MEMORANDUM DECISION

ON REHEARING

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 the Matter of M.H. (Minor Child),

Child in Need of Services,

D.H. (Father), and H.H. (Mother)

Appellants-Respondents,

v.

January 3, 2022

Court of Appeals Case No. 21A-JC-1425

Appeal from the Greene Circuit Court

The Honorable Lucas Rudisill, Magistrate

Trial Court Cause No. 28C01-2101-JC-6

Indiana Department of Child Services,
Appellee-Petitioner

May, Judge.

[1] D.H. ("Father") requests rehearing and argues the following footnote (hereinafter "FN1") in our original opinion was incorrect:

> We note that none of the orders in this case, including the Dispositional Order that triggers this appeal, is signed by a judge. It has long been established that "trial court magistrates do not have the authority to enter final judgments in civil cases, including juvenile cases. Final dispositional orders in [Children in Need of Services] cases *must* be signed by the trial court judge, not simply the magistrate." *In re D.F.*, 83 N.E.3d 789, 795 (Ind. Ct. App. 2017) (emphases added). As neither party here has raised any objection to this procedural error, and in light of our preference to decide cases on their merits whenever possible, we will address Parents' arguments. *See id*. (noting failure to present issue constitutes waiver and court's preference to decide cases on their merits despite procedural errors). However, we admonish the trial court to abide by procedural rules in the future, as failure to do so "only increases the chance of unnecessary delays in otherwise time-sensitive cases involving children." *Id*.

In re Matter of M.H., 21A-JC-1425, slip op. at *1 n.1 (Ind. Ct. App. December 10, 2021), *withdrawn* (Ind. Ct. App. December 15, 2021). On December 15, 2021, we issued a Notice of Change and a Corrected Opinion omitting the footnote, because the caselaw on which we relied had been superseded by

statute effective July 1, 2020. *See* Ind. Code § 33-23-5-8.5 ("Except as provided in section 8 of this chapter, a magistrate has the same powers as a judge.").

[2] On December 21, 2021, Father filed a Writ in Aid of Appellate Jurisdiction, stating, in relevant part: "Father also questions whether a 'corrected opinion' that appears to have been signed by only one (1) judge can replace a Memorandum Decision – Not for Publication issued by a three-judge panel." (Father's Writ of Aid of Appellate Jurisdiction at 4.) We note the Corrected Opinion indicates Judge May is the writing judge, with Judge Vaidik and Judge Molter concurring in the decision. *See In the Matter of M.H.*, 21A-JC-1425, slip op. at *2, *13 (Ind. Ct. App. December 10, 2021, Corrected) (listing writing and panel judges).

[3] It would seem Father is referring not to the Corrected Opinion, but to the Notice of Change, which was signed by Judge Melissa S. May only. The language and structure of the Notice of Change is virtually identical to the same type of order routinely issued by our Indiana Supreme Court. *See* Notice of Change Order, *Isom v. State*, 45S00-1508-PD-00508 (Ind. September 10, 2021) (Notice of Change order with virtually identical language signed by writing Justice). We therefore reject Father's argument regarding that issue.

[4] We therefore grant rehearing to address Father's arguments regarding FN1 and the Notice of Change and Corrected Opinion. We affirm our original opinion in all other respects.

[5] Vaidik, J., and Molter, J., concur.