NOT DESIGNATED FOR Publication

No. 100,303

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

TN THE MATTER OF THE MARRIAGE OF:

JOSEPH IRWIN,
Appellee,

and

AUDREY IRWIN,
Appellant.

MEMORANDUM OPINION

Appeal from Leavenworth District Court; Gunnar L. Sundby, judge. Opinion filed May 15, 2009. Appeal dismissed.

Audrey Catherine Irwin, appellant pro se.

Robert D. Beau, of Robert D. Beall, LLC, of Leavenworth, for appellee.

Before GREENE, PJ, PIERRON and STANDRIDGE, IT.

Per Curiam: Audrey Irwin (Wife) appeals all rulings entered by the district court after Joseph Irwin, Jr. (Husband), filed for divorce on December 2, 2003. For the reasons stated below, we dismiss the appeal on grounds that it is moot.

Facts

Husband, Wife, and their two children moved to Kansas in late July or early August 2003. Husband filed a petition for divorce on December *2,* 2003, in the District Court of Leavenworth County, Kansas, alleging that be and Wife no longer were compatible. In the petition, Husband claimed the children had resided in Kansas for 6 months; thus, the district court had jurisdiction over child custody. Based on the allegations in the petition, the district court entered an. ex. pane temporary order that, among other things, granted Husband residential custody of the children, with Wife receiving reasonable parenting time,

Wife promptly filed an answer and cross-petition also requesting a divorce. In her pleadings, Wife disputed Husband's assertion that the children had~ resided in Kansas for 6 months prior to Husband filing the petition. Thus, Wife claimed the district court did not have child custody jurisdiction.

At a hearing held January 6, 2004, Wife's attorney, Douglas 0. Waters, Jr., stated that "it would be better" and "we would agree" that the district court exercise jurisdiction over child custody issues. Both parties told the court that orders relating to the children previously had been entered in Virginia or Maryland, but those proceedings had been dismissed. To that end, the district court

asked:

> "THE COURT: So there are no custody orders issue by any other Court?
>
> "MR. BEALL [Husband's attorney]: No, sir
>
> "THE COURT: Do you agree, then, that this would—it would be the only convenient forum for the parties, Mr. Waters, by reason of their residency and the children's— "MR. WATERS: I—would agree to that, your Honor.
>
> "THE COURT: And that no other place would be more suitable place because of the information would be all localized now that they've all moved here.
>
> FFMR WATERS: Correct, your Honor. "THE COURT: Mr. Beau?
>
> MR BEALL: I would agree, your Honor.'[1]

Relying on these responses, the district court found that, pursuant to the terms of the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), K.S~A. 38-1336 *et seq.,* Kansas was not the home state of the children. Nevertheless, the district court also found Kansas was much more convenient for purposes of jurisdiction and there were no pending court orders from any other state concerning child custody. Pursuant to the UCCLIEA, then, the district court assumed jurisdiction over the child custody determinations.

On July 23, 2004, the district court entered a divorce decree dissolving the marriage. The decree was signed by the district judge and the parties' attorneys. With respect to the children, the court ordered joint legal custody but primary residential custody to Husband. Wife received parenting lime consistent with the court's preliminary order. The district court also awarded maintenance to Wife, child support to Husband, and divided numerous items of property between the parties. Wife did not file a notice of appeal within 30 days of this decree.

For nearly 2 years following the divorce, the district court continued to hold hearings regarding certain child custody issues, such as parenting time and holidays. On or around June 10, 2006, Wife filed a motion objecting to Husband's pending relocation~ to Fort Bliss, Texas, and seeking a change in child custody status.

In response to Wife's request, Janice Hayes, the guardian ad litem appointed to the case, filed with the district court an objection accusing Wife of "very strange behavior," including sleeping at roadside parks with the children while on a trip to Texas. Hayes further charged that Wife appeared to be stalking the family, attempted to alienate the children from Husband, and "continue[d] to express negative verbalizations to the children and continue[d] to use poor choice of words when describing [Husband's] wife." Wife countered that Hayes had "lost her objectivity and might be biased~"

On July 1 3~ *2006,* the district court entered an order denying Wife's motion to modify child custody. According to an. affidavit filed by Wife at the time, she followed Husband and the children to El Paso, Texas, where they had moved.

On September *25,* 2006, more than 2 months after the district court's last order, Wife filed a

"MOTION OF APPEAL" with the district court. Wife asserted numerous allegations, including that the district court never had jurisdiction over any of the proceedings, that the divorce decree had been pushed through the district court without the consent, knowledge, or approval of her attorney, and that Hayes (the guardian ad litem) exhibited bias against her by disregarding that the children had been living with an abusive woman Husband "found on one of those internet services,"

After filing her appeal, Wife never docketed it. As a result, the district court dismissed the appeal pursuant to Supreme Court Rule *5.051(2008* Kan, Ct. R. Annot. *35).*

On April 19, 2007, Wife made a second attempt to appeal~ the district court's rulings. After issuing a show cause order, the Court of Appeals dismissed Wife's appeal on November 8, 2007. The court gave two reasons for its ruling. First, Wife had failed to file for a reinstatement of her previously dismissed appeal pursuant to Rule 5.051. Second, there were no appealable orders entered by the district court 30 days before Wife filed her present notice of appeal on April 19, 2007; thus, pursuant to K.S.A. 60-2103(a) the Court of Appeals did not have jurisdiction over the appeal.

Following the Court of Appeals' dismissal of Wife's appeal, the district court entered an order dated February 14, 2008, taking notice that Wife had moved to the vicinity of El Paso, Texas, where Husband and the children were living, and that child custody court proceedings bad been initiated there by one of the parties. Based on this fact, as well as the fact that neither the children nor their parents continued to reside in Kansas, the district court declined to exercise jurisdiction over any future requests to modify child custody, effective immediately. Wife appeals from the district court's ruling.

Analysis

Citing K.S.A. 60-2103(a), Husband argues this court does not have jurisdiction to entertain Wife's appeal. Whether jurisdiction exists is a question of law over which an appellate court's scope of review is unlimited. *Foster v. Kansas Dept. of Revenue, 281* Kan. 368, *369,* 130 P.3d *560* (2006). Because the right to appeal is entirely statutory, appeals must be taken in the manner prescribed by statute to invoke an appellate courts jurisdiction. *Butler County R. W.D. No, 8 v Yates,* 275 Kan. 291, 299, 64 P.3d 357 (2003). To that end, a timely notice of appeal must be filed~ within 30 days from "entry of the [district court's] judgment." K.S.A. 60-2103(a).

Following the court's February 14, 2008, order declining to exercise jurisdiction over any future requests to modify child custody, Wife filed a "Motion of Appeal." Although the district court did not date stamp the pleading, it appears Wife faxed the document to the district court on or about March 13, 2008. In this notice, Wife purports to appeal every single order entered by the district court in the divorce action on grounds that the district court never had jurisdiction over the proceedings in the first place. Notwithstanding her stated intention, however, the only order entered by the district court within 30 calendar days of Wife[1]s appeal—and consequently the only order Wife may challenge in this appeal as provided by K.S.A. 60-21 03(a)—is the ruling dated February 14, 2008, in which the district court stated it would no longer exercise jurisdiction over requests to modify child custody. For the following reasons, we dismiss Wife's appeal as moot.

Wife appeals the court's February 14, 2008~ order *discontinuing* child custody jurisdiction on grounds that the court *lacked* jurisdiction over the proceedings. If we were to find that the district court did not have jurisdiction to enter its last order, however, reversal would change nothing. Although the district court's order discontinuing child custody jurisdiction would be vacated, the mandate from our court would deem the district court to be without child custody jurisdiction. Either way, the district court would no longer exercise jurisdiction over child custody issues, All prior child

custody orders entered by the district court would be unaffected because they were entered more than 30 days prior to Wife's appeal. See K~SA. 60-2103(a). Simply put, Wife's only timely claim on appeal is moot because a decision in her favor would not affect her rights. See *State ex ref. Slusher* v. *City of Leavenworth,* 285 Kan. 438, *454,* 172 P.3d~ 1154 (2001) ("An appeal will not be dismissed for mootness unless it is clearly and convincingly shown that the actual controversy has ended and the only judgment that could be entered would be ineffectual for any purpose and an idle act insofar as rights involved in the case are concerned."),

Appeal dismissed.