



NOT DESIGNATED FOR PUBLICATION

No. 112,259

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Adoption of
A.J.W., Minor Child, Y/O/B 2002,
J.Y.W., Minor Child, Y/O/B 2003.

MEMORANDUM OPINION

Appeal from Clay District Court; MERYL D. WILSON, judge. Opinion filed January 30, 2015.

Affirmed.

Gabrielle M. Thompson, Thompson & Bailey, of Manhattan, for appellant stepmother.

Phon Sounakhen, of Kansas Legal Services, Inc., for appellee natural mother.

Before MALONE, C.J., BRUNS, J., and RICHARD B. WALKER, District Judge, assigned.

Per Curiam: M.W. appeals the district court's dismissal of her petition to adopt her two stepdaughters. The district court dismissed M.W.'s petition because she did not have her deceased spouse's written consent to adopt his daughters. M.W. contends that the district court erred in dismissing the petition. But spousal consent is a prerequisite to proceeding with a stepparent adoption. Further, the required consent must be in writing and signed as well as acknowledged by a court or a notary, or it must be in substantial compliance with the consent statute. Because M.W. lacked written consent from her deceased spouse to adopt his daughters, she cannot proceed with a stepparent adoption.

We will briefly review the facts. This case concerns the adoption of two minor girls, A.J.W. and J.Y.W., who were born in 2002 and 2003, respectively. The girls were

born into the marriage of I.J., their natural mother, and J.W., their natural father. The parents divorced and J.W. was awarded full residential custody.

J.W. later married M.W. Beginning in September 2005, the girls lived full-time with J.W. and M.W., and later, their half brother. Despite court orders that required I.J. to pay child support and permitted her to visit the two girls, she paid no child support, never sent birthday cards or other gifts, and seldom saw her daughters. The girls lived with J.W. and M.W. in Georgia and in Kansas, and they lived exclusively with M.W. when J.W. was away on military deployments.

In 2007, J.W. and M.W. began working with an attorney to see if M.W. could adopt the girls, but little progress was made. J.W. was killed in a motorcycle accident on or about March 30, 2014. Before his death, J.W.'s attorney had sent I.J. a letter demanding back child support payments and stating that if she would allow M.W. to adopt the girls, J.W. would waive the past-due payments.

On April 9, 2014, M.W. filed a petition to adopt the girls, which was styled as a stepparent adoption. In the alternative, she requested that the district court initiate a child-in-need-of-care (CINC) proceeding against I.J. and terminate her parental rights. I.J. filed a pro se answer opposing the adoption. She then retained counsel and filed a motion to dismiss. I.J. argued that M.W. could not proceed with a stepparent adoption because she did not have J.W.'s written consent as required by Kansas law. The district court granted the motion to dismiss but awarded M.W. temporary custody of the girls, pending the outcome of an appeal. M.W. timely appealed the district court's judgment.

On appeal, M.W. argues that the district court erred by dismissing her stepparent adoption petition. In response, I.J. argues that the district court correctly dismissed the adoption petition because it was filed without the required consent of M.W.'s spouse. Resolution of this case requires this court to interpret and apply the Kansas Adoption and Relinquishment Act (Act), K.S.A. 59-2111 *et seq.* Interpretation of a statute is a question

of law over which appellate courts have unlimited review. This means that an appellate court interprets statutes without any deference to the district court's interpretation. *Cady v. Schroll*, 298 Kan. 731, 734, 317 P.3d 90 (2014).

Adoption is not a right but a privilege granted by statute. *In re Adoption of I.M.*, 48 Kan. App. 2d 343, 344, 288 P.3d 864 (2012). Because adoption is not recognized by common law, all rules regarding adoptions are statutory. *In re Application to Adopt H.B.S.C.*, 28 Kan. App. 2d 191, 196-97, 12 P.3d 916 (2000). The most fundamental rule of statutory interpretation is that the intent of the legislature governs if that intent can be ascertained. *Northern Natural Gas Co. v. ONEOK Field Services Co.*, 296 Kan. 906, Syl. ¶ 3, 296 P.3d 1106 (2013). This court first attempts to ascertain the legislature's intent by reading the statute's plain language and giving common words their ordinary meanings. 296 Kan. 906, Syl. ¶ 3. When the language of a statute is plain and unambiguous, this court does not speculate as to the intent behind it and does not read into it something not readily found there. 296 Kan. 906, Syl. ¶ 4. Only if a statute's text is unclear does this court employ canons of construction, legislative history, or other background considerations to divine the legislature's intent. 296 Kan. 906, Syl. ¶ 4.

M.W. asks this court to find that the district court erred by dismissing her petition for stepparent adoption. K.S.A. 59-2112(d) defines a stepparent adoption as "the adoption of a minor child by the spouse of a parent *with the consent of that parent.*" (Emphasis added.) Two separate statutes within the Act address consent. K.S.A. 59-2114(a) provides that "[c]onsent shall be in writing and shall be acknowledged before a judge of a court of record or before an officer authorized by law to take acknowledgments." The second provision of the Act that addresses consent, K.S.A. 2014 Supp. 59-2129(c) (referencing subsections [a][1] and [2]), states that consent to an adoption shall be given either by the living parents of the child or by one parent, if the other parent's consent is found unnecessary due to parental unfitness. See K.S.A. 59-2136.

The district court found that these provisions together allow a stepparent adoption only with the written consent of his or her spouse. Because M. W. did not have J. W.'s written consent to adopt his daughters, the district court ruled that she could not proceed with a stepparent adoption.

M. W. argues that the district court erred for two reasons. First, she contends that the district court failed to acknowledge the second of the consent provisions discussed above—the provision in K.S.A. 2014 Supp. 59-2129(a)(1)-(2), (c)—which states that consent must be obtained from a child's *living* parents. M. W. believes that this provision means that she does not need J. W.'s consent to adopt his children because he is dead.

We disagree with M. W.'s interpretation of the consent statutes. In order for a stepparent adoption to occur under the Act, the stepparent must have the consent of his or her spouse. K.S.A. 59-2112(d). Further, this consent must be signed, in writing, and acknowledged by a court or a notary. K.S.A. 59-2114(a). Stated differently, the consent of the stepparent's spouse is a prerequisite to proceeding with a stepparent adoption under the Act. Without the spouse's consent, a stepparent cannot utilize the stepparent adoption procedure.

But even if K.S.A. 2014 Supp. 59-2129(a)(1)-(2), (c) applied to this case, these provisions do not help M. W. K.S.A. 2014 Supp. 59-2129(a)(1)-(2), (c) provides that consent to a stepparent adoption shall be given either by the living parents of the child or by one parent, if the other parent's consent is found unnecessary due to parental unfitness. So even if J. J.'s consent is found to be unnecessary due to parental unfitness, M. W. still needs the consent of the other parent, J. W., to proceed with a stepparent adoption.

Next, M. W. argues that even if she does need J. W.'s consent to adopt the girls, the district court erred by not letting her prove that she had his consent through evidence other than a signed, written, acknowledged document. M. W. points to *In re K.J.A.*, 284

Kan. 853, Syl. ¶ 6, 166 P.3d 396 (2007), which states: "In an adoption, absent *prima facie* proof through acknowledgement, the identity of the signer of the adoption consent, as well as the adoption consent's validity and voluntariness, may be met by the adoptive parents through *alternate prima facie* evidence." (Emphases added.)

In *In re X.J.A.*, the natural mother signed a written consent to have her child adopted by another couple but did not sign the consent in front of a notary. 284 Kan. at 856. The adoptive parents later had the consent signed by a notary and filed it with their adoption petition. 284 Kan. at 856-57. Mother sought to withdraw her consent to the adoption before it was finalized, but she admitted at trial that she had signed the consent form and that she had dated it and filled in other information. 284 Kan. at 857-58. Because Mother had signed a consent form and other evidence showed she did so knowingly, the court found that the adoptive parents had substantially complied with the adoption statutes and that the consent would stand, despite the fact that Mother had not signed the consent in front of a notary. 284 Kan. at 873-74.

In re X.J.A. stands for the proposition that substantial compliance is sufficient to satisfy the form of a written consent. Here, M.W. contends that the letter she introduced into evidence from J.W.'s lawyer asking I.J. to let M.W. adopt the girls proves that J.W. consented to the adoption. This may have been the case had J.W. actually signed the letter, but it was only signed by his attorney. Under the Act, consent must be signed, in writing, and acknowledged by a court or a notary. K.S.A. 59-2114(a). While M.W. probably did have J.W.'s verbal consent to adopt the girls, and while the letter likely does prove that, having no written consent from J.W. at all is not in substantial compliance with the stepparent adoption statute, as was the consent in *In re X.J.A.* M.W. does not have consent that is in substantial compliance with the Act and therefore she cannot rely on extrinsic evidence to establish that she does. See K.S.A. 2014 Supp. 59-2129(d).

M.W. makes a separate argument that stepparents with deceased spouses should be allowed to proceed with stepparent adoptions because it would allow courts to consider the best interests of the children in determining whether to permit the adoption. As a hypothetical question, a stepparent with a deceased spouse may very well be able to proceed with a stepparent adoption as long as the stepparent had the written consent of the spouse before his or her death. But that is not the situation we have here. The law is clear that M.W. needs the written consent of J.W. that is in substantial compliance with the Act before she can proceed with a stepparent adoption. As previously discussed, the privilege to adopt is governed exclusively by statute and courts must comply with the statutes in considering any petition for adoption. See *In re I.M.*, 48 Kan. App. 2d at 344.

As a final matter, we note that M.W.'s adoption petition requested alternative relief that the district court initiate a CINC proceeding against I.J. and terminate her parental rights. M.W. did not pursue the alternative remedy in district court and she made no reference to the alternative remedy in her brief before this court. At oral argument, M.W. asked this court to reinstate her petition for stepparent adoption, but her counsel unequivocally stated that M.W. is not asking this court to consider the alternate remedy of a CINC proceeding. For this reason, we are not addressing whether the district court erred in dismissing the adoption petition without considering the alternative request for relief. M.W. is free to pursue any further remedies she may deem appropriate in district court, other than a stepparent adoption.

Affirmed.