

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY COURT
DOMESTIC RELATIONS BRANCH – ADOPTION**

EX PARTE IN THE MATTER OF)	ADOPTION CASE NO. A-
)	
THE PETITION OF)	
)	
)	JUDGE RONNA LEE BECK
)	
FOR ADOPTION OF)	
MINOR CHILD(REN))	

LIMITED CONSOLIDATION WITH

IN THE MATTER OF)	NEGLECT CASE NO. N-
)	
)	SOCIAL FILE NO.
DOB:)	
)	NEGLECT REVIEW CALENDAR
)	JUDGE
RESPONDENT(S))	

ORDER FOR SERVICE BY POSTING, WITHOUT PUBLICATION

This matter is before the court upon consideration of petitioner’s motion for service by posting on the **Mother/Father**, . has objected to the motion, arguing for publication in addition to posting. The petitioner contends that the Diligent Search Unit of the Child and Family Services Agency has been unable to serve the parent[s] despite diligent efforts. The Affidavit or Affidavits of the assigned Diligent Search investigator, filed in the case jacket and incorporated here by reference, list the steps that were taken to locate the parent[s].

D.C. Code Ann. § 16-306(a) (2001) requires "due notice" of pending adoption proceedings to be given to each person whose consent is necessary. The Superior

Court Adoption Rules require that service of the Notice of Adoption Proceeding and Order to Show Cause shall be made on each party and on any other person whose consent to the adoption is necessary and who has not executed a written consent to the adoption or a relinquishment of parental rights or had his or her parental rights terminated. Super. Ct. Adoption R. 4(d). Super. Ct. Adoption R. 4(e)(3) authorizes posting under certain circumstances:

Upon a determination that [personal service] will not be effective, the Court may order posting or publication of the notice. Where the subject of an adoption petition has been adjudicated to be neglected pursuant to D.C. Code § 16-2301 *et seq.*, or in other cases as ordered by the Court, service may be made by posting of the notice by the Clerk in the Domestic Relations Clerk's Office for not less than 14 days or for a period otherwise ordered by the Court.

Super. Ct. Adoption R. 4(e)(3).

When determining whether personal service will be effective, the court must assess whether the child-placing agency made diligent efforts. The Court of Appeals has held that a showing of diligent but futile efforts to ascertain the whereabouts of the defendant is a prerequisite to an order substituting constructive service for personal service. *Bearstop v. Bearstop*, 377 A.2d 405, 408 (D.C. 1977). It is only when the serving party is unable to effect personal service that provisions for other types of notice to a parent concerning proceedings to terminate the parent-child relationship may be given. *In re E.S.N.*, 446 A.2d 16,17 (D.C. 1982).

Constructive service is authorized in this case because it has not been possible to effect personal service, despite diligent efforts to find the person to be served. As the Supreme Court recognized in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950):

[I]n the case of persons missing or unknown, employment of an indirect and even a probably futile means of notification is all that the situation permits and creates no constitutional bar to a final decree foreclosing their rights.

Id. at 317 (citations omitted).

Posting in this case is authorized by Super. Ct. Adoption R. 4(e)(3) because the child has been adjudicated neglected. Moreover, the Court of Appeals has approved posting alone as the form of notice in a proceeding terminating the parent-child relationship. *In re E.S.N.*, 446 A.2d at 18. In reaching its decision, the Court of Appeals recognized that "the due process requirement depends upon 'the private interests at stake, the government's interest, and the risk that the procedures used will lead to erroneous decisions.'" *Id.* (citing *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 649 (1981)). In that regard, the Court of Appeals held that:

[A] father who exercises little actual control over a child and shoulders little responsibility with respect to the daily care of that child may be treated differently for due process purposes than a father who has assumed such responsibility.

Id. at 18-19 (citing *Quilloin v. Walcott*, 434 U.S. 246, 256 (1978)).

The court is not ordering publication in a newspaper in addition to or instead of posting in the Domestic Relations Clerk's office in this case for several reasons.

Unfortunately, neither method of service offers much prospect of actual notice;¹ yet publication costs more,² takes more time and trouble,³ and has more of a potential for

¹ See *Mullane*, 339 U.S. at 317 (referring to publication for a missing or unknown person as "a probably futile means of notification").

² There is no cost associated with posting. The cost for publication depends on the number of newspapers in which publication is to occur and the amount charged by each paper. The newspapers generally used for publication of legal notices charge less and have more limited circulation than newspapers such as *The Washington Post* and *The Washington Times*, which have larger circulation and charge higher fees. In addition, because publication requires more effort on the part of petitioner's counsel, and is more likely to necessitate a continuance of a hearing (see footnotes 3 and 4), the counsel fees are also greater for publication than posting.

even greater delay.⁴ In addition, for the court to order publication of the notice, there must be a showing that publication in a specified area may be effective to serve notice. Super. Ct. Adoption R. 4(e)(3). No such showing has been made in this case.

Posting is appropriate in this case, where the parent cannot be located after diligent efforts and apparently has not had a relationship with the child for a significant amount of time. [Insert any pertinent additional facts.]

WHEREFORE, it is this _____ day of _____, 2004,
hereby

ORDERED that petitioner's motion for service by posting is **GRANTED**. It is **FURTHER ORDERED** that the Domestic Relations Clerk shall post the attached Notice of Adoption Proceeding and Order to Show Cause in the

³ Posting in the Domestic Relations Clerk's office is for 14 days and requires no action by the petitioner once posting is approved. Posting is triggered by the signing of the posting order, and proof of posting is accomplished by a jacket entry by the Domestic Relations Clerk. By contrast, petitioner or petitioner's counsel must arrange for publication (this may include first obtaining a voucher to authorize payment by the court for the costs of publication) and must arrange to obtain and file an affidavit from the publisher demonstrating that publication has occurred.

⁴ Because posting is so easy to arrange and accomplish, posting is far less likely than publication to result in unforeseen delay. In a one month period, the court became aware of several instances where publication ran into snags. For example, in one instance the newspaper did not publish, despite weekly calls from counsel and a reassurance that publication had occurred, when it had not. In another instance, counsel had difficulty getting an affidavit from the publisher that confirmed that publication had occurred. In two other cases, the newspaper failed to publish one of the three weeks. Publication did not occur timely in another case because counsel for petitioner belatedly requested a voucher for publication. Publication problems often mean that service has not been accomplished by the time of the next scheduled hearing, and the hearing has to be continued. When that happens, once again vouchers and orders have to be signed, and publication has to be arranged. Such continuances can inconvenience many people. At an adoption hearing, many of the following people frequently are in attendance: petitioners, counsel for petitioners, the social worker or workers, the mother and counsel for the mother, the father and counsel for the father, and the guardian *ad litem*. A continuance is a burden to management of the court's calendar. Moreover, because of crowded calendars, a continuance can mean a significant delay. And there are, of course, counsel fees associated with hearings that have to be continued because service has not been effected, even though nothing has been accomplished at the hearing.

above-referenced adoption case in the Domestic Relations Clerk's office for a period of fourteen (14) days.

JUDGE RONNA LEE BECK
(Signed in Chambers)

Copies to:

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