

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JUSTIN FRANK, AMBER FRANK
and NICOLE FRANK, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

RICHARD FRANK,

Respondent-Appellant,

and

SHAWN FRANK,

Respondent.

UNPUBLISHED

September 26, 2000

No. 217741

Macomb Circuit Court

Family Division

LC No. 96-043390

Before: Smolenski, P.J., and Wilder and Meter, JJ.

PER CURIAM.

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

Respondent argues that he did not receive sufficient notice of the proceedings in this case. We disagree.

MCR 5.920(B)(2)(c) provides that, in a child protective proceeding, a summons must be issued and served on a parent for a hearing on a petition seeking termination of parental rights. Where the person to be summoned is a respondent in the proceeding, he is entitled to personal service as provided in MCR 5.920(B)(4)(a). *In re Adair*, 191 Mich App 710, 713; 478 NW2d 667 (1991). “If personal service of the summons is impracticable or cannot be achieved, the court may direct that it be served by

registered or certified mail to the last known address of the party, return receipt requested.” MCR 5.920(B)(2)(b). Alternatively, “[i]f the court finds service cannot be made because the whereabouts of the person to be summoned has not been determined after reasonable effort, the court may direct any manner of substituted service, including publication.” MCR 5.920(B)(4)(c). See MCL 712A.13; MSA 27.3178(598.13) (where personal service is not possible, service of process by alternative methods, including publication, may be used to confer jurisdiction on the probate court). Thus, in order for service of process to be effectuated by alternative methods (i.e., publication), the trial court must first determine that reasonable efforts were made to locate the respondent. MCR 5.920(4)(b) and (c); MCL 712A.13; MSA 27.3178(598.13), *In re Adair*, *supra* at 714.

We conclude that that respondent received adequate notice of the termination proceedings. The record indicates that two temporary custody petitions were filed in this case. When the first temporary custody petition was filed on November 13, 1996, respondent’s address was unknown. The family court found that personal service of a summons upon respondent could not be made because his whereabouts had not been determined after reasonable effort, and it ordered that notice of the January 8, 1997 adjudication hearing be made by publication. Notice of the hearing was made by publication on December 27, 1996 in the Macomb County Legal News. However, the publication was untimely (not published 14 days before the hearing as required by MCR 5.920(B)(5)(c)) and incorrectly directed to Robert Frank (rather than Richard Frank). Accordingly, this notice was inadequate.¹

At the time the second temporary custody petition was filed on October 3, 1997, respondent’s address was still unknown.² At a preliminary hearing on the petition, the family court again found that personal service of a summons upon respondent could not be made because his whereabouts had not been determined after reasonable effort, and it ordered that notice of the October 15, 1997 adjudication hearing be made by publication. Notice of the hearing was made by publication in the Macomb County Legal News on October 17, 1997. Although the published notice was directed to respondent, it was published after the hearing date and was, therefore, untimely. MCR 5.920(B)(5)(c). Accordingly, this notice was also inadequate.

However, the October 15, 1997 adjudication hearing was adjourned. On January 5, 1998, the family court found that personal service of the summons on respondent was impracticable or could not be achieved, and it ordered that notice of the February 6, 1998 adjudication hearing be made by publication. Notice of the hearing was once again published in the Macomb County Legal News on January 9, 1998. The publication was timely under MCR 5.920(B)(5)(c), it was properly directed to respondent, and it provided legal notice of the proceedings on the temporary custody petition, indicating that the hearing may result in the court exercising authority over the children because of neglect and/or abuse. Respondent did not attend the hearing.

¹ The first petition only involved Justin and Amber; Nicole was not born until April 7, 1997. Following a review hearing on July 16, 1997, Justin and Nicole were returned to their mother’s care.

² The second petition involved all three minor children.

On September 4, 1998, before the bench trial, the family court found that personal service of a summons upon respondent could not be made because his whereabouts had not been determined after reasonable effort, and it ordered that notice of the October 16, 1998, termination hearing be made by publication. However, the permanent termination petition was filed on September 9, 1998, indicating that respondent was incarcerated in the Macomb County Jail. A summons directed to respondent in jail stated that a hearing would be held to rule on a request that his parental rights over the children be terminated. In accordance with MCR 5.920(B)(3), the summons identified the nature of the hearing, explained respondent's rights to an attorney and a trial by judge, included notice that the hearing may result in a temporary or permanent loss of his parental rights to the children and indicated that the petition was attached. The record indicates that respondent was personally served in jail with the summons and the termination petition on September 14, 1998. Notice of the hearing was also made by publication in the Macomb County Legal News on September 18, 1998. Respondent was present and testified at the termination hearing. Because respondent was properly served with notice of the termination proceedings, both by personal service and publication, reversal is not warranted.

Affirmed.

/s/ Michael R. Smolenski

/s/ Kurtis T. Wilder

/s/ Patrick M. Meter