

Proposed amendment to KSA 38-2237(e)

The Revised Child in Need of Care Code made several changes to the provisions concerning service of process. One such change affects service by publication. The final sentence of K.S.A. 38-2237(e) now provides that, “In the case of a parent, publication shall also be in a newspaper authorized to publish legal notices in the locality where the court determines, after due diligence, the parent is most likely to be found.” This language has created problems for court personnel, because the language can be read to imply that for every parent whose location cannot be ascertained, it is necessary to publish notice in whatever the best guess of location might be. In practice, publication of notice in the correct newspaper for locations out of state, and perhaps in another country, is a very expensive and time consuming proposition.

The advisory committee proposed this language in response to *Board of County Commissioners of Reno County v. Akins*, 271 Kan. 192, 21 P.3d 535 (2001), which held that publication notice of a tax sale in the county where property was located violated due process when it was known that the taxpayer did not reside in the county, and insufficient efforts were made to locate the taxpayers. The advisory committee’s concern was that, in *Akins*, the taxpayers were known to have lived for some time in Oregon, which meant that publication in the State of Kansas was particularly unlikely to provide any actual notice of proceedings. Although *Akins* does not explicitly require it, the committee believed that if a parent was known to have lived for some time in another location but a current address could not be found, due process might require that publication notice be made in the location where the parent was known to reside. Courts insist on a very high standard of due process when the state terminates parental rights, and it is particularly unfortunate and disruptive for children when problems with service require the process to be redone. See *In re S.R.*, 34 Kan. App. 2d 202; 116 P.3d 43 (Kan Ct. App. 2005).

At the same time, it was not the advisory committee’s intention that publication in another state or foreign country be required in every case when a parent might be located somewhere else. To clarify the scope of the publication requirement, the advisory committee would suggest that the language be amended as follows:

(e) Service by publication. If service cannot be completed after due diligence using any other method provided in this section, service may be made by publication in accordance with this subsection. Before service by publication, the petitioner, or someone on behalf of the petitioner, shall file an affidavit which shall state the affiant has made an attempt, but unsuccessful, with due diligence to ascertain the names or residences, or both, of the persons. The notice shall be published once a week for two consecutive weeks in the newspaper authorized to publish legal notices in the county where the petition is filed. ~~In the case of a parent, publication shall also be in a newspaper authorized to publish legal notices in the locality where the court determines, after due diligence, the parent is most likely to be found.~~ ***If a parent cannot be served by other means and due diligence has revealed with substantial certainty that the parent is residing in a particular locality, publication shall also be in a newspaper authorized to publish legal notices in that locality.***