

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

MICHAEL PENKO,	:	MEMORANDUM OPINION
Plaintiff-Appellant,	:	
- vs -	:	CASE NO. 2005-L-066
WILLOUGHBY MUNICIPAL COURT, et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Court of Common Pleas, Case No. 04 CV 001849

Judgment: Appeal Dismissed.

Michael Penko, pro se, 891 East 85th Street, P.O. Box 19331, Cleveland, OH 441119
(Plaintiff-Appellant).

John W. Wiles, Wiles and Richards, Centre Plaza South, 35350 Curtis Boulevard,
#530, Eastlake, OH 44095 (For Defendant-Appellee Willoughby Municipal Court).

Thomas G. Lobe, City of Willoughby Hills Law Director, City Hall, 35405 Chardon
Road, Willoughby, OH 44094 (For Defendants-Appellees Willoughby Hills and Randy
Mullenix).

COLLEEN MARY O'TOOLE, J.,

{¶1} {¶1} On April 21, 2005, appellant, Michael Penko, filed a notice of appeal
from a March 21, 2005 judgment of the Lake County Court of Common Pleas. Thus,

appellant's notice of appeal was filed thirty-one days after the judgment had been entered by the trial court.

{¶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 was 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 has not complied with the thirty-day rule set forth in App.R. 4(A) nor has he alleged that there was a failure by the trial court clerk to comply with Civ.R. 58(B). 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).

{¶7} If Civ.R. 58(B) was not complied with, appellant may still perfect an appeal by obtaining an affidavit from the clerk's office indicating that service was not timely perfected and then attaching the affidavit to a motion to reinstate the appeal.

Additionally, the clerk must furnish this court with a copy of the appearance docket showing the date of actual service.

{¶8} Accordingly, this appeal is dismissed sua sponte pursuant to App.R. 4(A).

DIANE V. GRENDELL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.