

IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO

SANDRA DISANTIS,	:	MEMORANDUM OPINION
Plaintiff-Appellant,	:	
- vs -	:	CASE NO. 2017-L-012
LAKE HOSPITAL SYSTEM, INC., et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Lake County Court of Common Pleas, Case No. 2016 CV 000994.

Judgment: Appeal dismissed.

Christopher P. Wido, The Spitz Law Firm, LLC, 25200 Chagrin Boulevard, Suite 200, Beachwood, OH 44122 (For Plaintiff-Appellant).

Daniel J. Rudary and *Christopher B. Congeni*, Brennan, Manna & Diamond, 75 East Market Street, Akron, OH 44308 (Defendants-Appellees).

CYNTHIA WESTCOTT RICE, P.J.

{¶1} Appellant, Sandra Disantis, filed a notice of appeal from a December 19, 2016 entry from the Lake County Court of Common Pleas.

{¶2} The record reveals that on June 16, 2016, appellant instituted an action for injunctive relief and damages against appellees, Lake Hospital System, Inc. and Janet Conley. Appellees moved for summary judgment. In an entry dated December 19, 2016, the trial court granted appellees' motion for summary judgment and dismissed appellant's complaint. Appellant filed the instant appeal on January 20, 2017.

{¶3} On January 23, 2017, appellees filed a motion to dismiss the appeal on the grounds that the notice of appeal was filed untimely pursuant to App.R. 4(A). Appellee posits that the January 20, 2017 notice of appeal from a December 19, 2016 entry was late, and that the appeal should be dismissed.

{¶4} App.R. 3(A) expressly states that the only jurisdictional requirement for the filing of a valid appeal is to file a notice of appeal within the time allowed by App.R. 4. The Supreme Court of Ohio has held that the failure to comply with the time requirements of App.R. 4(A) is a jurisdictional defect, which is fatal to an appeal. *In re H.F.*, 120 Ohio St.3d 499, 2008-Ohio-6810, ¶ 17, citing *State ex rel. Pendell v. Adams Cty. Bd. of Elections*, 40 Ohio St.3d 58, 60 (1988).

{¶5} App.R. 4(A)(1) states that, “[s]ubject to the provisions of App.R. 4(A)(3), a party who wishes to appeal from an order that is final upon its entry shall file the notice of appeal required by App.R. 3 within 30 days of that entry.” Further, “[i]n a civil case, if the clerk has not completed service of the order within the three-day period prescribed in Civ.R. 58(B), the 30-day periods referenced in App.R. 4(A)(1) and 4(A)(2) begin to run on the date when the clerk actually completes service.” App.R. 4(A)(3).

{¶6} Civ.R. 58(B) directs the clerk of courts to serve the parties with notice of the judgment within three days of entering the judgment upon the journal. If the Civ.R. 58(B) service does not occur within three days, the time to appeal does not begin to run until service is made and noted in the appearance docket. *Coles v. Lawyers Title Ins. Corp.*, 163 Ohio App.3d 659, 664, 2005-Ohio-5360.

{¶7} The record in this case clearly shows that the trial court issued its judgment entry granting summary judgment on December 19, 2016. On that same date, the clerk of courts noted on the appearance docket that copies of that order were

mailed by regular mail to the parties. Since service was made on appellant within the three day period required in Civ.R. 58(B), the thirty day time period began to run on the date of entry of judgment, i.e. December 19, 2016. Thus, the deadline for appellant to file her notice of appeal was January 18, 2017, which was not a holiday or a weekend. Accordingly, appellant's January 20, 2017 notice of appeal from the December 19, 2016 entry was untimely.

{¶8} This court is not empowered to extend the time deadline in civil cases. *Pendell, supra*, at 60; *see also* App.R. 14(B).

{¶9} Based upon the foregoing, appellees' motion to dismiss the appeal is hereby granted, and this appeal is dismissed pursuant to App.R. 4(A)(1).

{¶10} Appeal dismissed.

TIMOTHY P. CANNON, J.,

THOMAS R. WRIGHT, J.,

concur.