

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

MURRAY A. MILLER, et al.,	:	<b>MEMORANDUM OPINION</b>
Plaintiffs-Appellants,	:	
- vs -	:	<b>CASE NO. 2009-T-0061</b>
SAM M. MILLER, et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2003 CV 433.

Judgment: Cross-appeal dismissed.

*Charles L. Richards*, Law Office of Charles L. Richards, Hunter's Square, 8600 East Market Street, #1, Warren, OH 44484-2375, and *Marshall D. Buck*, Comstock, Springer & Wilson, 100 Federal Plaza East, #926, Youngstown, OH 44503-1811 (For Plaintiffs-Appellants).

*Michael N. Unger*, Ulmer & Berne, L.L.P., 1100 Skylight Office Tower, 1660 West Second Street, Cleveland, OH 44113 (For Defendant-Appellee, Samuel M. Miller).

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COLLEEN MARY O'TOOLE, J.

{¶1} On June 22, 2009, appellants, Murray A. Miller and Sam H. Miller, filed a notice of appeal from a May 29, 2009 entry of the Trumbull County Court of Common Pleas. Appellee, Samuel M. Miller, filed his cross-appeal on July 6, 2009.

{¶2} Under App.R. 4(B)(1), appellee had the option of filing his cross-appeal within ten days of appellants filing their notice of appeal, or the traditional thirty-day

window created by App.R. 4(A). Pursuant to the foregoing rules, the latest that appellee could have filed his cross-appeal was July 2, 2009. The record in this matter indicates that appellee filed his cross-appeal with this court on July 6, 2009, four days beyond the required time limit of App.R. 4(B)(1). The time requirements for filing a cross-appeal pursuant to App.R. 4(A) are mandatory and jurisdictional. *Kaplysh v. Takieddine* (1988), 35 Ohio St.3d 170. See, also, *Kirkhart v. Keiper*, 11th Dist. No. 2001-P-0069, 2002-Ohio-6472, at ¶2. As a result, this court cannot address the merits of appellee's untimely cross-appeal as it lacks jurisdiction under App.R. 4(A).

{¶3} Based upon the foregoing analysis, the cross-appeal is hereby, sua sponte, dismissed for untimeliness. However, the appeal filed by appellants can proceed.

{¶4} Cross-appeal dismissed.

DIANE V. GRENDALL, J.,

TIMOTHY P. CANNON, J.,

concur.