

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* O. A. FAURA, Minor.

UNPUBLISHED  
March 13, 2018

No. 339596  
Montcalm Circuit Court  
Family Division  
LC No. 2016-000754-NA

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Before: O'CONNELL, P.J., and HOEKSTRA and SWARTZLE, JJ.

PER CURIAM.

Respondent-mother appeals by right the trial court's order terminating her parental rights under MCL 712A.19b(3)(a) (desertion) and (c)(i) (conditions that led to adjudication continue to exist).<sup>1</sup> Respondent now contests service by publication to notify her of the hearing on the termination of her parental rights. We affirm.

I. BACKGROUND

The day after the minor child was born, the Department of Health and Human Services (DHHS) filed an abuse and neglect petition on the basis of anticipatory neglect. Respondent had voluntarily relinquished her parental rights to another minor child in July 2015 after DHHS began abuse and neglect proceedings. Respondent attended the first three hearings in this case, but she stopped participating altogether afterward. Starting in November 2016 through the termination hearing in July 2017, respondent did not participate in any services or visit the child.

Respondent failed to maintain contact with her attorney or the DHHS caseworker. Respondent's attorney and the DHHS caseworker attempted to contact respondent via telephone calls, voicemail messages, text messages, e-mail, written letters, and by contacting her employer. She did not respond to any of the attempted communications except for a text message in January 2017, and her telephone number was eventually disconnected. As of May 2017, the DHHS caseworker was not sure if respondent still lived in the area. Because respondent's whereabouts were unknown and she did not contact her attorney, the trial court allowed for service by publication of the notice of the termination hearing, scheduled for July 24, 2017.

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<sup>1</sup> The trial court also terminated the parental rights of respondent-father. However, he is not a party to this appeal.

Notice of the hearing was published in a newspaper printed and circulated in the county in which the trial court was located. Respondent did not attend the termination hearing. The trial court found statutory bases for terminating respondent's parental rights and that termination of her parental rights was in the best interests of the child.

## II. DISCUSSION

Respondent argues on appeal that her right to due process was violated because she was not personally served with notice of the termination hearing. Accordingly, respondent contends, the trial court lacked jurisdiction to terminate her parental rights. We disagree.

Respondent did not contest service by publication in the trial court. On the contrary, respondent's attorney agreed to service by publication. Therefore, the issue is unpreserved for appeal. See *Henderson v Dep't of Treasury*, 307 Mich App 1, 29; 858 NW2d 733 (2014). Generally, we review de novo constitutional claims, *In re TK*, 306 Mich App 698, 703; 859 NW2d 208 (2014), and issues of personal service and jurisdiction, *In re Terry*, 240 Mich App 14, 20; 610 NW2d 563 (2000). However, we review unpreserved constitutional claims for "plain error affecting substantial rights." *In re TK*, 306 Mich App at 703.

Respondent maintains that the trial court did not find personal service impracticable before ordering service by publication and did not consider testimony or a motion and affidavit before ordering service by publication. Generally, "failure to provide notice of a termination proceeding hearing by personal service as required by statute, MCL 712A.12 . . . , is a jurisdictional defect that renders all proceedings in the trial court void." *In re Atkins*, 237 Mich App 249, 250-251; 602 NW2d 594 (1999). However, a trial court may order service by publication if the trial court is satisfied that personal service is impracticable. MCL 712A.13. The court rules likewise permit service by publication if the trial court finds personal service impracticable "on the basis of testimony or a motion and affidavit[.]" MCR 3.920(B)(4)(b). Service by publication is sufficient to confer jurisdiction. MCL 712A.13(3). Construing MCL 712A.13 and MCR 3.920(B)(4)(b), this Court concluded that the statute prevails over the more detailed court rule because the issue is a substantive issue. *In re SZ*, 262 Mich App 560, 566-568; 686 NW2d 520 (2004). Because the statute does not require the trial court to consider certain types of evidence, this Court held that the trial court may "evaluate evidence other than testimony or a motion and affidavit when determining whether notice can be made by substituted service." *Id.* at 568.

In this case, the trial court did not err by allowing service by publication. The DHHS caseworker and respondent's attorney represented to the trial court respondent's failure to maintain contact despite their repeated attempts to communicate with her. In addition, respondent failed to participate in services or to attend the hearings. Taken together, these circumstances made it clear that personal service would have been impracticable.

Respondent further argues that DHHS should have interviewed the father to discover respondent's location and should have attempted service by mail at her last known address before the trial court ordered service by publication. Nothing in MCL 712A.13 or MCR 3.920(B)(4)(b) requires such action before the trial court may order service by publication.

Additionally, when the trial court ordered service by publication, respondent's attorney answered that she had no objection to that method of service when the trial court asked if she objected. When a party waives an objection to an issue in the trial court, he or she may not raise it as an issue on appeal. *People v Fetterley*, 229 Mich App 511, 520; 583 NW2d 199 (1998). Therefore, respondent cannot now seek reversal of the trial court's order of service by publication when she did not object to it.

We affirm.

/s/ Peter D. O'Connell

/s/ Joel P. Hoekstra

/s/ Brock A. Swartzle