

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 6/11/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JAMONZ R.,) 1 CA-JV 12-0256
)
Appellant,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
SAMANTHA W., T.W.,) 103(G), Ariz. R.P. Juv. Ct.;
) Rule 28, ARCAP)
Appellees.)
)
_____)

Appeal from the Superior Court in Yavapai County

Cause No. P1300SV201000001

The Honorable David L. Mackey, Judge

AFFIRMED

Jamonz R., Appellant
In Propria Persona

Douglas

Samantha W., Appellee
In Propria Persona

Protected

P O R T L E Y, Judge

¶1 Jamonz appeals the termination of his parental rights. He contends that the service of process by publication was inappropriate. We disagree, and affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Jamonz (Father) and Samantha (Mother) are the unmarried parents of a child. Mother filed a private petition to terminate Father's parental rights in January 2010 alleging amongst other claims that he had abandoned the then nine-year-old child. She contacted Father through his MySpace page, but he refused to provide his address. Mother then attempted to locate him by other means, and filed an affidavit to support why she was serving him by publication in Maricopa County. A hearing was set for October 5, 2010. After Mother appeared and testified, the juvenile court found that: Father was "properly served with notice by publication;" Mother proved by clear and convincing evidence that he had abandoned the child; and termination was in the child's best interest.

¶3 Father learned that his rights had been severed while in the county jail and before being sent to prison on December 16, 2011, in Maricopa County Cause No. CR2010-158088. Nearly eight months later, Father sent the court a "request to readdress [the] instant case."¹ His August 10, 2012 request was denied on September 27, 2012. Father then requested an expedited hearing, but the court found that his request was moot. Similarly, his motion for "contested requirement Rule 42"

¹ Father sent a letter to the court in early August, but it was returned without being considered because it was not in a "proper format" and had not been "served on the other party."

was denied on October 30, 2012. He then filed his notice of appeal challenging the October 30 ruling.

DISCUSSION

¶4 There are two issues we need to resolve in this appeal. First, did the juvenile court err on October 30, 2012, by dismissing Father's request for a contested hearing? Second, was the service of publication in 2010 sufficient to meet the standards of due process?

¶5 First, the juvenile court did not err by denying Father's request for a contested hearing. The court did not need to set a contested hearing because Father's parental rights had been terminated in October 2010. The termination order had not been reversed, vacated or set aside by the court pursuant to Arizona Rules of Civil Procedure 59 or 60, Arizona Rule of Procedure for the Juvenile Court 46(E), or by an appellate court. Consequently, the court did not err.

¶6 The second issue is whether the juvenile court erred by not setting aside the termination order after Father filed his August 2012 request to "readdress" the case. In order to address the issue we must first determine whether the court properly found that service by publication was sufficient.

¶17 Citing to Arizona Rule of Procedure for the Juvenile Court 64(D), Father contends that he did not receive notice of the service by publication. Specifically, he contends that Rule 64(D) required notice to be provided to the Secretary of the Interior and that he did not receive notice from the Secretary.

¶18 Rule 64(D) does not support his argument. The provision of Rule 64(D) requiring notice to be provided to the Secretary of the Interior only applies if the child is an Indian child and entitled to the protections of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1903 (West 2013). Here, there is no information in the record that the child is an Indian child. Moreover, even if the child is an Indian child, she is not subject to the Indian Child Welfare Act because she remains in her Mother's custody. Consequently, Mother was not required to give notice to the Secretary of the Interior and the Secretary did not have to give notice to Father.

¶19 Moreover, Father does not challenge the fact that the affidavit supporting service by publication stated that he refused to give Mother his address in February 2010. His failure to provide his address prevented Mother from serving him directly or complying with Arizona Rule of Civil Procedure

4.1(1);² either method would have provided him with direct notice of the termination proceeding.

¶10 Father's August 2012 pleading demonstrates that service by publication was appropriate. His attachment to the pleading states the following: he and Mother had a "one-night stand" when he was nineteen and she was sixteen; when he subsequently ran into her on a bus she told him she was pregnant with his child, but he did not believe her; he saw her about four times before he was sent to prison; after he got out of prison two years later, he was out for a short time before he was sent back to prison; he was released in 2008; he was subsequently arrested and now finds himself back in prison until 2019.

¶11 In the attachment, he also states that he expected Mother, Child Protective Services, or the courts to send him paperwork if the child was his. But, he did nothing for years. In fact, even after he was convinced that the then eight-year-old child was his, he did nothing: he did not file a paternity action; he did not seek custody, parenting time (visitation), or seek to pay child support. He had a window of opportunity to be

² The record suggests that Father was not in jail or prison between January and September 2010. He was subsequently arrested for possession of marijuana and dangerous drugs, and charged with five drug offenses in Maricopa County Cause No. CR2010-158088. He pled not guilty to the charges, went to trial, was convicted, and subsequently sentenced on December 16, 2011.

the father he now claims he wants to be, but the window closed. Consequently, service by publication was appropriate and the juvenile court did not err by denying his request to readdress the issues.

CONCLUSION

¶12 Based on the foregoing, the juvenile court did not err in its rulings.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

DONN KESSLER, Judge

/s/

LAWRENCE F. WINTHROP, Chief Judge