

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of HEAVENLY BRANCH, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RAQUEL SCOTT,

Respondent-Appellant.

UNPUBLISHED

August 16, 2007

No. 274738

Genesee Circuit Court

Family Division

LC No. 98-109858-NA

Before: Smolenski, P.J., and Fitzgerald and Kelly, JJ.

MEMORANDUM.

Respondent appeals as of right from an order terminating her parental rights to her daughter under MCL 712A.19b(3)(g), (i), (j), and (l).¹ We reverse and remand for further proceedings.

We review a trial court's decision to terminate parental rights for clear error. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding is clearly erroneous when we are left with the firm and definite conviction that a mistake was made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). To be clearly erroneous, a decision must be more than maybe or probably wrong. *Sours, supra*. If the trial court determines that the petitioner has proven by clear and convincing evidence the existence of one or more statutory grounds for termination, the court must terminate parental rights unless it finds from evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). We review the trial court's decision regarding the child's best interests for clear error. *Id.* at 356-357.

A parent whose child is the subject of a protective proceeding is entitled to personal service of a summons and notice of proceedings. MCL 712A.12; MCR 3.920(B)(4)(a). However, if personal service cannot be accomplished, substituted service is authorized. MCL

¹ The order also terminated the parental rights, if any, of the child's putative father.

712A.13; MCR 3.920(B)(4)(b). Substituted service confers jurisdiction on the court. See *In re SZ*, 262 Mich App 560, 564-565; 686 NW2d 520 (2004).

We reverse the order terminating respondent's parental rights, and remand this matter for further proceedings consistent with this opinion. The lower court record does not contain a summons and notice for respondent to appear at the termination hearing. No evidence shows that respondent was notified of the hearing by either personal or substituted service.

Clear and convincing evidence supported the decision to terminate respondent's rights to the child. See, e.g., MCL 712A.19b(3)(1).² Furthermore, no evidence established that termination of respondent's parental rights was not in the child's best interests. MCL 712A.19b(5). However, the lack of any notice to respondent of the termination hearing was a jurisdictional defect that rendered the proceeding void. See *In re Terry*, 240 Mich App 14, 21; 610 NW2d 563 (2000). On remand, respondent must be afforded notice of a subsequent termination hearing by personal or, if appropriate, substituted service.

Reversed and remanded. We do not retain jurisdiction.

/s/ Michael R. Smolenski
/s/ E. Thomas Fitzgerald
/s/ Kirsten Frank Kelly

² Undisputed evidence showed that respondent's parental rights to other children had been terminated in proceedings brought under MCL 712A.2(b).