NOT DESIGNATED FOR PUBLICATION

No. 94,458

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Adoption of
E.A.C.

MEMORANDUM OPINION

Appeal from Rice District Court; HANNELORE KITTS, judge. Opinion filed May 19, 2006. Affirmed.

Myndee M. Reed, of Martindell, Swearer & Shaffer, LLP, of Hutchinson, for appellants.

Randall C. Henry, of Sterling, for appellees.

Roger Peterson, of Peterson & Kasper, of Ellsworth, guardian ad litem, for E.A.C.

Before GREEN, P.J., MALONE and BUSER, JJ.

Per Curiam: D.C. and S.C., the paternal grandparents of E.A.C., appeal the district court's denial of their petition to adopt E.A.C. We affirm.

The record for this appeal is somewhat sparse. E.A.C. was born on January 14, 1996, to C.C. (biological mother) and T.J.C. (biological father). On August 29, 2003, T.J.C. was convicted of first-degree murder for the June 2000 killing of C.C. On September 19, 2003, T.J.C. executed a consent to allow his parents, D.C. and S.C., to adopt E.A.C. On September 25, 2003, D.C. and S.C. filed an adoption petition in district court.

At some point, G.A. and D.A., E.A.C.'s maternal grandparents, filed a child in need of care (CINC) petition and a motion to terminate T.J.C's parental rights. On November 19, 2003, a joint hearing was held, wherein the district court (1) ruled that T.J.C.'s consent to the adoption was invalid; (2) found E.A.C. to be a CINC; (3) granted the motion to terminate T.J.C.'s parental rights; and (4) awarded temporary placement of E.A.C. with D.C. and S.C. until a final determination could be made. T.J.C. initially appealed the district court's decision to terminate his parental rights, but the appeal was voluntarily dismissed.

Ultimately, on April 7, 2005, the district court denied the petition for adoption. E.A.C. was placed with the maternal grandparents, G.A. and D.A., pursuant to K.S.A. 38-1584(b)(3). D.C. and S.C. timely appeal the denial of their adoption petition.

On appeal, D.C. and S.C. argue at length that contrary to the district court's ruling, T.J.C.'s consent to the proposed adoption was valid. Consequently, D.C. and S.C. contend the district court was obligated to grant the adoption, so long as D.C. and S.C. were fit and proper persons to adopt E.A.C.

Generally, our standard of review in adoption cases is to determine whether there is substantial competent evidence to support the district court's findings. *In re Adoption of K.J.B.*, 265 Kan. 90, 95, 959 P.2d 853 (1998). Here, the district court determined T.J.C.'s adoption consent was invalid as a result of the presumption of parental unfitness contained in K.S.A. 38-1585(a)(7). "Interpretation of a statute is a question of law, and an appellate court's review is unlimited. An appellate court is not bound by the district court's interpretation of a statute. [Citation omitted.]" *State v. Maass*, 275 Kan. 328, 330, 64 P.3d 382 (2003).

The district court ruled that T.J.C.'s adoption consent was invalid as a result of the application of the statutory presumption of parental unfitness contained in K.S.A. 38-1585(a)(7), which provides:

> "(a) It is presumed in the manner provided in K.S.A. 60-414 and amendments thereto that a parent is unfit by reason of conduct or condition which renders the parent unable to fully care for a child, if the state establishes by clear and convincing evidence that:
>
> . . . .

> (7) a parent has been convicted of capital murder, K.S.A. 21-3439 and amendments thereto, murder in the first degree, K.S.A. 21-3401 and amendments thereto, murder in the second degree, K.S.A. 21-3402 and amendments thereto or voluntary manslaughter, K.S.A. 21-3403 and amendments thereto, or if a juvenile has been adjudicated a juvenile offender because of an act which if committed by an adult would be an offense as provided in this subsection, and the victim of such murder was the other parent of the child."

This statute is part of the Kansas Code for Care of Children, and no similar provision can be found in the Kansas Adoption and Relinquishment Act, K.S.A. 59-2111 *et seq*. According to the statute, in a proceeding to terminate parental rights, if one parent is convicted of murdering another parent, a presumption exists that the convicted parent is unable to fully care for a child.

D.C. and S.C. claim the district court erred in relying on this statute to determine that T.J.C.'s adoption consent was invalid. They cite *In re Adoption of J.A.B.*, 26 Kan. App. 2d 959, 960, 997 P.2d 98 (2000), for support. In *J.A.B.*, a CINC petition was filed alleging K.L.G., the biological mother of J.A.B., was unfit. Subsequently, K.L.G. consented to allow her husband, J.A.B.'s stepfather, to adopt J.A.B. The district court granted the stepparent adoption. On an appeal filed by J.A.B.'s grandfather, this court held K.L.G. had capacity to give free and voluntary consent to the adoption, and the district court had not erred in permitting the adoption to be completed prior to the resolution of the CINC case. 26 Kan. App. 2d at 964; see also *In re A.W.*, 241 Kan. 810,

815, 740 P.2d 82 (1987) (even after a valid petition to terminate parental rights is filed, the parent retains the legal authority to relinquish his or her parental rights to a child placement agency).

Although J.A.B. is not directly on point, it supports the contention that T.J.C. retained the capacity to give free and voluntary consent to the adoption, even though a CINC case involving E.A.C. was pending. At the time the adoption consent was executed, T.J.C.'s parental rights had not been terminated. In fact, E.A.C. had not yet been adjudged a CINC. T.J.C. had a legal relationship with E.A.C., and he still retained the right to exercise care, custody, and control of the child at the time the adoption consent was executed.

We conclude the district court erred in relying solely upon K.S.A. 38-1585(a)(7) to determine that T.J.C.'s adoption consent was invalid. At the hearing on November 19, 2003, the district court was free to apply K.S.A. 38-1585(a)(7) in the CINC case in order to establish a presumption that T.J.C. was unable to fully care for E.A.C. This shifted the burden to T.J.C. to prove he was fit to care for E.A.C. However, there is nothing in the language of K.S.A. 38-1585(a)(7) which rendered T.J.C.'s adoption consent, executed 2 months earlier, invalid as a matter of law.

However, T.J.C.'s consent, even if valid, did not mandate that the proposed adoption be granted. Whether an adoption should be allowed rests within the judgment of

the court, not the consenting parent. In *In re Adoption of Chance*, 4 Kan. App. 2d 576, 584, 609 P.2d 232, *rev. denied* 228 Kan. 806 (1980), this court recognized:

> "The purpose of our adoption statutes as applied to minor children is to provide for the welfare of such children, and the statutes should be liberally construed to effect that purpose. While natural parents may specify the person or persons they wish to adopt their child, we recognize that regardless of the personal desires and expressed wishes of the natural parents, it is the court which in the final analysis must make a judgment as to whether any proposed adoption is to be allowed."

Here, the district court determined that T.J.C.'s adoption consent was invalid at the hearing on November 19, 2003. However, the district court did not deny the adoption petition for this reason. In fact, the district court awarded temporary placement of E.A.C. with D.C. and S.C. until a final determination could be made. Once T.J.C.'s parental rights were terminated, the district court was authorized to grant custody of E.A.C. for adoption without T.J.C.'s consent. See K.S.A. 38-1584(b)(1). We presume the district court was still considering the adoption petition, even though the court had ruled the consent was invalid, or else the court would have simply dismissed the adoption petition at the initial hearing.

The district court ultimately denied the adoption petition on April 7, 2005. The record on appeal contains no transcript of the hearing where the district court denied the adoption petition. We do not know the district court's reasoning in denying the adoption

petition and in placing E.A.C. with the maternal grandparents, G.A. and D.A. The record on appeal indicates the family assessments for both sets of grandparents were favorable.

D.C. and S.C. have not objected, either in district court or on appeal, to the sufficiency of the district court's findings in denying the adoption petition. A litigant must object to inadequate findings of facts and conclusions of law in order to give the district court an opportunity to correct them. In the absence of an objection, omissions in findings will not be considered on appeal. Where there has been no such objection, the district court is presumed to have found all facts necessary to support the judgment. *Hill v. Farm Bur. Mut. Ins. Co.*, 263 Kan. 703, 706, 952 P.2d 1286 (1998).

"'An appellant has the duty to designate a record sufficient to establish the claimed error. Without an adequate record, the claim of alleged error fails.' [Citation omitted.]" *State v. ex rel. Stovall v. Alivio*, 275 Kan. 169, 172, 61 P.3d 687 (2003). Here, the record on appeal fails to establish the district court erred in denying the adoption petition. In the absence of a sufficient record establishing error, we must presume the district court's ultimate decision to deny the adoption petition and to place E.A.C. with the maternal grandparents was supported by substantial competent evidence.

Affirmed.