STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of DY'JANIA NINA ANN WARD and NINA ANN BRANDON WARD, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

HASHIM A. WARD,

Respondent-Appellant,

and

ERICA S. BRANDON,

Respondent.

UNPUBLISHED
May 12, 2009

No. 288127
Wayne Circuit Court
Family Division
LC No. 06-454303-NA

Before: Servitto, P.J., and O'Connell, and Zahra, JJ.

PER CURIAM.

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

Respondent-appellant contends on appeal that service by publication was insufficient to confer personal jurisdiction over him. Specifically, respondent-appellant argues that the trial court failed to first attempt either personal or certified mail service at his last known address, or at the address which respondent-appellant had provided as his mother's address, or make simple inquiries of respondent-appellant's relatives regarding his whereabouts. This Court reviews the issue of personal jurisdiction de novo. *In re Terry*, 240 Mich App 14, 20; 610 NW2d 563 (2000).

Respondent-appellant was entitled to notice of the nature of the proceeding and an opportunity to be heard. *In re Slis*, 144 Mich App 678, 683; 375 NW2d 788 (1985). The family court's jurisdiction is derived from statute, and failure to comply with statutory notice requirements would render jurisdiction over respondent-appellant defective, and the order terminating his parental rights void. *In re Mayfield*, 198 Mich App 226, 230-231; 497 NW2d

578 (1993), citing *In re Brown*, 149 Mich App 529, 540; 386 NW2d 577 (1986). In a child protective proceeding, one named as a respondent must be personally served with the petition and notice of hearings, unless the trial court judge is satisfied that personal service is impracticable. MCL 712A.12; MCL 712A.13; MCR 3.920(B) and (C). If the trial court judge finds that personal service is impracticable or cannot be achieved, the court may order service in any manner reasonably calculated to give notice of the proceedings and an opportunity to be heard, including publication. MCL 712A.13; MCR 3.920(B)(4)(b).

The evidence presented showed that, although respondent-appellant did not attend the termination hearing or the four hearings preceding it, he provided the agency with his last known address and his mother's address as a mailing address, and petitioner listed both addresses on the termination petition. When discussing service of process at the pretrial hearing, petitioner reported respondent-appellant's last known address and offered his mother's mailing address to the trial court, but the trial court stated a mailing address was not needed because it intended to order personal service and publication. Publication with regard to respondent-appellant was effected in the Detroit Legal News on August 4, 2008, before personal service was attempted at his last known address on August 15, 2008. An Affidavit of Non-Service filed with the trial court stated respondent-appellant's last known address was vacant, was locked with a realtor's lock, had its cable wires cut, and had the electric meter locked. Certified or registered mail was not attempted at either respondent-appellant's last known address or his mother's mailing address. At the outset of the termination hearing, the trial court referred to the Affidavit of Non-Service and found personal service impracticable, but noted publication had been made, and proceeded with the hearing.

The trial court did not err in finding personal service impracticable and relying on publication to affect personal jurisdiction over respondent-appellant, even though publication was made before an attempt at personal service. No provision of Michigan statute, court rule, or case law requires that personal service must be attempted before the trial court orders alternate forms of service. Here, the trial court simultaneously ordered personal service and publication. The Affidavit of Non-Service made it clear that personal service was impracticable at respondent-appellant's last known address.

Nor did the trial court err in finding personal service impracticable and publication sufficient to confer personal jurisdiction over respondent-appellant. Respondent-appellant previously reported moving from his last known address, and letters from respondent-appellant's attorney to that address did not garner a response or his attendance at hearings. Thus evidence showed service by mail to that last known address would not have been effective. Service by mail to respondent-appellant's mother's address, or questioning relatives to ascertain respondent-appellant's whereabouts, was not necessary because both the general and local court rules allowed the court to rely on either publication or mail to assume jurisdiction, and publication was used. Respondent-appellant did not provide the agency with a change of address, visit the children, attend hearings, or inquire about the status of the proceeding. Thus, we reject respondent-appellant's claim that the trial court lacked personal jurisdiction over him.

Additionally, the trial court did not clearly err in finding that the statutory grounds for termination of respondent-appellant's parental rights were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The original conditions of adjudication with respect to respondent-appellant were domestic violence and a

criminal history. Before the initial disposition, however, respondent-appellant's marijuana use and failure to provide financial support also became conditions of adjudication. These conditions constituted failure to provide proper care or custody of the children. More than two years elapsed between the June 13, 2006 initial disposition and the September 2, 2008 termination hearing. The evidence showed the foster care agency made multiple referrals for respondent-appellant and adequately serviced his case. Respondent-appellant completed parenting classes one year after the initial disposition. He was referred to domestic violence counseling on February 8, 2007 and completed a domestic violence assessment, but he did not participate further. Respondent-appellant provided evidence of only six drug screens in two years, of which three were positive for marijuana, and he did not participate consistently in substance abuse counseling. He tested positive for marijuana at the initial disposition and at the adjourned termination hearing. He was ordered to visit the children weekly at the agency, but visited them only four times in two years. He last visited them March 26, 2008, five months before the termination hearing. By the time of the termination hearing, respondent-appellant had moved from the home he had leased for several months and his whereabouts were unknown. During the entire two-year proceeding, respondent-appellant failed to provide documentation of employment or demonstrate an ability to provide for the children.

The trial court adjourned the first scheduled termination hearing to allow respondent-appellant additional time to become compliant with services, but during two years respondent-appellant failed to rectify the conditions of marijuana use and domestic violence, failed to establish a stable home and demonstrate financial ability to care for the children, and failed to demonstrate through supervised visits an ability to properly parent them. The trial court did not err in finding under MCL 712A.19b(3)(c)(i) and (g) that respondent-appellant had failed to rectify the conditions of adjudication or become able to provide proper care or custody of the children, and he was not reasonably expected to do so within a reasonable time. In light of respondent-appellant's lack of effort to obtain a stable home and become a suitable parent for his children, and seeming lack of concern for their wellbeing, the trial court did not err in finding under MCL 712A.19b(3)(j) that the children would likely suffer harm in his care.

Respondent-appellant maintained contact with the agency caseworkers until the termination petition was filed. However, he failed to provide a change of address or attend the termination hearing, or any hearings during the six months leading up to the termination hearing, and did not present any evidence indicating he maintained regular contact with the children. Respondent-appellant may have had unauthorized visits with the children at his sister's home, and may have believed he was pursuing their custody, but he did not present evidence to support that finding. He did not visit the children or provide any evidence he was participating in services for five months before the termination hearing. Based on the evidence presented, the trial court did not err in finding under MCL 712A.19b(3)(a)(ii) that respondent-appellant had deserted the children and had not sought their custody for more than 91 days. The children were one and three years old at the outset of this proceeding, and the trial court did not err in finding under MCL 712A.19b(3)(k)(i) that respondent-appellant had abused them by abandoning them at a very young age.

Finally, the trial court did not err in finding termination was in the best interests of the minor children. MCL 712A.19b(5). The children resided with their mother before their removal and were then placed with respondent-appellant's sister for two years. Respondent-appellant did

not present evidence of contact or a bond with his children but, whether bonded or not, in two years he had not become able to properly care and provide for the children, and reunification was not possible within a reasonable time. The trial court correctly noted the primary concern in the proceeding was providing the children a suitable person they could rely on for proper, stable, permanent care.

Affirmed.

/s/ Deborah A. Servitto
/s/ Peter D. O'Connell
/s/ Brian K. Zahra