

STATE OF MICHIGAN
COURT OF APPEALS

FOR PUBLICATION
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In re CARTER, Minors.

No. 378547
Lake Circuit Court
Family Division
LC No. 24-002049-NA

Before: PATEL, P.J., and M. J. KELLY and GARRETT, JJ.

PER CURIAM.

In this child-protection case, respondent-mother appeals as of right an order of disposition regarding her children QC and XC. For the reasons stated in this opinion, we reverse and remand.

I. BASIC FACTS

Although this appeal only concerns respondent-mother’s parental rights to QC and XC, the proceedings below involved two additional children: AB and HC. The record reflects that HC, QC, and XC have the same father and that AB and HC’s mother is LB.¹ In September 2024, petitioner, the Department of Health and Human Services, sought removal of all four children from the custody of respondent-father and LB. The petition alleged that AB had suffered serious accidental burns and that respondent-father and LB had not followed up with proper medical care. Additionally, respondent-father and LB were using drugs and were homeless. The petition did not include any allegations against respondent-mother, who resided in New Mexico. Instead, it only indicated that petitioner had unsuccessfully attempted to contact her by telephone. Following an emergency removal hearing, the court removed all four children from the care of respondent-father, respondent-mother, and LB.

¹ AB’s father is unknown.

Thereafter, the case languished while jurisdictional² and tribal issues were ironed out. Petitioner did not file an amended petition alleging anything against respondent-mother until September 2025. Meanwhile, the children remained in foster care in Michigan.

Eventually, the court conducted an adjudication trial. At that trial, respondent-mother's lawyer questioned whether respondent-mother had been personally served with a copy of the petition. A caseworker responded by testifying that she had spoken over the telephone with respondent-mother regarding the petition and that she had sent her a copy of the petition "via encrypted email." She added that respondent-mother had acknowledged receipt of the petition. The caseworker admitted, however, that respondent-mother had not been personally served because she was residing in New Mexico. In response, to that testimony, respondent-mother's lawyer objected to the adjudication proceedings based upon the lack of personal service. The trial court, however, concluded that it could proceed in the absence of personal service.

Following the adjudication trial, the court found statutory grounds to exercise jurisdiction over the children under MCL 712A.2(b)(1). Accordingly, it entered an order taking jurisdiction over the children and entered an initial dispositional order. This appeal follows.

II. LACK OF PERSONAL JURISDICTION

A. STANDARD OF REVIEW

Respondent-mother argues that the trial court never had personal jurisdiction over her and that procedural irregularities occurred such that reversal is required. This appeal involves the interpretation and application of statutes and court rules, which are reviewed *de novo*. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Issues regarding personal jurisdiction are also reviewed *de novo*. *In re Dearmon*, 303 Mich App 684, 693; 847 NW2d 514 (2014).

B. ANALYSIS

MCL 712A.13 states, in part, as follows regarding child-protection proceedings:

Service of summons may be made anywhere in the state personally by the delivery of true copies thereof to the persons summoned: Provided, that 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. It shall be sufficient to confer jurisdiction if (1) personal service is effected at least 72 hours before the date of hearing; (2) registered mail is mailed at least 5 days before the date of hearing if within the state or 14 days if outside of the state; (3) publication is made once in some newspaper printed and circulated in the

² It was unclear whether Michigan, New Mexico, or Illinois had jurisdiction to hear the proceedings because father, LB, and the children had lived in New Mexico and Illinois before coming to Michigan.

county in which said court is located at least 1 week before the time fixed in the summons or notice for the hearing.

Here, although respondent-mother appeared at some of the adjudication proceedings,³ and it was averred that she received the amended petition by e-mail, the statute was not followed because she was never personally served, nor was alternative service in accordance with the statute provided.

“[G]enerally, statutes requiring service of notice to parents must be strictly construed.” *In re Brown*, 149 Mich App 529, 536; 386 NW2d 577 (1986). The Court in *Brown* concluded that the lack of personal service in that case rendered the proceedings void, even though the respondent had actual notice of the proceedings and appeared at them. *Id.* at 541-542.

Similarly, in *In re Mayfield*, 198 Mich App 226, 231; 497 NW2d 578 (1993), this Court reaffirmed that “lack of 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.” The *Mayfield* Court recognized that, “although a failure to follow the court rules regarding notice requirements would not establish a jurisdictional defect, failure to provide the applicable statutory notice would.” *Id.* The *Mayfield* Court concluded that the proceedings in that case were not void, even though service was attempted by first-class mail and not registered mail, because the three mailings that took place achieved the same result as registered mail, i.e., they showed that the respondent’s last-known address (located out of the state) was not valid, and it was “apparent from the record that respondent could not have been contacted under any method provided by” the statute. *Id.* at 232-233.

Here, in contrast to *In re Mayfield*, there were no attempts to reach respondent-mother at her last-known address. See also *In re Adair*, 191 Mich App 710, 715; 478 NW2d 667 (1991) (“Because the trial court did not determine that reasonable efforts had been made to locate respondent before it decided to grant substituted service by publication, the probate court proceeded without jurisdiction with regard to respondent.”), and *In re SZ*, 262 Mich App 560, 563, 570; 686 NW2d 520 (2004) (stating that personal jurisdiction over the respondent was adequate when multiple attempts to personally serve her were undertaken and service by publication occurred).

The Court in *In re Dearmon*, 303 Mich App 684, also dealt with a service issue. This *Dearmon* Court stated:

Respondent was personally served with a summons and the original petition, which sought circuit court jurisdiction over the children. The petition clearly communicated the nature of petitioner’s allegations and described in detail the conduct underlying petitioner’s request for jurisdiction. The original petition sought termination of respondent’s parental rights. Service of these documents

³ Her attorney argued that adjudication was improper due to the lack of personal service. See MCR 3.920(H) (“The appearance and participation of a party at a hearing is a waiver by that party of defects in service with respect to that hearing *unless objections regarding the specific defect are placed on the record.*”). (Emphasis added.)

afforded respondent with notice of the nature of the proceedings and conferred on the circuit court personal jurisdiction over her. *Once personal jurisdiction was established, it did not evaporate merely upon the filing of the amended petitions.* Alternatively stated, petitioner's preparation and filing of the amended petitions did not invalidate the personal jurisdiction that had already been obtained. [*Id.* at 694-695 (emphasis added).]

Here, not only was the original petition not personally served on respondent-mother, it also contained no allegations against her.

Based upon the preceding caselaw, it is plain that the lower court never obtained personal jurisdiction over respondent-mother because MCL 712A.13 was not strictly complied with.⁴

We reverse the order of adjudication and remand this case for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Sima G. Patel

/s/ Michael J. Kelly

/s/ Kristina Robinson Garrett

⁴ Because reversal is required in light of the lack of personal jurisdiction over respondent-mother, we decline to address respondent-mother's remaining arguments on appeal.