

NOT DESIGNATED FOR PUBLICATION

No. 125,042

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Interest of K.D.,  
a Minor Child.

MEMORANDUM OPINION

Appeal from Johnson District Court; ERICA K. SCHOENIG, judge. Opinion filed March 24, 2023.  
Affirmed.

*Richard P. Klein*, of Lenexa, for appellant natural father.

*Shawn E. Minihan*, assistant district attorney, and *Stephen M. Howe*, district attorney, for appellee.

*Joseph W. Booth*, of Lenexa, for interested party foster mother.

Before ISHERWOOD, P.J., MALONE and WARNER, JJ.

PER CURIAM: B.H. (Father) appeals the termination of his parental rights over K.D. Father claims that under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), K.S.A. 2022 Supp. 23-37,201 et seq., the Kansas district court lacked subject matter jurisdiction to enter any orders in the child in need of care (CINC) case. He also claims for the first time on appeal that for the Kansas district court to retain emergency jurisdiction over the CINC case for over two years violated his due process rights. Additionally, an interested party, L.F., K.D.'s foster mother, claims that this court lacks jurisdiction to hear this appeal because Father did not properly verify his original notice of appeal in district court and his docketing statement with this court.

For the reasons we will explain in this opinion, we find that this court has jurisdiction to hear this appeal and that the Kansas district court had subject matter jurisdiction under the UCCJEA to enter orders in the CINC case including the order terminating Father's parental rights. We also find that nothing about the district court's exercise of subject matter jurisdiction over the CINC case violated Father's due process rights. Thus, we affirm the district court's judgment terminating Father's parental rights.

#### FACTUAL AND PROCEDURAL BACKGROUND

On June 16, 2019, the Olathe Police Department responded to a report that a child, now known to be K.D., was left unattended in a car parked outside a hotel. A witness told the responding officer that K.D., who was about nine months old, had been in the car unattended for about 30 minutes before the officer arrived. The officer found K.D. sitting alone in an infant car seat that was not buckled into the car. Although K.D. was not in distress, she was taken by ambulance to be medically examined. The officer found a driver's license in the car belonging to B.D. (Mother). Soon after, the officer located Mother in the hotel. Mother told the officer that she had gone to the hotel with a friend to meet a man. Mother later claimed that her friend was supposed to be in the car with K.D. while Mother was in the hotel, but the friend was never located.

On June 18, 2019, the State filed a CINC petition with the district court. The petition alleged that the district court had jurisdiction over the case under K.S.A. 23-37,204, a statute addressing temporary emergency jurisdiction. That same day, the district court held a hearing and placed K.D. into the temporary custody of the Kansas Department for Children and Families (DCF). The CINC petition listed K.D. as living with Mother in Kansas City, Missouri, before being placed in DCF custody. At the time, Mother had provided no identifying information to the court for K.D.'s father.

Mother first identified B.H. as K.D.'s father on July 9, 2019. The district court appointed an attorney for B.H. on July 29, 2019, and the court ordered paternity testing. The district court later found that B.H. was K.D.'s father. When B.H. entered the case, he lived with his mother in Kansas City, Missouri.

Early in the case, the district court filed multiple orders for K.D.'s expedited placement with Father at his mother's house in Kansas City, Missouri under the Interstate Compact on the Placement of Children (ICPC). Those initial ICPC requests were denied because Father did not provide reference forms and background information to Jackson County, Missouri, and the county was unable to complete a walk-through of the home.

On January 23, 2020, the district court found that K.D. was a child in need of care. The district court also found that Father had voluntarily entered a statement of no contest on the matter. After hearing from the parties, the district court ordered a six-month reintegration plan for K.D. to reintegrate with Father. The district court later ordered a formal reintegration plan that required Father to maintain suitable housing, demonstrate appropriate parenting skills, comply with all visitation guidelines, complete a psychological evaluation and follow all recommendations, and submit to random urinalysis tests. At a hearing on November 30, 2020, the district court granted L.F., K.D.'s foster mother, interested party status in the CINC case.

In December 2020, Father filed a parentage case with the Jackson County, Missouri Circuit Court. In May 2021, Father filed with the Kansas district court a motion to dismiss the CINC case for lack of subject matter jurisdiction, arguing that the district court lacked jurisdiction to adjudicate K.D.'s custody because there was no ongoing emergency and because Missouri was K.D.'s home state under the UCCJEA. The district court discussed the matter at its next review hearing on August 16, 2021, and the court announced that it would contact the Missouri court to address the UCCJEA issues.

On September 7, 2021, the Kansas district court held a hearing by Zoom videoconference to address its jurisdiction. Along with the parties, Judge Jalilah Otto, a Jackson County, Missouri judge, participated in the hearing. At the hearing, it was established that Father's parentage case in Missouri had been dismissed because when it was filed, K.D. had been in Kansas for more than six months. Judge Otto then described how no other cases relating to K.D. were pending in Missouri and that the State of Missouri did not intend to file any future cases on the matter. Judge Otto stated:

"I can tell you [the State of Missouri] do[esn't] have any open cases over here. We don't intend to have any open cases over here. It is my understanding the conduct that occurred occurred in your jurisdiction, the child was found in your jurisdiction, and it sounds like there was quite some time between that and when the parents asserted their position on the matter, if you will.

"But from my perspective, we don't have a case. The incident that happened—it is your hearing, I guess, but I would go ahead and enter a finding on our side that you are the better venue to have the case. Whether it comes to you in temporary or emergency or whatever purpose it may come to you, I don't have anything—any kind of basis for having it here, and so I would go ahead and find that you are the better jurisdiction of the two to proceed on any case involving this particular juvenile."

Judge Otto later clarified: "At this moment Jackson County is declining—Jackson County, Missouri, is declining jurisdiction over the child and we do find that Kansas is the appropriate forum for the disposition of these proceedings for this child." The Kansas district court ultimately found that "Judge Otto has declined jurisdiction on behalf of the State of Missouri and there is no intent by their prosecutor's office to file a Child In Need of Care case." The district judge then concluded:

"And then as far as the record, the Court will find that Kansas does have child custody jurisdiction under UCCJEA Section 201—I think it is (a) (3) which would be all courts having jurisdiction have declined to exercise jurisdiction on the ground that a court

of this state is the more appropriate forum to determine the custody of the child. And that is our Kansas Statute K.S.A. 23-37, 201(a) (3)."

After retaining jurisdiction, the district court again filed an ICPC request for K.D.'s expedited placement with Father, who had since moved into his sister's house in Missouri. The request was again denied because Father had failed to submit any "required Missouri paperwork" even though he had been reminded to complete it.

On January 13, 2022, the district court filed a pretrial order approved by counsel for all parties. The pretrial order stated, in part:

"The parties stipulate that Court has subject matter jurisdiction over this action as well as subject matter jurisdiction under UCCJEA in that Kansas is the home state of the children; and jurisdictional conflicts under the UCCJEA have been resolved based on the motion and ruling by the Court on the father's motion challenging jurisdiction in this matter."

The pretrial order also confirmed that the State had moved to find the parents unfit and to terminate their parental rights under K.S.A. 38-2269(b)(3); (b)(4); (b)(7); (b)(8); (c)(2); and (c)(3). The pretrial order also stipulated that the parents had received proper notice of the termination motion and that "the parents stipulate that they have received procedural due process in regard to the State's pleadings."

On February 14, 2022, after a hearing on the matter, the district court entered judgment terminating Father's and Mother's parental rights over K.D. Father stipulated to the facts supporting termination instead of an evidentiary hearing. The stipulated facts were filed with the district court on February 11, 2022, three days before the termination hearing. The district court adopted the stipulated facts, which included the following:

"[F]ather has failed to maintain regular visitation with his daughter. He began supervised visits at the KVC office in December of 2019 and made all scheduled visits in December. Since January 24, 2020, the father has been inconsistent with visitation and was therefore required to confirm visits the evening before the scheduled visits. The father could have had 24 visits between January 21, 2020 and June 30, 2020 and he had only 4 video chats due to failure to schedule and confirm.

"The home the father presented for placement in Missouri was denied by the ICPC process on two separate occasions for two separate homes in Jacksons [*sic*] County, Missouri. Father does not have an approved home for the placement of the child and is deemed to have failed this portion of the reintegration plan.

"The father has not provided any proof of employment or other ability to meet the needs of the child. Father claims to have been employed at various times throughout the reintegration time period and since the reintegration plan expired. The father has provided no proof of employment in the form of pay stubs or any tax related documentation. Based on the lack documentation [*sic*] he is deemed to have failed this portion of the reintegration plan.

"The father has failed to provide a transportation plan. The father claims to have a licensed vehicle that is registered and insured. The father has provided no proof that he has a valid driver's license, or a properly insured and registered vehicle. Based upon lack of proper documentation, the father is deemed to have failed this portion of the reintegration plan.

"The father does not communicate with KVC unless KVC first contacts the father.

"The father has failed to maintain proper communication or visitation with the child in this case.

. . . .

"The father has missed 63 possible visits out of 120 total. [He] remains on one-hour weekly supervised visits.

"The father has failed to maintain proper visitation with minor child.

"The father has not completed parenting classes and provided proof to the KVC. He is deemed to have failed this component of the reintegration plan.

"The father did complete a mental health assessment in November of 2020 at Swope Mental Health. KVC worker, Carley Ohmstede would testify that [Father] was diagnosed with a mental disorder. Further, the assessment contained recommendations to

comply with court order to get his daughter back, work with the Full Employment Counsel to find a job, and find housing. [Father] has not followed the recommendations. After that, KVC asked [Father] to obtain a Level 2 Psychological Evaluation in order to gain more knowledge into his diagnosis and level of functioning. [Father] consistently refused KVC's assistance in making an additional mental health referral until August of 2021. In August of 2021, the father allowed KVC to set up a Level 2 evaluation at Responsive Centers and the initial video appointment took place on November 11, 2021, 10 months after the request for the Level 2 evaluation was made a part of the case plan. The father failed to follow through with the evaluation after the first video appointment despite several attempts from the agency reaching out to schedule another appointment.

....

"The father has not initiated contact with placement while the child has been in DCF custody. Placement would testify that the father has failed to initiate communication with placement regarding [K.D.]. He has not asked placement about [K.D.'s] daily living, milestones, or health/wellbeing. When placement engages in conversation with [Father] about [K.D.'s] life before and after visits, [Father] has never once verbally responded. [Father] has never once initiated communication regarding [K.D.'s] health, wellbeing, or developmental progress. Additionally, he never comments when placement makes statement about [K.D.'s] wellbeing or health. [Father] only twice acknowledged placement's emails over the entire duration of this case. These emails are sent at least once monthly and always contain pictures and occasional contain narrative updates and/or videos. [Father] responded to 2 out of 39 communication attempts from placement. He never responded to communication on holidays or [K.D.'s] birthday. [Father] has placement's e-mail and has never asked for an update on [K.D.] nor wished her happy birthday or happy holidays."

The district court found by clear and convincing evidence that Father was unfit to parent K.D., that Father's unfitness was unlikely to change in the foreseeable future, and that terminating Father's parental rights was in K.D.'s best interests. The district court filed a journal entry terminating Father's parental rights on February 23, 2022.

On February 24, 2022, Father filed a notice of appeal with the district court. The notice of appeal included a verification signed by Father before a notary public on

February 14, 2022, that stated: "B.H., of lawful age, being first duly sworn upon his oath, states that he is the father of the above-named children, and that he approves the above and foregoing notice of appeal and that he desires to continue pursuing the appeal in this case." Father later filed a docketing statement with this court on April 15, 2022. The docketing statement included a verification signed by Father before a notary public on February 14, 2022, that stated: "B.H., of lawful age, being first duly sworn upon his oath, states that he is the father of the above-named children, and that he approves the above and foregoing document and that he desires to continue pursuing the appeal in this case."

On November 2, 2022, L.F. filed with this court a motion for involuntary dismissal of Father's appeal. L.F. argued that because the verification pages in Father's notice of appeal and docketing statement were signed before the written judgment was entered, the verifications were fatally defective, and this court lacked jurisdiction over the appeal. This court denied the motion on present showing but ordered the parties to brief the issue for disposition with the rest of the appeal. Father filed an amended notice of appeal with the district court on November 9, 2022. He also filed an amended docketing statement with leave of this court on December 1, 2022. The amended notice of appeal included a new verification page signed by Father on November 9, 2022. The amended docketing statement included a new verification page signed on November 10, 2022.

#### DOES THIS COURT HAVE JURISDICTION TO HEAR THE APPEAL?

This court must first address whether it has jurisdiction to hear this appeal. L.F. argues that because the original verification pages on the notice of appeal and docketing statements were signed before the written judgment was entered, the verifications were fatally defective and this court lacks jurisdiction over the appeal. Father responds that (1) the original verification pages satisfy the purpose of the law and are therefore adequate, and (2) this court has found that amended verification pages can cure similar deficiencies.



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. *Wiechman v. Huddleston*, 304 Kan. 80, 86-87, 370 P.3d 1194 (2016). Whether jurisdiction exists is a question of law over which this court's scope of review is unlimited. *Via Christi Hospitals Wichita v. Kan-Pak*, 310 Kan. 883, 889, 451 P.3d 459 (2019).

K.S.A. 38-2273(e) provides: "Every notice of appeal, docketing statement and brief shall be verified by the appellant if the appellant has been personally served at any time during the proceedings. Failure to have the required verification shall result in the dismissal of the appeal." The statute does not explain what is meant by the term "verified" or specify the language that must be part of a verification. This court has found that the voluntary appearance by a party satisfies the requirement for personal service. *In re A.S.*, No. 108,328, 2012 WL 6734665, at \*3-4 (Kan. App. 2012) (unpublished opinion). The parties agree that K.S.A. 38-2273(e) applies to Father.

L.F. argues that the original verifications signed by Father are not valid because they were signed before the journal entry of termination was filed and presumably before the notice of appeal and docketing statement were prepared or finalized. L.F. generally cites Black's Law Dictionary to support her asserted definition of "verify." Under L.F.'s citation, verify means, "1. To prove to be true; to confirm or establish the truth or truthfulness of; to authenticate. 2. To confirm or substantiate by oath or affidavit; to swear to the truth of." Black's Law Dictionary 1873 (11th ed. 2019). Verification means, "1. A formal declaration made in the presence of an authorized officer, such as a notary public, or (in some jurisdictions) under oath but not in the presence of such an officer, whereby one swears to the truth of the statements in the document." Black's Law Dictionary 1873 (11th ed. 2019).

Father asserts that he signed the original verifications to his notice of appeal and docketing statement directly after the district court orally pronounced its judgment

terminating his parental rights. Father cites *In re S.G.*, No. 124,050, 2022 WL 1701626, at \*4 (Kan. App. 2022) (unpublished opinion) where this court found that the purpose of the verification requirement under K.S.A. 38-2273(e) was to "alleviate the problem of attorneys who were bound to proceed with appeals for a parent even if the parent was uninterested or could not be located." This court reached the same conclusion in *In re J.A.*, 30 Kan. App. 2d 416, 422-23, 42 P.3d 215 (2002) ("[The verifications] required the parent(s) to 'acknowledge their wish to continue appeal at every level of appeal or the appeal shall be dismissed.'"). Father argues that because verification under K.S.A. 38-2273(e) merely acts as an acknowledgement that he sought to proceed with an appeal, and because he signed the verifications after the district court orally ruled to terminate his parental rights, the original verifications are valid. We find Father's argument persuasive under the specific facts of this case.

The record on appeal supports Father's argument that when he signed the verifications, he knew the district court's judgment and he had the desire to appeal. Father signed his verifications on February 14, 2022, the same day the district court orally pronounced its judgment terminating his parental rights. Three days earlier, on February 11, 2022, Father agreed to stipulate to the facts supporting the termination of his rights. Thus, when Father signed the verifications before the notary public, he knew his parental rights were being terminated, and he was expressing his desire to appeal.

Father asserts that when he signed the verifications for his notice of appeal and docketing statement, the only information that was still unknown was the date the journal entry of judgment would be filed. He points out that a notice of appeal and docketing statement contain little information that needs verification other than information that is already in the court records. Father asserts that the verifications required under K.S.A. 38-2273(e) are not verifications at all, but merely a means to attest that the appealing party remains involved in the case. These points all have some merit. It would be more problematic if Father had signed a verification for his notice of appeal before the record

reflected that his parental rights were being terminated. And it might be a problem if Father had signed a verification on February 14, 2022, approving the contents of his appellate brief that was not filed until September 2022. But such facts are not before us, and Father did not sign a verification for his brief until the date the brief was filed.

The notice of appeal filed in district court and the docketing statement filed with this court are documents that are filed to begin any appeal. Father did not sign the verifications for these documents until he knew that his parental rights were being terminated, and he was expressing his desire to appeal. This satisfied the purpose of the verification requirement under K.S.A. 38-2273(e). We find that under these facts, Father's original verifications for his notice of appeal and docketing statement were sufficient. We need not address Father's alternative argument that his amended notice of appeal and docketing statement cured any deficiencies in the original documents. As a result, we reject L.F.'s claim that this court lacks jurisdiction to hear this appeal.

#### DID THE DISTRICT COURT HAVE SUBJECT MATTER JURISDICTION UNDER THE UCCJEA?

Father claims that under the UCCJEA, the Kansas district court lacked subject matter jurisdiction to enter any orders in the CINC case, including the order terminating his parental rights. He argues that Missouri was K.D.'s home state when the CINC action was commenced in Kansas and that Kansas never acquired subject matter jurisdiction because (1) there was no ongoing emergency in Kansas, and (2) Missouri did not decline jurisdiction, or it did not do so properly under the UCCJEA.

The State argues that because Missouri declined jurisdiction and found that Kansas was the appropriate forum for K.D.'s case, the Kansas district court had subject matter jurisdiction under the UCCJEA. L.F. argues that Kansas properly acquired temporary emergency jurisdiction under the UCCJEA and that jurisdiction in Kansas

ripened from emergency jurisdiction to home state jurisdiction when Missouri relinquished jurisdiction to Kansas.

"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) (citing *Jahnke v. Blue Cross & Blue Shield of Kansas*, 51 Kan. App. 2d 678, 686, 353 P.3d 455 [2015]). If the district court lacked jurisdiction to enter an order, an appellate court does not acquire jurisdiction over the subject matter on appeal. *In re Care & Treatment of Emerson*, 306 Kan. 30, 39, 392 P.3d 82 (2017). Parties cannot confer subject matter jurisdiction by consent, waiver, or estoppel; a failure to object to the court's jurisdiction does not invest the court with the requisite subject matter jurisdiction. *Goldman v. University of Kansas*, 52 Kan. App. 2d 222, 225, 365 P.3d 435 (2015). The party bringing an action and invoking the court's jurisdiction has the burden to establish jurisdiction. *Merriman v. Crompton Corp.*, 282 Kan. 433, 439, 146 P.3d 162 (2006).

As stated earlier, whether jurisdiction exists is a question of law over which our scope of review is unlimited. *Via Christi Hospitals Wichita v. Kan-Pak*, 310 Kan. at 889. Likewise, statutory interpretation presents a question of law subject to unlimited appellate review. *Nauheim v. City of Topeka*, 309 Kan. 145, 149, 432 P.3d 647 (2019).

The Revised Kansas Code for Care of Children (Code), K.S.A. 38-2201 et seq., provides that Kansas courts have original jurisdiction over proceedings under the Code, but this jurisdiction is subject to the UCCJEA. K.S.A. 38-2203(b). "The UCCJEA seeks to avoid jurisdictional competition between the courts of different states over child-custody matters. It does so through rules that generally make sure that only one state at a time has jurisdiction (authority) over child-custody matters in any particular family." *In re A.A.*, 51 Kan. App. 2d 794, 804, 354 P.3d 1205 (2015). Missouri has also adopted the

UCCJEA. See Mo. Rev. Stat. § 452.700 et seq. We will cite in our opinion to provisions of the Kansas statutes, but Missouri has the same provisions.

*Applicable provisions under the UCCJEA*

There are two primary ways for a court to exercise initial child custody jurisdiction. First, a court has jurisdiction if it is the home state of the child on the date of the commencement of the proceeding. Second, a court of another state can acquire jurisdiction if the court of the home state of the child declines to exercise jurisdiction. Under K.S.A. 2022 Supp. 23-37,201:

"(a) Except as otherwise provided in K.S.A. 2022 Supp. 23-37,204, and amendments thereto, a court of this state has jurisdiction to make an initial child-custody determination only if:

(1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(2) a court of another state does not have jurisdiction under paragraph (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under K.S.A. 2022 Supp. 23-37,207 or 23-37,208, and amendments thereto, 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;

(3) all courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under K.S.A. 2022 Supp. 23-37,207 or 23-37,208, and amendments thereto; or

(4) no court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2), or (3)."

But an important exception allows any court to acquire temporary emergency jurisdiction if a child present in that state is abandoned or has been subjected to or threatened with mistreatment or abuse. K.S.A. 2022 Supp. 23-37,204 provides:

"(a) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

"(b) If there is no previous child-custody determination that is entitled to be enforced under this act and a child-custody proceeding has not been commenced in a court of a state having jurisdiction under K.S.A. 2022 Supp. 23-37,201 through 23-37,203, and amendments thereto, a child-custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under K.S.A. 2022 Supp. 23-37,201 through 23-37,203, and amendments thereto. If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under K.S.A. 2022 Supp. 23-37,201 through 23-37,203, and amendments thereto, a child-custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

"(c) If there is a previous child-custody determination that is entitled to be enforced under this act, or a child-custody proceeding has been commenced in a court of a state having jurisdiction under K.S.A. 2022 Supp. 23-37,201 through 23-37,203, and amendments thereto, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under K.S.A. 2022 Supp. 23-37,201 through 23-37,203, and amendments thereto. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

"(d) A court of this state which has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of a

state having jurisdiction under K.S.A. 2022 Supp. 23-37,201 through 23-37,203, and amendments thereto, shall immediately communicate with the other court."

Finally, a court may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. K.S.A. 2022 Supp. 23-37,207 provides, in part:

"(a) A court of this state which has jurisdiction under this act to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

"(b) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(2) the length of time the child has resided outside this state;

(3) the distance between the court in this state and the court in the state that would assume jurisdiction;

(4) the relative financial circumstances of the parties;

(5) any agreement of the parties as to which state should assume jurisdiction;

(6) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) the familiarity of the court of each state with the facts and issues in the pending litigation."

*Kansas initially acquired temporary emergency jurisdiction over the case.*

Kansas initially acquired temporary emergency jurisdiction over the case under K.S.A. 2022 Supp. 23-37,204. We note with significance that the original CINC petition invoked the district court's jurisdiction under K.S.A. 23-37,204. Although the district court's journal entry and order of temporary custody did not state the jurisdictional grounds under the UCCJEA, the substance of the court's order made clear that it was placing K.D. in temporary DCF custody upon finding that "Child left in vehicle alone. Mother not permitted contact and Father has not established paternity."

Father argues in his brief that there was no *ongoing* emergency and "[e]ven if there was an emergency when the case began, that emergency was abated when [he] presented himself as a caregiver for K.D." Father asserts there was "no negative information about [him] in the [CINC] petition" that would cause the court to find him unfit. According to Father, once he appeared in the case and established paternity, the Kansas district court "lost jurisdiction" and should have dismissed the CINC case and turned K.D. over to Father, even though the court had no information he could provide adequate care.

But that is not what the statute says. K.S.A. 2022 Supp. 23-37,204(b) states that if there is no previous child custody determination that is entitled to be enforced under the act and a child custody proceeding has not been commenced in a court of a state having jurisdiction under the UCCJEA—as was the situation with K.D.—then a child custody determination made under temporary emergency jurisdiction "remains in effect until an order is obtained from a court of a state having jurisdiction" under the UCCJEA. K.S.A. 2022 Supp. 23-37,204(c) states that if there is a previous child custody determination entitled to be enforced under the act or a child custody proceeding has been commenced in a court of a state having jurisdiction under the UCCJEA, then any order issued by a court under temporary emergency jurisdiction must specify a period the court considers adequate to allow a person to obtain an order from the other state having jurisdiction. But



when the Kansas district court entered its temporary custody order in K.D.'s case, there was no previous child custody determination or child custody proceeding in another state involving K.D., so the provisions of subsection (c) do not apply.

Thus, once Kansas properly acquired temporary emergency jurisdiction over the case, that jurisdiction remained in effect until a custody order involving K.D. was obtained from a court of another state having jurisdiction under the UCCJEA. During the first six months that the case was pending in Kansas, Father made no effort to file a child custody case in the home state of Missouri and to have the case transferred there. During this time, the Kansas court continued to properly exercise its temporary emergency jurisdiction to protect K.D.'s interests. Early in the case, the district court filed multiple orders for K.D.'s expedited placement with Father at his mother's house in Kansas City, Missouri under the ICPC, but those requests were denied because Father did not provide reference forms and background information to Jackson County, Missouri, and the county was unable to complete a walk-through of the home.

Father eventually filed a parentage case in Jackson County, Missouri, and he then moved to dismiss the Kansas CINC case for lack of subject matter jurisdiction. The Kansas district court then complied with K.S.A. 2022 Supp. 23-37,204(d) and communicated with the Missouri court to settle the issue of UCCJEA jurisdiction. As the statute provides, a court having temporary emergency jurisdiction must initiate such communication "upon being informed that a child-custody proceeding has been commenced" in a court of another state having jurisdiction under the UCCJEA. Until Father moved to dismiss, the Kansas court was unaware of any other court that had been requested to make a child custody determination involving K.D. for the Kansas court to contact. As the record reflects, the Missouri court declined to exercise jurisdiction over the case and found that the Kansas district court was the more appropriate forum.

*Missouri properly declined to exercise jurisdiction under the UCCJEA.*

As we have already discussed, after Father filed a parentage case in Jackson County, Missouri, and moved to dismiss the Kansas CINC case for lack of subject matter jurisdiction, the Kansas district court held a hearing by Zoom videoconference to address jurisdiction on September 7, 2021. Along with all the parties, Judge Jalilah Otto, a Jackson County, Missouri judge, participated in the hearing. After some discussion between the participants at the hearing, Judge Otto stated: "At this moment Jackson County is declining—Jackson County, Missouri, is declining jurisdiction over the child and we do find that Kansas is the appropriate forum for the disposition of these proceedings for this child."

The Kansas district court ultimately found that "Judge Otto has declined jurisdiction on behalf of the State of Missouri and there is no intent by their prosecutor's office to file a Child In Need of Care case." The district court then concluded that Kansas has child custody jurisdiction under the UCCJEA because all courts otherwise having jurisdiction declined to exercise it. The record does not reflect that the district court filed a journal entry of any rulings made at the September 7, 2021, hearing, but the pretrial order later filed before the termination hearing stated that Father's motion to dismiss was denied, that any jurisdictional conflicts had been resolved, and that the Kansas court retained subject matter jurisdiction under the UCCJEA.

Father argues on appeal that Missouri did not decline jurisdiction, or it did not do so properly under the UCCJEA. He first argues in his brief that "there is no journal entry or written record of the Missouri court declining jurisdiction. And although the Kansas district court communicated with the Missouri court, there is no record at all of the Missouri court making the required findings under the UCCJEA section 207."

Father is mistaken. As we have covered in detail, the Kansas district court held a Zoom videoconference hearing on the record and discussed with Judge Otto of the Jackson County, Missouri family court the jurisdiction issue between Kansas and Missouri. Father's attorney participated in the hearing. Judge Otto unambiguously found that the State of Missouri declined jurisdiction over the matter at hand and that Kansas was the more appropriate forum for the disposition of the case. Based on Judge Otto's findings, the Kansas district court found that Kansas retained subject matter jurisdiction under the UCCJEA. This court has found that verbal communications from other states' courts can suffice as a declination of jurisdiction under the UCCJEA. See *In re K.L.B.*, 56 Kan. App. 2d at 443-44 (rejecting an argument that a Kentucky court's communications with the Kansas district court that it declined jurisdiction was not valid because it was not written).

Father next contends that even if Missouri did decline jurisdiction, it did so improperly. Father argues that he was not given the chance to submit information to the Missouri court before it declined jurisdiction and that the Missouri court did not consider the statutory factors under UCCJEA when it declined to exercise jurisdiction.

Father's contentions are not supported by the record. Nowhere in the record does it show that Father was prohibited or lacked the opportunity to provide information to the Missouri court before it declined jurisdiction. While no record of the Missouri case has been included in this court's record on appeal, the district court summarized that the Missouri case was filed sometime in December 2020 and remained pending until August 2021. Father does not explain why during the approximately eight months his case in Missouri was pending he could not have provided relevant information for the Missouri court to consider. Further, at the September 7, 2021, hearing where Judge Otto declined jurisdiction on behalf of Missouri, Father had the opportunity, through counsel, to address both the district court and Judge Otto before Judge Otto declined jurisdiction.

Father's argument that the Missouri court failed to consider the statutory factors under the UCCJEA when it declined to exercise jurisdiction is equally unpersuasive. K.S.A. 2022 Supp. 23-37,207(b) sets forth a nonexclusive list of factors a court should consider before determining that it is an inconvenient forum to make a child custody determination. The record of the September 7, 2021, hearing shows that Judge Otto considered many of these factors in reaching her decision to decline jurisdiction. For example, Judge Otto found that an emergency occurred in Kansas, K.D. was found by law enforcement in Kansas, K.D. remained in Kansas for a significant time before her parents meaningfully involved themselves in the case, that there were no active cases in Missouri involving K.D., and that Missouri had no basis to retain jurisdiction. These findings correlate directly or indirectly to subsections (2), (6), (7), and (8) of K.S.A. 2022 Supp. 23-37,207(b)'s factors. Moreover, K.S.A. 2022 Supp. 23-37,207(b) does not require that a court must make explicit findings on each factor on the record.

Father cites *In re A.A.*, 51 Kan. App. 2d 794 to support his claim that the Missouri court did not properly consider the statutory factors under the UCCJEA when it declined to exercise jurisdiction. *In re A.A.* involved a CINC case in which a mother and father obtained a divorce in Mississippi. The couple had two children and Mississippi was their home state at the time of the divorce. Mississippi made the initial child custody determination as part of the divorce. Also, as part of the divorce, a Mississippi court issued an order stating that issues not ruled on by the Mississippi court may be heard in Kansas, where the mother had moved with the children during the divorce. After the divorce, the mother filed a protection from abuse case in Kansas, which led to a CINC case being filed for the children. When the Kansas and Mississippi courts conferred to determine jurisdiction, the two courts focused exclusively on the language from the Mississippi divorce order that any unheard issues there may be heard in Kansas. On that language alone, and without discussion of any other facts or law, the Mississippi court declined jurisdiction over the children. 51 Kan. App. 2d at 809-10.

On appeal, this court found that Mississippi had not properly declined jurisdiction under the UCCJEA. 51 Kan. App. 2d at 811. This court found that there was no evidence in the record showing that the children's custody issue was heard in the Mississippi divorce subject to the order granting that such issues may be resolved in Kansas. 51 Kan. App. 2d at 810. This court also found that the record conclusively showed that the Mississippi court did not make any findings required under K.S.A. 2014 Supp. 23-37,207. 51 Kan. App. 2d at 809-10. In reaching its conclusion, this court emphasized that normally it would presume that the trial court—even one in Mississippi—made the appropriate findings to support its decision, but because the record so conclusively showed that it had not made the appropriate findings, this court could not rely on that presumption. 51 Kan. App. 2d at 810-11.

*In re A.A.* is distinguishable from the facts here. In *In re A.A.* the Mississippi court declined jurisdiction on grounds not at all covered by the UCCJEA. That is not the case here. The district court and Judge Otto of Missouri held what the district court described as "a UCCJEA hearing." There, the two courts specifically discussed jurisdiction under the UCCJEA throughout the hearing. Judge Otto, on behalf of Missouri, ultimately declined jurisdiction finding that Kansas was the "more appropriate forum." The language used by Judge Otto mirrors K.S.A. 2022 Supp. 23-37,207(b)'s language that the court declining jurisdiction must consider whether "it is appropriate for a court of another state to exercise jurisdiction."

Finally, Father contends that "if the Missouri court had properly considered the issues, there is no doubt that it would have found that Missouri was not an inconvenient forum." Father asserts that he and K.D.'s mother both live in Missouri, and all evidence on Father's ability to parent is in Missouri. Father argues that "[t]here are numerous unfair barriers to completing reintegration from another State, most of which have appeared in this case,"—but Father fails to specify these barriers in his brief.

Father ignores other K.S.A. 2022 Supp. 23-37,207(b) factors favoring Kansas as the more convenient forum. Those factors include Kansas' greater familiarity with the case; how long K.D. was in Kansas custody before, during, and after Father failed to show his fitness to parent K.D.; and the ability of the Kansas court to decide the issues more expeditiously than a Missouri court because the proceedings would have to restart from the beginning in Missouri. See K.S.A. 2022 Supp. 23-37,207(2), (7), and (8). Most importantly, the factors set forth in K.S.A. 2022 Supp. 23-37,207(b) are a nonexclusive list, and all the statute requires before a court of one state determines it is an inconvenient forum is to consider whether it is appropriate for a court of another state to exercise jurisdiction. The record reflects that the Missouri court properly made this determination before declining to exercise jurisdiction under the UCCJEA.

*Jurisdiction in Kansas ripened from emergency jurisdiction to home state jurisdiction.*

Although we could probably end our analysis here, L.F. also argues that because K.D. remained in Kansas for more than six months with no custody orders having been issued by another state, jurisdiction in Kansas ripened from emergency jurisdiction to home state jurisdiction. There is statutory support for L.F.'s claim. K.S.A. 2022 Supp. 23-37,204(b) states that once temporary emergency jurisdiction is established in Kansas and no child custody proceeding is commenced in another state having jurisdiction under the UCCJEA, "a child-custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child."

There is also case law support for L.F.'s claim. This court has suggested that "temporary emergency jurisdiction can ripen into home state jurisdiction once the home state declines jurisdiction." *In re A.W.*, 60 Kan. App. 2d 296, 309, 493 P.3d 298 (2021). See also *In re E.T.*, No. 111,971, 2015 WL 1125364, at \*8 (Kan. App. 2015) (unpublished opinion) (finding Kansas' emergency jurisdiction over several children

ripened into home state jurisdiction after they had resided in Kansas' custody for over six months even though their original home state had not declined jurisdiction).

K.D. remained in Kansas for over six months while the CINC case was proceeding and during that time, no custody orders were issued by a court in another state having jurisdiction under the UCCJEA. By the time the Kansas district court addressed the motion to terminate Father's parental rights, the pretrial order stated that the jurisdictional conflicts under the UCCJEA had been resolved. Indeed, the parties including Father stipulated in the pretrial order for the termination hearing that Kansas was K.D.'s home state. L.F.'s argument that jurisdiction in Kansas ripened from emergency jurisdiction to home state jurisdiction is legally sound and factually supported by the record.

In sum, Kansas initially acquired temporary emergency jurisdiction over this case under K.S.A. 2022 Supp. 23-37,204(a). That jurisdiction remained in effect at least until the Kansas court learned of the proceeding in Missouri involving K.D.'s custody. The Kansas court then complied with K.S.A. 2022 Supp. 23-37,204(d) and communicated with the Missouri court to settle the issue of UCCJEA jurisdiction. At the hearing on September 7, 2021, the Missouri court properly declined to exercise jurisdiction under K.S.A. 2022 Supp. 23-37,207. Moreover, because K.D. remained in Kansas for more than six months with no custody orders having been issued by another state, jurisdiction in Kansas ripened from emergency jurisdiction to home state jurisdiction. For all these reasons, we reject Father's claim that the Kansas district court lacked subject matter jurisdiction under the UCCJEA to enter any orders in the CINC case, including the order terminating Father's parental rights.

DID THE DISTRICT COURT'S RETENTION OF EMERGENCY JURISDICTION OVER K.D.  
VIOLATE FATHER'S RIGHT TO DUE PROCESS?

Finally, Father claims for the first time on appeal that "[e]ven if a Missouri court made findings under the UCCJEA section 207, it was a due process violation for the district court to wait for over two years to attempt to resolve the issue." The State argues strenuously that we should not address this constitutional claim for the first time on appeal. But we will do so based on Father's assertion that consideration of the theory is necessary to serve the ends of justice or to prevent the denial of a fundamental right. *In re Estate of Broderick*, 286 Kan. 1071, 1082, 191 P.3d 284 (2008). The parties agree that whether a 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).

"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. [Citations omitted.]" *In re J.D.C.*, 284 Kan. 155, 166-67, 159 P.3d 974 (2007).

On the first factor—the individual interest at stake—Father's right to decide the care, custody, and control of his child qualifies as a fundamental liberty interest protected by the Fourteenth Amendment to the United States Constitution. *In re J.D.C.*, 284 Kan. at 166. On the second factor—the risk of erroneous deprivation of the interest—Father asserts that the CINC case "was filed in June 2019 and the district court in Kansas waited until September 2021, for over two years, to consult with the Missouri court." Father argues that "if the district court had appropriately contacted the Missouri court early in the case, the Missouri court would have had no choice but to retain jurisdiction." Father



also repeats his assertion discussed earlier that he "was not given the opportunity to submit information that would allow the Missouri court to make an informed decision" about declining subject matter jurisdiction over the case.

It is on this second factor in the analysis that Father's due process claim fails. Father cites no legal authority to support his assertion that the Kansas district court should have contacted the Missouri court early in the case. The fact is that the Kansas court could not have communicated with the Missouri court much sooner than it did. Father first argued that Missouri was K.D.'s home state at the adjudication hearing on January 23, 2020, but there was no competing case file in Missouri until Father filed a parentage case in Jackson County, Missouri in December 2020. Even then, Father did not notify the Kansas court of the Missouri case until he moved to dismiss in May 2021. The district court announced at its next review hearing that it would contact the Missouri court to address the UCCJEA issues. A hearing was held on September 7, 2021, at which the Missouri court declined to exercise jurisdiction under the UCCJEA.

As we have already explained, when the Kansas district court acquired emergency jurisdiction, there was no pending child custody case in another state involving K.D. As a result, the Kansas child custody determination made under the emergency jurisdiction "remain[ed] in effect until an order is obtained from a court of a state having jurisdiction" under the UCCJEA. K.S.A. 2022 Supp. 23-37,204(b). The Kansas district court only had to communicate with another court "upon being informed that a child-custody proceeding [had] been commenced" in a court of another state having jurisdiction under the UCCJEA. K.S.A. 2022 Supp. 23-37,204(d). Until Father moved to dismiss the CINC case in May 2021 and notified the Kansas court of the pending Missouri case, there was no other court for the Kansas court to contact. Thus, any delay in the Kansas court communicating with the Missouri court resulted from Father's own delay in filing the Missouri parentage case and notifying the Kansas court of the out-of-state proceeding.

As part of his alleged due process violation, Father repeats his assertion that he was not given the opportunity to submit information that would allow the Missouri court to make an informed decision about declining subject matter jurisdiction. But as we discussed earlier, Father had eight months while his Missouri case was pending in which he could have provided relevant information for the Missouri court to consider. Father also had the opportunity, through counsel, to address both the Kansas district court and Judge Otto at the September 7, 2021, hearing, before Judge Otto declined jurisdiction.

We also find it relevant to Father's due process claim that throughout the Kansas CINC case, the district court expressed its desire to release K.D. to Father's custody. The district court ordered a six-month reintegration plan for K.D. to be placed in Father's care, but Father substantially disregarded the plan. And at least twice, the district court filed an ICPC request for K.D.'s expedited placement with Father, but the requests were denied because Father failed to submit the required paperwork. Finally, as L.F. points out in her brief, the parents stipulated in the pretrial order filed before the termination hearing that they had received procedural due process regarding the State's pleadings. Father fails to show that any of the district court's procedures or the exercise of its jurisdiction created any risk of erroneous deprivation of his individual interest at stake. The second factor in the analysis weighs heavily against finding a due process violation.

On the third factor—the State's interest in the procedures used—Father admits that "[t]here is no doubt that the state has a compelling interest in protecting children." Indeed, it was the state of Kansas and its social services providers that stepped up to protect K.D.'s interests when Mother abandoned her in a car and Father made little effort to arrange placement in his home and to comply with the court's reintegration plan. Thus, the third factor favors finding no due process violations. In sum, we find that nothing about the procedures used by the Kansas district court or the court's exercise of subject matter jurisdiction over the CINC case violated Father's due process rights.

Affirmed.