

THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO

DARNELL SMITH,	:	MEMORANDUM OPINION
	:	
Plaintiff-	:	
Petitioner-Appellant,	:	CASE NO. 2008-A-0073
	:	
- VS -	:	
	:	
STATE OF OHIO, WARDEN OF LAKE	:	
ERIE CORRECTIONAL INSTITUTION,	:	
RICHARD GANSHEIMER,	:	
	:	
Defendant-	:	
Respondent-Appellee.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2008 CV 851.

Judgment: Appeal dismissed.

Darnell Smith, pro se, PID: 463-783, Lake Erie Correctional Institution, P.O. Box 8000, Conneaut, OH 44030-8000 (Plaintiff-Petitioner-Appellant).

Nancy Hardin Rogers, Attorney General, State Office Tower, 17th Floor, 30 East Broad Street, Columbus, OH 43215-3428 (Defendant-Respondent-Appellee).

CYNTHIA WESTCOTT RICE, J.

{¶1} On November 20, 2008, plaintiff-petitioner-appellant, Darnell Smith, filed a notice of appeal from an October 20, 2008 judgment entry of the Ashtabula County Court of Common Pleas. Thus, Darnell's notice of appeal was filed thirty-one days after the judgment had been issued by the trial court. Darnell's notice of appeal was due on Wednesday, November 19, 2008, 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) 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, Darnell 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.” *Gray v. Kingsville Towing*, 11th Dist. No. 2008-A-0057, 2008-Ohio-6056, at ¶8, citing *State ex rel. Pendell v. Adams Cty. Bd. of Elections* (1988), 40 Ohio St.3d 58, 60; App.R. 14(B).

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

{¶8} Appeal dismissed.

DIANE V. GRENDELL, P.J.,

MARY JANE TRAPP, J.,

concur.