STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of SHARNICE LATRICE JACKSON and JHONELL ROOSEVELT MOSLEY, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DEBORAH DYLONA MOSLEY,

Respondent-Appellant,

and

ROOSEVELT JACKSON and MICHAEL NICHOLAS,

Respondents.

UNPUBLISHED
May 23, 2000

No. 217685
Wayne Circuit Court
Family Division
LC No. 97-351530

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

PER CURIAM.

Respondent-appellant (hereinafter respondent) appeals as of right from the family court order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g) and (j); MSA 27.3178(598.19b)(3)(c)(i), (g) and (j). We reverse and remand.

Respondent contends that the court lacked jurisdiction to terminate her parental rights because she did not receive sufficient notice of the permanent custody proceedings. A failure to provide notice of a termination hearing as required by statute, MCL 712A.12, 712A.19b(2); MSA 27.3178(598.12), 27.3178(598.19b)(2), constitutes a jurisdictional defect that renders void all family court proceedings. *In re Adair*, 191 Mich App 710, 713-714; 478 NW2d 667 (1991); *In re Brown*, 149 Mich App 529, 534-542; 386 NW2d 577 (1986).

The family court found in its termination order that respondent was served with notice of the termination hearing "by personal service to her sister and through verbal notice by the [case] worker," and further that "[p]ublication was effectuated." Because statutes requiring notice to parents must be strictly construed, service upon respondent's sister cannot be deemed a proper substitute for personal service on respondent. *In re Atkins*, 237 Mich App 249, 251; 602 NW2d 594 (1999); *In re Kozak*, 92 Mich App 579, 582; 285 NW2d 378 (1979). Moreover, verbal notice by the caseworker is not a recognized manner of service. *In re Mayfield*, 198 Mich App 226, 231; 497 NW2d 578 (1993) (Lack of service is not cured even though a noncustodial parent is represented by counsel at the hearing and has received actual notice of the time and place of the hearing.); *In re Brown, supra* at 541-542.

With respect to service by publication, MCL 712A.13; MSA 27.3178(598.13) provides "[t]hat if the judge is satisfied that it is impracticable to serve personally such summons or the notice provided for in the preceding section, he may order service . . . by publication thereof." Service by publication is "sufficient to confer jurisdiction if . . . publication is made once in some newspaper printed and circulated in the county in which said court is located at least 1 week *before* the time fixed in the summons or notice for the hearing." [Emphasis added.] In this case, notice by publication occurred on October 22, 1998, eight days after the termination hearing commenced on October 14, 1998. Thus, notice by publication was untimely.[1]

Petitioner argues that further service on respondent was excused under MCR 5.920(F) because respondent was personally served with a summons for the initial temporary custody hearing. After the adjudication hearing, a dispositional order was entered placing the children in the court's temporary custody. Under MCL 712A.20; MSA 27.3178(598.20), the court could not subsequently proceed to termination without issuance and service of a fresh summons. MCR 5.920(F) does not apply to excuse initial service of a summons for a termination hearing, but instead only excuses subsequent, repetitive service after an initial summons for a termination hearing has been properly served and the proceedings are subsequently adjourned to a future date. *In re Atkins, supra*.

Because statutes requiring notice to parents must be strictly construed, and because respondent was not properly served with a summons and copy of the permanent custody petition, reversal is required. In light of our disposition of the notice issue, we need not reach respondent's contention that the family court erroneously concluded that clear and convincing evidence warranted termination of respondent's parental rights.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Gary R. McDonald
/s/ Hilda R. Gage
/s/ Michael J. Talbot

[1] The termination hearing was scheduled to continue on November 4, 1998, although at the close of the October 14, 1998 hearing the court indicated that "I will not be taking any additional testimony at the next hearing." While the October 22, 1998 published notice occurred thirteen days prior to the

continued hearing on November 4, 1998, it cannot be considered sufficient to confer the family court with jurisdiction when it occurred after the termination hearing's evidentiary phase. *In re Atkins, supra* (Statutes requiring notice to parents must be strictly construed.).

The family court adjourned the November 4, 1998 hearing until December 2, 1998 to accommodate attempts to serve respondent personally and by certified mail at her most recent address, as provided by respondent's counsel at the November 4 hearing. Personal service was unsuccessful because the address was a vacant home. An unsigned return of service indicated that certified mail was sent to this vacant home on November 9, 1998, but that the mail was returned undelivered. Although in some circumstances a certified mailing to a last known address is sufficient to confer jurisdiction on the family court, MCL 712A.13; MSA 27.3178(598.13), we cannot conclude that the instant mailing constituted sufficient notice to respondent when she did not otherwise receive proper notice of the initial, evidentiary phase of the termination hearing.