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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF A.C. and E.C., Minor Children,	)	
D.B., Alleged Father of A.C.,	)	
Appellants-Respondents,	)	
vs.	)	No. 49A05-1002-JC-154
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner,	)	
CHILD ADVOCATES, INC.,	)	
Co-Appellee/Guardian Ad Litem.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn Moores, Judge
The Honorable Julie Cartmel, Magistrate
Cause Nos. 49D09-0909-JC-42316, 49D09-0909-JC-42317

April 21, 2011

MEMORANDUM DECISION ON REHEARING - NOT FOR PUBLICATION

MAY, Judge

Our opinion in the above-captioned case affirmed the juvenile court's finding that A.C. was a CHINS as to her putative father, D.B.[1] As part of the CHINS finding, the juvenile court ordered D.B., via a Participation Decree, to establish his alleged paternity of A.C. and to participate in other services with a goal of reunification with A.C. D.B. petitioned for rehearing, claiming our decision was erroneous because another panel of our court recently held in *In re M.R.*, 934 N.E.2d 1253 (Ind. Ct. App. 2010), that a parental participation decree may not be entered against a putative father. We grant rehearing to clarify why *M.R.* is distinguishable, direct the juvenile court to amend the Participation Decree, and affirm our opinion in all other respects.

In *M.R.*, the alleged father, F.T., was a party to a CHINS action regarding M.R. The juvenile court never established M.R.'s paternity, but entered a Parental Participation Decree requiring, among other things, that F.T. "reimburse the DCS for 'the out of home

[1] It also remanded so the trial court could remove any reference to E.C. from the CHINS order, as paternity testing had revealed another man was E.C.'s father.

placement/and or services to the children in the amount of $25.00 per week beginning the first Friday once released from incarceration.'" *Id*. at 1254 (footnote omitted). We held:

> F.T.'s mere status as a party did not confer authority to the juvenile court to order his parental participation prior to a determination that he is, in fact, a parent. DCS fails to direct us to any authority that permits a juvenile court, prior to an establishment of paternity, to enter a parental participation decree against one who is only an alleged parent. The juvenile court in this case put the cart before the horse.

Id. at 1255 (footnote omitted).

D.B.'s situation is different. The juvenile court's Participation Decree required D.B. to, among other boilerplate requirements, participate in a paternity test to determine whether he was in fact A.C.'s father. Unlike in *M.R.*, the court did not order D.B. to pay support for a child for whom D.B.'s paternity had not been established.

Additionally, our opinion in *M.R.* does not indicate F.T. acquiesced to any of the requests from DCS, nor did he act as if he might be M.R.'s father. D.B., by contrast, completed an "incarcerated parent questionnaire" and even suggested that his brother take custody of A.C. until D.B. was released from prison. The CHINS pre-dispositional report indicates D.B. asked the court to allow him to participate in a GED program, parenting classes, anger management classes, substance abuse treatment or education, and college level classes while incarcerated. These actions suggest D.B. thought he was A.C.'s father and was interested in completing services that would benefit A.C. Nothing in *M.R.* suggests F.T. sought involvement in M.R.'s life, and we agree the court order in that case was

inappropriate to the extent the juvenile court "put the cart before the horse." *Id*. at 1255.

In the case before us it seems the juvenile court attempted to hitch the proverbial horse to the front of the cart by requiring D.B. to establish paternity. To the extent the order purports to require D.B. to engage in services, we note D.B. requested some of those services (parenting classes and drug treatment); he therefore may not assert the order to complete them was error. The other requirements in the Participation Order, such as maintaining a source of income, maintaining suitable housing, and participating in homebased counseling, could not be completed due to D.B.'s incarceration. Nevertheless, we embrace the bright-line rule announced in *M.R.*, that is, a putative father should not be ordered to engage in CHINS-related services until his paternity of the CHINS is established. Therefore, we remand for the juvenile court to issue a new Participation Decree ordering only that D.B. establish paternity of A.C. If D.B. is A.C.'s father, the juvenile court may then enter a Participation Decree establishing the requirements D.B. must complete to move toward reunification with A.C. We affirm our original opinion in all other respects.

Affirmed and remanded.

ROBB, C.J., and VAIDIK, J., concur.