother is a single parent of seven children. A.W.'s father is deceased. The events of this case stem from Mother's alleged mismanagement of A.W.'s Type 1 diabetes. In April 2020, the State of Kansas petitioned to adjudicate A.W. a CINC. Between A.W.'s initial ketoacidosis hospitalization, which prompted his diagnosis, and the State's filing of its CINC petition, A.W. was hospitalized with diabetic ketoacidosis five more times. The District Court found that A.W. "has suffered from a failure of his mother to provide him with consistency to maintain his health, his medical needs

and educational needs as well as his need to have stable and safe and adequate housing." Mother appealed. The Court found that A.W. was a CINC because Mother neglected to properly treat his health conditions by missing doctor's appointments, failure to ensure A.W. had an appropriate diet, and failing to ensure A.W. has an adequate supply of insulin. The court also found A.W. to be a CINC because Mother failed to provide A.W. stable housing, which was seen through her numerous moves and inability to provide a home where all of her seven children could live. Thus, the Court affirmed.

In re Bean, No. 124,478, 2023 WL 573755 (Kan. App. Jan. 27, 2023) (unpublished). Johnson appeals from the District Court's division of marital property and its decision not to require his ex-wife, Bean, to pay spousal maintenance and contends that the District Court abused its discretion in dividing the property by failing to properly consider Bean's alleged dissipation of assets. Johnson also contends that the District Court abused its discretion by failing to take into consideration his alleged need for spousal maintenance and Bean's ability to pay. About four months after filing for divorce in 2019, Bean quit her job as a physician at the hospital in Russell because of blood clots that were caused by her pulmonary arterial hypertension. Bean testified that her health condition would likely shorten the length of time that she could work. Bean also testified that she had student loan debt, medical debt, and credit card debt she had incurred since filing for divorce. She admitted to cashing her 401(k) in violation of the temporary orders to pay bills and buy groceries while she was unemployed and admitted to deferring several mortgage payments while unemployed. Johnson requested that the District Court award him spousal maintenance in the amount of 25 percent of Bean's gross income, which represented the difference between Bean's income and his income at the time of trial. He also requested an escalator clause that would allow for adjustments should there be changes in the parties' gross incomes during the maintenance period.

The District Court found Bean to be in a $12,000 worse financial position than Johnson, it subtracted this amount from the value of the 401(k) account. The District Court then divided the remaining $20,000 equally between the parties and granted a $10,000 judgment to Johnson to be paid by Bean within six months. The District Court denied Johnson's request for maintenance because Bean's medical condition severely affected her earning capability. Ultimately, the Court found that while there were different ways for handling Bean cashing out her 401(k) and several deferrals on the mortgage, the court's decision did not fall outside the "wide latitude" granted to judges in dividing marital property. In terms of denying spousal maintenance, the District Court found it to be significant that the parties are both in a negative net worth position, and that Bean had children to provide for while Johnson does not have children. The District Court also found that Bean had a substantial amount of individual debt that placed her in a poor financial situation. Again, the Court found that there was evidence to award Johnson spousal maintenance, but there was no abuse by the District Court in denying Johnson's request for spousal maintenance.

In re Obembe, No. 124,097, 2023 WL 1487675 (Kan.App. Feb. 3, 2023) (Unpublished): The parties established a parenting plan and entered into a separation and property settlement agreement, which required Father to pay $4,880 per month for child support and $4,851 per month in maintenance. The Agreement also required Father to contribute $2,000 to the children's

529 education funds each month and Mother to contribute $1,000 per month to those same funds. The Agreement was incorporated into the divorce decree. Father's maintenance payments ended in October 2019, and soon after Mother moved for a modification of child support. As a result, the court increased Father's child support obligation to $8,170 and ordered that the payment be made in cash, rather than placed into the 529 accounts. Father sought to amend the judgment on the grounds that his 529 contributions constituted child support and, if they were not, he was at least entitled to a $2,000 reduction in his child support obligation.

Father appeals and advances four allegations of error by the District Court: (1) It calculated his child support award by disregarding the fact that Kansas uses an income shares model of child support while using the extended income formula (EIF), resulting in a windfall for Mother; (2) it determined that his 529 contributions were not child support; (3) it claimed to lack jurisdiction to modify the 529 account subsection of the parties' Agreement; and (4) it refused to order conciliation. The Court found no errors by the District Court that warranted relief.

The Court found Father's windfall arguments unsupported. The KCSG do not solely focus on need, but also may look to additional factors. Here, The District Court, in its March 2021 memorandum order, provided a need-based explanation for its child support order. It cited Mother's testimony that an increase in child support would make it easier for her to afford "a safe car, a safe backyard, and possibly additional extra-curricular activities," and noted that the increased amount would provide a necessary cushion for unforeseen expenses. The primary purpose underlying the District Court's child support award was to provide the children with an adequate, reasonable, and accustomed standard of living with Mother as their custodial parent. Therefore, the court merely considered the full spectrum of the children's needs and their expected standard of living.

The court further found that Father's 529 contributions are not child support based on the KCSG. Specifically, the definition for direct expenses references education, when read in context, particularly the discussion of school lunches, its language is intended to address K-12 education. Father's 529 contributions, which in this case are savings accounts for future educational expenses, do not meet the day-to-day requirement.

The court did have jurisdiction to modify the Agreement's 529 subsection, but their error was harmless. The subsection of the Agreement relating to the 529 account stated the deposits that shall be made "until further order of the Court." Here, the Agreement's language is clear that a court may modify the 529 section of the Agreement. However, even if the court had not reached an erroneous conclusion about jurisdiction, the outcome of the decision would not have changed (because the court stated it would not modify the 529 agreement) which translates to a finding of harmless error.

Lastly, the court did not err in refusing to order conciliation. The court denied his request and explained that Mother already expressed a willingness to discuss this issue. Thus, the District Court appropriately determined that the parties could independently resolve the issue.

In re Bowers, No. 124,040, 2023 WL 1879389 (Kan.App. Feb. 10, 2023) (Unpublished): The parties divorced in May 2016. The District Court filed its amended journal entry and decree of divorce on March 16, 2020, entering a $417,093 judgment against Potts to be paid to Bowers within five years. Potts appealed, asserting that the District Court erred in interpreting the parties' premarital agreement and its determination that Potts owed Bowers money for breaching various postnuptial agreements. Potts seeks reversal and issuance of a new judgment consistent with his interpretation of the premarital agreement.

First, under the terms of the premarital agreement Bowers should receive $500,000 from Potts' Separate Property, which was defined in the premarital agreement. However, Potts argued that he should not have to pay the full $500,000 because he did not have that much in his Separate Property at that time. Bowers disagreed and argued that if Potts' current Separate Property was not sufficient to satisfy the $500,000 obligation, then Potts' future Separate Property should be used to satisfy any remaining obligation. The District Court agreed with Bowers and found the premarital agreement did not limit the source of payment for Potts' $500,000 obligation to his current Separate Property, but rather allowed Bowers to recover from Potts' future Separate Property, including any property that started as joint property but became his Separate Property after it had been assigned to Potts through the divorce process.

Here, the parties' premarital agreement does not explicitly limit the definition of "Separate Property" to separate property currently in the possession of the parties at a specific point in time. If that was the parties' intent, the definition could have easily been written to accomplish that intent. The appellate court found the parties did not intend to limit Potts' $50,000 per year obligation by the amount or value of his Separate Property at the time of divorce. Additionally, Potts argues that the District Court erred by applying K.S.A. 2019 Supp. 23-2802(c)—the statute governing property division in divorce proceedings. However, any property not included in the premarital agreement must still be divided by the court using the statutory factors of K.S.A. 2019 Supp. 23-2802(c). Thus, the appellate court found no error in the District Court's use and application of K.S.A. 2019 Supp. 23-2802(c) to the property not governed by the parties' other contractual agreements.

Second, after their marriage, the parties entered into multiple postnuptial agreements, three of which are relevant to Potts' claims on appeal: (1) an agreement regarding Potts' management of Bowers' Interactive Brokers (IB) financial account; (2) an agreement that Bowers would loan Potts $20,000 for household expenses; and (3) an agreement that Bowers would loan Potts $10,176 for his West Bay golf membership. Potts breached all three postnuptial agreements and the District Court entered a judgment against Potts for $188,000. The appellate court affirmed the District Court’s judgment because Potts has failed to demonstrate any error of law or fact or that no reasonable person would concur with the District Court’s judgement.

K.S. v. D.C., No. 125,139, 2023 WL 1879325 (Kan. App. Feb. 10, 2023) (Unpublished): This case arises out of a dispute between grandmothers regarding their granddaughter, S.W. K.S. is S.W.'s paternal grandmother, and D.C. is S.W.'s maternal grandmother. The State initiated child in need of care proceedings on behalf of S.W. To avoid having their parental rights terminated, S.W.'s parents agreed to a permanent custodianship for S.W., and in 2013 the District

Court appointed K.S. as permanent custodian with visitation rights for D.C. K.S. sought to reduce D.C.'s visitation time with S.W. After hearing the matter, the District Court denied K.S.'s request and ordered a visitation schedule commensurate with past visitation schedules. K.S. appeals. The District Court must first make findings that visitation rights would be in the best interest of the child and that a substantial relationship between the child and the grandparent has been established. The burden is on the grandparent seeking visitation to prove these elements. Here, there is no dispute that S.W. and D.C. have a substantial relationship. K.S. K.S.A. 2021 Supp. 38- 2268(c)(1) provides that once a permanent custodian is appointed, "such individual shall stand in loco parentis to the child and shall have and possess over the child all the rights of a legal guardian." The appellate court had no indication that the court had in mind the special weight that courts must afford a fit permanent custodial grandmother's decision regarding her grandchild's visitation with her other grandmother. Thus, the Court of Appeals could not determine whether the District Court interfered with K.S.'s due process right (as her grandchild's permanent custodian) to parent her grandchild. As a result, it remanded the case to the District Court to make sufficient findings.

In the Int. of N.W., No. 125,235, 2023 WL 1879330 (Kan. App. Feb. 10, 2023) (Unpublished): The District Court terminated Father's parental rights after hearing testimony that Father's oldest child, N.W., repeatedly sexually abused Father's younger children, A.W. and R.W., in the home and Father was aware of the abuse but chose not to intervene. Father appeals and asserts the District Court erred in finding he was unfit. He specifically argues that reasonable efforts were not undertaken to implement family therapy and that he completed nearly all his assigned reintegration tasks. Here, N.W. acknowledged that he sexually violated his sisters in the manner they described and corroborated their assertions that Father was aware of his actions and did nothing to stop it. As long as Father remains unwilling or unable to acknowledge the reality of the abuse, a safe home environment for the children does not exist. Ultimately, Father failed to put forth the required effort to adjust his circumstances, conduct, or conditions to meet the children's needs. Thus, Father's refusal to acknowledge the abuse occurred constituted clear and convincing evidence that he was currently, and in the foreseeable future, unfit to parent the children and it was in their best interests for the District Court to terminate Father's parental rights.

Interest of A.S., No. 125,454, 2023 WL 2062945 (Kan.App. Feb. 17, 2023) (Unpublished): Mother appeals the District Court's order granting temporary custody of her child, A.S., to the Kansas Department for Children and Families (DCF), challenging the sufficiency of the evidence supporting the District Court's findings regarding medical child abuse. However, after Mother filed this appeal, the District Court, given its continuing jurisdiction, adjudicated A.S. and his two half-siblings as children in need of care and issued disposition orders placing A.S. and his siblings in the custody of DCF. The Court of Appeals found that the appeal was moot and it dismissed the appeal.

G.S. v. J.P., No. 124,545, 124,690, 2023 WL 2194550 (Kan. App. Feb. 24, 2023) (Unpublished): This consolidated appeal arises from protection from stalking (PFS) orders obtained by two individuals, G.D. and G.S., against J.P. III, and a subsequent extension of the

initial order obtained by G.S. J.P. appeals pro se, raising four issues in the case with G.S., which can generally be described as due process challenges, questions about the sufficiency of the evidence, challenges to the validity of relevant evidentiary standards, and abuse of discretion by the District Court.

The appellate court found J.P.'s notice of appeal with G.S. only challenged the District Court's ruling on his motion to dismiss the PFS order and subsequent extension obtained by G.S. Although this motion should have been liberally construed by the District Court as a motion to alter or amend judgment and/or a motion for relief from judgment, a motion for relief from judgment would have been untimely given the one-year time limit of K.S.A. 2021 Supp. 60-260(c). Further, on appeal, J.P. fails to properly address whether he was entitled to relief through a motion to alter or amend judgment and/or motion for relief from judgment. Accordingly, the Court of Appeals affirmed the District Court's ruling in the action with G.S. and denied J.P.'s requested relief. Additionally, the Court found the appeal in the action with G.D. challenging the PFS obtained by G.D. to be moot because the PFS has expired and no extension was obtained. Therefore, the Court of Appeals dismissed the case with G.D.

Ex rel. G.D. & B.D., No. 124, 641, 124, 642, 2023 WL 2194548 (Kan. App. Feb. 24, 2023) (Unpublished): Mother of G.D. and B.D. timely appeals from the District Court's findings of unfitness and termination of her parental rights. The District Court found Mother's drug use and failure to make reasonable efforts by the appropriate agencies to rehabilitate the family rendered her unable to care for the children. Mother attributes her lack of visitation to SFM's belief she needed permission from the children's therapist to have visits, but the record does not support her argument. Rather, the record does not establish Mother being unfit for lack of communication or contact with the children. However, based on Mother's use of methamphetamine, discontinuing therapy, not meeting with her peer mentor, and failing to remain in contact with SFM indicated that her unfitness was likely to continue for the foreseeable future.

Interests of D.G., No. 125,366, 2023 WL 2194320 (Kan.App., Feb. 24, 2023) (Unpublished): M.G. was removed from her parents' home after a report of violence in the home and the responding officers determined the condition of the home was not fit for human habitability. M.G.'s brother, D.G., was removed shortly after his birth for health-related concerns. The Father of M.G. and D.G. timely appeals the District Court's termination of his parental rights. Father argues the District Court's finding of unfitness was not supported by clear and convincing evidence. Father also claims the District Court abused its discretion in finding that terminating his parental rights was in the best interests of the children. Although father has completed the parenting class for his case plan, he had not engaged in either individual or couple's therapy and was unsuccessfully discharged from outpatient drug treatment for failure to attend, there were no other services that SFM could provide Father, and Father had a history of not cooperating. Therefore, Father was unlikely to accomplish case plan goals in the foreseeable future. SFM provided reasonable opportunities for Father to succeed and he chose not to participate in such programs. Thus, despite the reasonable efforts by appropriate agencies, Father

failed to exert the necessary effort in completing evaluations and assessments. The Court of Appeals affirmed the finding of the District Court to terminate Father's parental rights.

In the Interest of I.B., No. 125,394, 2023 WL 2196477 (Kan. App. Feb. 24, 2023) (Unpublished): Mother timely appeals the District Court's denial of her request for a continuance of the hearing set requesting the District Court to terminate her parental rights to her seven children. Mother argues the District Court abused its discretion by not granting her motion to continue her termination hearing and the denial was not in the best interests of the children. The termination of parental rights trial was scheduled in December 2021. On the date of the hearing, the District Court found good cause to continue the hearing as Mother claimed she was in the hospital the day before the hearing and there were issues with notice as to the fathers. At the continued termination hearing held in April 2022, the father of I.B., D.I.B., and D.B.B.—the children to whom the ICWA applied—relinquished his parental rights. Mother requested a continuance, claiming she was scheduled to start outpatient treatment at Miracles, Inc. the day after the hearing and further claiming she provided a negative urinalysis drug test the morning of the hearing. The District Court denied Mother's request for a continuance because it was not in the best interest of the children and proceeded with the evidentiary hearing. Cases involving the termination of parental rights should be disposed of without unnecessary delay, and a continuance should be granted only if the District Court finds it is in the best interests of the child and only when good cause is shown. Ultimately, the appellate court found that because the CINC case was first filed in October of 2020 and the court properly denied her request for a continuance because she failed to show good cause for the District Court to continue her case and a reasonable person could conclude a continuance was not in the best interest of the children.