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IN THE
COURT OF APPEALS OF INDIANA

WALTER WAYNE BOWLES,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 30A01-1012-DR-620
	)	
TERRI E. BOWLES,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE HANCOCK SUPERIOR COURT
The Honorable Richard D. Culver, Special Judge
Cause No. 30D01-0212-DR-739

April 26, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Walter Bowles ("Husband") appeals the trial court's order granting in part the motion to correct error of Terri Bowles ("Wife"). Husband raises one issue, which we restate as whether the trial court's order is void. We reverse.[1]

Husband and Wife were married in 1987 and divorced in 2003. In July 2009, Husband filed a verified petition for modification of decree, and in January 2010 Wife filed a motion to dismiss and verified petitions for modification, for suspension of driving privileges, and for contempt. After an evidentiary hearing, the trial court entered a Post Dissolution Order of Modification on March 23, 2010.

On April 21, 2010, Wife filed a motion to correct error. On May 20, 2010, the court scheduled a hearing on the motion for July 12, 2010. The hearing was later rescheduled, upon the court's own motion, for July 19, 2010. The hearing was again rescheduled, upon the request by Husband, for August 30, 2010.[2] According to the court's chronological case summary ("CCS"), the court held a hearing on August 30, 2010, at which the parties appeared in person and by counsel.[3] The CCS entry also stated: "Matter taken under advisement pending submission of proposed order." Appellant's Appendix at 10. An entry in the CCS dated October 12, 2010 stated: "Parties are granted 10 days to submit their proposed orders with regard to the Petitioner's motion

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[1] We note that Wife did not file an appellee's brief. When an appellee fails to submit a brief, we need not undertake the burden of developing an argument on the appellee's behalf. A.S. v. T.H., 920 N.E.2d 803, 805 (Ind. Ct. App. 2010). Rather, we will reverse the trial court's judgment if the appellant's brief presents a case of *prima facie* error. Id. Husband needs to establish only *prima facie* error, which is error at first sight or appearance. Id.

[2] Husband filed a motion for continuance of the hearing a second time, Wife filed an objection to the continuance, and the court denied Husband's motion.

[3] The record does not include a transcript of the August 30, 2010 hearing.

to correct errors." Id. Wife filed a proposed order with the court on October 22, 2010. On October 27, 2010, the court entered an order granting Wife's motion to correct errors.

The issue is whether the court's October 27, 2010 order is void. Husband argues the order was issued after the date Wife's motion was deemed denied under Ind. Trial Rule 53.3(A), that the court's request that the parties submit proposed orders did not extend the period during which the trial court was required to rule, and that therefore the order is void.

We note that generally a trial court has wide discretion to correct errors and we will reverse only for an abuse of that discretion. Paulsen v. Malone, 880 N.E.2d 312, 313 (Ind. Ct. App. 2008). An abuse of discretion occurs when the trial court's action is against the logic and effect of the facts and circumstances before it and the inferences that may be drawn therefrom, or is based on impermissible reasons or considerations. Id.

Trial Rule 53.3(A) provides:

> In the event a court fails for forty-five (45) days to set a Motion to Correct Error for hearing, or fails to rule on a Motion to Correct Error within thirty (30) days after it was heard or forty-five (45) days after it was filed, if no hearing is required, the pending Motion to Correct Error shall be deemed denied. Any appeal shall be initiated by filing the notice of appeal under Appellate Rule 9(A) within thirty (30) days after the Motion to Correct Error is deemed denied.

This rule is self-activating upon the passage of the thirty days. Demmond v. Demmond, 706 N.E.2d 566 (Ind. Ct. App. 1999), trans. denied.

The time limitation for ruling on a motion to correct error under Rule 53.3(A) does not apply where the parties or their counsel stipulate or agree on record that the time limitation will not apply or the court files an entry in the cause advising all parties of the

extension of time for ruling. Trial Rule 53.3(B). With respect to an entry filed by the court, Rule 53.3(D) provides:

> The Judge before whom a Motion to Correct Error is pending may extend the time limitation for ruling for a period of no more than thirty (30) days by filing an entry in the cause advising all parties of the extension. Such entry must be in writing, must be filed before the expiration of the initial time period for ruling set forth under Section (A), and must be served on all parties. Additional extension of time may be granted only upon application to the Supreme Court as set forth in Trial Rule 53.1(D).

Here, the record reveals that a hearing was held on Wife's motion to correct error on August 30, 2010, and thus the initial time period of thirty days for the court to rule on the motion under Trial Rule 53.3(A) expired on September 29, 2010. The court did not rule on Wife's motion until October 27, 2010.

The record does not reflect that the parties or their counsel stipulated or agreed, as permitted by Trial Rule 53.3(B), that the time limitation under Trial Rule 53.3(A) would not apply, or that the court took the step of filing an entry advising the parties of an extension, as permitted under Trial Rule 53.3(D), to properly extend the time limitation for ruling.

We recognize that the August 30, 2010 CCS entry stated that the matter was "taken under advisement pending submission of proposed order," that a CCS entry on October 12, 2010 stated that the parties were "granted 10 days to submit their proposed orders," and that Wife filed a proposed order on October 22, 2010. See Appellant's Appendix at 10. However, the trial court's August 30, 2010 and October 12, 2010 CCS entries did not extend the deadline or time period for the court to rule on the motion to correct error under Rule 53.3(A). Further, if the court here had determined that the

submission of proposed orders necessitated an extension of the court's allotted time to rule on the motion, the court could have extended its deadline by written entry as set forth under Rule 53.3(D), but the court here did not make such an entry. See Paulsen, 880 N.E.2d at 313-315 (holding that the trial court's CCS entry following a hearing on a motion to correct error that counsel was to submit additional authority did not extend the thirty-day time period for the court to rule on the motion under Trial Rule 53.3(A) and noting that the motion was deemed denied thirty days after the hearing and that the court failed to obtain an extension under Trial Rule 53.3(D)); Demmond, 706 N.E.2d at 566-568 (holding that the trial court's order for the parties to submit proposed orders by a certain date did not extend the time period for the court to rule under Trial Rule 53.3(A) and noting that the court could have obtained an extension of time under Trial Rule 53.3(D)).

Because the trial court did not rule on Wife's motion to correct error within thirty days of the hearing, the motion was deemed denied and we conclude that the court's October 27, 2010 belated order granting the motion is void. See Wurster Const. Co., Inc. v. Essex Ins. Co., 918 N.E.2d 666, 672-673 (Ind. Ct. App. 2009) (holding that the court's belated order granting a motion to correct error was made void when the appellant appealed the belated grant); Johnson v. Johnson, 882 N.E.2d 223, 226-228 (Ind. Ct. App. 2008) (citing to Paulsen and concluding that a motion to correct error was deemed denied pursuant to Rule 53.3 after the initial time period to rule had elapsed and holding that, because the trial court did not rule on the motion within thirty days of the hearing, it was

without power to belatedly grant the motion and that consequently the court abused its discretion when it issued the belated order granting the motion).

For the foregoing reasons, we reverse the trial court's October 27, 2010 order granting Wife's motion to correct error.

Reversed.

FRIEDLANDER, J., and BAILEY, J., concur.