Court of Appeals, State of Michigan

ORDER

IN RE ALFADAWI MINORS

Docket No. 371381

LC No. 2022-001555-NA

Sima G. Patel
Presiding Judge

Micheal J. Riordan

Brock A. Swartzle
Judges

This Court's opinion and order, entered on July 18, 2025, vacated the trial court's best-interests analysis, and remanded, while retaining jurisdiction, for further proceedings. Specifically, this Court ordered the trial court to "determine whether termination of respondent's parental rights is in the *children's* best interests." On remand, the trial court determined that termination of respondent's parental rights was in the children's best interests and entered an order terminating respondent's parental rights to the children.

On remand, the matter was scheduled for a half-day bench trial on September 8, 2025. On August 25, 2025, the trial court issued a summons for respondent to appear at the bench trial. The proof of service reflects that the summons and notice of hearing were served on respondent by certified mail. There is no indication in the record whether respondent signed for and received the certified mailing. Respondent's guardian ad litem was present at the hearing, but neither respondent nor an attorney on his behalf appeared at the bench trial. Testimony reflects that respondent was in a serious car accident on August 25, 2025, was hospitalized with a head injury, and was heavily sedated at the time of the bench trial. The matter was rescheduled to November 17, 2025. The record does not reflect whether respondent was served with the new bench trial date.

Respondent's prior attorney, Frank Becker, appeared on November 17, 2025, and objected to the trial proceeding without respondent present. Becker stated that he had been unable to speak with respondent and was told by family members that respondent was "not in a position to see anyone" and that medical professionals had instructed that he should not see anyone. Because the foster-care worker present at the hearing had not had any recent contact with the children or the mother, the trial court adjourned the trial until December 5, 2025, to give the foster-care worker an opportunity to obtain a current status. The record does not reflect whether respondent was served with the new bench trial date.

Attorney Becker appeared at the December 5, 2025 bench trial and indicated that he formerly represented respondent but had been excluded from all contact from respondent. Becker argued that it was a "total lack of due process that my client's serious rights as a father being adjudicated without his presence, and without him really being represented." The trial court declined to adjourn the matter. Following additional testimony, the trial court concluded by a preponderance of the evidence that termination was in each of the children's best interests despite their placement with the mother.

"It is well established that parents have a significant interest in the companionship, care, custody, and management of their children." *In re Brock*, 442 Mich 101, 109; 499 NW2d 752 (1993).

"This interest has been characterized as an element of 'liberty' to be protected by due process." *Id*. "The fundamental requisite of due process of law is the opportunity to be heard." *In re Rood*, 483 Mich 73, 92; 763 NW2d 587 (2009) (opinion by CORRIGAN, J.). This requires notice of court hearings:

> The "opportunity to be heard" includes the right to notice of that opportunity. An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. [*Id*. (cleaned up).]

The Legislature requires that a parent named in a termination petition receive personal service of a summons before the court may conduct a hearing:

> After a petition shall have been filed and after such further investigation as the court may direct . . . the court may dismiss said petition or may issue a summons reciting briefly the substance of the petition, and requiring the person or persons who have the custody or control of the child, or with whom the child may be, to appear personally and bring the child before the court at a time and place stated: Provided, That the court in its discretion may excuse but not restrict children from attending the hearing. If the person so summoned shall be other than the parent or guardian of the child, then the parents or guardian, or both, shall also be notified of the petition and of the time and place appointed for the hearing thereon, *by personal service* before the hearing, except as hereinafter provided. Summons may be issued requiring the appearance of any other person whose presence, in the opinion of the judge, is necessary.
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> Any interested party who shall voluntarily appear in said proceedings, may, *by writing*, waive service of process or notice of hearing. [MCL 712A.12 (emphasis added).]

"[S]tatutes requiring notice to parents must be strictly construed." *In re Atkins*, 237 Mich App 249, 251; 602 NW2d 594 (1999). "[P]ersonal service not only provides a parent notice, but also apprises the parent of the charges levied against him or her and affords a reasonable time to prepare a defense." *In re Dearmon*, 303 Mich App 684, 694; 847 NW2d 514 (2014), citing *In re Brown*, 149 Mich App 529, 541-542; 386 NW2d 577 (1986). The statutory requirement of personal service protects a parent's due-process rights. See *id*. See also *In re Ferranti*, 504 Mich 1; 22; 934 NW2d 610 (2019). "A failure to provide notice of a termination proceeding hearing by personal service as required by statute, [MCL 712A.12], is a jurisdictional defect that renders all proceedings in the trial court void." *Atkins*, 237 Mich App at 250-251, citing *In re Adair*, 191 Mich App 710, 713–714; 478 NW2d 667 (1991); *Brown*, 149 Mich App at 534–542. Notably, this Court determined in *Brown*, "the fact that respondent had actual notice does not cure this jurisdictional error." *Brown*, 149 Mich App at 541.

In cases where personal service is impracticable, MCL 712A.13 provides for service of process by alternative methods, including publication:

> Service of summons may be made anywhere in the state personally by the delivery of true copies thereof to the persons summoned: Provided, [t]hat if 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. . . .

"When determining whether personal service would be impractical, the trial court must determine if reasonable efforts were made to locate the party." *In re Lovitt*, 351 Mich App 237, 244; 34 NW3d 645 (2024). "Substituted service is sufficient to confer jurisdiction on the court." *In re SZ*, 262 Mich App 560, 565; 686 NW2d 520 (2004). However, as this Court determined in *Atkins*, "receipt of the amended petition by respondent's attorney cannot be deemed a proper substitute for personal service on respondent." *Atkins*, 237 Mich App at 251.

The court rules reinforce the necessity of personal service. MCR 3.920(G) states that "[a]fter a party's first appearance before the court, subsequent notice of proceedings and pleadings shall be served on that party or, if the party has an attorney, on the attorney for the party as provided in subrule (D), *except that a summons must be served for trial or termination hearing as provided in subrule (B)*." (Emphasis added.) MCR 3.920(B)(4) states:

> (a) Except as provided in subrule (B)(4)(b), a summons required under subrule (B)(2)[1] must be served by delivering the summons to the party personally.
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> (b) If 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, the court may by ex parte order direct that it be served in any manner reasonably calculated to give notice of the proceedings and an opportunity to be heard, including publication.

Similar to MCL 712A.12, MCR 3.920(F) provides that a respondent may execute a written waiver of notice of hearing or service of process.

In this case, there is no evidence that respondent was personally served with notice of the petition or the time and place for hearing. There is also no evidence that petitioner moved for alternate service or that the trial court determined that personal service on respondent would be impracticable. Moreover, respondent never executed a written waiver of service of process or notice of hearing.

In addition, a parent has the right to retain an attorney and, if financially unable to do so, the right to request and receive a court-appointed attorney as a matter of statute and court rule. *In re Powers Minors*, 244 Mich App 111, 121; 624 NW2d 472 (2002). While attorney Becker attended and participated in the bench trial, he stated that he was respondent's *former* counsel and had been denied

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[1] MCR 3.920(B)(2) states in relevant part:

> (2) *When Required*. Except as otherwise provided in these rules, the court shall direct the service of a summons in the following circumstances:
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> (b) In a child protective proceeding, a summons must be served on any respondent and any nonrespondent parent. . . .

access to respondent to discuss the matter following respondent's accident. There is no evidence in the record that respondent wished to retain Becker or, instead, request a court-appointed attorney.

Because respondent was not served in accordance with the statutory mandates, the trial court lacked jurisdiction and thus erred by proceeding with the best-interests hearing. See *Atkins*, 237 Mich App at 250-251; see also *Lovitt*, 351 Mich App at 247. The lack of jurisdiction renders all trial court proceedings void. *Lovitt*, 351 Mich App at 244. On this basis, we must vacate the trial court's order terminating respondent's parental rights to the children and remand for a new best-interests hearing. Respondent must be served with notice of the best-interests hearing in accordance with the statutory and court-rule mandates.

Vacated and remanded for further proceedings. We retain jurisdiction.

Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

August 18, 2026
Date

Chief Clerk