

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

KENNETH L. TENNEY,	:	MEMORANDUM OPINION
Plaintiff-Appellant,	:	
- vs -	:	CASE NO. 2005-T-0050
JUSTINE M. TENNEY,	:	
Defendant-Appellee.	:	

Civil Appeal from the Court of Common Pleas, Domestic Relations Division, Case No. 2000 DR 533.

Judgment: Appeal Dismissed.

Albert A. Palombaro, 101 & 103 Pinewood Center, 1032 Boardman-Canfield Road, Youngstown, OH 44512 (For Plaintiff-Appellant).

Gary R. Rich, 342 Mahoning Avenue, N.W., P.O. Box 4010, Warren, OH 44482 (For Defendant-Appellee).

COLLEEN MARY O'TOOLE, J.,

{¶1} On April 21, 2005, appellant, Kenneth L. Tenney, filed a notice of appeal from a March 21, 2005 judgment of the Trumbull County Court of Common Pleas, Domestic Relations Division. Thus, appellant's notice of appeal was filed thirty-one days after the judgment had been entered by the trial court.

{¶2} App.R. 4(A) states:

{¶3} “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.”

{¶4} Loc R. 5(C) of the Eleventh District Court of Appeals provides:

{¶5} “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 was noted. Lack of compliance shall result in the sua sponte dismissal of the appeal under Ohio App.R. 4(A).” (Emphasis sic.)

{¶6} In the present case, appellant has not complied with the thirty-day rule set forth in App.R. 4(A) nor has he 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).

{¶7} Accordingly, this appeal is dismissed sua sponte pursuant to App.R. 4(A).

DIANE V. GRENDALL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.

