2019 IL App (2d) 180807-U
No. 2-18-0807
Order filed March 19, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re B.P., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 17-JA-151
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v.	)	Francis M. Martinez,
Delilah M., Respondent-Appellant).	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Birkett and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's order terminating respondent's parental rights was affirmed where respondent failed to establish that the adjudicatory and dispositional orders were void for lack of sufficient service of process or failure to provide procedural due process.

¶ 2 Respondent, Delilah M., appeals the trial court's order terminating her parental rights. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 This case involves the termination of respondent's parental rights with respect to the now 17-year-old minor B.P. In 2005, when B.P. was four years old, respondent was convicted of murder. Respondent is serving her sentence at Logan Correctional Center in Lincoln, Illinois

with an expected release date of 2032. At that time of her conviction, respondent arranged for B.P.'s paternal grandmother to become B.P.'s guardian. In 2014, however, B.P.'s paternal aunt, Erica P., became B.P.'s guardian.

¶ 5 On May 11, 2017, the State filed a three-count neglect petition pursuant to sections 405/2-3(1)(b), 2-3(2)(i) and 2-3(2)(v) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b), 2-3(2)(i), 2-3(2)(v) (West 2016)), alleging that (1) the then 14-year-old B.P. was in an environment injurious to her welfare in that her "maternal aunt" struck B.P. multiple times leaving bruises and inflicting a nasal bone fracture; (2) B.P. is an abused minor in that these actions inflicted upon B.P. physical injury causing disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function; and (3) B.P. is an abused minor in that these actions, imposed for going to a park when instructed to stay home, inflicted excessive corporal punishment. The petition requested a temporary shelter care hearing, stated that B.P. was in DCFS custody, and alleged that it was in B.P.'s best interests that she be adjudged a ward of the court. The petition requested a hearing date of May 11, 2017. The petition identified respondent as B.P.'s mother, listed respondent's residence as Logan Correctional Center, but stated an incorrect address for the facility in Springfield, Illinois rather than Lincoln, Illinois.

¶ 6 At the shelter-care hearing on May 11, 2017, a Department of Children and Family Services (DCFS) investigator stated that she attempted to notify respondent about the case by telephoning Logan Correctional Center on May 10, 2017. The investigator was told that she would be put in touch with respondent's case manager but did not receive a further response. The parties agreed as to probable cause to believe that B.P was neglected, that there was an urgent and immediate necessity to place B.P in shelter care, and that reasonable efforts had been made

to avoid removal. The trial court found support for the agreement, ordered B.P. to be placed in shelter care, and continued the matter to July 11, 2017, for a pretrial hearing on the neglect petition. The trial court authorized the State to issue summons to respondent at Logan Correctional Center.

¶ 7 The State filed an amended neglect petition the next day, on May 12, 2017, substituting the references to "maternal aunt" with "guardian." The amended petition also deleted the request for the since-past May 11, 2017, hearing date. Respondent's address at Logan Correctional Center remained incorrect.

¶ 8 A summons was mailed to respondent on May 15, 2017, but, on May 30, 2017, it was returned to sender because it was misaddressed to Logan Correctional Center in Springfield, Illinois, rather than Lincoln, Illinois. Thus, when the parties appeared for the pretrial hearing on July 11, 2017, respondent had not been served. The trial court directed the State to have the summons reissued and continued the matter to July 25, 2017, for a status on discovery.

¶ 9 When the parties appeared again on July 25, 2017, however, respondent still had not been served. The guardian, Erica P., represented to the trial court that she had spoken with respondent by telephone and that respondent "knew what was going on." The trial court again directed the State to have the summons reissued. The parties informed the trial court that Erica P. intended to stipulate to the first count of the amended neglect petition. In exchange for the stipulation and agreement to do service on all counts, the State agreed to dismiss the remaining counts of the amended neglect petition. The intended dispositional agreement was that Erica P. would vacate her guardianship and grant guardianship and custody of B.P. to DCFS. The trial court entered an order setting forth the stipulation "so long as the mother does not object." The matter was continued to August 7, 2017, for an adjudicatory hearing and possible dispositional hearing.

¶ 10 The record demonstrates that on July 26, 2017, a new summons was sent by certified mail from the clerk of the court to respondent at the correct address for Logan Correctional Center. The return receipt was received on August 3, 2017, but the date of the delivery on the receipt was not completed. The personal service record from the Sheriff's Office of Logan County, Illinois, reflected that a deputy personally served the summons at 10:44 a.m. on August 4, 2017 (a Friday). The summons was directed to respondent and informed her that she was summoned to appear before the Circuit Court of Winnebago County on August 7, 2017 (a Monday), at 9 a.m. "to answer the Petition in this case." The summons further stated: "You are entitled to have an attorney present at the hearing on the petition filed herein, a copy of which is attached to this summons. Prompt notice should be served on the Clerk of said Court by any person upon whom summons is served, desiring to be represented, but who is financially unable to employ an attorney." The neglect petition (not the amended neglect petition) was attached.

¶ 11 However, also included with the summons was an extraneous letter stating that "a delinquency petition concerning your minor child was filed in the Juvenile Court of Winnebago County." The letter advised that "your child must be represented by an attorney" and that "[i]f you do not hire an attorney, the Court will appoint an attorney for your child" and "has the power to order you to pay for the legal services provided." The letter included an affidavit of assets and liabilities and further advised that "[u]nless you have hired an attorney to represent your child, please complete this form and bring it with you to your child's first court appearance" as the "form must be completed and presented to the court as part of the appointment process."

¶ 12 Respondent did not appear at the hearing on August 7, 2017. At the hearing, the State represented that the summons had been reissued and that respondent had been served. The following colloquy ensued:

"THE COURT: So I can default mother.

MR. LAYE [ASSISTANT STATE'S ATTORNEY]: Yes. With that, Judge, I believe that we can now enter the agreement for adjudication.

THE COURT: Could you restate that for the record.

MR. LAYE: With that I believe that we can enter the agreement as to the adjudication that was reached on July 25, 2017.

¶ 13 The DCFS report filed on the date of the hearing reflected that the caseworker had a telephone conversation with respondent on July 28, 2017, regarding placement options for B.P. Specifically, the report provided:

"CWS had a phone conversation with [respondent] on 07/28/17. [Respondent] is currently incarcerated at Logan Correctional Facility. CWS informed [respondent] that [B.P.] is in care and explained the reasons why the minor was brought into care. [Respondent] gave two relative placement options for the minor to be placed at. The Department will look into these placements and if appropriate place the minor with one of the relatives. [Respondent] also stated that she would like visitations if possible. CWS will arrange visitations with the parent if the minor is willing to engage."

¶ 14 The trial court entered an order, providing that "[respondent] having been duly served with notice of these court proceedings and having failed to appear, [she] is hereby found to be in default." The trial court proceeded to enter the adjudicatory and dispositional orders. The August 7, 2017, adjudicatory order stated that B.P. was a neglected minor as to the first count of the amended neglect petition pursuant to Erica P.'s stipulation to the factual basis and that the dispositional hearing was set for "*instanter*." The August 7, 2017, dispositional order granted

guardianship and custody of B.P. to DCFS. The trial court set a goal of "return home with an eye toward independence" and continued the matter to October 23, 2017, for a permanency review.

¶ 15 The DCFS permanency hearing report submitted for the October 23, 2017, hearing stated that a monthly visitation schedule between respondent and B.P. was in place and also that B.P.'s foster parent and B.P. mutually desired adoption. The DCFS caseworker reported that respondent's counselor contacted the caseworker and indicated that respondent "would like to come to court" and "wrote to the [c]ourt about six weeks ago, [but] ha[s]n't gotten a response to get a writ." The trial court stated that it had not received any correspondence from respondent. The trial court directed the State to writ respondent to court and continued the matter for a permanency review hearing on January 10, 2018. The trial court also entered an order, finding that DCFS made reasonable efforts to follow the service plan and set the goal of substitute care pending independence.

¶ 16 On November 3, 2017, the State filed a *habeas corpus* petition, requesting that the warden at Logan Correctional Center be ordered to transport respondent to the January 10, 2018, permanency review hearing. The petition was granted, and respondent appeared at the hearing. Following the trial court's admonishments, respondent stated that she wished to participate in the proceedings and did not agree with a goal of adoption. The trial court appointed counsel to represent respondent and ordered that respondent be writted in for subsequent proceedings. The trial court found that DCFS made reasonable efforts to follow the service plan and changed the goal to substitute care pending court determination of termination of parental rights. The matter was continued to February 28, 2018, for arraignment on the petition to terminate parental rights. The trial court also scheduled a hearing for May 22, 2018, on termination of parental rights and unfitness.

¶ 17 On January 11, 2018, the State filed a "motion for termination of parental rights and power to consent to adoption." The petition alleged that respondent was unfit because she failed to maintain a reasonable degree of interest, concern, or responsibility as to B.P.'s welfare and failed to make reasonable progress toward return of B.P. within nine months after B.P. was adjudicated neglected.

¶ 18 At the hearing on February 28, 2018, counsel for respondent argued that respondent was not properly served and that the adjudicatory and dispositional orders were improperly entered in respondent's absence. The trial court noted that the record established proper service and thus stated, "My suggestion is that you file a motion and be prepared to present evidence that negates that service."

¶ 19 On March 30, 2018, respondent moved to dismiss the petition based upon insufficient service of process prior to entry of the adjudicatory and dispositional orders. She argued that the summons failed to state that a dispositional hearing may occur on August 7, 2017, that guardianship and custody could be affected, or that her parental rights could be terminated. She also argued that she was provided no direction as to how to proceed given her incarceration and that she was misinformed of the nature of the proceeding as the summons included materials relevant to a delinquency petition. Accordingly, respondent maintained that notice was insufficient and untimely, that any orders entered before her January 10, 2018, appearance violated her procedural due process rights, and that the adjudicatory and dispositional orders were therefore void. She requested dismissal of the motion to terminate her parental rights as well as new adjudicatory, dispositional, and permanency review hearings.

¶ 20 Following a hearing on May 22, 2018, the trial court denied respondent's motion. The trial court found that section 405/2-15(5) of the Juvenile Court Act (705 ILCS 405/2-15(5) (West

2016)) provides the requisite notice and opportunity to be heard and conforms to procedural due process requirements. Specifically, the trial court reasoned:

> "[The statute] requires notice to be served at least three days before the hearing. In this particular case, that was done. Now, the statute doesn't distinguish between a non-incarcerated parent and an incarcerated parent; so the legislature is silent.
>
> But the Court can only presume, looking at the statute in its plain language, that the legislature intended no difference. Because if the legislature intended that category of citizen, incarcerated person, to be considered differently, it would have simply inserted that provision in that statement.
>
> And perhaps that's something the legislature should take up, because you make some—in practicality, you make some very good points. But it is clear that the statute does not differentiate between incarcerated and non-incarcerated persons.
>
> Now, the State did conform with that; so I believe they have met the statute."

¶ 21 The trial court acknowledged that the timing of service may not allow an incarcerated person sufficient opportunity to object or request counsel. However, the trial court pointed out, respondent had 30 days in which to attempt to vacate the default order. "That 30 days came and went with no correspondence with the Court and no continued correspondence with the Court or anyone else until she was actually writted by the State." The trial court also pointed out that respondent did nothing to give the court reason to appoint counsel or writ her to court. Thus, the trial court stated, "[It did] not feel it would be proper to impose or layer additional obligations on the State that aren't contained in the statute. I'm not even sure how I would fashion those."

¶ 22 Addressing the summons and accompanying materials that were provided to respondent, the trial court noted the erroneous inclusion of the delinquency petition, but found that the

information would have placed a reasonable person on notice that her liberty interest in her child was the subject of litigation. In sum, the trial court concluded:

¶ 23 "So I'm going to deny the motion, and I'm denying it based on the fact that the statute was comported with. The inadvertent insertion of that delinquency letter does not negate the notice provided by the Summons and the Petition.

That the petition is not written in language that would prevent a reasonable person from understanding that their child is in care of the Department and that this litigation is ongoing. And I did not receive communication.

And I don't believe there is an inability for incarcerated individuals to communicate, because I receive communication on a regular, a fairly regular basis. I certainly receive communication, and we respond to it, from the Department of Corrections."

Accordingly, the trial court entered an order denying respondent's motion to dismiss the petition to terminate parental rights and continued the matter to August 2, 2018, for the hearing on termination of parental rights and unfitness.

¶ 24 At the August 2, 2018, hearing, DCFS child welfare specialist Tashinah Shade and respondent testified. Shade testified that she sent respondent a letter with her business card in June or July 2017 to inform her that B.P. was in DCFS care. Shade did not receive any responsive correspondence from respondent. Shade first spoke to respondent in October or November 2017; the conversation was by telephone, and the logistics were coordinated by respondent's counselor at Logan Correctional Center. Regarding the notation in the August 7, 2017, DCFS report that a caseworker had a telephone conversation with respondent on July 28, 2017, Shade testified that she was in training during that time period and that the caseworker

who assumed Shade's cases may have communicated with respondent. Shade also testified regarding email correspondence with respondent's counselor at some point regarding the logistics to writ respondent to court and regarding respondent's participation in administrative case reviews.

¶ 25 Shade testified that an integrated assessment was not performed with respect to respondent because respondent's scheduled release date was after B.P. would be an adult. She further testified that respondent provided no food, clothing, supplies, or shelter to B.P. nor did respondent inquire into B.P.'s schooling, medical visits, or counseling sessions. Respondent sent letters to B.P. when B.P. was in DCFS custody; however, Shade's understanding was that respondent and B.P. had not communicated during the time B.P. was in the guardian's care. From November 2017 to February 2018, respondent and B.P. visited monthly. However, at that point, B.P. was having behavioral problems at school because, at the visits, respondent communicated her objection to B.P.'s adoption. Thus, B.P. requested termination of the monthly visits.

¶ 26 Respondent testified that she learned that B.P. was in DCFS custody on August 1, 2017,[1] when she was "served papers," but "[i]t was impossible for me to go to the law library because it takes 14 days in order for you to put your writ in." Respondent met with a counselor at Logan Correctional Center who told her that the August 7, 2017, hearing date was not for respondent

[1] Respondent testified that she was served on August 1, 2017 (a Tuesday), but she subsequently testified that she was served "on a Friday." As discussed, the personal service record from the Sheriff's Office of Logan County, Illinois, reflected that a deputy personally served the summons at 10:44 a.m. on August 4, 2017 (a Friday). Respondent maintains on appeal that she was served on August 4, 2017.

and that she did not have to appear. Respondent testified that she nevertheless understood from the petition that B.P. was in DCFS care because her guardian abused her. Respondent also testified that in July 2017, she spoke to an individual who was filling in for Shade. Respondent inquired as to B.P.'s well-being, gave him information regarding with whom B.P. could live, told him that she wanted to participate in the case, and inquired about visits with B.P. Respondent acknowledged receipt of a letter from Shade advising respondent of an October 2017 court date. Respondent testified that she sent a letter in response, requesting to be transported to the hearing, but her letter was "returned to sender."

¶ 27 Respondent further testified that she sent more than 10 letters to B.P. and tried to write her weekly. She stopped sending letters when visitation with B.P. ceased because she did not know what was happening. Respondent filed an administrative appeal to have visitation reinstated. Respondent testified that during the time period from 2014 to 2017 when Erica P. was B.P.'s guardian, respondent had one visit with B.P.

¶ 28 The trial court found that the State met its burden by clear and convincing evidence that respondent failed to show reasonable interest, concern, or responsibility. The trial court specified that its finding was not based upon respondent's failure to provide food and shelter as she was incarcerated. Rather, the trial court based its finding upon "things that could have been done, especially communication with the court and participation in these proceedings, [but] were not done." Specifically, the trial court noted that respondent received a copy of the neglect petition but did not "communicate with the court asking for counsel or communicate with the court asking to participate in these proceedings for a period of several months which prevented appointment of counsel and prevented participation." The trial court found Shade credible and pointed to respondent's sporadic communication with Shade and lack of reasonable interest in

the matter until the petition to terminate parental rights was filed. The trial court continued the matter for a best interests hearing.

¶ 29 The best interests hearing was held on September 14, 2018. Both Tashinah Shade, the DCFS child welfare specialist, and the guardian *ad litem* testified. The DCFS report to the court relayed that both B.P. and her foster parent sought adoption. B.P. did not want to live with her biological family for fear of being "bounced from house to house." DCFS recommended that it was in B.P.'s best interests to terminate parental rights as the placement offered B.P. care, love, growth, stability, and permanence. B.P. demonstrated a strong attachment to her foster family and was involved in her community and school, and the foster parent has supported B.P.'s involvement with respondent and other family members. In addition, the guardian *ad litem* testified that she discussed the issues of adoption and guardianship with B.P., that B.P. fully understood her options, and that B.P. wished to be adopted.

¶ 30 The trial court found that the State proved by a preponderance of the evidence that it was in B.P.'s best interests to terminate parental rights. Placement with respondent was not viable in light of respondent's incarceration. Independence would be appropriate only if there were no stable, permanent environment for B.P. However, B.P. was well integrated into the foster family and the community. She was old enough to express her feelings, and she wished to be adopted because she wanted the security of knowing she will be a part of a stable family. Thus, the trial court terminated respondent's parental rights and changed the minor's permanency goal to adoption.

¶ 31 Respondent timely filed a *pro se* notice of appeal from the September 14, 2018, order terminating her parental rights.[2] Counsel was appointed to represent respondent on appeal.

[2] B.P.'s father, Antonio P., was served at his last known address and by publication and

¶ 32 II. ANALYSIS

¶ 33 Respondent argues that the adjudicatory and dispositional orders were void for lack of sufficient service of process under section 405/2-15(5) of the Juvenile Court Act (705 ILCS 405/2-15(5) (West 2016)) or, alternatively, for failure to provide respondent procedural due process. Thus, respondent argues, in the absence of valid adjudicatory and dispositional orders, the order terminating her parental rights must be reversed. Respondent does not challenge the underlying unfitness and best interests findings. We review *de novo* the legal issues of whether the trial court obtained personal jurisdiction over respondent and whether the judgment is void. See *In re Dar C.*, 2011 IL 111083, ¶ 60; *People v. Rodriguez*, 355 Ill. App. 3d 290, 293-94 (2005). Resolution of respondent's arguments also requires us to construe statutory language. Statutory construction is likewise a question of law subject to *de novo* review. See *In re Jose A.*, 2018 IL App (2d) 180170, ¶ 18.

¶ 34 Parents have a fundamental liberty interest in the care, custody, and control of their children. *In re M.H.*, 196 Ill. 2d 356, 362-63 (2001). The authority to involuntarily terminate parental rights is set forth in the Juvenile Court Act (705 ILCS 405/1-1 *et seq.* (West 2016)) and the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2016)). These statutes "contain strict procedural requirements that embody Illinois' policy that favors parents' superior right to the custody of their own children." *In re E.B.*, 231 Ill. 2d 459, 464 (2008).

¶ 35 Upon the State's filing of a petition for wardship, the trial court is required to hold a temporary custody hearing to determine whether there is probable cause to believe that the minor is abused, neglected, or dependent, whether there is an immediate and urgent need to remove the

---

never appeared. His parental rights were terminated by default, and he is not a party to this appeal.

minor from the home, and whether reasonable efforts have been made to prevent removal of the minor or that no efforts reasonably may be made to prevent or eliminate the necessity of removal. 705 ILCS 405/2-10 (West 2016); *In re Arthur H.*, 212 Ill. 2d 441, 462 (2004). After the minor is placed in temporary custody, the trial court must conduct an adjudicatory hearing to determine whether a preponderance of the evidence demonstrates that the minor is abused, neglected, or dependent. 705 ILCS 405/2-18(1) (West 2016); *Arthur H.*, 212 Ill. 2d at 462-64. Following a finding of abuse, neglect, or dependency, the trial court must conduct a dispositional hearing to determine whether it is in the bests interests of the minor and the public that the minor be made a ward of the court and, if so, to determine the disposition that will best serve the health, safety and interests of the minor and the public. 705 ILCS 405/2-21(2), 2-22(1) (West 2016); *In re Tyianna J.*, 2017 IL App (1st) 162306, ¶ 43.

¶ 36 Ultimately, if the parent fails to do what is necessary to retain parental rights, then there is a two-stage process for terminating parental rights involuntarily. 705 ILCS 405/2-29(2) (West 2016); *In re J.L.*, 236 Ill. 2d 329, 337-38 (2010)*; Tyianna J.*, 2017 IL App (1st) 162306, ¶ 43. There must first be a showing, based upon clear and convincing evidence, that the parent is unfit. 705 ILCS 405/2-29(2), (4) (West 2016); *J.L.*, 236 Ill. 2d at 337. Following the unfitness finding, the trial court considers the best interests of the minor in determining whether parental rights should be terminated. 705 ILCS 405/2-29(2) (West 2016); *J.L.*, 236 Ill. 2d at 337-38.

¶ 37 Initially, the State argues that we lack jurisdiction to review the adjudicatory and dispositional orders because respondent failed to file a notice of appeal within 30 days after the entry of the dispositional order. In all proceedings under the Juvenile Court Act (except delinquency cases), "appeals from final judgments shall be governed by the rules applicable to civil cases." Ill. S. Ct. R. 660(b) (eff. Oct. 1, 2011); *In re M.J.*, 314 Ill. App. 3d 649, 654 (2000).

To properly perfect an appeal in a civil case, a notice of appeal must be filed within 30 days after the entry of a final order unless an extension is granted pursuant to Supreme Court Rule 303(d). Ill. Sup. Ct. R. 303(a), (d) (eff. July 1, 2017); *M.J.*, 314 Ill. App. 3d at 654. While the adjudicatory order in a juvenile case generally is not final and appealable, the dispositional order is. *M.J.*, 314 Ill. App. 3d at 655.

¶ 38 In *In re M.J.*, the mother appealed from the order terminating her parental rights but also argued that the State failed to meet its burden of proof in the underlying neglect proceedings. 314 Ill. App. 3d at 651. However, the mother never filed a notice of appeal from the dispositional order. *Id.* at 655. She nevertheless argued that the trial court erroneously admitted evidence at the adjudicatory hearing and therefore lacked jurisdiction to make the requisite findings to adjudicate the children neglected. *Id.* at 654. Thus, the mother argued, there was appellate jurisdiction over her challenge to the underlying neglect proceedings. *Id.* The appellate court rejected this argument, holding that a trial court does not lose subject matter jurisdiction by purportedly failing to proceed within rules of evidence or statutory strictures. *Id.* Rather, the trial court proceeds in possible error subject to appellate review. *Id.* The appellate court therefore dismissed for lack of jurisdiction the portion of the mother's appeal challenging the findings at the underlying neglect proceedings. *Id.* at 655.

¶ 39 Likewise, here, respondent appeals from the order terminating her parental rights but never appealed from the adjudicatory or dispositional orders (and the time period within which to appeal from them has long since expired). Thus, we lack jurisdiction to directly review the adjudicatory and dispositional orders. See *id.* However, respondent argues that the adjudicatory and dispositional orders were void because the trial court lacked personal jurisdiction over her at the time it entered the orders. "If a court lacks either subject matter jurisdiction over the matter or

personal jurisdiction over the parties, any order entered in the matter is void *ab initio* and, thus, may be attacked at any time." *In re M.W.*, 232 Ill. 2d 408, 414 (2009).

¶ 40 Accordingly, we turn to respondent's argument that the trial court lacked personal jurisdiction over her at the time it entered the adjudicatory and dispositional orders. Personal jurisdiction may be imposed upon a litigant by the effective service of summons, or a litigant may consent to personal jurisdiction by appearing in the matter. *Id.* at 426. Section 405/2-15 of the Juvenile Court Act (705 ILCS 405/2-15 (West 2016)) governs the service of summons of a petition alleging abuse, neglect, or dependency of a minor. *Dar C.*, 2011 IL 111083, ¶ 62. In setting forth the method of notice required to apprise individuals of a pending proceeding, the statute provides in relevant part:

> "Service of a summons and petition shall be made by: (a) leaving a copy thereof with the person summoned at least 3 days before the time stated therein for appearance ***. The certificate of the officer or affidavit of the person that he has sent the copy pursuant to this Section is sufficient proof of service." 705 ILCS 405/2-15(5) (West 2016)).

¶ 41 Here, the certificate of service from the Logan County Sheriff's Department states that a deputy served respondent with the summons and the neglect petition at 10:44 a.m. on August 4, 2017. Respondent argues this was not three days "before the time stated therein for appearance" at the neglect hearing as required by section 405/2-15(5). According to respondent, under the plain language of the statute, three days means 72 hours. The summons required respondent to appear at the neglect hearing scheduled for 9 a.m. on August 7, 2017. Thus, respondent maintains, service of the summons at 10:44 a.m. on August 4, 2017, was 70 hours and 16 minutes before the required appearance, not 72 hours.

¶ 42 The State contends that this argument is forfeited as respondent failed to challenge in the trial court the timeliness of the summons under section 405/2-15(5). See *In re Katarzyna G.*, 2013 IL App (2d) 120807, ¶ 10 (the failure to raise an issue in the trial court ordinarily results in forfeiture of the issue on appeal). In her motion to dismiss the petition to terminate her parental rights, respondent challenged the timeliness and sufficiency of notice although she did not raise the precise argument she now raises on appeal—that three days under section 405/2-15(5) means 72 hours. Regardless, forfeiture is a limitation on the parties, not the reviewing court, and a reviewing court may address the merits of an argument that was forfeited when it relates to the fundamental liberty interest involved in the termination of parental rights. *In re Tamera W.*, 2012 IL App (2d) 111131, ¶ 30. Moreover, a party may challenge jurisdiction at any time; thus, a jurisdictional argument cannot be forfeited. *People v. Strickland*, 2015 IL App (3d) 140204, ¶ 13.

¶ 43 The cardinal rule of statutory construction is to ascertain and give effect to the legislature's intent. *Jose A.*, 2018 IL App (2d) 180170, ¶ 18. The most reliable indicator of legislative intent is the language of the statute itself, which should be given its plain and ordinary meaning. *Id.* We must read the statute in the manner in which it was written and not read into it exceptions, limitations, or conditions that the legislature did not express. *In re C.W.*, 199 Ill. 2d 198, 211-12 (2002). Only where the language of the statute is ambiguous, or where a literal interpretation of the statute would either lead to absurd results or thwart the goals of the statutory scheme, may a court look beyond the express language of the statute and consider extrinsic aids of construction. *Jose A.*, 2018 IL App (2d) 180170, ¶ 18. With these principles in mind, we turn to respondent's argument.

¶ 44 The clear and unambiguous language of section 405/2-15(5) requires service of the summons and neglect petition "at least 3 days before the time stated therein for appearance." 705

ILCS 405/2-15(5) (West 2016). The common sense meaning of "day" as used in the statute here is a calendar day. See, *e.g.*, *Kuznitsky v. Murphy*, 381 Ill. 182, 185-86 (1942); *Airdo v. Village of Westchester ex rel. Clark*, 95 Ill. App. 3d 568, 569 (1981). For instance, in *Kuznitsky*, the issue was whether the word "day" as used in defining "employer" under the Unemployment Compensation Act (Ill. Rev. Stat. 1941, Chap. 48, par. 218(e)), meant a "calendar day" or, as the employer argued, a work or business day. 381 Ill. at 185-86. Our supreme court held that the plain language of the statute reflected that "day" meant a "regular calendar day." *Id.* at 185-86. Although the word "calendar" was used before the word "day" in other sections of the statute, its absence in the provision at issue did not provide a basis to hold otherwise. *Id.* at 185. Had the legislature intended anything other than the ordinary calendar day, it would have stated so in appropriate language. *Id.* at 186.

¶ 45 Likewise, in *Airdo*, the issue involved construction of the word "day," there as used in the Illinois Municipal Code (Ill. Rev. Stat. 1979, ch. 24, par. 10-2.1-17), which set forth a maximum 30-day statutory time period to suspend a member of a municipal fire department without pay. 95 Ill. App. 3d at 569. The court held that the plain meaning of "day" meant a "calendar day," not a "duty day." *Id.*; see also *Pekin Insurance Co. v. Harvey*, 377 Ill. App. 3d 611, 614 (2007) ("As a general rule, the law will not recognize fractions of a day unless that recognition is deemed important to the interests of justice or necessary to a decision regarding conflicting interests.").

¶ 46 Respondent provides no case law to support her argument that three days means 72 hours under section 405/2-15(5). She merely cites authority for general principles of statutory construction. These principles prohibit us from reading into the statute exceptions, limitations, or conditions that are not there. See *C.W.*, 199 Ill. 2d at 211-12. Had the legislature intended that service be made within 72 hours of the hearing, it would have specified the hourly unit as it did

in other sections of the Juvenile Court Act. See, *e.g.*, 705 ILCS 405/5-415(1) (West 2016) (requiring that a minor alleged to be delinquent and taken into temporary custody be brought before a judicial officer within 40 hours for a detention or shelter care hearing); 705 ILCS 405/5-501(6) (West 2016) (requiring the clerk of the court to set the matter for rehearing not later than seven days after the original order if the parent, guardian, or legal custodian fail to appear within 24 hours to take custody of a minor released from detention or shelter care).

¶ 47 Section 405/2-15(5) required that respondent be served with the summons and neglect petition at least three days before the time she was required to appear. 705 ILCS 405/2-15(5) (West 2016). Respondent was served on August 4, 2017; the hearing on the neglect petition was on August 7, 2017. Thus, as required by the plain language of the statute, respondent was served at least three days before the time she was required to appear. The State satisfied the requirements for service set forth in section 405/2-15(5). Thus, there is no basis upon which to hold that the adjudicatory and dispositional orders were void, and we are compelled to hold that we have no jurisdiction to review the orders.

¶ 48 Respondent argues that even if service of process complied with section 405/2-15(5), the adjudicatory and dispositional orders were nonetheless void because the timing of service violated her procedural due process rights. Respondent's position is that service of a summons on an incarcerated person in another county less than 72 hours before the time of the hearing, although compliant with the statutory requirements, failed to provide either adequate notice or an opportunity to be heard as required by *Mathews v. Eldridge*, 424 U.S. 319 (1976).

¶ 49 Respondent presumes without legal support or analysis that a procedural due process violation would render the adjudicatory and dispositional orders void such that we would have jurisdiction to review them. However, a procedural due process violation does not necessarily

negate personal jurisdiction such that the adjudicatory and dispositional orders would be void. See *M.W.*, 232 Ill. 2d at 427 (the due process challenges raised there "do not implicate personal jurisdiction"). A void order is an order entered despite a " 'total want of jurisdiction' " while a voidable order is an order entered erroneously by a court with jurisdiction and is not subject to collateral attack. *In re Marriage of Mitchell*, 181 Ill. 2d 169, 174 (1998) (quoting *Johnston v. City of Bloomington*, 77 Ill. 2d 108, 112 (1979)). There was no dispute here that the trial court had subject matter jurisdiction by virtue of the filing of the neglect petition. See *M.W.*, 232 Ill. 2d at 426 (subject matter jurisdiction "is invoked by the filing of a petition or complaint alleging the existence of a justiciable matter"). And, as discussed above, the trial court obtained personal jurisdiction over respondent upon the service of summons. Thus, at the time the trial court entered the adjudicatory and dispositional orders, the trial court had subject matter jurisdiction over the case and personal jurisdiction over respondent.

¶ 50 Nevertheless, as discussed below, we need not resolve whether the alleged procedural due process violation here provides a basis for finding the orders void because we hold that there was no violation of respondent's procedural due process rights. See *Fiallo v. Lee*, 356 Ill. App. 3d 649, 654 (2005) (declining to resolve "whether a court may find an order void *ab initio* based on a violation of procedural due process where the court had both personal and subject matter jurisdiction to enter the order" because the court found there was no procedural due process violation there).

¶ 51 Parents have a fundamental liberty interest in the care, custody, and control of their children. *M.H.*, 196 Ill. 2d at 362-63. Accordingly, due process requires that a parent have adequate notice in juvenile proceedings (*In re A.M.*, 402 Ill. App. 3d 720, 724 (2010)), and the Juvenile Court Act sets forth a respondent's right to be present at the proceedings (705 ILCS

405/1-5 (West 2016)). In determining whether there has been a procedural due process violation in a parental rights termination proceeding, the following factors are balanced: (1) the private interest affected by the governmental action; (2) the risk of an erroneous deprivation of a protected interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and (3) the governmental interest, including the function involved and fiscal and administrative burdens that the additional or substituted procedural requirements would involve. *M.H.*, 196 Ill. 2d at 363 (citing *Mathews*, 424 U..S. at 335).

¶ 52 There is no dispute that respondent has a fundamental liberty interest in B.P.'s custody and care. See *id.* at 362-63. Regarding the second prong—the procedures used, the trial court was not obliged to delay hearings in light of respondent's incarceration. See *In re J.S.*, 2018 IL App (2d) 180001, ¶ 20. "[I]t is well established that lawful incarceration necessarily makes unavailable many rights and privileges of the ordinary citizen." *In re C.J.*, 272 Ill. App. 3d 461, 464 (1995). The record demonstrates that as soon as the trial court became aware of respondent's desire to participate in the proceedings, the trial court directed the State to secure her presence at hearings and appointed counsel to represent respondent. This amounted to reasonable efforts by the trial court to accommodate respondent. See *J.S.*, 2018 IL App (2d) 180001, ¶ 20. To hold otherwise would essentially require this court to rewrite the statute to mandate a longer time period within which to provide service of summons or impose a statutory burden upon the State to writ a respondent to court without any request.

¶ 53 Moreover, a litigant may seek to vacate a default order within 30 days pursuant to section 5/2-1301 of the Code of Civil Procedure (735 ILCS 5/2-1301(e) (West 2016)), which provides that a court "may in its discretion, before final order or judgment, set aside any default, and may on motion filed within 30 days after entry thereof set aside any final order or judgment upon any

terms and conditions that shall be reasonable." The paramount consideration in evaluating a motion to vacate a default order "is simply whether or not substantial justice is being done between the litigants and whether it is reasonable, under the circumstances, to compel the other party to go to trial on the merits." *In re Haley D.*, 2011 IL 110886, ¶ 57. The litigant "need not necessarily show the existence of a meritorious defense and a reasonable excuse for not having timely asserted such defense" (as would be required in seeking to vacate a default order after 30 days of its entry pursuant to 735 ILCS 5/2-1401(a) (West 2016)). *Haley D.*, 2011 IL 110886, ¶¶ 57-58. This procedural mechanism minimizes the risk of an erroneous deprivation.

¶ 54 With respect to the governmental interest set forth in the third prong, the State, as *parens patriae*, has a compelling interest in protecting the welfare of a child. *In re R.C.*, 195 Ill. 2d 291, 305 (2001). Once the trial court determined that B.P. was neglected, the State had a duty to properly secure B.P.'s welfare and safety. See 705 ILCS 405/1-2 (West 2016). The risk of an erroneous deprivation of respondent's rights must be balanced against the State's interest in preventing delay in adjudicating a minor neglected. See *A.M.*, 402 Ill. App. 3d at 725. Such delays "impose a serious cost on the function of the government, as well as intangible costs to the lives of the children involved." *Id.*

¶ 55 In balancing respondent's interest in retaining her parental rights, the risk of erroneous deprivation of rights, and the State's interest in ensuring B.P.'s safety as soon as practicable, we note that DCFS contacted respondent at Logan Correctional Center, and respondent was aware that B.P. was in DCFS custody even before the summons was issued. Respondent was served with the summons and the neglect petition apprising her that a hearing on the petition was scheduled for August 7, 2017. As the trial court pointed out, respondent had 30 days in which to attempt to vacate a default order pursuant to section 5/2-1301(e), but "[t]hat 30 days came and

went with no correspondence with the Court and no continued correspondence with the Court or anyone else until she was actually writted by the State." Accordingly, respondent fails to establish a procedural due process violation.

¶ 56 As a final matter, the State argues that even if we were to hold that service on respondent failed to comply with the statutory requirements or violated respondent's procedural due process rights, respondent consented to personal jurisdiction by her appearances in court. In light of our holding, we need not address this argument.[3]

¶ 57 III. CONCLUSION

¶ 58 For the reasons stated, we affirm the judgment of the circuit court of Winnebago County terminating respondent's parental rights to B.P.

¶ 59 Affirmed.

[3] This is an accelerated appeal under Supreme Court Rule 311(a) (eff. July 1, 2018). Our disposition was due within 150 days after the filing of the notice of appeal, or February 28, 2019. However, the submission date was delayed in light of respondent's request for a six-week extension of time to file the opening brief; no reply brief was filed. We therefore find good cause for filing this decision beyond the 150-day deadline. See Ill. S. Ct. R. 311(a)(5) (eff. July 1, 2018).