

Daniel J. Reed (“Reed”) appeals the trial court’s order denying his motion to correct error, raising the following consolidated and restated issues:

- I. Whether the trial court erred in denying Reed’s motion to correct error because, he claims, that he did not have notice of the April 26, 2010 hearing at which the trial court found him in contempt; and
- II. Whether the trial court erred in ordering Reed to pay attorney fees.

We affirm.

FACTS AND PROCEDURAL HISTORY

On February 11, 2010, Saint-Gobain Containers, Inc. (“SGCI”), a manufacturer of glass products, filed a “Verified Complaint for Restraining Order Without Notice and Temporary Injunction and Permanent Injunction Without Hearing,” as well as a verified motion for an *ex parte* restraining order, against Reed, a former employee. SGCI alleged that Reed had trespassed on SGCI property on several occasions and that he had made threatening and intimidating statements to SGCI employees on company property, which caused the employees to fear for their own safety and the safety of others. SGCI further alleged that “Reed’s activity warrants an injunction under Indiana’s Workplace Violence Restraining Orders statute, Ind. Code § 34-26-6 [(“Workplace Violence Act”).”

Appellant’s App. at 59. Indiana Code section 34-26-6-6 provides as follows:

An employer may seek a temporary restraining order or injunction on behalf of an employee to prohibit further violence or threats of violence by a person if:

- (1) the employee has suffered unlawful violence or a credible threat of violence from the person; and
- (2) the unlawful violence has been carried out at the employee’s place of work or the credible threat of violence can reasonably be

construed to be carried out at the employee's place of work by the person.

At the time SGCI filed its complaint for restraining order, Reed was an employee of SGCI but had been on Accident and Sickness leave for about one month.¹ Under SGCI's policy, employees on leave were allowed on company property only during business hours and for business purposes. During his leave, Reed had been seen on SGCI property taking a shower, doing his dishes, and engaging in other activities in contravention of the policy; on several occasions, Reed refused to leave the premises. In addition to trespassing on SGCI property, Reed also made verbal statements of a threatening and intimidating nature to at least two supervisory employees, including shift supervisor Timothy Coleman ("Coleman"). SGCI alleged that these statements constituted credible threats of violence that served no legitimate purpose, and caused supervisory "employees to fear for their own safety and the safety of others." *Appellant's App.* at 63.

SGCI's motion for restraining order alleged in pertinent part that: Reed had been suspended from his job and termination was pending; unless he was restrained, Reed would continue "the unlawful conduct described above"; Reed needed to be restrained to prevent potential ramifications of the termination proceedings; and Reed's actions, if not restrained, would continue to result in immediate and irreparable harm to SCGI. *Id.* Additionally, SGCI alleged it had "no adequate remedy at law." *Id.* at 64.

That same day, the trial court entered an *ex parte* "Entry of Restraining Order"

¹ Due to a hand injury, Reed had been on leave from September 14, 2009 until November 22, 2009. The same injury caused him to be placed on leave, again, on January 7, 2010.

(“Order”), which in pertinent part provided:

IT IS, THEREFORE, ORDERED that Plaintiff Daniel J. Reed, regardless of whether he receives actual notice of the Court’s findings of fact and conclusions of law, be enjoined from the following acts:

1. From entering any and all property belonging to SGCI,
2. From making threatening statements or otherwise engaging in a course of conduct which would constitute a credible threat of violence upon any SGCI employee.

Id. at 67. Because the Order had an expiration date of February 21, 2010, the trial court scheduled a hearing for February 22, 2010. The summons, notifying Reed of the hearing, was addressed to “Daniel Reed, c/o Saint-Gobain Containers, Inc., 524 E. Center Street, Dunkirk, Indiana,” which was Reed’s address of record. *Id.* at i, 70. At the time of these events, Reed lived in a recreational vehicle that was parked about forty yards from the entrance to SGCI’s property. *Appellant’s Br.* at 2. Reed was personally served with the summons and appeared pro se at the February 22 hearing. *Id.* at ii.

As part of the evidence taken at the February 22 hearing, the trial court asked Reed for his mailing address. Reed gave the following address, “446 East Center Street,” Dunkirk, Indiana. *Appellee’s App.* at 3. Reed’s injunction was made permanent in an order dated February 22, 2010 (“the February 22 Order”),² under which Reed was enjoined from entering SGCI property and from engaging in conduct that would constitute a credible threat of violence against any SGCI employee. The chronological case summary (“CCS”) reveals that Reed was personally served with the permanent

² Although the trial court did not state its authority for imposing the injunction, it appears that it was entered pursuant to SGCI’s request as a Workplace Violence Restraining Order.

injunction on February 26, 2010. *Appellant's App.* at iii.

On March 26, 2010, SGCI filed a motion for order of contempt alleging that Reed had violated the permanent injunction by threatening Coleman at the Moose Lodge in Dunkirk, Indiana. The initial hearing on the matter was set for April 6, 2010. A notation in the CCS reveals that Reed was personally served on April 5 with notice of the April 6 hearing. Reed appeared pro se at the April 6 hearing. At the commencement of the hearing, and in response to the trial court's inquiry, Reed again stated that he lived at "446 East Center Street," Dunkirk, IN 47336. *Id.* at 4. Reed's address on the CCS remained, "Care of Saint-Gobain Containers, 524 East Center Street, Dunkirk, Indiana 47336." *Id.* at i (emphasis added).

During the April 6 hearing, Reed stated that he had retained the services of, and had paid a retainer to, attorney Kelly Bryan ("Bryan"), but that Bryan was unable to attend the initial hearing. *Id.* at 5. For reasons not of record, Bryan never filed an appearance or appeared in court. *Appellant's Br.* at 2 n.2. The trial court stated that it would set a fact-finding hearing and agreed to send the new hearing date to Reed, Bryan, and SGCI's counsel. The CCS entry dated April 6, 2010, contained the notation: "Matter now set for fact finding hearing on 4/26/10 at 1:30 p.m.," but the transcript shows that Reed was not given that date in open court. *Appellant's App.* at 6-8.

On Friday, April 23, 2010, one business day before the April 26 hearing, SGCI filed a motion requesting attorney fees, costs, and damages in connection with Reed's alleged violation of the restraining order. *Id.* at 76. SGCI mailed a copy of the motion to Reed at "446 East Center Street, Dunkirk, IN 47336." *Id.* at 79. Paragraph 5 of that

motion provided, “In response to SGCI’s Motion [for Contempt], the Court held a preliminary hearing on April 6, 2010, *and has set a fact-finding hearing for April 26, 2010.*” *Id.* at 77 (emphasis added).

Reed was not present at the April 26, 2010 hearing. During that hearing, the trial court heard testimony regarding: (1) whether Reed should be held in contempt of the February 22 Order for comments he made to Coleman at the Moose Lodge on the night in question; and (2) whether the trial court should grant SGCI’s motion for attorney fees, costs, and damages. *Id.* at 10-25. At the close of the hearing, the trial court found Reed in contempt and issued a body attachment. Reed was arrested two days later. *Id.* at 80. The trial court also took under advisement the issue of attorney fees, costs, and damages. During an April 30, 2010 hearing, at which Reed was in attendance, the trial court awarded SGCI attorney fees in the amount of \$2,500 and sentenced Reed to 120 days in jail, with seven days executed and 113 days suspended on condition that he not violate the injunction for one year and that he pay at least \$250 per month toward attorney fees until paid in full. *Id.* at 81.

Reed timely filed his motion to correct error contending that the trial court “committed error with respect to its orders entered on April 26, 2010 and the sanctions order entered on April 30, 2010 because [Reed] was never given notice of the April 26, 2010 hearing.” *Id.* at 83. The motion requested that the sanctions imposed as a result of the contempt finding, *i.e.*, jail time and attorney fees, be set aside. Reed did not, however, make a separate argument contending that the trial court had erred in awarding attorney fees to SGCI in the amount of \$2,500.

Following the June 30 hearing, the trial court denied Reed's motion to correct error. On July 8, 2010, the trial court also entered a judgment ordering Reed to pay an additional \$750 as a reimbursement for SGCI's reasonable attorney fees incurred in defending Reed's motion to correct error. Reed now appeals. Additional facts will be added as necessary.

DISCUSSION AND DECISION

Reed argues that the trial court abused its discretion when it denied his motion to correct error. Specifically, he contends that it was error for the trial court to find him in contempt and to impose sanctions when he did not have notice of the April 26, 2010 hearing.

A trial court is vested with broad discretion to determine whether it will grant or deny a motion to correct error. *Jones v. Jones*, 866 N.E.2d 812, 814 (Ind. Ct. App. 2007). The trial court's decision comes to us cloaked in a presumption of correctness, and the appellant has the burden of proving that the trial court abused its discretion. *Id.* In making our determination, we neither reweigh the evidence nor judge the credibility of witnesses. *Id.* An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before it or if the trial court has misinterpreted the law. *Dillard v. Dillard*, 889 N.E.2d 28, 32 (Ind. Ct. App. 2008).

As a matter preliminary to the merits, SGCI contends that Reed waived the "lack of notice" claim in his motion to correct error because he did not file supporting affidavits as required by Indiana Trial Rule 59. Indiana Trial Rule 59(H)(1) provides, "When a motion to correct error is based upon evidence outside the record, the motion

shall be supported by affidavits showing the truth of the grounds set out in the motion and the affidavits shall be served with the motion.” Reed contends that the record before us contains sufficient evidence of lack of notice to allow this court to find that the trial court abused its discretion in denying his motion to correct error. We address Reed’s claim of lack of notice to the extent it is supported by the evidence in the record before us.

I. Notice

We begin by noting that our analysis of this case is complicated by certain facts in the record before us. When SGCI filed its injunction against Reed, he was serving as the President of “the USW Local 115 [“Local 115”], which is [the] Mold Makers union.” *Appellee’s App.* at 12. As President of the Local 115, his duties included overseeing conflicts between union members and the SGCI management. Approximately eighteen SGCI employees were members of Local 115.

During the hearing on the permanent injunction, Reed appeared pro se. Through cross-examination, Reed attempted to establish that he was on SGCI premises in order to engage in union business, that he and SGCI’s Human Resources Manager, Aaron Orr (“Orr”), had differences of opinion regarding grievances, and that Orr had never “answered one [grievance] in a timely manner set forth by the contract.” *Id.* at 26. Indiana Code chapter 22-6-1 addresses a court’s limitation on issuance of injunctions in connection with a labor dispute; however, Reed did not cite to that statute. Finding that the matter properly fell within the Workplace Violence Act, the trial court permanently enjoined Reed from entering SGCI premises and from making threatening statements to

SGCI employees. Reed did not appeal the injunction. Therefore, the injunction under the Workforce Violence Act remained valid.

Without more, there would be no case before us. However, after Reed allegedly made threatening statements to Coleman at the Dunkirk Moose Lodge, SGCI filed against Reed a Motion for Order of Contempt. Reed was personally served notice on April 5 and appeared at the April 6 hearing without counsel. When questioned by the court as to whether he had counsel, Reed responded Bryan would be his counsel. The trial court questioned whether Reed had already retained him and whether he had paid Bryan money. *Appellant's App.* at 5. Reed responded in the affirmative to both questions. It is not clear what communication occurred between Reed and Bryan, if any, but it is clear that the trial court believed that Reed had retained Bryan, that Bryan was unavailable for the April 6 hearing date, but that he would appear when the case was continued. *Id.* It is also clear that no notation of counsel was made on the CCS, but that the trial court made note in his "hand written calendar" that Bryan would appear on Reed's behalf. *Id.* at 12.

Stating that he had a previously-scheduled vacation, Reed requested that the trial court set the hearing later than April 22. *Id.* at 8. The trial court agreed, and promised that Reed, Bryan, and counsel for SGCI would all receive notice of the next hearing date. The trial court also asked Reed to inform the court as to any change of address or change in counsel. *Id.* at 6. No hearing date was set prior to the end of the April 6, 2010 hearing, however, the CCS reveals that, before the end of that day, the trial court set the hearing date for April 26.

Reed did not appear at the April 26 hearing. The trial court made the following statement at the start of the hearing:

THE COURT: The plaintiff appears with its representatives and by counsel. The defendant or respondent, Daniel Reed, fails to appear. Matter was set today for hearing at 1:30, a fact finding hearing on the petition alleging contempt of court. On April 6, 2010 Mr. Reed was present, was advised of his rights, advised of possible consequences in the event of a finding, and advised of his right to counsel. He indicated he had employed counsel. Said he had retained an attorney. Had already paid him money but the attorney could not be present for that initial hearing. We notified Mr. Reed that we would be setting a hearing and he would be notified of the hearing. Hearing was set for today at 1:30. The time is now approximately 1:50. I would advise counsel for the plaintiff or the petitioner that as you're aware I contacted the law office of Mr. Kelly Bryan He's the attorney whose name appears on my hand written calendar. His office advised me that he left their facility at about 12:45, that he is en route to this court and that he had this case on his calendar today but he's not here and we're now fast approaching twenty five minutes into the time. So I guess my question would be for petitioner's counsel, what do you want to see happen today?

MS. HALL: We can present our evidence if you would like or we can proceed with what we've already submitted, the witnesses that submitted affidavits are the same ones that are here today.

THE COURT: O.K. So you would like to go ahead and proceed in the absence of counsel and absence of the respondent?

MS. HALL: Yes your Honor.

Appellant's App. at 4-5.

Apparently, there was a misunderstanding unknowingly created by Bryan's office. A person at Bryan's office stated to trial court staff that Bryan was on his way to the courthouse, without referencing his business at the courthouse, and the trial court believed that Bryan was coming to the courthouse on Reed's behalf. SGCI introduced

the testimony of Coleman and Orr, and following the hearing, the trial court found Reed in contempt of its permanent injunction. Bryan never appeared for Reed's case.

Reed filed his motion to correct error on May 24, 2010. Paragraph seven provided:

The court committed error with respect to its orders entered in April 26, 2010 and the sanctions ordered entered on April 30, 2010 because [Reed] was never given notice of the April 26, 2010 hearing.

Appellant's App. at 83-84. The trial court held a hearing on the motion on June 30, 2010, at which SGCI's counsel, Carolyn Hall, and Reed's counsel, Robert Beymer, chose to present argument instead of additional evidence.

At this June 30 hearing, it was Reed's theory that the trial court had failed to send him notice, and that this lack of notice was reflected in the CCS. SGCI responded that Reed had likely received notice via telephone call, the method through which SGCI's attorneys had been notified of the hearing. *Id.* at 33. Additionally, SGCI offered that its motion for attorney fees, which was sent to Reed on April 23, three days before the April 26 hearing, also contained notice that the contempt hearing would be held on April 26.³ The trial court, disagreeing with both parties, stated, "I think the court sent Reed notice by the CCS. He received CCS notice, automatic notice went out to the address that he gave us and it was also communicated with Mr. Bryan who was the attorney he gave us." *Id.* at 33. The court further noted that a party to a lawsuit has an affirmative duty to keep

³ We find this contention to be specious at best. The mere reference to the April 26 hearing, which was contained in a motion for attorney fees that was sent on Friday, April 23, is not, under the facts of this case, sufficient notice of the April 26 hearing.

himself aware of the status of a lawsuit. *Id.* at 34. The trial court denied Reed's motion to correct error.

On appeal, Reed continues to maintain that the record before us proves that required notice was not provided. *Appellant's Br.* at 7. Reed's theory regarding lack of notice, however, has changed. At the hearing on his motion to correct error, he contended that CCS notice was not sent. On appeal, Reed specifically notes that he, "does not allege that the clerk failed to mail the CCS." *Appellant's Br.* at 8 n.8. Rather, for the first time on appeal, he contends that the notice was not received because the trial court used an improper address. *Id.* at 8. Focusing on the difference between his stated address of 446 East Center Street, and the CCS notation of 524 East Center Street, Reed argues that any notice sent to 524 East Center Street was not proper notice. *Id.* at 9.

We need not decide this issue on appeal for, as noted earlier, the motion to correct error attacked the notice issue solely on the basis that the trial court had failed to send Reed notice. Thus, his present complaint was not called to the attention of the trial court and is now raised for the first time on appeal. "The complaining party has a duty to state an alleged error with specificity in his motion to correct errors in order to permit the trial court to review the exact legal issue involved. Failure to do so waives the claimed error on appeal." *Nelson v. Metcalf*, 435 N.E.2d 39, 42 (Ind. Ct. App. 1982); *Diaz v. Duncan*, 406 N.E.2d 991, 997 (Ind. Ct. App. 1980). Therefore, Reed has waived any error with respect to whether the trial court erred in denying his motion to correct error because the trial court sent the notice for the April 26, 2010 hearing to the wrong address. *Nelson*, 435 N.E.2d 42.

That being said, we remind the trial court, “that the trial court speaks through its CCS or docket.” *City of Indianapolis v. Hicks*, 932 N.E.2d 227, 233 (Ind. Ct. App. 2010), *trans. denied* (2011). While we do not discourage a trial court from keeping a hand-written calendar, our court is limited in its authority to look behind the CCS to examine whether an event either recorded or not recorded therein actually occurred. *Id.* (citing *Trojnar v. Trojnar*, 698 N.E.2d 301, 304 (Ind. 1998) (in context of Trial Rule 72, “a proper Clerk’s notation on the CCS will presumptively establish the fact that notice was mailed”) and *Minnick v. Minnick*, 663 N.E.2d 1226, 1228 (Ind. Ct. App. 1996) (“A challenge to the mailing of notice is precluded when the docket clearly states that notice was mailed.”)).

II. Attorney Fees

In his statement of issues, Reed raises the issue that the trial court erred in ordering Reed to pay attorney fees. *Appellant’s Br.* at 1. The argument section of his brief, however, does not contain *any* contentions on this issue. Indiana Appellate Rule 46(A)(8)(a) states that the argument section of the appellate brief must contain “the contentions of the appellant on the issues presented, supported by cogent reasoning.” A party waives an issue where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record. *Chapo v. Jefferson Cnty. Plan Comm’n*, 926 N.E.2d 504, 510 n.4 (Ind. Ct. App. 2010). Therefore, Reed has waived this claim.

Waiver notwithstanding, having found that the trial court did not abuse its discretion in denying Reed’s motion to correct error, this argument, if cogently made in

appellant's brief, would likewise fail. We agree with the trial court that the total amount of \$3,250.00 in attorney fees was reasonable.

Affirmed.

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