

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

DAVID KEITH,	:	MEMORANDUM OPINION
Plaintiff-Appellant,	:	
- vs -	:	CASE NO. 2006-T-0096
K-MART DISTRIBUTION CENTER, et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2004 CV 2574.

Judgment: Appeal dismissed.

Raymond J. Tisone and Robert D. Vizmeg, Anzelotti, Sperling, Pazol & Small Co., L.P.A., 21 North Wickliffe Circle, Youngstown, OH 44515 (For Plaintiff-Appellant).

William Case, Thompson Hine, L.L.P., 10 West Broad Street, #700, Columbus, OH 43215-3435 (For Defendants-Appellees).

WILLIAM M. O'NEILL, J.

{¶1} On August 25, 2006, appellant, David Keith, filed a notice of appeal from the July 25, 2006 judgment entry of the Trumbull County Court of Common Pleas. Thus, appellant's notice of appeal was filed thirty-one days after the judgment had been issued by the trial court. Appellant's notice of appeal was due on Thursday, August 24, 2006, which was not a holiday or a weekend.

{¶2} App.R. 4(A) states that:

{¶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 rule period in Rule 58(B) of the Ohio Rules of Civil Procedure.”

{¶4} Loc.R. 3(D)(2) 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 has been noted. Lack of compliance shall result in the *sua sponte* dismissal of the appeal under Ohio App.R. 4(A).” (Emphasis sic.)

{¶6} Here, appellant has not complied with the thirty-day rule set forth in App.R. 4(A) nor has appellant 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. GRENDELL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.