STATE OF MICHIGAN

COURT OF APPEALS

In re JUSTIN S. JACKSON, Minor.

DOREEN JACKSON and NOEL S. JACKSON,

Petitioners-Appellees,

v

LORI MARIE JACKSON,

Respondent-Appellant.

UNPUBLISHED
June 16, 1998

No. 204343
Shiawassee Probate Court
LC No. 96-002733

Before: Corrigan, C.J., and Hoekstra and Young, Jr., JJ.

PER CURIAM.

Respondent appeals as of right from a probate court order terminating her parental rights to the minor child under the stepparent adoption provision of the Michigan Adoption Code, MCL 710.51(6); MSA 27.3178(555.51)(6). We affirm.

This case arises from the petition to terminate respondent's parental rights and approve the adoption of the minor child by the stepmother-petitioner. Respondent, who was personally served with notice of the termination hearing, appeared at the hearing on July 10, 1996, but requested that the hearing be adjourned so she could retain counsel. The probate judge granted respondent her request. See MCL 710.25(2); MSA 27.3178(555.25)(2) (requiring that an adjournment or continuance of a proceeding be granted only upon a showing of good cause). The hearing was postponed until June 4, 1997. After three unsuccessful attempts to personally serve respondent with notice of the second hearing, petitioners mailed respondent notice on May 22, 1997, by first-class mail to her last known address, and the notice was forwarded to respondent's new address.

Respondent appeared at the second hearing, but again requested an extension of time, claiming that she had "absolutely no time to prepare or contact a lawyer." The court denied her request and proceeded with the hearing. After finding that respondent had substantially failed to comply with the support obligation and substantially failed to exercise her visitation rights or communicate with the child,

the court terminated respondent's parental rights. On appeal, respondent raises one issue for our review: whether she was denied due process because she allegedly received untimely notice of the second hearing in this case.[1] We reject her contention.

The basic requirement of due process is that a person be given a meaningful hearing before an impartial decision-maker after having been afforded reasonable notice. *Herman v Chrysler Corp*, 106 Mich App 709, 718; 308 NW2d 616 (1981) (citing *Matthews v Eldridge*, 424 US 319; 96 S Ct 893; 47 L Ed 2d 18 (1976)). Section 51(6) of the Adoption Code specifically states that "the court upon notice and hearing may issue an order terminating the rights of the other parent." MCL 710.51(6); MSA 27.3178(555.51)(6). According to MCR 5.750, adoption proceedings are governed by the rules generally applicable to probate proceedings, MCR 5.001 *et seq.*, except as modified. MCR 5.752, which governs the manner and method of service in adoption proceedings, is one such modification pertinent to this case. MCR 5.752(A) is generally entitled "service of papers" and is divided into three categories of papers, each requiring its own method of service. This case concerns subrule (2)(b) ("a petition to terminate the parental rights of a noncustodial parent") and subrule (3) ("all other papers").

First, MCR 5.752(A)(2)(b) requires that the petition to terminate parental rights be served on the noncustodial parent either by personal service under MCR 5.105(B)(1) or by certified mail, return receipt requested. See also MCL 710.24; MSA 27.3178(555.24) (petition for adoption), MCL 710.24a(1)(c); MSA 27.3178(555.24a)(1)(c) and MCR 5.205(C)(31)(c) (interested parties). Here, respondent was personally served in accordance with MCR 5.105(B)(1)(b)(i) and concedes in her brief on appeal that she received the petition.

Second, MCR 5.752(A)(3) provides that service of "all other papers" may be served by mail under MCR 5.105. MCR 5.105(B)(2) defines mailing a paper as "enclosing it in a sealed envelope with first-class postage fully prepaid, addressed to the person to be served, and depositing the envelope and its contents in the United States mail." MCR 5.105(B)(2) additionally states that service by mail is complete "at the time of mailing." Here, respondent was served by mail with notice of the second hearing. The notice, which was mailed on May 22, 1997, was complete at the time of mailing. Thus, petitioners complied with both MCR 5.752(A)(2)(b) ("a petition to terminate the parental rights of a noncustodial parent") and MCR 5.752(A)(2)(b)(3) ("all other papers"), satisfying the requirement that the court terminate the rights of the other parent only "upon notice and hearing," MCL 710.51(6); MSA 27.3178(555.51)(6).

Even assuming arguendo that respondent's notice of the second hearing was defective, respondent received actual notice of the hearing, appeared at the hearing and testified at the hearing. Compare *Laird v Rinckey*, 371 Mich 96; 123 NW2d 243 (1963). In light of the more than eleven months that passed between the first and second hearings, respondent cannot legitimately argue that she lacked notice of the nature of the proceedings nor a reasonable time in which to prepare a defense. See, e.g., *In re Guardian Ad Litem Fees*, 220 Mich App 619, 625; 560 NW2d 76 (1996). Respondent's failure to obtain counsel within that time does not mean that she was denied due process. Last, we point out that despite respondent's claim at the second hearing that she did not have sufficient time to prepare or contact counsel, respondent has yet to demonstrate prejudice resulting from the

probate court's denial of her second request for time.[2] See *Tisbury v Armstrong*, 194 Mich App 19, 20; 486 NW2d 51 (1991) (finding that cases where a denial of adjournment was proper have always involved some combination of numerous past continuances, failure of the movant to exercise due diligence, and lack of any injustice to the movant). Therefore, on the facts of this case, we hold that respondent was not denied due process.

Affirmed.

/s/ Maura D. Corrigan
/s/ Joel P. Hoekstra
/s/ Robert P. Young, Jr.

[1] Respondent rightly declines to argue that the procedural defect she alleges deprived the probate court of subject matter jurisdiction over this case. Unlike our decisions involving the jurisdictional requirements set forth in MCL 712A.2(b); MSA 27.3178(598.2)(b), see, e.g., *In re Brown*, 149 Mich App 529; 386 NW2d 577 (1986), this case involves the termination of parental rights under § 51(6) of the Adoption Code, which is a matter both substantively and procedurally different from cases involving the termination of parental rights under the Juvenile Code. *In re Sanchez*, 422 Mich 758, 766-771, 772-774 (Riley, J., dissenting); 375 NW2d 353 (1985). Accordingly, separate subchapters of the Michigan Court Rules govern adoption proceedings and proceedings in the juvenile division. See MCR 5.750, MCR 5.901.

[2] Arguably, respondent in this case has not preserved the issue for our review because she did not move for a rehearing in the lower court pursuant to MCL 710.64; MSA 27.3178(555.64) and MCR 5.756. See, e.g., *In re Baby Girl Fletcher*, 76 Mich App 219, 221; 256 NW2d 444 (1977).