

NOT DESIGNATED FOR PUBLICATION

No. 126,006

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Adoption of V.A.,
a Minor Child.

MEMORANDUM OPINION

Appeal from Seward District Court; BRADLEY E. AMBROSIER, judge. Submitted without oral argument. Opinion filed October 20, 2023. Affirmed.

Tessa French, of Miller & French LLC, of Liberal, for appellant stepfather.

No appearance by appellee natural father.

Before BRUNS, P.J., PICKERING, J., and TIMOTHY G. LAHEY, S.J.

PER CURIAM: This appeal arises out of the district court's denial of a petition for stepparent adoption brought under the provisions of the Kansas Adoption and Relinquishment Act, K.S.A. 59-2111 et seq. The natural mother consented to the adoption of her minor daughter by the stepfather, but the natural father—who has not participated in this appeal—objected to the adoption. After a hearing of the petition, the district court found that the natural father's consent to the adoption was unnecessary but did not terminate his parental rights. Ultimately, the district court denied the petition for stepparent adoption because it was not in the best interests of the minor child.

On appeal, the stepfather (Stepfather) contends that the district court erred by considering the best interests of the minor child as a basis for denying the adoption. However, we find that it is appropriate under K.S.A. 2022 Supp. 59-2136(h)(2)(A) for a

district court to consider the best interests of the minor child who is the subject of an adoption petition as part of its analysis in determining whether to grant or deny the adoption. Although we do find that the district court erred by finding the natural father's consent was unnecessary without also terminating his parental rights, we find that this error was harmless because the adoption was ultimately not granted. Finally, based on our review of the record on appeal, we conclude that the district court did not abuse its discretion and that there was substantial competent evidence to support its decision. Thus, we affirm.

FACTS

The material facts of this case are not in dispute and the issues presented involve statutory interpretation—which is a question of law. As such, we will briefly summarize the facts here and address additional facts as necessary in the analysis section of our opinion. In discussing the facts, we are mindful of our responsibility to protect the identity of the minor child. Consequently, we will refer to the minor child by her initials in this opinion.

In 2011, V.A.'s natural mother (Mother) and natural father (Father) were married. A few months later, V.A. was born and the family resided together for several years. In 2018, V.A.'s parents were divorced. In granting the divorce, the district court awarded joint legal custody of V.A. to Mother and Father. In addition, the district court granted residency to Mother and ordered Father to pay child support on V.A.'s behalf.

In the fall of 2019, Father voluntarily moved to Mexico. While Father was in Mexico, he had intermittent communications with V.A. but stopped making his court-ordered child support payments. About two years later, Mother and Stepfather started dating and moved in together in August 2021. Since that time, V.A. has also lived with them. In September 2021, Father moved back to Kansas.

On January 18, 2022, Mother and Stepfather were married. Just a week later, Stepfather filed a petition seeking to adopt V.A. On the same date, Mother filed her consent to the adoption. In response to the petition, Father filed an answer in which he objected to the adoption. In his answer, Father admitted that he had outstanding child support obligations. But he denied the allegations regarding his lack of involvement in V.A.'s life.

The district court held a hearing to consider Stepfather's petition for adoption on September 13, 2022. At that point, Stepfather had resided with V.A. and Mother for a little over a year. Likewise, Stepfather and Mother had been married for less than nine months. At the hearing, both Stepfather and Father presented the testimony of several witnesses and introduced numerous exhibits in support of their respective positions.

Mother was the first witness called and she testified about her relationship with Stepfather. Mother described her perspective of the negative relationship between V.A. and Father as well as the positive relationship between V.A. and Stepfather. She admitted that she had been in a relationship with another man before Stepfather that had lasted about a year. This man had also lived with Mother and V.A. during their relationship.

Stepfather also testified about his relationship with V.A. as well as about the financial and emotional support he was providing to her. He testified that he attends her activities, views her as his daughter, and shares all financial responsibilities for her with Mother. Several other witnesses testified about Father's lack of involvement in V.A.'s life as well as about V.A.'s positive relationship with Stepfather.

In his testimony, Father suggested that his lack of contact with V.A. was caused—at least in part—by Mother. He explained that he had a good relationship with V.A. before the divorce and they had spent a lot of time together. Father admitted that he voluntarily moved to Mexico in October 2019. According to Father, he would talk on the

phone or via video with V.A. nearly every day when he first moved to Mexico. He also introduced photos into evidence that he indicated were from V.A.'s visit a few months after he had moved to Mexico.

Additionally, Father testified that he had remarried and that his new wife had a child about the same age as V.A. He also indicated that he and his new wife had one child together. He stated that it was his desire to attempt to relocate his new family to Kansas at some point in the future. Although he claimed that he tried to have more contact with V.A., Father admitted that he had limited in-person parenting time with her in 2019 and no in-person parenting time with her in 2020.

Father testified that after he returned to Kansas in September 2021, he attempted to contact V.A. on several occasions without success. He stated that he saw V.A. briefly in September and in November 2021. At one of these visits, V.A. gave Father a letter stating that she did not want to see him. Still, Father testified that he unsuccessfully attempted to see her again around Christmas but received no response from Mother.

Father admitted that during the two years preceding the filing of the adoption petition—2020 and 2021—he had only two brief in-person visits with V.A. Even though he testified that he intended to make child support payments in the future, Father conceded that he had not paid any child support since October 2019. On cross-examination, Father also agreed that V.A. does not want to see him and that she likely feels hurt by him emotionally.

When asked on cross-examination why he would not consent to the adoption by Stepfather, Father testified that he loves his daughter and wanted to have a relationship with her. He also testified that he did not believe the adoption would be in V.A.'s best interests because of the short-term nature of Mother and Stepfather's relationship. He also

testified that when Mother was in the prior relationship with a different man, V.A. referred to the man's parents as her grandma and grandpa.

Several members of Father's family testified about his desire to have a relationship with V.A. as well as the unsuccessful attempts that he made to see her. It was suggested that Mother was preventing Father and his family from having contact with V.A. In particular, V.A.'s paternal grandparents both testified that they went to Mother's house about four times over the past few years but were not allowed to see their granddaughter.

At the conclusion of the hearing, the district court took the matter under advisement and requested additional briefing from the parties. On November 2, 2022, the district court issued a written decision in which it found that "ample evidence was offered to sever [Father's] parental rights." Although the district court decided not to terminate Father's parental rights, it still found that his consent to the stepparent adoption was unnecessary.

In addressing the ultimate question of whether the stepparent adoption should be granted, the district court found that Stepfather had "provided [V.A.] much-needed financial and emotional support," that Stepfather was a "positive influence" on V.A.'s life, and that there were "no concerns" regarding Stepfather's ability to parent. Nevertheless, the district court indicated concerns regarding "the complex family history and the short amount of time [Stepfather] has been involved in her life." As a result, the district court concluded that "[w]hile there very well may become a time when [Stepfather] would further the best interest of the child by becoming her legal father, now is not that time."

Thereafter, Stepfather filed a timely notice of appeal.

ANALYSIS

On appeal, Stepfather contends that the district court incorrectly construed the relevant provisions of the Kansas Adoption and Relinquishment Act, K.S.A. 59-2111 et seq. Specifically, Stepfather argues that the district court erroneously interpreted K.S.A. 2022 Supp. 59-2136(h), which sets out the procedure and grounds for termination of parental rights when a natural parent declines to consent to the adoption of his or her minor child. It is important to note that Father has not participated in this appeal nor has he otherwise attempted to challenge the district court's findings of fact or conclusions of law.

Standard of Review

To the extent that the issues on appeal require us to determine whether the district court accurately interpreted and applied the provisions of K.S.A. 2022 Supp. 59-2136(h), our review is unlimited. *In re N.E.*, 316 Kan. 391, 402, 516 P.3d 586 (2022). In interpreting a statute, the most fundamental rule of statutory construction is that the intent of the Kansas Legislature controls. *Harsay v. University of Kansas*, 308 Kan. 1371, 1381, 430 P.3d 30 (2018). To determine legislative intent, we must first look to the statutory language enacted and give common words their ordinary meanings. *Nauheim v. City of Topeka*, 309 Kan. 145, 149, 432 P.3d 647 (2019). Where there is no ambiguity, we need not resort to statutory construction. 309 Kan. at 149.

Notwithstanding, our review of the district court's ultimate decision to deny the petition for stepparent adoption is limited. We review a decision whether to terminate a natural parent's rights and grant a petition for adoption by determining whether there is substantial competent evidence in the record on appeal to support the factual findings. In making that determination, we are not to reweigh the evidence or independently decide the credibility of the witnesses. *In re Adoption of J.M.D.*, 293 Kan. 153, 170-71, 260 P.3d

1196 (2011). "Substantial evidence is such legal and relevant evidence as a reasonable person might accept as sufficient to support a conclusion." *Gannon v. State*, 298 Kan. 1107, 1175, 319 P.3d 1196 (2014). We view the evidence in the light most favorable to Father, as the prevailing party in the district court. See *In re Adoption of J.M.D.*, 293 Kan. at 171.

Stepparent Adoptions

The Due Process Clause of the Fourteenth Amendment to the United States Constitution protects the fundamental right of a natural parent to parent his or her children. *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000); see also *In re B.D.-Y.*, 286 Kan. 686, 697-98, 187 P.3d 594 (2008). As a result, judicial termination of parental rights requires proof by clear and convincing evidence. K.S.A. 2022 Supp. 59-2136(h)(1). In keeping with the importance of the liberty interest, the Kansas Supreme Court has recognized that the termination provisions of the Kansas Adoption and Relinquishment Act should be strictly construed in favor of maintaining a parent's rights. *In re Adoption of C.L.*, 308 Kan. 1268, 1279-80, 427 P.3d 951 (2018).

Kansas generally disfavors nonconsensual adoptions because public policy requires that a natural parent maintain their parental rights when possible. See *In re Adoption of G.L.V.*, 286 Kan. 1034, Syl. ¶ 6, 1060, 190 P.3d 245 (2008). However, the Constitution does not protect biological parents when it has been shown by clear and convincing evidence that they have failed to adequately accept responsibility and provide support for their child's well-being. *In re Adoption of G.L.V.*, 286 Kan. at 1060. The party seeking to terminate a natural parent's rights—in this case Stepfather—has the burden to prove that termination is appropriate. *In re Adoption of C.L.*, 308 Kan. at 1278.

The term "stepparent adoption" is defined in K.S.A. 2022 Supp. 59-2112(d) to mean "the adoption of a minor child by the spouse of a parent with the consent of that

parent." In a stepparent adoption, "[t]he rights of only one of the natural parents need to be terminated." 1 Elrod, *Kansas Law and Practice: Kansas Family Law* § 6.3 (2022-2023 ed.). In Kansas, stepparent adoptions are controlled by the provisions of K.S.A. 2022 Supp. 59-2136. Although the current version of the statute no longer expressly mentions stepparent adoptions, it remains applicable in cases "where a relinquishment or consent to an adoption has not been obtained from a [natural] parent . . ." K.S.A. 2022 Supp. 59-2136(a).

Under K.S.A. 2022 Supp. 59-2136(h)(1), a district court has the discretion to "order that parental rights be terminated and find the consent . . . unnecessary, upon a finding by clear and convincing evidence, of any of the" grounds listed in the statute. In other words, if a district court finds by clear and convincing evidence that the parental rights of the natural parent be terminated, the consent of that parent to the adoption is no longer required. Logically, this would mean that if a district court exercises its discretion not to terminate the natural parent's rights, then his or her consent to the adoption continues to be required.

In K.S.A. 2022 Supp. 59-2136(h)(1), the Kansas Legislature listed seven specific grounds permitting termination of a natural parent's rights in conjunction with a petition for adoption. If a petitioner proves one or more of the statutory grounds by clear and convincing evidence, the district court has the discretion to terminate the natural parent's rights and his or her consent to the adoption is unnecessary. See K.S.A. 2022 Supp. 59-2136(h)(1) (district court "may order" termination after finding "any" of the listed grounds has been proved); see also *Hill v. Kansas Dept. of Labor*, 292 Kan. 17, 21, 248 P.3d 1287 (2011). In deciding whether to terminate a natural parent's rights and approve an adoption, the district court "[s]hall consider all of the relevant surrounding circumstances." K.S.A. 2022 Supp. 59-2136(h)(2)(A).

Interpretation and Application of K.S.A. 2022 Supp. 59-2136(h)

A review of the record on appeal in this case reveals that the district court appropriately looked to the grounds set forth in K.S.A. 2022 Supp. 59-2136(h)(1) and found by clear and convincing evidence that Father had "failed or refused to assume the duties of a parent for two consecutive years immediately preceding the filing of the petition." K.S.A. 2022 Supp. 59-2136(h)(1)(G). The district court also found that Father failed to overcome the rebuttable presumption that he had failed or refused to assume the duties of a parent because of his lack of child support payments in the previous two years. See K.S.A. 2022 Supp. 59-2136(h)(3). The district further found by clear and convincing evidence that Father's "testimony concerning his non-support-related contact with the child is at best minimal and completely insufficient, pursuant to law, to require his consent for adoption." See K.S.A. 2022 Supp. 59-2136(h)(4).

Notwithstanding these findings, the district court exercised its discretion not to terminate Father's parental rights. Yet it still found that "Father's consent is unnecessary according to law." Based on our reading of the plain and unambiguous language of K.S.A. 2022 Supp. 59-2136(h)(1), we find that the district court erred in concluding that Father's consent to the adoption was unnecessary without also terminating his parental rights. Had the district court exercised its discretion to terminate Father's parental rights, then his consent would not have been necessary. But by deciding not to terminate Father's parental rights, the adoption could not go forward without his consent.

Although we find that the district court erred, we find this error to be harmless under the unique circumstances presented in this case. An error is harmless if it would not have changed the outcome of the case. See *In re Henderson*, 306 Kan. 62, 76-77, 392 P.3d 56 (2017). Here, the district court's error in finding that Father's consent to the adoption was unnecessary without also terminating his parental rights was harmless because it ultimately denied the petition for adoption.

Best Interests of the Child

Stepfather argues that under the current version of K.S.A. 2022 Supp. 59-2136, the best interests of the minor child who is the subject of the adoption action should no longer be considered in a stepparent adoption case. In support of this argument, Stepfather points out that the prior version of the statute—as set forth in K.S.A. 2010 Supp. 59-2136(d)—stated that "[t]he court may consider the best interests of the child and the fitness of the nonconsenting parent in determining whether a stepparent adoption should be granted." He further points out that the 2018 Kansas Legislature amended the statute, and it no longer expressly mentions the best interests of the child as a consideration. See L. 2018, ch. 118, § 19. Thus, he argues that the Legislature intended to completely remove the best interests of the child analysis for stepparent adoptions over an objecting natural parent whose consent has been deemed unnecessary. However, we find Stepfather's argument to be unpersuasive.

"It is elementary law that the aim and end of adoption statutes is the welfare of children." *Browning v. Tarwater*, 215 Kan. 501, 505, 524 P.2d 1135 (1974); see also 1 Elrod, *Kansas Law and Practice: Kansas Family Law* § 6.2 (2022-2023 ed.) ("If a minor is being adopted, the chief consideration is the welfare of the child."). Significantly, the current version of K.S.A. 2022 Supp. 59-2136(h)(2)(A) states that a district court "[s]hall consider all of the relevant surrounding circumstances" in determining whether to terminate a natural parent's rights and to grant a petition for adoption. We find that this language includes the best interests of the child as one of the circumstances that a district court is required to consider in a stepparent adoption case.

Our Legislature's directive to district courts to "consider all of the relevant surrounding circumstances" does not limit the scope of what should be assessed in determining the welfare of a minor child who is subject to an adoption proceeding. See K.S.A. 2022 Supp. 59-2136(h)(2)(A). Rather, it expands the type of things that a district

court should consider. Certainly, the best interests of the child is one of the surrounding circumstances that is to be considered before a district court makes the ultimate determination regarding whether to grant a stepparent adoption. In fact, we find that a contrary interpretation of the plain and unambiguous language of K.S.A. 2022 Supp. 59-2136(h)(2)(A) would be unreasonable. See *State v. James*, 301 Kan. 898, 903, 349 P.3d 457 (2015).

Although we have no reason to disagree with the district court's positive findings in this case regarding Stepfather's ability to parent, simply being a stepparent—in and of itself—does not inherently make a person either a good or a bad parent. Instead, the decision to terminate a natural parent's rights and to grant an adoption depends upon the unique circumstances presented in each case. If we were to adopt Stepfather's legal argument and prevent district courts from considering the best interests of the child who is the subject of the proceedings, it could not only lead to absurd results but could also be dangerous to the welfare of the minor child in some instances. Accordingly, we conclude that it was appropriate for the district court to consider V.A.'s best interests as part of the relevant circumstances in this case.

Substantial Competent Evidence

Finally, we turn to whether there is substantial competent evidence in the record on appeal to support the district court's decision to deny Stepfather's petition for adoption. As discussed above, it is not our role to reweigh the evidence or to decide the credibility of witnesses. Likewise, we are not to replace our own judgment for that of the district court if its decision is supported by "legal and relevant evidence that a reasonable person could accept as being adequate to support a conclusion." *Pyle v. Gall*, 317 Kan. 499, 501, 531 P.3d 1189 (2023) (quoting *State, ex rel. Secretary, DCF v. M.R.B.*, 313 Kan. 855, 862, 491 P.3d 652 [2021]). In other words, "appellate review of factual questions should accord a great deal of deference to the trial judge's determination, even in those instances

where the appellate jurists might have decided the case differently." *In re Adoption of J.M.D.*, 293 Kan. at 171.

As Stepfather accurately points out, the district court found that he has "provided [V.A.] much-needed financial and emotional support," that it had "no concerns" with his ability to parent, and that "he has been a positive influence in the child's life." Yet the district court went on to find that "the complex family history and the short amount of time he has been involved in [V.A.'s] life preclude the Court from granting the adoption."

Significantly, the district court explained:

"The Court does have a real concern about the short-term nature of the marriage and the relationship between natural mother and the Petitioner. The parties, at the time of the hearing, had been married for 8 months. The entire relationship of the parties was less than two years in duration. Mother had been in a similar relationship with a gentleman who lived with mother and child for about the same duration immediately before this relationship began. The child saw that gentleman, as she sees this one, in a parental role. Furthermore, the evidence clearly establishes that during the time of the marriage the child saw natural father in that role. This gives the Court concern. Furthermore, mother appears to have been orchestrating a great deal of this relationship for the sole purpose of allowing a non-consensual step-parent adoption. While it is understandable, this Court does not believe doing so is in the best interest of this child. While there very well may become a time when Petitioner would further the best interest of the child by becoming her legal father, now is not that time."

A review of the record on appeal reveals that these findings are supported by substantial competent evidence. In particular, the record reflects that—at the time of the hearing—V.A. had only known Stepfather for a little over a year and that Mother had only been married to Stepfather for about nine months. The record also reflects that Mother had been in a relationship with another man following her divorce from Father to whom V.A. had also grown attached. The record reflects that during Mother and Father's

marriage and prior to Father's move to Mexico, he had a close relationship with V.A. In addition, there is evidence in the record on which a reasonable person could find that Mother contributed to at least some of the difficulties in V.A.'s relationship with Father. The district court also had the benefit of hearing the testimony presented by the parties and the witnesses at the hearing. Thus, viewing the record in the light most favorable to Father as the prevailing party below, we cannot say that it was unreasonable for the district court—who had the benefit of seeing and hearing the witnesses testify—to deny this non-consensual adoption based on the evidence presented at the hearing.

CONCLUSION

In conclusion, we find that the district court appropriately considered V.A.'s best interests as part of its analysis under K.S.A. 2022 Supp. 59-2136(h)(2)(A) determining whether to grant or deny the adoption. Although we do find that the district court erred by finding the natural father's consent was unnecessary since it did not also terminate his parental rights, we find that this error was harmless under the circumstances presented. Finally, based on our review of the record on appeal in the light most favorable to Father as the prevailing party below, we conclude that there is substantial competent evidence to support the district court's decision. Thus, we affirm.

Affirmed.