

1-1-2016

Juvenile Law - Notice by Publication: Going Public with Confidential Information - Adoption of Zak, 32 N.E.3D 361 (Mass. App. Ct. 2015)

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Recommended Citation

21 Suffolk J. Trial & App. Advoc. 450 (2015-2016)

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**JUVENILE LAW—NOTICE BY PUBLICATION:
GOING PUBLIC WITH CONFIDENTIAL
INFORMATION—ADOPTION OF ZAK,
32 N.E.3D 361 (MASS. APP. CT. 2015).**

In juvenile court, confidentiality is of very high importance; however, confidentiality is not the only requirement and it must be balanced with all other court procedures.¹ Confidentiality is compromised in cases involving an unnamed or unknown father because of the conflict in the due process requirement of notice and the court's notice procedures.² In *Adoption of Zak*,³ the Massachusetts Appeals Court considered whether the trial court was justified in terminating all parental rights, including the rights of Zak's unknown father.⁴ The court ultimately held that there was not an abuse of discretion in the termination of all the parental rights, nor in denying the requests to place the children with the maternal great-aunt; thus, the appeals court upheld the trial court's decisions.⁵

¹ See MASS. GEN. LAWS ch. 119, § 38 (2008) (explaining "Protection and Care of Children" proceedings are closed to public); see also Lori M. Nehls, Note, *Juvenile Record Expunction: The Rehabilitating Remedy*, 7 SUFFOLK J. TRIAL & APP. ADVOC. 91, 91-93 (2002) (discussing confidentiality in Massachusetts while explaining reasons it is important). Further, the Juvenile Court issued a standing order that made all case documents property of the court and they are also to remain confidential. See *In re Care & Prot. of Sharlene*, 840 N.E.2d 918, 929-30 (Mass. 2006) (discussing Juvenile Standing Order 1-84). See generally Riya Shah, Lauren Fine & Jamie Gullen, *Juvenile Records: A National Review of State Laws on Confidentiality, Sealing and Expungement*, JUV. L. CTR. 1, 48 (2014), <http://juvenilerecords.jlc.org/juvenilerecords/documents/publications/national-review.pdf> (explaining confidentiality on national scale); *Policy Statement: Confidentiality of Juvenile Court Proceedings and Records*, NAT'L ASS'N OF COUNSEL FOR CHILDREN 1, 1 (1998) [hereinafter *Juvenile Court Proceedings and Records*] available at https://c.ymcdn.com/sites/www.naccchildlaw.org/resource/resmgr/policy/policy_statement_-_confident.pdf (discussing pros and cons of confidentiality in juvenile courts).

² See *Adoption and Reproductive Technology Law in Massachusetts*, ARTL MA-CLE 6-1, § 6.4.2 (2000) (emphasizing need for unknown fathers to be notified of pending proceedings); *Standing Order 1-93: Procedures for Care and Protection Cases Under St. 1992*, (1992) (repealed 2007), <http://www.mass.gov/courts/docs/courts-and-judges/courts/juvenile-court/standingorder193.pdf> (including child's name published in newspaper of court's choice). But see § 38 (stating all proceedings before juvenile court are closed and confidential).

³ 32 N.E.3d 361 (Mass. App. Ct. 2015).

⁴ See *id.* at 363 (reasoning parental rights can be terminated when parents are unfit).

⁵ See *id.* at 362-63. Abuse of discretion is the highest of standards. MASS. R. CIV. P. 60 (citing *Farmers Co-operative Elevator Ass. v. Strand*, 382 F.2d 224 (8th Cir. 1967)). A court can reverse a decision for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered

The termination of parental rights is not lightly granted, and in *Adoption of Zak*, the court did not abuse its discretion in that decision.⁶ In February of 2010, the police responded to multiple calls from neighbors about domestic disturbances at the home of the custodial parents of Carol, Nick, and Zak.⁷ At the time of the altercations, the children were present inside the home witnessing the alleged violence.⁸ The calls to the police

evidence which by due diligence could not have been discovered in time to move for a new trial . . . ; (3) fraud . . . , misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

Id. Although it is a seemingly broad list of reasons for a court to reverse a decision, abuse of discretion is a heavy burden “that should be granted only in extraordinary circumstances” *In re Georgette*, 768 N.E.2d 549, 557 (Mass. App. Ct. 2002).

⁶ See *Adoption of Zak*, 32 N.E.3d at 363 (affirming lower court’s decision because multiple incidents of domestic violence occurred); see also *Adoption of Jacques*, 976 N.E.2d 814, 820 (Mass. App. Ct. 2012) (citing *Adoption of Don*, 755 N.E.2d 721, 726 (Mass. 2001)) (“Unless shown to be clearly erroneous, we do not disturb the judge’s findings, which are entitled to substantial deference.”); Jacqueline D. Stanley, *Grounds for Termination of Parental Rights*, 32 AM. JURIS. PROOF OF FACTS 3d 83, § 3 (1995) (“Terminating parental rights is deemed a serious state intervention . . . and a significant threat to the sacred bond between parents and their children. Consequently, before a court will terminate a natural parent’s rights over a child, the petitioner must establish by clear and convincing evidence that grounds exist for doing so.”). See generally *Santosky v. Kramer*, 455 U.S. 745, 769 (1982) (stating jurisdictions agree “clear and convincing” is correct balance between state’s concern and parental rights). “Termination of parental rights (TPR) . . . is one of the most difficult proceedings over which a judge must preside.” *Termination of Parental Rights*, PA, DEPENDENCY BENCHBOOK: OFFICE OF CHILD. & FAM. IN THE COURTS: ADMIN. OFFICE OF PA. CT., 16.1 (2014) (“Benchbook”), <http://www.ocfcpcourts.us/assets/upload/2014%20Revision%20of%20Benchbook.pdf>. This is because not only are the parents losing any and all relationship with their child, but also the child is now a legal orphan. *Id.*

⁷ See *Adoption of Zak*, 32 N.E.3d at 364 (“The judge also found that the children had been the subject of physical violence. Zak testified that both parents had beaten him with a belt. Zak also testified that, on one occasion, the father struck him, causing him to fall back and hit a bedframe. Zak testified that he was scared when his parents argued, and he stated that he was ‘done with the fighting.’”). The presiding purpose of Chapter 119 of the Massachusetts General Laws is to protect the “health and safety of the child . . . and shall include the long-term well-being of the child.” MASS. GEN. LAWS ch. 119, § 1. The well-being of the child is violated when the parents or guardians are abusing said child. See § 51B(c) (“If the department has reasonable cause to believe a child’s health or safety is in immediate danger from abuse . . . the department shall take the child into immediate temporary custody . . . to protect the child from abuse”). See generally Albertina Antognini, *From Citizenship to Custody: Unwed Fathers Abroad and at Home*, 36 HARV. J.L. & GENDER 405, 411-14 (2013) (explaining custody for fathers).

⁸ See *Adoption of Zak*, 32 N.E.3d at 364 (reasoning domestic violence in front of minors is harmful to their development). “Only recently have researchers begun gathering evidence to show that children who observe violence perpetrated against their mother become ‘the unintended or indirect victims of such behavior.’” Maureen K. Collins, Comment, *Nicholson v. Williams*:

lead to the custodial father being arrested and charged with assault and battery.⁹ These incidents, among others, lead the Department of Children and Families (“DCF”) to investigate the family and file the subsequent case for termination of parental rights.¹⁰

After the removal of the children, DCF required the parents to take certain steps in order to return custody and keep parental rights intact.¹¹ However, the parents failed to comply with DCF, which triggered the termination and subsequent adoption of the minor children.¹² As for the child, Zak, the unknown biological father had to be given notice of the proceedings to formally terminate his parental rights and free the child for adoption.¹³ Due to Zak’s unknown father, DCF is required to perform

Who Is Failing to Protect Whom? Collaborating the Agendas of Child Welfare Agencies and Domestic Violence Services to Better Protect and Support Battered Mothers and Their Children, 38 NEW ENG. L. REV. 725, 745 (2004). Studies also show that witnessing domestic violence can have long term effects on future relationships both personal and romantic. *Id.*; see also Pauline Quirion, Judith Lennett, Kristin Lund & Chanda Tuck, *Protecting Children Exposed to Domestic Violence in Contested Custody and Visitation Litigation*, 6 B.U. PUB. INT. L.J. 501, 511 (1997) (“The Study also noted that children from violent families are five times more likely to be delinquent as those from the general population.”).

⁹ See *Adoption of Zak*, 32 N.E.3d at 364 (discussing termination of parental rights). Ultimately, the father was not convicted of assault and battery. *Id.* at 364 n.6.

¹⁰ See *id.* at 363-64 (showing multiple domestic incidents calls into question fitness of parents). The parents allege that the termination was due to a single incident of violence. *Id.* at 363. However, the police were called to their home on at least six different occasions. *Id.* at 363-64. All of the occasions that the police responded to their home were due to calls of domestic disturbances by neighbors. *Id.* The sheer amount of calls to the home for domestic disturbances help show that there was no abuse of discretion on the part of the court by terminating parental rights. *Id.* at 365.

¹¹ *Id.* at 365. These steps are the DCF ordering the parents to complete “services.” *Id.*; see MASS. GEN. LAWS ch. 119, § 29C (2011) (discussing reasonable efforts by DCF). “In making any determination, the health and safety of the child shall be of paramount concern.” § 29C. Each state’s legislature has the ability to define the parameters for reasonable efforts by DCF. See Will L. Crossley, *Defining Reasonable Efforts: Demystifying the State’s Burden Under Federal Child Protection Legislation*, 12 B.U. PUB. INT. L.J. 259, 293 (2003) (defining DCF parameters).

¹² See *Adoption of Zak*, 32 N.E.3d at 365 (outlining requirements for parents to comply with DCF). “[DCF] shall make rules and regulations concerning the administration of its duties.” MASS. GEN. LAWS ch. 119, § 37 (1967). When DCF takes custody of children, they create a service plan which “is a written document which describes in detail the behavioral changes needed, the tasks to be undertaken and the services to be provided . . .” Dep’t of Children and Families, *110 CMR 6.01: Service Plans and Case Reviews*, MASS.GOV (Feb. 19, 2010), <http://www.mass.gov/eohhs/docs/dcf/regs/110cmr6.pdf>. In *Adoption of Zak*, DCF ordered, among other things, that the parents complete a batterers program, counseling, and domestic violence services. *Adoption of Zak*, 32 N.E.3d at 365. DCF also stated that the parents often missed or showed up late to appointments. *Id.* Additionally, the parents refused services because they felt the services were not helping or that they did not require the assistance. *Id.*

¹³ See MASS. GEN. LAWS ch. 119, § 24 (2016) (requiring notice to parents to terminate parental rights); *Adoption of Zak*, 32 N.E.3d at 362 n.2 (explaining Zak’s father is unknown); see also Karen Greenberg, Daniel Pollack & Andrea Maciver, *A National Responsible Father*

reasonable efforts to locate and inform him of the pending litigation.¹⁴ In this case, reasonable efforts by the Department were fulfilled with the notice by publication and all parental rights were terminated.¹⁵ The court ultimately held there was no abuse of discretion in the termination of their parental rights.¹⁶

Massachusetts General Laws chapter 119, section 38, was originally enacted in 1954.¹⁷ It stated, “[a]ll hearings under sections 1 to 38A . . . shall be closed to the general public It shall be unlawful to publish the names of persons before the court in any closed hearing.”¹⁸ Furthermore, parents have a fundamental right to parenting their children; unless the parent is deemed unfit, then that fundamental right is up for termination and due process is required.¹⁹ Due process of law extends to

Registry: Providing Constitutional Protections for Children, Mothers and Fathers, 13 WHITTIER J. CHILD & FAM. ADVOC. 85, 88-91 (2014) (“Because termination of the previous parents’ rights is a required condition precedent of effectuating an adoption, an unknown father creates sticky situations with which legislatures and courts have struggled to deal with.”).

¹⁴ See *Adoption of Zak*, 32 N.E.3d. at 362 n.2 (stating Zak has unknown biological father); see generally MASS. GEN. LAWS ch. 119, § 24 (stating procedures for unknown or unnamed fathers); Daniel A. Klein, Annotation, *Notice by Publication as Sufficient to Comply with Due Process Requirements Under Federal Constitution’s Fourteenth Amendment—Supreme Courts Cases*, 99 L. Ed. 2d 1029, @ 2. [a] (2012) (inferring reasonable efforts include notice by publication when there are unknown or unnamed fathers); *Right to Due Process*, LINCOLN UNIVERSITY, <http://www.lincoln.edu/criminaljustice/hr/Dueprocess.htm> (last visited Feb. 1, 2016) (explaining due process).

¹⁵ See *Adoption of Zak*, 32 N.E.3d. at 365 (defining reasonable efforts by actions to be performed prior to termination of parental rights). Reasonable efforts include: placement of the child, permanency plans, and services. See MASS. GEN. LAWS ch. 119, § 29C (2011) (detailing publication requirements).

¹⁶ See *Adoption of Zak*, 32 N.E.3d. at 363 (holding parents were unfit). Unfitness “is not whether the parent is a good one, let alone an ideal one; rather, the inquiry is whether the parent is so bad as to place the child at serious risk of peril from abuse, neglect, or other activity harmful to the child.” *Care & Prot. of Bruce*, 694 N.E.2d 27, 29 (Mass. App. Ct. 1998) (citing *Petition of New England Home for Little Wanderers*, 328 N.E.2d 854, 860-63 (Mass. 1975)). The standard by which the court evaluates unfitness is clear and convincing evidence. See *Santosky v. Kramer*, 455 U.S. 745, 747-48 (1982) (detailing standard of review). “To be clear and convincing, the ‘evidence must be sufficient to convey a ‘high degree of probability’ that the proposition is true The requisite proof must be strong and positive; it must be ‘full, clear and decisive.’” *Care & Prot. of Yetta*, 2 N.E.3d 910, 915 (Mass. App. Ct. 2014) (quoting *Adoption of Rhona*, 784 N.E.2d 22, 30 (Mass. App. Ct. 2003)).

¹⁷ MASS. GEN. LAWS ch. 119, § 38 (2008).

¹⁸ *Id.* (referring specifically to care and protection proceedings).

¹⁹ See U.S. CONST. amend. XIV, § 1 (“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”); see also MASS. GEN. LAWS ch. 119, § 24 (2016) (requiring notice to all parties involved). “[W]e have recognized the fundamental right of parents to make decisions

all parents interested in the proceedings, even those unknown or unnamed fathers.²⁰

Notice by Publication has a long-standing history in all states.²¹ Publication alerts people to the fact that they have become involved in pending litigation.²² Courts are required by the United States Constitution to grant all parties due process of law.²³ Granting due process starts by notifying the parties of the action pending against them.²⁴ When the party cannot be located, notice by publication is often the next step.²⁵ The

concerning the care, custody, and control of their children.” *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (citing *Stanley v. Illinois*, 405 U.S. 645, 651 (1972)). These rights include education and religion among others. *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972); see generally Mary Beck, *Toward a National Putative Father Registry Database*, 25 HARV. J.L. & PUB. POL’Y 1031, 1032 (2002) (stating courts disrupted adoptions when father’s late assertions to the children occur).

²⁰ See U.S. CONST. amend. XIV, § 1 (guaranteeing due process of law); see also MASS. GEN. LAWS ch. 119, § 24 (2016) (requiring notice by publication to unknown or unnamed fathers). See generally *Right to Due Process*, *supra* note 14 (discussing due process rights extending to all persons).

²¹ See, e.g., MASS. GEN. LAWS ch. 105, § 6 (2016) (requiring notice by publication in license revocation proceedings against public warehouses); MASS. GEN. LAWS ch. 119, § 24 (2016) (requiring notice by publication in care and protection proceedings where parent’s identity or whereabouts unknown); MASS. GEN. LAWS ch. 185, § 38 (2016) (requiring notice by publication in Land Court proceedings); MASS. GEN. LAWS ch. 214, § 7 (2016) (requiring notice by publication in actions for construction of wills); N.C. GEN. STAT. § 7B-1105 (2015) (requiring notice by publication in termination proceedings where parent’s identity or whereabouts unknown); OHIO R. JUV. P. 5 (2016) (using child’s initials in notice by publications); 2 CAL. FORMS OF PLEADING AND PRAC. § 12A.138 (2015) (using child’s name in notice by publication in juvenile emancipation proceedings); ME. R. PROB. P. § 14.45 (2012) (using child’s name in notice by publication in termination of parental rights proceedings); *Notice and Order of Hearing (for Publication)*, WIS. CT. SYS., <https://www.wicourts.gov/formdisplay/JC-1635.pdf?formNumber=JC-1635&formType=Form&formatId=2&language=en> (showing example of Wisconsin’s ideal publication notice including child’s name).

²² See Klein, *supra* note 14, at @ 2. [a] (“Such notice must be reasonable and adequate for the purpose, due required being had to the nature of the proceeding and the character of the rights which may be affected by it The court has long adhered to a rule that notice by publication satisfies due process under circumstances in which another, more direct form of notice cannot reasonably be given, as where the name or address of an interested party is unknown and not reasonably ascertainable, or where a party’s interests are conjectural or future”).

²³ See U.S. CONST. amend. XIV, § 1 (granting due process right). Due process is required in all cases in which a party is subject to or has an interest. *Id.*; see Jane Rutherford, *The Myth of Due Process*, 72 B.U. L. REV. 1, 4 (1992) (discussing three central values of due process: law, participation, and equality).

²⁴ See *Right to Due Process*, *supra* note 14 (stating that at minimum citizens have right to notice of litigation pending against them); see generally Rutherford, *supra* note 23, at 4, 61 (finding although due process is fundamental, notice sometimes fails).

²⁵ See MASS. GEN. LAWS ch. 119, § 24 (2008) (outlining notice and summons procedures in child protection cases); see also *Adoption of Holly*, 738 N.E.2d 1115, 1119 (Mass. 2000) (“[T]he department had in fact made ‘diligent efforts’ to locate S.C.; additional efforts would have been futile; and S.C. was afforded constructive notice, by publication”). In *Adoption of Holly*, DCF made multiple attempts to locate S.C., including asking into S.C.’s whereabouts, making

Juvenile Courts in Massachusetts uses notice by publication specifically when the father is unknown or unnamed.²⁶

DCF in this case relied on Massachusetts General Laws chapter 119, section 24, to state the requirements of notice by publication in the juvenile court.²⁷ The statute requires that “notice [be] in a form prescribed by the court to be served upon such parent by publication once in each of three successive weeks in any newspaper as the court may order.”²⁸ Further, in 1993 the Massachusetts Legislature enacted Standing Order 1-93 with the purpose of unifying notice procedures when a parent is a party to the case, regardless of identity.²⁹ This standing order lays out a format for which DCF fills in the blanks with the case specific material and then publishes it in a public newspaper of the court’s choice.³⁰ The notice is as follows:

TO:[name of parent or guardian to be served, or if name of parent or guardian is unknown, mother of /father of /guardian of]

A petition has been presented to this court by [name of petitioner], seeking, as to the subject child [name of child], that said child be found in need of care and protection and committed to the Department of Social Services. The court may dispense with your consent to the adoption of the said child if it finds that the child is in need of care and protection and that the best interests of the child would be served by said disposition.

You are hereby **ORDERED** to appear in this court, at the court address set forth above, on [pre-trial conference date], at 9:00 a.m., for a **PRE-TRIAL CONFERENCE**.

You may bring an attorney with you. If you cannot afford an

inquiries to the court appointed investigator, and even contacting S.C.’s mother. *Adoption of Holly*, 738 N.E.2d at 1120. Further, the *Holly* Court interpreted the standing order to mean that so long as diligent efforts were made by the Department, actual location is not required. *Id.* at 1119; see *Opinion of the Justices*, 313 N.E.2d 561, 570 (Mass. 1974) (stating publication is inadequate if name and address of relevant person(s) is available).

²⁶ See MASS. GEN. LAWS ch. 119, § 24 (2016) (outlining due process rights of parents).

²⁷ See § 24 (detailing requirements for publication); see also *Adoption of Holly*, 738 N.E.2d at 1119 (allowing notice by publication to locate unknown father); *Adoption of Zena*, 2015 Mass. App. Unpub. LEXIS 776, *4 *cert. denied*, 40 N.E.2d 552 (2015) (allowing notice by publication for father who is on parole but not his location unknown).

²⁸ § 24; see also MA. SUP. JUV. CT. STANDING ORDER 1-93: Procedures for Care and Protection Cases Under St. 1992 (1992) (repealed 2007) [hereinafter *Standing Order 1-93*] (providing example of summons used by court).

²⁹ See *Standing Order 1-93*, *supra* note 28 (“In cases governed by the provision of G.L. c. 119, s. 24, requiring the petitioner to cause notice to be served upon a parent by publication in a newspaper, the court shall, upon motion by the petitioner, without regard to whether the identity of the parent is known or unknown, authorize such publication by issuing an ‘Order For Service By Publication . . .’”).

³⁰ See *id.* (providing summons by publication form).

attorney, the court will appoint an attorney to represent you.

If you fail to appear, the court may proceed with a trial on the merits of the petition and an adjudication of this matter.

For further information, call the Office of the Clerk Magistrate at³¹

In the pre-formed order, DCF is required to not only fill out both parents' names, but also the full name of the child with the following statement: "this matter is a care and protection petition" ³² The standing order was later repealed by the Massachusetts Legislature in 2007; however, the courts would go on to recognize this as the default format in Massachusetts.³³

In *Adoption of Zak*, Zak's father is unknown.³⁴ Prior to parental rights being terminated, DCF is required to perform due diligence in the location and notification of all parties involved in the termination.³⁵ Due diligence and notification is required for unknown or unnamed fathers as well.³⁶ Once notice is given or the State makes reasonable efforts to locate, the due process requirement is satisfied and the termination and subsequent adoption proceedings will proceed.³⁷

The court ordered and approved DCF to use notice by publication to alert Zak's unknown father of the termination of his parental rights.³⁸

³¹ *Id.* (showing final version of form to be printed in newspapers).

³² *Id.* (describing DCF responsibility with regard to form).

³³ See MASS. GEN. LAWS ch. 119, § 24 (2016) ("If the identity or whereabouts of a parent is unknown, the petitioner shall cause notice in a form prescribed by the court to be served upon such parent by publication once in each of 3 successive weeks in any newspaper as the court may order."); *Standing Order 1-93*, *supra* note 28 (showing court retained standard after repealed by legislature).

³⁴ See *Adoption of Zak*, 32 N.E.3d at 362 n.2 (describing facts of underlying case).

³⁵ See *id.* at 363 (describing facts of underlying case); see also MASS. GEN. LAWS ch. 119, § 29D (2016) (listing parties Department must notify). Persons requiring notice include: the child's foster parent(s), pre-adoptive parent(s), relative(s), parent(s), and any other person who is a party to the proceeding. § 29D.

³⁶ See MASS. GEN. LAWS ch. 119, § 24 (requiring notice by publication when parent's identity or whereabouts is unknown); see also *Adoption and Reproductive Technology Law in Massachusetts*, *supra* note 2 (citing *Adoption of Hugh*, 619 N.E.2d 979, 979 (Mass. App. Ct. 1991)) ("It is imperative for the petitioning agency to make a diligent search for the name and address of an unknown party. An adoption allowed without appropriate notice may be revoked.")

³⁷ See § 24 ("[T]he court . . . shall issue a notice to the department and summonses to both parents . . ."). If the party is known, "[n]otice shall be by personal service upon the parent." *Id.* If, however, the party or location is unknown, the court may order notice by publication. *Id.*; see U.S. CONST. amend. XIV, § 1 ("No state shall . . . deprive any person of life, liberty, or property, without due process of law[.]"); see generally *Right to Due Process*, *supra* note 14 (discussing when the Constitution requires right to due process).

³⁸ See *Adoption of Zak*, 32 N.E.3d at 363 (discussing facts of underlying case); see also *Benchbook*, *supra* note 6, at Chapter 16 (outlining steps in termination of parental rights process).

Therefore, notice was published and when the unknown father did not appear, his rights to the child were waived and terminated.³⁹ After the termination, neither party challenged the issue of the publication to the unknown father, nor did the father appear before the court to challenge the termination himself.⁴⁰ Thus, the court held that due diligence by the department was met and the termination of all parental rights was affirmed.⁴¹

The issue in *Zak* is not whether the unknown father lacked notification in the court-ordered manner, but whether the procedures of notification required by the court are insufficient in their current form.⁴² Massachusetts Juvenile Courts require DCF, in a prescribed manner, to publish in a newspaper for three successive weeks a notice to the unknown or unnamed father.⁴³ The child's full name is included in the publication.⁴⁴ However, the juvenile court prides itself on protecting the minor's confidentiality when they come before the court, especially those before them due DCF intervention.⁴⁵ Massachusetts Juvenile Courts violate the juvenile's confidentiality and alert the world to the fact that this child is not only before the court, but also in state care due to their presently unfit parents by publishing the child's name(s) in the notice.⁴⁶ While notification is a powerful tool in most cases it is counterproductive in the current form the juvenile court prescribes.⁴⁷

³⁹ See *Adoption of Zak*, 32 N.E.3d at 367 (outlining facts of underlying case); see also *Termination of Parental Rights*, *supra* note 38, at 16-14 (explaining real efforts to locate are required prior to termination).

⁴⁰ See *Adoption of Zak*, 32 N.E. 3d at 362-63 (explaining why court terminated parental rights).

⁴¹ See *id.* at 363 (discussing procedural history).

⁴² Compare MASS. GEN. LAWS ch. 119, § 24 (describing Massachusetts notice by publication procedures), with *Juvenile Court Proceedings and Records*, *supra* note 1 (describing pros and cons of confidentiality in juvenile courts). See Beck, *supra* note 19, at 1062-68 (discussing possibility of father's ignorance of their child's existence); Antognini, *supra* note 7, at 432 (discussing how fathers do not or may not know of child's birth).

⁴³ See MASS. GEN. LAWS ch. 119, § 24 (providing general summons for unknown or unnamed father publications).

⁴⁴ See *Standing Order 1-93*, *supra* note 28 (showing example of preformed summons including child's name).

⁴⁵ See *supra* note 1 and accompanying text (discussing history of confidentiality in Juvenile Courts).

⁴⁶ See *Standing Order 1-93*, *supra* note 28 (providing summons by publication form); see also SHAH RIYA, LAUREN FINE & JAMIE GULLEN, JUVENILE RECORDS: A NATIONAL REVIEW OF STATE LAWS ON CONFIDENTIALITY, SEALING AND EXPUNGEMENT 1, 48 (2014), available at <http://juvenilerecords.jlc.org/juvenilerecords/documents/publications/national-review.pdf> (discussing how authors wish to ensure confidentiality to allow for true second changes).

⁴⁷ See sources cited *supra* note 21 (depicting many instances in which parties use notice by publication). But see MASS. GEN. LAWS ch. 119, § 38 (specifying proceedings are to be closed to

Juvenile courts across the country have various forms of notice by publication.⁴⁸ In some of their prescribed forms, they do not include the names of the juveniles involved in the proceedings.⁴⁹ Instead, they opt to use other less descriptive information in order to notify the correct interested parties.⁵⁰ Other states show there is no need for the child's name to be placed in the notice.⁵¹ Additionally, one of the many complications is that the unknown or unnamed father may not even know the name of their

public); RIYA, *supra* note 46, at 12 (discussing improvements in confidentiality procedures); *see also infra* note 48 (detailing different types of notices by publication among states).

⁴⁸ See OHIO R. JUV. P. 5 (2016) (mandating juvenile's names be replaced with their initials prior to publication); N.C. GEN. STAT. § 7B-1105 (2011) (prescribing that notice include gender and age of child but forbidding child's name). For example, the North Carolina statute states: The notice shall be published in a newspaper qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and published in the counties directed by the court, once a week for three successive weeks. Provided, further, the notice shall:

- (1) Designate the court in which the petition is pending;
 - (2) Be directed to "the father (mother) (father and mother) of a male (female) juvenile born on or about _____ in (date) _____ County, _____, (city _____, respondent"; (State)
 - (3) Designate the docket number and title of the case (the court may direct the actual name of the title be eliminated and the words "In Re Doe" substituted therefor);
 - (4) State that a petition seeking to terminate the parental rights of the respondent has been filed;
 - (5) Direct the respondent to answer the petition within 30 days after a date stated in the notice, exclusive of such date, which date so stated shall be the date of first publication of notice and be substantially in the form as set forth in G.S. 1A-1, Rule 4(j1); and
 - (6) State that the respondent's parental rights to the juvenile will be terminated upon failure to answer the petition within the time prescribed. Upon completion of the service, an affidavit of the publisher shall be filed with the court.
- (e) The court shall issue the order required by subsections (b) and (d) of this section within 30 days from the date of the preliminary hearing unless the court shall determine that additional time for investigation is required. (f) Upon the failure of the parent served by publication pursuant to subsection (d) of this section to answer the petition within the time prescribed, the court shall issue an order terminating all parental rights of the unknown parent.

§ 7B-1105. *But see* ME. R. PROB. P. § 14.45 (2015) (disclosing child's name in publication); *Notice and Order of Hearing (for Publication)*, WISC. CT. SYS., <https://www.wicourts.gov/formdisplay/JC-1635.pdf?formNumber=JC-1635&formType=Form&formatId=2&language=en> (last visited April 8, 2016) (showing example of Wisconsin's ideal publication including child's name); *Proceeding to Declare Minor Free*, *supra* note 21 (showing example of California's notice by publication using juveniles name).

⁴⁹ See *supra* note 21, 48 accompanying text (examining other forms of notice).

⁵⁰ See ME. R. PROB. P. § 14.45 (2015) (disclosing child's name in publication); *Proceeding to Declare Minor Free*, *supra* note 21 (showing example of California's notice by publication using juvenile's name).

⁵¹ See sources cited *supra* note 48 (regarding state publications disclosing child's name).

child.⁵² Furthermore, these fathers may not even know the child exists.⁵³ Thus, publishing the name of the child is not only unnecessary, but a breach of confidentiality.⁵⁴

The Massachusetts Juvenile Court could in turn adopt minor changes to its current notice procedures making the notification just as effective, while still securing the juveniles confidentiality.⁵⁵ The court could still provide adequate information to the unknown or unnamed father by simply replacing the child's name with the child's date of birth along with the mother's name.⁵⁶ That information alone should alert an unknown or unnamed father of the existence of their child because they will likely know of the child's the date of birth, or by simple calculation can determine the possibility of fatherhood by using the date of birth.⁵⁷ Regardless of the father's knowledge of the child, replacing the child's name in the notice with their birth date would afford the same opportunity, if not a greater one, to alert the father of the proceedings.⁵⁸

In *Adoption of Zak*, the Massachusetts Appeals Court held the termination of all parental rights was valid and the trial court did not abuse its discretion in the termination of those parental rights. However, by disclosing the child's name in the publication for the unknown father, the trial court released confidential information from the court's proceedings. This act creates a conflict between the notice procedures and the desire for minor's information to remain confidential. The court can uphold the

⁵² See Beck, *supra* note 19, at 1062-68 (discussing situations where fathers are not aware of child's existence); see also Antognini, *supra* note 7, at 432 (discussing how mothers know of child's birth, whereas fathers may not).

⁵³ See Beck, *supra* note 19, at 1062-68 (discussing situations where fathers are not aware of child's existence); see also Antognini, *supra* note 7, at 432 (discussing how mothers know of child's birth, whereas fathers may not).

⁵⁴ See sources cited *supra* note 48 (regarding state publications and disclosure of child's name); see also *supra* note 1 and accompanying text (discussing importance of confidentiality).

⁵⁵ See e.g., Greenberg, *supra* note 13, at 86-88 (providing possible solution in national registry); *Juvenile Court Proceedings and Records*, *supra* note 1, at 1 (eluding to benefits of changing confidentiality procedures in juvenile proceedings).

⁵⁶ See ME. R. PROB. P. § 14.45 (2015) (concluding children's names are not required in publications); see also *Juvenile Court Proceedings and Records*, *supra* note 1, at 1 (discussing proposed changes to confidentiality policies in juvenile court).

⁵⁷ See *supra* note 48 and accompanying text (comparing states' forms of notice by publication).

⁵⁸ See sources cited *supra* note 50 (displaying notices without requiring child's name); see also *Juvenile Court Proceedings and Records*, *supra* note 1, at 1 (showing balance of confidentiality interests is useful). In some instances, complete confidentiality is counterproductive; however, children still require protection—like in child protection cases, where opening up proceedings could deter reporting, cause children trauma, and much more. See *Juvenile Court Proceedings and Records*, *supra* note 1, at 1 (showing balance of confidentiality interests is useful).

standards of due process, while maintaining the juvenile's confidentiality from those who have no knowledge, nor should have knowledge of the pending litigation by adapting the current notice procedures used in the juvenile court for notice by publication by replacing the child's name to their date of birth.

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