

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
LAWRENCE COUNTY

MISTY MAYO,	:	Case No. 16CA4
Petitioner-Appellant,	:	
v.	:	<u>DECISION AND</u>
	:	<u>JUDGMENT ENTRY</u>
OHIO CIVIL RIGHTS COMMISSION,	:	
Respondent-Appellee.	:	RELEASED: 04/24/2017

APPEARANCES:

Warren N. Morford, Jr., Ironton, Ohio, for appellant.

Michael DeWine, Attorney General and Patrick Dull, Principal Assistant Attorney General, Columbus, Ohio, for appellee.

Harsha, J.

{¶1} Misty Mayo appeals the dismissal of her petition for judicial review of an Ohio Civil Rights Commission final order. The trial court dismissed the petition for lack of subject matter jurisdiction because Mayo failed to satisfy the statutory 30-day filing period.

{¶2} Mayo contends that an additional three days should be added to the 30-day computation because the Commission served the order on her by mail. The Commission argues that the three-day extension periods for performing an act when notice is served by mail do not apply to a petition for review of an Ohio Civil Rights Commission final order. The Commission also notes that Mayo filed her petition on day 34. Even if Mayo had 33 days, the Commission contends she is still late by one day. In response, Mayo concedes that her filing would still be one day late, but argues that she could show excusable neglect due to a calculation error.

The Supreme Court of Ohio has concluded the rules that extend filing periods by three days when notice is served by mail do not apply to filing a petition for review of a final order of the Ohio Civil Rights Commission. Civil and administrative rules cannot expand a court's jurisdiction beyond the bounds set by statute. We overrule Mayo's sole assignment of error and affirm the decision of the trial court.

I. FACTS

{¶3} Mayo filed a charge of discrimination against her former employer with the Ohio Civil Rights Commission, which dismissed the claim upon determining that it lacked probable cause. After Mayo filed an application for reconsideration, which the Commission granted, the Commission again found no probable cause and dismissed the matter. The Commission served its final order on Mayo by mail on October 22, 2015.

{¶4} Thirty-four days later, on November 25, 2015, Mayo filed a petition for judicial review in the Lawrence County Court of Common Pleas. The Commission moved to dismiss the petition, arguing that it was untimely because the relevant statute requires the petition be filed within 30 days. Mayo responded by arguing that the appeal was timely under Civ.R. 6(D) which allows three days to be added to the 30-day period in some instances. The trial court held that the law requires a petitioner to file a petition within 30 days, making Mayo's petition untimely. The trial court found that it lacked subject matter jurisdiction and dismissed the petition.

II. ASSIGNMENT OF ERROR

{¶5} Mayo assigns the following error for our review:

I. THE TRIAL COURT COMMITTED PREJUDICIAL, REVERSIBLE
ERROR IN FINDING THAT THE PLAINTIFF/APPELLANT, MISTY MAYO,

DID NOT TIMELY FILE HER PETITION FOR JUDICIAL REVIEW OF THE LETTER OF DETERMINATION ISSUED BY THE DEFENDANT/APPELLEE OHIO CIVIL RIGHTS COMMISSION AND DATED OCTOBER 22, 2015.

III. LAW AND ANALYSIS

{¶16} The standard to apply for a dismissal pursuant to Civ.R. 12(B)(1), lack of subject matter jurisdiction, is whether the plaintiff has alleged any cause of action which the court has authority to decide. This is generally a question of law which we review de novo. *Ford v. Tandy Transp., Inc.*, 86 Ohio App.3d 364, 375–76, 620 N.E.2d 996 (4th Dist.1993).

{¶17} R.C. 4112.06 governs judicial review of Ohio Civil Rights Commission final orders and requires a petitioner seeking judicial review to file a petition within thirty days from the service of the order. R.C. 4112.06(H); *Ramsdell v. Ohio Civ. Rights Comm.*, 56 Ohio St.3d 24, 25, 563 N.E.2d 285 (1990). The Commission may serve the order by mail. See Ohio Adm.Code 4112-1-09. Both Civ.R. 6(D) and Ohio Adm.Code 4112-1-02(B) provide that whenever a party is required to do some act or take some other action after the service of a notice or other document, and the notice or paper is served by mail, “three days shall be added to the prescribed period.” Civ.R.6(D); Ohio Adm.Code 4112-1-02. However the three-day extension for mail service does not apply to the 30-day period for filing a petition for judicial review under R.C. 4112.06(H). *Ramsdell* at 27-28, fn. 2 (“We are cognizant of the fact that our decision effectively nullifies the application of Ohio Adm.Code 4112-1-02 to appeals from administrative orders. However, while administrative agencies have the power to adopt rules pursuant to a legitimate legislative delegation, they do not have the power to expand the jurisdiction of the civil courts beyond the bounds set by statute.”).

{¶8} Mayo concedes that she filed her petition 34 days after the Commission served the final order. Based on the holding in *Ramsdell*, we reject her argument that Civ.R. 6(D) and Ohio Adm.Code 4112-1-02 extend the deadline by three days. We also reject Mayo's argument that the 30-day period could be extended under Civ.R. 6(B) for excusable neglect based on the same reasoning – the Ohio Rules of Civil Procedure cannot be used to extend the jurisdiction of the court. See *also* Civ.R. 82 (“These rules shall not be construed to extend or limit the jurisdiction of the courts of this state.”). And because Mayo did not make her Civ.R. 6(B)/excusable neglect argument at the trial court level, she forfeited it. *Snyder v. Stevens*, 4th Dist. Scioto No.12CA3465, 2012-Ohio-4120, ¶ 15.

{¶9} We overrule Mayo's sole assignment of error.

IV. CONCLUSION

{¶10} The trial court did not err as a matter of law when it dismissed Mayo's untimely petition for lack of subject matter jurisdiction. Neither the civil nor administrative rules providing for a three-day extension apply to the 30-day period for filing a petition for judicial review under R.C. 4112.06(H). Having overruled Mayo's sole assignment of error, we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Lawrence County Court of Common Pleas to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

McFarland, J. & Hoover, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.