

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
-vs-	:	CASE NO. 2008-T-0085
PHILLIP TATE,	:	
Defendant-Appellant.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2008 CV 1396.

Judgment: Appeal dismissed.

Dennis Watkins, Trumbull County Prosecutor, *Deena L. DeVico*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Plaintiff-Appellee).

Phillip Tate, pro se, PID: 183-479, Trumbull Correctional Institution, P.O. Box 901, Leavittsburg, OH 44430-0901 (Defendant-Appellant).

MARY JANE TRAPP, J.,

{¶1} On August 29, 2008, appellant, Phillip Tate, pro se, filed a notice of appeal from a July 29, 2008 judgment of the Trumbull County Court of Common Pleas. Appellant's notice of appeal was due to be filed by August 28, 2008, which was not a holiday or a weekend. Thus, his appeal was untimely filed.

{¶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 ***."

{¶4} Loc.R. 3(D)(2) 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, appellant has neither complied with the thirty-day rule set forth in App.R. 4(A) nor 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).

{¶8} Appeal dismissed.

DIANE V. GRENDELL, P.J.,

TIMOTHY P. CANNON, J.,

concur.