

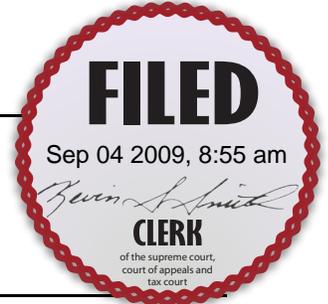
Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

APPELLEE PRO SE:

**DAN J. MAY**  
Kokomo, Indiana

**J.R.**  
Kokomo, Indiana



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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN RE PATERNITY OF: )

Al.W. )

Al.W. b/n/f An.W., )

Appellant-Petitioner, )

vs. )

J.R., )

Appellee-Respondent. )

No. 34A05-0901-JV-38

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APPEAL FROM THE HOWARD CIRCUIT COURT  
The Honorable Lynn Murray, Judge  
Cause No. 34C01-9412-JP-213

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**September 4, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

An.W. (“Mother”) appeals the trial court’s denial of her motion for relief from order of dismissal. Mother raises multiple issues, which we consolidate and restate as whether the trial court properly denied Mother’s motion for relief from order of dismissal.

We reverse and remand.

### **FACTS AND PROCEDURAL HISTORY**

Mother gave birth to Al.W. on October 28, 1994. On December 27, 1994, the Indiana State Department of Public Welfare, by the Title IV-D prosecuting attorney, filed a petition to establish paternity and support on behalf of Al.W. In the petition, it was alleged that J.R. was Al.W.’s father. J.R. was served with a copy of the petition on January 20, 2005. Attorney Monty Arvin filed an appearance as J.R.’s counsel on February 28, 2005. Arvin filed a motion to withdraw his appearance on December 20, 2005, which the trial court granted.

No further action was taken in the case until September 11, 2007 when Deputy Prosecutor Rebecca R. Vent filed a motion to close the case “due to no service.” *Appellant’s App.* at 14. The trial court granted the motion and dismissed the case that same day. On August 20, 2008, Mother, as Al.W.’s next friend, filed a motion for relief from order of dismissal pursuant to Indiana Trial Rule 60(B)(1), (2), (3), and (6). Mother specifically argued that “[t]he minute sheet dismissal recites a lack of service on [J.R.]. In fact, [J.R.] was served and appeared by counsel in the action.” *Id.* at 15. After holding a hearing, the trial court denied Mother’s motion for relief from order of dismissal on

November 26, 2008. Mother then filed a timely motion to correct error, which the trial court denied on December 16, 2008. Mother now appeals.

### **DISCUSSION AND DECISION**

Mother argues that the trial court erred in denying her motion for relief from order of dismissal. The grant or denial of a motion for relief under Trial Rule 60(B) is within the discretion of the trial court, and we will reverse only for an abuse of that discretion. *Collins v. Collins*, 805 N.E.2d 410, 412 (Ind. Ct. App. 2004), *trans. denied*. “An abuse of discretion occurs if the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court, or if the court has misinterpreted the law.” *Id.* Additionally, we note that “the dismissal of paternity actions is not typically encouraged.” *Paternity of J.A.P. ex rel. Puckett v. Jones*, 857 N.E.2d 1, 8 (Ind. Ct. App. 2006), *trans. denied*.

Here, the trial court dismissed the paternity action due to a lack of service on J.R. However, the record indicates that J.R. was served with a copy of the paternity petition on January 20, 2005. Thereafter, attorney Monty Arvin filed an appearance as J.R.’s counsel on February 28, 2005. Because J.R. was served with a copy of the paternity petition, the trial court erred in dismissing this action due to lack of service and abused its discretion by denying Mother’s motion for relief from order of dismissal.

Reversed and remanded.

NAJAM, J., and BARNES, J., concur.