

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

ALLSTATE INSURANCE COMPANY,	:	<b>MEMORANDUM OPINION</b>
Plaintiff-Appellee,	:	
- vs -	:	<b>CASE NO. 2005-T-0093</b>
RUSSELL P. HAKE, et al.,	:	
Defendants-Appellants.	:	

Civil Appeal from the Court of Common Pleas, Case No. 04 CV 212.

Judgment: Appeal dismissed.

*Adam E. Carr*, Williams, Sennett & Scully Co., L.P.A., 2241 Pinnacle Parkway, Twinsburg, OH 44087-2367 (For Plaintiff-Appellee).

*William M. Roux*, The Law Offices of William M. Roux, 305 Bank One Building, 106 East Market Street, Warren, OH 44481 (For Defendants-Appellants).

CYNTHIA WESTCOTT RICE, J.

{¶1} On August 5, 2005, appellants, Russell P. Hake and Judith A. Hake, filed a notice of appeal from the July 1, 2005 judgment entry of the Trumbull County Court of Common Pleas. Thus, appellants' notice of appeal was filed thirty-four days after the judgment had been issued by the trial court. Appellant's notice of appeal was due on Monday, August 1, 2005, which was not a holiday or a weekend.

{¶2} App.R. 4(A) states that:

{¶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 rule period in Rule 58(B) of the Ohio Rules of Civil Procedure.”

{¶4} Loc.R. 3(D)(2)<sup>1</sup> 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} Here, appellants did not comply with the thirty-day rule set forth in App.R. 4(A). Appellants attached a copy of an envelope to their notice of appeal which demonstrates that they may not have been served with the judgment entry until July 5, 2005. However, even if appellants were not served until July 5, 2005, they were required to file their notice of appeal by August 4, 2005, not August 5, 2005. Moreover, the docket clearly shows that appellants were served with the trial court’s judgment entry on July 1, 2005.

{¶7} Furthermore, appellants have not alleged that there was a failure by the trial court clerk to comply with Civ. R. 58(B). The time requirement is jurisdictional in

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<sup>1</sup>. We note that the numbering of this rule has changed and was effective August 1, 2005.

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).

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

DONALD R. FORD, P.J.,

WILLIAM M. O'NEILL, J.,

concur.