No. 125,304

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Parentage of W.L. and G.L.

SYLLABUS BY THE COURT

1.

A judgment rendered by a court with jurisdiction of the parties and the subject matter is final and conclusive unless it is later modified on appeal or by subsequent legislation. Such a judgment cannot legally be collaterally attacked.

2.

The judgment of the court determining parentage under the Kansas Parentage Act, K.S.A. 2022 Supp. 23-2201 et seq., is "determinative for all purposes" when all necessary parties have been joined. K.S.A. 2022 Supp. 23-2215(a). When a necessary party has not been joined, such a judgment is not divested of jurisdiction but has only the force and effect of a finding of fact necessary to determine a party's duty of support.

Appeal from Crawford District Court; GUNNAR A. SUNDBY, judge. Opinion filed June 16, 2023. Affirmed.

Allison G. Kort, of Kort Law Firm LLC, of Kansas City, Missouri, for appellant C.L.

Valerie L. Moore, of Lenexa, for appellee M.S., and *Sara S. Beezley*, of Girard, for appellee E.L.

Before GARDNER, P.J., HILL and PICKERING, JJ.

GARDNER, J.: This case asks whether a person may claim a presumption of parentage after a district court has tried and entered judgment on another person's

presumption of parentage for the same child. E.L. was in a same-sex relationship with M.S. when twins conceived through artificial insemination were born to E.L. After that relationship ended and the twins were three years old, the biological mother entered a same-sex marriage with C.L. They have since divorced. Both of E.L.'s ex-partners claimed to be the parent of the twins, but at different times. M.S. petitioned for parentage and the Crawford County District Court heard evidence, including from C.L., and entered a judgment finding M.S. the legal parent of the twins. C.L. first asserted her parentage after that order was entered. So when M.S. moved to dismiss C.L.'s parentage petition for failure to state a claim for relief, the district court granted that motion. After careful review, we affirm, finding C.L.'s parentage petition an improper collateral attack on the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In January 2012, E.L. and M.S. began a same-sex relationship. In May 2014, E.L. became pregnant with twin boys—W.L. and G.L.—through artificial insemination. E.L. gave birth to the twins in December 2014. The two never had a coparenting agreement. They lived in Kansas City until they permanently separated in January 2016. After the separation the parties moved separately to Pittsburg.

In January 2017, E.L. and C.L., a woman, began dating, just after the twins' second birthday. In the summer of 2017, E.L. and C.L. became engaged and moved in together.

M.S. Files a Parentage Action

In October 2017, M.S. filed a Petition for Determination of Parentage in Crawford County District Court, asserting parentage of the twins under K.S.A. 2017 Supp. 23-2208(a)(4)'s presumption of maternity. She argued that she had stood in the role of a

parent since the boys' conception, and that "it would be in the best interest of the minor children that the Court make a determination of parentage, custody, and child support." E.L. answered, denying that M.S. was a parent under the Kansas Parentage Act (KPA). See K.S.A. 2022 Supp. 23-2201 et seq. E.L. then cut off M.S.'s visitation. E.L. and C.L. married in January 2018.

In April 2018, M.S.'s parentage action was tried. M.S., C.L., and E.L. testified. Both C.L. and E.L. described C.L. as very involved in the twins' lives. C.L. detailed her daily schedule with the boys. E.L. testified that she and C.L. intended for C.L. to adopt the boys, but they had postponed the adoption plans while M.S.'s parentage case was pending. Yet C.L. did not assert any presumption of parentage during the trial.

The district court denied M.S.'s petition, finding her involvement with the children was incidental rather than an intentional sharing of full parenting responsibilities. M.S. appealed, but another panel of this court affirmed the district court. See *In re W.L.*, 56 Kan. App. 2d 958, 982, 441 P.3d 495, *rev. granted* 310 Kan. 1062 (2019). M.S. petitioned the Kansas Supreme Court for review of that decision, however, and that petition was granted.

In August 2018, after M.S.'s parentage case had concluded at the district court level, C.L. petitioned to adopt the children, with E.L.'s consent. While the adoption was pending, E.L. "voluntarily wrote and signed a parenting agreement confirming [C.L.] is the boys' legal mother." But that agreement had no preclusive or binding effect on M.S.'s parentage case. See K.S.A. 2022 Supp. 23-2209(d) ("Any agreement between an alleged or presumed father and the mother or child does not bar an action under this section."). And the adoption was never completed, as E.L. and C.L.'s marriage began to deteriorate.

E.L. and C.L. Divorce

In the spring of 2019, while M.S.'s appeal of her parentage case was pending with this court, E.L. and C.L.'s marriage deteriorated. They separated in early October and by the end of October, E.L. had petitioned for divorce. In December 2019, C.L. filed her answer and counter-petition to E.L.'s divorce petition, alleging that there were two children of their marriage and that C.L. was a parent to them. E.L.'s answer denied C.L.'s allegation of parentage but admitted that C.L. was a stepparent to the children and was entitled to some time with them.

The divorce case remained pending. In the fall of 2020, E.L. and C.L. reached a coparenting agreement that established joint legal and physical custody of the children.

The Supreme Court Reverses M.S.'s Parentage Action

While E.L. and C.L.'s divorce was pending, the Kansas Supreme Court issued its decision in M.S.'s parentage case in November 2020. *In re W.L.*, 312 Kan. 367, 369, 475 P.3d 338 (2020). That case held that "the same-sex partner of a woman who conceives through artificial insemination may establish a legal fiction of biological parentage by asserting the KPA presumption of maternity in K.S.A. 2019 Supp. 23-2208(a)(4) (notorious recognition of maternity)." 312 Kan. at 381. No written coparenting agreement is necessary. *In re M.F.*, 312 Kan. 322, 323, 475 P.3d 642 (2020); *In re W.L.*, 312 Kan. at 368. Instead,

> "[s]he need only show she has notoriously recognized maternity and the rights and duties attendant to it at the time of the child's birth. In addition, in keeping with *Troxel v. Granville*, 530 U.S. 57, 66, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000), the court must ultimately 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 who is claiming parentage under the KPA." 312 Kan. 381-82.

See *Frazier v. Goudschaal*, 296 Kan. 730, 746-47, 295 P.3d 542 (2013).

Under this "legal fiction," the procedure for establishing maternity under K.S.A. 2022 Supp. 23-2208(a)(4) is the same as the procedure for establishing paternity. See *In re W.L.*, 312 Kan. at 381 ("KPA provisions applicable to father and child relationship apply, insofar as practicable, to determine existence of mother and child relationship."). Thus, a woman claiming to be a presumptive mother of a child can be an interested party under the KPA without claiming to be the biological or adoptive mother. *Frazier*, 296 Kan. at 747.

A woman trying to establish maternity "bears the burden to demonstrate the initial presumption." *In re W.L.*, 312 Kan. at 381. If this burden is successfully met, the burden shifts "to the party opposed to establishment of the relationship to rebut the presumption by clear and convincing evidence, by court decree establishing paternity or maternity of someone other than the presumed parent, or under K.S.A. 2019 Supp. 23-2208(c)." 312 Kan. at 381. Under K.S.A. 2019 Supp. 23-2208(c), "if two conflicting presumptions arise, 'the presumption which on the facts is founded on the weightier considerations of policy and logic, including the best interests of the child' prevails." 312 Kan. at 381. Finally, if a presumption of parentage is rebutted, "the burden shifts back to the party seeking establishment of the parent and child relationship, who must go forward with the evidence. K.S.A. 2019 Supp. 23-2208(b). The ultimate burden placed on the party seeking court recognition of the relationship can be discharged by a preponderance of the evidence." 312 Kan. at 381 (citing *In re M.F.*, 312 Kan. 322, Syl. ¶ 4).

The Kansas Supreme Court reversed the district court's order denying M.S.'s parentage action. It found that the district court erred by relying on evidence "critical of M.S.'s performance as a partner and a parent after the twins' birth," stating, "the quality of

her partnering with E.L." is "not necessarily material to the statutory and constitutional questions a district judge must answer" in determining parentage. 312 Kan. at 382. Similarly, the court found that the district judge improperly relied on evidence of C.L.'s positive effect on the twins' lives, because counsel never "truly pursued" the possibility of conflicting parentage presumptions under K.S.A. 2019 Supp. 23-2208(c). 312 Kan. at 383. And without an asserted conflicting presumption, "[C.L.] and her relationship to the twins is irrelevant to whether M.S. can establish her pre-existing maternity under K.S.A. 2019 Supp. 23-2208(a)(4) and (b)." 312 Kan. at 383.

Our Supreme Court clarified that the focus should be on the woman's parenting at the time of birth, not the women's relationship. "*In re M.F.* makes clear that a birth parent needs to make a decision and be held to it, not given the power to change his or her mind whenever the bloom is off the rose of romance or it otherwise suits." 312 Kan. at 383. The court stated: "A child is born with one legal parent or two. His or her birth mother does not get to change that reality once it arises by operation of law." 312 Kan. at 383.

Thus, the Kansas Supreme Court reversed the Court of Appeals' decision and remanded the case for further proceedings. The court instructed that on remand, the district judge was free to allow more evidence by the parties, including proof of any conflicting presumptions. 312 Kan. at 384; see K.S.A. 2022 Supp. 23-2208(c).

M.S.'s Remanded Parentage Action

M.S.'s remanded parentage case was assigned to Senior Judge Sundby in February 2021. Because C.L. was not a party to that case, she was not electronically notified of any filings or hearings in it.

Still, C.L. discovered there was a status conference in that parentage case scheduled for February 22, 2021, and secured an attorney to represent her as an interested

party in M.S.'s remanded parentage case. Without objections, the district court allowed her attorney to join the status conference held on Zoom to observe. In discussing the mandate, the attorneys discussed whether a new evidentiary hearing was necessary. M.S.'s counsel opined that because C.L. was not involved with E.L. at the time of the twins' birth, C.L. could not establish a competing presumption of parentage. Thus, M.S. should "just be declared a parent . . . based on the record alone." E.L.'s counsel disagreed:

> "I think there is going to be an issue of competing presumptions. [C.L.] has actually been in these boys lives for longer than [M.S.] has been in their lives, especially during the period of time that have been more formative where they have known her. They call her mom. She's been around three plus years so I think that's going to be the question for this Court is maybe have to get to the position where we have a *Ross* Hearing on the issues of these competing presumptions."

M.S.'s counsel then asked if C.L. intended to assert a competing presumption of parentage. C.L.'s counsel responded that he had just been hired and had not yet fully reviewed the case, but he stated: "I don't think she's going to assert the presumption, Judge. I think she's going to ask for stepparent visitation in this. . . . [T]hat's my understanding."

At another hearing, on February 25, 2021, M.S., E.L., and C.L. all appeared with counsel. The original guardian ad litem also appeared on behalf of the twins. At that hearing, C.L. said that she intended to file a motion to intervene in the parentage action that day. But she neither asserted a presumption of parentage at this hearing, nor moved to intervene that day.

Similarly, at the next hearing, on March 2, 2021, M.S., E.L., and C.L. all appeared with counsel. Again, C.L. did not assert a presumption of parentage, file any pleadings doing so, or move to intervene. The court set the case for trial on April 9, 2021.

Between that hearing and the trial date, E.L. and M.S. attended mediation and reached an agreement. That agreement became the basis of the district court's "Order Establishing Parentage," filed on April 5, 2021. That order declared M.S. to be the legal parent of the twins, awarded M.S. and E.L. joint legal custody, and adopted a reintegration parenting time schedule for M.S.

C.L. Intervenes in M.S.'s Parentage Action

Not until July 1, 2021, nearly five months after the first status conference, and three months after the court decreed M.S. the twins' legal mother, did C.L. first move to intervene in M.S.'s parentage action as an interested party. In that motion, and for the first time, C.L. claimed a presumption of parentage. She asserted, as M.S. had, that she had recognized maternity of the twins notoriously and in writing under K.S.A. 2022 Supp. 23-2208(a)(4).

On August 19, 2021, the district court entered E.L. and C.L.'s divorce decree in that separate case. It stated that the parties had not reached an agreement on any of the issues about the twins.

On that same day, the district court heard C.L.'s motion to intervene in the parentage case. The district court considered consolidating E.L. and C.L.'s divorce case with M.S.'s parentage case rather than permitting C.L. to intervene in M.S.'s parentage case. But it ultimately denied C.L.'s motion to consolidate the two cases and granted C.L.'s motion to intervene in the parentage case. The district court also made orders consistent with E.L.'s and C.L.'s agreed schedule, giving C.L. temporary stepparenting time and ordering that she be listed as a stepparent for school purposes. Mediation was ordered to form a permanent schedule.

In November 2021, the district court entered a journal entry approving the detailed parenting plan agreed to by M.S. and E.L. and finalizing the child support order.

C.L. Files a Parentage Action

On December 3, 2021, approximately three months after her motion to intervene was granted, and nearly eight months after the district court found M.S. to be a legal parent, C.L. first petitioned to determine parentage or, in the alternative, stepparent visitation. C.L.'s parentage petition asserted that all three women should have legal custody of the children. She claimed that she was entitled to these parental presumptions:

> (1) K.S.A. 2021 Supp. 23-2208(a)(3)(A), because after the children's birth she and E.L. married and C.L. acknowledged maternity of the children in writing;
>
> (2) K.S.A. 2021 Supp. 23-2208(a)(3)(C), because after the children's birth she and E.L. married and C.L. was "obligated to support the children under a written voluntary promise"; and
>
> (3) K.S.A. 2021 Supp. 23-2208(a)(4), because C.L. had notoriously or in writing recognized maternity of the children.

M.S. answered and she and E.L. later jointly moved to dismiss C.L.'s parentage action. They agreed that C.L. is a stepparent and that the children love her and have a relationship with her. But they argued that C.L. had failed to state a claim upon which relief could be granted for several reasons, including that no legal framework exists in Kansas under which a child can have three legal parents (stepparents aside), and that stepparent visitation should be handled in E.L. and C.L.'s divorce case rather than in a parentage case. The motion also argued that the only two parents for the twins are M.S. and E.L. because C.L. knew about M.S.'s parentage petition, C.L. participated in the trial

as a witness for E.L., M.S.'s parentage had already been established by court order by the time C.L. filed her own parentage petition, and there is "zero legal precedent or argument for adding another parent post-decree."

The district court granted the motion to dismiss C.L.'s parentage action for failure to state a claim under K.S.A. 2022 Supp. 60-212(b)(6).

C.L. timely appeals.

Analysis

On appeal, C.L. does not raise all the claims she made to the district court. She does not argue that Kansas law recognizes or should recognize three legal parents of a child. Nor does she argue that she had a presumption of maternity under K.S.A. 2022 Supp. 23-2208(a)(4) (notoriously or in writing recognized maternity of the children). C.L. has thus abandoned those claims. See *State v. Funk*, 301 Kan. 925, 933, 349 P.3d 1230 (2015) (issue not adequately briefed is considered abandoned).

DID THE DISTRICT COURT PROPERLY DISMISS C.L.'S PARENTAGE PETITION?

We first address M.S.'s claim that the district court "properly exercised the doctrine of collateral estoppel and/or res judicata" when denying C.L.'s parentage petition. In response, C.L. argues that the parties never argued these doctrines on remand and the district court never relied on either doctrine to support its dismissal of her petition, but even if it had, reliance on those doctrines is improper because M.S.'s parentage action did not determine C.L.'s parentage.

Collateral estoppel and res judicata are affirmative defenses that must be set forth in the responsive pleading—here, M.S.'s answer. K.S.A. 2022 Supp. 60-208(c); *Estate of*

Belden v. Brown County, 46 Kan. App. 2d 247, 262, 261 P.3d 943 (2011); see *State v. Parry*, 305 Kan. 1189, 1193, 390 P.3d 879 (2017). An affirmative defense not asserted in an answer is waived. *Turon State Bank v. Bozarth*, 235 Kan. 786, Syl. ¶ 1, 684 P.2d 419 (1984); *Church of God in Christ, Inc. v. Board of Trustees*, 47 Kan. App. 2d 674, 685-86, 280 P.3d 795 (2012) (holding, as matter of law, affirmative defenses of res judicata and collateral estoppel are waived when no answer was filed); *Estate of Belden*, 46 Kan. App. 2d at 262 (holding application of res judicata improper when not raised in answer).

But M.S.'s answer to C.L.'s petition does not raise the affirmative defense of collateral estoppel or res judicata. By failing to plead these defenses in her answer, M.S. waived them and cannot assert them for the first time on appeal. See *Turon State Bank*, 235 Kan. 786, Syl. ¶ 1; *Church of God in Christ, Inc.*, 47 Kan. App. 2d at 685-86; *Estate of Belden*, 46 Kan. App. 2d at 262; see also *In re Adoption of Baby Girl G.*, 311 Kan. 798, 801, 466 P.3d 1207 (2020) (holding issues not raised before district court cannot be raised on appeal). But see *Forster v. Fink*, 195 Kan. 488, 493, 407 P.2d 523 (1965) ("A party impliedly consents to the introduction of issues not raised in the pleadings by his failure to make a timely objection to the admission of evidence relating thereto.").

And like C.L., we find no indication in the record that the district court relied on either res judicata or collateral estoppel as a basis to dismiss C.L.'s parentage action. The court neither referred to those doctrines nor cited any of their elements in its written order or its oral ruling from the bench. See *Herington v. City of Wichita*, 314 Kan. 447, 457-58, 500 P.3d 1168 (2021) (res judicata elements); *In re Care & Treatment of Easterberg*, 309 Kan. 490, 502, 437 P.3d 964 (2019) (collateral estoppel elements). Nor does M.S. show that these preclusion doctrines bar suit by a nonparty. See *Brockman Equipment Leasing, Inc. v. Zollar*, 3 Kan. App. 2d 477, 482, 596 P.2d 827 (1979) (one not a party is not bound by the doctrine of res judicata); see also *In re Tax Appeal of Fleet*, 293 Kan. 768, 778, 272 P.3d 583 (2012) ("Issue preclusion prevents a second litigation of the same issue between the same parties, even when raised in a different claim or cause of

action."). We thus disagree that the district court dismissed C.L.'s parentage petition based on the doctrine of res judicata or collateral estoppel.

Still, the district court did find C.L.'s parentage petition was essentially filed too late, as the motion to dismiss had argued. The court had already adjudicated another person (M.S.) to be the legal mother of the twins, besides their birth mother. In other words, C.L. did not timely present any "competing presumption." See K.S.A. 2022 Supp. 23-2208(c).

The district court's written order simply states that dismissal is proper because "[t]he Court finds that there were no competing presumptions at the time of the children's birth." But its oral ruling puts flesh on the bones of that order:

> "And now there is no denying that [C.L.] has gained a relationship with these children and has been involved in it and nobody seems to be disputing that.
>
> "But the facts are, as I think we have to look at it from a—not from the facts that you wish to present to support her care and her love and closeness to this child, I have to look at it and I am looking at it on the basis that at the time of birth and conception there was no competing interest or presumption. Then a hearing was held and found—and she was found to be a parent and no matter how close and loving that relationship has become as a stepparent, that can't rise to the level of a parent or to a presumption of a parentage.
>
> "Only then the Court would—this Court would be creating new law, which is not applicable, to create the concept of a third parent. And that doesn't appear to fly with the legislature. That doesn't appear to be contained within the language of the past cases issued by the Appellate Courts and so, therefore, the Court will grant the motions to dismiss at this time."

True, this ruling states that "at the time of birth and conception there was no competing interest or presumption." That statement is accurate. C.L. was not in the picture when the twins were born, since she and E.L. began dating after their second birthday. And that finding is controlling as to C.L.'s claim of maternity under K.S.A.

2022 Supp. 23-2208(a)(4). As the Kansas Supreme Court held in *In re M.F.*, 312 Kan. 322, Syl. ¶ 5, a notorious or written recognition of parentage had to be done at the time of the child's birth to give rise to a presumption under K.S.A. 2022 Supp. 23-2208(a)(4). So the district court correctly held that the facts precluded C.L. from any presumption of maternity under K.S.A. 2022 Supp. 23-2208(a)(4).

But the two subsections that C.L. asserts on appeal, K.S.A. 2022 Supp. 23-2208(a)(3)(A) and (a)(3)(C), expressly base presumptions on events arising "[a]fter the child's birth." ("After the child's birth, the man and the child's mother have married . . . and . . . (A) The man has acknowledged paternity of the child in writing; . . . or (C) the man is obligated to support the child under a written voluntary promise."). According to the plain language of those subsections, those presumptions under K.S.A. 2022 Supp. 23-2208 need not exist at the time of the child's birth. Although the Legislature put time limits (300 days after certain events) on presumptions in K.S.A. 2022 Supp. 23-2208(a)(1) and (a)(2), the presumptions in K.S.A. 2022 Supp. 23-2208(a)(3)(A) and (a)(3)(C) are based on events "after the child's birth" and state no time limit. And no general statute of limitations applies to a parentage action based on the presumptions in K.S.A. 2022 Supp. 23-2208. See K.S.A. 2022 Supp. 23-2209(a)(1) ("any person on behalf of such a child may bring an action . . . [a]t any time to determine the existence of a father and child relationship presumed under K.S.A. 2022 Supp. 23-2208").

Still, the district court did not base its ruling solely on the lack of conflicting presumptions at the time of birth. The rest of the court's ruling says that the court held a parentage hearing, that the court found M.S. to be a parent, that a stepparent cannot also be a parent, and that to find in C.L.'s favor would create new law—the concept of a third parent—which the district court declined to do. In other words, C.L. was bringing an improper collateral attack on the court's previous judgment that M.S. was the twins' parent. C.L. invites us to ignore the district court's prior judgment in favor of M.S., yet

that judgment, even if voidable for some reason, had become a finality and beyond attack before C.L. began her parentage action.

A collateral attack is "[a]n attack on a judgment in a proceeding other than a direct appeal." Black's Law Dictionary 329 (11th ed. 2019). Collateral attacks on judgments of our courts of general jurisdiction (such as the district court) are generally precluded unless permitted by statute. *Jones v. Jones*, 215 Kan. 102, 112-13, 523 P.2d 743 (1974). Although res judicata principles apply only to parties and those in privity with them, the collateral attack doctrine applies to both parties and nonparties. *Ohio Pyro, Inc. v. Ohio Dept. of Commerce*, 115 Ohio St. 3d 375, 382, 875 N.E.2d 550 (2007).

"The questioning of the validity of a decree of adoption in any proceeding other than a direct appeal or a petition to set aside the adoption is a collateral attack." *Jones*, 215 Kan. at 111. In *Jones*, the district court found the natural parents' consent to adoption was valid. On appeal, the Kansas Supreme Court found that the district court had jurisdiction to decide the validity of the parents' consent, and decided the consent was valid, so the parents were estopped from collaterally attacking the decree of adoption. The court held that a judgment by a court having jurisdiction of the parties and the subject matter is final and conclusive unless it is later modified on appeal or by later legislation, and such a judgment cannot legally be collaterally attacked.

> "This court has consistently held against collateral attacks upon judgments of the courts of this state which have general jurisdiction of an issue. Where a court has jurisdiction of the parties to an action and of the subject matter, and renders a judgment within its competency, even if erroneous, the judgment is final and conclusive unless corrected or modified on appeal or by such other method as may be prescribed by statute, and it may not be attacked collaterally otherwise. [*State v. Shepherd*, 213 Kan. 498, Syl. ¶ 3, 516 P.2d 945 (1973)]." 215 Kan. at 112-13.

Lack of jurisdiction is the only exception we know of to the rule barring collateral attacks. Even then, the collateral attacker has the burden to show clearly and conclusively that the court that entered the judgment lacked jurisdiction to do so:

> "Collateral attacks upon judicial proceedings are never favored, and where such attacks are made, unless it is clearly and conclusively made to appear that the court had no jurisdiction, or that it transcended its jurisdiction, the proceedings will not be held to be void but will be held to be valid." 215 Kan. 102, Syl. ¶ 4.

See *Chamberlin v. Thorne*, 145 Kan. 663, 669-70, 66 P.2d 571 (1937) (presumption of jurisdiction attaches to judgments of courts of general jurisdiction; mere silence of record as to existence of facts essential to jurisdiction of probate court in adoption proceedings cannot defeat judgment of adoption on collateral attack); *Brockman Equipment Leasing*, 3 Kan. App. 2d at 482 (finding collateral attacker failed to sustain burden which "rests heavily" upon him to show lack of jurisdiction). Cf. *Choctaw & Chickasaw Nations v. City of Atoka, Okl.*, 207 F.2d 763, 766 (10th Cir. 1953) ("On a collateral attack on a judgment of a court of general jurisdiction it will be presumed, unless the contrary affirmatively appears, that all parties to the action were properly served with process.").

When a collateral attack fails to challenge the jurisdiction of the court, it should be dismissed on this basis alone:

> "Second, collateral attacks on judgments are clearly disfavored under the law, and Kansas courts have held this especially true in cases of adoptions. Kansas decisions hold that valid adoptions proceedings are not subject to collateral attack. *Jones v. Jones*, 215 Kan. 102, 111, 523 P.2d 743, *cert. denied* 419 U.S. 1032 (1974); *Walker v. McNutt*, 165 Kan. 533, Syl. ¶ 3, 196 P.2d 163 (1948); *LeShure v. Zumalt*, 151 Kan. 737, 739[,] 100 P.2d 643 (1940). The defendants' counterclaim is a collateral attack on the Winkelmans' adoptions and is not favored; more importantly, it does not challenge the jurisdiction of the adoptions court and should be dismissed on this basis alone. See *Long*

> *v. Winkelman*, case No. 86,270, unpublished opinion filed October 19, 2001." *Winkelman v. Tihen*, No. 96,488, 2007 WL 2767973, at *8 (Kan. App. 2007) (unpublished opinion).

Thus, in *Long v. Winkelman*, No. 86,270, 2001 WL 37132485, at *2 (Kan. App. 2001) (unpublished opinion), the court found that collateral attacks on an adoption judgment failed to state legally cognizable causes of action, and allowing an amendment to the pleadings would have been an exercise in futility, citing *Johnson v. Board of Pratt County Comm'rs*, 259 Kan. 305, 327, 913 P.2d 119 (1996) (quoting *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 [1962]).

Although this is not an adoption case, the principles underlying the collateral attack doctrine apply just as strongly here, in a parentage action. Both types of cases create a parent-child relationship and share the underlying realities that children are not commodities, that competing claims to children are foreseeable, that judgments are life-altering, that finality is necessary, and that delay is to be avoided.

The district court had jurisdiction of the parties to M.S.'s parentage action and of the subject matter, and rendered a judgment within its competency on April 5, 2021, declaring M.S. the legal parent of the twins. See K.S.A. 2022 Supp. 23-2210(a) ("The district court has jurisdiction of an action brought under the Kansas parentage act."). Although that 2021 judgment stemmed from the agreement of the parties to that litigation, it is still a valid judgment of the court. A consent judgment is just as effective as if the merits had been litigated and "it binds the parties as fully as other judgments." Black's Law Dictionary 1007 (11th ed. 2019). As a result, the 2021 judgment that M.S. is a parent is entitled to the presumption of finality that the doctrine disfavoring collateral attacks affords to a valid judgment. So even if that ruling were somehow erroneous, the judgment is final and conclusive unless corrected or modified on appeal or by another method prescribed by statute, and it may not be attacked collaterally except for lack of jurisdiction.

Yet C.L. makes no challenge to the district court's jurisdiction in M.S.'s parentage action. She mentions that she was not a party to that case and that neither E.L. nor M.S. notified her about its progress, but she does not argue or show on appeal that she should have been made a party to that action.

The relevant statutes under the KPA do not suggest that C.L. was a necessary party to M.S.'s parentage action. These statutes set out who the necessary parties are to a parentage action and who must get notice of that action. K.S.A. 2022 Supp. 23-2210(b) provides that in any parentage action, the initial pleading shall include the information required by K.S.A. 2022 Supp. 23-37,209. The latter statute requires the petitioner to state, among other matters, whether the petitioner "knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons." K.S.A. 2022 Supp. 23-37,209(a)(3). K.S.A. 2022 Supp. 23-2211(a) states that for parentage actions (non-child support) "the child, the mother, each man presumed to be the father under K.S.A. 2022 Supp. 23-2208, and amendments thereto, and each man alleged to be the father shall be made parties." But in October 2017, when M.S. filed her parentage petition, C.L. had not alleged that she was the children's mother, nor had she asserted any presumption under K.S.A. 2017 Supp. 23-2208. Nor did she so allege during the trial in May 2018. And on appeal, C.L. does not allege that M.S. or E.L. violated these statutes and does not contend that she was a necessary party to M.S.'s parentage action.

We find nothing inequitable about this. C.L. had actual knowledge of M.S.'s parentage petition while it was being litigated in the district court as evidenced by her testimony during that trial about her relationship to E.L. and to the children. And although C.L. contends that she was not notified of the post-remand progress of M.S.'s parentage case because she was not a party to it, she had actual and timely knowledge of its progress after the Kansas Supreme Court remanded it—her attorney represented her

interests in that case and she also appeared in pretrial conferences in February and March 2021, before the district court entered its order finding M.S. to be the legal parent of the twins. Yet C.L. filed no motion to intervene nor any petition for parentage until months after the district court entered that order. Essentially, she sat upon her rights. See *Ingraham v. Fischer*, No. 109,584, 2013 WL 5975967, at *1 (Kan. App. 2013) (unpublished opinion) (noting legal maxim that if you sit on your rights, you can lose them, often with unfortunate results); *Hagen v. Perry*, No. 92,256, 2005 WL 3433998, at *4 (Kan. App. 2005) (unpublished opinion) (same). Cf. *State ex rel. Stovall v. Meneley*, 271 Kan. 355, 388-89, 22 P.3d 124 (2001) (explaining that doctrine of laches stems from maxim that equity aids the vigilant and not those who slumber on their rights; laches is "the neglect to assert a right or claim which, taken together with the lapse of time and other circumstances causing prejudice to the adverse party, operates as a bar in a court of equity"). And C.L. does not contend on appeal that her lack of notice deprived the district court of jurisdiction to enter its order finding M.S. the legal parent.

But even if C.L. were a necessary party to M.S.'s parentage action, her non-joinder would not void the district court's judgment that M.S. was the twins' legal parent. This is because under the KPA, failure to join a necessary party does not divest the court of jurisdiction. Rather, in that event, the court's judgment, which otherwise determines the existence of the parent and child relationship for all purposes, solely determines the duty of child support:

> "The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes, but if any person necessary to determine the existence of a father and child relationship for all purposes has not been joined as a party, a determination of the paternity of the child shall have only the force and effect of a finding of fact necessary to determine a party's duty of support." K.S.A. 2022 Supp. 23-2215(a).

So if C.L. were a necessary yet non-joined party to M.S.'s parentage petition, her non-joinder would not divest the district court of jurisdiction.

Since C.L. does not show that she was a necessary party, the judgment of the court finding a parent and child relationship between M.S. and the twins is "determinative for all purposes." K.S.A. 2022 Supp. 23-2215. And because C.L. fails to meet her burden to show "clearly and conclusively" that the district court lacked jurisdiction to enter its judgment finding M.S. to be the legal parent of the twins, she cannot now attack that judgment. See *Jones*, 215 Kan. 102, Syl. ¶ 4.

C.L. cites one case in support of her argument that her parentage petition was timely—*In re A.K.*, 62 Kan. App. 2d 536, 518 P.3d 815 (2022). She cites its language that "[t]he reasonable way for a court to consider the 'time of birth' analysis in a stepparent case such as this is to consider that analysis as one more factor to be weighed." 62 Kan. App. 2d at 548. But there, the court was presented with two conflicting presumptions before it reached any decision on parentage—one under K.S.A. 2022 Supp. 23-2208(a)(4) from a woman, and one under K.S.A. 2022 Supp. 23-2208(a)(3)(B) from a man who was named as father on the child's birth certificate several years after the child was born. A panel of this court recognized that the "time of birth" analysis applies only to presumptions under K.S.A. 2022 Supp. 23-2208(a)(4). 62 Kan. App. 2d at 548. Still, it found "concerns for preserving 'vital bonds' that develop between parent and child and for the stability of the child do come into play in a case like this where A.M.'s parentage began at the birth of the child and Q.K.'s claim arose several years later." 62 Kan. App. 2d at 548. Under those circumstances, the fact that the man's competing presumption did not arise until years after the woman had entered the children's lives was just one factor to be weighed in the competing presumption analysis.

Not so here. *In re A.K.* does nothing to help convince us that we should or could ignore the binding effect of the district court's judgment that M.S. was the legal parent of

the twins. There, the parties raised conflicting presumptions of parentage which the court weighed and resolved in one action. Here, C.L. first asserted parentage four years after M.S. asserted parentage and several months after the court entered its judgment that M.S. was the legal parent.

Affirmed.