

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

RODGER M. AND IRENE S. WORK INC. dba NELSON LEDGE ESTATES,	:	MEMORANDUM OPINION
	:	
Plaintiff-Appellee,	:	CASE NO. 2015-P-0036
	:	
- vs -	:	
	:	
PATRICK ABELA AND OCCUPANTS,	:	
	:	
Defendant-Appellant.		

Civil Appeal from the Portage County Municipal Court, Ravenna Division, Case No. 2014 CVG 01611R.

Judgment: Appeal dismissed.

Terry G.P. Kane, Kane & Kane, 111 East Main Street, Suite B, P.O. Box 167, Ravenna, OH 44266 (For Plaintiff-Appellee).

Patrick Abela, pro se, 10348 Knowlton Road, Garrettsville, OH 44231 (Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} On May 22, 2015, appellant, Patrick Abela, pro se, filed a notice of appeal from an entry of the Portage County Municipal Court, Ravenna Division.

{¶2} The record in this matter reveals that on June 16, 2014, appellee, Rodger M. and Irene S. Work Inc. dba Nelson Ledge Estates, filed a complaint for eviction against appellant. On October 22, 2014, the magistrate issued a decision granting a writ of restitution and indicating that the “second cause of action is pending until answer date.” The trial court adopted the magistrate’s decision on that same date. Appellant

filed objections to the magistrate's decision on October 28, 2014. On November 3, 2014, the trial court issued an entry overruling appellant's objections and ordering that the writ of restitution shall be issued. On March 4, 2015, the trial court issued an execution order for the abandoned property. Thereafter, on April 21, 2015, appellee filed a "Notice of Dismissal" pursuant to Civ.R. 41(A). It is from that entry that appellant filed the instant appeal.

{¶3} On May 27, 2015, appellee filed a motion to dismiss the appeal on the grounds that the notice of appeal was untimely filed pursuant to App.R. 4(A). Appellant has filed no response in opposition to the motion to dismiss.

{¶4} App.R. 3(A) expressly states that the only jurisdictional requirement for the filing of a valid appeal is to file a notice of appeal within the time allowed by App.R. 4. The Supreme Court of Ohio has held that the failure to comply with the time requirements of App.R. 4(A) is a jurisdictional defect, which is fatal to an appeal. *In re H.F.*, 120 Ohio St.3d 499, 2008-Ohio-6810, ¶ 17, citing *State ex rel. Pendell v. Adams Cty. Bd. of Elections*, 40 Ohio St.3d 58, 60 (1988).

{¶5} App.R. 4(A)(1) states that, "[s]ubject to the provisions of App.R. 4(A)(3), a party who wishes to appeal from an order that is final upon its entry shall file the notice of appeal required by App.R. 3 within 30 days of that entry." Further, "[i]n a civil case, if the clerk has not completed service of the order within the three-day period prescribed in Civ.R. 58(B), the 30-day periods referenced in App.R. 4(A)(1) and 4(A)(2) begin to run on the date when the clerk actually completes service." App.R. 4(A)(3).

{¶6} Civ.R. 58(B) directs the clerk of courts to serve the parties with notice of the judgment within three days of entering the judgment upon the journal.

{¶7} The record in this case clearly shows that on November 3, 2014, the trial court ordered that a writ of restitution shall be issued. The order granting restitution was

a final and appealable order when issued. See *Sheehe v. Demsey*, 8th Dist. Cuyahoga No. 99965, 2014-Ohio-305, ¶ 6.

{¶8} The clerk of courts noted on the appearance docket that copies of the November 3, 2014 judgment entry were mailed by ordinary mail to appellant and placed in appellee's attorney's courthouse mailbox on November 4, 2014. Thus, service was made on appellant within the three day period required in Civ.R. 58(B), and the thirty day time period began to run on the date of entry of judgment, November 3, 2014.

{¶9} Accordingly, the deadline for appellant to file his notice of appeal was December 3, 2014, which was not a holiday or a weekend. Appellant filed his notice of appeal from the April 21, 2015 notice of voluntary dismissal, which was not the final appealable order in the case.

{¶10} This court is not empowered to extend the time deadline in civil cases. *Pendell, supra*, at 60; see also App.R. 14(B). Therefore, appellant untimely filed his notice of appeal on May 22, 2015.

{¶11} Based upon the foregoing, appellee's motion to dismiss the appeal is hereby granted, and this appeal is dismissed pursuant to App.R. 4(A).

{¶12} Appeal dismissed.

TIMOTHY P. CANNON, P.J.,

THOMAS R. WRIGHT, J.,

concur.