NOT DESIGNATED FOR PUBLICATION

No. 107,931

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Petition of ETHAN AZAR,
a Minor Child, by His Next Friend, RAY JAGODA,
Appellant,
To Change His Name, (CAMILLE AZAR),
Appellee.

MEMORANDUM OPINION

Appeal from Johnson District Court; THOMAS E. FOSTER, judge. Opinion filed February 15, 2013. Reversed and remanded with directions.

Micheline Z. Burger, of Olathe, and *Sheldon Bernstein*, of Bernstein, Rodarte & Hatheway, PC, of Kansas City, Missouri, for appellant.

Lewanna Bell-Lloyd, of Olathe, for appellee.

Before ARNOLD-BURGER, P.J., GREEN, J., and HEBERT, S.J.

Per Curiam: Ray Jagoda (Father) and Camille Azar (Mother) are the parents of Ethan Azar (Son). The two were never married, and in 2004 the circuit court in Jackson County, Missouri, entered a judgment establishing Father's paternity and awarding Father sole custody. In 2006, Mother registered the judgment in Johnson County and filed a motion to modify the custody order. She sought joint legal custody and liberal unsupervised parenting time. Father subsequently filed, in the same case, a motion to change Son's name. Four years after the initial filing in Johnson County and following a trial, the district court ruled on the host of issues raised in Mother's modification motion, denying most of them and also denying Father's name-change motion. Mother appealed

to this court; Father did not cross-appeal. This court affirmed the district court. *Azar v. Jagoda*, No. 105,392, 2011 WL 4444507 (Kan. App. 2011) (unpublished opinion).

After this court issued a mandate, Father petitioned the district court in 2011, under Chapter 60, to change Son's name. The district court determined that under the doctrines of res judicata and collateral estoppel the court's previous ruling against Father's name-change motion barred him from raising the issue anew. Moreover, the court determined that Father's new petition did not make any new arguments necessary to support a rehearing on the issue.

Father raises several issues on appeal and, most importantly, argues the court did not have jurisdiction to rule on Father's name-change motion in the 2006 case. Therefore, he claims the court's ruling with regards to his name change motion was void and thus precludes application of the doctrines of res judicata or collateral estoppel. We agree for the reasons stated herein and reverse and remand the case to the district court for a hearing on Father's petition for name change.

FACTUAL AND PROCEDURAL HISTORY

Mother and Father are the natural parents of Son. The two never married, and within a few months of Son's birth, Father filed a paternity action in Jackson County, Missouri. After 2 years of litigation, the Jackson County court awarded Father sole legal and physical custody of Son, and the court permitted Mother to have restricted visitation with Son.

Two years later, after all three had moved to Kansas, Mother filed motions in Johnson County to register the Missouri judgment and to modify the Jackson County child-custody order. She sought joint legal custody and liberal unsupervised parenting time. Subsequently, Father filed a motion in Jackson County to change Son's name, but

because Mother, Father, and Son all lived in Kansas, the circuit court in Jackson County dismissed Father's motion without prejudice because, the court reasoned, it lacked jurisdiction over the matter. Father then filed a motion, in the same Johnson County case to change Son's name. The motion is fairly detailed and observes that Son has been using Father's last name for the preceding 4 years (Son was over 6 years old by the time Father's name change motion was filed), that changing Son's name would be in his best interests, and that Mother would not consent to a name change. The motion, however, does not specifically cite any statutory authority beyond the original case caption which listed Chapters 38 and 60.

After the case languished in the district court for almost 4 years due to the litigious nature of the parents, the district court held a trial and orally ruled on Mother's custody-modification motion and Father's name-change motion on February 16, 2010. With respect to the name-change motion, the court noted that once Father obtained custody of Son he unilaterally signed Son up with certain agencies under Father's surname, even though Mother's surname was on Son's birth certificate. This amounted to "basically a common law name change." The court denied Father's request for name change, finding:

> "The Court denies the request for name change. The Court finds that [Son] had his name for eight, over eight years now. That to change his name at this point would only cause confusion for him, and would be a wedge that father could use to further drive between the child and the mother, and Court believes it's just an indication, one of those things that father is doing to damage the bond between the child and the mother. The Court finds it's in the child's best interest to keep the name that he has now."

The court made note of this decision in a subsequent journal entry, the relevant part of which simply states: "The court denies defendant's motion to change the name of the minor child."

Although Mother appealed several of the district court's adverse rulings, this court ultimately affirmed the district court's rulings. See *Azar*, 2011 WL 4444507, at *1. Father, however, did not cross-appeal the district court's ruling denying his request to change Son's name.

Two weeks after this court issued a mandate, in late 2011, Father petitioned the district court, under Chapter 60 of Kansas Statutes Annotated, to change Son's name. Notably, the petition states that the court-appointed special advocate (CASA) representative and Son's psychiatrist, Dr. James Hunter, both conclude that Son's name should be changed to include Father's last name. The petition also states that Son wants the same. These statements were not made in Father's name-change motion in the 2006 case. Although not in the appellate record, Mother filed a motion to dismiss the new petition.

A hearing ensued in February 2012. Mother argued that Father's petition should be barred under the doctrines of collateral estoppel and res judicata. In rebuttal, Father cited the recent opinion of *Stabel v. Meyer*, 45 Kan. App. 2d 941, 259 P.3d 737 (2011), to argue that those doctrines could not apply because the court did not have jurisdiction to rule upon Father's initial name-change motion. Father also argued that even if the court had jurisdiction to rule upon the motion in the 2006 case, circumstances had changed in the 2 years since the ruling to warrant a hearing on the new name-change petition.

The district court ultimately agreed with Mother and determined that collateral estoppel and res judicata precluded Father, under the alleged facts, from seeking to change Son's name under the applicable statute, K.S.A. 60-1402(c). The court thoroughly explained its reasoning:

> "This Court simply finds that at this time, [there have] been no allegations that are any different from the allegations that were presented in the [2006] case and tried, and

> the final judgment from the mandate of the Court of Appeals just two weeks before the filing of this Petition. There could be certain facts that may be pled in the future that would give reasonable cause for ordering the name change of the child, but in this case, it appears to be nothing other than just refiling the same motion with a different title on it, and claiming that we're proceeding under Chapter 60 rather than under Chapter 38 when the original motion indicated it was proceeding under Chapter 60 and Chapter 38. So, I'm granting the motion to dismiss for those reasons."

The journal entry of sentencing largely reiterates this statement, observing that Father's new petition failed to raise any new allegations or change of circumstances to support a rehearing on the issue.

Father appeals.

ANALYSIS

Our standard of review is unlimited.

This court has unlimited review over the legal question of whether a district court had statutory authority to change a minor's name. *Stabel*, 45 Kan. App. 2d at 942. Appellate courts also have unlimited review when called upon to interpret statutes. 45 Kan. App. 2d at 942 (citing *Unruh v. Purina Mills*, 289 Kan. 1185, 1193, 221 P.3d 1130 [2009]).

Kansas law applies to the 2006 motion to modify proceeding.

The first issue this court must address is the one Mother frames as a conflict of laws issue (also known as choice of laws). Father argues, for reasons that will be set forth in more detail later in this opinion that under Kansas law the district court lacked subject matter jurisdiction to rule on his motion for name change filed in the 2006 case (Motion).

If the decision was made without jurisdiction, then his current action cannot be barred by the doctrines of res judicata and collateral estoppel. See *In re Estate of Heiman*, 44 Kan. App. 2d 764, 766, 241 P.3d 161 (2010) ("If a court lacks subject matter jurisdiction, its actions have no legal force or effect and cannot bind the parties."). But Mother claims that because Missouri law allows for a name change in a paternity action, our district court had subject matter jurisdiction to consider the issue when it was raised in Father's Motion. See *Jenkins v. Austin*, 255 S.W.3d 24 (Mo. App. 2008) (trial court considering mother's petition to establish paternity, custody, and support for child born out of wedlock had jurisdiction to order a name change in the best interest of the child); see also Mo. Rev. Stat. § 210.841.3(5) (Paternity judgment or order may contain provisions concerning "[a]ny matter in the best interest of the child.").

We find this case does not present a choice of laws issue. There is no dispute that Kansas properly accepted jurisdiction of Mother's 2006 petition for modification of custody orders under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"). Under the UCCJEA, Kansas has jurisdiction to modify child custody orders from another state if it would have jurisdiction to initially hear the matter and neither the child nor the child's parents reside in the issuing state. K.S.A. 2011 Supp. 23-37,203. All parties to the order now reside in Kansas. Mother registered the Missouri judgment in Kansas pursuant to K.S.A. 38-1362. Father did not contest the validity of the registration. See K.S.A. 38-1362(e). The Missouri court acknowledged it no longer had jurisdiction. Accordingly, Missouri no longer had continuing jurisdiction over the parties or the subject matter of these proceedings. See *Hamilton v. Foster*, 260 Neb. 887, 896-97, 620 N.W.2d 103 (2000) (State which initially enters custody decree loses continuing exclusive jurisdiction to modify the decree if it loses all connections with the child.). Custody orders were the only orders made in the Missouri case. After Kansas accepted jurisdiction of the case, Father filed a motion in the Missouri court to modify the Missouri order by changing the name on Son's birth certificate. The Missouri court properly found that it did not have jurisdiction to consider such a motion because all

parties resided in Kansas. When Father then filed his motion for name change in the Kansas case, he did not frame it as a motion to modify the previous Missouri order, but simply as a "Motion to Change Name."

Accordingly, this is not a case in which we must attempt to apply Missouri law. This is not a case involving enforcement or interpretation of an existing custody order issued by another state. Nor is it a case of enforcement or interpretation of a foreign judgment registered under K.S.A. 60-3002. Both situations may involve an examination and application of the law of the issuing state in an attempt to understand its meaning and scope and appropriately enforce its provisions. It is not an action under the Uniform Interstate Family Support Act, K.S.A. 2011 Supp. 23-36,101 *et seq.* which governs child support enforcement and contains a specific choice of law provision. See K.S.A. 2011 Supp. 23-36,604. This is a case in which Kansas courts properly acquired jurisdiction over the parties and the cause of action and, accordingly, Kansas law applies.

Did the district court have subject matter jurisdiction over Father's Motion?

Father contends that the district court erred in applying the doctrines of res judicata and collateral estoppel to his 2011 petition for name change (Petition) on behalf of his son because the court's order denying his Motion was issued without jurisdiction and accordingly has no legal force or effect. Subject matter jurisdiction defines the court's authority to hear and decide a particular type of action. *Padron v. Lopez*, 289 Kan. 1089, 1106, 220 P.3d 345 (2009). So before we address Mother's response, it is important to outline the law regarding subject matter jurisdiction over a name change action as it existed when the district court ruled on Father's Motion, and the law as it exists now.

There are dual statutory schemes governing name changes in Kansas.

The general statutory provision regarding name changes is contained at K.S.A. 60-1401 and provides: "The district court shall have authority to change the name of any person, township, town or city within this state at the cost of the petitioner without affecting any legal right." To do so a petition must be filed in the county in which the petitioner resides. K.S.A. 60-1402(a). If "upon hearing" the judge is satisfied as to the truth of the allegations in the petition and there is reasonable cause to change the petitioner's name, the judge is required to grant the request. K.S.A. 60-1402(c). This statute does not apply exclusively to adults; a minor also may petition, through a next friend, to change his or her name under the statute. See *In re Application to Change Name*, 10 Kan. App. 2d 625, 627, 706 P.2d 480 (1985). Some special considerations come into play when a minor petitions to change his or her name. 10 Kan. App. 2d at 627. Specifically, the district court should consider "the interests of the parents and the best interests of the child" in addition to the reasonable cause requirement specified in K.S.A. 60-1402(c). 10 Kan. App. 2d at 628-29.

In contrast, in paternity actions brought under the Kansas Parentage Act (KPA), K.S.A. 2011 Supp. 23-2223 provides that the district court can amend a birth certificate to change a child's last name only upon the request of both parents. It contains no discussion about what to do if the request comes from only one parent or if both parents do not agree.

We review the applicable caselaw on the subject of name changes as part of an action under the KPA.

In 1998, our Supreme Court held in *In re Marriage of Killman*, 264 Kan. 33, 42-43, 955 P.2d 1228 (1998), that district courts have no implied authority to modify a child's name in a *divorce* proceeding because the applicable statute only allowed the

divorce action to include orders regarding support, education, custody, and residency of minor children.

Confusion ensued, however, in a host of cases concerning a similar but distinct situation in which a petitioner sought to change the name of his or her child in a *paternity* action, under the KPA, rather in than a divorce proceeding, under K.S.A. 60-1601 *et seq.*

A few months following the filing of the *Killman* decision, our court held that consistent with the Supreme Court's reasoning in *Killman*, district courts have no authority to change a child's name under the KPA without the express consent of both parents. We found that the KPA only gave the court the authority to determine paternity and to make orders related to support, education, custody, and visitation of the minor child. *Denk v. Taylor*, 25 Kan. App. 2d 172, 174-75, 958 P.2d 1172 (1998). This was contrary to our pre-*Killman* caselaw which held that a trial court has the discretion in a paternity action to decide a child's surname based on the best interests of the child. See *Struble v. Struble*, 19 Kan. App. 2d 947, 948-49, 879 P.2d 37 (1994).

But *Denk* did not end the matter. In *M.L.M. v. Millen*, 28 Kan. App. 2d 392, 394, 15 P.3d 857 (2000), another panel of this court found that *Denk* did not overrule *Struble* and found the rationale in *Struble* to be more persuasive. The *M.L.M.* panel did not mention *Killman*. The *M.L.M.* panel found that to construe the KPA to only allow a name change when both parties consented would allow one parent to hold the other parent hostage as to the name of the child with no recourse. 28 Kan. App. 2d at 395. This rationale continued to be cited in *J.N.L.M. v. Miller*, 35 Kan. App. 2d 407, 412-13, 130 P.3d 1223 (2006), when yet another panel of this court found that the court had the discretion to change the child's name in a nonmarital situation where the child's surname had been contested, as long as it was in the best interests of the child. The panel cited *Struble* but made no mention of *Killman* or *Denk*.

This was the status of the law in 2010 when the district court denied Father's Motion.

In 2011, prior to the filing of this action, this court was again faced with the issue of a name change filed as part of an action under the KPA. See *Stabel v. Meyer*, 45 Kan. App. 2d 941, 259 P.3d 737 (2011). The *Stabel* panel recognized the inconsistent appellate decisions and, consequently, sought to provide clear guidance in their wake. 45 Kan. App. 2d at 943.

In *Stabel*, as here, the mother and father had a child out of wedlock, and the mother gave the child her last name. The father, in turn, requested the district court change the child's last name to his own as part of a paternity action filed under the KPA. The district court held an evidentiary hearing and ordered the child's last name changed.

On appeal, the mother argued that under the doctrine of *expressio unis est exclusion alterius*, the district court did not have jurisdiction to change the child's name because *both parents* must consent to the changing their child's name under K.S.A. 38-1130, which is both the predecessor to K.S.A. 2011 Supp. 23-2223 and the exclusive provision by which to change a child's name under the KPA. See *Stabel*, 45 Kan. App. 2d at 942-43; *Denk*, 25 Kan. App. 2d at 174-75. This court agreed and concluded, like the *Denk* panel had, that the rationale in *Killman*, though dealing with a divorce situation, was controlling because the "statutory provisions involved in this case exclude the possibility of changing the last name of the child over the objection of one of the parents." *Stabel*, 45 Kan. App. 2d at 952.

On the same day as *Stabel*, the same panel issued an unpublished opinion in a similar case, *In re Chance*, No. 103,286, 2011 WL 2175927 (Kan. App. 2011) (unpublished opinion). The panel followed the same rationale under similar facts as it did in *Stabel*. But more importantly as it relates to this case, the father, who had filed a

paternity action under the KPA, also asked for their children's surnames to reflect his surname. The district court granted the request and mother appealed, arguing that this court should follow *Denk* and find that the district court lacked jurisdiction to consider a contested name change action in a KPA proceeding.

On appeal, father argued that his KPA petition could also be construed as a petition for a name change under K.S.A. 60-1402. *Chance*, 2011 WL 2175927, at *4. This court disagreed. First, under K.S.A. 60-1402(a), father was required to file the action in the county of the petitioner's residence (in this case the county in which the children resided). Because he did not file it in the children's county of residence, even if it were construed as an action under K.S.A. 60-1402, he did not satisfy the requirements of K.S.A. 60-1402(a). 2011 WL 2175927, at *4. But secondly, to the extent that the father argued that the action could be viewed as an action under K.S.A. 60-1402 which had been properly joined with his cause for relief under the KPA, this court again cited *Killman* for the premise that, under the doctrine of *expressio unis est exclusion alterius*, "even if [the father] had properly stated a cause of action to change the children's last name under K.S.A. 60-1402(a), K.S.A. 2010 Supp. 38-1116(a) would not permit joinder of that action with his paternity action." *Chance*, 2011 WL 2175927, at *5.

Finally, this court recently analyzed and applied *Killman* and *Stabel* to a similar set of facts as those here. See *Denlinger v. Good*, No. 107,579, 2012 WL 5869658 (Kan. App. 2012) (unpublished opinion). There, the father filed a name-change petition—under K.S.A. 60-1401—6 months after the district court made him the primary custodian of his child. The mother then filed a motion in the preexisting paternity case brought under the KPA to modify parenting time. After consolidating the petition with the existing paternity case for purposes of hearing, the district court ruled in the father's favor in both instances. 2012 WL 5869658, at *2.

On appeal, the mother challenged whether the district court had jurisdiction to consider the father's petition because, she claimed, the father's action was controlled by the KPA. This court, however, affirmed the district court because the father requested to change his child's name "*under a separate action* filed under the authority of K.S.A. 60-1401." (Emphasis added.) 2012 WL 5869658, at *5. Therefore, the father used the other statutory means suggested by *Stabel* and *Killman*—K.S.A. 60-1401 *et seq.*—and accordingly the district court had authority to rule on the father's petition. 2012 WL 5869658, at *6; see also 1 Elrod and Buchele, Kansas Law and Practice: Kansas Family Law, The Ongoing Family § 4.12(2)(b), p. 174 (citing *Denk*, 25 Kan. App. 2d 172, for proposition that unless both parents consent to name change under K.S.A. 38-1130, "then a separate action must be brought" under K.S.A. 60-1401).

With this framework in mind, Father argues that with respect to the present case, based on this court's rulings in *Killman*, *Denk*, and now *Stabel*, the district court lacked jurisdiction to rule on Father's Motion in the 2006 case.

Father's Motion cannot be construed as a separate action under K.S.A. 60-1604.

Mother's response is twofold. First, she supports the district court finding that because Father's Motion was captioned as being filed under both Chapter 38 and Chapter 60, the court was correct in holding that Father's Motion was also implicitly filed under K.S.A. 60-1401, over which the court did have jurisdiction. We disagree. Father filed his Motion as part of the existing motion to modify custody filed by Mother. Although a reference to Chapter 60 is noted in the caption to Father's Motion, we find merit in Father's contention that he was simply restating the caption in the case already created with Mother's filing. We decline to read anything further into his Motion. Even Mother acknowledged in at least one pleading that Chapter 60 did not apply to the case. Nonetheless, she continued to list it in the case caption, sometimes only citing Chapter 60, other times citing only Chapter 38, and yet other times citing both Chapter 60 and

Chapter 38 in the case caption. Father did not institute a separate action, he filed his Motion as part of the existing case, just as he had attempted to do in Missouri. He noted that Mother did not consent to the name change, apparently a reference to the K.S.A. 38-1130 requirement that both parents must consent to change the name on a birth certificate in an action brought under the KPA. As this court held in *Chance*, we cannot construe Father's Motion as a petition for a name change under Chapter 60 and find it merged into the KPA action, because the court has no jurisdiction to consider such a claim as part of a KPA action. See *Chance*, 2011 WL 2175927, at *5. And likewise, parties cannot confer jurisdiction or statutory authority upon a district court where none exists or convey jurisdiction on a court by failing to object. *State v. Elliott*, 281 Kan. 583, 588, 133 P.3d 1253 (2006).

> *In this case, a finding of lack of jurisdiction would apply both retroactively and prospectively.*

Second, Mother contends because the Supreme Court's ruling in *Stabel* was issued after the court's ruling on Father's Motion, the ruling should be applied prospectively only. Retroactive application, she postulates, will cause hardship by voiding all paternity name change cases in which the name change was granted over the objection of one parent. She cites only *Carroll v. Kittle*, 203 Kan. 841, 850, 457 P.2d 21 (1969), in support of her position. *Carroll*, however, involved the application of governmental immunity and not the underlying jurisdiction of a court to hear a cause of action.

In contrast, by definition, a jurisdictional ruling may never be made prospective only, since a court lacks discretion to consider the merits of a case over which it is without jurisdiction. *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 203, 108 S. Ct. 1717, 100 L. Ed. 2d 178 (1988) (quoting *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 379-80, 101 S. Ct. 669, 66 L. Ed. 2d 571 [1981]) ("A court lacks discretion to consider the merits of a case over which it is without jurisdiction, and thus, by definition,

a jurisdictional ruling may never be made prospective only.'"). Mother does not argue any detrimental reliance on the court's prior ruling, nor can it be said that *Stabel* represented a new interpretation of the issue. Due to conflicting opinions from this court, the parties were certainly on notice that there may be a question concerning the court's jurisdiction to rule on a name change motion within an action under the KPA.

We conclude that the district court lacked jurisdiction to consider Father's Motion.

We conclude that, under Kansas law, the district court lacked jurisdiction to consider Father's Motion. See *In re Marriage of Hampshire*, 261 Kan. 854, 862, 934 P.2d 58 (1997) (judgment rendered without subject matter jurisdiction is void; void judgment is a nullity that may be vacated at any time). And, as Father properly observes, a void judgment precludes the district court from using the doctrines of res judicata or collateral estoppel. See also *Waterview Resolution Corp. v. Allen*, 274 Kan. 1016, 1024, 58 P.3d 1284 (2002) ("There are limits to the argument that collateral estoppel precludes consideration of a former judgment. A void judgment may be attacked at any time."); *In re Marriage of Cline*, 17 Kan. App. 2d 230, 235, 840 P.2d 1198 (1992) ("it is unreasonable to suggest that a void judgment must be given res judicata effect").

Upon filing of a petition under K.S.A. 60-1402, the court is required to conduct a hearing.

Here, Father argues the district court erred in determining, without an evidentiary hearing, that he failed to demonstrate reasonable cause necessary to change Son's name under K.S.A. 60-1402. Although the court found Father's claim barred based upon doctrines of res judicata and collateral estoppel, the court also separately found that "[i]n addition, the Court previously heard evidence regarding the name change in the registration of paternity judgment case and finds that there are no different allegations

than those heard in Case No. 06CV9480. There has been no change of circumstances to support a rehearing on this issue."

However, the language of K.S.A. 60-1402 suggests that a hearing on a name-change petition is mandatory, and therefore, the district court prematurely concluded that Father's new petition, in which he does allege new circumstances, was precluded by the court's previous rulings. Initially, K.S.A. 60-1402(a) establishes three requirements for filing a name-change petition: (1) The petitioner has been a resident of the state for at least 60 days, (2) the reason for the name change, and (3) the name desired. K.S.A. 60-1402(b) then explains the means by which the court must give notice of the hearing, which suggests that a hearing is mandatory if the petitioner satisfies the three requirements under subsection (a). Finally, subsection (c) discusses the evidentiary burden necessary for a court, *upon hearing*, to order the requested name change. Therefore, we find that the court was required to conduct a hearing on Father's Petition, unless properly waived by the parties, and we are required to reverse the district court's dismissal of Father's action and remand for a hearing on his Petition.

Due to the litigious nature of the parties relationship in this case, however, we are compelled to caution both Mother and Father that "'[t]he goal of fairly dispensing justice . . . is compromised when the Court is forced to devote its limited resources to the processing of repetitious and frivolous [claims].' [Citations omitted.]" *State ex rel. Stovall v. Lynn*, 26 Kan. App. 2d 79, 82, 975 P.3d 813, *rev. denied* 267 Kan. 890 (1999). By filing a pleading, counsel represents that the factual contentions therein have evidentiary support and that they are not presented for any improper purpose. See K.S.A. 60-211. In this case, it is easy to understand the district court's frustration when it specifically found in 2010, albeit without jurisdiction, that a name change was not in the best interests of Son and would be used to drive a wedge between Son and Mother in an effort to damage the bond between the two, only to be faced with a similar request less than 2 years later. But we must rely on the veracity of Father's pleading that conditions have changed that

could support a different finding. Accordingly, he is entitled to a hearing, to determine if, after a review of the evidence, the district court agrees.

Reversed and remanded with directions to conduct a hearing on Father's Petition.