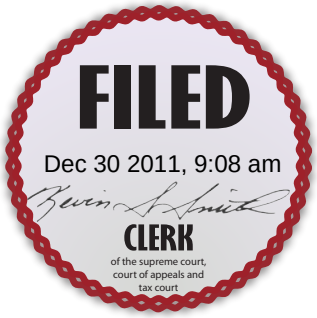

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IN THE
COURT OF APPEALS OF INDIANA

LARRY D. BROSSMAN,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 32A01-1103-DR-106
	)	
TERESA A. DIGRIGOLI,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE HENDRICKS CIRCUIT COURT
The Honorable Jeffrey V. Boles, Judge
Cause No. 32C01-1004-DR-51

December 30, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Larry Brossman ("Husband") appeals the denial of his motion to correct error. However, all the issues he raises on appeal challenge the validity of specific provisions in the 2008 decree dissolving his marriage to Teresa DiGrigoli ("Wife"). As those challenges are not timely, we affirm.

FACTS AND PROCEDURAL HISTORY

Husband and Wife divorced and their dissolution decree was issued August 8, 2008. It provided, among other things, that Wife was entitled to half of Husband's military pension and to incapacity maintenance.[1] On August 27, 2008, Husband petitioned to modify the decree on a ground he now asserts again on appeal – that his pension should not have been included in the marital pot because his pension rights were not yet vested. On September 11, 2008, the trial court granted Wife's motion to strike his petition to modify.[2] In November 2010, the trial court entered an order, apparently in response to Husband's motion to modify

[1] If the court finds a spouse to be physically or mentally incapacitated to the extent that the ability of the incapacitated spouse to support himself or herself is materially affected, the court may find that maintenance for the spouse is necessary during the period of incapacity, subject to further order of the court. Ind. Code Ann. § 31-15-7-2(1).

[2] In his brief Husband asserts, without explanation, "the court never ruled on [Husband's] petition to modify." (Appellant's Br. at 2.) In his reply brief he acknowledges for the first time his motion was stricken and he argues the trial court erred in striking the motion. "Therefore, [Husband's] right to raise this matter on appeal has been preserved." (Appellant's Reply Br. at 2.) Husband does not explain how his 2011 appeal of a 2008 ruling on a motion to strike is timely or how his right to appeal the order was otherwise "preserved," and we decline to find such purported appeal timely. *See Watson v. Auto Advisors, Inc.*, 822 N.E.2d 1017, 1027 (Ind. Ct. App. 2005) (when parties do not provide argument and citations to authority, their arguments are waived for appellate review), *trans. denied; see also* Ind. Appellate Rule 46(A)(8)(a) ("The argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on, in accordance with Rule 22.").

child support, parenting time, and spousal maintenance. Husband brought a motion to correct error, apparently in response to the order.[3] He now purports to appeal the awards to Wife of half his military pension and of spousal maintenance.

DISCUSSION AND DECISION

An appeal of a final judgment is initiated by the timely filing of a notice of appeal within thirty days after the entry of judgment or the denial of a motion to correct error. Ind. Appellate Rule 9(A)(1); *Trinity Baptist Church v. Howard*, 869 N.E.2d 1225, 1227 (Ind. Ct. App. 2007), *trans. denied*. The timely filing of a 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*, 869 N.E.2d at 1227.

It appears the only order for which Husband's current appeal could be timely is the one denying Husband's motions to correct error and for relief from judgment. Those motions were denied February 11, 2011, and Husband filed his notice of appeal March 11. In his Notice of Appeal Husband asserts he is appealing a "Judgment and Order Denying Motion to Correct Errors and Awarding Attorneys' Fees" dated February 11, 2011, and "the 'Decree of Dissolution of Marriage' dated August 8, 2008." (Notice of Appeal at 1.) He does not explain, either in that Notice of Appeal or in his Brief, how a March 2011 appeal of the August 2008 dissolution decree might be timely.

[3] Husband has included neither the motion to modify child support, parenting time, and spousal maintenance nor the motion to correct error in the record provided to us.

Nor can this be an appeal, timely or otherwise, of the ruling on Husband's motion to correct error. That ruling did not address the pension-related allegations of error Husband now purports to raise on appeal; it did not mention his pension. Nor may Husband now appeal the spousal maintenance order, even though the order on the motion to correct error did address it. The maintenance order was a part of the dissolution decree entered August 8, 2008. Husband did not timely appeal the entry of the dissolution decree. He now argues his appeal is instead from the trial court's February 11, 2011, order on his motion to correct error, which motion he asserts was in response to the court's Findings of Fact, Conclusions of Law, and Order dated November 5, 2010.

It was not. The spousal maintenance-related matters resolved in the 2011 order are not the same matters Husband now asserts were error. Husband does not direct us to the pages in the record where his motion to correct error might be found, and we decline to search the record to try and find it. *See Shaddy v. Yount*, 217 Ind. 26, 27, 25 N.E.2d 450, 450 (1940) (it is well settled that a reviewing court will not search the record to find cause for reversal). But it is apparent from the court's findings and conclusions that Husband did not then allege, and the court did not then rule on, the error he now asserts on appeal.

On appeal Husband argues the *original* spousal maintenance order was error because "*[i]n the divorce decree* the court never ordered any set amount of spousal maintenance. . . . the income withholding order subsequently filed and referencing court ordered maintenance is invalid." (Appellant's Br. at 6) (emphasis added). But in its order on the motion to correct

error over two years after the dissolution, the court noted Husband wanted to *modify* the maintenance order, along with child support payments and parenting time, alleging a substantial change in circumstances.

The court found its dissolution decree had established a maximum amount Husband would be obliged to pay for maintenance, and Husband had been ordered in a 2008 income withholding order to pay a set amount weekly. It noted that in 2010, Husband paid $8,554.02 in spousal maintenance. It concluded there had not been a change in Husband's circumstances sufficient to make the maintenance payment unreasonable, and Husband "cannot terminate the spousal maintenance due to the language of paragraph 43 *of the decree*."[4] (Appellant's App. at 9) (emphasis added).

It is evident Husband is attempting to appeal the 2008 dissolution decree and not the order on his motion to correct error, as Husband has not alleged on appeal there was anything erroneous in the order. We accordingly affirm the trial court.

Affirmed.

NAJAM, J., and RILEY, J., concur.

[4] Paragraph 43 provided Wife was entitled to maintenance as long as her disability continues. The award of maintenance would terminate if the Social Security Administration determined she was no longer entitled to disability benefits.