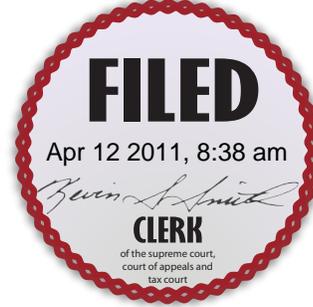


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

SCOTT A. NORRICK
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**IN THE
COURT OF APPEALS OF INDIANA**

JOHN GRIMES,)	
)	
Appellant-Respondent,)	
)	
vs.)	No. 48A02-1007-DR-825
)	
TAMARA GRIMES,)	
)	
Appellee-Petitioner.)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause No. 48D01-0709-DR-1350

April 12, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

John Grimes appeals from the trial court's order denying his motion to correct error in a post-dissolution proceeding in which Grimes and his ex-wife, Tamara Grimes¹ ("Foster"), each alleged the other was in contempt of a prior court order. Grimes presents the following restated issue for our review: whether the trial court erred by denying Grimes's motion to correct error from the trial court's May 10, 2010 order.

We affirm.

FACTS AND PROCEDURAL HISTORY

Foster filed a petition to dissolve her marriage to Grimes on September 25, 2007. On January 22, 2008, the parties filed a joint stipulation agreement as to property settlement and waiver of a final hearing. That same date, the trial court incorporated the parties' property settlement agreement and issued its decree of dissolution. On October 20, 2008, Grimes filed a verified petition to modify support claiming undue hardship based on reduced earnings. On December 10, 2009, the trial court issued an order reducing Grimes's weekly child support obligation and entering an order for Grimes to pay a \$775.00 debt for daycare expenses pre-paid by Foster for the care of their minor child. Thereafter, each of the parties filed motions for contempt based upon alleged violations of the trial court's order. After holding a hearing on the parties' motions, the trial court entered its order, on May 10, 2010, setting off Grimes's overpayment of child support against his obligation to pay \$775.00 to Foster for daycare expenses. Grimes now appeals.

¹ The transcript reflects that at the time of the hearing on the contempt motions, Tamara Grimes was referred to as Tamara Foster. *Tr.* at 5.

DISCUSSION AND DECISION

We note at the outset that Foster has not filed an appellee's brief in this case. "When an appellee fails to submit a brief in accordance with our rules, we need not undertake the burden of developing an argument for the appellee." *Robinson v. Valladares*, 738 N.E.2d 278, 280 (Ind. Ct. App. 2000). We apply a less stringent standard of review with respect to claims of reversible error in these situations and will reverse the trial court if the appellant is able to establish *prima facie* error. *Id.* *Prima facie* error is error at first sight, on first appearance, or on the face of it. *Id.* If the appellant is unable to meet this burden, we will affirm the decision of the trial court. *Id.*

Grimes claims that the trial court improperly modified the parties' property settlement agreement by setting off Grimes's overpayment of child support against his obligation to pay \$775.00 to Foster for daycare expenses via the May 10, 2010 order. It appears, however, that Grimes is attempting to challenge the provision in the trial court's December 10, 2009 order requiring him to reimburse Foster for \$775.00 in daycare expenses. In support of this contention, Grimes sets forth certain terms of the property settlement agreement that describe the financial obligations of the parties.

The trial court's December 10, 2009 order was a final judgment. The proper vehicle for reconsideration of a final judgment is a motion to correct error, which may be made on either a party's or the court's motion. *Waas v. Ill. Farmers Ins. Co.*, 722 N.E.2d 861, 862-63 (Ind. Ct. App. 2000). A motion to correct error must be filed no later than thirty days after the entry of judgment. Ind. Trial Rule 59(C). Here, the challenged judgment is the

December 10, 2009 order, if he intended to challenge his obligation to pay the daycare debt, and any challenge to that judgment should have been filed before Grimes's June 8, 2010 motion to correct error was filed. Consequently, Grimes has waived his right to challenge that order by failing to timely file a motion to correct error or notice of appeal from that judgment.

The subject of the trial court's May 10, 2010 order was the resolution of competing motions alleging contempt. More specifically, Foster claimed that Grimes had not paid child support and had failed to pay the daycare expenses as previously ordered. Grimes claimed that Foster had prevented him from exercising parenting time as previously ordered. The trial court found that Foster had prevented Grimes from exercising parenting time, but did so as the result of a failure to recognize parenting time guideline revisions that had occurred subsequent to the entry of the decree. Thus, the trial court did not find her in contempt.

At the hearing, Grimes specifically acknowledged that he had been ordered to pay child support and to reimburse Foster for the daycare expenses, but had failed to do so. He testified as follows:

Q: [O]kay, there was a \$775.00 dollar bill from uh summer or two previously to the daycare that the Court ordered you to pay and that's on the Decree, or that's on the December 8 Order as well?

A: Yes.

Q: And you haven't paid that?

A: No.

Q: Okay. You, you know you were supposed to pay the \$775.00 but you were laid off?

A: Correct.

Tr. at 31. The trial court found that as a result of the retroactive reduction in the amount of Grimes's child support obligation, he had overpaid by \$779.94. The trial court then set off that overpayment against Grimes's obligation to reimburse the daycare expenses, and applied the remainder against his child support arrearage. Grimes has offered no argument as to how this procedure was an abuse of the trial court's discretion, but for the claim that the trial court was improperly modifying the property settlement agreement. We find that the trial court did not abuse its discretion by setting off the overpayment against the daycare expense, and that in doing so, the trial court was not modifying the property settlement agreement, but rather, enforcing its own prior order.

Affirmed.

CRONE, J., and BRADFORD, J., concur.