STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of PATRICK JOHN HUEBNER,
Minor.

STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PATRICK JOHN HUEBNER, MINOR,

Defendant,
and

DOUGLAS HUEBNER,

Appellant.

UNPUBLISHED
February 6, 2001

No. 218381
Oakland Circuit Court
Family Division
LC No. 98-602639-DL

Before: Hoekstra, P.J., and Whitbeck, and Meter, JJ.

PER CURIAM.

Appellant Douglas Huebner appeals by leave granted from two family court orders that (1) required appellant to reimburse the county for the expenses of his son's detention, and (2) denied appellant's motion for a new trial with regard to his son's adjudication of delinquency. We affirm.

Appellant first contends that his son's adjudication of delinquency must be set aside for lack of jurisdiction because appellant was not allowed to attend an initial hearing and was not notified of the adjudicative and dispositional phases of the delinquency proceedings. This issue involves the interpretation and application of court rules and statutes and is therefore reviewed de novo. *Grzesick v Cepela*, 237 Mich App 554, 559; 603 NW2d 809 (1999); see also *In re Juvenile Commitment Costs*, 240 Mich App 420, 426; 613 NW2d 348 (2000). Moreover, this Court reviews jurisdictional questions de novo. See *In re Terry*, 240 Mich App 14, 20; 610 NW2d 563 (2000).

We disagree with appellant's argument that his exclusion from an initial hearing warrants reversal. As stated in MCL 712A.6a; MSA 27.3178(598.6a), the "[f]ailure of a parent or guardian to attend a hearing [regarding juvenile delinquency] . . . does not provide a basis for appellate or other relief."

Moreover, even though the court rules provide that parents must be notified in delinquency cases, see MCR 5.921(A)(2), the failure to follow the court rules regarding notice requirements does not establish a jurisdictional defect. *In re Mayfield*, 198 Mich App 226, 230-231; 497 NW2d 578 (1993). Only the "failure to provide the applicable *statutory* notice" can cause such a defect and therefore warrant reversal. *Id*. at 231 (emphasis added). Here, the applicable statutory notice provision states, in relevant part:

> After a petition shall have been filed . . . , the court may dismiss said petition or may issue a summons reciting briefly the substance of the petition, and requiring the person or persons who have the custody or control of the child, or with whom the child may be, to appear personally and bring the child before the court at a time and place stated: . . . . <u>If the person so summoned shall be other than the parent or guardian of the child, then the parents or guardian, or both, shall also be notified of the petition and of the time and place appointed for the hearing</u> thereon, by personal service before the hearing, except as hereinafter provided. [MCL 712A.12; MSA 27.3178(598.12); emphasis added.]

It is not clear that this statutory notice provision was violated in this case. Indeed, the person having custody of the minor, Joyce Huebner, was properly notified of the proceedings. Joyce Huebner was the minor's mother. Accordingly, the phrase "[i]f the person so summoned shall be other than the parent or guardian of the child, then the parents . . . shall also be notified . . ." did not apply. At first blush, therefore, it appears that appellant simply was not entitled to notice under this statutory provision. See *Transamerica Ins Group v Michigan Catastrophic Claims Ass'n*, 202 Mich App 514, 516-517; 509 NW2d 540 (1993) (providing that clear and unambiguous statutes should be enforced as written).

Other panels of this Court, however, have apparently construed this statute to necessarily require notice to noncustodial parents. See *Mayfield*, *supra* at 231, and *In re Brown*, 149 Mich App 529, 541; 386 NW2d 577 (1986). The *Mayfield* opinion was released in 1993, and we are required to follow published opinions of this Court issued on or after November 1, 1990. See 7.215(H)(1). Moreover, we note that construing MCL 712A.12; MSA 27.3178(598.12) as not necessarily requiring notice to noncustodial parents would hinder compliance with MCL 712A.6a; MSA 27.3178(598.6a), which requires the parents of alleged juvenile delinquents to attend all court hearings except for good cause. Accordingly, we will assume, without deciding, that MCL 712A.12; MSA 27.3178(598.12) did indeed require notice to appellant of his son's proceedings.

Nevertheless, we find no basis for reversal. In *Terry*, *supra* at 20-21, the father, who was a noncustodial parent, was not properly served with notice of termination of parental rights proceedings, but the failure to serve the father did not render the entire proceedings void. Instead, the deficiency in service only affected the family court's decision to terminate the father's parental rights; the mother of the child could not claim that the proceedings were void as

applied to herself. *Id*. Applying the basic concept of *Terry* to the specific facts of this case, we find no basis for reversal of the minor's adjudication. First, the minor in this case executed a waiver of service, giving the court personal jurisdiction over him. Second, the Legislature has made clear that the absence of a minor's parent during delinquency proceedings is not a fatal defect, therefore emphasizing that the proceedings are directed toward the minor and not the parents. See MCL 712A.6a; MSA 27.3178(598.6a). Third, the court had subject matter jurisdiction over the proceedings pursuant to MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1). Finally, the minor's mother, who had sole legal and physical custody of the minor, was properly notified under MCL 712A.12; MSA 27.3178(598.12). In light of these specific facts, we hold that a reversal of the minor's adjudication for failure to notify the noncustodial parent is unwarranted in this case. See *Mayfield, supra* at 234 (statutes requiring notice to parents should be construed to avoid unreasonable results). The family court properly exercised its jurisdiction over the minor.

Our failure to reverse rests on another, independent basis. Appellant's entire argument on appeal rests on his assertion that if he had been given proper notice and allowed to attend the adjudicative and dispositional hearings, he would have hired an attorney for the minor who was more competent than the attorney the court appointed for the minor. In other words, he argues for reversal only because he was deprived of the opportunity to hire a different attorney for his son. However, MCL 712A.17c(2)(b); MSA 27.3178(598.17c)(2)(b) requires the family court to appoint an attorney when the child's parent is the victim. Here, the victims were indeed the child's parents. Accordingly, appellant's argument that he would have retained an attorney for the child provides no basis for reversal.

Appellant next argues that the family court had no jurisdiction to order him to reimburse the county for costs relating to the minor's placement in a juvenile detention facility. See MCL 712.18(2); MSA 27.3178(598.18)(2) (providing for the assessment of such costs). Again, we review jurisdictional questions de novo. See *Terry, supra* at 20.

We disagree that the family court lacked jurisdiction to order the reimbursement. As noted by the prosecution, appellant was properly served the supplemental petition listing allegations of a probation violation by the minor. Until that point, the minor had remained in his mother's care. The placement in the juvenile facility occurred *after* appellant was served the summons and supplemental petition relating to the probation violation. Appellant attended the probation violation hearing with his counsel and indicated his satisfaction with the minor's guilty plea. The family court, after giving appellant an opportunity to be heard regarding placement options, chose placement in a juvenile facility primarily because the parents' continuing conflict over their children was causing a chaotic atmosphere for the minor. Because the minor's detention arose from a hearing about which appellant was properly notified and in which appellant participated, the family court properly entered the reimbursement order relating to the minor's detention.[1]

---

[1] Appellant also makes reference in his appellate brief to the "prosecution costs" he was forced to reimburse. However, we find no order relating to "prosecution costs" in the lower court file.

Appellant lastly argues that MCL 600.1023(1); MSA 27A.1023(1) is unconstitutional because it creates the potential for judicial abuse. The constitutionality of a statute presents a question of law that we review de novo. *McDougall v Schanz*, 461 Mich 15, 24; 597 NW2d 148 (1999). This Court should presume that the statute is constitutional "unless its unconstitutionality is clearly apparent." *Id.*

MCL 600.1023(1); MSA 27A.1023(1) provides:

> When 2 or more matters within the jurisdiction of the family division of circuit court involving members of the same family are pending in the same judicial circuit, those matters, whenever practicable, shall be assigned to the judge to whom the first such case was assigned.

Appellant evidently believes that the family court judge in this case conspired with the prosecution and the mother to use information about appellant gained during divorce proceedings against appellant in the delinquency proceedings. Appellant contends that MCL 600.1023(1); MSA 27A.1023(1) makes it easy for judges to conduct biased proceedings and is therefore unconstitutional on its face. Appellant did not challenge the constitutionality of this statute below and has therefore not preserved this issue for appellate review. See *People v Hoffman*, 205 Mich App 1, 14; 518 NW2d 817 (1994). Moreover, we disagree with appellant's assertion that the statute creates such a high potential for abuse that it is unconstitutional on its face.

Affirmed.

/s/ Joel P. Hoekstra
/s/ William C. Whitbeck
/s/ Patrick M. Meter