NOT DESIGNATED FOR PUBLICATION

No. 109,257

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Adoption of R.L.J., a Minor Child.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; RICHARD T. BALLINGER, judge. Opinion filed October 4, 2013. Affirmed.

Rachael A. Doyle, of Martin, Pringle, Oliver, Wallace & Bauer, L.L.P., of Wichita, for appellant natural father.

F.C. "Rick" Davis, of Davis & Jack, L.L.C., of Wichita, for appellee.

Before BUSER, P.J., SCHROEDER, J., and KNUDSON, S.J.

Per Curiam: D.G., the biological father of R.L.J., brings this appeal after his parental rights were terminated and the district court granted C.T.'s petition for adoption of R.L.J. We are not persuaded D.G. should be given relief under the issues raised because: (1) The district judge properly applied K.S.A. 2012 Supp. 59-2136(h)(1)(G) in deciding D.G.'s parental rights should be terminated; (2) there was an insufficient showing of judicial misconduct; (3) there was substantial competent evidence to support the district court's findings of fact; and (4) the entry of the adoption decree was timely. We do grant D.G.'s motion for attorney fees to be assessed as costs and paid by C.T. in an amount of $4,500.

PROCEEDINGS IN THE DISTRICT COURT

J.T. (Mother), while unmarried, gave birth to R.L.J. on July 26, 2009. She subsequently married C.T. on May 21, 2011. C.T.'s petition to adopt R.L.J. was filed on June 4, 2012, alleging in material part:

> "That [D.G.], the biological father of [R.L.J.], has for a period of more than two years last past wholly failed and refused to support the said minor child or contribute in any way to the support thereof and has wholly failed and refused to assume any of the duties of a parent toward said child for a period of more than two consecutive years last past; and on account of the premises herein stated the consent of the said child's father is not required, and pursuant to K.S.A. 59-2136 all his parental rights should be terminated."

The pretrial order that was entered stated in part:

"4. ADMISSIONS AND STIPULATIONS

"a. The Court has jurisdiction over the parties and the subject matter of this case.

"b. Venue is proper in this court.

"c. Copies of documents may be admitted in lieu of originals.

"d. Official court records, financial and telephone records of either birth parent may be admitted without foundation.

. . . .

"ISSUES OF LAW AND FACT

"1. Has [D.G.] failed or refused to assume the duties of a parent for the two consecutive years next preceding the filing of the petition herein

"2. Whether [C.T.] may invoke the rebuttable presumption that [D.G.] has knowingly failed to provide a substantial portion of the child support required by judicial decree, when financially able to do so for a two year period next preceding filing of the petition.

"3. Has [D.G.] failed to provide love and affection to his child for the two years next preceding the filing of the petition for adoption?

"4. Is it in the best interest of [R.L.J.]to be adopted by [C.T.]"

We also note that in the pretrial order, D.G. did contend that "[a]lthough [C.T.] contends [D.G.] has failed to carry out his parental duties for two years, it has been less than two years since [D.G.] learned that he is the child's father. Therefore, insufficient time has passed to support such a finding."

D.G. was in a federal prison when the evidentiary hearing was held on September 12, 2012. He was represented by court-appointed counsel and participated by telephone. He does not contend on appeal that his inability to appear in person placed him at a disadvantage.

Mother had two sexual partners , D.G. and R.J., at or near the time she became pregnant. She was not married to either man. Both men were aware she was pregnant and either of them could be the father. D.G. ended his relationship with Mother shortly after she became pregnant and was not to resurface until she contacted him in late fall of 2010 requesting he provide a DNA sample to determine paternity. He made no effort to provide support for Mother during her pregnancy. He also paid no child support or had any relationship with Mother or R.L.J. until the DNA test results determined he was the biological father. At trial, D.G. acknowledged that he knew in late 2008 that he could be R.L.J.'s biological father.

Our impression from the testimony given at trial by J.T. is that R.J. was a former boyfriend of hers before she met D.G., and with whom at the time of conception she had a sexual dalliance. In any event, R.J. did not maintain an ongoing relationship with Mother after she informed him of her pregnancy. However, R.J. came back into her life when she was about 4 months pregnant. It appears R.J. did not resume a romantic relationship with Mother but provided her with a caring relationship during the balance of her pregnancy. R.J. went with her to medical appointments and was present when R.L.J. was born. R.L.J. was named after R.J. In addition, he signed the child's birth certificate as R.L.J.'s father. After R.L.J.'s birth, the Kansas Department of Social and Rehabilitation

Services obtained a court order requiring R.J. to pay child support. Before trial, R.J. gave his written consent for C.T. to adopt the child.

D.G. has had multiple encounters with the criminal justice system and was often in county, state, or federal custody during the 24 months preceding the filing of the adoption petition. However, he was not in physical custody from October 6, 2010, through April 21, 2011, and worked during that period of time at fast food restaurants. D.G. was married and the father of four other children. On or about April 21, 2011, D.G. turned himself in to authorities to begin serving a federal sentence for a firearms violation. D.G. had an expectation he would be sent to a halfway house in mid-December 2012, and that his final release date from federal custody would be on June 13, 2013.

After the submission of evidence and closing arguments, the district court announced its ruling from the bench regarding the parental rights of D.G. The district court noted that this was a stepparent adoption case. The court also pointed out the only allegation raised was failure to support 2 years prior to the petition for adoption. The district court further noted a judicial obligation to consider all the circumstances, which included D.G.'s limited income and possibility of contact with R.L.J.

The district court found D.G. had provided no financial support to benefit R.L.J. but acknowledged his testimony of an offer made to provide support, the purchase of diapers, and the gift of a toy to R.L.J. The judge stated: "Even if [D.G.'s] testimony is believed, his offer of support in purchasing some diapers and in purchasing one toy is incidental at best." The district court also found D.G.'s contacts with R.L.J. had been incidental and legally insufficient.

The district court concluded that C.T. had shown by clear and convincing evidence that D.G. failed to support R.L.J. financially, mentally, or emotionally for 2 consecutive years next preceding the filing of the petition. Accordingly, the district court further

concluded D.G.'s consent was not required for adoption and his parental rights should be terminated.

On October 16, 2012, the district court filed its journal entry terminating D.G.'s parental rights to R.L.J. On October 20, 2012, the district court ordered an immediate hearing for C.T.'s petition for adoption, as J.T. had consented, R.J. had consented, and D.G.'s rights as the biological father had been terminated.

ANALYSIS

K.S.A. 2012 Supp. 59-2136

We first consider D.G.'s contention that the district court erroneously applied K.S.A. 2012 Supp. 59-2136(d) to the facts rather than K.S.A. 2012 Supp. 59-2136(h). We note the issue was not raised before the district court. Nevertheless, because the issue presents a question of law arising on proved or admitted facts, we will consider D.G.'s contention of error. See *In re Estate of Broderick*, 286 Kan. 1071, 1082, 191 P.3d 284 (2008), *cert. denied* 555 U.S. 1178 (2009). We begin by agreeing with D.G. that K.S.A. 2012 Supp. 59-2136(d) is not applicable in this proceeding. However, that does not necessarily resolve the issue. We must first decide if in fact the district court did apply subsection (d) rather than subsection (h) of the statute.

It is axiomatic that the burden is on D.G. to designate facts in the record to support a claim of error. See *National Bank of Andover v. Kansas Bankers Surety Co.*, 290 Kan. 247, 283, 225 P.3d 707 (2010). In his appellate brief, D.G.'s designation of facts to support his claim are as follows:

> "Here, D.G. is the presumed father of R.L.J. based on [K.S.A. 2012 Supp.] 23-2208(a)(5)—genetic testing confirmed that he is in fact the biological father. . . . D.G. is not the presumed father under [K.S.A. 2012 Supp.] 23-2208(a)(1), (2), or (3), as he only

had a dating relationship with J.T. Nor did D.G. acknowledge paternity of the child in writing, list his name on the birth certificate, or was court-ordered to pay child support. Rather, R.J., was the presumed father and his name was listed on the birth certificate. *The district court found 'that this is a step-parent adoption' and improperly terminated D.G.'s rights under [K.S.A. 2012 Supp.] 59-2136(d).* But [K.S.A. 2012 Supp.] 59-2136(d) is wholly inapplicable to this case based on the statutory text of [K.S.A. 2012 Supp.] 59-2136(d), the legislative history, and this Court's decision in *In re [Adoption of] C.A.T.*[, 47 Kan. App. 2d 257, 273 P.3d 813 (2012).]" (Emphasis added.)

We conclude D.G. has not designated sufficient facts to sustain his claim on appeal. First, D.G. contends the district court erred in treating this action as a stepparent adoption. However, a stepparent adoption is defined as "the adoption of a minor child by the spouse of a parent with the consent of that parent." See K.S.A. 59-2112(d). Clearly, under this statutory definition, C.T.'s action to adopt R.L.J. is a stepparent adoption. Moreover, subsection (d) of K.S.A. 2012 Supp. 59-2136 is applicable only when there is a presumed father under subsection (a)(1), (2), or (3) of K.S.A. 2012 Supp. 23-2208. Consequently, subsection (h) of K.S.A. 2012 Supp. 59-2136 is to be applied in stepparent adoptions if there is a presumed father under any of the other subsections of K.S.A. 2012 Supp. 23-2208; see *In re Adoption of C.A.T.*, 47 Kan. App. 2d 257, ¶ Syl. 5, 273 P.3d 813 (2012).

Second, we have reviewed D.G.'s citation to the record on appeal and find it inconsistent with what the district court actually stated. The district court never stated K.S.A. 2012 Supp. 59-2136(d) was the applicable subsection. What the judge stated in his pronouncements from the bench was that "I agree that this is a step-parent adoption." The district court's statement does not support D.G.'s assertion that the district court applied K.S.A. 2012 Supp. 59-2136(d).

Third, litigants and their counsel bear the responsibility of objecting to inadequate findings and conclusions of law in order to give the district court the opportunity to

correct them. *O'Brien v. Leegin Creative Leather Products, Inc.*, 294 Kan. 318, 361, 277 P.3d 1062 (2012). In the case now before us, there was no suggestion made to the district court that the court had applied the wrong subsection of K.S.A. 2012 Supp. 59-2136 in reaching its decision. Under the limited factual basis D.G. offers to support his claim of error, together with the failure to present the matter to the district court, we are not persuaded and will not presume the district court applied the wrong subsection.

Alternatively even if the district court did erroneously apply K.S.A. 2012 Supp. 59-2136(d), D.G. suffered no prejudice as a result. That is because the controlling factual issue—whether D.G. failed to assume the duties of a parent for 2 consecutive years next preceding the filing of the petition for adoption—was the determinative issue regardless of whether the district court applied subsection (d) or subsection (h) of the statute. In *In re Adoption of C.A.T.*, a panel of our court arrived at a similar conclusion and upheld the decision of the district court to terminate parental rights notwithstanding there was trial error in applying the wrong subsection. The court held that "[u]nder both K.S.A. 2010 Supp. 59-2136(d) and (h)(1)(G), the consent of the natural father is not required if he has failed or refused to assume the duties of a parent for 2 consecutive years next preceding the filing of a petition for adoption." 47 Kan. App. 2d 257, Syl. ¶ 9.

Accordingly, we find no support for D.G.'s contention that the district court committed reversible error. We turn our attention to the trial proceedings to consider D.G.'s claims of judicial impropriety and whether the evidence presented was sufficient to support termination of D.G.'s parental rights.

Claim of judicial misconduct

D.G. argues there was judicial misconduct that constitutes structural error. Specifically, D.G. asserts the following improprieties by the district judge: (1) questioning D.G. in detail by asking about specific criminal case numbers, charges, and

convictions; (2) questioning D.G. about an unproven accusation that he had stolen from customers when he worked at a fast food restaurant; (3) introducing evidence concerning the amount of bond D.G. was able to obtain and the source of his funds; and (4) acknowledging that no exhibits were offered or admitted into evidence by the parties but incorporating his "little file'" into the record. According to D.G., the district court's use of this information demonstrated partiality to C.T. and a bias against D.G.'s right to a fair trial.

Allegations that a party has been denied his or her fundamental right to an impartial judge constitutes structural error not subject to the harmless error rule. See *State v. Womelsdorf*, 47 Kan. App. 2d 307, 323, 274 P.3d 662 (2012), *rev. denied* 297 Kan. __ (August 19, 2013). Claims of judicial misconduct may be reviewed despite the lack of a contemporaneous objection, when the party claims a violation of his or her right to a fair trial. *State v. Kemble*, 291 Kan. 109, 113, 238 P.3d 251 (2010). In determining whether the district court committed judicial misconduct, the standard of review upon appeal is unlimited. *State v. Plunkett*, 257 Kan. 135, 136, 891 P.2d 370 (1995).

We conclude D.G.'s contention of judicial misconduct lacks substance. The district court took judicial notice of D.G.'s criminal history, which was public information pursuant to K.S.A. 60-409 and consistent with the pretrial stipulations. Furthermore, D.G.'s argument ignores the fact that as a result of questions by his attorney during direct examination, extensive evidence was introduced regarding his criminal history and the periods of time when he was incarcerated. D.G. also gave direct testimony regarding the surety bond and the source of the funds needed to pay the bond before the district court asked questions for clarification.

Moreover, there is a disconnect from the factual showing made by D.G. and a conclusion that those facts demonstrate improper bias. At best, we believe the only plausible legal argument to be made is that there was ordinary trial error. Here, D.G.'s

trial attorney did not object to the admission of evidence resulting from the district court's questions and suggestions. A party must make a contemporaneous and specific objection to the admission of evidence in order to preserve the issue for appeal. See K.S.A. 60-404; *State v. Harris*, 293 Kan. 798, 813-14, 269 P.3d 820 (2012). Finally, even if the issue of ordinary trial error had been preserved for appeal, we conclude the error, if any, was harmless because it had no affect on the district court's controlling findings of fact and conclusions of law. See *State v. Ward*, 292 Kan. 541, 569, 256 P.3d 801 (2011), *cert. denied* 132 S. Ct. 1594 (2012).

Sufficiency of evidence

D.G. presents two arguments challenging the sufficiency of the evidence. In his written brief on appeal, D.G. states:

> "[T]he district court's findings were not supported by substantial competent evidence for two reasons. First, the district court wrongly emphasized D.G.'s incarceration, criminal record, financial affidavits, and posting of bond as relevant evidence in its application of the totality of the circumstances test. Second, the district court failed to consider J.T.'s efforts to thwart D.G.'s attempts to contact and support R.L.J."

When a district court terminates parental rights based on factual findings under K.S.A. 2012 Supp. 59-2136(h), those factual findings will be reviewed on appeal to determine if, after reviewing all the evidence in the light most favorable to the prevailing party, the facts were supported by clear and convincing evidence. *In re Adoption of B.B.M.*, 290 Kan. 236, 244, 224 P.3d 1168 (2010). When determining whether factual findings are supported by clear and convincing evidence, an appellate court does not weigh conflicting evidence, pass on witnesses' testimony, or redetermine questions of fact. 290 Kan. at 244. Finally, the district court's factual findings, if supported by clear and convincing evidence, must be sufficient to support the district court's conclusions of law. *Hodges v. Johnson*, 288 Kan. 56, 65, 199 P.3d 1251 (2009).

In our opinion, D.G.'s first argument is that the district court's findings to support its legal conclusion—that D.G. failed to assume the duties of a parent for 2 consecutive years immediately preceding the filing of the adoption petition—were based on irrelevant evidence. D.G.'s second argument comes from an opposite place—the district court failed to consider evidence relevant to the legal issue.

D.G. argues the district court wrongly emphasized his incarceration, criminal record, financial affidavits, and posting of bond. D.G. notes the district court called his incarcerations voluntary because he violated his parole violations. By focusing on D.G.'s ability to pay for and contact his child while in prison and his unrelated criminal record, D.G. argues the court violated *In re Adoption of F.A.R.*, 242 Kan. 231, 746 P.2d 145 (1987), and *In re Adoption of J.M.D.*, 293 Kan. 153, 260 P.3d 1196 (2011). D.G. particularly focuses on the court's interest in D.G.'s ability to post bond. D.G. argues his bond payment occurred prior to when D.G. was aware he was R.L.J.'s father. D.G. argues that because his then-girlfriend paid his bond, her motives and ability to pay the bond money were outside the scope of the relevancy of the district court's inquiry.

If a nonconsenting parent is incarcerated and therefore unable to fulfill the usual parental duties performed by unrestrained parents, the court must decide whether the parent has sought the opportunities and options which could be available in order to perform those duties to the best of his or her abilities. *In re Adoption of S.E.B.*, 257 Kan. 266, 273, 891 P.2d 440 (1995). If an incarcerated parent has made reasonable efforts to contact and maintain a continuing relationship with his or her children, it is up to the trial court to determine whether such efforts are sufficient. "[A]ll the surrounding circumstances must be considered" when the court makes such a determination. *In re Adoption of F.A.R.*, 242 Kan. at 236.

Here, D.G. knew Mother was pregnant and that there was a chance the child could be his. The parties stipulated no evidence of child support payments existed. D.G. himself

testified to providing only minor amounts of financial or emotional support. Even considering how D.G.'s incarceration affected his ability to spend time with and provide financial support for R.L.J., the district court had substantial evidence from J.T. and C.T. to support the termination of D.G.'s parental rights. Without reviewing the credibility of witnesses or the weight of the evidence, sufficient evidence exists to support the district court's decision to include and weigh the proper evidence.

D.G. also claims the district court neglected to consider Mother's efforts to thwart his attempts to contact and support R.L.J. D.G. correctly cites *In re Adoption of Baby Girl P.*, 291 Kan. 424, 433, 242 P.3d 1168 (2010), as support that the assertion of parental rights should not be a Herculean task. D.G. argues that Mother excluded him, told him he was not the father, and added R.J. to the birth certificate. Once D.G. discovered he was the father, he claims he "attempted to provide what he could for R.L.J."

However, the fact Mother made it difficult for D.G. to see R.L.J. and D.G. was incarcerated does not mean that D.G. has had a Herculean task to contact R.L.J. A mother "does not interfere with a father's ability to support by avoiding contact and not making specific requests for assistance in response to general offers of support." *In re Adoption of M.D.K.*, 30 Kan. App. 2d 1176, 1181, 58 P.3d 745 (2002).

Here, D.G. had knowledge that Mother was pregnant but made no effort to determine whether he was R.L.J.'s father. Although D.G. claimed he did not know how to get in contact with Mother or her mother while he was incarcerated, he also claimed to have constant contact with Mother while he was out of prison. D.G.'s minimal efforts were not thwarted by Mother; the district court simply determined his efforts were simply insufficient to assert his parental rights.

Before concluding, we digress to comment on an incidental point raised during oral argument. K.S.A. 2012 Supp. 59-2136(h)(1)(G) provides that parental rights may be

terminated, upon a finding by clear and convincing evidence, that "the father has failed or refused to assume the duties of a parent for two consecutive years next preceding the filing of the petition." Upon questioning from the panel, D.G. argued he did not know he was R.L.J.'s father until January 19, 2011, when the DNA test report was received, and therefore could not be found to have failed to assume parental duties for the entire 24 months preceding the filing of the adoption petition. After oral argument, D.G. filed a supplemental brief with this court to support his argument. We did not order that a supplemental brief be filed and have not considered its content. Nevertheless, to cut through any lingering confusion, we will summarize our view. First, the issue was not directly raised in the district court at the conclusion of the evidence or presented for consideration of the court after its findings of fact and conclusions of law were presented. Issues not raised before the trial court cannot be raised on appeal. See *In re Care & Treatment of Miller*, 289 Kan. 218, 224-25, 210 P.3d 625 (2009). Second, the issue has not been properly briefed on appeal and has been waived. See *Superior Boiler Works, Inc. v. Kimball*, 292 Kan. 885, 889, 259 P.3d 676 (2011). Third, as we have already noted, whether parental rights should be terminated is a fact issue. In this appeal, there is evidence that D.G. knew from the time R.L.J. was conceived that he may be the father and subsequently made no effort to assert parental rights. We will not weigh conflicting evidence, pass on the credibility of witnesses, or redetermine questions of fact. *In re B.D.-Y*, 286 Kan. 686, 705, 187 P.3d 594 (2008). Finally, D.G.'s argument ignores the explicit language of K.S.A. 2012 Supp. 59-2136(h)(1)(G). In *In re D.M.M.*, 24 Kan. App. 2d 783, 786-87, 955 P.2d 618 (1997), the court considered a similar issue wherein paternity was in doubt and rejected this very argument.

In summary, we believe D.G. has focused on evidence and circumstances favorable to his point of view while ignoring the evidence supportive of the district court's controlling findings. Those findings in the written order terminating D.G.'s parental rights included:

"2. The Court takes into consideration the limited financial ability of [D.G.] and his limited possibility of contacts with the length of time that [D.G.] has been incarcerated, with the optimal period of time the Court considered being two years previous to filing of [C.T.] herein which was June 4, 2012.

"3. By testimony of all parties there has been no money paid by [D.G.] for support of [R.L.J.] There is conflicting evidence of [D.G.'s] offer of support and purchasing diapers and purchase of a toy for [R.L.J.] Even if [D.G.'s] testimony is believed, his offer of support in purchasing some diapers and in purchasing one toy is incidental at best.

"4. There is conflicting evidence regarding the contact had by [D.G.] with the child involved herein. By all accounts, whatever contact there was by [D.G.], is incidental contact and inconsequential."

We conclude after reviewing all the evidence in the light most favorable to C.T., the district court's findings are supported by clear and convincing evidence and sufficient to support termination of D.G.'s parental rights.

The adoption decree

D.G. argues that under K.S.A. 59-2407 the district court lacked jurisdiction to enter a decree of adoption pending his timely appeal of the order terminating his parental rights. In support, D.G. cites to *In re Baby Boy N.*, 19 Kan. App. 2d 574, 874 P.2d 680, *rev. denied* 255 Kan. 1001 (1994). In *In re Baby Boy N.*, a panel of this court based its jurisdictional decision solely on the language of K.S.A. 59-2407. 19 Kan. App. 2d at 589-90. D.G.'s argument fails because K.S.A. 59-2407 was repealed in 2006 and no other reason is advanced to challenge the district court's jurisdiction. Failure to support a point with pertinent authority or show why it is sound despite a lack of supporting authority is akin to failing to brief the issue. *State v. Berriozabal*, 291 Kan. 568, 594, 243 P.3d 352 (2010).

Attorney fees

Counsel was appointed by the district court to represent D.G. on appeal. Counsel has filed a timely posthearing motion under Supreme Court Rule 5.01 (2012 Kan. Ct. R. Annot. 32) seeking payment of attorney fees incurred on appeal. There has been no response to the motion by the appellee, C.T. We have authority to award attorney fees under Supreme Court Rule 7.07(b) (2012 Kan. Ct. R. Annot. 66) because the district court had authority to award attorney fees under K.S.A. 2012 Supp. 59-104(d) and K.S.A. 59-2134(c).

Counsel's affidavit attached to the motion for an award of attorney fees does specify "(A) the nature and extent of the services rendered, (B) the time expended on the appeal, and (C) the factors considered in determining the reasonableness of the fee. (See KRPC 1.5 Fees.)" See Supreme Court Rule 7.07(b)(2) (2012 Kan. Ct. R. Annot. 66). Unfortunately, the affidavit does not provide us with an itemization of time spent on a particular task but instead provides only a lump-sum figure for the total time spent on appeal. In her affidavit, counsel requests an allowance of $9,000 based on 100 hours, notwithstanding the actual time incurred was 127.9 hours. Counsel indicates the rate of $90 per hour was predetermined by agreement with the appellee, C.T.

Whether we should award attorney fees, and the amount to be awarded, require the exercise of judicial discretion. A panel of this court in *In re Adoption of J.M.D.*, 41 Kan. App. 2d 157, 171-74, 202 P.3d 27 (2009), *rev'd* 293 Kan. 153, 260 P.3d 1196 (2011), allowed appellate counsel attorney fees of $3,941.76 (47.6 hours at $80/hour). *In re Adoption of J.M.D.* was also a stepparent adoption and the issues presented on appeal are very similar to the issues in this appeal. In *In re Adoption of J.M.D.*, the panel relied on the hourly rate of $80 allowed under K.S.A. 22-4507(c) to compensate court-appointed counsel for representing indigent defendants in criminal cases. In reversing, the Supreme

Court approved of the method used by the panel to determine an allowance for attorney fees, stating:

> "The Court of Appeals acknowledged that 'it may appear harsh to require a prospective adoptive parent to pay attorney fees for an attorney appointed to represent the parental rights of [an] indigent biological parent.' [*In re Adoption of J.M.D.*,] 41 Kan. App. 2d at 173. Accordingly, the panel ameliorated that harshness by adjusting the hourly rate to comport with criminal defense appointments. We concur with that method of balancing the interests of all concerned." 293 Kan. at 175.

The Supreme Court then applied the same method to assess attorney fees and costs of $1,525.91 against the stepfather incurred in connection with the petition for review proceedings. 293 Kan. at 175.

In our review of appellate counsel's affidavit, we note she was admitted to the bar in 2012. Two senior partners of her law firm assisted and supervised in the appeal. As we have noted, the affidavit does not give us any breakdown of units of time spent on a specific task or the amount of time spent by the senior partners on the appeal. In addition, the request for an allowance of $9,000 seems inordinately high compared to the fees requested and allowed in *In re Adoption of J.M.D.*

We conclude based on the totality of circumstances and in the exercise of discretion, appellate counsel's motion is granted and D.G.'s attorney fees and costs are hereby assessed against C.T. in the amount of $4,500 (50 hours at $90/hour).

Affirmed.