STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JESSICA LASTFOGEL, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

AARON LASTFOGEL,

Respondent-Appellant.

UNPUBLISHED
November 17, 2000

No. 223489
Montcalm Circuit Court
Family Division
LC No. 98-010001-NA

In the Matter of ALAN LASTFOGEL, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

AARON LASTFOGEL,

Respondent-Appellant.

No. 223522
Montcalm Circuit Court
Family Division
LC No. 98-010002-NA

Before: Neff, P.J., and Murphy and Griffin, JJ.

PER CURIAM.

Respondent appeals as of right from a family court order terminating his parental rights to his two minor children under MCL 712A.19b(3)(h), (k)(*ii*), and (n)(*i*); MSA 27.3178(598.19b)(3)(h), (k)(*ii*), and (n)(*i*). We affirm.

Respondent first argues that he did not receive adequate notice of the termination proceedings. The failure to provide notice of a termination proceeding as provided by statute is a jurisdictional defect that renders all proceedings in the family court void. *In re Atkins*, 237 Mich

App 249, 250-251; 602 NW2d 594 (1999). MCR 5.920(B)(4) requires that a respondent be personally served with a summons for a termination hearing, unless personal service is impracticable or cannot be achieved. Service is required at least fourteen days before the scheduled hearing. MCR 5.920(B)(5)(a).

The record indicates that respondent was personally served with a copy of the termination petition and a summons on August 27, 1999, which indicated that a hearing on the petition would be held on September 20, 1999. Respondent appeared on that date and was represented by counsel. The family court authorized an amended petition that day, handed a copy to respondent's attorney, and asked that the attorney hand a copy to respondent. The court further insisted that petitioner prepare a summons so that respondent could be properly served with notice of the next hearing and adjourned the hearing specifically to allow proper service on respondent. Although respondent contends that the record does not show that he was properly served with the amended petition, an affidavit of service appears in the lower court record. The termination hearing took place on October 5, 1999, which was fifteen days after respondent was personally served. Thus, the record reflects that respondent was adequately served with notice of both the initial and amended petitions requesting termination of his parental rights.

Respondent next argues that he should have been named in the initial neglect petition so that he could have participated in the case prior to the termination phase. The original petitions were filed on December 1, 1998, and generally alleged neglect by the children's mother. The petitions noted that respondent was incarcerated. On January 11, 1999, the children's mother appeared for a pretrial hearing and admitted most of the allegations in the petitions, causing the court to find that the children were within the jurisdiction of the court pursuant to MCL 712A.2(b)(1) and (2); MSA 27.3178(598.2)(b)(1) and (2).

Although respondent, the children's legal father, was entitled to notice of the January 11, 1999 hearing, under the circumstances, there was nothing that respondent could have done to prevent the family court's assumption of jurisdiction over his children. The allegations in the original petition were based on the conduct of the children's custodial parent, their mother. Accordingly, we conclude that appellate relief is not warranted.

Respondent also contends that his parental rights were improperly terminated at the initial dispositional hearing. This argument is without merit because it is clear from the record that respondent's parental rights were not terminated at the initial dispositional hearing. Rather, they were terminated under MCR 5.974(F), which governs termination of parental rights after the initial dispositional hearing if the children are in foster care. Respondent's children were placed in the home of their paternal grandparents in accordance with an order of the family court and, therefore, were in "foster care." MCL 712A.13a(d); MSA 27.3178(598.13a)(d).

Next, respondent argues that the family court erred in finding that a statutory ground for termination was established by clear and convincing evidence. Even if termination was not proper under § 19b(3)(h), because respondent did not receive notice of the initial petition and, therefore, did not have an opportunity to provide for his children's care and custody once the children were removed from their mother's home, termination was plainly warranted under the remaining two statutory grounds cited by the family court. See *In re Vasquez*, 199 Mich App 44, 52-53; 501 NW2d 231 (1993). Respondent had been convicted of criminal sexual conduct

involving penetration of his twelve-year-old stepdaughter, who was the half-sister of respondent's children. Respondent admitted having sexual intercourse with his stepdaughter on more than one occasion. This conduct justified termination of respondent's parental rights under § 19b(3)(k)(*ii*). Further, respondent's conviction, considered in conjunction with the family court's finding that continuing the parent-child relationship between respondent and his children would be harmful to the children, justified termination of respondent's parental rights under § 19b(3)(n)(*i*). With regard to this latter ground, we additionally find that the family court did not err in determining that termination of respondent's parental rights was not clearly adverse to the children's best interests and that continuing the parent-child relationship would be harmful to the children. Although the family court's findings of fact and conclusions of law were sparse, they were sufficient under these circumstances.

Affirmed.

/s/ Janet T. Neff
/s/ William B. Murphy
/s/ Richard Allen Griffin