

Party Can Present Issue for First Time in Motion to Correct Error

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On August 12, 2010, the Indiana Court of Appeals issued a memorandum decision, uncitable as authority under App. R. 65(D), that refused to hold that the appellant had waived an argument, even though the appellant had raised the issue for the first time in a motion to correct error in *Ingling v. Grouse*, Case No. 20A04-1001-ES-25.

In this case, the appellee argued that the appellant had waived the error raised on appeal because the appellant did not object prior to filing a motion to correct error. The Court recognized that a party may not generally raise an issue for the first time in a motion to correct error. *Troxel v. Troxel*, 737 N.E.2d 745, 752 (Ind. 2000). However, the Court refused to apply that general rule in this case.

Here, however, the trial court did not convene a hearing when it set bond. The contestants were therefore afforded no initial opportunity to challenge the trial court's order. Moreover, the contestants requested the bond reduction in advance of the bond deadline and before the trial court had rendered a final, appealable judgment. We find the contestants raised their objection in a timely manner, and even though it was presented for the first time under the heading "motion to correct error," the issue was placed squarely before the trial court during the proceedings and not waived for purposes of appeal.

The Court's decision on this issue indicates the Court's preference to decide cases on their merits, rather than on procedural games. Moreover, this decision emphasizes that there are always exceptions to any general rule.

Lessons:

1. General rules always have exceptions.
2. An appellate court will not find that an issue has been waived when it is raised for the first time on appeal if the appellant did not have an opportunity to object and the issue is brought to the judge's attention earlier.



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