NOT DESIGNATED FOR PUBLICATION

No. 90,238.

In the Interest of C.M., C.M., and C.M., Minor Children.

Court of Appeals of Kansas

April 2, 2004

Appeal from Reno District Court; Patricia Macke Dick, judge. Opinion filed April 2, 2004. Appeal dismissed.

Richard A. Macias, for appellants foster parents.

Karen S. Smart, assistant district attorney, Keith E. Schroeder, district attorney, Phill Kline, attorney general, and Michael C. Robinson, guardian ad litem, for appellee.

Sarah J. Sargent, of Topeka, for amicus curiae Kansas Children's Service League.

Before ELLIOTT, P.J., MALONE, J., and ROGG, S.J.

MEMORANDUM OPINION

PER CURIAM.

The Ns, foster parents of two of the three M children, appeal the trial court's denial of their motion requesting interested party status.

We dismiss the appeal, and if we were to reach the merits, we would affirm.

C.M.1, C.M.2, and C.M.3 were placed in protective custody; Kansas Social and Rehabilitation Services (SRS) was granted temporary custody of the M children since father was incarcerated and mother was undergoing inpatient drug treatment. All three children were adjudicated children in need of care and were placed in the foster care of the N family. About 5 months later, C.M.2 was placed in a different home in a different town at the request of the Ns. Both parents' rights were terminated.

The trial court then ordered the children be placed in SRS custody for adoption; found there was no known reason for the sibling split; and ordered the children to be placed together. Three months later, the children were still residing in separate foster homes and the trial court stated the children remained "in separate homes for no good reason despite court order to reunify them and look for placement for all three."

At some point, the Ns moved to be granted interested party status under K.S.A. 38-1541. At the hearing, the M children's case worker testified about the history between the Ns and C.M.2 and the Ns' inability to deal with him.

The trial court rejected the Ns' motion for interested party status as well as their oral motion to stay the scheduled removal of C.M.1 and C.M.3 from their home, finding there was no adequate reason for removing C.M.2 from his siblings in the first place.

The Ns appeal.

For reasons unknown to us, the Ns obtained a restraining order from federal court which apparently remains in effect, pending the outcome of this appeal.

We issued a show cause order concerning whether the denial of a motion to be

designated an interested party is appealable. The right to appeal is not a vested one, and absent statutory authorization, no appeal is available. *Nguyen v. IBP, Inc.,* 266 Kan. 580, 588, 972 P.2d 747 (1999).

Appellants' reliance on the collateral order doctrine is misplaced. See *In re C.H.W.,* 26 Kan. 413, 417, 988 P.2d 276 (1999). And a separate issue is whether the Ns would have standing to appeal the refusal to grant interested party status because K.S.A. 38-1591(a) only allows interested parties to appeal an adjudication, disposition, termination of parental rights, or order of temporary custody.

Our reading of *In re D.D.P., Jr.,* 249 Kan. 529, 542, 819 P.2d 1212 (1991), and *In re J.T.H.,* No. 87,456, unpublished opinion filed May 17, 2002, indicates the Ns do not have standing to appeal under K.S.A. 38-1591 because they are not interested parties and they are not appealing an adjudication, disposition, termination, or order of temporary custody. Further, in *In re S.C. and C.A.,* No. 90,597, unpublished opinion filed March 5, 2004, we held that when a trial court denies interested party status, that person has no right to appeal the denial.

The appeal is dismissed.

If we were to reach the merits of this appeal, we would affirm.

The Ns argue the trial court abused its discretion in refusing to grant them interested party status in the M children's case. We disagree. See K.S.A.2003 Supp. 38-1502(e); K.S.A. 38-1541.

We have reviewed the record on appeal, and it is obvious from the transcript of the hearing that all three factors listed in K.S.A. 38-1541 were considered by the trial court. The trial

court decided the Ns were not suited as interested parties in the case. The information indicated a stable relationship between the Ns and C.M.1 and C.M.3, but a nonexistent, even negative, relationship with C.M.2. It was clear the reason C.M.2 was no longer with his siblings was that the Ns did not wish him to be in their home. Under these circumstances, it cannot be said the trial court abused its discretion in refusing to grant interested party status in this case.

The Ns also claim the trial court failed to follow the requirements of K.S.A. 38-1561, K.S.A. 38-1562, and/or K.S.A. 38-1565, specifically relating to the October 21, 2002, hearing. But at the time that permanency hearing was held, parental rights to the M children had already been terminated. The statutes cited by the Ns are from the *dispositional* section of the Code for the Care of Children, and are intended to apply *before* parental rights are terminated. See *In re J.D.,* 31 Kan.App.2d 658, 664-65, 70 P.3d 700 (2003).

The Ns also claim the trial court failed to grant them a hearing and failed to follow the requirements of K.S.A. 38-1566. Simply put, for the Ns to prevail on this argument, they must show their claimed oral request for a hearing was within 10 days of the notification. We can find nothing in the record to indicate this was, in fact, the case. The appellant has the duty to designate a record sufficient to establish a claimed error. Without an adequate record, the claim of error fails. *Unrau v. Kidron Bethel Retirement Services, Inc.,* 271 Kan. 743, 777, 27 P.3d 1 (2001).

The Ns also argue the trial court failed to follow the requirements of K.S.A. 38-1566(b). This argument fails because that statute applies only to the removal of children from the home of a parent, *not* a foster parent or any other alternative placement.

Next, the Ns argue the trial court failed to follow K.S.A. 38-1584(b)(4) or the factors

listed in *In re J.A.,* 30 Kan.App.2d 416, 42 P.3d 215, *rev. denied* 274 Kan. ---- (2002). However, the authorities relied on by the Ns involve situations in which adoption placement decisions are being made. The present case simply involves the trial court's determination the foster care placement should be changed so that all of the M children can reside together. No adoption or custody issue was presented to or decided by the trial court.

And the Ns' reliance on *Spielman v. Hildebrand,* 873 F.2d 1377 (10th Cir.1989), is misplaced. This argument is essentially one of procedural due process; the Ns claim they were not given an adequate opportunity to challenge the decision of the Kansas Children's Service League (KCSL) and the trial court to remove C.M.1 and C.M.3 from their foster home in order to place them with their brother, C.M.2.

The appellants in the present case were not preadoptive parents of any of the M children. No agreement had been signed with the KCSL regarding the adoption of the children. The Ns were the foster parents of two of the three children, and their situation has been addressed in *Smith v. Organization of Foster Families,* 431 U.S. 816, 847, 97 S.Ct. 2094, 53 L.Ed.2d 14 (1977).

The statutory procedures in Kansas for the removal of children from a foster home offers similar procedural procedures as those approved in *Smith.* See K.S.A. 38-1566(a). As in *Smith,* the Kansas statutory procedures are sufficient to protect whatever liberty interest the Ns might have.

Appeal dismissed.