

NOTICE  
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2012 IL App (4th) 100820-UB  
NO. 4-10-0820  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

**FILED**  
November 1, 2012  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

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., a Minor,	)	
Respondent-Appellant.	)	Honorable
	)	Heidi N. Ladd,
	)	Judge Presiding.

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

**ORDER**

¶ 1 *Held:* The State's failure to serve respondent mother with summons in minor's adjudication proceedings did not amount to plain error so as to warrant remand for new proceedings.

¶ 2 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). Respondent pleaded guilty, and the trial court placed respondent on pretrial release, pending sentencing. On August 16, 2010, the trial court sentenced respondent to 364 days in the Department of Juvenile Justice (Department), or until her twenty-first birthday, whichever occurred first, with credit for 25 days previously served. Respondent appeals, arguing the State violated her statutory right to parental notice and her due process rights when it failed to serve respondent mother with notice of the petition for

adjudication of wardship.

¶ 3

## I. BACKGROUND

¶ 4

In the State's petition for adjudication of delinquency and wardship, the State named Monique F. as the respondent minor and Susan F. as the respondent mother. The State, however, did not serve respondent mother with notice of the proceeding, as the summons was returned on June 14, 2010, and reflected that "no contact" was made.

¶ 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 to be placed in the temporary custody of the Court Services Department.

¶ 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. Defense counsel pointed out respondent mother was not present, stating "[mother] 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 trial court

responded as follows:

"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."

The State indicated it did not object to allowing the minor to proceed without her mother being present.

¶ 8 A docket entry dated June 14, 2010, reflects the summons for Susan F. was returned "not found." Thus the trial court was incorrect when it stated respondent mother had been served with summons. The trial court again allowed respondent to proceed in the absence of her mother. 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 that time, respondent was residing at Roundhouse and receiving services through Catholic Charities.

¶ 9 On August 5, 2010, the State filed a warrant of apprehension for respondent, alleging violation of her pretrial release. 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 record on appeal does not contain a copy of the State's petition.) 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.

¶ 10 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 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 the Department.

¶ 11 On September 14, 2010, respondent filed a motion to reconsider her sentence. On October 5, 2010, 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."

¶ 12 On October 12, 2010, respondent filed a notice of appeal, and the trial court appointed the office of the State Appellate Defender (OSAD) as counsel for respondent. OSAD filed a motion to withdraw as counsel pursuant to *Anders v. California*, 386 U.S. 738 (1967). On March 27, 2012, this court denied OSAD's motion and directed the parties to submit briefs

addressing whether the service and notice provisions of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/5-101 to 7-1 (West 2010)) were met. *In re Monique F.*, 2012 IL App (4th) 100820-U, ¶ 20. The parties have done so.

¶ 13

## II. ANALYSIS

¶ 14 On appeal, respondent argues the State violated her statutory right to parental notice and her due process rights when it failed to serve respondent mother with notice of the petition for adjudication of wardship. Respondent acknowledges she has forfeited her challenge to the State's failure to notify respondent mother of the proceedings by failing to object in the trial court. However, respondent requests this court to apply plain error analysis and find it is appropriate to remand for a new adjudicatory hearing.

¶ 15 Initially, we must determine if respondent has in fact forfeited any challenge to the State's failure to serve respondent mother by her failure to object in the trial court. We have held that failure to serve a custodial parent deprives the trial court of personal jurisdiction but does not deprive the court of subject-matter jurisdiction and its power to adjudicate. *In re Nathan A.C.*, 385 Ill. App. 3d 1063, 1075, 904 N.E.2d 112, 122 (2008). Moreover, personal jurisdiction may be forfeited "if the party appears before the court without objecting to personal jurisdiction." *Nathan A.C.*, 385 Ill. App. 3d at 1075, 904 N.E.2d at 122; see also 705 ILCS 405/5-525(4) (West 2010) (providing the appearance of a minor's parents constitutes waiver of service and a submission to the jurisdiction of the court). However, once a respondent parent appears in the proceedings, he or she must be given a copy of the petition. 705 ILCS 405/5-525(4) (West 2010). If a respondent parent appears notwithstanding the lack of service, an objection to the lack of service must be made in the trial court or the respondent forfeits the issue

on appeal. *In re C.L.*, 392 Ill. App. 3d 1106, 1112, 913 N.E.2d 74, 79 (2009).

¶ 16 In the case *sub judice*, the record shows respondent mother was not served with the petition for adjudication of wardship in which she was named. Respondent mother, however, later appeared at the August 9, 2010, status hearing in which the State filed a petition for indirect criminal contempt. The record does not show whether respondent mother was provided with a copy of the original petition for adjudication of wardship once she appeared, as is required by the Juvenile Court Act. Neither party acknowledges this potential problem nor addresses this issue in their briefs. Notwithstanding the parties' oversight, we address whether this issue has any bearing on whether respondent has forfeited her challenge to lack of service.

¶ 17 Our research has only revealed one case addressing a situation where it was unknown whether the respondent parent was presented with the original petition for adjudication after failing to be served and later appearing at the minor's proceedings. In *In re B.L.*, 315 Ill. App. 3d 602, 604, 734 N.E.2d 476, 478 (2000), the respondent father was not served with notice of the minor's proceedings and was not present at the adjudicatory or dispositional hearings. The respondent father, however, did appear at a later status hearing where no court reporter was present. *B.L.*, 315 Ill. App. 3d at 603, 734 N.E.2d at 477. Because the court reporter was absent, the appellate court could not glean from the record what the respondent father was told at the hearing or whether he was provided with a copy of the petition. *B.L.*, 315 Ill. App. 3d at 605-06, 734 N.E.2d at 479. Thus, the appellate court concluded it could not find the respondent father waived service and the trial court had personal jurisdiction over the respondent father on his "mere entrance into a juvenile courtroom." *B.L.*, 315 Ill. App. 3d at 606, 734 N.E.2d at 479.

¶ 18 The appellate court did conclude, however, the respondent minor had forfeited his

opportunity to challenge the lack of service irrespective of whether the respondent father had received a copy of the petition when he appeared. The court found forfeiture because (1) the respondent's attorney had volunteered to contact the father to get him to attend the next hearing but failed to do so; and (2) the minor did not raise the State's lack of diligence in locating the respondent father in the trial court and "even failed to object when the court instructed the minor and his attorney to find [the respondent father]." *B.L.*, 315 Ill. App. 3d at 605, 734 N.E.2d at 478. The appellate court found these actions constituted "not so much a waiver as a procedural default wherein the minor and his attorney volunteered to act and acquiesced in a procedure that short-circuited the statutory procedures," and the minor could not claim error "based on his own complicity." *B.L.*, 315 Ill. App. 3d at 605, 734 N.E.2d at 478.

¶ 19 As in *B.L.*, we do not conclude respondent mother waived notice of service by her mere entrance into the juvenile courtroom. However, unlike the respondent father in *B.L.*, respondent mother attended three separate hearings—the status hearing on August 9, 2010; the August 16, 2010, sentencing hearing; and the October 5, 2010, hearing on respondent's motion to reconsider her sentence. A court reporter was present at these hearings, and the record on appeal contains the transcripts from these proceedings. Although the record does not show whether respondent mother was given a copy of the original petition, it does show that through her attendance and participation in the proceedings, respondent mother was aware of the charges against respondent. For example, during the sentencing hearing, respondent's counsel submitted a letter to the trial court written by respondent mother, acknowledging respondent's stay at Roundhouse, asking the trial court to "give [respondent] a chance," and assuring the court respondent mother would "work hard" to "bring back that beautiful, happy[,] loving young

woman" inside respondent. Thus, unlike the record in *B.L.*, we are able to ascertain from the record what transpired when respondent mother appeared. Although respondent mother may not have received formal notice of the proceedings, she had actual notice. Further, respondent was afforded an opportunity to object to the lack of service at any of the three hearings respondent mother later attended, but respondent chose not to do so.

¶ 20 Moreover, we note that in addition to failing to raise the issue of lack of service in the trial court, respondent also "acquiesced in a procedure that short-circuited the statutory procedures." *B.L.*, 315 Ill. App. 3d at 605, 734 N.E.2d at 478. During respondent's June 8, 2010, status hearing, respondent's counsel represented to the court that "respondent mother is choosing not to participate in these proceedings at this time" and that respondent "is prepared to go forward" with the plea agreement "if the court would allow us to do that without a mother being present at this time." The court allowed respondent to proceed without respondent mother, finding that "it would act to the minor's detriment to continue to insist that her mother appear." Again, at respondent's plea hearing on June 24, 2010, respondent's counsel stated, "My client is seventeen and she is requesting to proceed in the absence of her mother." The court responded it would "allow her to proceed and w[ould] not hold her hostage to her mother's disinterest in the proceedings." This acquiescence, combined with respondent mother's actual notice of the proceedings, and respondent's failure to object, supports a conclusion respondent has forfeited the issue on appeal. We also note under section 5-525(4) of the Juvenile Court Act (705 ILCS 405/5-525(4) (West 2010)), if a party appears and does not object to a failure to serve her with summons, she waives service and submits herself to the jurisdiction of the court.

¶ 21 Respondent argues although she has forfeited the issue on appeal, this court

should review the State's failure to serve respondent mother for plain error pursuant to Illinois Supreme Court Rule 615(a) (Ill. S. Ct. R. 615(a) (eff. Aug. 27, 1999)). Respondent argues the lack of service was so serious that it affected the fairness of the proceedings and challenged the integrity of the judicial process. The State argues respondent is precluded from invoking plain error analysis because she invited the alleged error. In the alternative, the State argues the error here was not so serious that it affected the fairness of the proceedings or challenged the integrity of the judicial process.

¶ 22 Rule 615(a) allows for appellate review of a claim not properly preserved if plain error has occurred. *People v. Harvey*, 211 Ill. 2d 368, 386, 813 N.E.2d 181, 193 (2004). Relief will be granted under plain error analysis (1) when the evidence is closely balanced or (2) where "the error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." (Internal quotation marks omitted.) *In re M.W.*, 232 Ill. 2d 408, 431, 905 N.E.2d 757, 773 (2009).

¶ 23 We first address the State's argument respondent invited any error by consenting to plead guilty without respondent mother being served summons, and thus is precluded from having her claim reviewed under the plain error doctrine. As stated above, respondent specifically requested to proceed in the absence of her mother. Thus, respondent should be precluded on appeal from complaining of the error she invited. See *In re Kenneth D.*, 364 Ill. App. 3d 797, 803, 847 N.E.2d 544, 550 (2006) (respondent waived right to complain of error she invited when she injected the evidence into the proceedings and failed to make an objection). Nevertheless, we address the merits of respondent's claim.

¶ 24 In the present case, the State's failure to give respondent mother notice of the

juvenile proceedings was error. This court has found failure to provide notice in juvenile proceedings can amount to plain error. See *In re Marcus W.*, 389 Ill. App. 3d 1113, 1128, 907 N.E.2d 949, 960 (2009). In *Marcus W.*, we concluded the State's failure to serve the respondent parents and guardian in the minor's probation revocation proceedings undermined the integrity of the juvenile proceedings where (1) the State possessed known addresses for the respondents but made no attempt to provide them notice; (2) the respondents participated in prior proceedings but were not present at the probation revocation proceedings; and (3) the sentencing court considered, in part, the lack of adult supervision in determining the respondent was to be sentenced to the Department. *Marcus W.*, 389 Ill. App. 3d at 1126, 907 N.E.2d at 959.

¶ 25 We find *Marcus W.* distinguishable from the case *sub judice*. Although the State failed to provide notice to respondent mother, the record shows the State did attempt to serve her with summons. The record reflects attempted service dates of June 1, 2010, and June 4, 2010. Further, even though respondent mother was never served, she did eventually appear at three separate proceedings. At the August 16, 2010, sentencing hearing, respondent mother provided the court with a letter in which she explained she "refused to help or speak to [respondent]" because she was encouraged by friends and family to "show [respondent] some 'tuff [*sic*] love.'" Respondent mother also acknowledged in her letter that her response of "tuff [*sic*] love" forced the trial court to "send [respondent] to the round house." Moreover, respondent mother's letter included a prayer to the court that it allow respondent to "come back and live with [her]" and that she would "get all the help" she could to "make this work." Thus, unlike the minor in *Marcus W.*, respondent was not committed to the Department in part because of a lack of adult supervision. Rather, during sentencing, the court focused on respondent's drug use, her "wild-

street existence," and her need for a "structured environment" in committing her to the Department. Finally, the mother's correspondence demonstrates she deliberately stayed away from the proceedings. This leads us to conclude the outcome of the proceedings would have been the same even if respondent mother had been served. Thus, we conclude, the State's failure to provide respondent mother with notice of the original adjudication petition did not undermine the fairness or integrity of the judicial proceedings.

¶ 26

### III. CONCLUSION

¶ 27

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

¶ 28

Affirmed.