

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

RICHARD D. KALEDA,	:	MEMORANDUM OPINION
Plaintiff-Appellant,	:	
- vs -	:	CASE NO. 2012-T-0079
TRUMBULL COUNTY BOARD OF HEALTH,	:	
Defendant-Appellee.	:	

Civil Appeal from the Trumbull County Court of Common Pleas, Case No. 2010 CV 3240.

Judgment: Appeal dismissed.

Jeffery A. Kaleda, Markesbery & Richardson Co., L.P.A., 2368 Victory Parkway, Suite 200, P.O. Box 6491, Cincinnati, OH 45206 (For Plaintiff-Appellant).

Robert C. Kokor, 394 State Route 7, S.E., P.O. Box 236, Brookfield, OH 44403 (For Defendant-Appellee).

TIMOTHY P. CANNON, P.J.

{¶1} On September 24, 2012, appellant, Richard D. Kaleda, filed a notice of appeal from an August 21, 2012 judgment entry of the Trumbull County Court of Common Pleas. The notice of appeal was due to be filed by September 20, 2012, which was neither a holiday nor a weekend.

{¶2} On October 5, 2012, appellee, Trumbull County Board of Health, filed a motion to dismiss with this court asserting that appellant's appeal is untimely. Appellee

contends that this court lacks jurisdiction because appellant failed to timely file his notice of appeal within the 30-day time period prescribed by App.R. 4(A).

{¶3} On October 22, 2012, appellant filed a memorandum in opposition to appellee's motion to dismiss. Appellant states that the appealed judgment entry was time-stamped on August 21, 2012, and was served by regular mail on August 22, 2012. Appellant maintains that his appeal was timely filed on September 24, 2012, pursuant to the three-day mail rule under App.R. 14(C), which states, in part:

{¶4} Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after service of a notice or other document upon that party and the notice or paper is served upon the party by mail or commercial carrier service under App.R. 13(C)(4), three days shall be added to the prescribed period. * * *

{¶5} Appellant's reliance on App.R. 14(C) is misplaced because the three-day mail rule does not apply to notices of appeal. See App.R. 14(B) ("[t]he court may not enlarge or reduce the time for filing a notice of appeal * * *").

{¶6} With respect to "Time for Appeal," App.R. 4(A) states:

{¶7} "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 period in Rule 58(B) of the Ohio Rules of Civil Procedure."

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

{¶9} 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.)

{¶10} In the instant matter, appellant has neither complied with the 30-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*, 40 Ohio St.3d 58, 60 (1988); *see also* App.R. 14(B).

{¶11} Accordingly, appellee's motion to dismiss the appeal due to untimeliness is granted. This appeal is dismissed for lack of jurisdiction. *See Barnes v. Andover Village Retirement Community, Ltd.*, 11th Dist. No. 2003-A-0122, 2004-Ohio-1705, ¶10-11.

{¶12} Appeal dismissed.

DIANE V. GRENDELL, J.,

MARY JANE TRAPP, J.,

concur.