

STATE OF OHIO )  
 ) ss:  
COUNTY OF SUMMIT )

DIANA ZALESKI THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

AUG 20 2 54 PM '93

OWNER'S MANAGEMENT CO. )

Plaintiff-Appellant )

v. )

TAMMY S. OSBORNE )

Defendant-Appellee )

C.A. NO. 16208  
CLERK OF COURTS

JOURNAL ENTRY

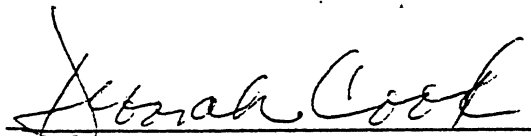
This cause was heard on August 10, 1993 after notice to the parties to show cause why the within appeal should not be dismissed because of untimely filing of the notice of appeal by the appellant, Owners Management, Inc., "Owner's Management." On February 3, 1993, the Barberton Municipal Court dismissed the forcible entry and detainer action filed by Owner's Management against appellee, Tammy S. Osborne. Owner's Management then filed a motion for findings of fact and conclusions of law, pursuant to Civ.R. 52; the trial court issued its findings of fact on March 2, 1993. Owner's Management filed a notice of appeal with this court on March 24, 1993.

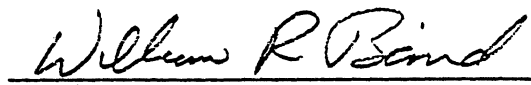
A notice of appeal must be filed within thirty days from the entry of the judgment or order from which a party appeals. App. R. 4. The judgment in this case was issued on February 10, 1993, more than thirty days before Owner's Management filed its notice of appeal. Owner's Management contends that its Civ.R. 52 motion for findings of fact and conclusions of law tolled the running of the time limit in which it could file its notice of appeal. We disagree. Ohio Civil Rule of Procedure 1(C) provides that the Ohio Rules of Civil Procedure, "to the extent


that they would by their nature be clearly inapplicable, shall not apply to procedure \*\*\* (3) in forcible entry and detainer \*\*\*." On the authority of Civ.R. 1(C), the Supreme Court of Ohio has specifically held that Civ.R. 52 does not apply to forcible entry and detainer proceedings. State, ex rel. GMS Management Co., Inc. v. Callahan (1989), 45 Ohio St.3d 51, paragraph one of the syllabus.

As such, the Civ.R. 52 motion for findings of fact and conclusions of law filed by Owner's Management did not toll the time period in which Owner's Management had to file its notice of appeal. Thus, the notice of appeal was untimely filed in accordance with App.R. 4.

Therefore, we have no jurisdiction to consider this appeal. The appeal is hereby dismissed at Owner's Management's costs.

  
\_\_\_\_\_  
Judge

  
\_\_\_\_\_  
Judge

  
\_\_\_\_\_  
Judge

cc: Ted S. Freidman, Attorney for Plaintiff, 6175 S.O.M. Center Rd., Suite 210, Solon, OH 44139.

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