STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of CHANTAY MERCEDES WOODS, DEONTA DWAYNE WOODS, SHELDON DEMARCO WOODS, DEANDRE KELLY WOODS, DEMETRI LAMAR WOODS and KAYLA CHERISE WOODS, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LATRESE MARIE ANDERSON,

Respondent-Appellant,

and

KELLY DWAYNE WOODS,

Respondent.

UNPUBLISHED
May 19, 2000

No. 218954
Wayne Circuit Court
Family Division
LC No. 97-352228

Before: Cavanagh, P.J., and Sawyer and Zahra, JJ.

PER CURIAM.

Respondent-appellant appeals by delayed leave granted the family court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i) and (g); MSA 27.3178(598.19b)(3)(c)(i) and (g). We affirm.

Respondent-appellant argues that she did not receive proper notice of the permanent custody proceedings. We disagree. In termination of parental rights cases, a failure to provide notice of a hearing by personal service as required by statute, MCL 712A.12; MSA 27.3178(598.12), is a jurisdictional defect that renders all proceedings void. *In re Adair*, 191 Mich App 710, 713-714; 478

NW2d 667 (1991); *In re Brown*, 149 Mich App 529, 534-542; 386 NW2d 577 (1986). This Court has interpreted the statutory language as requiring that a noncustodial parent be personally served with a summons and notice of the petition and the time and place of a dispositional hearing or a contested termination hearing. *In re Gillespie*, 197 Mich App 440, 442; 496 NW2d 309 (1992). MCL 712A.13; MSA 27.3178(598.13) provides for alternative methods of service that are sufficient to confer jurisdiction on the family court. *In re Mayfield*, 198 Mich App 226, 231; 497 NW2d 578 (1993).

In this case, respondent-appellant's counsel requested an adjournment of the permanent custody hearing on January 15, 1999, on the basis that respondent-appellant did not receive proper notice of the proceedings. In denying counsel's request, the referee found that, on November 23, 1998, an attempt was made to personally serve respondent-appellant with notice of the December 14, 1998, permanent custody hearing, which was adjourned and rescheduled for January 15, 1999, at 5753 15th Street in Detroit, and that, according to a person at the residence, respondent-appellant did not live there. The referee also found that respondent-appellant was served with notice of the December 14, 1998, hearing by certified mail and signed a receipt on November 12, 1998. In addition, notice by publication was made on November 19, 1998. The referee found that personal service was impracticable and that service by certified mail and publication were made for the adjourned hearing, and concluded that respondent-appellant had notice of the proceedings.

We agree with the referee's determination that respondent-appellant received proper notice of the proceedings. Respondent-appellant did not attend the pretrial hearing on the permanent custody petition on November 2, 1998. At that hearing, the foster care case manager confirmed that respondent-appellant's address was 5753 15th Street in Detroit. The referee noted that there was no affidavit of service in the file and ordered that respondent-appellant be personally served at that address. The referee also ordered service by certified mail and substituted service by publication, *pending a showing that personal service was impracticable*. The permanent custody hearing was set for December 14, 1998.

A summons, dated November 9, 1998, indicates that a hearing was scheduled for December 14, 1998, to rule on a request that respondent-appellant's parental rights be terminated. The summons states that a petition was attached. The return of service indicates that the summons was to be personally served on respondent-appellant at 5753 15th Street in Detroit. An Affidavit of Non-Service, dated December 11, 1998, and signed by a deputy sheriff, indicates that an unsuccessful attempt at personal service was made on November 23, 1998.

According to the referee, service by certified mail was made prior to the attempt at personal service. Apparently, respondent-appellant was served with notice of the December 14, 1998, hearing by certified mail and signed a receipt on November 12, 1998.[1] In addition, substituted service by publication for the December 14, 1998, hearing was made on November 19, 1998.

We are satisfied that respondent-appellant received proper notice of the permanent custody proceedings under the relevant statutes and court rules. MCL 712A.13; MSA 27.3178(598.13) allows for alternative methods of service of process if the family court determines that personal service is

impracticable. *In re Adair*, *supra* at 714. MCR 5.920(B)(4)(b) permits service by certified mail addressed to the last known address of the party if personal service is impracticable or cannot be achieved. Also, under MCR 5.920(B)(4)(c), any manner of substituted service, including publication, may be used if service cannot be made because the whereabouts of the person to be summoned has not been determined after reasonable effort.

Respondent's position is based on the fact that there was no showing of impracticability made before the alternative methods of service were used. In fact, service by certified mail and publication were made before personal service was even attempted. We would agree with respondent if personal service had not also been attempted. That is, respondent is correct that the trial court cannot proceed directly to substituted service without making an attempt to achieve personal service or otherwise first determining that personal service is not practical. Here, however, the trial court ordered that personal service should be attempted, but allowed petitioner to start the substituted service process, without ruling that substituted service would be accepted.

In other words, while the trial court allowed substitute service to take place, it was conditioned upon an attempt to achieve personal service and a showing that such personal service was not practical. Presumably, if the trial court had not been satisfied that petitioner had not made an adequate attempt at personal service, it would have ruled that the substitute service was not acceptable. Nothing in the statute, court rules or Michigan case law mandates that the attempt to effect personal service be completed before the court authorizes the commencement of alternative methods of service. Rather, the statute, court rules and case law require the court to find that personal service is impractical or cannot be achieved before ruling that any alternative method of service may become effective. The trial court made such a finding in this case.

We cannot fault the trial court for insisting on the attempt at personal service while allowing petitioner to commence substituted service as well. Respondent would have required petitioner to wait until after personal service was unsuccessful to schedule a hearing to obtain permission to use substituted service, and then actually make the substituted service. This would have done little to provide additional notice to respondent, but would have served to increase the amount of time the children's futures were in limbo.

Ultimately, the procedure employed by the trial court was calculated to provide greater, not lesser, notice to respondent. Essentially, the trial court told petitioner to "try everything"—personal service, certified mail, and publication. At least one of these—certified mail—was successful. In addition, respondent received actual notice from the caseworker as well. Statutes are to be construed to avoid absurd or unreasonable results. *Mayfield*, *supra* at 234. It would be absurd and unreasonable to construe the statutes and court rules in such a manner as requiring a longer, more drawn out process which achieves nothing to increase the likelihood of notice to respondent.

In upholding the notice in this case, we do wish to stress two points. First, the trial court did have petitioner attempt personal service. Second, the trial court did make a determination that personal service was impracticable. This opinion should not be read as either excusing the obligation to make personal service when practicable or excusing the trial court from making the determination that

personal service was impracticable before accepting alternate service. We merely hold that service is not invalid because alternate service was achieved before the trial court's determination rather than after where the trial court's determination of the need for alternate service is ultimately correct.

Respondent-appellant also argues that the family court failed to follow the evidentiary requirements of MCR 5.974(F). We disagree.

MCR 5.974(F) provides, in relevant part:

> (F) Termination of Parental Rights; Child in Foster Care. If the parental rights of the respondent over the child are not terminated at the initial dispositional hearing, and the child is in foster care in the temporary custody of the court, the court following a dispositional review hearing or a permanency planning hearing under MCR 5.973 may take action on a supplemental petition that seeks to terminate the parental rights of respondent-appellant over the child on the basis of one or more grounds listed in MCL 712A.19b; MSA 27.3178(598.19b).
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> (2) *Evidence*. At the hearing all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value, even though such evidence may not be admissible at trial. The respondent and the petitioner shall be afforded an opportunity to examine and controvert written reports so received and shall be allowed to cross-examine individuals who made the reports when those individuals are reasonably available.

Respondent-appellant argues that the family court erred by allowing the foster care case manager to testify from notes and the case file, prepared in part by prior workers assigned to the case. We conclude that the testimony was properly admitted by the court. The family court may consider all relevant and material evidence, including hearsay, at the dispositional phase of a termination proceeding. *In re Ovalle*, 140 Mich App 79, 82; 363 NW2d 731 (1985). The requirements of due process do not prevent the admission of hearsay testimony as long as the evidence is fair, reliable and trustworthy. *Id.* Although respondent-appellant's counsel objected that the foster care case manager was reading from her notes rather than testifying from her memory at the permanent custody hearing, counsel did not suggest that the evidence was unreliable or not trustworthy. Therefore, the evidence was properly admitted.

Respondent-appellant also argues that the family court erred by allowing the admission of certain reports without requiring the testimony of the authors of those reports. MCR 5.974(F)(2) provides that the respondent-appellant shall be afforded an opportunity to examine and controvert reports and cross-examine the individuals who made the reports "when those individuals are reasonably available." Here, the authors of the reports were not subpoenaed for the permanent custody hearing and respondent-appellant's counsel did not request an adjournment to subpoena them. The family court properly overruled the objection by respondent-appellant's counsel to the admission of the psychiatric

report because counsel had ample opportunity to subpoena the psychiatrist for the permanent custody hearing, but failed to do so. Also, respondent-appellant's counsel did not object to the admission of the psychological report after a certain portion was deleted. There was no error.

Affirmed.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Brian K. Zahra

[1] Although there are no documents relating to service by certified mail in the lower court file, respondent-appellant has not challenged the referee's finding that she was served by certified mail and signed a receipt.