

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JEJ, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TYLER BLAINES,

Respondent,

and

REYNELDA BANDARI, a/k/a REYNELDA
JACKSON,

Respondent-Appellant.

In the Matter of JEJ, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

REYNELDA BANDARI, a/k/a REYNELDA
JACKSON,

Respondent,

and

TYLER BLAINES,

Respondent-Appellant.

UNPUBLISHED
October 9, 2001

No. 227937
Wayne Circuit Court
Family Division
LC No. 94-315028

No. 227993
Wayne Circuit Court
Family Division
LC No. 94-315028

Before: White, P.J., and Sawyer and Saad, JJ.

PER CURIAM.

In these consolidated cases, respondents, Reynelda Bandari and Tyler Blaines, appeal as of right from the family court's order terminating their parental rights to minor child JEJ, and we affirm.

I. Lack of Personal Service

Mr. Blaines argues that the court violated his constitutional due process rights by failing to provide him with proper notice of the proceedings.

Specifically, Mr. Blaines contends that he was entitled to personal service of notice of the termination proceedings. We hold that Mr. Blaines was not entitled to personal service and that, therefore, no jurisdictional defect or violation of due process occurred. Our statutes and court rules require personal service on the parent or guardian of a child involved in a child protective proceeding. Because Mr. Blaines was not the guardian of JEJ and because he failed to establish his paternity of her, Mr. Blaines was not a parent or guardian to whom personal service is required.

Because personal jurisdiction is an question of law, we review the issue de novo. *In re NEGP*, 245 Mich App 126, 134; 626 NW2d 921 (2001). In a child protective proceeding, the family court's jurisdiction over a parent is defined by statute. *In re Mayfield*, 198 Mich App 226, 230-231; 497 NW2d 578 (1993). Specifically, MCL 712A.12 states that, after a petition is filed, the parent or guardian shall be personally served with notice of the petition and hearing.¹ Failure to comply with the statutory notice provision renders orders issued pursuant to the proceedings ineffective. MCL 712A.18(4); *In re Terry*, 240 Mich App 14, 21; 610 NW2d 563 (2000).

Under MCR 5.920(B)(2)(c), "the summons must be issued and served on the parent or person with whom the child resides" Further, "[i]f the person summoned is not the respondent, respondent shall be notified by service as provided in subrule (B)(4)," which provides for personal service or, if impracticable, service by certified mail or publication. MCR 5.920(B)(2)(c); MCR 5.920(B)(4)(a)-(d).

Personal service is required for the minor child's "parent or guardian." This requirement is reflected in our court rules which require personal service on the minor's "parent or person with whom the child resides" and the "respondent." Our Court has interpreted this language to require personal service of the summons, petition and notice of the termination hearing on the

¹ MCL 712A.13 provides for alternate methods of service sufficient to confer jurisdiction on the family court if personal service is impracticable.

noncustodial parent. *In re Gillespie*, 197 Mich App 440, 442; 496 NW2d 309 (1993); *In re Adair*, 191 Mich App 710, 713; 478 NW2d 667 (1991).

Though personal service is required under the statute, it does not define “parent” or “respondent,” so we look to the court rules for guidance. *In re Gillespie, supra* at 444. Under MCR 5.903(A)(12), a parent is “a person who is legally responsible for the control and care of the minor, including a . . . father.” A “father,” under MCR 5.903(A)(4), is a man married to the mother “at any time from the minor’s conception to the minor’s birth,” a man who legally adopts the child, who is named on the birth certificate, or whose paternity is established under MCR 5.903(A)(4)(d)(i)-(iv). The term “respondent” is defined in MCR 5.903(C)(8) as “the parent who is alleged to have committed an offense against a child or as defined in MCR 5.974(B).” MCR 5.974(B), in turn, provides that a respondent includes a father as defined by MCR 5.903(A)(4).

No evidence showed that Mr. Blaines had care of control of JEJ or that he acted in any way as her guardian. The trial court referred to Mr. Blaines as JEJ’s *putative* father and, though Ms. Bandari stated that Mr. Blaines signed a document when JEJ was born, the birth certificate on record with the county does not list Mr. Blaines as JEJ’s father, and no documentation or any other evidence presented at the proceedings meets the requirements in MCR 5.903(A)(4)(a)-(d). Therefore, Mr. Blaines is not a “father” or “parent” as defined by MCR 5.903(A)(4) or (12).

A *putative* father is not entitled to the same service and notice afforded a noncustodial natural parent or respondent. *In re Gillespie, supra* at 446. Mr. Blaines’ claims, however, that the trial court found probable cause to believe that he is JEJ’s natural father at a hearing on September 15, 1999. Therefore, he claims that, under MCR 5.921(D), he is entitled to service in accordance with MCR 5.920(B)(2)(c). However, Mr. Blaines misinterprets MCR 5.921(D) and fails to consider the court rule as a whole. MCR 5.921(D) describes a discretionary process by which a trial court may establish a putative father to be a natural parent. The rule allows the court to hear testimony regarding the identity and address of the natural father and, if it finds probable cause to believe that the putative father is the natural father, the court must serve him with notice, complying with MCR 5.920, that a petition has been filed and a hearing scheduled at which he may appear. However, contrary to Mr. Blaines’ argument, following this process, the putative father is not automatically deemed a natural father who is entitled to service forever thereafter. Rather, the court may then conduct a hearing to determine whether a preponderance of the evidence establishes the putative father as the natural father. The court may then allow the putative father fourteen days to establish his relationship to the minor. The putative father is always expected to take some action to establish paternity.

Mr. Blaines attended the initial hearing at which one attorney referred to him as “the father.” However, the court did not address the issue or make a probable cause determination of paternity, nor did Mr. Blaines make any statements regarding his paternity. Further, at that hearing, the court personally served Mr. Blaines with notice of the pretrial and, had he chosen to attend, the court could have conducted an examination to determine whether a preponderance of the evidence established him as JEJ’s natural father. The notice Mr. Blaines received included a petition, and stated that he had a right to counsel and that the hearing may result in temporary or permanent loss of his rights to JEJ. After Mr. Blaines received personal notice, the trial court had the discretion to conduct a hearing on his relationship to JEJ or, if he failed to appear or take steps to establish paternity, to determine that he waived all right to further notice, including the right to notice of termination of parental rights. MCR 5.921(D)(2)-(3).

Mr. Blaines argues that the court's use of the phrase "neither parent" at one pretrial hearing and petitioner's reference to "both parents" at the termination hearing, created an inference that the court found probable cause to believe that he is JEJ's natural father, entitling him to service under MCR 5.920. Clearly, however, the trial court did not make a finding of probable cause regarding his paternity. Nonetheless, the court personally served Mr. Blaines with notice of the October proceeding, thereby substantially complying with MCR 5.921(D)(1). Because Mr. Blaines did not appear for the pretrial and made no effort to establish paternity, the court could have correctly determined that Mr. Blaines waived all right to future notice. MCR 5.921(D)(3).

Though Mr. Blaines was not entitled to personal service, the court attempted to serve him personally, then by certified mail, and then by publication. Contrary to Mr. Blaines' claim, however, this attempt does not establish that the court considered Mr. Blaines as the natural father. Again, the court made no such finding and, therefore, was not required to serve Mr. Blaines personally. Accordingly, service by publication was proper, pursuant to MCR 5.920(B)(4)(d), which states that, "If personal service of a summons is unnecessary, the court may direct that it be served in a manner reasonably calculated to provide notice." Here, this is precisely what the court by ultimately serving Mr. Blaines by publication.

II. Grounds for Termination of Parental Rights

We also find that clear and convincing evidence supports the trial court's termination of Ms. Bandari and Mr. Blaines' parental rights.

The termination petition alleges that Mr. Blaines had not established paternity and did not visit or support JEJ. The petition also states that, "Mr. Blaines should have been aware of the mother's habits and has failed to take action about the welfare of his daughter." With respect to Ms. Bandari, the petition alleges crack cocaine use, no housing, inability to successfully complete a drug treatment program and non-compliance with a treatment plan, termination of parental rights to other children, and lack of cooperation with Protective Services in relinquishing custody of JEJ. Clearly, the petition sufficiently alleged statutory grounds for termination.

Further, the trial court correctly found that clear and convincing evidence supported termination under MCL 712A.19b(3)(c)(i) because more than 182 days elapsed and the conditions that led to the adjudication continued to exist. However, respondents claim that the trial court erred by admitting into evidence a termination order and findings of fact from a prior proceeding during which the court terminated Ms. Bandari's parental rights to two children, and terminated Mr. Blaines' parental rights to one child. We disagree.

The record of termination proceedings for the older children is part of the lower court record in this case. JEJ was named in the original petition, along with the older children, and her name was only removed because Ms. Bandari refused to allow Protective Services access to her. However, though two petitions were ultimately filed, the proceedings regarding all the children were handled as one case file by the family court.

Clearly, the trial court must know all the circumstances of the case, including those which prompted placement of the child in temporary custody. *In re LaFlure*, 48 Mich App 377, 390-

391; 210 NW2d 482 (1973). Because the termination of parental rights occurred at the initial dispositional hearing, in order to find that 182 days or more had elapsed since an initial dispositional order, the trial court necessarily relied on conditions leading to adjudication with respect to other children in the previous termination proceeding. See MCL 712A.19b(3)(c)(i). We hold that the trial court properly relied on the prior proceeding involving the older children and the length of time conditions existed, and could also calculate whether 182 elapsed based on that evidence. The plain language of subsection 19b(3)(c)(i) supports this conclusion because it states that “[t]he parent was a respondent in a proceeding brought under this chapter . . .” and does not specify that the court may only consider the current proceeding. MCL 712A.19b(3)(c)(i) (emphasis added).

The conditions leading to the termination proceedings existed for Ms. Bandari since 1994 and included drug abuse, failure to maintain suitable housing and failure to maintain a legal source of income. Ms. Bandari’s argument that she was not offered a treatment plan with respect to JEJ does not change the fact that she was a respondent in a child protective proceeding involving the other children, that she failed to comply with prior plan requirements, and that the conditions of drug abuse and lack of housing continued for well over 182 days since the initial dispositional order in the older children’s case.

The conditions leading to the termination of Mr. Blaines’ parental rights included his inability and/or refusal to provide care and support. These conditions continued throughout the entire proceedings, which lead to the termination of his rights to the older child. The conditions then continued with respect to JEJ.

Both respondents have failed to correct these conditions for several years, and are unlikely to do so within a reasonable time. Mr. Blaines has not shown a desire to take custody of JEJ and Ms. Bandari has not shown she has stopped using drugs. Clearly, as to both parents, the conditions that led to the adjudication continue to exist and the trial court properly terminated their parental rights on that basis.

Once a statutory basis for termination is shown, the court shall terminate parental rights unless it finds that the termination of those rights is clearly not in the child’s best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). Because the trial court properly found clear and convincing evidence supported termination under MCL 712A.19b(3)(c)(i), we need not address the other grounds for termination because one ground alone is sufficient. *Trejo, supra*, 462 Mich 360.

Nonetheless, we also find that clear and convincing evidence supported termination of Mr. Blaines’ parental rights under MCL 712A.19b(3)(a)(ii). This Court presumes that desertion has occurred after a failure to communicate with the child for six months or a failure to provide support. *In re Sterling*, 162 Mich App 328, 335; 412 NW2d 284 (1987). Testimony at the termination hearing established that Mr. Blaines did not visit JEJ during her six months in protective custody and no evidence supports Mr. Blaines’ argument that he may have visited JEJ without anyone’s knowledge. Evidence also showed that, throughout the proceedings, Mr. Blaines failed to provide any support for JEJ. Mr. Blaines’ abandonment is further evidenced by his failure to establish his paternity of JEJ, his failure to come forward with a plan to care for the child, and his failure to take any steps to acquire custody of her. Accordingly, the trial court properly terminated his parental rights on this basis.

We also find that clear and convincing evidence established that, without regard to her intent, Ms. Bandari failed to provide proper care and custody of JEJ and there is no reasonable expectation that she will be able to do so within a reasonable time. MCL 712A.19b(3)(g).

For years, Ms. Bandari failed to procure stable, suitable housing of her own and lived at shelters while JEJ was in her care. Further, Ms. Bandari did not successfully complete a drug treatment program and failed to stop using drugs over a three to five-year period. Ms. Bandari provided some evidence of employment in 1999, but did not have a steady, legal source of income for any length of time. Clearly, Ms. Bandari did not provide proper care and custody of JEJ during her entire three-year custodial period.

Ms. Bandari argues that she did not receive a treatment plan to allow her to correct the conditions leading to the adjudication. Services for Ms. Bandari stopped in September 1999 when the trial court terminated her parental rights to the other children and because she had not followed through with treatment for several months. A foster care supervisor testified that a treatment plan was prepared for Ms. Bandari after JEJ was removed from her custody, but Ms. Bandari made no contact with the agency and therefore did not receive it. Nonetheless, Ms. Bandari had a treatment plan for three years before JEJ entered foster care; Ms. Bandari clearly knew what steps she must take to regain custody of JEJ.²

Evidence also showed that Ms. Bandari failed to provide proper care and custody of two older children despite years of referrals and services. We have held that such evidence is relevant because, how a parent treats one child is probative of how that parent might treat another. *In re Powers*, 208 Mich App 582, 588-589; 528 NW2d 799 (1995). In light of this evidence, the trial court did not err in finding that Ms. Bandari failed to provide proper care and custody of JEJ or that it was unlikely that she would be able to do so within a reasonable time. With respect to Mr. Blaines, his failure to visit or attend proceedings for JEJ clearly shows his lack of interest in providing care and custody for her, and his long-term failure to do so for the older child also indicates that he is unlikely to do so for JEJ within a reasonable time.

Finally, the trial court correctly found that clear and convincing evidence established a reasonable likelihood that JEJ will be harmed if returned to Mr. Blaines' or Ms. Bandari's care. MCL 712A.19b(3)(j). Again, Mr. Blaines showed no interest or ability to care for JEJ and evidence showed that he allowed JEJ to remain in Ms. Bandari's custody when he had reason to know that she was not a suitable caretaker. This evidence strongly suggests that, should he obtain custody of JEJ, Mr. Blaines might relinquish her care to someone else, whether capable or not, which would place JEJ at considerable risk of harm. Further, Ms. Bandari never successfully completed a drug treatment program for cocaine and marijuana use and she stopped submitting to any drug tests in March 1998. Her failure to complete a drug program and her refusal to establish her sobriety would also place JEJ at risk of harm and further neglect.

² In fact, Ms. Bandari enrolled in a drug treatment program on the day of her termination hearing, further demonstrating her knowledge that, at the very least, drug treatment was required.

Affirmed.

/s/ David H. Sawyer
/s/ Henry William Saad