

NOT DESIGNATED FOR PUBLICATION

No. 125,296

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of

J.S.,
Appellant,

and

K.G.,
Appellee.

MEMORANDUM OPINION

Appeal from Johnson District Court; KATHLEEN SLOAN, judge. Submitted without oral argument. Opinion filed November 3, 2023. Affirmed.

J.S., appellant pro se.

No appearance by appellee.

Before GREEN, P.J., SCHROEDER and CLINE, JJ.

PER CURIAM: J.R.S. (Father) timely appeals the district court's child custody order in favor of the natural mother, K.G. (Mother), granting her sole legal and residential custody of their children and ordering Father to undergo a psychological evaluation and begin working toward parenting time with the children. Father raises six claims on appeal, which can be narrowed to three overarching issues: (1) a lack of due process; (2) abuse of discretion in filing the child custody order and awarding Mother custody in the best interests of the children; and (3) a jurisdictional claim under the Uniform Child-

Custody Jurisdiction and Enforcement Act (UCCJEA), K.S.A. 2022 Supp. 23-37,101 et seq. For reasons we explain more fully below, we affirm the district court's child custody order.

FACTS

The facts of this case are convoluted, well-known to the parties, and need not be restated here except as necessary in analysis of the issues. In August 2015, Father filed a petition for determination of paternity of J.S. (born in 2011) and B.S. (born in 2013); the district court found he was the children's natural biological father. During the pendency of the paternity/parentage action, the district court also made orders for the benefit of the children in separate pending children in need of care (CINC) cases. The CINC proceedings are not part of this appeal. Many of the facts alleged by Father deal with the extensive history of the case starting in 2015 and support the district court's custody order on January 25, 2022, giving Mother sole custody of the children.

ANALYSIS

Father essentially raises three issues on appeal: (1) a lack of due process; (2) abuse of discretion in filing the child custody order and awarding Mother custody in the best interests of the children; and (3) a jurisdictional claim under the UCCJEA. Mother did not file a brief in response.

No lack of due process

Father argues:

"The decision [on the order of child custody] was contrary to the evidence and improperly issued. The Order of Custody is misleading which claim[s] to have been

issued after the matter was heard under 15CV5047 hearing but in contrary the matter was heard under CINC 22JC181 and 182 cases. The order was issued without the opportunity for the Appellant to be heard, a trial or presentation of evidence before being deprived custody and care of his children."

Father fails to explain how the district court's decision was improperly issued, what contrary evidence was before the district court, or how the custody order was misleading. Father's argument is conclusory and not adequately briefed; thus, it is waived and abandoned on appeal. See *State v. Arnett*, 307 Kan. 648, 650, 413 P.3d 787 (2018) (issue not briefed deemed waived or abandoned). But even if we consider his claims, we find they lack merit. In fact, Father's argument is directly contradictory to the record.

On January 25, 2022, the district court conducted a hearing largely related to the CINC cases—18JC229 and 18JC230—but also related to the civil paternity/parentage case 15CV5047. The district court commended Mother for turning the CINC cases around and reaching nearly two years of sobriety and granted Mother sole legal custody of the children. The district court explained:

"This has been a long process with permanency and then with Aftercare. I am very comfortable releasing the Child In Need of Care case at this time, but I will be entering—I will be entering orders as I can do under K.S.A. 38-2264(k) that will be exactly as recommended by the Guardian ad Litem."

K.S.A. 38-2264(k) allows the district court to enter child custody orders "[i]f permanency with one parent has been achieved without the termination of the other parent's rights." Father appeared for the hearing and had counsel for the CINC case but not the civil case. Father had an opportunity to be heard, and his due process rights were not violated. See *Village Villa v. Kansas Health Policy Authority*, 296 Kan. 315, 331, 291 P.3d 1056 (2013) ("[P]rocedural due process . . . requires notice and an opportunity to be

heard at a meaningful time and in a meaningful manner."). Father received due process even if he does not like the result.

No abuse of discretion in awarding Mother sole custody in the best interests of the children

Father also asserts a vague and ambiguous claim the district court abused its discretion in filing the child custody order. Father alleges the district court abused its discretion because the child custody order was filed under the paternity/parentage case without reference to the CINC cases and, therefore, misled the Missouri courts under the UCCJEA, and the district court also refused to communicate with Illinois courts. Father then makes another conclusory due process claim alleging he was not afforded a reasonable opportunity to present evidence and be heard on the merits of the custody case. Father also contends the district court's order was fraudulent because he and Mother were both unrepresented in the paternity/parentage case, although the order stated Mother was pro se and Father was represented by counsel. Father's claims lack merit.

In custody matters, we review a district court's orders for an abuse of discretion. *In re Marriage of Nusz*, No. 123,788, 2022 WL 503720, at *10 (Kan. App. 2022) (unpublished opinion). In *Nusz*, a panel of this court explained:

"A district court's discretionary determination of a child's custody, residency, visitation, or parenting time is guided by various provisions of K.S.A. 2020 Supp. 23-3201 et seq. The paramount consideration in making these decisions is the child's welfare and best interests. Given the district court's unique vantage point of what is often an emotionally charged situation, we generally will not overturn these decisions unless the district court abused its discretion. See *Cheney v. Poore*, 301 Kan. 120, 128, 339 P.3d 1220 (2014); see also *Frazier v. Goudschaal*, 296 Kan. 730, 755, 295 P.3d 542 (2013) (applying abuse of discretion review to coparenting agreement). Challenges to specific factual findings in support of these determinations are reviewed to assure that they are

supported by substantial competent evidence and that the findings support the district court's legal conclusions. *Vandenberg*, 43 Kan. App. 2d at 704." *In re Marriage of Nusz*, 2022 WL 503720, at *15.

A judicial action constitutes an abuse of discretion if (1) it is arbitrary, fanciful, or unreasonable; (2) it is based on an error of law; or (3) it is based on an error of fact. *Biglow v. Eidenberg*, 308 Kan. 873, 893, 424 P.3d 515 (2018). Father bears the burden of proving the district court abused its discretion. See *Northern Natural Gas Co. v. ONEOK Field Services Co.*, 296 Kan. 906, 935, 296 P.3d 1106 (2013).

Father first claims the district court abused its discretion because the child custody order was filed under the paternity/parentage case without reference to the CINC cases. This claim is plainly inaccurate. The child custody order itself is labeled with case No. 15CV5047—the paternity/parentage case. The transcript from the hearing in which the district court granted custody of the children to Mother also listed 15CV5047 as the case caption. When the hearing began, the district judge stated: "At this time the Court calls 18JC229, captioned In the Interest of [B.S.]; and 18JC230, captioned In the Interest of [J.S.]. We're also calling 15CV5047, which is captioned In the Matter of [J.R.S.] vs. [K.G.]." We observe no merit to this claim by Father.

Father then asserts the district court misled the Missouri courts under the UCCJEA and refused to communicate with Illinois courts. Interestingly, any documentation suggesting either parent or the children had any connection to Missouri or Illinois was filed after the district court issued the child custody order on January 25, 2022, and is not relevant to the that order at issue here. We can find no indication where the Kansas district court misled the Missouri courts or refused to communicate with the Illinois courts, and we decline to consider these issues as there is no documentation in the record on appeal. That said, the record reflects Father unsuccessfully attempted to gain jurisdiction in Michigan even though the record shows the mother and children did not

live in Michigan. Father has failed to establish the district court abused its discretion or violated the rules under the UCCJEA in communicating with the Missouri and Illinois courts.

Father also claims the district court's order was fraudulent because he and Mother were both unrepresented in the paternity/parentage case, although the order stated Mother was pro se and Father was represented by counsel. Father forgets a paternity/parentage action is a civil matter and it is his duty to retain counsel, as the district court has no duty to appoint him counsel. As previously noted, the child custody hearing addressed the CINC cases as well as the paternity/parentage case. Mother and Father both had counsel for the CINC cases, but representation for both parties did not extend to the civil paternity/parentage case. While the order of child custody notes Mother appeared pro se and Father was represented, it is unclear what relief Father is seeking or how a likely clerical error in the journal reflecting he had counsel resulted in an abuse of discretion by the district court. Father has failed to meet his burden to establish the district court abused its discretion.

Father also argues Mother is unfit because the children were in out-of-home placement since 2018, the children were removed from Mother's care on three occasions, and Mother had parental rights terminated for another child.

It is well-known a parent has a constitutionally recognized fundamental right to a parental relationship with his or her child. See *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); *In re B.D.-Y.*, 286 Kan. 686, 697-98, 187 P.3d 594 (2008). Accordingly, parental rights for a child may be terminated only upon clear and convincing proof of parental unfitness. K.S.A. 38-2269(a); *Santosky*, 455 U.S. at 769-70; *In re R.S.*, 50 Kan. App. 2d 1105, 1113, 336 P.3d 903 (2014).

Here, we are not reviewing the district court's termination of parental rights but, rather, the district court's finding that Father's parenting time should be monitored and/or restricted until he complies with the district court's orders. Our review of the record reflects the finding is supported by substantial competent evidence. Mother's attorney, the children's guardian ad litem (GAL), and the State agreed the CINC cases should be closed and released.

The State also had no objection to the district court adopting the orders of the CINC case in the civil paternity/parentage case. The children's GAL also recommended the district court enter orders in the civil paternity/parentage case that mirror the CINC cases. The GAL proffered:

"I think the Court should order sole legal custody to the mother. The Court should order that the father again undergo a psychological evaluation that complies with the Court's prior orders and that all CINC documents and relevant documents from the parentage case be provided to the evaluator prior to the evaluation, which is exactly what was not done when the father had his last evaluation."

The district court released the CINC cases and entered orders in the paternity/parentage case as permitted under K.S.A. 38-2264(k), granting Mother sole custody of the children as recommended by the children's GAL and the State. Mother, through the CINC proceedings, had achieved the ability to care for and parent her children, was found fit and, therefore, was presumed to act in the best interests of the children. See *In re T.A.*, 30 Kan. App. 2d 30, 35, 38 P.3d 140 (2001).

Father alleges the custody order violates his right to parent his children because no finding of unfitness was made against him. Father claims he "complied with all the requirements and submitted Forensic Evaluations" and no parenting time violates the law.

Father's arguments improperly describe the provisions of the child custody order. Father can obtain parenting time by following the district court's orders for individual therapy with a therapist who has reviewed a new psychological evaluation. Father can progress to family therapy with the children when the family therapist and the children's therapist agree it is appropriate. Father can then begin supervised visits when therapeutically recommended. Upon showing a material change in circumstances, Father can file a motion to modify parenting time and request unsupervised visits. Father's claim on appeal is hard to identify, convoluted, and lacks merit.

Jurisdiction under the UCCJEA

Father contends:

"According to UCCJEA, the District Court lacked jurisdiction because no parent or child were residing in the State of Kansas [on] January 25, 2022. Records revealed that the children were placed with the mother in June of 2021 at her home in Missouri. GAL affirmed in the transcript that J.S. was attending a school in the State of Missouri. Appellant as the Father was residing in the State of Illinois. The District Court was obligated by UCCJEA to communicate with the State of Illinois before entering the deficient order."

Father suggests the district court failed to follow the provisions of the UCCJEA by failing to communicate with the State of Illinois before entering custody orders. Father's arguments are conclusory, and he provides no citations to legal authority, including the standard of review, or to the record on appeal; therefore, Father's claims are waived and abandoned. See *Arnett*, 307 Kan. at 650; see also Supreme Court Rule 6.02(a)(5) (2023 Kan. S. Ct. R. at 36) ("Each issue must begin with citation to the appropriate standard of appellate review and a pinpoint reference to the location in the record on appeal where the issue was raised and ruled on."). Even if we reach the merits, Father's claims fail.

"Subject matter jurisdiction concerns the court's authority to hear and decide cases. It may be raised at any time, whether for the first time on appeal or even on the appellate court's own motion." *In re K.L.B.*, 56 Kan. App. 2d 429, 437, 431 P.3d 883 (2018). Whether jurisdiction exists is a question of law over which we exercise unlimited review. *In re N.A.C.*, 299 Kan. 1100, 1106, 329 P.3d 458 (2014).

While "the Revised Kansas Code for Care of Children [K.S.A. 38-2201 et seq.] generally confers original jurisdiction on Kansas courts to hold proceedings concerning any child who may be a child in need of care[,]" the UCCJEA places certain limits on that jurisdiction. *In re A.A.-F.*, 310 Kan. 125, 135-136, 444 P.3d 938 (2019). Specifically,

"[t]he UCCJEA places limits on courts in situations where two or more states might have an interest in a child-custody matter. It sets criteria for determining which state has initial jurisdiction, for declining jurisdiction, for a second court to exercise jurisdiction, and for enforcing and for exercising jurisdiction to modify custody decrees." 310 Kan. at 135-36.

"It is erroneous for a district court to assume subject matter jurisdiction over a CINC case with interstate connections without ensuring the UCCJEA's provisions are satisfied." *In re A.W.*, 60 Kan. App. 2d 296, 303, 493 P.3d 298 (2021). Here, Father's CINC cases are intertwined with the paternity/parentage case in which the district court adopted its findings from the CINC cases and ordered sole custody of the children to Mother in the paternity/parentage case.

Under the UCCJEA, a court typically exercises initial child custody jurisdiction in two ways. First, a Kansas court has jurisdiction if it is "the home state of the child on the date of the commencement of the proceeding." K.S.A. 2022 Supp. 23-37,201(a)(1). "'Home state' means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding." K.S.A. 2022 Supp. 23-37,102(8). Second, a court of another

state can acquire jurisdiction if the court of the home state of the child declines to exercise jurisdiction. K.S.A. 2022 Supp. 23-37,201(a)(2). Here, the record reflects that at the time the CINC cases were filed and the paternity/parentage action was commenced, Kansas was the home state for Mother and the children.

The record on appeal appears incomplete and jumps from hearings and documents submitted in late 2017 to the child custody hearing in January 2022. While it appears Mother lived in Kansas during the majority, if not for the entirety, of this case as documented in the record, we have been unable to find any indication the Kansas court assigned management of the case to another state. The only indication Father and potentially Mother lived in Missouri or Illinois was filed well after the district court issued the child custody order. Father "has the obligation to insure a sufficient record for us to consider those arguments and to provide citations that direct our consideration." *In re A.A.-F.*, 310 Kan. at 141. Father failed to meet his obligation to provide a sufficient record to support his claims of error.

Another panel of our court recently addressed this very issue in Father's appeal of the CINC cases filed in 2022—after the child custody order here was filed. See *In re B.S.*, No. 125,843, 2023 WL 4145322, at *1 (Kan. App. 2023) (unpublished opinion). But, in the 2022 CINC cases, Father claimed the district court lacked jurisdiction over the CINC proceedings under the UCCJEA because Kansas was no longer the children's home state and neither Mother nor Father lived in Kansas—the same argument Father contends here. The previous panel found Kansas was the home state for both B.S. and J.S. because they had lived in Kansas with Mother for more than six months preceding the filing of the 2022 CINC petitions. 2023 WL 4145322, at *4. We will not reexamine this finding, nor could we, given the deficiencies in the record on appeal.

We find Father's due process rights were not violated, the district court did not abuse its discretion in granting Mother sole legal and residential custody in the best interests of the children on January 25, 2022, and Father's jurisdictional claims lack merit.

Affirmed.