

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Akaki Tikaradze

Court of Appeals No. L-11-1217

Appellee

Trial Court No. CVI-11-06148

v.

Kenwood Gardens Apartments

DECISION AND JUDGMENT

Appellant

Decided: August 17, 2012

* * * * *

James P. Silk, Jr., for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This is an appeal from a default judgment issued by the Toledo Municipal Court in a landlord and tenant dispute. Because we conclude that the trial court did not abuse its discretion in granting a default judgment and awarding damages, we affirm.

{¶ 2} Appellee, Akaki Tikaradze, filed a suit in small claims court against his landlord, appellant, Kenwood Garden Apartments. In the complaint he alleged that

appellant had breached the lease agreement and had failed to repair a heater in his apartment for five days and nights. Appellee claimed damages in the amount of \$68 for a hotel bill and \$2,500 in compensation for “extreme inconvenience and psychological distress” caused by appellant’s “blatant unprofessionalism” and that it “negatively affected [his] job performance.”

{¶ 3} A trial was scheduled for May 17, 2011, but appellant failed to appear to defend the suit. In a decision issued the same day, the magistrate recommended that default judgment be granted in favor of appellee, and an award of \$2,568 plus statutory interest be granted against appellant. Appellant responded by filing objections to the magistrate’s recommendations. On June 22, 2011, the trial court overruled appellant’s objections and adopted the magistrate’s decision.

{¶ 4} Appellant now appeals from that judgment, arguing the following sole assignment of error:

The trial court erred by adopting the Magistrate’s Recommendations of Judgment in the amount of \$2,568.00 when no evidence was presented regarding damages.

{¶ 5} Chapter 1925 of the Revised Code provides the procedures for the small claims division of a municipal court. Proceedings in small claims courts are subject to the Ohio Rules of Civil Procedure pursuant to R.C. 1925.16, but only where the rules are not inconsistent with the procedures provided in Chapter 1925. *See Wagner v. Dambrosio*, 8th Dist. No. 52142, 1986 WL 12648 (Nov. 6, 1986). In line with the goal of

the small claims division to provide for the efficient, informal and inexpensive adjudication of small claims, pleadings are kept to a minimum.

{¶ 6} Under R.C. 1925.05(A), small claims courts are permitted to enter default judgment where a defendant fails to appear at trial. “R.C. 1925.05(A) * * * suggests the failure to appear at [trial] constitutes an admission of liability, much as the failure to file an answer in the general division of the municipal court constitutes an admission of liability.” *Miller v. McStay*, 9th Dist. No. 23369, 2007-Ohio-369, ¶ 8. Consequently, a default by a defendant arises when the defendant has failed to contest the allegations raised in the complaint, making default judgment proper against the defendant since by the omission of statements refuting the plaintiff's claims, liability has been admitted or “confessed.” *Reese v. Proppe*, 3 Ohio App.3d 103, 105, 443 N.E.2d 992 (8th Dist.1981). A trial court's decision to grant or deny a motion for default judgment will not be reversed absent an abuse of discretion. *Huffer v. Cicero*, 107 Ohio App.3d 65, 74, 667 N.E.2d 1031 (4th Dist.1995).

{¶ 7} Furthermore, a default judgment is “based upon admission and * * * therefore obviates the need for proof.” *Ohio Valley Radiology Assoc., Inc. v. Ohio Valley Hosp.*, 28 Ohio St.3d 118, 122, 502 N.E.2d 599 (1986). In addition, in a small claims case it is not necessary for a plaintiff to file an application for default judgment prior to the trial court's entry of such judgment. *Schmidt v. Brower*, 11th Dist. No. 2010-A-0014, 2010-Ohio-4431, ¶ 21. *Accord Miller, supra*, at ¶ 13-14; *Sheaff v. Conese*, 12th Dist. No.

CA-2001-10-242, 2002-Ohio-5607, ¶ 36. Even Civ.R. 55 provides, in pertinent part, that

If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court *may* conduct such hearings or order such references as it deems necessary and proper and shall when applicable accord a right of trial by jury to the parties. (Emphasis added.)

Therefore, a trial court's decision to conduct a hearing as to damages is discretionary where the amount requested is clear from the complaint.

{¶ 8} In this case, appellant does not dispute that it received notice of the trial date. On the notice sent to appellant, it clearly states: "If you do not appear at the trial, judgment may be entered against you by default, and your earnings may be subjected to garnishment or your property may be attached to satisfy said judgment." Appellant did not appear on the date or otherwise defend prior to that day. Despite appellant's arguments to the contrary, we conclude that appellee was not required to offer proof of any of the allegations or claims in his complaint since appellant failed to appear and dispute those claims, including the amount of damages. Therefore, the trial court did not abuse its discretion in adopting the magistrate's decision and granting the default judgment and the award of damages.

{¶ 9} Accordingly, appellant's sole assignment of error is not well-taken.

{¶ 10} The judgment of the Toledo Municipal Court is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
