

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE INTEREST OF:

Name _____ Case No. _____

Year of Birth _____ A male female

REQUEST FOR NOTICE BY PUBLICATION AND AFFIDAVIT

Pursuant to K.S.A. 38-2237

Comes now _____, County/District Attorney or designee other _____, being first duly sworn, and states as follows:

1. A petition has been filed in this court alleging that (*Check all that apply.*) **the child named above is a Child in Need of Care** **the parents are unfit by reason or conduct or condition which renders the parents unable to care properly for a child and the conduct or condition is unlikely to change in the foreseeable future** **the parental rights of the parent should be terminated** **a permanent custodian should be appointed for the child.**

2. The residence and location of _____ are presently unknown despite unsuccessful attempts by affiant to determine the same. Duly diligent efforts have been made to ascertain the **name** **residence** of the **father** **mother**, but have proven unsuccessful: (*Describe efforts or reference affidavit to be attached.*) _____

3. The **father** **mother** is (*State name and city of residence.*) _____
_____.

4. The grandparents are (*State names and city of residence.*) _____
_____.

5. The foregoing information was provided to affiant by _____.

6. Other information: _____.

Authority

K.S.A. 38-2237 as amended by 2007 SB 269.

Notes on Use

Due diligence is required to protect the rights of the parties and provide timely proceedings for permanency for the child. Failure to exert due diligence in locating parties for service and notice of a hearing may void the findings and orders made at that hearing, and require rehearing. Due diligence varies from case to case and examples of information sources are: the party's attorney, the phone numbers and contact numbers the party previously provided, directory information at 1-411, area phone directories, the last known address and the current occupant and neighbors, the utility companies for that address, mailing a letter marked "Address Correction Requested" to the last known address, family members and friends or known contacts, DCF child support parent locator, internet search, and the Kansas corrections website.

If due diligence has been employed in attempting service, but attempts are unsuccessful, then service may be made by publication. Prior to service by publication the petitioner, or designee, shall file an affidavit stating that attempts have been made with due diligence to ascertain the name or residence of the person to be served, although the attempts were unsuccessful. List the attempts. Upon filing of the affidavit and request for an order for service by publication the court may issue an order for such service (Form 259). Publication shall be in the county where the petition is filed and if the court finds that there is substantial certainty that a parent currently resides in a particular locality, publication shall also be in a newspaper authorized to publish legal notices in that locality.

Comments

Due diligence is explored in this case. *In re L.S.*, 14 Kan. App. 2d 261, 788 P.2d 875 (1990).

The statute does not provide for service on counsel of record in lieu of parent. Parents are denied due process rights by notice defects. *In re H.C.*, 23 Kan. App. 2d 955, 939 P.2d 937 (1997).

Given the facts of this case, short notice prior to hearing when mother is served by publication does not prejudice mother. *In re J.H.*, 25 Kan. App. 2d 372, 962 P.2d 1127 (1998).

This case discusses the requirements of due process in a termination case, including a discussion of due diligence. *In re S.R.*, 34 Kan. App. 2d 202, 116 P.3d 43 (2005).