

STATEMENT OF THE CASE

Steven A. Ratliff (“Father”) appeals the trial court’s order that he pay for college expenses incurred by his and Marlene Ratliff’s (“Mother”) daughter (“Daughter”).

We dismiss.

ISSUES

Father raises the following issue:

Whether the trial court abused its discretion by ordering Father to pay for college expenses incurred by Daughter.

Mother raises the following dispositive issue:

Whether Father’s appeal should be dismissed for failure to file a timely notice of appeal.

FACTS

Daughter was the only child born during the parties’ marriage, which the trial court dissolved on July 2, 1996. On February 23, 2007, the trial court entered an order, ordering Daughter to pay 30% of her secondary educational expenses; and Father and Mother to pay “70% of those expenses, in accordance with their guideline percentages (i.e., [Mother] paying 15% and [Father] paying 85%)[.]” (Father’s App. 35). The trial court further ordered that Daughter’s “portion of the education expenses (i.e., 30%) is satisfied by any grants, awards, scholarships, and subsidized/unsubsidized federal loans which she may obtain”; that “the parties’ educational support obligation shall begin with the spring of 2007 semester, and shall remain as long as [Daughter] maintains full time

curriculum status, and a cumulative grade point average in excess of 2.5 on a 4.0 scale”; and that Daughter “shall be responsible for providing timely expense statements to the parties upon which reimbursement is sought, and the parties shall promptly reimburse [Daughter] for their percentages[.]” *Id.* at 36.

On December 2, 2008, Father filed a petition to modify the February 27, 2007 order. Following a hearing held on July 1, 2009, the trial court ordered Father to pay Mother \$6,109.50, which represented Father’s obligation for “the 2008-2009 school year after deducting awards, grants and student loans,” within thirty days of the date of the order. (Mother’s App. 2). The trial court further ordered

that beginning with the 2009-2010 school year, the parties’ respective contributions to [Daughter]’s secondary education shall be modified with [Mother] paying 24% and [Father] paying 76%. ([Daughter] shall remain obligated to pay the initial 30% of such expenses)[.]

Id.

Father filed a motion to correct error on August 4, 2009. On August 12, 2009, the trial court granted Father’s motion in part. The trial court therefore ordered Father to pay Mother \$4,781.25 for the 2008-2009 school year and “corrected its determination to reflect that any unpaid sums shall enter as a Judgment” (Father’s App. 28). The trial court, however, denied Father’s request that the trial court “amend its ruling to state that 2009-2010 be the last [school] year that [he] is ordered to pay tuition” *Id.* at 38.

On February 1, 2010, Mother filed a “Verified Motion for Proceedings Supplemental; Motion to Produce and Motion [sic] Petitioner’s Motion to Reconsider,

Request for Payment of Judgment Against [Father], and Request for Payment of College Expenses for Fall, 2009.” *Id.* at 18. On April 7, 2010, the trial court held a hearing “on all financial issues.” *Id.* at 20.

During the hearing, Father tendered a check in the amount of \$4,781.25 to Mother as payment for the amounts owed for college expenses incurred by Daughter during the 2008-2009 school year. According to an entry in the chronological case summary (“CCS”), however, Mother telephoned the trial court on April 7, 2010, after the hearing, and notified the trial court that Father’s bank account had insufficient funds to cover the check tendered in court.

On April 26, 2010, the trial court found and ordered as follows:

1. That [Father] tenders in open Court his previously ordered obligation of [\$4,781.25], resolving the proceedings supplemental.
2. That as a result of [Father]’s delay in paying his Court ordered obligation, pursuant to the August 12, 2009 “Order on [Father]’s Motion to Correct Error[] and Judgment Entry,” [Daughter] has had to obtain bridge loans to maintain her financial eligibility with Franklin College.
3. That [Father] is correct in his assertion that he should not, under this Court’s prior orders, be obligated to pay [Daughter]’s loan obligations, which were voluntarily obtained in excess of her percentage share obligation (i.e., 30%). However, when loan obligations are incurred by [Daughter], due in large part to [Father]’s own conduct in not paying his college support obligation on a timely basis, then he cannot equitably challenge the methodology used by [Daughter] and [Mother] to cure or mitigate his own failure to perform.
4. The evidence is without dispute that until the current hearing, [Father] had neither paid his full college support obligation for the 2008-09 school year, nor has he made any contribution to the 2009-10 school year.

5. That the total reimbursable school obligations for Fall Semester of 2009 are [\$11,665.00], with the parties' obligation totaling 70% or [\$8,165.50].

6. Accordingly, [Father]'s obligation for the Fall 2009 Semester is [\$6,205.78], which sum shall be paid within thirty (30) days of the date of this order. Thereafter, any unpaid sums shall be entered as a Judgment in favor of [Mother].

Id. at 28-29.

Father filed his notice of appeal with the trial court clerk on May 27, 2010.

Additional facts will be provided as necessary.

DECISION

Mother asserts that Father's appeal should be dismissed for failure to file a timely notice of appeal. Father counters that he timely filed his notice of appeal as he did so within thirty days of the trial court clerk processing and entering the order into the record of judgments and orders ("RJO").

Timeliness of filing a notice of appeal is of the utmost importance. A timely filed notice of appeal "is a jurisdictional prerequisite, and failure to conform to the applicable time limits results in forfeiture of an appeal." *Trinity Baptist Church v. Howard*, 869 N.E.2d 1225, 1227 (Ind. Ct. App. 2007).

When Father filed his notice of appeal on May 27, 2010, Indiana Appellate Rule 9(A)¹ provided, in relevant part, as follows:

¹ Amended September 21, 2010, effective January 1, 2011, Indiana Appellate Rule 9(A) now provides that a "party initiates an appeal by filing a Notice of Appeal with the trial court clerk within thirty (30) days after the entry of a Final Judgment is noted in the [CCS]."

(1) Appeals from Final Judgments. A party initiates an appeal by filing a Notice of Appeal with the trial court clerk within thirty (30) days after the entry of a Final Judgment.

* * *

(5) Forfeiture of Appeal. Unless the Notice of Appeal is timely filed, the right to appeal shall be forfeited

“[A]s a general proposition, the ‘entry’ mentioned in Appellate Rule 9(A) is entry into the RJO.” *Smith v. Deem*, 834 N.E.2d 1100, 1109 (Ind. Ct. App. 2005). Pursuant to Indiana Trial Rule 58(A), “upon a decision of the court, the court shall promptly prepare and sign the judgment, and the clerk shall thereupon enter the judgment in the [RJO] and note the entry of the judgment in the [CCS] and Judgment Docket.” Thus, “[i]n situations where the trial court clerk performs his or her duties under Trial Rule 58 and promptly enters the trial court’s order or judgment into the RJO, the rendition/entry date would be the date from which the appellate time limits run.” *Smith*, 834 N.E.2d at 1109-10.

In this case, the order bears a signature date of April 26, 2010, and is file-stamped April 26, 2010. It appears, however, that the trial court clerk may not have entered the order into the RJO until April 28, 2010.²

² The CCS reads as follows:

04/26/1010 Notice: N DISPOSED: REDBT RJO: Y
Court, having taken this matter under advisement and being duly advised, now GRANTS Order on Financial Issues and Judgment Entry, [Father] is ordered to pay the sum of \$6,205.78 within 30 days for the Fall 2009 Semester, any unpaid sums shall enter as a Judgment in favor of [Mother]; and [Father] to provide proof of insurance and insurance cards to [Mother] within 30 days. (entry) (notice) kg

The subsequent entry reads:

Where there is a discrepancy between the date the trial court rendered its order and the date the trial court clerk entered the order into the RJO, the “notice-based approach . . . is the best solution” in determining the date from which the time for filing the notice of appeal should run. *Id.* at 1109. As *Smith* further explains,

[i]n cases where, for whatever reason, there is a delay between the trial court’s rendition of judgment and the entry into the RJO, . . . several things can be said. First the judgment or order is effective as between the parties from the date it is rendered. In addition, the date of entry into the RJO is generally the date from which the appellate time limit begins to run. Indeed, upon entry, the parties are required to be given notice. But where . . . a party does have notice of the trial court’s ruling before its entry into the RJO, we see no reason to justify allowing that party to delay filing a Notice of Appeal within thirty days of the date on which the party received notice simply because the clerk has not performed a ministerial task.

Id. at 1110. Therefore, we have held that the time for filing a notice of appeal shall begin to accrue upon the trial court’s rendition of final judgment; namely, when the trial court signs the judgment or order. *See Lang v. State*, 911 N.E.2d 131, 135 (Ind. Ct. App. 2009) (finding that the appellant had thirty days from the date the trial court signed the sentencing and restitution order to file her notice of appeal).

04/28/2010 Notice: N RJO: N
Clerk processes Order dated 04/26/10.
OB 265 PG 50. Bw

“OB” commonly is “a reference to the ‘order book,’ the former name for the RJO.” *Smith*, 834 N.E.2d at 1103 n.3. Thus, this entry may be interpreted as meaning the trial court clerk entered the order into the RJO on April 28, 2010.

Here, the trial court rendered its decision on April 26, 2010, and stamped it as “filed” on April 26, 2010. Furthermore, the trial court clerk noted the entry of judgment, and notice thereof, in the CCS on April 26, 2010. Accordingly, even assuming the trial court clerk did not actually enter the order into the RJO until April 28, 2010, Father had notice that the trial court’s decision had been rendered on April 26, 2010.³ Given that Father filed his notice of appeal thirty-one days later, on May 27, 2010, he did so untimely. He therefore has forfeited his right to appeal.

Dismissed.

NAJAM, J., and BAILEY, J., concur.

³ We note that both Father’s notice of appeal and case summary state that the order from which he is appealing is dated April 26, 2010. Moreover, correspondence from Father to the Clerk of the Indiana Court of Appeals (the “Clerk”) indicates that he originally served his notice of appeal on the Clerk on May 13, 2010. The Clerk, however, returned Father’s notice of appeal because he had failed to file it with the trial court clerk, as required by Indiana Appellate Rule 9. Father subsequently filed his notice of appeal with the trial court clerk on May 27, 2010. Father finally initiated his appeal by serving the Clerk with the file-stamped notice of appeal on May 27, 2010. In his correspondence to the Clerk, Father acknowledged that the notice of appeal had been filed one day late. Therefore, even if the trial court clerk did not enter the order into the RJO until April 28, 2010, it is clear that Father had notice of the order as of April 26, 2010, and that the time by which he was required to file his notice of appeal was thirty days later.