STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of DAVID AMANTE SOWELL, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ADRIANNE SOWELL,

Respondent-Appellant,

and

ANDRE ANDERSON,

Respondent.

UNPUBLISHED
September 3, 1999

No. 214210
Wayne Circuit Court
Family Division
LC No. 97-354798

Before: Markman P.J., and Saad and P. D. Houk*, JJ.

PER CURIAM.

Respondent-appellant (hereinafter "respondent") appeals as of right from the family court order terminating her parental rights to the minor child under MCL 712A.19b(3)(a)(ii), (c)(i), (g) and (j); MSA 27.3178(598.19b)(3)(a)(ii), (c)(i), (g) and (j). We affirm.

Respondent argues that her right to due process was violated by appellee's failure to serve her with notice of the permanent custody proceeding. We disagree. A failure to provide notice of a termination proceeding by personal service as required by statute, MCL 712A.12; MSA 27.3178(598.12), is a jurisdictional defect that renders all proceedings in the trial court void. *In re Adair*, 191 Mich App 710, 713-14; 478 NW2d 667 (1991); *In re Brown*, 149 Mich App 529, 534-42; 386 NW2d 577 (1986).

* Circuit judge, sitting on the Court of Appeals by assignment.

At the adjudication hearing, a dispositional order was entered placing the child in the temporary custody of the trial court. Under MCL 712A.20; MSA 27.3178(598.20), a fresh summons was required before the trial court could proceed to termination. Contrary to appellee's argument, MCR 5.920(F) does not apply to excuse initial service of a summons for a termination hearing, but, instead, only excuses subsequent, repetitive service after an initial summons for a termination hearing has been properly served and the proceedings are subsequently adjourned to a future date. See e.g., *In re Andeson*, 155 Mich App 615, 618-19; 400 NW2d 330 (1986).

Here, however, the record indicates that respondent was personally served with notice of the permanent custody proceeding. Although there was some confusion about where she was residing, a return of service indicates that a summons and copy of the petition was personally served on respondent on June 3, 1998. The summons notified respondent that a hearing would be held on July 15, 1998, to rule on a request that her parental rights be terminated, that she had the right to an attorney and a trial by jury or judge, and that the hearing might result in a temporary or permanent loss of her rights to the child. Notice of the hearing was also made by publication on June 9, 1998. Although respondent contends that she did not live at the address listed on the summons, she did not present any evidence or an affidavit indicating that she was not personally served at that address. Accordingly, we conclude that respondent has failed to establish that service was improper or the summons invalid.

We also reject respondent's argument that her right to due process was violated by the trial court's refusal to grant an adjournment. "A motion for an adjournment must be based on good cause, and a court, in its discretion, may grant an adjournment to promote the cause of justice." *Zerillo v Dyksterhouse*, 191 Mich App 228, 230; 477 NW2d 117 (1991). See also MCR 5.974(F)(1)(b); *In re Jackson*, 199 Mich App 22, 28; 501 NW2d 182 (1993).

The foster care worker testified at the termination hearing that she had discussed the permanent custody proceeding with respondent and her doctor, and advised respondent of the date and time of the hearing. Respondent's doctor discussed the importance of respondent attending the hearing, and respondent indicated that she wanted to attend the hearing. The worker believed that respondent understood that her parental rights could be terminated. Although respondent's attorney informed the trial court at the start of the termination hearing that respondent had been hospitalized and had no transportation to court for the hearing, she acknowledged that respondent was not being detained at the hospital and could leave. On this record, we conclude that the trial court did not abuse its discretion in denying the request for an adjournment.

Respondent also argues that, under MCR 5.972(A)(3), a continuance was warranted to secure the testimony of an unavailable witness because of the lack of competent medical testimony or records and the trial court's reliance on the hearsay testimony of the foster care worker regarding respondent's medical condition. In requesting an adjournment, respondent's attorney asserted that respondent might want to testify or present medical testimony. As the trial court found, respondent had notice of the hearing and was aware of its significance. Respondent's attorney was aware of respondent's medical condition and treatment, and had almost eight weeks from the time of the pretrial hearing on the permanent custody petition to discuss the case with respondent and prepare for trial. Moreover, hearsay testimony is admissible at the dispositional phase of a termination proceeding. MCR

5.974(F)(2); *In re Ovalle*, 140 Mich App 79, 82; 363 NW2d 731 (1985). The request for an adjournment was properly denied.

Because respondent does not argue that the statutory grounds for termination were not proven, any allegation of error in this regard is deemed abandoned. *In re JS & SM*, 231 Mich App 92, 98; 585 NW2d 326 (1998).

Affirmed.

/s/ Stephen J. Markman
/s/ Henry William Saad
/s/ Peter D. Houk