

NOT DESIGNATED FOR PUBLICATION

No. 126,561

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Interest of X.L.,
a Minor Child.

MEMORANDUM OPINION

Appeal from Wyandotte District Court; JANE A. WILSON, judge. Submitted without oral argument. Opinion filed May 3, 2024. Appeal dismissed.

Jeffrey C. Leiker, of Leiker Law Office, P.A., of Overland Park, for appellants.

Rae A. Nicholson, of Rae Nicholson Law, LLC, of Overland Park, for appellees.

Before ARNOLD-BURGER, C.J., CLINE and COBLE, JJ.

PER CURIAM: J.D. and N.D. ("Fosters") were X.L.'s foster parents throughout the child in need of care (CINC) proceedings involving X.L., which resulted in a termination of parental rights. Although Fosters desired to adopt X.L. and the Secretary of the Department for Children and Families had approved such adoption, the district court entered a post-termination order placing X.L. in the custody of H.H. and S.H. ("Adoptive Parents")—who were also adopting X.L.'s three older siblings—and consenting to their adoption of X.L. Fosters now appeal from the district court's post-termination order, as well as the denial of a motion to reconsider their limited status as interested parties based on an alleged due process violation. But because this court lacks appellate jurisdiction to consider an appeal from a post-termination decision, we must dismiss the appeal.

FACTUAL AND PROCEDURAL HISTORY

A full recitation of the procedural history of this case was set out in *In re X.L.*, 63 Kan. App. 2d 853, 540 P.3d 369 (2023), which concerned an appeal by the Department from the same post-termination order Fosters now seek to challenge. For this appeal, a summary of the procedural history will suffice.

The district court terminated the parental rights of the biological parents to X.L. (born 2019), as well as her older siblings, in January 2021. At that time, X.L. had been placed with Fosters since birth and Fosters were identified as a potential adoptive resource. The district court later denied Fosters' motion seeking direct placement for adoption, directing the Department and caseworkers to explore options that would keep X.L. with her siblings, consistent with a Department policy that prioritized placing siblings together.

Soon after, caseworkers selected Adoptive Parents to adopt X.L. and her three siblings, then created a transition plan to move the children from their current placements to Adoptive Parents' home. Subsequently, Secretary Laura Howard intervened directing the Department to place X.L. with Fosters for adoption in October 2022.

About a week after the Secretary's intervention, Adoptive Parents filed a motion claiming the Department had not made reasonable efforts when it abruptly changed positions and further asked the district court to place X.L. in their custody for adoption. Fosters later filed another motion requesting interested party status. Due to their role as the Secretary's chosen adoptive resource, the district court entered an order granting limited interested-party status to Fosters. In particular, the court authorized Fosters to receive notice of any hearings "but [ordered that they] shall not have the rights set forth in [K.S.A.] 38-2241(b)(2) and (b)(3), nor shall they be allowed to be present for any future proceedings."

Following an evidentiary hearing in January 2023, the district court entered an order granting Adoptive Parents' motion. The court found that the Department had not made reasonable efforts to find an adoptive placement. See K.S.A. 38-2264(j). It ruled that the Department had failed to comply with its own policies and procedures as to a sibling split. The court ultimately ordered X.L. be placed for adoption with Adoptive Parents. The Department appealed from the ruling, which resulted in a dismissal by this court for lack of appellate jurisdiction to review a post-termination decision in a CINC case. *In re X.L.*, 63 Kan. App. 2d at 866.

Meanwhile, Fosters—who were not a part of the appeal in *In re X.L.*—continued their efforts to overturn the ruling at the district court level by filing a "Motion To Reconsider And/Or For Relief From Judgment Regarding Order For Interested Party Status and Direct Placement Pursuant To K.S.A. §60-259 & §60-260," in February 2023. In this motion, they argued that their due process rights had been violated because the court had failed to notify them of their limited interested party status until the day of the January 2023 evidentiary hearing. The district court summarily denied this motion. The court explained that it would not have allowed Fosters to participate in the January 2023 hearing because they had already been heard in a meaningful manner by the court at an August 2, 2022 evidentiary hearing. The court detailed how Fosters had presented extensive testimony and evidence at that hearing regarding their position on why it was in X.L.'s best interests to be placed with them. As such, the court reminded Fosters that it had already considered the evidence they claim was excluded from the January 2023 hearing. So they suffered no prejudice.

Fosters filed a timely notice of appeal, stating they were appealing from the district court's order placing X.L. with Adoptive Parents, as well as the order denying Fosters' motion for reconsideration.

ANALYSIS

Fosters seek to overturn the district court's post-termination decision placing X.L. with Adoptive Parents for adoption by challenging the district court's authority to enter that ruling and asserting a due process violation for limiting their participation in the case as interested parties and failing to provide adequate notice of the January 2023 evidentiary hearing. Yet as this court noted in *In re X.L.*, a prerequisite for reaching the merits of claims like these is a procedural mechanism for posing such questions to the appellate court. 63 Kan. App. 2d at 865-66 (citing *State v. Trotter*, 296 Kan. 898, 905, 295 P.3d 1039 [2013]).

Under K.S.A. 38-2273(a), "[a]n appeal may be taken by any party or interested party from any order of temporary custody, adjudication, disposition, finding of unfitness or termination of parental rights." The Kansas Supreme Court held in *In re N.A.C.*, 299 Kan. 1100, Syl. ¶ 6, 329 P.3d 458 (2014), that an order terminating parental rights is the last appealable order in a CINC proceeding, and orders entered post-termination are not appealable. See also *In re N.E.*, 316 Kan. 391, 413-18, 516 P.3d 586 (2022) (reaffirming). As mentioned, this court recently applied the holding in *In re N.A.C.* to the same post-termination order that Fosters now seek to challenge in this appeal. *In re X.L.*, 63 Kan. App. 2d at 866.

Although this court directed the parties to brief the jurisdiction issue, the best Fosters offer is an assertion that their appeal should proceed "[i]n the interest of justice." Fosters also state that "[t]he suggestion that there is no legal mechanism to correct such action also suggests that no remedy exists should a Child in Need of Care Court attempt [to] place a child post-termination with any complete stranger off the street, or even a registered offender." While Fosters present an extreme example, they raise a valid concern about post-termination decisions being unappealable. But as other appellate decisions have noted, concerns about public policy are better left to the Legislature, who

have chosen to enact the Revised Kansas Code for Care of Children in this way. See, e.g., *In re N.A.C.*, 299 Kan. at 1121 ("[T]he legislature has balanced whatever perceived value there may be in letting interested parties struggle back and forth among themselves at every stage in post-termination proceedings against the child's recognizable need for permanency."); *In re A.F.*, 38 Kan. App. 2d 742, 746, 172 P.3d 63 (2007) ("The legislature has worked hard to create a comprehensive Code for Care of Children. It has attempted to balance the protection of the rights of children, parents, and other interested parties against the need for speed sufficient to ultimately allow children to move on and live their lives. We respect the choice the legislature has made here.").

In addition, as much as Fosters challenge the district court's decision to limit their participation in the case as interested parties, we likewise find we lack jurisdiction to consider that ruling. Under a prior version of the relevant statutes, this court held that the denial of a motion for interested party status did not qualify as an appealable order under the same reasoning as described above. *In re S.C.*, 32 Kan. App. 2d 514, 518, 85 P.3d 224 (2004). Moreover, K.S.A. 38-2241 gives the district court the authority to grant or deny interested party status and includes a procedure for reviewing the denial or termination of such status. Nothing in the record suggests Fosters attempted to follow the procedure outlined in the statute.

As a final note, we also observe another aspect of this case that warrants dismissal of Fosters' appeal. Under K.S.A. 38-2273(e), "[e]very 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." Even though Fosters may have never been personally served at any point during the CINC proceedings, this court has held that the voluntary appearance by a party is enough to establish the personal service requirement. See *In re A.S.*, No. 108,328, 2012 WL 6734665, at *3 (Kan. App. 2012) (unpublished opinion). The panel in that case reached that conclusion after noting that K.S.A. 38-

2237(a) states "[p]ersonal and residence service is completed by service in substantial compliance with the provisions of K.S.A. 60-303, and amendments thereto." And that statute, in turn, states that "voluntary appearance by a party is equivalent to service on the date of appearance." K.S.A. 2023 Supp. 60-303(e).

Here, the record demonstrates that Fosters personally appeared at the hearing on their Motion for Finding of Lack of Reasonable Efforts heard in August 2022. Although unclear what method of service they received for that hearing, nothing in the record suggests Fosters objected to the lack of personal service or that service of process was legally inadequate at that time. Fosters did object in their brief to lack of adequate notice of the hearing on Adoptive Parents' motion in January 2023, but K.S.A. 38-2273(e) states verifications are required "if the appellant has been personally served *at any time* during the proceedings." (Emphasis added.) Fosters have not verified any of the required documents. Their limited interested-party status also raises questions about whether they have standing. But it is unnecessary to address this issue due to our finding that we lack jurisdiction to review the district court's post-termination decision placing X.L. with Adoptive Parents for adoption.

The appeal is dismissed.