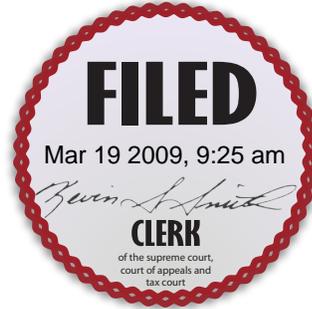


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE MATTER OF THE PATERNITY OF)
MINOR CHILD, M.A., BY NEXT FRIEND T.R.,)
Appellant,)
vs.)
C. A.,)
Appellee.)

No. 18A04-0809-JV-543

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Richard A. Dailey, Judge
Cause No. 18C04-0809-JP-5

March 19, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

T.R. (“Mother”) appeals the trial court’s paternity determination regarding her minor child, M.A. We reverse in part and remand.

Issues

Mother raises several issues on appeal, which we consolidate and restate as:

- I. whether the trial court abused its discretion in denying Mother’s motion for change of venue; and
- II. whether the trial court properly determined C.A. was M.A.’s father.

Facts

On July 24, 2008, C.A. filed an emergency petition to establish paternity in Delaware County. C.A. alleged he was the natural father of M.A., born to Mother in 2004. C.A.’s mother (“alleged grandmother”) raised M.A. in Muncie, while C.A. lived in Florida. Mother exercised sporadic visitation with M.A., but resided in Vincennes. In his petition, C.A. alleged an emergency situation because Mother was apparently seeking custody of M.A.

On July 25, 2008, the trial court set a hearing on the matter for August 1, 2008. On or about July 28, 2008, M.A. was apparently moved from alleged grandmother’s home in Muncie to Mother’s home in Vincennes. On July 30, 2008, an attorney appeared for Mother and filed an objection to the venue. Mother alleged that M.A. resided in Knox County and preferred venue would be in that county. C.A. filed a response, arguing that M.A. was only moved to Knox County on July 28, 2008.

On July 31, 2008, Mother filed a motion to continue the August 1, 2008 hearing. The trial court denied the motion to continue and set a hearing on the motion for change of venue in conjunction with the paternity hearing on August 1, 2008. Neither Mother nor her attorney appeared at the August 1, 2008 hearing. The trial court adjudicated C.A. as the biological father of M.A. It denied Mother's motion for change of venue, but did grant a motion for change of judge.¹ This appeal followed.²

Analysis

As an initial matter, we note that C.A. did not file an appellee's brief. "When the appellee has failed to submit an answer brief we need not undertake the burden of developing an argument on the appellee's behalf." Trinity Homes, LLC v. Fang, 848 N.E.2d 1065, 1068 (Ind. 2006). "Rather, we will reverse the trial court's judgment if the appellant's brief presents a case of prima facie error." Id. Prima facie error is defined as at first sight, on first appearance, or on the face of it. Id. If Mother is unable to meet this burden, we will affirm. See id.

I. Venue

The statutory rules of procedure in paternity actions mandate that "venue lies in the county in which the child, the mother, or the alleged father resides." Ind. Code § 31-

¹ Mother argues that after the trial court granted her motion for change of venue from judge, it should not have ruled on the paternity motion and instead should have let the matter proceed to the new judge. We note that Indiana Trial Rule 79(O) allows the original judge to hear and determine "emergency matters between the time a motion for change of judge is filed and the appointed special judge accepts jurisdiction." Ind. Tr. Rule 79(O). This issue is irrelevant because we reverse this ruling and remand the issue to the newly selected trial judge.

² Since the initiation of this appeal, alleged grandmother intervened in the action and filed a petition for custody of M.A. The hearing on that matter was continued indefinitely pending the outcome of this appeal.

12-3-2. At the time of this filing, the child lived in Delaware County and Mother lived in Knox County. The alleged father lived out of state. Mother timely objected to the venue and requested the matter be changed to Knox County. We review a trial court's denial of a motion for change of venue for an abuse of discretion. Ind. Trial Rule 76(A).

The evidence here indicated that M.A. had lived in Delaware County from approximately birth up until the time the paternity petition was filed. She was apparently moved from the county after the filing and just days before the hearing. The trial court was satisfied the length of time M.A. resided in Delaware County was sufficient for that county to have venue. More importantly, when the paternity action was filed in Delaware County M.A. was residing there. It was not an abuse of discretion for the trial court to deny Mother's motion and keep the matter in Delaware County.

Mother alternatively argues that under Indiana Trial Rule 75, Knox County is the preferred venue for the matter. As to Mother's arguments regarding convenience, although Mother resides in Knox County, it seems other witnesses reside in Delaware County. Also, M.A.'s alleged grandmother has intervened in the action and resides in Delaware County. We affirm the trial court's denial of Mother's motion for change of venue.

II. Paternity

Indiana statutes set out specific methods of establishing paternity. See I.C. § 31-14-2-1. "A man's paternity may only be established: in an action under this article; or by executing a paternity affidavit in accordance with Indiana Code Section 16-37-2-2.1." I.C. § 31-12-2-1. Under the paternity article, a man must file a verified petition and the

child and child's mother are necessary parties in that action. I.C. §§ 31-14-5-1 & 31-14-5-6.

A man is presumed to be the father of a child in several situations, including when a child is born during or within 300 days of the end of a marriage or when the man undergoes a genetic test that indicates with ninety-nine percent probability that he is the child's father. See I.C. § 31-14-7-1. This presumption does not apply to C.A. because he was never married to Mother, nor has he undergone genetic testing. C.A. and Mother have not executed a paternity affidavit, which is another avenue to establish paternity.

There is a rebuttable presumption that a man is the child's father if he receives the child into his home and openly holds the child out as his biological child. I.C. § 31-14-7-2(a). Even in this instance, although there was evidence C.A. held M.A. out as his own, M.A. was not received into his home in Florida. Rather, she was raised by C.A.'s mother. The statute is clear to explain, however that these circumstances "do not establish the man's paternity." I.C. § 31-14-7-2(b).

The trial court relied primarily on C.A.'s testimony and the testimony of his aunt to conclude that C.A. was M.A.'s father. Evidence in the form of letters from other family members and friends was also introduced. C.A. testified that since M.A.'s birth Mother told him that M.A. was his child. Mother was not present at the hearing to rebut or confirm such testimony. No evidence of genetic testing was introduced. Nor did C.A. and Mother execute a paternity affidavit. C.A. did not establish his paternity of M.A. through the appropriate means. Without meeting these statutory prerequisites, the trial court did not have a sufficient legal basis to adjudicate C.A. as the father. Mother has

presented us with a prima facie error. The trial court's decision is contrary to Indiana law and must be reversed.

Conclusion

The trial court did not abuse its discretion by denying Mother's motion for change of venue and keeping the matter in Delaware County. The trial court's conclusion that C.A. is the biological father of M.A. is contrary to Indiana law. We reverse the trial court's paternity finding and remand for further proceedings consistent with this opinion.

Reversed in part and remanded.

BAILEY, J., and MATHIAS, J., concur.