STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JULIAN WESLEY GENTRY and JUSTIN DAVON JUDGE, Minors.

CASSANDRA GENTRY,

Petitioner-Appellee,

v

CLINTON JUDGE,

Respondent-Appellant,

and

DWIGHT PICKETTE,

Respondent.

UNPUBLISHED
May 16, 2000

No. 215271
Wayne Circuit Court
Family Division
LC No. 98-366039

Before: Gribbs, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Respondent-appellant Clinton Judge (hereinafter "respondent") appeals as of right from the order terminating his parental rights to the minor child Justin Judge, pursuant to MCL 712A.19b(3)(f); MSA 27.3178(598.19b)(3)(f). We affirm.

There is no merit to respondent's claim that he was not provided with sufficient notice of the termination hearing. *In re Atkins*, 237 Mich App 249, 251; 602 NW2d 594 (1999). Although respondent was not personally served pursuant to MCL 712A.12; MSA 27.3178(598.12), he was provided notice of the termination hearing by certified mail to his prison address on July 22, 1998. Even assuming that respondent was the legal father of the child, it does not appear that the failure to provide him with notice by personal service rendered these proceedings below void. *Atkins*, *supra* at 250-251. The form of service rendered in this case, notice by certified mail, was a recognized form of substituted service under MCL 712A.13; MSA 27.3178(598.13); *In re Mayfield*, 198 Mich App

226, 232-233; 497 NW2d 578 (1993), and the facts indicate that personal service was impracticable, given respondent's incarceration for murder of the child's mother. Although brief testimony was taken at a hearing prior to notice being given to respondent, that hearing was adjourned in order to give respondent notice of the proceedings and an opportunity to appear. Notice of the hearing was then provided and it is undisputed that respondent did not respond to the notice within the fourteen day period prescribed in MCL 712A.13; MSA 27.3178(598.13). Afterwards, the termination hearing was reconvened and respondent's parental rights were terminated. Under these circumstances, we conclude that the proceedings were not void due to a deficiency in notice. MCL 712A.12; MSA 27.3178(498.12), MCL 712A.13; MSA 27.3178 (598.13).

Further, it appears from the record that respondent was not a "father" within the definition of MCR 5.903(4). He was never married to the child's mother and did not establish paternity over or adopt the child. MCR 5.903(4). That being the case, respondent was, at most, only the child's "putative father," who had not established paternity in a legally recognized manner and was not a noncustodial parent entitled to statutory service of process. MCL 712A.12; MSA 27.3178(598.12). *In re Gillespie*, 197 Mich App 440, 443-446; 496 NW2d 309 (1992). Here, the trial court complied with the notice requirements for a putative father. MCR 5.921(D). After taking initial testimony on the identity of the child's alleged natural father, the trial court adjourned the termination hearing to direct that notice be served on respondent by certified mail. MCR 5.921(D)(1). When fourteen days had elapsed after respondent received notice by certified mail, and he failed to appear or contact the trial court, the court proceeded with the termination hearing. MCR 5.921(D)(2). Respondent's argument that he was not provided with sufficient notice of the termination hearing is without merit.

Respondent also argues that the trial court failed to secure his presence for trial. There is no indication in the record, however, that respondent ever requested that he be allowed to attend the hearing or participate in any manner. Additionally, where respondent never contacted the court or appeared at the termination hearing, never requested counsel, and never established paternity over the child, the trial court did not err in failing to appoint legal counsel for respondent. MCR 5.915(B); MCR 5.921(D).

Next, there is no merit to respondent's claim that the admission of alleged hearsay testimony at the termination hearing constituted reversible error. We are not convinced that Cassandra Gentry's testimony that respondent never established paternity over the child amounted to inadmissible hearsay. Even if it were hearsay, however, its admission would have been harmless error. Respondent's parental rights were terminated because he failed to support or assist in supporting the child and failed to contract or communicate with the child for a period of two years or more, not because he failed to establish paternity. Nor is it apparent from the record that Cassandra Gentry's testimony that respondent had been convicted of murdering Michelle Gentry and was serving a twenty-five-year minimum sentence was, in fact, hearsay. The murder victim, Michelle Gentry, was Cassandra Gentry's daughter and there is nothing in the record to indicate that Cassandra's testimony was not based on her personal knowledge of these events.

Finally, contrary to respondent's contention, the trial court did not clearly err in finding that a statutory ground for termination, specifically § 19b(3)(f), was established by clear and convincing

evidence.[1] MCR 5.974(I); *In re Miller,* 433 Mich 331, 337; 445 NW2d 161 (1989). Further, respondent failed to show that termination of his parental rights was clearly not in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith,* 222 Mich App 470, 472-473; 564 NW2d 156 (1997). The trial court did not err in terminating respondent's parental rights.

Affirmed.

/s/ Roman S. Gribbs
/s/ Joel P. Hoekstra
/s/ Jane E. Markey

[1] Although respondent also claims that the trial court erred in terminating his parental rights under § 19b(3)(i), there is no indication in the record that the court relied on that statutory ground as a basis for termination.