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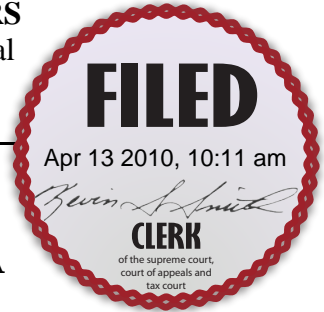
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**IN THE
COURT OF APPEALS OF INDIANA**

TERRY POUNDS,

Appellant- Defendant,

vs.

STATE OF INDIANA,

Appellee- Petitioner,

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No. 18A02-0911-CV-1159

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable John M. Feick, Judge
Cause No. 18C04-0503-MI-8

April 13, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Terry Pounds appeals the trial court's denial of his motion for relief from a civil forfeiture judgment, raising the single issue of whether the trial court erred when it denied his motion without an evidentiary hearing. Concluding we lack jurisdiction because the trial court has not yet ruled on Pounds's motion to correct error nor has sufficient time elapsed for the motion to be deemed denied pursuant to Trial Rule 53.3(A), we dismiss Pounds's appeal as premature and remand for further proceedings on Pounds's motion to correct error.

Facts and Procedural History

Following a civil forfeiture trial that resulted in a judgment against him, Pounds, acting pro se, filed a motion for relief from judgment pursuant to Trial Rule 60(B) alleging:

1. There was a conflict of interest where the attorney representing [Pounds] in the civil proceeding was previously employed by the Delaware County Drug task force and represented them in civil forfeiture proceedings.
2. The criminal charges that [were] initially filed against [Pounds] that caused the civil forfeiture to be filed [were] dismissed and pursuant to I.C. 34-24-1-1 maintaining a common nuisance is not one of the offenses mentioned which will allow the [State] to commence forfeiture proceedings or the seizure of [Pounds's] property.

Appellant's Appendix at 34. The trial court denied Pounds's motion without a hearing on August 24, 2009. On September 10, 2009, Pounds filed a motion to correct error. On October 22, 2009, the trial court scheduled a hearing on Pounds's motion to correct error for November 18, 2009. However, before he received notice of the hearing date, Pounds

filed a notice of appeal on October 27, 2009.¹ Pounds listed the trial court's August 24, 2009, order denying his motion for relief from judgment as the basis of his appeal. On November 18, 2009, the trial court issued an order finding it had no jurisdiction over the case due to Pounds's notice of appeal.

Discussion and Decision

A party wishing to appeal the judgment of a trial court must file a notice of appeal within thirty days after the entry of the final judgment. Ind. Appellate Rule 9(A)(1). "However, if any party files a timely motion to correct error, a Notice of Appeal must be filed within thirty (30) days after the [trial] court's ruling on such motion, or thirty (30) days after the motion is deemed denied under Trial Rule 53.3², whichever occurs first."

Id.

The trial court issued its order denying Pounds's motion for relief from judgment on August 24, 2009. Pounds filed a timely motion to correct error seventeen days later on September 10, 2009. Forty-two days later, the trial court scheduled a hearing on the motion. Because the trial court scheduled the motion for hearing within forty-five days after it was filed, the motion is not deemed denied under Trial Rule 53.3(A), and the trial court has not issued an order denying the motion. As a result, Pounds's notice of appeal is premature, and we lack jurisdiction over the case because there is no final judgment for us to review.

¹ Pounds was incarcerated at the time the trial court scheduled the hearing, which apparently explains the delay in receiving notice of the hearing.

² Pursuant to Trial Rule 53.3(A) and subject to the exceptions listed in Trial Rule 53.3(B), a motion to correct error is deemed denied if the trial court does not rule on the motion within thirty days of a hearing on the motion or forty-five days after the motion was filed if no hearing is held.

Conclusion

No appealable final order exists in this case because the trial court has not ruled on Pounds's motion to correct error and the motion is not deemed denied pursuant to Trial Rule 53.3. Therefore, we dismiss the appeal and remand this case to the trial court for further proceedings on Pounds's motion to correct error.

Dismissed and remanded.

FREIDLANDER, J., and KIRSCH, J., concur.