

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

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|-------------------------------|---|-----------------------------|
| RYAN PATTERSON, | : | MEMORANDUM OPINION |
| Appellant, | : | |
| - vs - | : | CASE NO. 2009-A-0031 |
| PRESRITE CORPORATION, et al., | : | |
| Appellees. | : | 7/24/09 |

Civil Appeal from the Court of Common Pleas, Case No. 2007 CV 1408.

Judgment: Appeal dismissed.

Ryan Patterson, pro se, 4841 McKinley Avenue, Ashtabula, OH 44004 (Appellee).

Jennifer A. Corso, Wegman, Hessler & Vanderburg, 6055 Rockside Woods Boulevard, #200, Cleveland, OH 44131 (For Appellee, Presrite Corporation).

Richard Cordray, Attorney General, State Office Tower, 30 East Broad Street, Columbus, OH 43215-3428, and *Laurel Blum Mazorow*, Assistant Attorney General, State Office Building, 11th Floor, 615 West Superior Avenue, Cleveland, OH 44113-1899 (For Appellee, Ohio Department of Job and Family Services, Director).

COLLEEN MARY O'TOOLE, J.

{¶1} On June 11, 2009, appellant, Ryan Patterson, filed a notice of appeal from the March 5, 2009 judgment entry of the Ashtabula County Court of Common Pleas.

{¶2} On June 15, 2009, appellee, the Director of the Ohio Department of Job and Family Services, filed a motion to dismiss the appeal for untimeliness pursuant to App.R. 4. Mr. Patterson filed no response in opposition to the motion to dismiss.

{¶3} App.R. 4(A) states that:

{¶4} “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.”

{¶5} Loc.R. 3(D)(2) of the Eleventh District Court of Appeals provides:

{¶6} “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.)

{¶7} In the instant matter, the notice of appeal was due on Monday, April 6, 2009, which was not a holiday or a weekend. The notice of appeal was not filed until June 11, 2009. This appeal is untimely by over two months.

{¶8} Mr. Patterson 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* (1988), 40 Ohio St.3d 58, 60; App.R. 14(B).

{¶9} Accordingly, appellee's motion to dismiss is granted, and this appeal is dismissed pursuant to App.R. 4(A).

{¶10} Appeal dismissed.

MARY JANE TRAPP, P.J.,

TIMOTHY P. CANNON, J.,

concur.