

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

ANTHONY LOUIS, d.b.a. T. LOUIS	:	APPEAL NO. C-130583
CONSTRUCTION,	:	TRIAL NO. A-1005337
	:	
Plaintiff-Appellee,	:	
vs.	:	
	:	<i>JUDGMENT ENTRY.</i>
KIMBERLY FULTON,	:	
	:	
Defendant-Appellant,	:	
	:	
and	:	
	:	
WILLIE JONES,	:	
	:	
and	:	
	:	
BANK OF AMERICA,	:	
	:	
Defendants.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Kimberly Fulton appeals the judgment of the trial court adopting a decision of the magistrate determining that Fulton owed \$9,610.85 to plaintiff-appellee Anthony Louis, d.b.a. T. Louis Construction on Louis’s claim for unjust enrichment. Because we determine that Fulton’s appeal was not filed within 30 days of the entry of the trial court’s judgment as required by App.R. 4(A), we must grant Louis’s motion to dismiss Fulton’s appeal.

In this case, the clerk entered the trial court's judgment adopting the magistrate's decision on the docket on Friday, August 9, 2013, and then noted service of the judgment by ordinary mail on the docket on Tuesday, August 13, 2013. Although the docket entry indicates that Fulton filed her notice of appeal on September 11, 2013, the notice of appeal was actually filed electronically on Tuesday, September 10, 2013. Subsequently, Louis filed a motion to dismiss Fulton's appeal as untimely under App.R. 4(A).

App.R. 4(A) states that "[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 period in Rule 58(B) of the Ohio Rules of Civil Procedure." Civ.R. 58(B) requires the clerk to serve parties in accordance with Civ.R. 5(B) within three days of the entry of judgment, and requires the clerk to note the service on the docket. If the clerk fails to serve parties in a civil case with the appealable judgment in the manner prescribed by Civ.R. 58(B), App.R. 4(A) operates as a toll of the 30-day timeframe for filing a notice of appeal until the clerk serves the judgment. *Roberts v. Columbus City Police Impound Div.*, 195 Ohio App.3d 51, 2011-Ohio-2873, 958 N.E.2d 970, ¶ 7 (10th Dist.), citing *State ex rel. Sautter v. Grey*, 117 Ohio St.3d 465, 2008-Ohio-1444, 884 N.E.2d 1062, ¶ 16.

The time requirement in App.R. 4(A) is jurisdictional and cannot be enlarged by an appellate court. *State ex rel. Pendell v. Adams Cty. Bd. of Elections*, 40 Ohio St.3d 58, 60, 531 N.E.2d 713 (1988); *In re Ross*, 154 Ohio App.3d 1, 2003-Ohio-4419, 796 N.E.2d 6, ¶ 20 (1st Dist.); App.R. 14(B).

In response to Louis's motion to dismiss, Fulton contends that the clerk did not comply with the three-day requirement under Civ.R. 58(B). We disagree. The judgment was entered on the docket on August 9, 2013, so that day is excluded from the three-day requirement under Civ.R. 58(B). *See* Civ.R. 6(A) (which excludes from the computation of time the day "from which the designated period of time begins to run"). Moreover, Saturday, August 9 and Sunday, August 10 are also excluded from the three-day count. *See id.* (providing that "[w]hen the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation."). The clerk in this case noted service of the judgment by ordinary mail on Tuesday, August 13, 2013, within the three-day period required under Civ.R. 58(B).

Thus, because the clerk served Fulton within the three-day period required by Civ.R. 58(B), Fulton had 30 days from the entry of judgment on August 9, 2013, in which to file her notice of appeal under App.R. 4(A). Fulton, however, did not file her notice of appeal until Tuesday, September 10, 2013, which is more than 30 days from August 9, 2013. *See* App.R. 14(A).

Because Fulton's notice of appeal was not filed within the 30-day timeframe required under App.R. 4(A), this court is without jurisdiction over her appeal, and we must dismiss it. *See Pendell*, 40 Ohio St.3d 58, 60, 531 N.E.2d 713; *see also* App.R. 14(B).

The appeal is hereby dismissed.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**OHIO FIRST DISTRICT COURT OF APPEALS**

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**HILDEBRANDT, P.J., DINKELACKER and FISCHER, JJ.**

To the clerk:

Enter upon the journal of the court on June 25, 2014

per order of the court \_\_\_\_\_.  
Presiding Judge