

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

CHERI KUSS,	:	<b>MEMORANDUM OPINION</b>
Petitioner-Appellee,	:	
- vs -	:	<b>CASE NO. 2012-P-0051</b>
THOMAS JASON CLEMENTS,	:	
Respondent-Appellant.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2010 CV 0904.

Judgment: Appeal dismissed.

*Cheri Kuss*, pro se, 4396 Edson Road, Kent, OH 44240 (Petitioner-Appellee).

*Thomas Jason Clements*, pro se, 1410 Brookdale Lane, Kent, OH 44240 (Respondent-Appellant).

DIANE V. GRENDELL, J.

{¶1} This matter is before this court on the pro se motion of appellant, Thomas Jason Clements, for leave to file a delayed appeal. Along with his motion, appellant filed his notice of appeal on May 18, 2012. Appellant is appealing the trial court's November 30, 2011 judgment, overruling his motion to vacate an ex parte civil protection order. Thus, appellant's appeal was filed approximately five months after the trial court's judgment. No response in opposition was filed.

{¶2} By way of background, on June 8, 2010, appellee, Cheri Kuss, filed a petition for a civil protection order, which was granted on November 29, 2010. On November 23, 2011, appellant filed a motion to vacate judgment. The trial court overruled appellant's motion on November 30, 2011. No appeal was filed within 30 days from that judgment.

{¶3} On January 9, 2012, appellant filed a motion to reconsider the November 30, 2011 entry. The trial court overruled appellant's motion on February 1, 2012. On February 27, 2012, appellant filed a pro se notice of appeal with this court, Case No. 2012-P-0023.

{¶4} On April 16, 2012, this court dismissed the appeal for lack of a final appealable order. *Kuss v. Clements*, 11th Dist. No. 2012-P-0023, 2012-Ohio-1678, ¶6. We held that the trial court's February 1, 2012 judgment overruling appellant's motion for reconsideration is a nullity and cannot properly be appealed. *Id.* at ¶4. We further held that the filing of a motion for reconsideration does not extend the time for filing an appeal from a final judgment. *Id.* at ¶5.

{¶5} Presently before us is appellant's May 18, 2012 pro se motion for leave to file a delayed appeal from the trial court's November 30, 2011 judgment to once again appeal the trial court's overruling of his motion to vacate the ex parte civil protection order.

{¶6} App.R. 5(A) provides, in relevant part:

{¶7} "(1) After the expiration of the thirty day period provided by App.R. 4(A) for the filing of a notice of appeal as of right, an appeal may be taken by a defendant with leave of the court to which the appeal is taken in the following classes of cases:

{¶8} “(a) Criminal proceedings;

{¶9} “(b) Delinquency proceedings; and

{¶10} “(c) Serious youthful offender proceedings.”

{¶11} In this case, the judgment entry being appealed is not from a criminal, delinquency, or serious youthful offender proceeding. Rather, the judgment being appealed was generated from the granting of a civil protection order. Appellant’s attempt to utilize App.R. 5(A) to extend his time to file a notice of appeal beyond the 30-day time limit provided for in App.R. 4(A) is ineffective because App.R. 5(A) may be utilized only to extend the time to file a notice of appeal from a judgment issued from a criminal, delinquency, or serious youthful offender proceeding. *See Vale Edge, Inc. v. Simms*, 11th Dist. No. 98-P-0124, 1999 Ohio App. LEXIS 4320, \*2-3 (Feb. 12, 1999).

{¶12} Accordingly, it is ordered that appellant’s motion for leave to file a delayed appeal is hereby overruled as not being applicable to this matter.

{¶13} Appeal dismissed as untimely.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.