

IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO

CAVALRY SPV I, LLC BUYER OF BANK	:	MEMORANDUM OPINION
OF AMERICA/FIA CARD SERVICES, N.A.	:	
CLAIM,	:	CASE NO. 2012-L-013
	:	
Plaintiff-Appellee,	:	
	:	
- vs -	:	
	:	
PATRICK HARKINS,	:	
	:	
Defendant-Appellant.	:	

Civil Appeal from the Painesville Municipal Court, Case No. CVF1002150.

Judgment: Appeal dismissed.

Stuart Tobin, Immerman & Tobin Co., L.P.A., 10810 Indeco Drive, Cincinnati, OH 45241 (For Plaintiff-Appellee).

Patrick Harkins, pro se, 2707 Larchview Drive, Painesville, OH 44077 (Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} On January 27, 2012, appellant, Patrick Harkins, pro se, filed a notice of appeal from a December 27, 2011 entry of the Painesville Municipal Court. The notice of appeal was due on January 26, 2012, 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} In the instant matter, appellant has neither complied with the thirty-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).

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

{¶8} Appeal dismissed.

TIMOTHY P. CANNON, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.