NOT DESIGNATED FOR PUBLICATION

No. 111,576

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

L.E.H., A Minor Child,
By and Through D.L.H.,
Appellant,

v.

KANSAS DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES,
Appellee.

MEMORANDUM OPINION

Appeal from Shawnee District Court; REBECCA W. CROTTY, judge. Opinion filed August 21, 2015. Affirmed.

Donna L. Huffman, of The Law Office of Donna L. Huffman, of Oskaloosa, for appellant.

Jan Haley Maxwell, of State of Kansas Department of Social and Rehabilitation Services, for appellee.

Before LEBEN, P.J., HILL and ATCHESON, JJ.

LEBEN, J.: Donna, the mother of L.E.H., appeals the decision of the Kansas Department for Children and Families that an allegation of child abuse against Christopher, L.E.H.'s father, was unsubstantiated. Donna raises several claims on appeal, but she has not satisfied her burden to show that the administrative agency erred:

- Donna asks that we find that the agency committed misconduct when it first heard the case; the agency reheard it on remand from our court. But even if we found

misconduct in that first hearing, Donna has now received the relief we would have ordered—a rehearing.

- Donna suggests that the agency's decision wasn't supported by substantial evidence, but the agency may find abuse only by clear and convincing evidence, and it found that Donna's evidence did not meet that standard. Given the evidence before us, including the testimony of a social worker that the bruises on L.E.H.'s buttocks were not consistent with child abuse and evidence that the child bruises easily, we cannot find that the agency's decision was unsupported.
- Donna also suggests that the district court, which initially heard this appeal, should have granted discovery to her, but she did not adequately request discovery in the district court.
- Donna also claims that her due-process rights were violated, but she received both notice and an opportunity to be heard, and we find no due-process violation.

We therefore affirm the agency's decision.

FACTUAL AND PROCEDURAL BACKGROUND

This is the second time this case has been before our court. See *L.E.H. v. Kansas Dept. of SRS*, 44 Kan. App. 2d 798, 241 P.3d 167 (2010). We summarized the crux of the case in the opening sentence of that opinion: "Everyone agrees that Christopher spanked his daughter, L.E.H., but not everyone agrees that the spanking was child abuse." 44 Kan. App. 2d at 798.

Donna thought it was, and she sought a state-agency determination that Christopher had committed child abuse. Obviously, such a finding may lead to agency action to protect a child. But such a finding can have other consequences as well; for example, such a finding may prevent a person from working or volunteering for a child-care facility. See K.S.A. 2014 Supp. 65-516(a)(3); *L.E.H.*, 44 Kan. App. 2d at 803-04.

In 2005, Donna notified the police that she believed her daughter, L.E.H., had been physically abused by her father. The police referred the case to the Kansas Department of Social and Rehabilitation Services (now the Kansas Department for Children and Families). Initially, a hearing officer who heard the testimony of Donna, Christopher, L.E.H., and a physician determined that Christopher had committed abuse, but the agency has an appeals committee, and it found the evidence insufficient to show abuse. Thus, the agency determined the allegation of child abuse was unsubstantiated. Donna requested judicial review of the agency action.

The sufficiency of the evidence was at issue in the earlier appeal and remains at issue today. We will begin our factual review by quoting our 2010 summary of the facts to that point:

> "L.E.H. is the daughter of Donna and Christopher, and she lives primarily with Donna. In May 2005, while L.E.H. was on a weekend visit with Christopher when she was 7 years old, she used nail polish while riding in Christopher's car, which was not allowed. Everyone agrees that Christopher spanked L.E.H. when they got home. According to the girl, her father spanked her on her bare bottom many times in punishment. Christopher said he spanked her through her clothing more than once but that he couldn't remember how many times.
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> "After L.E.H. returned to her mother's home, Donna noticed bruising on the daughter's buttocks. She took the child to her pediatrician, Dr. Harold Parr, who determined that the bruising was consistent with a spanking and not with an accidental trauma. Dr. Parr reported the incident to law-enforcement authorities, stating: 'These bruises could only have been caused by someone using significantly excessive force in the spanking and this type of injury represents child abuse by any definition that I know of.'
>
> "The Kansas Department of Social and Rehabilitation Services (SRS) conducted an investigation. Within 2 months, SRS mailed a notice to Donna advising that the allegation of child abuse was unsubstantiated. Donna requested an evidentiary hearing

(what SRS refers to as a 'fair hearing'), but SRS denied that request. Donna appealed that decision to the Shawnee County District Court, which ordered SRS to hold the requested hearing.

"At that hearing, L.E.H. testified that after she had returned home that day, Christopher had spanked her on her bare bottom with his hand '[l]ots' of times. She said she had cried and asked him to stop. She testified that her bottom hurt when she sat down—even when wearing underwear. During cross-examination, though, she said that after the spanking she had played outside on 'some big rocks' and slides. But she denied that she had slid down the rocks or fallen down.

"Christopher testified that although he couldn't recall how many times he spanked her, L.E.H. was fully clothed and he only used his hand. He agreed that L.E.H. had cried during the spanking but did not remember her asking him to stop. Christopher said that L.E.H. played with the kids next door later in the day and that she never complained she had been hurt. Christopher said that the spanking couldn't have caused the bruising and that the most likely explanation was that she injured herself while playing outside.

"Dr. Parr testified that he had examined L.E.H. 3 days after the spanking. He observed no other injuries beyond the bruising to her buttocks. Dr. Parr said he determined that the bruises were consistent with a hand spanking done with excessive force and that they were not consistent with any sort of accidental trauma, such as falling down. But Dr. Parr declined on cross-examination to agree with SRS counsel's characterization that the doctor had testified on direct examination that the bruising could *only* have been inflicted by a spanking.

"Kolissa Tate, a former SRS employee who had investigated this abuse allegation, said that she had found the allegation unsubstantiated after she and her supervisor concluded that it didn't meet the criteria for physical abuse under an SRS regulation. She said that she'd seen more significant bruising in other cases and that the photographs of the bruises did not show a hand print or 'anything that's clear and convincingly the result of a spanking.' She said that because no one was with L.E.H. 'every minute of the day,' there was no way to know what else had occurred after the

spanking. She also said that for abuse to be substantiated, there must be clear and convincing evidence that the perpetrator is a danger to all children, not just the one involved in the allegation.

"The administrative hearing officer who heard this testimony entered an initial order finding that the alleged abuse against L.E.H. by Christopher had been established by clear and convincing evidence. But SRS sought review before the agency's state appeals committee, as provided for in K.S.A. 75-37,121 and 77-527. Based on its review of the record and without oral argument, the committee [in June 2007] reversed the decision. While it found that L.E.H. had physical injuries to her buttocks and that Dr. Parr's testimony was sufficient to support the position that the injuries were caused by nonaccidental trauma, the committee found that it couldn't attribute the injuries to an act by Christopher because 'Dr. Parr did not testify with 100 percent certainty that the bruising was caused from a spanking.'

"The appeals committee concluded that the SRS regulation governing the substantiation of a 'perpetrator' of abuse, K.A.R. 30-46-10(j), requires that two things be proven by clear and convincing evidence: (1) that an act of abuse was committed and (2) that the perpetrator is a danger to children generally. See K.A.R. 30-46-10(a) (defining abuse). The committee found that there was clear and convincing evidence that Christopher had spanked L.E.H. and that the child had bruising on her buttocks. But the committee found that the evidence was insufficient to meet either of the required tests under the regulation. First, the committee found the evidence wasn't sufficient to conclude that the bruising was caused by the spanking. Second, the committee found that the evidence wasn't sufficient to conclude that Christopher is a threat to children in general: 'One cannot assume that because one child was spanked on one occasion, the perpetrator of the spanking is a danger to all children.' The committee thus found the abuse allegation unsubstantiated.

"Donna appealed to the district court, which affirmed the agency finding. The district court noted that the agency's conclusion that there was insufficient proof that the spanking had caused the bruising was what's considered a 'negative' finding, which meant that it had to be upheld by the court unless the agency had disregarded undisputed evidence or the agency had been motivated by bias, passion, or prejudice. See *General*

> *Building Contr., LLC v. Board of Shawnee County Comm'rs*, 275 Kan. 525, 541, 66 P.3d 873 (2003). The court said that it was 'likely that this Court would not have reached the same conclusion' had it reviewed the matter independently but that it could not overturn the agency's order under the negative-findings standard. The district court did not determine whether proof that a perpetrator was a danger to all children was required to substantiate an abuse allegation; the court concluded that because the appeals committee 'would have reached the same conclusion' whether the test had one part (abuse of one child) or two (abuse of one child plus danger to all children), it did not need to address that legal issue." *L.E.H.*, 44 Kan. App. 2d at 799-802.

On appeal to this court, we determined that the agency had been wrong on the law when it ruled that a person must be shown to be a danger to children generally before the person may be substantiated for having committed an act of child abuse. *L.E.H.*, 44 Kan. App. 2d at 806. We also found that the agency had applied a more difficult standard for proving child abuse than the law required. 44 Kan. App. 2d at 807. As a result, we vacated the agency decision and sent the case back to the agency for reconsideration under the correct standard: whether "clear and convincing evidence shows that the truth of the facts asserted is highly probable." 44 Kan. App. 2d at 807, 809-10 (citing *In re B.D.-Y.*, 286 Kan. 686, Syl. ¶ 3, 187 P.3d 594 [2008]). We instructed the district court to consider any fee or cost issues properly before it. 44 Kan. App. 2d at 810.

In December 2010, the district court sent the case back to the agency but retained the cost and fee issues. In August 2013, the agency appeals committee again failed to find sufficient evidence that Christopher abused L.E.H. It said there was not clear and convincing evidence that Christopher caused any of the bruising on L.E.H.'s buttocks. The appeals committee noted that when the police investigated L.E.H.'s bruises, they noticed new bruising on her left shoulder and left calf, suggesting that she was a child who played hard and bruised easily.

Donna again sought judicial review of the agency action, and the district court upheld the agency's decision. The court also declined to award Donna attorney's fees because the Kansas Administrative Procedure Act does not authorize the court to award them. (Donna did recover the filing fee and the costs of the transcripts.)

Donna has again appealed to this court.

ANALYSIS

We are reviewing an administrative-agency determination about whether a person committed child abuse. The agency must determine whether abuse occurred based on the statutes and regulations in effect at the time the abuse allegedly happened. *L.E.H.*, 44 Kan. App. 2d at 802. We review the agency decision under the Kansas Judicial Review Act, and we apply the provisions of that statute in place at the time of the agency action. See K.S.A. 2014 Supp. 77-621(a)(2); *Village Villa v. Kansas Health Policy Authority*, 296 Kan. 315, 321, 291 P.3d 1056 (2013).

The Kansas statute defining abuse at the time it allegedly happened in this case provided that physical abuse is "the infliction of physical . . . injury or the causing of a deterioration of a child," which "may include, but shall not be limited to, maltreatment or exploiting a child to the extent that the child's health or emotional well-being is endangered." K.S.A. 2004 Supp. 38-1502(b). The regulations in effect at that time provided that abuse includes "any act . . . that results in . . . physical injury" and that "physical abuse" is "the infliction of physical injury on a child or the causation of a child's deterioration," including "nonaccidental or intentional action . . . that results in bodily injury." K.A.R. 30-46-10(a)(2), (g) (2005 Supp.). Abuse is substantiated when it "has been confirmed by clear and convincing evidence." K.A.R. 30-46-10(i) (2005 Supp.). Accordingly, a person is a "substantiated perpetrator" or "perpetrator" of abuse when he or she "has been validated by the secretary [then of the Kansas Department of

Social and Rehabilitation Services] or designee, using clear and convincing evidence, to have committed an act of substantiated abuse." K.A.R. 30-46-10(j) (2005 Supp.).

On appeal, Donna first argues that this court should revisit its prior decision in this case and reverse the agency decision in light of new evidence. If we decline to revisit our prior decision, she challenges both the agency actions and the district court's rulings on remand. Donna has the burden to show agency error under K.S.A. 2014 Supp. 77-621(a)(1).

I. *We Decline to Revisit the Issues Decided in the Earlier Appeal.*

Based on new information obtained after our remand, Donna contends that we should revisit the issues we considered in 2010 and find additional failings in the agency's first review of her allegations. We will briefly summarize Donna's arguments before explaining why we are declining to further consider the agency's 2007 ruling rather than proceeding to review its 2013 decision after remand.

Donna makes two arguments regarding the first appeal. First, she contends that if this court had considered the appeals committee's ballots in the first appeal, the ballots would have changed the outcome of the case. The comments sections of two of the three ballots say "worker followed agency policy," and the comments section in the third is blank. Donna says the ballots show a different basis for the appeals committee's decision than was reflected in its final order, indicating that the first appeals committee's decision was arbitrary and capricious. See K.S.A. 2014 Supp. 77-621(c)(8). Donna's second argument is that the appeals committee failed to consider the entire agency record, which includes evidence received and the transcript of the hearing before the presiding officer. See K.S.A. 2014 Supp. 77-532(b)(4), (8). Donna points to statements from the Director of the Office of Administrative Hearings indicating that the committee generally reviews only the administrative hearing officer's initial order and "the briefs dealing with that

order" and does not consider the transcript from the administrative hearing, the exhibits, or the prehearing orders. Donna says that if this court had been aware of the record the appeals committee considered, it would have found that the appeals committee engaged in unlawful procedure. See K.S.A. 2014 Supp. 77-621(c)(5).

We see no purpose to further review of the agency's initial ruling. Even if we concluded that the agency had reviewed an incomplete record or had engaged in some unlawful procedure the first time around, the remedy would be to remand the case and order a new hearing. See, *e.g.*, *Board of Saline County Comm'rs v. Jensen*, 32 Kan. App. 2d 730, 736-37, 88 P.3d 242 (remanding a case based on an agency's failure to follow a prescribed procedure when the agency relied on a tax-valuation system that was prohibited by standard appraisal guidelines despite a statutory requirement that the appraisal process conform to generally accepted appraisal procedures), *rev. denied* 278 Kan. 843 (2004). Donna has already obtained that remedy. Further, even if we concluded that the procedures used by the appeals-committee members in 2007 suggested personal bias requiring their disqualification, we would still have remanded the case for a new hearing—but with the additional requirement of new appeals-committee members to hear it. See K.A.R. 30-7-78(a) (2009) (stating that the agency secretary may appoint more than one state appeals committee); *In re Tax Appeal of Lyerla Living Trust*, 50 Kan. App. 2d 1012, 1024-27, 336 P.3d 882 (2014) (disqualifying judges of the Court of Tax Appeals on remand based on questions about their impartiality). Donna has already obtained that remedy too; the members of the appeals committee who heard the case in 2013 on remand were not the same ones who heard it in 2007.

We proceed, then, to consider Donna's arguments regarding the agency's decision on remand.

II. *We Find No Basis to Overturn the Agency's Actions on Remand.*

Donna's primary contention on this appeal can be simply stated: The appeals committee got the facts wrong. Donna believes that clear and convincing evidence showed that Christopher committed child abuse. The committee found that the evidence wasn't strong enough to meet the clear-and-convincing-evidence standard.

As in any case in which an agency's factual findings are challenged, we must test the agency finding to see whether substantial evidence supports it. In doing so, we consider the entire agency record, including both what supports and detracts from the agency's conclusion. See K.S.A. 2014 Supp. 77-621(c)(7) and (d); *Moore v. Venture Corporation*, 51 Kan. App. 2d 132, 137-38, 343 P.3d 114 (2015); *In re Protests of Oakhill Land Co.*, 46 Kan. App. 2d 1105, 1114, 269 P.3d 876 (2012). We do not reweigh the evidence; that is the job of the factfinder—here, the agency appeals committee. See K.S.A. 2014 Supp. 77-621(d).

Donna is certainly correct that some significant evidence supports the abuse claim. As we noted the first time we heard this case, Dr. Parr told the hearing officer that L.E.H.'s bruising was consistent with a spanking rather than accidental trauma. In fact, he said, "I can't think of a scenario where this could occur in an accidental trauma." He also said that he saw lines in the bruises that resembled fingers and that the bruises "could only have been caused by someone using significantly excessive force in the spanking." In addition, L.E.H. testified that her father had spanked her "lots" of times, that she had asked him to stop, and that she had been "afraid he was going to break [her] in half."

But there also is evidence pointing toward a finding that Christopher's spanking of L.E.H. was not so severe as to constitute abuse. Social worker Kolissa Tate, who said she had conducted hundreds of investigations of physical child-abuse allegations while working for SRS, said that the "pinpoint blood dots" seen on L.E.H.'s buttocks weren't in

a pattern or consistent with spanking and that they could have been caused by some injury while L.E.H. was playing outdoors. She said that "these are not severe bruisings as I have seen them." She also concluded that Mother may have influenced L.E.H.'s view of Father and his behavior. She said "things [had been] discussed in front of [L.E.H.] or with her, that a normal [7] year old . . . would not . . . have known about." As an example, Tate said L.E.H. told her that her dad was "supposed to be on medicine" and "needed to cool off." The appeals committee considered this an indication that L.E.H. was "at least in part . . . using her mother's description of the event." In addition, Christopher testified that L.E.H. had been fully clothed when he spanked her, that he did not remember her asking him to stop, and that he "d[id] not see how it was possible that what [he] did should have caused severe bruising or injury."

There was also one additional piece of evidence that the appeals committee found significant—evidence that was not in the evidentiary record when the case came before us previously. That new item is a narrative report by Sharon Hoffman, a deputy with the Jefferson County Sheriff's Office. Hoffman examined L.E.H. to look for bruising and took additional photographs of L.E.H.'s bruising 5 days after the spanking; Hoffman had also looked for bruising and taken photos 2 days after the spanking (Donna having learned of the spanking the night before). On the second visit, Hoffman wrote that she "noticed two new areas of bruising that have appeared since Monday . . . . This would be the upper left shoulder area and the back of the left calf." Hoffman's first report showed that she had looked for marks or bruises in those areas and hadn't found any. The appeals committee found this new evidence significant, concluding that it "suggests that [L.E.H.] is a child who plays hard and[/]or is bruised easily."

The appeals committee concluded that clear and convincing evidence established that Christopher had spanked L.E.H. on the buttocks and that she had bruising on her buttocks by the following night. But it found "insufficient evidence . . . to find that Christopher . . . committed an act of abuse as that term is defined in K.A.R. 30-46-10(a).

It was not established by clear and convincing evidence that any or all of the bruising to [L.E.H.]'s buttocks was caused by Christopher . . . ." The committee added that had the standard of proof been lower—simply whether it was more probably true than not (rather than the "highly probable" clear-and-convincing-evidence standard), then Christopher "may very well have been substantiated for abuse."

As the appeals committee noted, its job was to determine whether abuse had occurred as that term is defined by law. "'Physical, mental or emotional abuse' means the infliction of physical, mental or emotional injury or the causing of a deterioration of a child." K.S.A. 2004 Supp. 38-1502(b). In addition, the agency has defined abuse to mean "any act . . . that results in . . . physical injury or deterioration or the imminent risk of serious injury." K.A.R. 30-46-10(a) (2005 Supp.). Spanking a child is not illegal under Kansas law; nor is a mere spanking automatically abuse. Courts and agencies sometimes face a difficult task in determining when physical discipline imposed by a parent crosses the line and becomes child abuse.

The Kansas Protection from Abuse Act provides another definition of abuse, which includes causing or attempting to cause "bodily injury." See K.S.A. 60-3102(a)(1). In that context, when considering what would be proof of bodily injury—and thus abuse— the Kansas Supreme Court concluded that a child must suffer "substantial physical pain or physical impairment" from a parent's actions to have a bodily injury. *Paida v. Leach*, 260 Kan. 292, Syl. ¶ 1, 917 P.2d 1342 (1996).

In our case, we have bruising that showed up after a spanking—bruising that social worker Tate found "not severe" and inconsistent with spanking. There also was evidence—credited by the appeals committee—that L.E.H. was a child who played hard and bruised easily. L.E.H. testified directly that she had played on big rocks before Donna noticed the bruising.

The question we must answer is whether substantial evidence supports the agency decision. Evidence is substantial—and thus sufficient to support a decision—if a reasonable person could accept it as sufficient to support the conclusion being reached. *Oakhill Land Co.*, 46 Kan. App. 2d at 1114. In our case, a reasonable person could conclude that the evidence wasn't sufficient to prove abuse by clear and convincing evidence, as required. We do not reweigh the evidence, so we conclude that the agency's factual determinations were supported by substantial evidence. Further, we find no reason to believe that the agency's conclusion on remand was tainted by an inaccurate understanding of the applicable law.

Donna raises some additional arguments related to the agency's factual findings. First, she contends that the appeals committee should have been bound by the factual findings of the hearing officer. Second, she contends that the second appeals committee should have been bound by some of the factual findings of the first appeals committee. We do not find either argument persuasive.

The Secretary of the Kansas Department for Children and Families or his or her designee is charged with investigating reports of child abuse and determining whether the reports are valid. See K.S.A. 2014 Supp. 38-2202(bb); K.S.A. 2014 Supp. 38-2226(a). As part of that process, the appeals committee exercises unlimited review of the hearing officer's decision and therefore has authority to make factual findings. See K.S.A. 2014 Supp. 77-527(d); K.A.R. 30-7-78(a) (2009); *Tire Disposal Facilitators, Inc. v. State ex rel. Harder*, 22 Kan. App. 2d 491, 492, 919 P.2d 362 (1996). Moreover, this court *ordered* the appeals committee to determine a factual question—whether Christopher caused L.E.H.'s injuries. We remanded the case so that the agency could reconsider the factual finding under the clear-and-convincing standard set out in *In re B.D.-Y. L.E.H.*, 44 Kan. App. 2d at 810.

There are some cases in which we must consider findings made by a hearing officer. In our review for substantial evidence, we must consider any credibility decisions the hearing officer made about witnesses who testified in person before that officer. K.S.A. 2014 Supp. 77-621(d). But the hearing officer did not make any credibility findings here.

Donna separately suggests that we should have accepted the findings of the first appeals committee; she argues that our mandate allowed the second committee only to consider the conclusions, not the factual findings. We remanded to the agency "for further consideration" in light of the standards we had set out for their use. *L.E.H.*, 44 Kan. App. 2d at 810. We did not specifically limit the agency's role in determining the facts based upon the evidence presented.

Donna also raises an issue about the form of the ballots used by appeals-committee members. She notes that the ballots do not mention the "highly probable" standard or provide insight into the appeals committee's decision-making process. But nothing requires that the committee even use written ballots, and the committee provided a written final order explaining its findings. That order was signed by all three committee members, and it provided an adequate basis for us to review the decision.

We should note one other procedural matter. The report from Sharon Hoffman, the sheriff's deputy, was not introduced in evidence before the hearing officer, though it was contained in the agency's files by that time. Donna had provided that report by including it as an attachment to a motion she filed seeking to present testimony from another sheriff's deputy. The agency clearly relied upon Hoffman's report in the decision now under review. Donna has not argued on appeal that it was improper for the agency to consider that report.

In sum, the appeals committee found that the evidence did not show it was highly probable that the bruising on L.E.H.'s buttocks was caused by Christopher. We conclude that a reasonable person could conclude, based on the evidence, that Christopher did not inflict physical harm or injury on L.E.H. through the spanking. We therefore conclude that the agency's decision is supported by substantial evidence, and we find no procedural problem with its decision based on the arguments Donna has raised.

III. *We Find No Error in the District Court's Actions on Remand.*

Donna next makes several challenges to the district court's actions during its review of the agency's decision on remand. Her challenges to the merits of its decision (*i.e.*, whether to affirm the agency decision) are of no significance; we are required to review the matter independently, without any required deference to the district court, just as if the appeal had been made directly to us. See *Kansas Dept. of Revenue v. Powell*, 290 Kan. 564, 567, 232 P.3d 856 (2010). We will proceed, though, to discuss her claim of procedural error.

Donna's procedural claim is that the district court failed to provide an opportunity for discovery regarding alleged "concealment and spoliation" by the agency. She says the court erred in "failing to give [L.E.H.] the opportunity to do discovery and have the scheduling conference as repeatedly requested prior to ruling."

In Donna's petition for judicial review of the agency's decision following remand, Donna stated that K.S.A. 77-619(a) authorizes the district court to receive evidence related to the validity of the agency action that is not contained in the agency record. K.S.A. 77-619(a) provides that the district court may receive additional evidence (beyond the agency record) relating to agency misconduct; such misconduct would not necessarily be disclosed in the agency record itself. Donna said in her petition that "L.E.H. seeks discovery as these issues [regarding agency misconduct] are herein raised." But Donna

has not provided a citation to the record on appeal indicating that she ever made a motion for discovery or sent a specific discovery request to the agency. Donna has the burden to designate facts in the appellate record that support her claims. *Friedman v. Kansas State Bd. of Healing Arts*, 296 Kan. 636, 644, 294 P.3d 287 (2013).

Discovery is not generally available during court review under the Kansas Judicial Review Act. See Leben, *Challenging and Defending Agency Actions in Kansas*, 64 J.K.B.A. 22, 31-32 (June/July 1995). Accordingly, the party seeking that discovery would have some obligation to file a motion seeking to authorize it, to schedule a conference with the court at which possible discovery could be discussed, or to serve a specific discovery request on another party. Because Donna has not shown that she either filed a motion for discovery or otherwise made any specific request for discovery, we find no error in the district court's failure to authorize it.

IV. *We Find No Violation of L.E.H.'s Due-Process Rights.*

Donna's final argument is that L.E.H. was denied procedural due process, which is guaranteed by the United States Constitution. The basic elements of due process include notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *Village Villa*, 296 Kan. at 331. In analyzing a due-process claim, a court ordinarily first determines whether due process is even implicated—which happens when the plaintiff is denied a protected property or liberty interest. *Winston v. Kansas Dept. of SRS*, 274 Kan. 396, 410-11, 49 P.3d 1274 (2002). If due process is implicated, the court then determines what process is due. *Village Villa*, 296 Kan. at 331.

The agency contends that L.E.H. has not been deprived of a constitutionally protected liberty or property interest. It argues that while the alleged perpetrator has a liberty interest in keeping his or her name off of the SRS Child Abuse Registry, the victim has no protected interest that may be lost based on the outcome of the case. See

K.A.R. 30-46-15 (2009) ("The substantiated perpetrator shall be notified in writing of the secretary's decision to substantiate the perpetrator for the purpose of placing the name of the perpetrator in the child abuse and neglect central registry. The notice shall . . . inform the substantiated perpetrator of the perpetrator's right to appeal the decision."); *Winston*, 274 Kan. at 409. We conclude, however, that we need not determine whether L.E.H. has a protected liberty or property interest because due-process requirements were met here, whether or not they had to be.

Donna, acting on L.E.H.'s behalf, received notice and an opportunity to be heard. Indeed, it is impossible to believe that the agency had any doubts about the basic claims Donna was making: Donna filed a brief before the agency stating her position on the evidence that had been presented. Donna has not shown a due-process violation.

CONCLUSION

We have carefully reviewed the extensive record in this case, as well as the arguments that Donna has made in her appellate brief. We believe that we have fairly characterized the arguments she has made. To the extent that she presented subsidiary issues or arguments that we have not addressed directly, however, we would note that we have reviewed those too, and we have not seen any basis upon which we should overturn the agency decision.

The district court's judgment, which affirmed the agency decision, is affirmed.