

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DE'VONTE MARTEZ PEARSON-PILTON, SARDE RENEE COWHERD, SHANICE ROCHELLE PILTON, KHADESIA ROCHELLE PILTON, and RAYGEEN ELIZABETH PILTON, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

HOPE ELAINE PILTON,

Respondent-Appellant,

and

WILLIAM WOODS and VINCENT GIBSON,

Respondents.

In the Matter of DE'VONTE MARTEZ PEARSON-PILTON, SARDE RENEE COWHERD, SHANICE ROCHELLE PILTON, KHADESIA ROCHELLE PILTON, and RAYGEEN ELIZABETH PILTON, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

UNPUBLISHED
August 25, 2000

No. 220026
Wayne Circuit Court
Family Division
LC No. 95-323901

No. 220378

WILLIAM WOODS,

Wayne Circuit Court
Family Division
LC No. 95-323901

Respondent-Appellant,

and

HOPE ELAINE PILTON and VINCENT GIBSON,

Respondents.

Before: Owens, P.J., and Jansen and R. B. Burns*, JJ.

PER CURIAM.

In Docket No. 220026, respondent-appellant Hope Elaine Pilton appeals as of right from the family court order terminating her parental rights to her children pursuant to MCL 712A.19b(3)(b)(i), (c)(i), (g) and (j); MSA 27.3178(598.19b)(3)(b)(i), (c)(i), (g) and (j). In Docket No. 220378, respondent-appellant William Woods appeals as of right from the same order terminating his parental rights to De'Vonte pursuant to the same statutory grounds, as well as MCL 712A.19b(3)(a)(ii); MSA 27.3178(598.19b)(3)(a)(ii). We affirm.

Respondent Pilton argues that the trial court erred in finding that statutory grounds existed to terminate her parental rights and in finding that termination of her parental rights was in the children's best interests. We review for clear error both the family court's decision that a ground for termination has been proven by clear and convincing evidence and the court's decision regarding a child's best interests. *In re Trejo*, ___ Mich ___; ___ NW2d ___ (Docket No. 112528, decided 7/5/00), slip op at 17.

The family court did not clearly err in finding that § 19b(3)(b)(i) was established by clear and convincing evidence. Respondent Pilton's three oldest children had been removed from her home because of physical abuse allegedly inflicted by their father and neglect. After the birth of Pilton's fourth child, the three were returned to Pilton's home on an extended visit, but all four children were removed after a baby-sitter reported that Sarde and Shanice had been physically abused. Although Pilton denied inflicting the children's bruises and tried to blame the baby-sitter, the children informed the foster care supervisor that their mother was responsible for their injuries. Pilton repeatedly denied abusing her children and told her therapist that the children's black eyes were caused by falls down stairs or being hit by an object thrown by another child. She also told the therapist that her children had been removed from her home the second time because of neglect, not abuse. At the termination hearing, Pilton again denied abusing her children.

Evidence also established that Pilton had difficulty controlling her anger. There were at least two incidents of inappropriate behavior reported at visitations at the Children's Center. During one

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

incident, Pilton cursed in front of the children and offered to fight another mother. On at least three occasions, foster care workers observed that Pilton had either scratches or bruises on her face, and she acknowledged on two occasions getting into fights with others.

In light of this evidence, the family court did not clearly err in finding that Pilton caused physical injury to both Sarde and Shanice. Further, because of Pilton's refusal to acknowledge abusing her children and her ongoing problems with managing her anger and engaging in physical confrontations, there was a reasonable likelihood that her children would suffer from injury in the foreseeable future if returned to her home. The same evidence, coupled with evidence of Pilton's ongoing inability to maintain a suitable home for her children, also supports the court's determination that termination was warranted under §§ 19b(3)(c)(i), (g) and (j).

The family court also did not clearly err in finding that termination of Pilton's parental rights was "clearly not contrary to the best interest of these children." The court noted that the children had been in foster care since 1995 and out of Pilton's care since 1996 and were at an age where permanent planning was essential for continued growth and development. The older children did not even want to participate in visitations with their mother. These findings are supported by the record. Because petitioner established statutory grounds for termination, and because the evidence did not establish that termination of Pilton's parental rights was clearly not in the children's best interests, the family court properly terminated respondent Pilton's parental rights. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo, supra*, slip op at 27.

Respondent-appellant Woods argues that reversal is required because of inadequate service and because publication in a legal newspaper was not reasonably calculated to provide him with notice of the proceedings that led to the termination of his parental rights. Whether the family court failed to satisfy a notice requirement involves a legal question of statutory interpretation that this Court reviews de novo. *In re IEM*, 233 Mich App 438, 443; 592 NW2d 751 (1999). A noncustodial parent must be personally served with a summons and notice of the petition and the time and place of a dispositional hearing or a contested termination hearing. *In re Gillespie*, 197 Mich App 440, 442; 496 NW2d 309 (1992). A failure to provide notice of a termination proceeding as required by statute, MCL 712A.12; MSA 27.3178(598.12), is a jurisdictional defect that renders all proceedings in the family court void. *In re Atkins*, 237 Mich App 249, 250-251; 602 NW2d 594 (1999). Statutes requiring notice to parents must be strictly construed. *Id.* at 251. However, alternative means of service are authorized by MCL 712A.13; MSA 27.3178(598.13). *Gillespie, supra* at 443.

MCL 712A.12; MSA 27.3178(598.12) requires that, after a petition has been filed in a child protection proceeding, the parent or guardian of the child must be notified of the petition and the time and place for the hearing by personal service, except as otherwise statutorily provided. Pursuant to MCL 712A.13; MSA 27.3178(598.13),

[I]f 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 registered mail addressed to their last known addresses, or by publication thereof, or both, as he may direct. It shall be sufficient to confer jurisdiction if (1) personal service is effected at

least 72 hours before the date of hearing; (2) registered mail is mailed at least 5 days before the date of hearing if within the state or 14 days if outside of the state; (3) 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.

MCL 712A.19b(2); MSA 27.3178(598.19b)(2) provides that “[n]ot less than 14 days before a hearing to determine if the parental rights to a child should be terminated, written notice of the hearing shall be served upon . . . [t]he child’s parents.”

The family court attempted personal service and service by certified mail at the address for Woods listed on the temporary custody petition. Service was unsuccessful, so notice was effectuated by publication on May 28, 1998, in the Detroit Legal News. When petitioner filed the permanent custody petition on October 5, 1998, personal service and service by certified mail was again attempted at the original address; the certified mail went unclaimed. After Woods’ mother appeared at one of the proceedings and informed the court that Woods lived with her, the court again ordered personal service and certified mail at her address, and service by publication was again ordered. Service by certified mail was then attempted at Woods’ mother’s address and was signed by respondent-appellant Pilton, who lived in the upstairs flat. When the sheriff notified the family court that he was unable to personally serve Woods at that address, notice by publication was again effectuated.

We conclude that adequate efforts were made to personally serve Woods. Because personal service could not be effected, service through the alternative means authorized by MCL 712A.13; MSA 27.3178(598.13) was sufficient. See *In re Mayfield*, 198 Mich App 226, 232; 497 NW2d 578 (1993). Woods’ argument that the court should have attempted substituted service through either regular mail or service on his mother is without merit. Neither of these forms of service is statutorily authorized.

Next, Woods argues that petitioner failed to establish by clear and convincing evidence that termination was appropriate under § 19b(3)(a)(ii), on the basis of desertion. Woods maintains that he was told by petitioner in October 1998 that he could no longer visit with De’Vonte. Woods argues, without citation to authority, that because his visitation was “interfered with” termination of his parental rights was not appropriate. We disagree. There is no indication in the lower court record that Woods ever attempted to establish paternity prior to the proceeding in which termination of his parental rights was recommended, that he attended any of the child protection proceedings concerning De’Vonte, or that he provided any support or care for the child. There is no record that he visited De’Vonte between June 1998 and December 2, 1998. Although Woods filed an affidavit of parentage on March 18, 1999, one week after the referee recommended that his parental rights be terminated, this belated interest in the child does not alter his lack of visitation or support for more than 91 days between June 1998 and March 1999, during which time he did not seek custody. Therefore, the family court did not clearly err in finding that § 19b(3)(a)(ii) was established by clear and convincing evidence. Because we find that subsection 19(b)(3)(a)(ii) was established by clear and convincing evidence, it is unnecessary to address the remaining statutory grounds for termination.

Finally, respondent Woods contends that termination of his parental rights was not in De’Vonte’s best interests. The family court found that termination of respondent Woods’ parental rights was “clearly not contrary to the best interest” of his child because he had not shown any interest in caring for the child or providing for his welfare. Woods failed to visit, provide support, or plan for the child and had abandoned the child for an extended period of time. We review for clear error the family court’s decision regarding the child’s best interests. *In re Trejo, supra*, at 17. Our review of the record convinces us that the family court did not clearly err in determining that termination of Woods’ parental rights was not contrary to his child’s best interests.

Affirmed.

/s/ Donald S. Owens

/s/ Kathleen Jansen

/s/ Robert B. Burns