



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-16-00093-CV

**IN THE INTEREST OF K.A.M., a Child**

From the 150th Judicial District Court, Bexar County, Texas  
Trial Court No. 2014-PA-01503  
Honorable Charles E. Montemayor, Judge Presiding

Opinion by: Sandee Bryan Marion, Chief Justice

Sitting: Sandee Bryan Marion, Chief Justice  
Patricia O. Alvarez, Justice  
Luz Elena D. Chapa, Justice

Delivered and Filed: July 27, 2016

**AFFIRMED**

Christopher M. appeals the trial court's order terminating his parental rights to K.A.M. In his sole issue presented on appeal, Christopher contends the trial court did not have personal jurisdiction over him because the substituted service used to serve him was improper. We affirm the trial court's order.

**BACKGROUND**

On June 24, 2014, the Texas Department of Family and Protective Services filed a petition to terminate Christopher's parental rights. That same day, the trial court appointed an attorney ad litem to represent Christopher.

On July 1, 2014, the Department filed a motion for substituted personal service of citation. The motion sought to leave a copy of the citation at a specific address, and the affidavit attached

to the motion stated the address was the residence where Christopher's mother lived and was the address Christopher listed on his recent bail bond. The trial court granted the motion and entered an order authorizing substituted service.

On January 8, 2016, the case was called for trial. Christopher and his attorney were present. Christopher's attorney stated he was making a special appearance on behalf of Christopher, asserting Christopher was not properly served and "we are not ready to proceed to trial." After reviewing the history of the case, the trial court announced trial would proceed. After the direct examination of one witness, the trial was recessed and reset for February 5, 2016.

On February 5, 2016, Christopher and his attorney were again present. Before trial began, Christopher's attorney again stated he was renewing Christopher's special appearance. Trial resumed, and Christopher's attorney participated during trial, making numerous objections and cross-examining witnesses. During closing argument, Christopher's attorney referred to the improper service but then also argued:

All that being said, in summary, Judge, I would ask that you deny the State's request and you maintain some sort of contact or some sort of rights for my client. I'll leave it up to the Court's discretion of what contact that could be; or whether it's supervised or not. But I also do not think that they have met their burden of proving that it's in the child's best interest to terminate my client's parental rights today.

At the conclusion of the trial, the trial court announced its decision to terminate Christopher's parental rights, appoint K.A.M.'s grandmother as managing conservator, and appoint K.A.M.'s mother as possessory conservator. Christopher appeals.

#### **DISCUSSION**

In the sole issue presented in this appeal, Christopher contends substituted service was improper because "the Department failed to exercise due diligence to locate an address at which he could be personally served." The Department and K.A.M.'s attorney ad litem respond the

substituted service was proper or, in the event the substituted service was improper, Christopher waived his complaint regarding the service of process when he made a general appearance at trial.

Whether a court has personal jurisdiction over a defendant is a question of law which we review de novo. *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002); *In re Sloan*, 214 S.W.3d 217, 222 (Tex. App.—Eastland 2007, orig. proceeding). “Personal jurisdiction over a party is generally established when the party is served with process.” *In re P.Y.M.*, No. 04-13-00024-CV, 2013 WL 4009748, at \*2 (Tex. App.—San Antonio Aug. 7, 2013, pet. denied) (mem. op.). “A party waives complaints regarding service of process if he makes a general appearance.” *In re D.M.B.*, 467 S.W.3d 100, 103 (Tex. App.—San Antonio 2015, no pet.); TEX. R. CIV. P. 120 (providing appearance by defendant in open court, either in person or by attorney, has “the same force and effect as if the citation had been duly issued and served as provided by law”).

“A party enters a general appearance when it (1) invokes the judgment of the court on any question other than the court’s jurisdiction, (2) recognizes by its acts that an action is properly pending, or (3) seeks affirmative action from the court.” *In re D.M.B.*, 467 S.W.3d at 103 (quoting *Exitto Electronics Co. v. Trejo*, 142 S.W.3d 302, 304-05 (Tex. 2004)). If a father’s attorney ad litem appears at a termination proceeding, announces “not ready,” but participates in the hearing by seeking the court’s consideration of the child’s best interest or otherwise, the father makes a general appearance and waives any complaint about service. *See, e.g., In re J.W.S.*, No. 04-15-00707-CV, 2016 WL 1464655, at \*1 (Tex. App.—San Antonio Apr. 13, 2016, no pet.) (mem. op.); *In re D.M.B.*, 467 S.W.3d at 103-04; *In re P.Y.M.*, 2013 WL 4009748, at \*2.

In this case, both Christopher and his attorney ad litem appeared at trial. Although Christopher’s attorney ad litem stated he was asserting a special appearance and announced not ready, the attorney: (1) fully participated in the hearing by objecting and questioning witnesses;

and (2) sought affirmative relief during closing argument by requesting the trial court to maintain Christopher's parental rights and by asserting the Department failed to establish that termination of Christopher's parental rights was in K.A.M.'s best interest. Accordingly, through the actions of the attorney ad litem, Christopher entered a general appearance and waived any complaint regarding service of process. See *In re J.W.S.*, 2016 WL 1464655, at \*1; *In re D.M.B.*, 467 S.W.3d at 103-04; *In re P.Y.M.*, 2013 WL 4009748, at \*2.

#### CONCLUSION

The trial court's order is affirmed.

Sandee Bryan Marion, Chief Justice