

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MITCHELL SMITH, a/k/a
MITCHEL SMITH, and MARY SMITH, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DONALD SMITH,

Respondent-Appellant,

and

JEANNIE DENISE GOODE and ROBERT GOODE,

Respondents.

UNPUBLISHED

January 28, 2000

No. 218889

Wayne Circuit Court

Family Division

LC No. 98-369500

Before: White, P.J., and Sawyer and Griffin, JJ.

WHITE, J. (dissenting).

I would remand for further proceedings regarding the notice issue. The record is devoid of evidence that appellant received adequate notice of the February 26 trial date. At the conclusion of the October 30 proceeding, which appellant did not attend although he had received proper notice, the referee announced her decision to terminate appellant's parental rights. No further proceedings with respect to appellant were contemplated, and no adjourned date was stated on the record.¹ Apparently, it later came to light that the mother was still married to Robert Goode and that Robert Goode, not appellant, was the father of the children as to whom parental rights had previously been terminated. An amended petition was authorized, adding Goode, as the legal father, and additional allegations regarding appellant. The amended petition was served by publication. This was the only notice of the amended petition and trial that is apparent on the record.

The record reflects that on August 12, 1998, appellant executed affidavits of parentage stating that his current address was 11117 Rosemary in Detroit, and also giving a phone number. The record reveals no attempts to serve or locate him at that address before resorting to service by publication.² Nor does the record reflect that such attempts would have been futile.³ The record on the issue is sparse. I would remand for a determination whether appellant was properly served⁴ and notified⁵ of the trial that resulted in the termination of his parental rights,⁶ including the issues whether the Rosemary address was a correct address at which appellant would have received notice, and whether and what attempts were made by counsel to contact appellant regarding the hearing.

/s/ Helene N. White

¹ Thus, this case is unlike *In re Andeson*, 155 Mich App 615; 400 NW2d 330 (1986).

² No petition or order for service by publication with respect to appellant is found in the lower court record.

³ See *In re Mayfield*, 198 Mich App 226; 497 NW2d 578 (1993).

⁴ I observe with respect to MCR 5.920(F) that appellant never appeared in court in response to service by summons. Rather, appellant was served with a summons in court on August 12 that ordered him to appear on October 30, which he failed to do.

⁵ The February 26 date was not placed on the record, and was not contemplated at the October 30 hearing. If the February 26 date is nevertheless seen as simply a continuation of the October 30 hearing of which appellant had notice, at least with respect to the allegation in the original petition, there is no indication that appellant's attorney, who also had the Rosemary address and phone number, made any effort to notify him of the February 26 trial.

⁶ The October 30 proceeding cannot be relied on alone as the basis for upholding the termination of appellant's rights because no order was ever entered by the court finding termination proper on the record made at that hearing, and petitioner was apparently proceeding on the belief that appellant's rights were being terminated based on the prior terminations, which involved a different father.