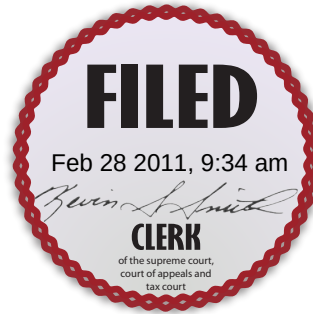


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

JENNIFER A. JOAS
Madison, Indiana

ATTORNEYS FOR APPELLEE:

LISA GARCIA REGER
STEPHEN T. NAVILLE
Lorch & Naville, LLC
New Albany, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

ANGELA L. BAUER,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 22A05-1003-DR-191
	)	
DAVID B. BAUER,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE FLOYD SUPERIOR COURT
The Honorable Nicholas L. South, Judge
Cause No. 22D01-0411-DR-188

February 28, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Angela Bauer appeals the trial court's order denying her motion for relief from judgment pursuant to Ind. Trial Rule 60(B).¹ We affirm.

FACTS AND PROCEDURAL HISTORY

The marriage between David (Husband) and Angela (Wife) was dissolved on October 13, 2006. At that time, the parties had two minor children, L.B. and A.B. The parties agreed to exercise joint legal custody of the children, and Wife was awarded primary physical custody. Husband was given liberal parenting time and ordered to pay \$462.00 per week in child support.

On February 6, 2008, Husband filed a Petition for Modification and Contempt Citation requesting the trial court modify his child support obligations due to a significant change in his income.² A hearing was held on July 11, 2008, during which Husband presented his 2007 income tax return and testified in support of his request. The trial court reduced Husband's child support obligation to \$215.58 per week on August 13, 2008.

Wife filed a motion to correct error, which the trial court denied on February 12, 2009. On March 12, 2009, Wife filed an appeal, and we dismissed it on August 13, 2009, because Wife violated Ind. Appellate Rules 10(F) and 10(G), which require an appellant to seek an order compelling the trial court to issue the Clerk's Record and Transcript if they have not done so. On September 9, 2009, Wife filed a motion requesting relief from the trial court's Order of August 13, 2008. After a hearing, the trial court denied Wife's motion for relief

¹ Wife captioned her motion as a Motion to Dismiss, but the relief she requested and the Trial Rule she cited both indicate Wife sought relief from the judgment.

² Wife is not challenging the court's decision regarding the contempt allegations.

from judgment as untimely. Wife filed a motion to correct error, which motion the court also denied.

DISCUSSION AND DECISION

We review the denial of a motion to correct error for abuse of discretion. *Scales v. Scales*, 891 N.E.2d 1116, 1120 (Ind. Ct. App. 2008). As Wife asked the court to reconsider its denial of her motion for relief from judgment, she can demonstrate an abuse of discretion in the denial of her motion to correct error only by demonstrating the court erroneously denied her motion for relief from judgment.

Whether to grant a motion for relief from judgment under T.R. 60(B) is within the discretion of the trial court, and we reverse only for abuse of that discretion. *Miller v. Moore*, 696 N.E.2d 888, 889 (Ind. Ct. App. 1998). An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances before it, or if the trial court has misinterpreted the law. *Id.* When we conduct our review of the trial court's decision, we will not reweigh the evidence presented. *Beike v. Beike*, 805 N.E.2d 1265, 1267 (Ind. Ct. App. 2004).

In her motion for relief, Wife alleged fraud by Husband. Under T.R. 60(B)(3), a motion based on intrinsic fraud, extrinsic fraud, or fraud on the court may be brought if the fraud was committed by an adverse party and had an adverse effect on the moving party. *Stronger v. Sorrell*, 776 N.E.2d 353, 356 (Ind. 2002). A motion for relief under T.R. 60(B)(3) must be filed within one year from the date the judgment was entered. Wife filed her motion more than a year after the court entered the judgment, so she may not obtain relief

under that section. However, T.R. 60(B) “does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or for fraud upon the court.” T.R. 60(B). Therefore, we must determine whether Wife’s motion fits the criteria for “an independent action.”

An independent action can be brought within a reasonable time after the judgment and must allege either extrinsic fraud or fraud upon the court. *Stronger*, 776 N.E.2d at 356. An independent action is subject to the doctrine of laches, and its remedy is limited. *Id.* While intrinsic fraud involves perjury or falsification of documents, both extrinsic fraud and fraud upon the court require more than just the presentation of evidence that is false. *Glover v. Torrence*, 723 N.E.2d 924, 933 (Ind. Ct. App. 2000). Extrinsic fraud is best characterized as fraud outside the issues of the case, and may be found where the alleged fraud prevented “a trial of the issue in the case or improperly procured the exercise of the court’s jurisdiction.” *Id.* Fraud upon the court, while similar to extrinsic fraud, has been more narrowly limited to include only “the most egregious of circumstances where an unconscionable plan or scheme was used to improperly influence the court’s decision, and such acts prevented the opposing party from fully and fairly presenting his case.” *Id.*

Wife asserts Husband committed extrinsic fraud because by “failing to follow Floyd County Local Family Rule 313 [he] improperly procured the court’s jurisdiction.” (Br. of Appellant at 10.) Wife did not present this argument to the trial court, and it is waived for appeal. *See Dedlow v. Pucalik*, 801 N.E.2d 178, 183 (Ind. Ct. App. 2003) (party generally waives appellate review of issue or argument not presented before the trial court).

Wife also argues she “and her children were denied their day in court due to [Husband]’s scheme to defraud the Court of appropriate and relevant information,” (Br. of Appellant at 13), which, she asserts, is tantamount to fraud upon the court. Based on the facts alleged by Wife and Indiana precedent, we disagree.

The relevant facts are these: (1) At the July 2008 hearing, Husband offered a copy of his 2007 tax return, which return he also provided to Wife; (2) Wife’s counsel informed the court that Wife disagreed with Husband’s income figures, but she did not request a continuance or an opportunity to conduct further discovery; and (3) Over a year later, Wife obtained evidence suggesting Husband’s tax return inaccurately reflected his actual income.

Those facts parallel the facts of *Glover*, in which we held the mother’s allegations to be of intrinsic, not extrinsic fraud. 723 N.E.2d at 933. In *Glover*, the mother alleged the father committed fraud by not disclosing all income in a tax return submitted for determining child support. We held:

Instead of demanding such independent verification or conducting discovery, Mother took Father at his word and then waited nearly four years after the judgment was entered to challenge such information. As each party’s income was clearly an issue in the child support proceedings and Father’s actions did not prevent a trial of this issue or rise to the level of an unconscionable plan or scheme which prevented Mother from fully and fairly presenting her case, we find that his actions merely amounted to intrinsic fraud.

Id.

The same rationale applies here. When Husband filed a petition to modify child support, an obvious issue for trial would be the income levels of Husband and Wife. *See id.* While Husband may have provided an inaccurate picture of his income, his actions did not

prevent a redetermination of child support or rise to the level of an unconscionable plan or scheme that prevented Wife from fully and fairly presenting her case. *See id.* As those additional elements are required for extrinsic fraud and fraud upon the court, we hold the fraud alleged by Wife is intrinsic. *See id.*

The only procedure for alleging intrinsic fraud is Trial Rule 60(B)(3). *Id.* at 932 (while all three kinds of fraud may be alleged under T.R. 60(B), an action alleging intrinsic fraud must be brought under T.R. 60(B)(3)). As we discussed above, a motion for relief under T.R. 60(B)(3) must be brought within one year from the date of the judgment challenged. *See* T.R. 60(B). Wife did not file her motion within one year from the challenged judgment, and the trial court properly dismissed it.

Affirmed.

FRIEDLANDER, J., and MATHIAS, J., concur.