

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

HPSC, INC.,	:	MEMORANDUM OPINION
Plaintiff-Appellant,	:	
- vs -	:	CASE NO. 2009-L-110
ESTATE OF RICARDO SCARSO, et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Court of Common Pleas, Case No. 09 CV 000490.

Judgment: Appeal dismissed.

Dale D. Cook, Wiles, Boyle, Burkholder & Bringardner Co., L.P.A., 300 Spruce Street, 1st floor, Columbus, OH 43215-1173 (For Plaintiff-Appellant).

Thomas J. Sacerich, Sacerich, O’Leary & Field, 8302 Yellowbrick Road, Mentor, OH 44060-4960 (For Defendants-Appellees).

TIMOTHY P. CANNON, J.

{¶1} On September 4, 2009, appellant, HPSC, Inc., filed a notice of appeal from a July 7, 2009 entry of the Lake County Court of Common Pleas.

{¶2} In the July 7, 2009 judgment entry, the trial court denied appellant’s motion for reconsideration. In a June 23, 2009 entry, the trial court issued a judgment in favor of appellant in the amount of \$0. No appeal was filed thirty days from the June 23 judgment entry.

{¶3} It is well established that the filing of a motion for reconsideration from a final appealable order in the trial court is a nullity. *Pitts v. Ohio Dept. of Transp.* (1981), 67 Ohio St.2d 378, 381. See, also, *Keyerleber v. Keyerleber*, 11th Dist. No. 2007-A-0010, 2007-Ohio-3018, at ¶3. Therefore, all judgments or orders from a motion for reconsideration are a nullity. *Pitts* at 381. Thus, in the instant matter, the July 7, 2009 judgment of the trial court denying appellant's motion for reconsideration is a nullity and cannot properly be appealed.

{¶4} In addition, the filing of a motion for reconsideration does not toll the time for filing an appeal from a final judgment. *Id.* at 380. Therefore, in the present case, an appeal from the June 23, 2009 judgment entry, which is the only final appealable order listed on the trial court docket, is untimely. The notice of appeal from that entry was due on Thursday, July 23, 2009, which was not a holiday or a weekend.

{¶5} App.R. 4(A) states that:

{¶6} "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."

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

{¶8} "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.)

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

{¶10} Based upon the foregoing analysis, this appeal is hereby dismissed, *sua sponte*, for lack of a final appealable order and untimeliness.

{¶11} Appeal dismissed.

DIANE V. GRENDELL, J.,

COLLEEN MARY O'TOOLE, J.,

concur.