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this Memorandum Decision shall not be
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establishing the defense of res judicata,
collateral estoppel, or the law of the case.**

ATTORNEY FOR APPELLANT:

HERBERT L. ALLISON
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

PAULA A. CONDON and,)	
HERBERT L. ALLISON,)	
)	
Appellants-Respondents,)	
)	
vs.)	No. 32A01-0610-CV-479
)	
ROBERT J. CONDON,)	
)	
Appellee-Petitioner.)	

APPEAL FROM THE HENDRICKS SUPERIOR COURT
The Honorable David H. Coleman, Judge
Cause No. 32D02-0303-DR-33

August 22, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Paula Condon appeals the trial court's order denying her petition for relief and ordering her and her attorney, Herbert Allison, to pay Robert Condon's attorney fees of \$250.00. Presented for our review are the restated issues of whether the trial court properly 1) denied Paula's petition and 2) ordered Paula and her attorney to pay Robert's attorney fees of \$250.00. Concluding that Paula's petition was untimely and her appeal was groundless, we affirm.

Facts and Procedural History

In May 2003, the trial court dissolved the Condons' marriage. Also at that time, the Condons entered into a settlement agreement giving them joint legal and physical custody of their four children. The Condons further agreed that Robert would pay Paula \$110.00 per week in child support.

In December 2004, Robert filed an emergency petition for modification of custody alleging that Paula was unemployed and homeless, and that the children wanted to reside with him. Robert also requested the termination of his child support payments. Following a hearing on the petition, in March 2005, the trial court granted Robert's motion, awarded him sole legal custody of the children, and terminated his child support payments.

In August 2006, after learning that Paula obtained a job, Robert filed a petition for modification of child support. The following month, Paula filed a petition wherein she asked the court to grant her relief pursuant to Indiana Trial Rule 60(B) from both the May 2003 dissolution decree and the March 2005 order. The gravamen of Paula's argument appeared to be that the trial court made a mathematical miscalculation in determining the amount of

support that Robert was to pay her. Paula also filed a Motion for Investigation and Report wherein she asked the court to order an unspecified investigation done and a written report of the investigation filed with the court to aid it in determining custody of the Condon children.

Robert filed a response to Paula's petition wherein he argued that a Trial Rule 60(B) motion for relief from judgment was not the appropriate motion to attack the trial court's prior orders. Rather, according to Robert, Paula should have either filed a motion to correct error or appealed the May 2003 decree and March 2005 order. In addition, he argued that Paula had filed a frivolous and meritless petition, and that she should be required to pay him \$250.00 in attorney fees for the cost of his response.

The trial court denied Paula's petition without a hearing and ordered Paula and her attorney to pay Robert's attorney fees of \$250.00 for the frivolous and meritless appeal. Paula appeals.

Discussion and Decision

I. Trial Rule 60(B) Motion for Relief From Judgment

In September 2006, Paula alleged that the trial court made a mathematical miscalculation in determining Robert's child support obligation and filed a petition seeking Trial Rule 60(B) relief for mistake or excusable neglect from the trial court's May 2003 dissolution decree and March 2005 order awarding custody of the parties' four children to Robert, both final judgments. She argues that the trial court erred in denying her petition. However, a final judgment must be challenged in a motion to correct error or an appeal filed within thirty days of that judgment. See Ind. Trial Rule 59 and Ind. Appellate Rule 9(A). Trial Rule 60(B) is not a substitute for a direct appeal. Parks v. Cunningham, 762 N.E.2d

788, 790 (Ind. Ct. App. 2002). Paula failed to timely and directly challenge the May 2003 and March 2005 orders in a motion to correct error or a direct appeal, and her Trial Rule 60(B) challenge is an inappropriate challenge to the two-year-old and three-year-old final judgments. The trial court did not err in denying her petition.¹

II. Attorney Fees

Paula also argues that the trial court erred in ordering her and her counsel to pay Robert's attorney fees of \$250.00. We review the trial court's decision to award attorney fees under an abuse of discretion standard. Davidson v. Boone County, 745 N.E.2d 895, 899 (Ind. Ct. App. 1998). Indiana Code section 34-52-1-1 governs the award of attorney fees for litigating in bad faith or for pursuing frivolous, unreasonable or groundless claims. A claim is groundless if no facts exist which support the legal claim relied on and presented by the losing party. Davidson, 745 N.E.2d at 899-900.

Here, Paula inappropriately and untimely challenged a three-year-old order and a two-year-old order. Because no facts existed to support the legal claim that she relied on and presented, her claim was groundless. Under these circumstances, the trial court did not abuse its discretion when it ordered Paula and her attorney to pay Robert's attorney \$250.00 for the cost of responding to Paula's petition.

Conclusion

The trial court properly denied Paula's untimely Trial Rule 60(B) motion, and properly ordered payment of Robert's attorney fees for pursuing a groundless appeal.

¹ We further note that Paula's argument that her constitutional right to due process was violated when the trial court denied her petition without a hearing also fails. Where, as here, there is no pertinent evidence to be heard because a party cannot prevail under any set of facts, a hearing is unnecessary. See

Affirmed.

VAIDIK, J., and BRADFORD, J., concur.