

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KATHERINE DANIELLE
BAHENA, Minor.

CYNTHIA ANN ZACHERY,

Petitioner-Appellee,

v

JUDI KAY NAIL-BROWN,

Respondent-Appellant.

UNPUBLISHED

September 24, 2009

No. 292168

Cass Circuit Court

Family Division

LC No. 08-000157

Before: Murphy, P.J., and Meter and Beckering, JJ.

PER CURIAM.

Respondent appeals as of right from a circuit court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(d) and (g). We affirm.

Respondent argues that the circuit court violated her due process rights by failing to have her personally served with the petition and notice of the hearing. We disagree.

“Due process in civil cases generally requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker.” *In re Juvenile Commitment Costs*, 240 Mich App 420, 440; 613 NW2d 348 (2000). In addition, a respondent in a child protective proceeding has a statutory right to notice. *In re AMB*, 248 Mich App 144, 173; 640 NW2d 262 (2001). A respondent must be served with the initial petition and a summons. MCR 3.920(B)(2)(b). A respondent must also be served with a summons for a trial or a termination hearing. MCR 3.920(F). Service of process should be made by personal delivery. MCR 3.920(B)(4)(a). If personal service cannot be made, the court may order that service be made “in any manner reasonably calculated to give notice of the proceedings and an opportunity to be heard, including publication.” MCR 3.920(B)(4)(b). Service of process is necessary to enable the court to exercise jurisdiction over the respondent. See *Alycekay Co v Hasko Constr Co, Inc*, 180 Mich App 502, 505-506; 448 NW2d 43 (1989).

The record indicates that once respondent’s current address was discovered, she avoided service of process. Consequently, the court authorized service, and service was made, by tacking and publication. Service of the summons for trial was also made by tacking, and notice of the dispositional hearing was sent to the same address. Respondent has not shown that these alternate

methods of service were not reasonably calculated to provide her with notice or even that she did not receive notice. Her only complaint is that she did not receive personal service. Because alternate means of service are allowed where necessary, MCR 3.920(B)(4)(b), and substituted service is sufficient to confer personal jurisdiction on the court, *In re SZ*, 262 Mich App 560, 565; 686 NW2d 520 (2004); MCL 712A.13, respondent has not shown error.

Respondent next argues that the circuit court violated her due process rights by failing to appoint counsel for her. We disagree.

Parents have fundamental due process rights in child protective proceedings. *In re CR*, 250 Mich App 185, 204; 646 NW2d 506 (2002). A parent also has a right to the effective assistance of counsel in child protective proceedings. *Id.* at 197-198. At a respondent's first court appearance, the court is required to advise the respondent of his or her right to retain counsel and to appointed counsel if indigent. MCL 712A.17c(4); MCR 3.915(B)(1)(a); MCR 3.965(B)(5). The court is required to appoint counsel if the respondent requests it and establishes indigency. MCL 712A.17c(5); MCR 3.915(B)(1)(b). Because respondent never appeared and never requested counsel during the proceedings, the court was not required to appoint counsel for her.¹ Thus, there was no error.

Finally, respondent argues that the trial court violated her due process rights by allowing petitioner to pay part of the lawyer-guardian ad litem's fee, which respondent asserts somehow compromised the duty of objectivity the lawyer-guardian ad litem owed to respondent. We disagree.

In a child protective proceeding, the court is required to "appoint a lawyer-guardian ad litem to represent the child." MCL 712A.17c(7). The lawyer-guardian ad litem is an attorney who represents the child. MCL 712A.13a(1)(g). He or she serves "as the independent representative for the child's best interests," and owes a duty to the child alone. MCL 712A.17d(1)(b). Therefore, the lawyer-guardian ad litem in this case did not owe a duty of objectivity to respondent; her duty was to advocate for the child's best interests "according to [her] understanding of those best interests, regardless of whether [her] determination reflects the child's wishes." MCL 712A.17d(1)(i). Further, when a lawyer-guardian ad litem is appointed, the court may assess the cost against a person responsible for the support of the party represented, which in this case was petitioner. MCL 712A.17c(8); MCR 3.916(D). Respondent's claim is without merit.

Affirmed.

/s/ William B. Murphy

/s/ Patrick M. Meter

/s/ Jane M. Beckering

¹ Every time court documents were tacked to the door of respondent's residence during efforts to personally serve her with notice of the proceedings, the documents contained a notice of her right to counsel, and her right to appointed counsel if she could not afford to hire one.