

# MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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In the Matter of the Paternity of  
J.H.H.:

J.C. Cheshire,  
*Appellant-Petitioner,*

v.

Jessica Himebaugh,  
*Appellee-Respondent.*

October 30, 2023

Court of Appeals Case No.  
23A-JP-1256

Appeal from the Harrison Circuit  
Court

The Honorable John T. Evans,  
Judge

Trial Court Cause No.  
31C01-2209-JP-14

**Memorandum Decision by Judge Bradford**  
Judges Vaidik and Brown concur.

**Bradford, Judge.**

## Case Summary

- [1] J.H.H. (“Child”) was born to Jessica Himebaugh (“Mother”) in December of 2016. In September of 2022, J.C. Cheshire filed a petition to establish paternity. Following a hearing, the trial court dismissed Cheshire’s petition as untimely under Indiana Code section 31-14-5-3(b). We affirm.

## Facts and Procedural History

- [2] Child was born to Mother on December 6, 2016. Mother has lived in the same home in West Baden Springs since Child’s birth. Cheshire was not present at the hospital, and neither Mother nor Cheshire signed a paternity affidavit, at the time of Child’s birth.
- [3] On September 20, 2022, Cheshire filed a verified petition to establish paternity, custody, child support, and parenting time (“the paternity action”). On October 17, 2022, Mother filed a motion to dismiss, arguing that the paternity action was untimely filed.
- [4] The trial court conducted a hearing on Mother’s motion on April 13, 2023, at which Cheshire argued that the paternity action should be considered timely because he had been unable to locate Mother in the time between Child’s birth and the filing of the paternity action to serve her with the summons. In support of his claim, Cheshire testified that he had unsuccessfully attempted to contact Mother on numerous occasions. The trial court, however, also heard testimony suggesting that Cheshire had communicated on several occasions with Mother

and had been aware of where Mother was living. Mother testified that Cheshire had, at some point after Child’s birth, taken a photograph of Mother’s home and sent it to her. Both Mother and Maternal Grandmother subsequently confirmed to Cheshire that Mother and Child lived on the property. On May 5, 2023, the trial court issued an order granting Mother’s motion to dismiss, finding that the paternity action was untimely filed.

## Discussion and Decision

[5] As an initial matter, we note that Mother has not filed an appellee’s brief. As a result, we will not undertake the burden of developing arguments on her behalf and will reverse if Cheshire establishes prima facie error. *See WindGate Properties, LLC v. Sanders*, 93 N.E.3d 809, 813 (Ind. Ct. App. 2018). “Prima facie, in this context, means at first sight, on first appearance, or on the face of it.” *Id.* “This standard, however, ‘does not relieve us of our obligation to correctly apply the law to the facts in the record in order to determine whether reversal is required.’” *Id.* (quoting *Wharton v. State*, 42 N.E.3d 539, 541 (Ind. Ct. App. 2015)).

[6] Cheshire contends that “the two-year time period in which to bring his paternity action was tolled because [Mother] made service on her impossible, invoking the tolling provision of [Indiana Code section] 31-14-5-3(b)(6).” Appellant’s Br. p. 13. Indiana Code section 31-14-5-3(b) provides that a paternity action must be filed “not later than two (2) years after the child is born.” An exception to the two-year statute of limitations is if “a responding

party cannot be served with [a] summons during the two (2) year period.” Ind. Code § 31-14-5-3(b)(6). However, Cheshire acknowledged that the trial court “was correct when it concluded that service” could have been achieved under the Trial Rules. Appellant’s Br. p. 15.

[7] The record also supports the trial court’s determination that service could have been achieved because it does not support Cheshire’s claim that Mother made service on her impossible. Instead, it reveals that Cheshire had several potential methods of service available to him. First, the record indicates that Cheshire had communicated with Mother for some time after Child’s birth via telephone or text message, with Mother offering at one point to meet Cheshire in a public place so that he could spend time with Child. Cheshire arguably could have taken Mother up on her offer and personally served her with a summons at that time. Second, Cheshire had sent a picture to Mother of her home and both Mother and Maternal Grandmother confirmed to Cheshire that Mother lived on the property depicted in the picture that he had sent to her. This suggests that Cheshire knew of an address where he could have, at least attempted, to serve Mother. Finally, Cheshire could have served Mother by publication. *See Matter of Paternity of R.L.W.*, 643 N.E.2d 367, 370 (Ind. Ct. App. 1994) (providing that service by publication was sufficient in a paternity action when mother and her attorney had deliberately concealed Mother’s whereabouts).

[8] Despite having options available to him, the record is devoid of any indication that Cheshire ever actually attempted to timely file a paternity action or serve Mother with notice of any such action. Because Cheshire had methods of

service available to him but failed to avail himself of any of the available methods, we agree with the trial court that the paternity action was untimely.<sup>1</sup>

[9] The judgment of the trial court is affirmed.

Vaidik, J., and Brown, J., concur.

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<sup>1</sup> Given our conclusion that Father had various service methods available to him during the two-year period for filing a timely paternity action, we need not consider Father's argument regarding whether Indiana Trial Rule 4.13, outlining the procedure for service by publication, rendered the tolling provision in Indiana Code section 31-14-5-3(b)(6) wholly inapplicable.