

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of STEVEN HOLLY, SIERRA  
HOLLY, and SCOTT HOLLY, Minors.

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DEPARTMENT OF HUMAN SERVICES, f/k/a  
FAMILY INDEPENDENCE AGENCY,

UNPUBLISHED  
October 20, 2005

Petitioner-Appellee,

v

JULIE ANN HOLLY,

Respondent-Appellant.

No. 261903  
Clinton Circuit Court  
Family Division  
LC No. 04-017374-NA

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Before: Kelly, P.J., and Meter and Davis, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(a)(ii), (c),<sup>1</sup> (g), and (j). We reverse and remand.

Neither respondent nor any counsel on her behalf appeared in any of these child protective proceedings through the time of the termination hearing. The initial petition listed respondent's last known address as "Tennessee," but mentioned that the children had previously spent time in foster care in Arkansas. In a proof of service form regarding the initial petition and summons, child protective services worker Angela Wright indicated that "[a]fter diligent inquiry" she could not serve respondent because she did not know respondent's whereabouts. At the preliminary hearing, the children's aunt and guardian, Wilma Holly, stated that she did not know where respondent lived. Wright later testified that "it was reported to me that [respondent] abandoned" the children, and that "Tennessee was what I was told was her last place of residence." The amended petition again listed respondent's last known address as "Tennessee," as well as the fact that the children reported that they "were in foster care twice while they lived in Arkansas in their mother's care," although they had "no idea where [respondent] lives now."

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<sup>1</sup> The trial court did not specify pursuant to which subrule, (c)(i) or (c)(ii), it intended to order termination, and petitioner did not set forth the applicable statutory ground in the amended petition seeking termination.

At the termination hearing, the following discussion occurred with respect to respondent's whereabouts and notice of the proceedings:

*The Court:* Thank you. And it is my understanding—I was just handed an Affidavit of Publication because at the time we were serving this petition we did not know the mother's whereabouts, but it has been published, and it was brought to my attention that the mother was located in jail or prison in another state, we were notified of that yesterday, is that correct, Ms. Pino [the prosecutor]?

*Prosecutor:* Yes, that's correct, Your Honor, in Benton County Jail in Arkansas. And I believe that the foster care worker was able to fax the Petition to her at the jail as well as notice by publication.

*The Court:* And this Court has received no request from the mother to adjourn these proceedings or to provide counsel to her. Have you been contacted by the mother with any requests, Ms. Pino?

*Prosecutor:* No, Your Honor.

*The Court:* Okay. Then I do find notice of service was properly executed in this case and we can proceed with trial. Your first witness.

Foster care worker Tonya Randall explained that the day before the hearing, she received a letter from respondent's sister in Arkansas, which informed her that respondent resided in jail in Benton County, Arkansas. Randall also averred that she had arranged substituted service of notice of the termination hearing on respondent by publication, and that her prepublication efforts to locate respondent included "people searches for both grandmother as well as [respondent]" in Tennessee and in Texas. No indication exists that Randall investigated respondent's potential whereabouts in Arkansas, where the children had reported living with her. Ron George stated in an affidavit that notice of the March 9, 2005, termination hearing was given to respondent by publication in the Clinton County News on February 13, 2005.

Respondent argues that the trial court's failure to ensure that she received proper statutory notice of the amended petition for termination and the termination hearing renders void the trial court's order terminating her parental rights. Whether a trial court possesses personal jurisdiction over a party constitutes a question of law that this Court considers de novo. *In re SZ*, 262 Mich App 560, 564; 686 NW2d 520 (2004). In child protective proceedings, parents have a statutory right to notice, and failure to comply with the relevant statutes "constitutes a jurisdictional defect." *In re AMB*, 248 Mich App 144, 173; 640 NW2d 262 (2001), citing *In re Mayfield*, 198 Mich App 226, 230; 497 NW2d 578 (1993). Personal service is required under MCL 712A.12, but MCL 712A.13 permits substituted service "in cases in which personal service is impractical." *In re SZ*, *supra* at 564-565. The court rules similarly mandate personal service on a respondent in a child protective proceeding, MCR 3.920(B)(2)(b) and(4)(a), but permit substituted service "[i]f the court finds, on the basis of testimony or a motion and affidavit, that personal service of the summons is impracticable or cannot be achieved." MCR 3.920(B)(4)(b).

We conclude that the trial court did not have jurisdiction over respondent because the statutory requirements for service of process were not complied with. Although the prosecutor

indicated that petitioner may have faxed a copy of the petition to respondent at the Benton County Jail, there is no proof of this in the record, so it appears that petitioner failed to serve respondent personally. MCL 712A.12. Presuming petitioner personally served respondent the day before the termination hearing, petitioner failed to provide personal service “at least 72 hours before the date of hearing.” MCL 712A.13; see also *In re Mayfield, supra* at 231 (a lack of statutory service before the adjudicative hearing is not cured even though the noncustodial parent is represented by counsel at the hearing and has received actual notice of the time and place of the hearing). Although petitioner arranged for notification by publication, the trial court could order substituted service on a respondent only “if the judge is satisfied that it is impracticable to serve personally such summons or the notice provided for in the preceding section [MCL 712A.12].” The record contains no indication that the trial court considered the potential impracticability of personal service on respondent *before* authorizing service by publication.

At the termination hearing, the trial court simply noted that service by publication had occurred because “at the time we were serving this petition we did not know the mother’s whereabouts.” The court’s bare observation that it did not know respondent’s whereabouts does not constitute the statutorily mandated finding of impracticability contemplated by MCL 712A.13. Under similar circumstances, we have found that:

it was error for the trial court to allow only for notice by publication without first further inquiring regarding the whereabouts of respondent and attempting to determine if reasonable efforts were made to locate her by [petitioner] for service by certified or registered mail. Under the facts of this case, it would have been reasonable to contact the family or to make some type of inquiry to the correctional systems of West Virginia or Virginia by telephone call or letter in an effort to find respondent before resorting to substituted service, particularly publication in Wayne County alone when it was known respondent was out of the state. [*In re Adair*, 191 Mich App 710, 714; 478 NW2d 667 (1991).]

Similarly, the trial court here failed to make a record of an initial finding regarding the impracticability of serving respondent and what specific and reasonable efforts petitioner had made to do so. Because the statutory requirements for substituted service were not adhered to, and once located, respondent was not given the requisite time following personal service, if in fact she received it, the trial court never obtained personal jurisdiction over respondent, and the order terminating her parental rights is void. *In re SZ, supra* at 568; *In re AMB, supra* at 173.

We vacate the trial court’s order terminating parental rights, and we remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly

/s/ Patrick M. Meter

/s/ Alton T. Davis