NOT DESIGNATED FOR PUBLICATION

No. 115,309

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Adoption of T.M.M.H.

MEMORANDUM OPINION

Appeal from Johnson District Court; MICHAEL P. JOYCE, judge. Opinion filed December 2, 2016. Affirmed.

Joseph W. Booth, of Booth Family Law, of Lenexa, for appellant natural grandmother.

Suzanne Valdez, of Smith Legal L.L.C., of Lawrence, for appellee stepfather.

Before SCHROEDER, P.J., LEBEN and GARDNER, JJ.

GARDNER, J.: This appeal asks whether a Grandmother who has been determined to have joint legal custody of a child in one case has the right to participate in and object to that child's adoption by his Stepfather in another case. Based on the clear language of the relevant statutes, the absence of relevant documents in the record, and our clear precedent, we affirm the district court's finding that Grandmother has no such right.

Factual and procedural background

T.M.M.H. is a minor child born in November 2006. His father passed away in 2007 and his natural mother (Mother) later remarried. Stepfather desired to adopt the child and filed a petition for adoption. Mother consented to the adoption. Thereafter, the district court ordered notice for a hearing to "all interested parties, including but not

limited to [Paternal Grandmother, L.C. (Grandmother)]." Grandmother contested the stepparent adoption, asked the district court to dismiss the petition for adoption, and moved to compel depositions. Stepfather objected to the motion, arguing Grandmother lacked standing to challenge the stepparent adoption or to conduct discovery.

Grandmother asserted that she had standing to do so because in a separate case, Case No. 08CV3344, which had begun by her exercise of her statutory grandparent visitation rights, she had obtained a joint custody agreement and order between herself and Mother. Because she had legal joint custody of the child, she argued she had standing to conduct depositions, participate in the adoption proceeding, and prevent Stepfather's adoption absent her consent.

The district court denied Grandmother's motion to compel depositions and held that Grandmother lacked standing to contest the adoption, but had standing to receive notice of the adoption proceeding. Grandmother filed a timely notice of appeal. She and Stepfather have filed briefs, yet the Mother and the child's Guardian Ad Litem (GAL) have not. We note that it is the role of the GAL to represent the best interests of the child, and that Grandmother cannot assert arguments on behalf of the child in this appeal.

Because Grandmother appealed before the adoption action was completed, we issued a show cause order questioning the finality of the district court's decision. After reviewing the parties' responses, we retained the appeal and ordered the parties to brief the jurisdictional issue for the panel. Grandmother then filed an urgent motion for temporary order pursuant to K.S.A. 2015 Supp. 59-2401a(c) asking us to stay the adoption hearing. We partially granted that motion, declining to stay the adoption hearing but granting a temporary stay of the order arising from the hearing, pending completion of this appeal.

Neither Grandmother nor her counsel appeared at the adoption hearing, although she had been provided notice. The district court concluded the adoption proceedings but for entering its final order, apparently awaiting this court's determination of the issues on appeal.

Does this court have jurisdiction to hear this appeal?

An appellate court has a duty to question jurisdiction on its own initiative. When the record discloses a lack of jurisdiction, it is our duty to dismiss the appeal. Whether jurisdiction exists is a question of law over which our scope of review is unlimited. *Northern Natural Gas Co. v. ONEOK Field Services Co.*, 296 Kan. 906, 916, 296 P.3d 1106, *cert. denied* 134 S. Ct. 162 (2013).

This action was filed pursuant to the Kansas Adoption and Relinquishment Act (KARA), K.S.A. 59-2111 *et seq.* The KARA falls within the Kansas Probate Code and permits "an interested party" to appeal "any final order, judgment or decree entered in any proceeding pursuant to: . . . The Kansas adoption and relinquishment act." K.S.A. 2015 Supp. 59-2401a(a)(1). The probate code does not define the phrase "final order, judgment or decree," so we look to the Kansas Code of Civil Procedure for guidance. See K.S.A. 2015 Supp. 59-2401a(b) (appeal procedures under the probate code are governed by article 21 of chapter 60 of the Kansas Statutes Annotated); *In re Guardianship of Sokol*, 40 Kan. App. 2d 57, 61, 189 P.3d 526 (2008).

Under the civil code, a party may appeal to the Court of Appeals, as a matter of right, from any final decision. K.S.A. 2015 Supp. 60-2102(a)(4). A judgment is final and appealable only if it finally decides and disposes of the entire merits of the controversy, and reserves no further questions or directions for future or further action by the court. *Flores Rentals v. Flores*, 283 Kan. 476, 481-82, 153 P.3d 523 (2007). Here, there is no

final judgment in the adoption proceeding because the district court has not yet filed its order.

Stepfather contends that because there is no final order, this court lacks jurisdiction to consider this appeal. Nonetheless, he asks this court to assume jurisdiction so that this case may be resolved "as soon as practicable." But parties cannot confer subject matter jurisdiction by consent, waiver, or estoppel. *Goldman v. University of Kansas*, 52 Kan. App. 2d 222, 225, 365 P.3d 435 (2015). Subject to certain exceptions, Kansas appellate courts have jurisdiction to entertain an appeal only if the appeal is taken in the manner prescribed by statutes. *State v. Mburu*, 51 Kan. App. 2d 266, 269, 346 P.3d 1086, *rev. denied* 302 Kan. 1017 (2015). Therefore, we give no consideration to Stepfather's desire to confer jurisdiction on this court.

Grandmother argues this court has jurisdiction under the collateral order doctrine, which provides a narrow exception to the final order requirement.

> "[The collateral order] doctrine, which we sparingly apply, provides a narrow exception to the final order requirement. It 'allows appellate courts to reach "not only judgments that 'terminate an action,' but also a 'small class' of collateral rulings that, although they do not end the litigation, are appropriately deemed 'final.' [Citation omitted.]"' *Kansas Medical Mut. Ins. Co.*, 291 Kan. at 611-12 (quoting *Mohawk Industries, Inc. v. Carpenter*, 588 U.S. 100, 106, 130 S. Ct. 599, 175 L. Ed. 2d 458 [2009])." *In re T.S.W.*, 294 Kan. 423, 434, 276 P.3d 133 (2012).

Under this doctrine, an order may be collaterally appealable if it: "(1) conclusively determines the disputed question, (2) resolves an important issue completely separate from the merits of the action, and (3) is effectively unreviewable on appeal from a final judgment. [Citation omitted.]" *T.S.W.*, 294 Kan. at 434.

These three requirements are met here. First, the district court's finding that Grandmother lacked standing eliminated her further participation in the adoption proceeding and so conclusively determined that disputed question. Second, whether Grandmother has standing to participate in the adoption proceedings is an important issue separate from the merits of whether Stepfather should be permitted to adopt the child. Third, Grandmother must appeal the district court's decision now because interested party status is a prerequisite to appeal a final judgment in adoption proceedings. See *T.S.W.*, 294 Kan. at 432 (finding the KARA falls within the Kansas Probate Code, and permitting an appeal by an interested party); K.S.A. 2015 Supp. 59-2401a(b) (providing only interested parties may appeal from a final order in a KARA proceeding); K.S.A. 2015 Supp. 59-2401a(e) (defining an "interested party" as: "[1] The parent in a proceeding pursuant to [KARA] . . . ; and [8] any other person granted interested party status by the court from which the appeal is being taken"). Thus the challenged order is effectively unreviewable on appeal from the final judgment in the adoption proceeding. Accordingly, we find that pursuant to the collateral order doctrine we have jurisdiction over Grandmother's appeal of the order that she lacked standing to participate in the adoption proceedings or to contest the adoption by Stepfather.

Did the district court err by finding Grandmother could not contest the adoption?

Grandmother presents four separate arguments in challenging the district court's order that she lacked standing to participate in the adoption proceedings: 1) her status as a joint legal custodian cannot be modified absent a material change in circumstances that would make it in the child's best interests to modify the order; 2) her status as a legal custodian grants her the right and responsibility to defend the child's best interests; 3) her status as a legal custodian grants her rights equal to Mother's rights so Stepfather cannot adopt the child without Grandmother's consent; and 4) Mother waived her parental preference by granting Grandmother joint legal custody. We address these arguments jointly in our discussion below.

Our standard of review

The existence of standing is a question of law over which this court has unlimited review. *Kansas Bldg. Industry Workers Comp. Fund v. State*, 302 Kan. 656, 676, 359 P.3d 33 (2015). Furthermore, this is a matter of statutory interpretation, which is a question of law over which courts have unlimited review. The most fundamental rule of statutory construction is that the intent of the legislature governs if that intent can be ascertained. *Neighbor v. Westar Energy, Inc.*, 301 Kan. 916, 918, 349 P.3d 469 (2015). An appellate court must first attempt to ascertain legislative intent through the statutory language enacted, giving common words their ordinary meanings. *Ullery v. Othick*, 304 Kan. 405, 409, 372 P.3d 1135 (2016). When construing statutes to determine legislative intent, appellate courts must consider various provisions of an act in pari materia with a view of reconciling and bringing the provisions into workable harmony if possible. *Friends of Bethany Place v. City of Topeka*, 297 Kan. 1112, 1123, 307 P.3d 1255 (2013).

The statutory definition of joint legal custody

Grandmother's arguments presuppose that the same definition of joint legal custody that applies to parents applies to her, thus her rights are equal to the Mother's rights to make decisions in the best interests of the child. We first look to statutes and caselaw, then look to the joint custody agreement between Grandmother and Mother, to discern what joint legal custody is and what effect this status may have on Stepfather's adoption.

We find that our statutes refer to joint legal custody only as between parents, not between a parent and a grandparent. "Joint legal custody" is not a term of art whose meaning is fixed as applied to a situation such as this involving a nonparent.

The sole statutory reference to "joint legal custody" is found in Article 32 of the Kansas Family Law Code relating to Custody, Residency and Parenting Plans. It provides: "The court may order the joint legal custody of a child with both parties. In that event, the parties shall have equal rights to make decisions in the best interests of the child." K.S.A. 2015 Supp. 23-3206(a). But the statutes surrounding this one, and the cases addressing joint legal custody, reflect that the "parties" referred to in this statute as having equal rights are parents involved in separation or divorce. See, *e.g.*, K.S.A. 2015 23-3203, 23-3204; 23-3207; *In re Marriage of Roth*, 26 Kan. App. 2d 365, 987 P.2d 1134 (1999); *In re Marriage of Powell*, No. 98,209, 2008 WL 2891080 (Kan. App. 2008) (unpublished opinion); *In re Marriage of Carlson*, No. 113,192, 2016 WL 197727 (Kan. App. 2016) (unpublished opinion).

The statutes do permit a court to award temporary residency of a child to a grandparent, but only if the court finds probable cause to believe that the child is a child in need of care or that neither parent is fit to have residency. K.S.A. 23-3207(c). Neither of those events is alleged to have occurred here.

The Kansas Family Law Treatise also discusses joint legal custody as being a relationship between parents.

> "Joint legal custody implies, at the very least, that both parents retain the decision-making authority for the major issues in rearing a child—education, medical care, activities. It may also imply a joint or shared residency arrangement. In Kansas, joint legal custody is the preferred custody relationship. Joint legal custody reflects the trend toward sharing parental responsibilities during the marriage and the emphasis on more equal parental rights. Joint legal custody is seen as a way to ensure post divorce parental involvement, remove the burden of single parenting and improve the chances of receiving child support." 2 Elrod, Kansas Law and Practice, Kansas Family Law § 12:14, pp. 349-50 (2015-2016 ed.).

Similarly, no statute uses the phrase "permanent legal custodian" or "permanent legal custody." That term is used in caselaw in the context of child in need of care cases involving termination of parental rights. See, *e.g.*, *In re S.F.*, No. 105,264, 2011 WL 1004639 (Kan. App. 2011) (unpublished opinion). The Revised Kansas Code for Care of Children, K.S.A. 2015 Supp. 38-2272(a)(1), provides that a permanent custodian may be appointed with the consent and agreement of the parents and approval by the court, but that provision applies only as to children that have been adjudicated to be in need of care. See K.S.A. 2015 Supp. 38-2269. But those permanent custodians are subject to court-imposed limitations or conditions upon their rights and responsibilities. K.S.A. 2015 Supp. 38-2272(d). And a permanent custodian for a child in need of care has no right to consent to the child's adoption. K.S.A. 2015 Supp. 38-2272(c)(1) ("Subject to subsection [d], a permanent custodian shall stand in loco parentis and shall exercise all of the rights and responsibilities of a parent except the permanent custodian shall not: [1] Consent to an adoption of the child."). These statutes do not support Grandmother's position.

Grandmother relies on K.S.A. 2015 Supp. 23-3218(a), which states in part: "Subject to the provisions of the uniform child custody jurisdiction and enforcement act . . . the court may change or modify any prior order of custody, residency, visitation and parenting time, when a material change of circumstances is shown . . ." She thus contends that the court cannot modify her status as joint legal custodian without a showing of a material change of circumstances.

But the remainder of that statute shows that it applies to custody modifications between two parents, not between a parent and a third party. The sentence quoted above continues by stating:

> "[B]ut no ex parte order shall have the effect of changing residency of a minor child from the parent who has had the sole de facto residency of the child to the other parent unless

there is sworn testimony to support a showing of extraordinary circumstances." K.S.A. 2015 Supp. 23-3218(a).

Grandmother has not shown any statute or caselaw that supports her premise that her right to make decisions regarding the child is equal to Mother's.

The parties' definition of joint legal custody

We have reviewed the record to determine whether Grandmother's status as a joint custodian is defined or described by the parties' agreements or other court proceedings involving the parties. But the record in this case sheds no light on the nature or extent of the rights vested in Grandmother by virtue of her status as joint legal custodian in Case No. 08CV3344.

The district court found that the joint legal custody agreement was a "hybrid-type classification" that began with Grandmother's rights to visitation then morphed into something agreed upon by Grandmother and Mother which was termed joint legal custody. But the record on appeal does not contain the agreements themselves or any other information regarding the agreements between Mother and Grandmother which led to the joint legal custodian relationship, nor does it contain any pleadings from Case No. 08CV3344. We therefore cannot tell whether the agreements merely establish where the child will reside during the year, or if they establish additional duties and responsibilities such as having control of the minor and providing for the minor's care, treatment, habilitation, education, support, and maintenance.

The record contains two documents which address, but do not define, the joint legal custody arrangement. The first is the joint custody order which provides that after a 3-day trial, the district court granted Mother and Grandmother "joint legal custody of the minor child, but the Court orders that the minor child be reintegrated into [Mother's] life

and family." The district court then addressed a residency plan in which the child was to reside with Grandmother until the last day of school in May 2015, then with Mother for the summer of 2015. The order also addressed "parenting time" regarding family vacations and holidays. Finally, the district court set the matter for a review hearing on June 25, 2015, "to review how the minor child is adapting to the custody changes, and to possibly determine where the minor child will attend school in the fall of 2015, if the parties are unable to resolve this issue on their own."

But that order does not explain the circumstances surrounding the granting of joint legal custody, does not reflect whether it was the initial granting of the custodial arrangement, does not address whether the district court denied Mother's request to remove the joint custodianship, and does not define the terms of the joint legal custody agreement.

The second document is the district court's subsequent order finding Grandmother lacked standing to contest the adoption. The district court found:

> "The factual circumstances surrounding this case are a bit out of the ordinary because, in Case No. 08CV3344, another division of this Court has entered an order of joint custody between the natural mother and the paternal grandmother. While these different factual circumstances provide the paternal grandmother a unique position, it does not give her standing to contest the adoption.
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> . . . .
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> "Grandparents, even the parents of a deceased natural guardian, have the statutory right in Kansas to visitation. *See* K.S.A. 38-129(b). [Now K.S.A. 2015 23-3301(c)]This statutorily created right has been around, in its present form, since 1984. It provides, in part that the 'district court may grant the parents of a deceased person visitation rights, . . . , even if the surviving parent has remarried and the surviving parent's spouse has adopted the child.' In fact, this is the section of the Kansas statutes that the paternal grandmother relied on in 2008 when she first filed her 'Petition for Grandparent Visitation Pursuant to K.S.A. 38-129' in Case No. 08CV3344. Over time, the relief

> sought and obtained morphed into a joint custody agreement and order between the paternal grandmother and the natural mother. The paternal grandmother argues that the Court's order granting her joint legal custody gives her standing to contest the adoption. This Court disagrees.
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> "The paternal grandmother classifies her status as one of a 'permanent legal custodian.' The only place that this Court is aware of that identifies a party as a 'permanent legal custodian' is in the Kansas code for care of children, Chapter 38, Article 22. The paternal grandmother was not awarded the status of a permanent legal custodian, per K.S.A. [2015 Supp.] 38-2272, in Case No 08CV3344.
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> "Grandparent visitation is not contained within Chapter 38, Article 22, but in Article 1. At best, the paternal grandmother's status as 'joint legal custodian' is a hybrid-type classification that was created out of her rights to visitation under K.S.A. 38-129 and the agreements entered into between her and the natural mother."

The only information this court has regarding the joint legal custody agreement is found in these two orders.

As the party making the claim, Grandmother bears the burden to designate facts in the record to support that claim; without such a record, we presume the action of the district court was proper. *Friedman v. Kansas State Bd. of Healing Arts*, 296 Kan. 636, 644-45, 294 P.3d 287 (2013). Because no other information is provided in the record on appeal regarding the joint legal custody agreement, we presume that the district court's findings set forth above were proper. Nothing in the relevant statutes compels us to find otherwise.

Grandparents' rights in a stepparent adoption, generally

This is a stepparent adoption, defined as the "adoption of the minor child by the spouse of the parent with the consent of that parent." K.S.A. 59-2112(d). Mother, the parent, has given her consent and has not revoked or otherwise challenged it. Persons required to give consent in a stepparent adoption are: (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 2015 Supp. K.S.A. 59-2136 (proceedings for termination of parental rights). See K.S.A. 2015 Supp. 59-2129(a). Grandparents, whether having visitation rights, guardianships, or other legal status, are not listed. Because Grandmother had no right to consent, according to the plain language of the statute, she had no power to affect the adoption proceedings by objecting or withholding her consent.

Grandmother had some rights relating to the adoption, however. K.S.A. 2015 Supp. 59-2133(b) provides: "In independent and stepparent adoptions notice of the hearing on the petition shall be given to the parents or presumed parents . . . unless parental rights have been previously terminated, and any other persons as the court may direct . . . ." That statute does not specifically list the persons who should be noticed, but gives the court discretion in selecting participants in the adoption hearing and related issues. The district court selected Grandmother to receive notice, but she did not appear at the adoption proceedings. That Grandmother was noticed, however, does not mean she has the right to conduct depositions or otherwise participate in the adoption hearing. Instead, the notice makes her aware of the adoption proceedings, enabling her to protect in other proceedings her right to reasonable visitation with her grandchild. K.S.A. 2015 Supp. 23-3301(c); see *In re Adoption of J.A.B.*, 26 Kan. App. 2d 959, 970, 997 P.2d 98 (2000).

Guardianships are analogous

A guardianship is the standard way in which a fit parent grants a third-party legal authority over the parent's child. A guardian has statutory duties and responsibilities which include, if the ward is a minor, having custody and control of the minor and providing for the minor's care, treatment, habilitation, education, support, and maintenance. K.S.A. 2015 Supp. 59-3075(b)(1). But even guardianships are temporary, do not constitute a de facto termination of parental rights, and can be terminated by the

parent at any time or by the court if no further need for the guardianship exists, as the case below explains:

> "A guardianship isn't permanent nor is it a 'legal right' with the same legal standing as an adoption. See *In re Guardianship of Williams*, 254 Kan. 814, 828, 869 P.2d 661 (1994). Further, the appointment of a guardian isn't 'a de facto termination of parental rights.' Elrod, Child Custody Practice and Procedure § 4:6, p. 192 (2010 Supp.). . . . [A] voluntary guardianship of a minor can be terminated by the parent at any time, for any or no reason, whether the termination is agreed to by the guardian or not. Nelson, Practitioner's Guide to Kansas Family Law § 6.5.3(a) (citing *Guardianship of Williams*, 254 Kan. at 820). . . . [E]ven without a motion, the court may summarily terminate a guardianship if 'no further need for the guardianship exists.' K.S.A. 59-3092(a)(3)." *In re Guardianship & Adoption of H.C. and L.B.*, No. 105,357, 2012 WL 687074, at *4 (Kan. App. 2012) (unpublished opinion).

In the above case, we found that the petition to terminate the guardianship should have been granted because the evidence did not show that the children were "in need of a guardian." 2012 WL 687074, at *5. That result was mandated in part by the parents' constitutional rights:

> "This result is also mandated by the fundamental constitutional rights of natural parents as explained by the Kansas Supreme Court in *Williams*, 254 Kan. 814. The court noted the long-standing rule that 'absent highly unusual or extraordinary circumstances the parental preference doctrine is to be applied in a custody dispute over minor children when the dispute is between a natural parent who has not been found unfit and a nonparent.'" 2012 WL 687074, at *6.

Our case involves neither a guardianship nor a typical custody case, but a unique, undefined relationship flowing from an agreement between a natural parent and a grandparent. Nonetheless, the parental preference rule remains the same, whether custody

was placed in a third party by agreement or by court order. *In re Guardianship of Williams*, 254 Kan. 814, 826, 869 P.2d 661 (1994).

The parental preference rule applies

Third-party custody agreements may be upheld in Kansas, but where, as here, these agreements are entered into freely by a fit parent, the parental preference doctrine applies. In nonparental custody cases, "Kansas follows the parental preference rule which mandates that a parent be awarded custody unless the parent has been determined by a court to be unfit. A parent's fundamental right to establish a home and raise children is protected and will be disturbed only in extraordinary circumstances." 2 Elrod, Kansas Law and Practice, Kansas Family Law § 12:17, p.366 (2015-2016 ed.). See *Troxel v. Granville*, 530 U.S. 57, 68 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000).

In *Sheppard v. Sheppard*, 230 Kan. 146, 150-54, 630 P.2d 1121 (1981), our Supreme Court held a statute unconstitutional that gave the district court the discretion based on the child's best interests to order that physical custody remain with a nonparent after custody had been given consensually to the nonparent. In addressing the parental preference doctrine our Supreme Court held:

> "What we hold here is simply this: that a parent who is not found to be unfit, has a fundamental right, protected by the Due Process Clause of the United States Constitution, to the care, custody and control of his or her child, and that the right of such a parent to custody of the child cannot be taken away in favor of a third person, absent a finding of unfitness on the part of the parent." 230 Kan. at 154.

We apply that rule here.

No showing of waiver has been made

Grandmother generally acknowledges the parental preference doctrine, but contends that Mother waived that doctrine by consenting to the joint legal custody agreement. We disagree.

A waiver is the intentional relinquishment of a known right. *Lyons v. Holder*, 38 Kan. App. 2d 131, 138, 163 P.3d 343 (2007) (citing *Sultani v. Bungard*, 35 Kan. App. 2d 495, 498, 131 P.3d 1264 [2006]). A claim of waiver is considered an affirmative defense under Kansas law. See K.S.A. 2015 Supp. 60-208(c)(q). The party raising an affirmative defense such as waiver bears the burden of proving the defense. *Munck v. KPERS*, 35 Kan. App. 2d 311, 321-22, 130 P.3d 117 (2006). Thus Grandmother has the burden to show that the waiver of Mother's constitutional right was made voluntarily, knowingly, intelligently, and with full awareness of its legal consequences.

Grandmother does not meet that burden here. Nothing of record shows that Mother's mere consent to the joint legal custody agreement waived her constitutional rights to make decisions regarding her child, or that any terms in the joint custody agreement or order expressly or impliedly did so. See *In re Guardianship of Williams*, 254 Kan. at 822 (rejecting the argument "that the parental preference doctrine does not apply when the parent seeking to regain custody had earlier relinquished legal custody by agreement").

The best interests test is inapplicable here

Contrary to Grandmother's assertions, the best interests test does not apply in determining a fit parent's custodial right as against a third-party nonparent's right.

> "The best interests of the child test . . . has long been the preferred standard to apply when the custody of minor children is at issue between the natural parents of the child or children. However, absent highly unusual or extraordinary circumstances it has no application in determining whether a parent, not found to be unfit, is entitled to custody as against a third-party nonparent." *In re Guardianship of Williams*, 254 Kan. at 826.

Thus in *Williams*, the Mother was not required to show that a change of custody would materially promote the welfare of her minor son before she could regain custody and terminate the existing guardianship. 254 Kan. at 828.

But the best interests of the child are nonetheless protected in this Stepfather adoption proceeding to which Mother consented. "There is a fundamental presumption that a fit parent will act in the best interests of his or her child." *Kansas Dept. of SRS v. Paillet*, 270 Kan. 646, Syl. ¶ 7, 16 P.3d 962 (2001). And as the Supreme Court has observed, a fit parent's decision must be accorded "at least some special weight." *Granville*, 530 U.S. at 69; see *Paillet*, 270 Kan. at 656. Further, "It is elementary law that the aim and end of adoption statutes is the welfare of children. The theory of the adoption statute is that such welfare will be best promoted by giving an adopted child the status of a natural child. (*Bilderback v. Clark*, 106 Kan. 737, 189 Pac. 977.)" *Browning v. Tarwater*, 215 Kan. 501, 505, 524 P.2d 1135 (1974). So even if the record had fully supported Grandmother's claim that her status as a joint legal custodian of the child generally gives her the right to make decisions in the best interests of the child, that right must yield to the conflicting right of the fit Mother.

Affirmed.