

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

MICHELLE TURIC

Plaintiff-Appellant

v.

JOHN H. RION, et al.

Defendants-Appellees

Appellate Case No. 27540

Trial Court Case No. 2015 CV 06298

[Civil appeal from
Common Pleas Court]

DECISION AND FINAL JUDGMENT ENTRY

July 13, 2017

PER CURIAM:

{¶ 1} This matter is before the court for resolution of our May 25, 2017 show cause order. Michelle Turic instituted the appeal by filing a notice of appeal on April 13, 2017. Turic appeals the trial court’s March 10, 2017 “Entry Granting Defendants’ Motion for Summary Judgment” and dismissing the underlying legal malpractice case.

{¶ 2} It appeared to this court that the notice of appeal was not timely filed. App.R. 4(A)(1) provides that “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.” We ordered

Turic to show cause why this appeal should not be dismissed, as her April 13 notice of appeal was filed more than 30 days after the March 10 entry.

{¶ 3} For completeness, we noted in our show cause order that App.R. 4(A)(3), an exception to the 30-day rule of App.R. 4(A)(1), does not apply. That division states that “[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.” This exception changes the date on which the 30-day clock begins to run, depending on when the clerk serves the parties with notice of the final judgment and notes service on the docket. If the clerk serves notice within three days of the entry of a final civil judgment, a notice of appeal is due within 30 days of the entry of final judgment. App.R. 4(A)(1). If the clerk does not serve notice within three days of the entry of a final civil judgment, a notice of appeal is due 30 days after the clerk served notice. App.R. 4(A)(3). Saturdays and Sundays are not counted in the three-day calculation. Civ.R. 6(A) (“When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation”); App.R. 14(A) (same).

{¶ 4} The record here shows that the clerk timely completed service. The clerk served notice of the Friday, March 10, 2017 entry on Tuesday, March 14, 2017. Service was made within three days, given that the intervening weekend days are not counted. Civ.R. 6(A); App.R. 14(A); see *Niki D'Atri Ents. v. Hines*, 7th Dist. Mahoning No. 13 MA 57, 2014-Ohio-283, ¶ 5-9 (service issued on a Tuesday after a Friday judgment was timely under Civ.R. 6(A) and App.R. 14(A) because weekends are not included in the computation of time). Neither party disputes this analysis.

{¶ 5} Instead, Turic asserts that she based her time calculation on the date she *received* notice of the final judgment. She states that she received the court's final judgment and the clerk's notice on March 16, 2017, which is, as observed by appellees, consistent with the recorded date of mailing. However, the Supreme Court of Ohio has specifically held that the date a party has actual notice of a judgment is not the proper starting date for the notice of appeal clock:

Jurisdiction in the court of appeals is based upon a timely filing of a notice of appeal. Timeliness is defined as 30 days from the date of the final order or from the date that the clerk completes service if service is not completed within three days of entering the judgment on the journal. App.R. 4(A)(1). By maintaining a strict 30-day deadline, there is no doubt as to when the notice of appeal is due. The attorneys, the parties, and most importantly the court of appeals know whether the appeal has been filed timely. There is no guessing. The appellate court is not transformed into a fact-finder in an attempt to determine whether the parties or the attorneys had actual knowledge of the judgment entry. Yet if we accept the premise that actual knowledge is a permissible alternative to service by the clerk of courts, that is the precise position we would be putting all Ohio appellate courts in. That would be an untenable situation.

Clermont Cty. Transp. Improvement Dist. v. Gator Milford, L.L.C., 141 Ohio St.3d 542, 2015-Ohio-241, 26 N.E.3d 806, ¶ 7. Thus, the question here is not when Turic had knowledge of, or received notice of, the final judgment. The 30-day appeal time begins to run when the

final judgment is entered. In this case, it began to run on March 10, 2017. The notice of appeal was due within 30 days. When it was filed on April 13, 2017, it was filed too late.

{¶ 6} Timely filing of the notice of appeal “is a prerequisite to a civil appeal as of right.” *Moldovan v. Cuyahoga Cty. Welfare Dept.*, 25 Ohio St.3d 293, 294-295, 496 N.E.2d 466, 467 (1986). “[T]he failure to comply with time requirements of App.R. 4(A) is a jurisdictional defect, which is fatal to an appeal.” *CitiBank v. Abu-Niaaj*, 2d Dist. Greene No. 2011CA45, 2012-Ohio-2099, ¶ 7, citing *In re H.F.*, 120 Ohio St.3d 499, 2008-Ohio-6810, 900 N.E.2d 607, ¶ 17 and *Transamerica Ins. Co. v. Nolan*, 72 Ohio St.3d 320, 649 N.E.2d 1229 (1995). We cannot extend this deadline or excuse an untimely-filed notice. App.R. 14 (court of appeals “may not enlarge or reduce the time for filing a notice of appeal”). Accordingly, without a timely notice of appeal, this court lacks jurisdiction to consider Turic’s appeal.

{¶ 7} Our show cause order is NOT SATISFIED. This appeal, Montgomery Appellate Case No. 27540, is DISMISSED.

{¶ 8} Pursuant to Ohio App.R. 30(A), it is hereby ordered that the Clerk of the Montgomery County Court of Appeals shall immediately serve notice of this judgment upon all parties and make a note in the docket of the mailing.

SO ORDERED.

MARY E. DONOVAN, Judge

JEFFREY E. FROELICH, Judge

JEFFREY M. WELBAUM, Judge

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