

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MELODY MARIAH BEAVERS,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

WILLIAM J. BEAVERS,

Respondent-Appellant,

and

MARCIA HARRIS,

Respondent.

UNPUBLISHED

July 17, 2003

No. 241778

Macomb Circuit Court

Family Division

LC No. 2001-051696-NA

Before: Hoekstra, P.J., and Fitzgerald and White, JJ.

PER CURIAM.

Respondent William Beavers (hereafter “respondent”) appeals as of right from the trial court’s order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(a)(ii). We affirm.

I

Respondent first argues that the trial court erred in failing to sua sponte appoint counsel to represent him even though he could not be located. We disagree. Under MCL 712A.17c(5) and MCR 5.915(B)(1)(b),¹ respondent was required to take the initiative in requesting a court-

¹ The court rules governing child protective proceedings were amended and recodified as part of new MCR subchapter 3.900, effective May 1, 2003. This opinion refers to the rules in effect at the time of the trial court’s decision.

appointed attorney. No request was ever made. *In re Hall*, 188 Mich App 217, 221-222; 469 NW2d 56 (1991). The rules do not make an exception for a respondent who has not appeared. We therefore conclude that the trial court was not obligated to sua sponte appoint counsel for respondent.

II

Respondent next argues that the trial court erroneously entered a “default judgment” against him during the adjudicative phase of the proceedings. We disagree.

We agree with defendant that there is no authority for utilizing the default judgment procedure of MCR 2.603 in a child protective action. MCR 5.901(A); see also *In re PAP*, 247 Mich App 148, 154-155; 640 NW2d 880 (2001). A trial court can assert jurisdiction over a minor child only if a statutory ground for jurisdiction is established through a respondent’s plea, or by a preponderance of the evidence at an adjudicative trial. MCR 5.971; MCR 5.972(C)(1); *In re S R*, 229 Mich App 310, 314; 581 NW2d 291 (1998). Although the trial court used the term “default” in its order of jurisdiction, the record discloses that, substantively, jurisdiction was obtained on the basis of a Protective Service worker’s sworn testimony at an adjudicative trial that respondent’s whereabouts were unknown, and that the child’s mother had abandoned her with fictive kin. This testimony was sufficient to establish a ground for jurisdiction under MCL 712A.2(b)(1). Accordingly, we find no error.

III

Next, respondent argues that the trial court erred in ordering substitute service by publication without first requiring petitioner to make reasonable efforts to locate him. We disagree.

A parent of a child who is the subject of a child protective proceeding is entitled to personal service of a summons and notice of the proceedings. MCL 712A.12; MCR 5.920(B); MCR 5.921(B) and (C); MCR 5.974(C). Failure to provide notice of a termination proceeding by personal service as required by statute is a jurisdictional defect that renders all proceedings in the trial court void. *In re Terry*, 240 Mich App 14, 21; 610 NW2d 563 (2000); *In re Atkins*, 237 Mich App 249, 250-251; 602 NW2d 594 (1999). However, if personal service is impracticable, substitute service, including by publication, is permissible. MCL 712A.13; MCR 5.920(B)(4). Before ordering alternative methods of service of process, the trial court must determine that personal service is impracticable. *In re Adair*, 191 Mich App 710, 714-715; 478 NW2d 667 (1991).

Here, the trial court correctly determined that petitioner made reasonable efforts to locate respondent before ordering substitute service. The caseworker attempted to locate respondent at his last known address, and also left a letter for him, but these efforts were unsuccessful. She also tried to send notice by registered mail to this address, but the mail was returned. She attempted to locate respondent through the Internet, but her search was unsuccessful, and she checked child support orders in Macomb County, where the child resided. Petitioner could not locate any relatives who could offer leads as to respondent’s whereabouts.

Respondent argues that petitioner “may” have found his current address if someone had checked for child support orders with the Wayne County Friend of the Court. There is nothing in the record, however, to suggest that petitioner should have considered this measure at the time. It appears that petitioner’s only leads were respondent’s name and a past address. In view of the minimal information that was available, the trial court did not err in finding that petitioner had made reasonable efforts to locate respondent and that substitute service was therefore appropriate. Further, contrary to what respondent argues, the record discloses that service by publication was accomplished before the adjudicative hearing. Specifically, the record contains a proof of publication on October 12, 2001, in the *Macomb County Legal News*. Publication in Macomb County was proper, because MCL 712A.13 provides that publication is sufficient to confer jurisdiction if it is “made once in some newspaper printed and circulated in the county in which said court is located”

IV

We find no merit to respondent’s remaining issues. The trial court did not clearly err in finding clear and convincing evidence of the statutory ground for termination. MCR 5.974(I); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). The evidence established that the child’s mother abandoned her on or around Memorial Day 2001, and, as of February 2002, had not attempted to contact her. Respondent also made no efforts to locate the child during this period. Consequently, the trial court did not err in finding that termination was warranted under subsection 19b(3)(a)(ii), desertion for ninety-one days or more. The court did not err in inferring that respondent’s eight-month or longer period of absence was due to his own decision or dilatoriness, rather than circumstances beyond his control. Further, the evidence did not clearly show that termination of respondent’s parental rights was not in the child’s best interests. MCL 712A.19b(5); *In re Trejo, supra* at 353.

Respondent also argues that petitioner failed to make reasonable efforts at reunification. Where respondent’s whereabouts could not be determined, and termination was being requested on the basis of desertion, we fail to see what petitioner could have done to reunify respondent with the child.

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Helene N. White