

NOT DESIGNATED FOR PUBLICATION

No. 125,843

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Interests of B.S and J.S.,
Minor Children.

MEMORANDUM OPINION

Appeal from Johnson District Court; KATHLEEN SLOAN, judge. Opinion filed June 23, 2023.
Affirmed.

J.S., appellant pro se.

Shawn E. Minihan, assistant district attorney, *Stephen M. Howe*, district attorney, and *Richard P. Klein*, guardian ad litem, of Lenexa, for appellee.

Before BRUNS, P.J., SCHROEDER and WARNER, JJ.

PER CURIAM: Father appeals from the district court's order, finding his children, B.S. (born in 2013) and J.S. (born in 2011), are children in need of care (CINC). After failing to appear at the adjudication hearing, Father raises several issues on appeal as set out below. Upon an extensive review of the record, we find the district court had jurisdiction to adjudicate the children as CINC and Father's claims lack merit or are not ripe. We affirm.

FACTS

On April 1, 2022, the State filed CINC petitions on behalf of B.S. and J.S. The petitions requested the district court declare the children CINC because Mother, who had

sole custody of the children, had recently been incarcerated and Father lived out of state and could not exercise parenting time because he had not yet completed the requirements from a court-ordered reintegration plan in a prior paternity or CINC case.

The petitions noted the Kansas Department for Children and Families had a long history with B.S. and J.S., explaining the State had previously filed two CINC petitions on the children's behalf, first in 2015 and again in 2018. The State's allegations in those cases had revolved around Mother's substance abuse issues and Father's alleged pattern of physical and emotional abuse. Mother was more successful than Father with the prior CINC cases. Father refused to participate in the reintegration process in either case. In a separate parentage case in 2017, Father's parenting time was denied. The order provided his parenting time would be reinstated under supervision *after* he completed a psychological evaluation and a batterer's intervention program, which he failed to do. In the 2015 and 2018 CINC cases, Mother completed her reintegration plans and regained custody in both cases.

At the conclusion of the 2018 CINC case in January 2022, Mother was given sole custody of the children. Father, pursuant to K.S.A. 38-2264(k), was ordered to complete a psychological evaluation and begin family therapy with B.S. and J.S. (pending approval from the psychological evaluation) before seeking supervised visits and to subsequently show a material change in circumstances before seeking unsupervised visitation.

Shortly after Mother regained custody of B.S. and J.S. and obtained the release of the 2018 CINC cases, she was charged with distribution of methamphetamine and received a four-year federal sentence upon her conviction. When Mother was ultimately incarcerated on the federal charge on March 7, 2022, she left B.S. and J.S.—who for the past seven months had been living with her in Kansas—with one of her friends in Missouri. KVC Aftercare helped Mother create a safety plan for the children before she took them to stay with her friend. The children ended up staying with Mother's friend

until the State filed its CINC petitions. At the time of those filings, Father had not seen the children since May 2017. Mother's incarceration compounded by Father's absence led the State to file the CINC petitions now at issue. About the same time, Father requested documents from the 2018 CINC case to register a foreign judgment in Missouri, which caused the State to believe he was attempting to regain custody of the children without complying with the district court's prior protective orders.

Upon receiving the 2022 CINC petitions, the district court signed an ex parte order of protective custody and, on April 5, 2022, granted an order of temporary custody. The order of temporary custody noted Mother was incarcerated and Father lived out of state, had no contact with the children, and had not completed any of the previously mandated requirements to exercise parenting time. The district court also appointed a guardian ad litem (GAL) for the children. The following week, Father appealed the temporary custody order to this court and filed his foreign judgment in Missouri. This court later dismissed the appeal as moot after the district court's CINC adjudication.

On August 11, 2022, the district court held a rescheduled first appearance hearing regarding the CINC case—the initial first appearance was set over due to jurisdictional objections lodged by Father, who appeared pro se. The district court overruled Father's various jurisdiction-based arguments. Mother's attorney then stated that Mother did not object to the State proceeding via proffer, but Father disagreed and reraised his concerns about jurisdiction. The district court reiterated its position on Father's arguments and informed Father the matter would be set for trial—that is, an adjudication hearing. Father continued to assert the "proceeding [was] illegal" and the court lacked jurisdiction. He explained:

"I have put notifications on this Court that [the Uniform Child-Custody Jurisdiction and Enforcement Act] is pending in the State of Illinois and the State of Missouri. And pursuant to K.S.A. 38-2204, the children were not found in a county of

Kansas. They were found in Clay County[, Missouri]. The mother was . . . living in Jackson County, Missouri."

Over Father's continuing protestations, the district court scheduled an adjudication hearing on October 7, 2022, which Father stated would work with his schedule. Due to Father's frequent interrupting, the district court indicated it would prefer the hearing take place in person, but it ultimately decided to hold it via Zoom to accommodate Father's schedule. After the scheduling hearing, the State attempted to personally serve Father at the address he had verbally provided, but it was unsuccessful and finally served Father by publication.

Father did not appear at the adjudication hearing. The State expressed it had all of its witnesses ready to testify, but it was concerned about Father's absence, noting he had attended all of the prior hearings; the district court echoed these concerns. Mother's attorney explained Father had recently filed a motion to modify custody in Jackson County, Missouri, and there had been a hearing in that case the day prior. The district judge responded it was unlikely the Missouri court was aware of the pending CINC cases going on in Kansas. Before the district court permitted the State to proceed with adjudication by proffer, one of the attorneys present attempted to contact Father utilizing the two different phone numbers Father had provided, but Father did not answer the calls. The State then gave its proffer. The proffer included the following relevant evidence:

- Mother had sole custody and lived with the children in Kansas starting in August 2021 until she was incarcerated in March 2022;
- Mother was unavailable to act as a parent due to her incarceration, and she would not be released until 2026;
- Father had refused to comply with the reintegration plans and various orders in the prior CINC cases and had no parenting time—at least until he completed the court's orders;

- Father had not seen the children since May 2017; and
- Father's case worker from KVC believed Father was uncooperative and unwilling to work towards contact with the children.

The children's GAL then stated he believed both children to be CINC and further noted "that the children believe that their father abused them significantly [T]hat is their reality, is that they are terrified of their father and they think they were abused."

After hearing the proffer and the statements of the GAL, the district court found the "evidence constitutes clear and convincing evidence that the children are Children In Need of Care . . . as to both of their parents and finds they're Children In Need of Care pursuant to K.S.A. 38-2202 (d) (1), (d) (2) and (d) (3)." The journal entry memorializing the adjudication was filed soon after.

About a month after the adjudication hearing, the district court held a joint hearing with a district court from Missouri to determine which state was the appropriate forum for the children's CINC cases to proceed. Father attended the hearing. The district court explained to the Missouri judge that in addition to the currently pending CINC cases, Father's and Mother's parentage case also remained pending. Ultimately, the Missouri court declined to exercise jurisdiction, explaining it believed "that exclusive jurisdiction lies in Kansas[.]" Father raised the issue of whether Illinois, his home state, should exercise jurisdiction; the district court told Father Illinois' potential jurisdiction was not relevant to the determination of jurisdiction between Kansas and Missouri.

ANALYSIS

Jurisdiction Exists in Kansas

On appeal, Father challenges the district court's exercise of jurisdiction over the CINC proceedings on several grounds. First, he argues the district court lacked subject matter jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), K.S.A. 2022 Supp. 23-37,101 et seq., and Johnson County was not the appropriate forum because Kansas was no longer the children's home state and neither Mother nor Father lived in Kansas. Second, Father asserts the district court did not have temporary emergency jurisdiction, but Missouri did. Third, Father argues Kansas lost exclusive and continuing jurisdiction when Mother and the children left the state. Fourth, he contends the district court "did not have Statutory Basis under the provisions of K.S.A. 38-2202 to file a Kansas CINC or adjudicate the case." Fifth, Father argues the district court abused its discretion by adjudicating the children as CINC because it erroneously believed it had jurisdiction even though the children were located in Missouri.

The State responds to Father's jurisdictional arguments by showing the district court properly exercised jurisdiction because Kansas is B.S.'s and J.S.'s home state under the UCCJEA.

"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). The existence of jurisdiction 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, 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).

Home state

Under the UCCJEA, a court typically exercises initial child custody jurisdiction in two main 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, as the State laid out in its proffer at the adjudication hearing, Kansas was the home state for both B.S. and J.S. because they had lived with Mother in Kansas for more than six months preceding the filing of the 2022 CINC petitions. According to the State’s evidence presented by proffer and the district court’s findings of fact at the adjudication hearing, the children reintegrated with Mother in Kansas during the final stage of the prior CINC case in August 2021—more than six months before the filing of the 2022

petitions in April 2022. That said, Mother was taken into custody and the children were temporarily staying with her friend in Missouri for several weeks prior to the CINC petitions being filed; Mother's friend promptly returned B.S. and J.S. to Kansas after the cases were filed. Regardless, this interim time that the children spent out of state does not destroy Kansas' status as the children's home state because "[a] period of temporary absence of any of the mentioned persons is part of the period." K.S.A. 2022 Supp. 23-37,102(8).

Father repeatedly asserts that the children lived in Missouri for a longer period and argues that "the State and the District Court statements claim[ing] mother lived in Kansas when the 2nd CINC cases closed [are] not reliable." But Father was given the opportunity to challenge the State's evidence of Mother and the children's residence at the adjudication hearing, but he failed to appear. Although Father states in his brief Mother resided at a particular address in Missouri with B.S. and J.S. beginning in June 2020, it is an unsupported allegation considering Mother did not reintegrate with the children and regain custody until August 2021 in the 2018 CINC case. We find no evidence in the record to support Father's claim. The record reflects Kansas was the children's home state for UCCJEA purposes.

The State alternatively argues, should Kansas not be deemed the children's home state, the district court still obtained jurisdiction under K.S.A. 2022 Supp. 23-37,201(a)(2). That provision provides that a state that is not a child's home state under K.S.A. 2022 Supp. 23-37,201(a)(1) may nevertheless exercise initial child-custody jurisdiction if no other state qualifies as the child's home state and:

"(A) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

"(B) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships." K.S.A. 2022 Supp. 23-37,201(a)(2).

Here, no state other than Kansas could qualify as the children's home state; the only time they spent outside of Kansas was the few weeks they spent in Missouri at Mother's friend's residence. Further, the record does not disclose the children ever visited Father's home state of Illinois, let alone lived there for the requisite six months. Both the children and Mother have significant connections to Kansas—the parentage case was filed in Johnson County in 2015 and three CINC cases have proceeded through Kansas courts during the children's lives. Finally, due to the lengthy history of CINC cases in this state and Mother's successful reintegration with the children on two occasions, there is substantial evidence available in Kansas concerning B.S. and J.S.'s care, protection, training, and personal relationships.

Substantial competent evidence supports the fact Mother and the children lived in Kansas for at least six consecutive months prior to the State filing the CINC petitions at issue, Kansas was the children's home state under K.S.A. 2022 Supp. 23-37,201(a)(1), and the district court had jurisdiction under the UCCJEA.

Venue

Father next argues Johnson County was not the proper venue for the CINC proceedings. However, his venue-based argument does not claim another county in Kansas was proper; he argues the district court "was obligated to transfer the cases to Missouri in the County where the children were physically present or Illinois where Appellant as the father resides." Here, Father confuses venue with jurisdiction because he is really arguing the district court was required to transfer its jurisdiction to another state under the UCCJEA.

Despite Father's vague argument, venue was proper in Johnson County—and, as explained above, Kansas had continuing and exclusive jurisdiction. Under K.S.A. 38-2204(a), "[v]enue of any case involving a [CINC] shall be in the county of the child's residence or in the county where the child is found." Although Mother lived in Missouri for much of the pendency of the 2018 CINC cases, she moved back to Kansas to reintegrate with B.S. and J.S. and remained in Kansas with them when she regained custody in August 2021. And while the children were temporarily staying in Missouri when the CINC petitions were filed, Kansas was still their home state under the UCCJEA. The record before us indicates the children were living with Mother in Johnson County, Kansas, from August 2021 to March 2022, shortly before the CINC petitions were filed. Thus, Kansas had jurisdiction, and venue was proper in Johnson County.

Temporary emergency jurisdiction

Father next asserts that the district court could not have exercised emergency jurisdiction "because [the] children were not present in the State of Kansas. Children were present in the State of Missouri." That is, because B.S. and J.S. were temporarily staying with Mother's friend in Missouri at the time the CINC petitions were filed, no emergency existed in Kansas and the district court could not have exercised jurisdiction under K.S.A. 2022 Supp. 23-37,204(a). For this reason, he contends, the court's orders were void for lack of temporary emergency jurisdiction; he maintains emergency jurisdiction only existed in Missouri.

A court may acquire emergency jurisdiction to enter temporary custody orders if a child present in the state is abandoned or has been subjected to or threatened with mistreatment or abuse—even if initial custody orders have been entered by a court in the child's home state. K.S.A. 2022 Supp. 23-37,204(a), (c), and (d). Here, Kansas entered the initial custody orders. And as previously explained above, the district court had jurisdiction because Kansas was the children's home state. As such, the district court did

not need to act under the jurisdictional grant provided in K.S.A. 2022 Supp. 23-37,204 because it was exercising jurisdiction under K.S.A. 2022 Supp. 23-37,201.

Father's argument that Kansas could not exercise emergency jurisdiction centers on his contentions B.S. and J.S. were not in Kansas at the time the CINC petitions were filed and Missouri had emergency jurisdiction because the children were staying with Mother's friend there. Specifically, Father argues no emergency existed because "[a] placement was already in place by [Mother] before a CINC case" and there were no safety concerns with Mother's friend with whom the children were staying after Mother was incarcerated. While it is true the children were not located in Kansas on the day the State's CINC petitions were filed, Missouri never exercised emergency jurisdiction. On the other hand, upon learning B.S. and J.S. had been left behind by Mother, the State promptly filed CINC petitions to protect them. Father's argument is flawed because he fails to recognize under the facts of this case Kansas had jurisdiction to adjudicate the children as CINC because Kansas was their home state under the UCCJEA.

Continuing exclusive jurisdiction

Father also asserts that the district court "has lost exclusive and continuing jurisdiction under UCCJEA" because neither he, Mother, nor the children currently reside in Kansas.

After an initial custody determination has been made—in this case by the district court acting as the children's home state—that court "generally retains exclusive jurisdiction over later custody issues until an event listed in the UCCJEA (such as a determination that neither parent nor the child still lives in the state) occurs." *In re A.A.*, 51 Kan. App. 2d 794, 804, 354 P.3d 1205 (2015). K.S.A. 2022 Supp. 23-37,202(a) provides that such a court retains jurisdiction until:

"(1) A court of this state determines that neither the child, the child's parents, and any person acting as a parent do not have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

"(2) a court of this state or a court of another state determines that the child, the child's parents, and *any person acting as a parent* do not presently reside in this state."
(Emphasis added.)

Here, the record reflects no other state had exercised jurisdiction over the children based on them temporarily staying with Mother's friend in Missouri. In short, the district court still had exclusive, continuing jurisdiction to hear and decide this matter. The mere fact that neither Father nor Mother currently reside in Kansas is insufficient, standing alone, to divest the court of its jurisdiction.

Abuse of discretion

Next, Father argues the district court's CINC adjudication constituted an intentional abuse of discretion because the court was aware B.S. and J.S. resided in Missouri, so its decision to exercise jurisdiction was "not made within the account of the applicable legal standards."

Father's argument, for the same reasons enumerated above, lacks merit. A judicial action constitutes an abuse of discretion where it is based on an error of fact; an error of law; or was otherwise arbitrary, fanciful, or unreasonable. *In re A.A.-F.*, 310 Kan. at 141. The only error Father points to is his contention the district court made a mistake of law because it ignored the fact B.S. and J.S. lived in Missouri. However, the record reflects the period of time the children were in Missouri prior to the filing of the CINC petitions was merely temporary. We observe no error of law and no abuse of discretion by the district court.

The District Court Was Not Required to Contact the Illinois Court

Father also argues the district court "did not satisfy the provisions of the UCCJEA 110"—a provision concerning communications between courts of different states when potential conflicts regarding jurisdiction arise in child custody cases. The State responds Father has not preserved this issue for our consideration and this issue is not ripe for appeal as Father can still seek to have the district court communicate with an Illinois court regarding jurisdiction under the UCCJEA.

Father's argument requires us to interpret K.S.A. 2022 Supp. 23-37,110, which is a question of law subject to unlimited review. *In re N.A.C.*, 299 Kan. at 1106-07. The UCCJEA contains a provision that permits communication between courts of different states on matters involving potential jurisdictional issues or conflicts. See K.S.A. 2022 Supp. 23-37,110. Contrary to Father's assertion, the statute is not mandatory; it states: "A court of this state *may* communicate with a court in another state concerning a proceeding arising under this act." (Emphasis added.) K.S.A. 2022 Supp. 23-37,110(a). Further, a court is not obligated to allow the parties to participate in the communication with another court, but the parties must be provided an opportunity to present facts and make legal arguments before the court makes any determination on jurisdiction. K.S.A. 2022 Supp. 23-37,110(b).

Father fails to provide any standard of review or other authority to support his claim the district court was *required* to communicate with both Illinois and Missouri prior to holding the adjudication hearing. Accordingly, we treat Father's argument as waived or abandoned. See *In re Adoption of T.M.M.H.*, 307 Kan. 902, 912, 416 P.3d 999 (2018).

We find no error in the district court's alleged failure to communicate with an Illinois court—or, in the alternative, Father's claim is not ripe for review.

Father's Claims Are Not Preserved

Father next claims the State committed an abuse of process, alleging its filing of the CINC petitions constituted a knowingly illegal and improper use of the judicial system intended to harass and defame him. In a similar vein, he argues the State was permitted to commit fraud upon the court by presenting false evidence, citing a 2019 case he filed in Illinois—and Illinois caselaw—as support for his claim. The State responds Father has not preserved either argument for appeal, he fails to cite any applicable law, and the issues are not ripe for review at this time.

There are at least two interrelated problems with Father's abuse of process and fraud on the court arguments. First, these issues are not preserved. Father never raised these claims before the district court and cites no authority or record citations to support them. Second, both abuse of process and fraud are typically brought as independent causes of action, not as errors for an appellate court to review. For these reasons, we find Father is entitled to no relief on these claims.

Under the preservation rule, an issue that was not raised before the district court generally cannot be raised on appeal. *In re N.E.*, 316 Kan. 391, 407, 516 P.3d 586 (2022). To satisfy the rule, a party must either provide "a pinpoint reference to the location in the record on appeal where the issue was raised and ruled on" in the district court, or "[i]f the issue was not raised below, there must be an explanation why the issue is properly before the court." Supreme Court Rule 6.02(a)(5) (2023 Kan. S. Ct. R. at 36). "A party who ignores this requirement is considered to have waived and abandoned any exception to the preservation rule." *In re N.E.*, 316 Kan. at 408. Here, Father has provided no record citations to the location where these issues were raised and ruled on. Our review of the record has not revealed either issue being raised before the district court. And Father has not argued an exception to the preservation rule. Because Father has disregarded Rule

6.02(a)(5), we find these arguments waived and abandoned and decline to address the second reason why Father's allegations lack merit.

The District Court Did Not Lose Jurisdiction Based on the Timing of the CINC Adjudication

Father argues the district court failed to timely adjudicate the children as CINC within 60 days of the filing of the State's petitions as provided in K.S.A. 38-2251(c) ("A final adjudication or dismissal shall be entered within 60 days from the date of the filing of the petition, unless good cause for a continuance is shown on the record."). Father asserts the district court lacked jurisdiction because it did not rule on the petitions within 60 days. We find his argument unpersuasive. Father cites no authority reflecting K.S.A. 38-2251(c) is jurisdictional in nature. Failure to support a point with pertinent authority is akin to failing to brief the issue; thus, it can be deemed waived and abandoned. *In re Adoption of T.M.M.H.*, 307 Kan. at 912. However, even if we were to consider the issue, another panel of this court found the language of K.S.A. 38-2251(c) is directory, not mandatory. *In re L.C.W.*, 42 Kan. App. 2d 293, 297, 211 P.3d 829 (2009). In light of Father's deficient briefing of the issue, we see no reason to conclude otherwise. Moreover, our review of the record reflects the district court found good cause for continuances to secure Father's presence at the relevant hearings and to consider his various jurisdictional objections.

Father's Due Process Rights Were Not Violated

Father argues, for the first time on appeal, that his due process rights were violated because he was never given notice of, let alone the opportunity to be heard at, the adjudication hearing. Whether one's right to due process has been violated is a question of law subject to unlimited appellate review. *In re K.E.*, 294 Kan. 17, 22, 272 P.3d 28 (2012).

The State contends we should decline to address this constitutional claim for the first time on appeal. Importantly, Father has not affirmatively invoked and argued any exception to the general rule that constitutional claims may not be raised for the first time on appeal. See Rule 6.02(a)(5). And as our Supreme Court has cautioned, a failure to satisfy Rule 6.02(a)(5) in this respect amounts to an abandonment of the constitutional claim. See, e.g., *State v. Godfrey*, 301 Kan. 1041, 1043-44, 350 P.3d 1068 (2015). However, we determine Father's claim could be classified as necessary to serve the ends of justice or to prevent the denial of a fundamental right, and we will address the issue. In doing so, we observe the record before us contradicts Father's claim. He suffered no deprivation of his right to be heard at a meaningful time and in a meaningful manner because he had notice of the hearing and chose not to appear in person or by Zoom.

Father's right to participate in the process to decide the care, custody, and control of B.S. and J.S. is a fundamental liberty interest protected by the Fourteenth Amendment to the United States Constitution and is plainly implicated in this case. See *Troxel v. Granville*, 530 U.S. 57, 65-66, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000); *In re J.D.C.*, 284 Kan. 155, 166, 159 P.3d 974 (2007). And Kansas courts have held that a parent is entitled to due process before the parent may be deprived of the right of custody, care, and control of his or her child. See, e.g., *Sheppard v. Sheppard*, 230 Kan. 146, 154, 630 P.2d 1121 (1981).

The fundamental due process requirement "is the opportunity to be heard at a meaningful time and in a meaningful manner." *In re J.D.C.*, 284 Kan. at 166.

"A due process violation exists only when a claimant is able to establish that he or she was denied a specific procedural protection to which he or she was entitled. The type and quantity of procedural protection that must accompany a deprivation of a particular property right or liberty interest is determined by a balancing test, weighing: (1) the individual interest at stake; (2) the risk of erroneous deprivation of the interest through the procedures used and the probable value, if any, of additional or substitute

procedural safeguards; and (3) the State's interest in the procedures used, including the fiscal and administrative burdens that any additional or substitute procedures would entail." 284 Kan. at 166-67.

Turning to the second and third factors—the risk of erroneous deprivation and the State's interest in the procedure—Father's argument fails. When a parent contests a CINC petition, "the court shall hear evidence as to those persons, if they are present. The case may proceed by proffer as to persons not present, unless they appear by counsel and have instructed counsel to object." K.S.A. 38-2248(e). Before Father's parental rights could be impaired by the adjudication of B.S. and J.S. as CINC, the State was required to prove they were CINC by clear and convincing evidence. K.S.A. 38-2250. Father could waive his right to be present (1) by stipulating to or not contesting an adjudication or (2) by failing to appear and not instructing his attorney to object. See K.S.A. 38-2248(a), (e). Here, Father received notice of the adjudication hearing when he attended an initial hearing on the CINC petitions, two months before the adjudication occurred. At that hearing, the district court with Father present determined he was available on the scheduled day and ordered the hearing to occur over Zoom to better accommodate Father's ability to attend. In short, Father failed to appear at the adjudication hearing after he received notice, and the hearing was made as accessible to him as reasonably possible. Because Father was on notice of the pending adjudication hearing set for October 7, 2022, and chose not to appear in person or by Zoom and be heard, the default adjudication of the children as CINC based upon proffered evidence in accordance with K.S.A. 38-2248(e) did not violate Father's due process rights.

Affirmed.