

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MARY FRANCES O'NEAL,
KELLY LYNN O'NEAL and MARK ANTHONY
O'NEAL, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ERIC M. O'NEAL,

Respondent-Appellant,

and

ROSE MARIE MERSIER, a/k/a ROSE MARIE
MILLER,

Respondent.

UNPUBLISHED

January 4, 2000

No. 217464

Wayne Circuit Court

Family Division

LC No. 96-339381

Before: Saad, P.J., and McDonald and Gage, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from the family court order terminating his parental rights to the minor children under MCL 712A.19b(3)(a)(ii), (c)(i), (g) and (j); MSA 27.3178(598.19b)(3)(a)(ii), (c)(i), (g) and (j). We affirm.

Respondent argues that reversal is required for failure to provide proper service of notice of the termination proceeding. We disagree.

A failure to provide notice of a termination proceeding as required by statute, MCL 712A.12; MSA 27.3178(598.12), is a jurisdictional defect that renders all proceedings in the trial court void. *In*

re Adair, 191 Mich App 710, 713-714; 478 NW2d 667 (1991). Although personal service of process is generally required, MCL 712A.13; MSA 27.3178(598.13) allows for alternative methods of service if the court determines that personal service is impracticable. *In re Adair, supra* at 714. Here, personal service was attempted at respondent's last known address, but was unsuccessful. Service was then effectuated both by certified mail, which was received and signed for by respondent's mother, and by publication.

The record reveals that personal service was impracticable because respondent's whereabouts were unknown. Respondent had not had any contact with the caseworker or visited with the children since January 1997, and the caseworker had been unsuccessful in locating respondent through a computer check, or by questioning either the children or respondent's mother, with whom respondent was believed to be living.

Respondent asserts that the caseworker should have checked to see if he had a driver's license or state identification card, but he does not assert, nor is there any indication in the record, that these methods would have revealed his whereabouts. In any event, the record indicates that respondent nonetheless had actual notice of the termination hearing because he telephoned the court on the date of the hearing to indicate that he would not be attending because of swollen feet. Under these circumstances there is no basis for believing that the court could have accomplished more had respondent been personally served. See *In re Mayfield*, 198 Mich App 226, 233-235; 497 NW2d 578 (1993).

It is noteworthy that respondent's parental rights were terminated, in part, pursuant to § 19b(3)(a)(ii) (desertion), a ground that was clearly supported by clear and convincing evidence. MCR 5.974; *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Affirmed.

/s/ Henry William Saad
/s/ Gary R. McDonald
/s/ Hilda R. Gage