STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of TRAY'VON DIAMEL DIGGS, DOMINICK DELAZ FADI DIGGS, ANTHONY M. WITHERSPOON, JA'LEN H. WITHERSPOON, and DESMOND R. DIGGS-WITHERSPOON, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DIAMOND NACOLE WITHERSPOON,

Respondent-Appellant,

and

HAROLD DIGGS,

Respondent.

UNPUBLISHED
May 21, 2009

No. 287287
Wayne Circuit Court
Family Division
LC No. 06-454045-NA

Before: Wilder, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

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

Contrary to respondent-appellant's argument, 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 trial court assumed permanent wardship over respondent-appellant's infant daughter (referred to as "Baby Girl") and temporary wardship over her five sons (the minors at issue in the present case) after respondent-appellant wrapped the infant in a plastic bag and hid her in the basement of her home for several hours after giving birth. The conditions of adjudication were respondent-appellant's callous and life-threatening treatment of Baby Girl, long-term opiate use, and lack of food and furniture in the home. These conditions all

constituted a failure to provide proper care and custody of the children. The trial court gave respondent-appellant an opportunity to plan for her sons and demonstrate that her treatment of Baby Girl was an aberration, and she was provided a treatment plan at the October 10, 2006, initial disposition. Twenty-one months elapsed before termination of respondent-appellant's parental rights to her five sons. The evidence showed that a lack of transportation was not the reason for termination of respondent-appellant's parental rights but served as respondent-appellant's excuse for failure to provide consistent drug screens showing that she was sober enough to properly care for and supervise five young boys. The caseworker's testimony that she provided bus tickets numerous times and mapped out exactly which buses respondent-appellant should take indicated lack of transportation was a specious excuse.

To respondent-appellant's credit, she completed and benefited from individual therapy, attended most family therapy sessions until they were suspended by the trial court, maintained the same home from which the children were removed, and completed parenting classes. However, she never stopped taking opiates, which she had done since they appeared in one son's system at birth in 2002, and she mixed them with alcohol. The evidence also showed that respondent-appellant did not sufficiently benefit from parenting classes because she allowed her five-year-old son access to a lighter three times and to a gun once during the short, four-month period when unsupervised visits were allowed, and she was unable to control the children at visits. After more than two years of intervention, the evidence was clear and convincing that respondent-appellant, whether due to opiate use or another reason, remained unable or unwilling to properly supervise, control, care for, provide for, or address the special needs of her children, and would not likely become able to do so within a reasonable time. The trial court did not err in finding, as a practical matter, that if respondent-appellant could not find a way to comply with services, she would certainly neglect the children's physical, emotional, and medical needs, as she had in the past, and the children would likely suffer harm if returned to her. The trial court did not clearly err in terminating respondent-appellant's parental rights under §§ 19b(3)(c)(i), (g), and (j).

Clear and convincing evidence also showed that respondent-appellant's parental rights were involuntarily terminated to Baby Girl on August 11, 2006, under §§ 19b(3)(b)(i), (g), (j), and (k)(v). Although she was provided an opportunity to demonstrate that her disregard of Baby Girl's welfare was not characteristic of her care for the other children, the evidence showed that respondent-appellant did not put forth effort sufficient to demonstrate her ability to meet the five boys' behavioral, physical, emotional, and medical needs, despite two years of interventional services. Therefore, the trial court did not clearly err in terminating respondent-appellant's parental rights under § 19b(3)(l).

Respondent-appellant also argues on appeal that service of the initial petition and notice of the preliminary hearing, as well as service of the May 26, 2006, Original Amended Permanent Custody Petition and notice of the first adjudication trial date, were insufficient to confer the trial court's jurisdiction over her, and that, therefore, all subsequent proceedings and orders, including the order terminating her parental rights, are void.

This Court reviews the issue of personal jurisdiction de novo. *In re Terry*, 240 Mich App 14, 20; 610 NW2d 563 (2000). Respondent-appellant did not raise the issue of ineffective service or lack of jurisdiction in the trial court and thus did not preserve it for review.

Unpreserved constitutional issues are reviewed for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

The family court's jurisdiction is derived from statute, and failure to comply with statutory notice requirements renders jurisdiction over a respondent defective. *In re Mayfield*, 198 Mich App 226, 230-231; 497 NW2d 578 (1993). In a child protective proceeding, the parent or guardian of a child, or one named as a respondent, must be personally served with the petition and notices of hearings, unless the trial court is satisfied that personal service is impracticable, in which case service may be effected by mail or publication. MCL 712A.12; MCL 712A.13; MCR 3.920(B) and (C). MCR 3.920(C)(2)(b) requires that notice of the preliminary hearing be given to the parent of the child as soon as the hearing is scheduled and that the notice may be given "in person, in writing, on the record, or by telephone." MCR 3.920(C)(3)(b) requires that "[n]otice of a hearing on a petition requesting termination of parental rights in a child protective proceeding be given in writing at least 14 days before the hearing." MCL 712A.13 provides:

> It shall be sufficient to confer jurisdiction if (1) personal service is effected at least 72 hours before the date of hearing; (2) registered mail is mailed at least 5 days before the date of hearing if within the state or 14 days if outside of the state; (3) publication is made once in some newspaper printed and circulated in the county in which said court is located at least 1 week before the time fixed in the summons or notice for the hearing.

Statutory notice requirements are strictly construed, but are also construed to avoid absurd or unreasonable results. *In re Mayfield, supra* at 234; see also *Detroit International Bridge Co v Commodities Export Co*, 279 Mich App 662, 664; 760 NW2d 565 (2008).

The lower court record indicates that respondent-appellant was not served with the April 19, 2006, petition[1] that initiated this proceeding, or with notice of the April 19, 2006, preliminary hearing, but that petitioner expressed its intention to amend the original petition upon further investigation; the preliminary hearing was continued to allow for amendment as well as for respondent-appellant's presence. The fact that respondent-appellant appeared at the April 26, 2006, hearing indicated she had received notice either in person, in writing, on the record, or by telephone in accord with MCR 3.920(C)(2)(b). She was personally served with a copy of the April 26, 2006, amended petition at the close of the preliminary hearing at the same time that all parties received a copy of the newly amended petition, and she made no objection to tardy service, waived a reading of the petition, and waived the requirement of finding probable cause.

With regard to service of the petition requesting termination of respondent-appellant's parental rights, the lower court record indicates that respondent-appellant was not personally served with notice of the adjudication trial and the May 26, 2006, Original Amended Permanent Custody Petition, which initially requested termination of her parental rights to all six children but was orally amended at the outset of trial to request termination only with regard to Baby Girl and temporary custody with regard to respondent-appellant's five sons. The adjudication trial

[1] We note that respondent-appellant was in jail at the time.

commenced on June 6, 2006, and continued on several subsequent dates. Without a finding by the trial court that personal service was impracticable, and even though respondent-appellant's address was known and did not change during the proceedings, respondent-appellant was served by certified mail postmarked June 1, five days before commencement of the adjudication trial.

Respondent-appellant did not contest the lack of personal service or timeliness of service, but attended the five-day adjudication trial, and she did not appeal the trial court's August 11, 2006, termination of her parental rights to Baby Girl or its assumption of jurisdiction over her five sons. Thereafter, respondent-appellant attended the next nine hearings, with the exception of the June 18, 2008, hearing, without raising the issue of jurisdiction.

Failing to provide respondent-appellant personal service of the May 26, 2006, petition requesting termination of her parental rights was plain error. Although it could be argued that the allegations in the May 26, 2006, petition were identical to the allegations in the April 26, 2006, petition that respondent-appellant had personally received a copy of, with minor added allegations relating to respondent-appellant's husband, the later petition requested termination of her parental rights. The relief sought was significantly different, and respondent-appellant should have been personally and timely placed on notice of the drastic relief petitioner was requesting, even though that request for relief was orally modified at the trial.

However, reversal is not required because any plain error did not affect respondent-appellant's substantial right to notice, deprive her of an opportunity to be heard, or otherwise adversely affect her right to receive a fair trial. As this Court previously stated in *In re Gillespie*, 197 Mich App 440, 446-447; 496 NW2d 309 (1992):

> However, given that a probate court is to consider all hearings, from the initial adjudication or disposition hearing to the termination hearing, as a single continuous proceeding, *In re LaFlure*, 48 Mich App 377, 391; 210 NW2d 482 (1973), given that respondent does not challenge the notice he received with regard to the review hearings or the termination hearing, given that respondent appeared at the termination hearing without claiming a lack of personal service, given the disruption collateral attacks of the nature of the attack raised in this case cause to the placement process, and given a child's need for permanency, stability, and finality, we believe that the general rules governing waiver of objections regarding service of process should apply in termination proceedings where a parent or parents appear at the termination hearing, challenge the petition for termination, and fail to challenge or raise the issue of lack of service of process arising out of prior proceedings.

Similarly in the present case, respondent-appellant's failure for more than two years to raise an objection to the time or manner of service, and her participation during the entire proceedings, waives her right to object in this collateral attack to the time or method of service and the trial court's jurisdiction. Respondent-appellant experienced a full opportunity to address the allegations against her, and any error in time or manner of service did not affect her substantial right to a fair trial and does not require reversal.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood