NOT DESIGNATED FOR PUBLICATION

No. 109,525
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IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Application to Adopt:
J.T.C., DOB: 2/20/1998, a Minor Child.

MEMORANDUM OPINION

Appeal from Norton District Court; PRESTON A. PRATT, judge. Opinion filed October 4, 2013. Affirmed in part and dismissed in part.

Daniel C. Walter, of Ryan, Walter & McClymont, Chtd., of Norton, for appellants proposed adoptive parents.

No appearance by appellees.

Before STANDRIDGE, P.J., SCHROEDER, J., and LARSON, S.J.

Per Curiam: This is an appeal by the proposed adoptive parents of J.T.C. and E.A.C. from the district court's dismissing their adoption petition on jurisdictional grounds because their petition did not attach consent to the adoptions from the judge having jurisdiction over the children pursuant to the Kansas Adoption and Relinquishment Act (the Act). See K.S.A. 2012 Supp. 59-2129(a)(5). In prior child in need of care (CINC) case Nos. 09 JC 07 and 10 JC 02, the court appointed permanent custodians for the children without termination of parental rights.

On September 17, 2012, the proposed adoptive parents filed petitions to adopt J.T.C. and E.A.C. Attached to the petitions were the written consents of the natural

mother and the natural father of each child, as well as the consent of J.T.C., who was over the age of 14.

The Act, specifically K.S.A. 2012 Supp. 59-2129(a), requires a petition for an independent adoption to include the following consents:

> "(1) The living parents of the child; or
> (2) one of the parents of the child, if the other's consent is found unnecessary under K.S.A. 59-2136, and amendments thereto; or
> (3) the legal guardian of the child, if both parents are dead or if their consent is found to be unnecessary under K.S.A. 59-2136, and amendments thereto; or
> (4) the court entering an order under K.S.A. 38-2270, and amendments thereto; *and*
> *(5) the judge of any court having jurisdiction over the child pursuant to the revised Kansas code for care of children, if parental rights have not been terminated*; and
> (6) the child sought to be adopted, if over 14 years of age and of sound intellect."
> (Emphasis added.)

The district court, on its own initiative, questioned its jurisdiction to grant the adoptions which would remove the children from the custody of the permanent custodians appointed in the prior CINC cases. The court ordered the parties to brief the issue, as well as a second issue regarding J.T.C.'s natural father's motion to withdraw his consent to the adoption. (Sometime after this appeal was docketed, J.T.C.'s natural father committed suicide.) The district court also ruled on the proposed adoptive parents' objection that the permanent custodians had standing in the adoption cases.

On November 13, 2012, the district court entered an order dismissing the adoption cases for lack of jurisdiction. The district court noted in the prior CINC proceedings, the court appointed the paternal grandparents permanent custodians of J.T.C. and E.A.C. and ordered the children released from SRS custody. But, the district court found it still had jurisdiction over the children. Regarding the adoption petitions, the district court found

under K.S.A. 2012 Supp. 59-2129(a)(5), in addition to the consents of the natural parents and J.T.C., the proposed adoptive parents were required to obtain the consent of the judge having jurisdiction over the children pursuant to the revised Kansas Code for the Care of Children if parental rights have not been terminated. Because the prospective adoptive parents did not obtain consent to the adoptions from the court having jurisdiction over the children, the district court ruled it had no jurisdiction to hear the adoption petitions. See *In re Adoption of I.H.H.-L.*, 45 Kan. App. 2d 684, 692-95, 251 P.3d 651 (statutorily required consent[s] under K.S.A. 59-2129 is essential in proper filing of a petition for adoption and failure to comply with this requirement deprives the court of jurisdiction to hear or grant the petition), *rev. denied* 292 Kan. 964 (2011). Although the district court judge acknowledged he was the sole judge in the district and heard both the CINC and adoption cases, the judge ruled the consent requirement of K.S.A. 2012 Supp. 59-2129(a)(5) was required because of the continuing jurisdiction of the court over No. 09 JC 07 and No. 10 JC 02.

After the proposed adoptive parents' motion for reconsideration was denied, the proposed adoptive parents' timely appeal arguing the district court erred in finding (1) the permanent custodians had standing to participate in the adoption proceedings, and (2) it had no jurisdiction to hear the petitions for adoption. Appellants' primary contention is that the district court judge's consent was not required because the CINC cases—No. 09 JC 07 and No. 10 JC 02—had terminated.

After the brief of the appellants was filed on June 10, 2013, appellants' counsel notified the Clerk of the Appellate Court of new developments in the case. According to appellants, the children were removed from the home of the permanent custodians' home and placed with an uncle of J.T.C. New CINC cases, No. 2013 JC 02 and No. 2013 JC 03 respectively, were filed in Norton County District Court relating to J.T.C. and E.A.C. The appellants argue this strengthened their argument that the prior CINC cases had

terminated and the consent of the district court judge to an independent adoption was not required.

Based on appellants' June 10, 2013, letter to the clerk, we issued a show cause order wherein we referred to the arguments in appellants' brief, the notification of new developments, and the record on appeal that indicated appellants, after the adoption petitions were dismissed and an appeal to our court was filed, filed motions in the prior CINC cases—No. 09 JC 07 and No. 10 JC 02—to obtain consent to the adoption which suggested this appeal is moot. Appellants were directed to show why this appeal should not be dismissed as moot and if not moot, the impact of the new CINC cases on this appeal.

Appellants filed a written response wherein they continued to maintain the fact the State found it necessary to file new CINC cases (because the permanent custodians apparently no longer wanted to serve in that capacity) demonstrates the prior CINC cases terminated and the district court's consent to the independent adoptions was unnecessary. In any event, appellants argued the new CINC cases were moot because the district court had jurisdiction over the petitions for adoption that were filed with all necessary consents; the petitions for adoption should have been granted; and the children should now be in the care and custody of the appellants.

ANALYSIS

We can find this appeal is moot, at least in part, for several reasons. First, appellants have no basis to continue to argue their first issue—that the district court erred in finding the permanent custodians had standing in the adoption proceedings—was still viable after the children were removed from the permanent custodians' home. This is no longer an issue where whatever judgment we might make would not have any effect on

the outcome of the controversy, *Manly v. City of Shawnee*, 287 Kan. 63, Syl. ¶ 4, 194 P.3d 1 (2008), making this issue plainly moot.

Second, we have no basis for considering appellants' arguments that the newly filed CINC cases are moot. Neither of those cases are before us. And, we have no jurisdiction over them or any right to enter any judgment as to their validity.

Appellants' response to our order to show cause indicates they have not been granted interested party status in the new CINC cases. But they neglect to acknowledge that subsequent to their filing of their appeal in the adoption case on February 20, 2013, they filed a motion to intervene to contest standing in No. 09 JC 07 and No. 2010 JC 02 on March 8, 2013. While the appellants' challenge to the standing of the Norton County District Attorney's Office was denied, they were granted interested party standing in No. 2009 JC 07 and 2010 JC 02 on March 12, 2013. Discovery appears to have been held and the court set a trial date on the natural mother's motion for consent to adoption on August 1-2, 2013.

The appellants' actions in attempting to assist the natural mother to require the district court judge to consent to the adoption pursuant to K.S.A. 2012 Supp. 59-2129(a)(5) is totally inconsistent with their appellate argument before us that jurisdiction did not continue in No. 2009 JC 07 and 2010 JC 02.

It could be argued that by their actions in continuing to appear in and pursue requested remedies in the 2009 and 2010 CINC cases, the appellants have, in effect, abandoned the arguments being made in this appeal making it moot. We do not hold that appellants' actions in No. 2009 JC 07 and No. 2010 JC 02 CINC cases make this appeal moot, but in doing so, appellants have consented to the continuing jurisdiction and validity of No. 2009 JC 07 and No. 2010 JC 02 and, in effect, rendered their arguments

that both cases had been dismissed by the court below to have extremely questionable validity.

While we believe and will hold in this appeal that the prior juvenile CINC cases did not terminate, were not dismissed by the court, and the district court below correctly dismissed the appellants' petition for adoption, none of the proceedings in the 2013 CINC cases are before us and cannot have any effect on the appeal we are considering.

But, out of an abundance of caution and because of the importance of every action relating to individuals subject to adoption proceedings, we will give consideration to appellants' issue on appeal that the consent of the district court judge was not required in the adoption proceedings below.

Appellants contend on appeal that after the district court appointed permanent custodians of the minor children on May 9, 2011, it entered an order on May 11, 2011, but for some unexplained reason it was not filed until December 19, 2011, which stated in part: "5. That this child in need of care case will automatically terminate at the end of ninety days." Appellants now contend that this order had the effect of terminating the district court judge's continuing jurisdiction over the children making his consent to the adoption of the children under K.S.A. 2012 Supp. 59-2129(a)(5) unnecessary.

This argument appears to be contrary to the argument made by the appellants to the court below where their brief filed in the adoption case stated in part: "Therefore, after the permanent custodian was appointed by this court, this court retains continuing jurisdiction over matters involving the child. At no time has this court entered an order terminating jurisdiction."

The district court's ruling on November 13, 2012, which is before us on appeal, specifically recognizes this admission of the appellants when it states:

"K.S.A. 38-2272(b) states, 'Upon the appointment of a permanent custodian, the secretary's custody of the child shall cease. The court's jurisdiction over the child shall continue unless the court enters an order terminating jurisdiction.' K.S.A. 38-2203(d) states, 'when it is no longer appropriate for the court to exercise jurisdiction over a child, the court, . . . shall enter an order discharging the child. . . .' *In their briefs all parties agree that the court in the CINC cases has not terminated jurisdiction over the children.*" (Emphasis added.)

In closing, the district court's ruling concluded:

"It is important to keep in mind that the present cases are before the Court under the adoption statutes, not under the CINC statutes. Even though this district court has a single district judge who is hearing both the CINC case and the adoption case, the judge's consent for adoption must come from the CINC case. The judge's consent from the CINC case is required under K.S.A. 59-2129(a)(5) but is lacking. Lack of that consent from the CINC cases means there is lack of jurisdiction in the adoption cases."

The district court was correct. K.S.A. 2012 Supp. 38-2272(b) reads as the district court above set forth. It continues in subsection (d)(1) to state:

"When the court retains jurisdiction after appointment of a permanent custodian, the court, in its order, may impose limitations or conditions upon the rights and responsibilities of the permanent custodian including, but not limited to, the right to . . . [d]etermine contact with the biological parent."

Additionally, K.S.A. 2012 Supp. 38-2203(c) states:

"When the court acquires jurisdiction over a child in need of care, jurisdiction may continue until the child has: (1) Become 18 years of age, or until June 1 of the school year during which the child became 18 years of age if the child is still attending high school unless there is no court approved transition plan, in which

> event jurisdiction may continue until a transition plan is approved by the court or until the child reaches the age of 21; (2) been adopted; or (3) been discharged by the court."

The district court did terminate the secretary's custody of the children in No. 2009 JC 07 and No. 2010 JC 02, but the court did not discharge the minor children from its jurisdiction. The district court maintained jurisdiction over the children as evidenced by its May 9, 2011, orders regarding the children's visitation with the natural parents. The district court required the parents to obtain blood or UA testing before visitation and if positive, parenting time would be suspended "until future visitation is *reviewed by the court*." (Emphasis added.) Further, the permanent custodians continued to file reports with the court. Finally, the proceedings in the CINC cases after the appeal in this case was filed shows continuing jurisdiction over the children by the district court in No. 2009 JC 07 and No. 2010 JC 02.

If the permanent custodians no longer wanted to serve in that capacity, as appellants allege, the revised Kansas Code for Care of Children states a child in need of care is a child who "[h]as had a permanent custodian appointed and the permanent custodian is no longer able or willing to serve." K.S.A. 2012 Supp. 38-2202(d)(13). The State may have filed new CINC cases in order to return custody of the children to the secretary. But, that does not demonstrate that the district court did not retain jurisdiction over the minor children. The court was not required to hear the petitions for adoption absent consent under K.S.A. 2012 Supp. 59-2129(a)(5). The district court correctly dismissed the adoption petitions, and its rulings must be affirmed.

The brief of appellants raises two additional arguments that have no merit. They maintain the petitions for adoptions should have been deemed requests for consent to the adoptions, and the judge's orders entered in the adoption proceedings should be construed as recognizing the judge had impliedly consented to and recognized jurisdiction over the

case. Appellants further contend that given the fundamental right of parents to make decisions regarding their children, the district court should have deferred to the parents' consent to the adoptions and not substitute its judgment as to what was in the children's best interests.

Appellants have provided no persuasive authority for either of these arguments. Any appellate argument not supported by pertinent authority is deemed waived and abandoned. *State* v. *Tague*, 296 Kan. 993, 1001-02, 298 P.3d 273 (2013).

This appeal is deemed to be affirmed in part and dismissed in part.