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).

2012 IL App (4th) 100820-U

Filed 3/27/12

NO. 4-10-0820

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

| | | |
|---|---|---|
| In re: MONIQUE F., a Minor, | ) | Appeal from |
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Circuit Court of |
| Petitioner-Appellee, | ) | Champaign County |
| v. | ) | No. 10JD112 |
| MONIQUE F., | ) | |
| Respondent-Appellant. | ) | Honorable |
| | ) | Heidi N. Ladd, |
| | ) | Judge Presiding. |

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

**ORDER**

¶ 1 *Held:* The court denied OSAD's motion to withdraw as counsel pursuant to *Anders v. California*, 386 U.S. 738 (1967), and ordered OSAD to file a brief on respondent's behalf.

¶ 2 This appeal comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal pursuant to *Anders v. California*, 386 U.S. 738 (1967), asserting no meritorious issues can be raised in this case. After carefully reviewing the record, we disagree with OSAD's assessment of the merits of this appeal and, for the following reasons, we deny OSAD's motion.

¶ 3 I. BACKGROUND

¶ 4 On May 25, 2010, the State charged respondent, Monique F., a minor born August 31, 1992, with theft (720 ILCS 5/16-1(a) (West 2010)) (count I) and possession of drug

paraphernalia (720 ILCS 600/3.5(a) (West 2010)) (count II). The record is unclear whether respondent's mother, Susan, F., was served with notice of the proceedings involving respondent (respondent's father is deceased). The trial court's docket entry of May 26, 2010, indicates "Proof of Service on file." The entry, however, does not indicate what document the proof of service relates to nor who was served, and the record lacks a copy of the proof of service. The court's May 28, 2010, docket entry shows the State issued a summons to respondent mother on May 26, 2010. The docket also reflects on June 14, 2010, the summons was "Returned Not Found for [respondent mother]." The record, however, does not contain a copy of the summons or its return. Additionally, the court's docket entry shows "Proof of Service on file," dated June 18, 2010. Again, the entry does not indicate what the proof of service relates to nor who was served, and the record lacks a copy of the proof of service.

¶ 5 On May 25, 2010, respondent appeared before the trial court without her mother. The court appointed counsel for respondent and admonished respondent of the charges against her, the possible sentences, and her rights. At this time, the court ordered respondent detained in the temporary custody of the Court Services Department. The court ordered summons to issue to respondent mother, returnable June 8, 2010, at 11:15 a.m.

¶ 6 On June 8, 2010, respondent appeared personally and by counsel before the trial court. A representative of Catholic Charities was also present. However, respondent mother did not appear. Counsel notified the court respondent mother would not be participating in the proceedings and informed the court respondent was prepared to move forward with a plea agreement if the court would allow it. The court allowed respondent to proceed without respondent mother and the State presented its plea agreement. Respondent requested additional time to consider the plea agreement,

and the court set a status hearing for June 24, 2010, and released respondent into the custody of Catholic Charities pursuant to a pretrial conditions order.

¶ 7 On June 24, 2010, respondent appeared personally and by counsel. A representative of Catholic Charities was also present. The trial court again allowed respondent to proceed in the absence of her mother. The transcript of the hearing reflects the following:

> "[RESPONDENT'S COUNSEL]: I would note the Respondent Mother is not present. She has not appeared at all in this case. My client is seventeen and she is requesting to proceed in the absence of her mother.
>
> THE COURT: All right. I will note that there was service on the Respondent Mother I believe. Let me look at the summons. There was summons that was issued to the Respondent Mother, and that was returnable on June 8th. It indicates there was service on the Respondent Mother. She does not appear. The minor is seventeen years of age. I believe it would be appropriate to allow her to proceed if she wishes. Any objection, Mr. Dill?"

Respondent pleaded guilty to count I in exchange for the dismissal of count II and the State's agreement not to file additional charges in the present case or in Champaign County sheriff's department report S101509J. The court adjudicated respondent a delinquent minor. The court scheduled a sentencing hearing for August 16, 2010. At this time, respondent was residing at Roundhouse and receiving services through Catholic Charities.

¶ 8 On August 9, 2010, the trial court held a status hearing with respondent, a

representative from probation services, and defense counsel. Respondent mother also appeared, for the first time, at the August 2010 hearing. The State filed a petition for indirect criminal contempt, alleging respondent violated conditions of her release by causing herself to be unsuccessfully discharged from placement at Roundhouse due to illegal drug use. The trial court continued the matter for further proceedings to August 16, 2010. The court ordered respondent to be detained by the Youth Detention Center pending the August 16, 2010, hearing.

¶ 9 On August 16, 2010, respondent, counsel for respondent, respondent mother, a representative from Catholic Charities, and a representative from Court Services appeared for respondent's sentencing. The trial court sentenced respondent to the Department of Juvenile Justice (DJJ) for an indeterminate term to automatically terminate in 364 days or upon respondent's turning 21, whichever occurred first, with credit for 25 days previously served. The court found the parents, guardian, or legal custodian of respondent were unfit or unable for some reason other than financial circumstances alone to care for, protect, train, or discipline respondent or were unwilling to do so, and the best interests of the public and respondent would be served by sentencing respondent to DJJ.

¶ 10 On September 14, 2010, respondent filed a motion to reconsider her sentence. The trial court denied respondent's motion. The court noted it "made very detailed observations and findings for the record to support the sentence" and respondent did not present any "new law or fact to suggest the [c]ourt was in error."

¶ 11 On October 12, 2010, respondent filed a notice of appeal, and the trial court appointed OSAD as counsel for respondent. OSAD filed a motion to withdraw as counsel pursuant to *Anders* on November 17, 2011. On our own motion, we gave respondent leave to file additional points and authorities on her behalf by December 21, 2011, and she filed none. After carefully reviewing the

record, we disagree with OSAD's assessment of the merits of this appeal and, for the following reasons, we deny OSAD's motion.

¶ 12 II. ANALYSIS

¶ 13 In its motion to withdraw, OSAD asserts, in part, no colorable argument can be made respondent did not receive all the procedural protections provided for in the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/5 through 7-1 (West 2010). OSAD specifically alleges "it must be concluded that the notification and service requirements of the [Juvenile] Act were complied with." We are unable to determine from the record whether the State complied with the notification and service requirements of the Juvenile Act—namely, that the State served respondent mother with notice of the proceedings.

¶ 14 In its brief, OSAD alleges respondent mother "was served with notice of the proceedings," citing the first two pages of the common-law record. However, our copy of pages one and two of the common-law record contains the State's petition for adjudication. OSAD also directs us to pages two and three of the trial court's transcript of the proceedings held on June 24, 2010, as evidence of service on respondent mother. The transcript, as quoted above, reveals the court believed respondent mother had been served. However, the docket entry of June 14, 2010, actually reads as follows: "Summons returned not found for Susan F.[] on June 14, 2010."

¶ 15 Further, the record lacks several documents that are instrumental in determining whether respondent received all the procedural protections of the Juvenile Act as OSAD asserts. Specifically, the record does not contain copies of the documents that correspond to the following docket entries: (1) the May 26, 2010, entry showing "Proof of Service on file," (2) the May 28, 2010, entry indicating the State issued a summons to respondent mother on May 26, 2010, (3) the

June 14, 2010, entry reflecting a returned summons (not served) for respondent mother, and (4) the June 18, 2010, entry showing "Proof of Service on file."

¶ 16 Moreover, in its brief, OSAD sheds doubt on whether respondent mother was ever served. OSAD states at the June 8, 2010, status hearing "[t]he [trial] court did not have notice that [respondent mother] had been served." Since OSAD recognizes the court did not have proof of service at the June 8 status hearing, and the record is lacking documents to support OSAD's assertion respondent mother was in fact served, we disagree no colorable argument can be made on appeal the State did not comply with the service and notification requirements of the Juvenile Act. In fact, the docket entry of June 14, 2010, affirmatively shows *no* service of summons on Susan F.

¶ 17 Section 5-525 of the Juvenile Act requires a summons and a copy of the petition be served to the minor's "parent, guardian, or legal custodian[,] and to each person named as a respondent in the petition." 705 ILCS 405/5-525(1)(a) (West 2010). Our supreme court has held that failing to notify a respondent mother, named in a petition for adjudication, whose address is known, deprives the trial court of jurisdiction, rendering the adjudication order and subsequent orders void. *People v. R.S.*, 104 Ill. 2d 1, 6, 470 N.E.2d 297, 300 (1984).

¶ 18 Respondent mother was named in the adjudication petition and her address was listed on the petition. Therefore, respondent mother should have been served with notice of the proceedings involving her daughter. If the mother could not be found for service, then publication was necessary, 705 ILCS 405/5-525(2)(b) (West 2010). There is no proof of publication in this case.

¶ 19 We recognize the appearance by a respondent parent at a juvenile proceeding constitutes a waiver of service and submission to the jurisdiction of the trial court. See 705 ILCS 504/5-525(4) (West 2010). However, respondent mother was not present at respondent's detention

hearing or at the adjudicatory hearing where respondent admitted the criminal allegations. Respondent mother did not appear before the court until the August 9, 2010, status hearing. Therefore, a question arises about the validity of the minor's plea, given at a time where no parent was present as the result of the State's failure to notify the parent of the proceedings.

¶ 20 For the reasons stated, we disagree no colorable argument can be made on appeal respondent did not receive all the procedural protections of the Juvenile Act. We conclude this issue would be best resolved by the advocacy process. Therefore, we deny OSAD's motion and direct OSAD to (1) file a brief on respondent's behalf, addressing in part, whether the service and notification requirements of the Juvenile Act were met and (2) if not met, the effect thereof on the validity of respondent's plea at a time when her only parent was not present at the adjudicatory hearing. OSAD is also directed to supplement the record with copies of the following: (a) the May 26, 2010, proof of service, (b) the summons the State issued on respondent mother on May 26, 2010, and its return on June 14, 2010, and (c) the June 18, 2010, proof of service.

¶ 21 Additionally, in its motion to withdraw, OSAD asserts no colorable argument can be made on appeal (1) the court did not comply with the Juvenile Act in adjudicating respondent delinquent and declaring her a ward of the court or (2) the court abused its discretion when it sentenced respondent. Whether respondent mother was served will affect the remaining issues in this case. Therefore, we are unable to determine at this time if respondent can make any colorable arguments as to these issues, and so, we direct OSAD to address them in its brief.

¶ 22 III. CONCLUSION

¶ 23 The questions raised in this order do not imply a position on the merits of the issues involved. However, a motion to withdraw asserts the absence of any arguable issues. Without

further exploration of the issues we identify herein, we cannot agree with OSAD that no colorable issue can be raised. We deny OSAD's motion for leave to withdraw. Our denial is without prejudice. Within 21 days, OSAD shall file a brief addressing the concerns raised in this order.

¶ 24 Motion denied.