

RENDERED: JANUARY 31, 2003; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000779-MR

CHARLES KOGER

APPELLANT

v. APPEAL FROM OHIO CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
ACTION NO. 02-CI-00063

SUSAN DEWITT;
PHILLIP BALLARD

APPELLEES

OPINION AND ORDER DISMISSING

** ** * * *

BEFORE: BAKER, GUIDUGLI, AND SCHRODER, JUDGES.

BAKER, JUDGE. Charles Koger brings this pro se appeal from a February 27, 2002 order of the Ohio Circuit Court. We dismiss.

On January 11, 1994, Koger was arrested for murder. He alleges that appellees seized from him personal property with a value of approximately \$22,500.00 and never returned same. On February 27, 2002, Koger filed a civil action in the Ohio Circuit Court against appellees for recovery of the seized property. By February 27, 2002 order, the court dismissed

Koger's action. Some twenty eight days later, on March 25, Koger filed a motion for specific findings of fact and conclusions of law pursuant to Ky. R. Civ. P. (CR) 52.01, 52.04, and 41.02. Koger then filed notice of appeal with this Court on April 12, 2002.

Under CR 73.02(1)(a), a notice of appeal must be filed within thirty days after the date of notation of service of the order or judgment appealed. It is well established that compliance with the time requirements of CR 73.02(1)(a) is mandatory and jurisdictional. See Fox v. House, Ky. App., 912 S.W.2d 450 (1995). The failure to timely file a notice of appeal is fatal and results in dismissal of the appeal. See City of Devondale v. Stallings, Ky., 795 S.W.2d 954 (1990).

In the instant case, the circuit court entered an order dismissing Koger's action on February 27, 2002; the service notation was also entered on February 27. Koger filed the notice of appeal on April 12, 2002, well outside the thirty day limitation of CR 73.02(1)(a).¹ As such, we are of the opinion that Koger's notice of appeal was untimely filed and that the instant appeal must be dismissed.

¹We observe that Koger's motion under Ky. R. Civ. P. (CR) 52.01, 52.04 and 41.02 was not filed until March 25. As the motion was not filed within ten days of the court's order, the motion did not operate to toll the time for filing a notice of appeal under CR 73.02(1)(e).

For the foregoing reasons, the appeal is hereby
ORDERED DISMISSED.

ALL CONCUR.

ENTERED: January 31, 2003

/s/ Matthew J. Baker
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

Charles Koger, Pro Se
St. Mary, Kentucky

BRIEF FOR APPELLEES:

Michael T. Lee
Owensboro, Kentucky