

**NOTICE**  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

NO. 4-10-0721

Filed 1/26/11

IN THE APPELLATE COURT  
OF ILLINOIS

FOURTH DISTRICT

In re: S.M., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 08JA82
SHANNON McNEAL	)	
Respondent-Appellant.	)	Honorable
	)	Richard P. Klaus,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court. Justices Appleton and McCullough concurred in the judgment.

**ORDER**

*Held:* Respondent waived his argument the trial court's orders are void for lack of personal jurisdiction because respondent appeared at a subsequent permanency hearing and did not file a motion challenging the court's jurisdiction.

Respondent, Shannon McNeal, appeals from the orders of the circuit court of Champaign County finding him an unfit parent and terminating his parental rights. Respondent's sole argument on appeal is the trial court lacked personal jurisdiction over him. We affirm.

I. BACKGROUND

On November 12, 2008, the State filed a petition for adjudication of neglect and shelter care with respect to the minor child, S.M. (born August 2, 2008). The petition alleged the minor was neglected because the parents failed to correct the

conditions that resulted in a prior adjudication of parental unfitness. S.M.'s mother is not a party to this appeal.

The November 12, 2008, shelter-care report stated respondent's whereabouts were unknown and a diligent search had been conducted on November 11, 2008.

The November 19, 2008, affidavit of efforts to notify respondent stated the following:

"That I have been unable to learn the last known address of [respondent]. I have made the following attempts to learn the last known address of said respondent:

I questioned [the minor's mother] as to his whereabouts and she reports he left her for another woman and is living somewhere in Peoria, IL. She claimed to have no knowledge of his whereabouts or how to contact him.

I questioned [the minor's grandmother] and her two oldest children. They state they do not know how to contact [respondent] and have not had contact with him since he separated from their mother. They claim they do not know the name of [respondent's] paramour.

This worker completed a [d]iligent [s]earch on 11/11/2008. The results listed a

possible address of 19 Dunbar Court, Urbana, IL. That is the address where the [respondents] resided during the prior report. This worker went to that address on 11/19/2008 and was advised by the current resident, that [respondent] did not reside there."

On December 1, 2008, a certificate of publication was filed, which indicated that notice of the proceedings was published in the Champaign News-Gazette, a newspaper of general circulation in Champaign County, for one week, starting November 24, 2008.

Following a February 26, 2009, dispositional hearing, which respondent did not attend, the trial court adjudicated S.M. neglected, made her a ward of the court, and placed her custody and guardianship with the Department of Children and Family Services (DCFS). The court found respondent was unfit, unable, and unwilling for reasons other than financial circumstances alone, to care for, protect, train, or discipline S.M. The court noted respondent had had no contact with DCFS or S.M.

On March 5, 2010, the State filed a petition seeking the termination of respondent's parental rights. The State's petition alleged respondent (1) failed to make reasonable progress toward the return of S.M. within nine months after the adjudication of neglect and (2) failed to maintain a reasonable

degree of interest, concern, or responsibility as to S.M.'s welfare.

On March 8, 2010, respondent appeared *pro se* for the first time at the permanency hearing. The trial court admonished respondent of the allegations contained in the State's motion seeking a finding of unfitness and termination of his parental rights. The court also appointed counsel to represent respondent.

On August 9, 2010, respondent appeared personally and by counsel and testified at his fitness hearing. At the conclusion of the hearing, the trial court found the State proved respondent was unfit for termination purposes.

At the September 9, 2010, best-interest hearing, respondent again appeared personally and by counsel. The trial court found it was in S.M.'s best interest respondent's parental rights be terminated.

This appeal followed.

## II. ANALYSIS

On appeal, respondent argues the trial court did not have personal jurisdiction over him because the State failed to conduct the required statutory due diligence to locate him prior to effectuating service by publication. Respondent does *not* argue the trial court lacked jurisdiction to adjudicate the minor neglected.

The State argues respondent waived the issue because he appeared and participated in the proceedings. Alternatively, the State contends the statutory requirements for publication service were satisfied.

"Proper service of summons is required to establish *in personam* jurisdiction." *In re D.J.*, 361 Ill. App. 3d 116, 120, 836 N.E.2d 830, 833-34 (2005). Personal jurisdiction is obtained only by complying with the applicable statute specifying the precise manner of process. *Miller v. Town of Cicero*, 225 Ill. App. 3d 105, 110, 590 N.E.2d 490, 493 (1992). Section 2-16(2) of the Juvenile Court Act of 1987 (Act) provides, in pertinent part, the following:

"Where a respondent's usual place of abode is not known, a diligent inquiry shall be made to ascertain the respondent's current and last known address. \*\*\* If, after diligent inquiry made at any time within the preceding 12 months, the usual place of abode cannot be reasonably ascertained, or if respondent is concealing his or her whereabouts to avoid service of process, petitioner's attorney shall file an affidavit at the office of the clerk of court in which the action is pending showing that respondent on

due inquiry cannot be found or is concealing his or her whereabouts so that process cannot be served. The affidavit shall state the last known address of the respondent. The affidavit shall also state what efforts were made to effectuate service. \*\*\* The clerk of the court as soon as possible shall cause publication to be made once in a newspaper of general circulation in the county where the action is pending. \*\*\* [T]he court may not enter any order or judgment against any person who cannot be served with process other than by publication unless notice by publication is given *or unless that person appears.*" (Emphasis added.) 705 ILCS 405/2-16(2) (West 2008).

Under the Act, the appearance of a person named as a respondent constitutes a waiver of service and submission to the jurisdiction of the court unless the person files a motion under section 2-301 of the Code of Civil Procedure (735 ILCS 5/2-301 (West 2006)) objecting to the court's jurisdiction over the person. See *In re Antwan L.*, 368 Ill. App. 3d 1119, 1128, 859 N.E.2d 1085, 1093 (2006).

In this case, respondent appeared in court, was repre-

sented by counsel, and participated actively in the fitness and best-interest proceedings without objection to lack of personal service. Because respondent did not file a motion challenging personal jurisdiction, respondent waived service of process and voluntarily submitted to the jurisdiction of the court.

Thus, the trial court's fitness and termination orders are not void for lack of personal jurisdiction. Because we find the court had personal jurisdiction over respondent, we do not need to address the issue of whether the published notice of the underlying hearing on the State's petition complied with the statutory requirements of section 2-16(2) of the Act.

### III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment.

Affirmed.