[Cite as *Union Sav. Bank v. Duffy*, 2012-Ohio-3232.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Union Savings Bank,	:	
Plaintiff-Appellee,	:	
v.	:	
J. Stephen Duffy a.k.a. John Stephen Duffy a.k.a. Stephen J. Duffy,	:	No. 11AP-927
	:	(C.P.C. No. 11CVE-01-1422)
Defendant-Appellant,	:	(REGULAR CALENDAR)
Jane Doe, name unknown, spouse of J. Stephen Duffy a.k.a. John Stephen Duffy a.k.a. Stephen J. Duffy et al.,	:	
Defendants-Appellees.	:	

D E C I S I O N

Rendered on July 17, 2012

Lerner, Sampson & Rothfuss, and *Jesse M. Kanitz*, for appellee Union Savings Bank.

Rachel K. Robinson, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

DORRIAN, J.

{¶ 1} Defendant-appellant, J. Stephen Duffy, appeals from a judgment of the Franklin County Court of Common Pleas granting default judgment in favor of plaintiff-appellee, Union Savings Bank.

{¶ 2} Union Savings filed an action in foreclosure on February 1, 2011 naming Mr. Duffy as the defendant. Mr. Duffy did not file an answer but did file a written request for mediation on February 23, 2011, and attended a mediation session on

August 12, 2011. Union Savings moved for default judgment on September 23, 2011 and the trial court granted that motion on September 30, 2011, concurrently entering a judgment entry of foreclosure.

{¶ 3} Mr. Duffy filed a timely notice of appeal on October 28, 2011 bringing the following sole assignment of error:

> The trial court erred by granting Appellee Union Savings Bank's September 23, 2011 Motion for Default Judgment without complying with the procedures set forth in Civil Rule 55 and Local Rule 55 of the Franklin County Common Pleas Court Local Rules. Therefore, as a matter of law, the September 30, 2011 Judgment Entry and Decree in Foreclosure must be vacated.

{¶ 4} This appeal presents two questions: first, whether Mr. Duffy entered an appearance in the case that would trigger the notice requirements of the Ohio Rules of Civil Procedure and applicable local rules before default judgment could be entered, and second, whether Mr. Duffy received such notice.

{¶ 5} We find that Mr. Duffy did in fact enter an appearance in the case triggering the notice requirements under rules of procedure governing default judgments. Appellant filed a formal request in the trial court for referral to mediation, and the trial court responded with a docketed order directing the parties to mediation. This court has liberally construed the term "appearance" for purposes of applying the notice provisions of Civ.R. 55(A), finding far less formal intervention in the case to constitute an appearance than what occurred in the current case. *See, generally, Am. Communications of Ohio, Inc. v. Hussein*, 10th Dist. No. 11AP-352, 2011-Ohio-6766, ¶ 10. Mr. Duffy's request for mediation was enough to constitute an appearance for purposes of invoking his right to receive notice of impending default judgment.

{¶ 6} Mr. Duffy argues that, having made an appearance in the matter, he was not given the time allowed by rule to respond to the motion for default judgment. The plain language of Civ.R. 55(A) provides that if a party against whom judgment by default is sought has appeared in the action, that party "shall be served with written notice of the application for judgment at least seven days prior to the hearing on such

application." Although in fact exactly seven days elapsed between the filing of this motion and judgment against appellant, appellant argues that he was entitled to an additional three days to respond to the motion because Union Savings served him with the motion by mail, and, pursuant to Civ.R. 6(E), three days must be added to the required period:

> **Time: additional time after service by mail.** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three days shall be added to the prescribed period. This subdivision does not apply to responses to service of summons under Rule 4 through Rule 4.6.

{¶ 7} It is unnecessary in the present case, however, to determine whether the three-day period of Civ.R. 6(E) is applicable to motions for default judgment that are served by ordinary mail upon the opposing party. The Franklin County Court of Common Pleas, by local rule, has imposed additional procedural safeguards in default judgment cases. Loc.R. 55.01 of the Franklin County Court of Common Pleas provides that "[i]f the party against whom judgment by default is sought has appeared in the action, written notice of the hearing on the motion along with the date and time fixed by the Assignment Commissioner with the concurrence of the Trial Judge shall be served upon that party." While Union Savings argues that in the present case its service upon appellant of the motion for default judgment provided sufficient notice that the motion would, pursuant to App.R. 55, be deemed submitted to the trial court seven days after filing, the trial court was not free to disregard its own local rule in the present case and proceed to grant default judgment without independently docketing the matter for a non-oral hearing and giving appellant notice of that date.

{¶ 8} While on the present facts that conclusion may seem to unduly raise procedure over substance in the case, our decision in *Cuervo v. Snell*, 10th Dist. No. 99AP-1442 (Sept. 26, 2000), is directly on point: " '[H]owever hurried a court may be in its efforts to reach the merits of a controversy, the integrity of procedural rules is

dependent upon consistent enforcement because the only fair and reasonable alternative thereto is complete abandonment.' " *Id.*, quoting *Miller v. Lint*, 62 Ohio St.2d 209, 215 (1980). If a court, therefore, disregards the response time created by rule, this can constitute reversible error. *Id.*, citing *Gibson-Myers & Assoc. v. Pearce*, 9th Dist. No. 19358 (Oct. 27, 1999).

{¶ 9} Finally, we note that the parties extensively briefed and argued the question whether the trial court's judgment in the present case was void or merely voidable. The posture of the present case, however, does not require us to address this issue: whether the trial court's judgment is void or merely voidable, it is in either case reversible on appeal.

{¶ 10} In summary, we hold that the trial court erred in granting default judgment in favor of Union Savings because the proceedings in the trial court did not comply with Loc.R. 55.01 of the Franklin County Court of Common Pleas. Therefore, Mr. Duffy's assignment of error is sustained. The judgment of the Franklin County Court of Common Pleas is reversed, and this matter is remanded to that court for further proceedings in accordance with law and consistent with this decision.

Judgment reversed;
cause remanded.

BRYANT and TYACK, JJ., concur.