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Custody and Parenting Time

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In **Bixler v. Delano**, 185 N.E.3d 875 (Ind. Ct. App. 2022), the Court held that Father, the appellant, established prima facie error when the trial court denied his motion for relief from judgement after the trial court entered a custody order in favor of Mother following a hearing where Father was not present.

Mother had Father had a custody order in place regarding their child. Mother drafted a letter to the trial court expressing concerns for Child while in Father's care, and the court construed this letter as a motion to modify custody, parenting time, and child support. The trial court set the motion for a hearing and attempted to provide notice to Father via the address in the court's record, but the notice was returned undeliverable. The trial court held the hearing in Father's absence and awarded Mother legal custody, physical custody, and child support. About a month and a half later, Father's attorney filed an appearance and a motion for relief from judgment. A hearing was held on said motion. Father provided evidence that he would have contested Mother's motion but did not receive notice and that Mother knew of his location even though he did not file a notice of relocation with the court. Mother testified that she knew of four possible places where Father might be living but did not send her letter to those places because she did not have the specific addresses. After the trial court made findings on the attempts to provide Father notice at the address in the court's file, the trial court denied Father's motion for relief from judgement. Father appealed.

The trial court erred in denying Father's motion for relief from judgment and in finding that he did not attend the modification hearing because he did not receive notice. Id. at 878-79. In this case, Mother, the appellee, did not file an appellate brief in support of her position; and, therefore, the appellant only needed to establish that there is prima facie error. Prima facie is defined as "at first sign, on first appearance, or on the face of it." Graziani v. D & R Const., 39 N.E.3d 688, 690 (Ind. Ct. App. 2015). The trial court has discretion to relieve a party from judgement governed by Ind. Trial Rule 60(B). Father established prima facie error, as he did not receive notice of the hearing, and consequently failed to appear. Mother knew of four addresses where Father might live, received updates about the child's condition from her and Father's families, had relevant information of where he could be found. Despite knowing Father's potential whereabouts, no further attempts were made to notify Father of the proceedings. Moreover, Father testified he would have contested Mother's request and provided crucial information during the custody hearing which the trial court would have considered in making its ruling. Thus, the Court of Appeals reversed the trial court's ruling and remanded it for an evidentiary hearing.