NOT DESIGNATED FOR PUBLICATION

No. 107,839

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Interest of:
J.W.,
a Minor Child.

MEMORANDUM OPINION

Appeal from Crawford District Court; DONALD R. NOLAND, judge. Opinion filed October 19, 2012. Appeal dismissed.

Jason P. Wiske, of Pittsburgh, for appellant mother.

Michael Gayoso, Jr., county attorney, for appellee State.

Seth A. Jones, of Richard L. Hines, P.A., of Erie, for appellees J.P. and W.P.

Before LEBEN, P.J., ATCHESON, J., and BUKATY, S.J.

Per Curiam: This appeal arose out of proceedings under the Revised Kansas Code for Care of Children. After the State of Kansas filed to declare J.W. a child in need of care in 2009, her mother agreed to the appointment of the child's paternal grandparents as permanent custodians for J.W. The mother and grandparents also agreed that the mother would have regular visitations with J.W.

But the grandparents eventually moved to end the mother's visitation rights, claiming that she wasn't regularly using them and the child was being harmed. The district court granted the grandparents' request in 2012, and the mother has appealed the end of her visitation rights.

We asked the parties to brief the question of whether we have jurisdiction to hear this appeal: The Revised Kansas Code for Care of Children provides for appeal only to orders of temporary custody, adjudication, disposition, finding of unfitness, or termination of parental rights, K.S.A. 2011 Supp. 38-2273(a), and the termination of visitation rights within a continuing guardianship does not appear to be among the situations in which an appeal is authorized. After considering the parties' arguments, we conclude that we lack jurisdiction to consider the mother's appeal. We therefore must dismiss it.

FACTUAL BACKGROUND

In January 2009, the State filed a petition asking the district court to find J.W. to be a child in need of care based on allegations that the child's father had sexually abused J.W. The next day, the district court awarded temporary custody of J.W. to the State and recommended placement with J.W.'s paternal grandparents. An adjudication hearing was scheduled for July 14, 2009, but on that day the child's mother consented to the appointment of J.W.'s paternal grandparents as permanent custodians. Also on that day, the district court terminated the father's parental rights, but the scheduled adjudication hearing to determine whether J.W. was a child in need of care wasn't held. In August 2009, just after J.W. turned 5 years old, the district court appointed the grandparents as permanent custodians. The district court's order provided that J.W.'s mother was permitted visitation with J.W. for 3 hours every other week—in accordance with the terms of her consent to the grandparents' appointment.

In January 2012, the grandparents filed a motion to terminate the mother's parenting time. A hearing was held in March 2012. The district court found that the mother hadn't made an effort to exercise her parenting time and that it was in J.W.'s best interests that the mother no longer have parenting-time rights. The district court granted

the grandparents' motion and ordered that the mother's visitation and parenting-time rights be terminated. The mother appealed.

ANALYSIS

We Lack Jurisdiction to Hear This Appeal.

Our court raised the issue of appellate jurisdiction and asked the parties to brief the issue. J.W.'s mother argues that her appeal is an appeal from a disposition, authorized by statute. The State and the grandparents contend that this court doesn't have jurisdiction because the district court's order isn't a disposition, so it isn't subject to appellate review by statute.

Whether appellate jurisdiction exists is a question of law over which this court has unlimited review. *Woods v. Unified Gov't of Wyandotte County/KCK*, 294 Kan. 292, 295, 275 P.3d 46 (2012). When the record reveals a lack of jurisdiction, we must dismiss the appeal. *In re T.S.W.*, 294 Kan. 423, 432, 276 P.3d 133 (2012). Moreover, the right to appeal is entirely statutory and isn't a right contained in the United States or Kansas Constitutions, 294 Kan. at 432, so we must look to the statute providing for appeal to determine whether we have jurisdiction. We don't have discretionary power simply to consider appeals from all district court orders. See *Kansas Medical Mut. Ins. Co. v. Svaty*, 291 Kan. 597, 609-10, 244 P.3d 642 (2010).

To determine jurisdiction here, we look to the Revised Kansas Code for Care of Children as it is the exclusive statutory authority for cases concerning children in need of care. *In re C.E.*, 47 Kan. App. 2d 442, 443-44, 275 P.3d 67 (2012). The revised code governs proceedings "concerning any child who may be a child in need of care." K.S.A. 2011 Supp. 38-2203(a). A district court acquires jurisdiction over a child "by the filing of a petition pursuant to this code." K.S.A. 2011 Supp. 38-2203(c). Here, the district court

has jurisdiction over J.W. because the State filed a petition pursuant to the code. The Revised Kansas Code for Care of Children lists the specific orders from which a party may appeal: "An appeal may be taken by any party or interested party from any order of temporary custody, adjudication, disposition, finding of unfitness or termination of parental rights." K.S.A. 2011 Supp. 38-2273(a). So the only appealable orders are those listed in K.S.A. 2011 Supp. 38-2273(a), and if the order doesn't fit one of those five categories, then the order isn't appealable by statute. *In re C.E.*, 47 Kan. App. 2d at 448.

Thus, the question before us is whether the district court's order terminating the mother's visitation rights is appealable under K.S.A. 2011 Supp. 38-2273(a). While in lay terms one might consider the district court's order a "disposition" of some kind, the terms used in K.S.A. 2011 Supp. 38-2273(a) are all terms of art under the code, each occurring in a certain sequence and each carrying its own meaning. *In re C.E.*, 47 Kan. App. 2d at 448. First, an "adjudication" is defined as a determination that a child is in need of care. K.S.A. 2011 Supp. 38-2251(b); *In re C.E.*, 47 Kan. App. 2d at 448. Next, a "disposition" refers to the court's custody order after a child has been adjudicated as a child in need of care. See K.S.A. 2011 Supp. 38-2255; *In re C.E.*, 47 Kan. App. 2d at 448 (citing *In re D.M.M.*, 38 Kan. App. 2d 394, 398-99, 166 P.3d 431 [2007]); *In re S.C.*, 32 Kan. App. 2d 514, Syl. ¶ 6, 85 P.3d 224 (2004) ("Under the Code, adjudications refer only to child in need of care determinations, and dispositions are those actions concerning custody taken by the court following such determinations."). So a disposition is tied to an adjudication. Further, the code specifically refers to an "order of disposition" as an order that is either "entered at the time of the adjudication if notice has been provided" or "entered within 30 days following adjudication, unless delayed for good cause shown." K.S.A. 2011 Supp. 38-2253(b); *In re C.E.*, 47 Kan. App. 2d at 448. The code even provides a listing of the authorized dispositions, which include placing a child in the custody of a parent, removing a child from the custody of a parent, placing a child in the custody of a relative, providing for a permanency plan with or without reintegration, or additional orders

involving counseling, alcohol and drug treatment, and child support. See K.S.A. 2011 Supp. 38-2255; K.S.A. 2011 Supp. 38-2255b.

Given these definitions, did a disposition take place when the district court ended the mother's visitation rights? To determine that, we must review the sequence of orders. In June 2009, the State filed an amended petition asking the district court to find J.W. to be a child in need of care. An adjudication hearing was set for July 14, 2009. Instead of an adjudication that J.W. was in need of care, however, her mother consented to the appointment of the grandparents as J.W.'s permanent custodians. In August 2009, the district court issued an order appointing the grandparents as permanent custodians. As a result, the district court never adjudicated J.W. to be a child in need of care. A September 2009 order terminating the father's parental rights indicates that J.W. "has been adjudicated a Child in Need of Care," but that finding isn't supported by the record available to us.

The mother apparently concedes that her appeal isn't from an order of temporary custody, adjudication, finding of unfitness, or termination of parental rights. An order of temporary custody was issued in January 2009, but there was no adjudication, finding of the mother's unfitness, or termination of her parental rights. The mother contends only that the district court's order was a disposition, making it subject to an appeal.

But a disposition refers to a custody order and is only entered at the time of or within 30 days of an adjudication that a child is in need of care. See K.S.A. 2011 Supp. 38-2253(b); *In re C.E.*, 47 Kan. App. 2d at 448. Here, there was no adjudication that J.W. was a child in need of care. And the district court's order terminating the mother's parenting time isn't among the authorized dispositions listed in the code. See K.S.A. 2011 Supp. 38-2255; K.S.A. 2011 Supp. 38-2255b. The district court's order wasn't a custody order, and it wasn't entered within 30 days of an adjudication that J.W. was a child in need of care. In short, there was no disposition because there was no adjudication.

This court previously has dismissed appeals by grandparents from orders changing placement because the order wasn't among the appealable orders under K.S.A. 2011 Supp. 38-2273(a). *In re A.F.*, 38 Kan. App. 2d 742, 745-46, 172 P.3d 63 (2007); *In re D.M.M.*, 38 Kan. App. 2d at 399. J.W.'s mother argues that her situation is different from the situations in those cases because she is J.W.'s natural mother and not a grandparent, but she doesn't specify how that difference makes the district court's order appealable under K.S.A. 2011 Supp. 38-2273(a). She also cites *In re T.D.W.*, 18 Kan. App. 2d 286, 850 P.2d 947 (1993), for the proposition that the termination of her visitation rights in a permanent custodianship is a disposition. But it isn't clear to us how *In re T.D.W.* supports this proposition. In *In re T.D.W.*, this court concluded that an order denying a motion to terminate parental rights is appealable by the State as an order of disposition because the court "chose instead to continue the children in their present placements and to order preparation of a reintegration plan." 18 Kan. App. 2d at 288. The court cited K.S.A. 1992 Supp. 38-1563 (a previous version of K.S.A. 2011 Supp. 38-2255) as addressing authorized dispositions or placements for a child who has been adjudged a child in need of care. *In re T.D.W.*, 18 Kan. App. 2d at 288. In any event, the court's decision to continue placement came after an adjudication. 18 Kan. App. 2d at 287-88. Here, as noted earlier, there was no such adjudication and therefore no order of disposition. Under the definitions previously relied on by this court, there can't be a disposition without an adjudication. See *In re C.E.*, 47 Kan. App. 2d at 448.

Because the court's order isn't a disposition and doesn't fit any of the other appealable categories under K.S.A. 2011 Supp. 38-2273(a), the result is there is no appealable order. See *In re A.F.*, 38 Kan. App. 2d at 746 ("We simply cannot create a new category of appeals so that appeals like this one may be heard."). We lack the jurisdiction necessary to consider the mother's appeal.

We certainly recognize that this will seem a harsh rule to the mother—although her parental rights have not been terminated, she has lost access rights to J.W. and has no right to appeal that decision. But as we noted in *In re A.F.*, our state legislature has worked hard to create a comprehensive Revised Kansas Code for Care of Children. In doing so, it has attempted to balance the protection of the rights of children, parents, and other interested parties against the need for speedy proceedings that allow children to move on and live their lives. See *In re A.F.*, 38 Kan. App. 2d at 746.

The legislature's choice not to provide for an appeal in the case presented here by J.W.'s mother may be a reasonable one. J.W.'s mother had a hearing in the district court before it acted to end her parenting time with J.W., and the attorneys representing the State and the paternal grandparents agreed at oral argument before this court that the mother could at some point seek a court order to reinstate her parenting time should there be a change in circumstances. See K.S.A. 2011 Supp. 38-2272(b) and (d)(1). Providing the opportunity for such hearings in the district court in a case in which a permanent guardian has already been appointed may be a reasonable compromise between allowing access to the court and also achieving relatively quick and inexpensive rulings, without a right of appeal. But whatever the merits of allowing an appeal in a case like this one, the legislature has not provided for it. We must respect the legislature's decision.

The mother's appeal is dismissed for lack of jurisdiction.