

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

REPUBLIC BANK,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2004-L-004
M & D DEVELOPERS, INC., et al.,	:	
Defendants,	:	
MICHAEL P. KLEPACKI, JR., a.k.a.	:	
MICHAEL PAUL KLEPACKI,	:	
Defendant-Appellant.	:	

Civil appeal from the Common Pleas Court, Case No. 02 CF 001452.

Judgment: Appeal Dismissed.

Dennis Reimer, 2450 Edison Boulevard, P.O. Box 968, Twinsburg, OH, 44087 (For Plaintiff-Appellee).

Kevin T. Toohig, 1360 West Ninth Street, #310, Cleveland, OH, 44113 (For Defendant-Appellant).

WILLIAM M. O'NEILL, J.

{¶1} On January 12, 2004, appellant, Michael P. Klepacki, Jr., filed a notice of appeal from a September 25, 2003 judgment of the Lake County Court of Common Pleas. Thus, appellant's notice of appeal was filed over three months after the

judgment had been issued by the trial court. On January 28, 2004, appellee, Republic Bank, filed a motion to dismiss this appeal as untimely. Appellant filed a memorandum in opposition to the motion to dismiss on February 5, 2004.

{¶2} App.R. 4(A) states:

{¶3} “A party shall file the notice of appeal required by App.R. 3 within thirty days of the later of entry of the judgment or order appealed or, in a civil case, service of the notice of judgment and its entry if service is not made on the party within the three day period in Rule 58(B) of the Ohio Rules of Civil Procedure.”

{¶4} Loc.R. 5(C) of the Eleventh District Court of Appeals provides:

{¶5} “In the filing of a Notice of Appeal in civil cases in which the trial court clerk has not complied with Ohio Civ.R. 58(B), *and the Notice of Appeal is deemed to be filed out of rule*, appellant shall attach an affidavit from the trial court clerk stating that service was not perfected pursuant to Ohio App.R. 4(A). The clerk shall then perfect service and furnish this court with a copy of the appearance docket in which date of service has been noted. Lack of compliance shall result in the *sua sponte* dismissal of the appeal under Ohio App.R. 4(A).” (Emphasis sic.)

{¶6} In the present case, appellant acknowledges that his notice of appeal was filed late but he asserts that he was never served with the notice of judgment by the clerk of courts. It is clear, however, that appellant failed to comply with Loc.R. 5(C) of the Eleventh District Court of Appeals. He did not attach an affidavit from the trial court clerk stating that service had not been perfected pursuant to App.R. 4(A).

{¶7} Accordingly, appellee's motion to dismiss this appeal is hereby granted pursuant to App.R. 4(A).

{¶8} The appeal is dismissed.

Appeal dismissed.

DONALD R. FORD, P.J. and DIANE V. GRENDALL, J. concur.