

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

STATE ex rel. JOHN W. PEROTTI,	:	<b>MEMORANDUM OPINION</b>
Plaintiff-Appellant,	:	
-vs-	:	<b>CASE NO. 2004-T-0141</b>
SHERIFF ALTIERE,	:	
Defendant-Appellee.		

Civil Appeal from the Court of Common Pleas, Case No. 2004 CV 1858.

Judgment: Appeal Dismissed.

*John W. Perotti*, pro se, 554 East 222nd Street, Euclid, OH 44123 (Plaintiff-Appellant).

*Dennis Watkins*, Trumbull County Prosecutor, and *James T. Saker*, Assistant Prosecutor, 160 High Street, N.W., Administration Building, Fourth Floor, Warren, OH 44481 (For Defendant-Appellee).

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DONALD R. FORD, P.J.,

{¶1} This matter is before this Court on the January 19, 2005 motion of Appellee, Sheriff Altieri, to dismiss this appeal as being untimely. This case began with Appellant, John W. Perotti, filing a complaint for injunctive relief and for civil rights violations pursuant to Section 1983, Title 42 U.S. Code on August 2, 2004. On September 22, 2004, the trial court dismissed the complaint. Instead of filing an appeal

in this court, appellant waited and filed a motion for a delayed appeal in the trial court on November 8, 2004. That was overruled by the trial court on November 17, 2004.

{¶2} There are two problems with appellant's actions. First, a motion for a delayed appeal must be filed in the appellate court rather than the common pleas court. App.R. 5(A)(2). Thus, the trial court had no choice but to overrule appellant's motion, which it did on November 17, 2004. However, this court will treat appellant's motion for a delayed appeal as though it had been filed in this court on November 8, 2004.

{¶3} The second, and more serious problem, is that the underlying action is civil rather than criminal. There are no provisions in the appellate rules to file a delayed appeal in a civil case. An appeal must be filed within thirty days of the judgment being appealed. App.R. 4(A). The time requirement is jurisdictional in nature and may not be enlarged by an appellate court. *State ex rel. Pendell v. Adams Cty. Bd. of Elections* (1988) 40 Ohio St.3d 58, 60; App.R. 14(B).

{¶4} Based on the foregoing analysis, appellant's motion for delayed appeal is overruled and appellee's motion to dismiss this appeal is hereby granted.

{¶5} Appeal dismissed.

WILLIAM M. O'NEILL, J.,

COLLEEN MARY O'TOOLE, J.,

concur.

