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ATTORNEY FOR APPELLANT:

JAN B. BERG
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General Of Indiana

MICHAEL GENE WORDEN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF:)
H.I.,)
)
Appellant-Defendant,)
)
vs.) No. 49A02-0611-JV-984
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Danielle Gregory, Magistrate
Cause No. 49D09-0607-JD-2782

July 16, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

H.I. appeals a restitution order issued by the Putnam Circuit Court. H.I. raises three issues, but we find one issue dispositive: whether the Putnam Circuit Court had jurisdiction to order restitution.¹ Concluding that the Putnam Circuit Court did not have jurisdiction over the case at the time it issued its restitution order, we vacate the order.

Facts and Procedural History

On May 14, 2006, H.I., who was fifteen years old at the time, drove Charles Beikman's vehicle. Beikman was H.I.'s manager and was too intoxicated to drive. While H.I. was driving the car, she leaned over to pick up a doughnut, and was involved in an accident. The State filed a Petition Alleging Delinquency in the Putnam Circuit Court, alleging that H.I. was a delinquent child for committing the act that if committed by an adult would be operating a motor vehicle without ever receiving a license, a Class C misdemeanor.

On July 3, 2006, the Putnam Circuit Court approved the filing of the petition and held an initial hearing at which H.I. appeared along with her mother, but without counsel. H.I. apparently admitted to the allegations at this hearing. The Putnam Circuit Court issued an Order on Initial Hearing, in which it ordered the disposition transferred to Marion County, H.I.'s county of residence. The Order also found that there was a victim entitled to restitution,² and set a restitution hearing for August 14, 2006. The Order also stated: "if there

¹ H.I. also argues that the Marion Superior Court improperly denied H.I. the opportunity to challenge the restitution order and that the order is improper on its face as the act to which H.I. admitted was not the cause of the damage to the victim. As we vacate the order in its entirety, we need not address these issues.

² We were not provided with the transcript from the initial hearing, and have no information as to how H.I. caused damage to this victim.

is a dispute with insurance [H.I.'s] mother will be responsible for the amount of restitution.” Appellant’s Appendix at 21. On August 18, 2006, the Putnam Circuit Court issued a restitution order, requiring H.I. to pay \$2,197 to the victim. On August 29, 2006, the Marion Superior Court set the matter for disposition and appointed a public defender. The Marion Superior Court held a hearing on September 28, 2006, and determined H.I. to be a delinquent child. At this hearing, H.I. attempted to challenge the Putnam Circuit Court’s restitution order, but the Marion Superior Court decided that it had no authority to hear a challenge to the order, and left it intact. H.I. now appeals the restitution order.

Discussion and Decision

The question of whether the Putnam Circuit Court had jurisdiction to issue its restitution order is a question of law that we will review de novo. See In re Bender, 844 N.E.2d 170, 183 (Ind. Ct. App. 2006), trans. denied.

Change of venue in a juvenile case may be granted only pursuant to Indiana Code section 31-32-7-3. Ind. Code § 31-32-7-2. Under this section, upon the motion of the juvenile court, the juvenile, or the juvenile’s parent, “the juvenile court may assign a case to a juvenile court in the county of a child’s residence at any time before the dispositional hearing.” With regard to the continuing jurisdiction of a trial court after it assigns a case to another trial court:

[i]t is the general rule that when a proper motion for change of venue from the county is filed the court in which it was filed loses jurisdiction in the case. But jurisdiction must continue in some court, and until the court to which the venue was changed acquires jurisdiction by the receipt of transcript, the original court must retain jurisdiction to make any necessary emergency interlocutory orders.

City of Gary v. Enterprise Trucking & Waste Hauling, 846 N.E.2d 234, 242 (Ind. Ct. App. 2006) (quoting Indianapolis Dairymen’s Co-op v. Bottema, 226 Ind. 260, 265, 79 N.E.2d 409, 411-12 (Ind. 1948)). Therefore, when the Putnam Circuit Court assigned the case to the Marion Superior Court, the Putnam Circuit Court lost jurisdiction except “as to emergency matters and matters which need prompt determination.” Raikos v. Henring, 527 N.E.2d 1141, 1145 (Ind. Ct. App. 1988). Although the record is not clear as to when the Marion Superior Court received the documents relating to H.I.’s case, this circumstance is immaterial to our review, as we conclude that the restitution order was not an “emergency” order, and therefore, the Putnam Circuit Court did not have jurisdiction to order it.

“The common meaning of ‘emergency’ is an ‘unforeseen combination of circumstances or the resulting state that calls for immediate action.’” City of Gary, 846 N.E.2d at 242 (quoting Bedree v. DeGroote, 799 N.E.2d 1167, 1173 (Ind. Ct. App. 2003), trans. denied). The restitution order was not unforeseen and clearly did not call for immediate action. Therefore, the Putnam Circuit Court did not have the authority to issue the restitution order.

The impropriety of the Putnam Circuit Court’s restitution order is even more apparent when examining the statutory authority for ordering restitution pursuant to a finding of delinquency. “The juvenile court may . . . [o]rder the child to pay restitution if the victim provides reasonable evidence of the victim’s loss, which the child may challenge at the dispositional hearing.” Ind. Code § 31-37-19-5(b)(4). “This section applies if a child is a delinquent child under IC 31-37-1.” Ind. Code §31-37-19-5(a). Although the Putnam Circuit

Court had established a factual basis for H.I.'s admission that she had committed an act that would be a criminal offense if committed by an adult, H.I. was not adjudicated a delinquent until the Marion Superior Court entered its dispositional order on September 28, 2006. H.I. was not a delinquent child at the time the Putnam Circuit Court issued its restitution order. Therefore Indiana Code section 31-37-19-5 did not apply and the Putnam Circuit Court had no authority to issue a restitution order.

The State argues that H.I. has waived any objection she has to the Putnam Circuit Court's jurisdiction by appearing at the initial hearing. We agree that when H.I. appeared in the Putnam Circuit Court, she submitted herself to its jurisdiction. See C.C. v. State, 826 N.E.2d 106, 109 (Ind. Ct. App. 2005), trans. denied. However, the Putnam Circuit Court assigned the case to the Marion Superior Court after this hearing. H.I. objected to the Putnam Circuit Court's restitution order at the disposition hearing in the Marion Superior Court. We conclude that H.I. has not waived her ability to challenge the authority of the Putnam Circuit Court to issue the restitution order.

Conclusion

We conclude that when the Putnam Circuit Court assigned the case to the Marion Superior Court, it divested itself of the authority to issue the restitution order. We hereby vacate that order.

Reversed.

SULLIVAN, J., and VAIDIK, J., concur.