

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

AUBURN PIPE & PLUMBERS SUPPLY CO., INC.,	:	<b>MEMORANDUM OPINION</b>
	:	
Plaintiff-Appellee,	:	<b>CASE NO. 2005-G-2674</b>
	:	
- vs -	:	
	:	
WHOLESALE WATERPROOFERS, INC., et al.,	:	
	:	
Defendants-Appellants.	:	

Civil Appeal from the Court of Common Pleas, Case No. 05 M 0048

Judgment: Appeal dismissed.

*Roger J. Weiss, Weiss & Freedman, L.L.P.*, 35 River Street, Chagrin Falls, OH 44022  
(For Plaintiff-Appellee).

*Patrick Dichiro*, 4141 Rockside Road, #230, Seven Hills, OH 44131 (For Defendants-Appellants).

DONALD R. FORD P.J.

{¶1} On November 21, 2005, appellants, Wholesale Waterproofers, Inc. and Stuart Lowe, filed a notice of appeal from an October 19, 2005 judgment entry of the Geauga County Court of Common Pleas. Thus, appellant's notice of appeal was filed thirty three days after the judgment had been issued by the trial court. Appellant's notice of appeal was due on Friday, November 18, 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 have not complied with the thirty-day rule set forth in App.R. 4(A) nor have they 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} Accordingly, this appeal is dismissed sua sponte pursuant to App. R. 4(A).

WILLIAM M. O’NEILL, J.,  
CYNTHIA WESTCOTT RICE, J.,  
concur.

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1. We note that the numbering of this rule changed and was effective August 1, 2005.