STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of Christopher, Ammond, Minor

DEPARTMENT OF SOCIAL SERVICES,

Petitioner-Appellee,

v

JEFFREY KNOX,

Respondent-Appellant,

and

MARY AMMOND,

Respondent.

UNPUBLISHED
August 2, 1996

No. 182302
LC No. 91-18339-NA

Before: Hoekstra, P.J., and Michael J. Kelly and Holbrook, Jr., JJ.

PER CURIAM.

Respondent Jeffrey Knox appeals as of right an order terminating his parental rights to the minor child, Christopher Ammond, under MCL 712A.19b(3)(a) and (i); MSA 27.3179(598.19b)(3)(a) and (i) [respectively, desertion and the previous termination of parental rights to a sibling]. Respondent Mary Ammond voluntarily relinquished her parental rights to her son Christopher, and she is not a party to this appeal. We affirm.

In August 1994, the Department of Social Services [DSS] petitioned the Muskegon County probate court for temporary or permanent custody of Christopher Ammond, who was born on December 16, 1994, after Christopher had been treated at a local hospital emergency room for a cut through the bone of his left hand's middle finger, which had occurred while Christopher was in his mother's custody. Mary Ammond told the DSS protective services worker, Vicki Birdsall, that respondent Knox was Christopher's father. As a result, the petition named Knox as Christopher's father and alleged that Knox had a criminal record for drug-related offenses, that Knox's parental rights

to Jarid Ammond, who is Christopher's older brother, had previously been terminated, and that Knox had failed to establish a parent/child relationship with Christopher through regular visitation.

Following Mary Ammond's voluntary relinquishment of her parental rights to Christopher, the probate court set December 21 and 22, 1994 as the date for a permanent wardship hearing as to respondent Knox. Two summonses were issued; however, the process server was unable to achieve personal service because Knox could not be located at his last known address. Notice was mailed to Knox at that address, and notice to Knox was also published in the *Norton Examiner* on November 30, 1994. The published notice advised Knox to appear at the hearing on the neglect petition or his parental rights as to Christopher could be temporarily or permanently terminated.

Respondent Knox did not appear at the December 21, 1994 hearing, but Knox's counsel was present. Knox's counsel moved for an adjournment to permit additional attempts at notifying Knox of the proceedings; however, the probate court denied the motion, reasoning that Knox had been adequately notified. The probate court proceeded to hear petitioner's evidence, found subject-matter jurisdiction over Christopher, and found that satisfactory notice had been provided to Knox. The probate court then noted that it was unclear whether Knox was Christopher's legal father or his putative father,[i] determined that clear and convincing evidence existed to support terminating Knox's parental rights as to Christopher on the grounds that Knox had deserted Christopher and that Knox's parental rights as to Jarid had been previously terminated for neglect and unsuccessful attempts at reunification. The probate court determined that termination was in Christopher's best interests, and entered an order terminating respondent's and Ammond's parental rights.

On appeal, respondent argues that petitioner failed to show culpable neglect, that there was insufficient evidence presented to support the statutory grounds for termination, and that the probate court abused its discretion when it decided that termination was in Christopher's best interests. We disagree.

A probate court must find that clear and convincing evidence exists to support at least one ground for termination under MCL 712A.19b(3); MSA 27.3178(598.19b)(3). MCR 5.974(D)(3), (E)(1), and (F)(3); *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). We review the probate court's factual findings for clear error. MCR 5.974(I); *In re Cornet*, 422 Mich 274, 277; 373 NW2d 536 (1985). If the factual findings are not clearly erroneous, then we review the probate court's decision that termination is in the child's best interests for an abuse of discretion. *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991).

Respondent Knox's rights were terminated under § 19b(3)(a) and (i), which permit termination when:

a) The child has been deserted under either of the following circumstances:

> (i) If the parent of a child is unidentifiable and has deserted the child for 28 or more days and has not sought custody of the child during that period. For the purposes of this section, a parent is unidentifiable if the parent's identity cannot be ascertained after reasonable efforts have been made to locate and identify the parent.
>
> (ii) The parent of a child has deserted the child for 91 or more days and has not sought custody of the child during that period.
>
> * * *
>
> (i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful. [MCL 712A.19b(3)(a) and (i); MSA 27.3178(598.19b)(3)(a) and (i).]

First, respondent Knox argues that petitioner failed to show culpable neglect, such as intentional or negligent disregard for a child's needs. Knox's argument fails because our Legislature amended § 19b to expressly state that a showing of culpable neglect is not required. 1988 PA 224; *In re Jacobs*, 433 Mich 24, 35-36; 444 NW2d 789 (1989).

Next, respondent Knox contends that there was insufficient evidence presented. We have reviewed the record in this case, and we are not convinced that the probate court committed clear error when it found clear and convincing evidence existed to support termination under subsections (a) and (i). The evidence showed that respondent Knox admitted to the DSS' protective services worker Birdsall during a telephone conversation that he had not seen Christopher for eight months and that he had only seen Christopher then because the child happened to be with Mary Ammond when Knox met with her. An absence of eight months exceeds either § 19b(3)(a)(i)'s or § 19b(3)(a)(ii)'s requirements. *In re Mayfield*, 198 Mich App 226, 230, 235; 497 NW2d 578 (1993).

Furthermore, Birdsall provided the probate court with, and it correctly took judicial notice of, a July 19, 1993 order terminating respondent Knox's parental rights as to Christopher's older brother, Jarid. See MRE 201; *In re Stowe*, 162 Mich App 27, 33; 412 NW2d 655 (1987). Moreover, this Court has previously determined that mistreatment of one child is probative of the respondent's treatment of other children, *Jackson*, *supra*, 26, and affirmed terminations premised on that ground. See *In re Powers*, 208 Mich App 582, 592; 528 NW2d 799 (1995); *In re Vasquez*, 199 Mich App 44, 52; 501 NW2d 231 (1993).

We find no abuse of discretion in the probate court's decision that termination was in Christopher's best interests. Mary Ammond voluntarily relinquished her parental rights to Christopher

so that he could be adopted by her sister and brother-in-law, who had adopted Jarid. To the extent that the probate court considered whether Christopher would be better of in his new home, no abuse of discretion occurred because a probate court is permitted to consider such factors after finding that clear and convincing evidence existed to support statutory grounds for termination. *In re Mathers*, 371 Mich 516, 530; 126 NW2d 722 (1963).

Next, respondent Knox argues that the probate court erred when it denied respondent's counsel's adjournment motion, relying on MCR 2.503. Knox's argument is further premised on challenges to the sufficiency of notice because Knox complained that he was not provided with notice of the preliminary hearings held as to Mary Ammond and that the notice of his hearing was insufficient.

MCR 2.503 governs adjournments; however, that rule does not apply to child protective proceedings. MCR 5.901(A); *In re King*, 186 Mich App 458, 466; 465 NW2d 1 (1990). Nevertheless, we review denials of adjournment motions made in termination cases for an abuse of discretion. *Jackson*, *supra*, 28.

Contrary to respondent Knox's assertions that he was entitled to notice of the preliminary hearings held as to Mary Ammond, MCR 5.965(B)(1) requires the probate court to notify a parent before a preliminary hearing, and Knox does not satisfy MCR 5.903(A)(12)'s definition of a parent[ii] because he is not legally responsible for Christopher's care or control. Nor is there any record evidence that Knox satisfies MCR 5.903(A)(4)'s definition of a father[iii] because he apparently was not married to Mary Ammond and has not established paternity under any of the rule's express provisions. Therefore, Knox was not entitled to notice of the preliminary hearing. *In re Gillespie*, 197 Mich App 440, 444-446; 496 NW2d 309 (1995).

Assuming that respondent Knox had a right to be present during the proceedings and noting that the court rules permit appearance through counsel, the probate court is not obligated to secure the respondent's physical presence before going forward with the termination so long as proper notice has been given. MCR 5.973(A)(3)(b) and (c); *Vasquez*, *supra*, 49. The court rules require notice be given to fathers and putative fathers. MCR 5.921(A)(2) [for parents, which includes fathers as defined in MCR 5.903(A)(4)] and (D)(1) [for putative fathers]. MCL 712A.13; MSA 27.3178(598.13)[iv] requires personal service of notice unless such service is impracticable, and then the statute permits substitute service by registered mail to the respondent's last known address or by publication or by both. Similarly, the court rules require personal service of the summons under MCR 5.920(B)[v] and notice of the termination proceeding under MCR 5.920(C) unless the probate court directs service by mail or by publication.

In this case personal service of the summons to respondent Knox was unsuccessful on two separate occasions. Notice was mailed to Knox at his last known address. In addition to the mailed notice, notice to Knox was also published in the *Norton Examiner* on November 30, 1994, advising him to attend the December 21, 1994 hearing or his parental rights to Christopher could be temporarily

or permanently terminated. We conclude that the published notice satisfied the statute and the court rule.

Based on the foregoing review of the notice given in this case, we find that the probate court did not abuse its discretion when it denied the adjournment motion. *Jackson*, *supra*, 28.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Michael J. Kelly
/s/ Donald E. Holbrook, Jr.

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[i] We note that Christopher's birth certificate lists another man as his father.

[ii] MCR 5.903(A)(12) defines a parent as:

> a person who is legally responsible for the control and care of the minor, including a mother, father, guardian, or custodian, other than a custodian of a state facility, a guardian ad litem, or a juvenile court-ordered custodian.

[iii] MCR 5.903(A)(4) defines a father as:

> (a) a man married to the mother at any time from a minor's conception to the minor's birth unless the minor is determined to be a child born out of wedlock;
>
> (b) a man who legally adopts the minor; or
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> (c) a man whose paternity is established in one of the following ways within time limits , when applicable, set by the court pursuant to the subchapter:
>
> > (i) the man and the mother acknowledge that he is the minor's father . . . .
> >
> > (ii) the man and the mother file a joint written request for a correction of the certificate of birth . . . .
> >
> > (iii) the man acknowledges the minor . . . .
>
> (iv) a man who by order of filiation or by judgment of paternity is determined judicially to be the father of the minor . . . .

[iv] MCL 712A.13; MSA 27.3178(598.13) provides in relevant part:

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

[v] MCR 5.920(B)(4)(a) requires personal service of the summons; however,

> (b) If personal service of the summons is impracticable or cannot be achieved, the court may direct that it be served by registered or certified mail addressed to the last known address of the party, return receipt requested.
>
> (c) If the court finds service cannot be made because the whereabouts of the person to be summoned has not been determined after reasonable effort, the court may direct any manner of substituted service, including publication. [MCR 5.920(B)(4)(b) and (c).]