

STATE OF MICHIGAN
COURT OF APPEALS

In the matter of AMBER MAE PAGE, Minor

CHARLES LEWIS PAGE, III, and LISA ANN
PAGE,

UNPUBLISHED
August 21, 1998

Petitioners-Appellees,

v

No. 208454
Oakland Juvenile Court
LC No. 97-027625

BUFFY MAE TIDWELL,

Respondent-Appellant.

Before: Doctoroff, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Respondent appeals as of right from a juvenile court order permanently terminating her parental rights. We reverse.

Petitioners filed a petition for a stepparent adoption on April 2, 1997. On August 13, 1997, petitioners filed a proof of service indicating that a notice of hearing for the termination of respondent's parental rights had been mailed to respondent at an address in the City of Portland, Tennessee. The scheduled termination hearing was held before a referee on September 3, 1997. Respondent did not appear. On the basis of the referee's findings, the juvenile court issued an order terminating respondent's parental rights pursuant to the grounds set forth in MCL 710.51(6); MSA 27.3178(511)(6). A copy of the termination order was then mailed to respondent at an address in the City of Mt. Juliet, Tennessee. On September 25, 1997, Oakland County Friend of the Court received two letters from respondent, dated September 16, 1997, in which respondent complained that she had not been given any notice of the termination hearing. The juvenile court issued an order of adoption on October 1, 1997.

On appeal, respondent argues that she was not afforded proper notice of the termination hearing. We agree. Under MCL 710.51(6); MSA 27.3178(511)(6), a court may issue an order

terminating the parental rights of the noncustodial parent “upon notice and hearing.” The manner and method of service in adoption proceedings is governed by MCR 5.752. At the time petitioners filed their proof of service, MCR 5.752(A) provided that papers other than a “notice of intent to release or consent” could be served by personal service or by mail under MCR 5.105.¹ Under MCR 5.105(A)(2), service by mail “may be made to the *current* address of an interested party.” (Emphasis added.) Service by mail is complete at the time of mailing. MCR 5.105(B)(2). Personal service by certified mail, return receipt requested, is made when the individual to be served receives the paper. MCR 5.105(B)(1)(b)(iii). In cases where the whereabouts of the noncustodial parent cannot be ascertained after diligent inquiry, former MCR 5.752(C) provided that the trial court could direct any manner of substitute notice of hearing.²

Here, it is clear that when petitioners attempted to serve respondent with notice of the termination hearing, the Portland address was not respondent’s “current” address. First, petitioners admit in their brief on appeal that mail sent to the Portland address “had been returned as forwarding expired.” Second, a letter from the Oakland County Friend of the Court to both petitioner Charles Page and respondent, dated April 29, 1997, listed the Mt. Juliet address, rather than the Portland address, as being respondent’s address. Accordingly, there was no effective service by mail. See MCR 5.105(A)(2). Likewise, because there is no evidence in the record that the certified letter was ever received by respondent, the attempted personal service by certified mail, return receipt requested, was also ineffective. See MCR 5.105(B)(1)(b)(iii). Finally, despite the facts suggesting that respondent no longer resided at the Portland address, petitioners made no effort to obtain substitute service.

Although we are reluctant to require that an adoption be set aside, see *In re Koroly*, 145 Mich App 79, 87; 377 NW2d 346 (1985), we are equally aware that the permanent termination of parental rights is an extremely serious matter, see *In re Sanchez*, 422 Mich 758, 765; 375 NW2d 353 (1985). Because respondent did not receive the notice required by statute and court rule, we hold that the juvenile court erred in terminating her parental rights.

Reversed.

/s/ Martin M. Doctoroff
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot

¹ MCR 5.752 has subsequently been amended to specifically provide that a petition to terminate the parental rights of a noncustodial parent may be served either through personal service or by certified mail, return receipt requested.

² The amended version of MCR 5.752 is substantially the same.