

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

|                          |   |                             |
|--------------------------|---|-----------------------------|
| ATLAS AMERICA, INC.,     | : | <b>MEMORANDUM OPINION</b>   |
| Plaintiff-Appellee,      | : |                             |
| - vs -                   | : | <b>CASE NO. 2009-P-0005</b> |
| MICHAEL J. FANO, et al., | : |                             |
| Defendants-Appellants.   | : |                             |

Civil Appeal from the Court of Common Pleas, Case No. 2005 CV 01251.

Judgment: Appeal dismissed.

*Jason M. Toth*, Law Office of Charles L. Richards, Hunter's Square, 8600 East Market Street, #1, Warren, OH 44484 (For Plaintiff-Appellee).

*Jeffrey D. Myers*, 409 South Prospect Street, N. Suite, P.O. Box 129, Ravenna, OH 44266 (For Defendants-Appellants).

MARY JANE TRAPP, P.J.

{¶1} On January 23, 2009, appellants, Michael J. Fano and Christine A. Fano, filed a notice of appeal from a December 22, 2008 entry of the Portage County Court of Common Pleas. The notice of appeal was filed thirty-two days after the trial court issued its judgment. The notice of appeal was due on Wednesday, January 21, 2009, 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, Michael J. Fano and Christine A. Fano have 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.

CYNTHIA WESTCOTT RICE, J.,  
TIMOTHY P. CANNON, J.,  
concur.