

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

ADOPTION OF A.M.F.

:
:

MEMORANDUM OPINION

CASE NO. 2010-L-071

Civil Appeal from the Lake County Court of Common Pleas, Probate Division, Case No. 10 AD 001.

Judgment: Appeal dismissed.

Sandra A. Dray, Sandra A. Dray Co., L.P.A., 1111 Mentor Avenue, Painesville, OH 44077 (For Appellee, Heidi L. Facemyer).

Carolyn Kaye Ranke, 323 West Lakeside Avenue, #420, Cleveland, OH 44113 (For Appellant, Aaron Bates).

TIMOTHY P. CANNON, J.

{¶1} On June 22, 2010, appellant, Aaron Bates, by and through counsel, filed a notice of appeal from a May 20, 2010 entry of the Lake County Court of Common Pleas, Probate Division.

{¶2} On June 24, 2010, appellee, Heidi L. Facemyer, filed a motion to dismiss the appeal as untimely. No brief in opposition to the motion to dismiss has been filed.

{¶3} App.R. 4(A) states that:

{¶4} “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.”

{¶5} Loc.R. 3(D)(2) of the Eleventh District Court of Appeals provides:

{¶6} “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.)

{¶7} Here, the notice of appeal was due on Monday, June 21, 2010, which was not a holiday or a weekend. 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).

{¶8} Accordingly, appellee’s motion to dismiss is granted. This appeal is dismissed pursuant to App.R. 4(A).

{¶9} Appeal dismissed.

MARY JANE TRAPP, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.