[Cite as *Gwen v. Regional Transit Auth.*, 2004-Ohio-628.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 82920

TERRI L. GWEN Plaintiff-Appellant vs. REGIONAL TRANSIT AUTHORITY, et al. Defendants-Appellees [Earl McKinney, Defendant-Appellee/Cross-Appellant]	:	JOURNAL ENTRY and OPINION

DATE OF ANNOUNCEMENT OF DECISION:	February 12, 2004
CHARACTER OF PROCEEDING:	Civil appeal from Common Pleas Court Case No. CV-408121
JUDGMENT:	AFFIRMED IN PART, REVERSED IN PART, AND REMANDED
DATE OF JOURNALIZATION:	_____

APPEARANCES:

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ANTHONY O. CALABRESE, JR., J.

{¶1} Defendant-appellant Terri Gwen ("appellant") appeals from the decision of the trial court dismissing her case against the Greater Cleveland Regional Transit Authority ("GCRTA"). More specifically, appellant is appealing the trial court's docketed entry of April 5, 2002, denying appellant's motion for a new trial against GCRTA and the trial judge's February 13, 2002 memorandum of opinion. In addition, appellee Earl McKinney ("McKinney") filed a notice of cross appeal with this court on May 29, 2003. McKinney disputes the May 5, 2003 journal entry granting a default judgment of $360,267.92 in appellant's favor.

{¶2} Having reviewed the arguments of the parties and the pertinent law, we affirm in part, reverse in part, and remand.

I

{¶3} According to the facts, appellant was hired by GCRTA as a trainee bus operator on December 28, 1987. Appellant became a full-time bus operator on February 28, 1989, and was assigned to the Triskett garage. Appellant's work history demonstrates a poor

attendance record as well as various discipline incidents. Early on in appellant's career with GCRTA, appellant reported that one of her co-workers, Fred Leadger, had grabbed her, propositioned her, and tried to kiss her. Appellant's filing of this report resulted in some animosity and caused some of appellant's co-workers to shun her.

{¶4} On July 10, 1996, appellant was working and driving her bus on her route when she observed an off-duty co-worker, appellee McKinney, driving alongside her. Appellant testified that McKinney exposed himself to her. "He blew [his horn] a third time. I looked over and he was playing with himself. He had his penis in his hand. *** I could not believe what I saw."[1] After exposing himself to appellant, McKinney drove to the RTA bus center, walked onto appellant's bus, exposed himself again, and demanded a kiss.[2]

Five days after the incident appellant reported it to her supervisor, Berry Grant. Grant investigated the matter and determined that McKinney was off-duty at the time of the incident. McKinney alleged that his pants were loose and accidently fell down. Grant considered firing McKinney; however, due to conflicting versions and lack of corroborating witnesses, Grant suspended McKinney for 30 days without pay for unbecoming behavior.

{¶5} Appellant contacted Karen DiNunzio, claims investigator,

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[1]Tr. at 190, Sept. 4, 1998, deposition of Terri Lynn Gwen.

[2]Tr. at 223-224, Sept. 4, 1998, deposition of Terri Lynn Gwen.

and inquired about her eligibility for workers' compensation due to psychological injury from McKinney's contact. DiNunzio told appellant that because there was no physical contact she was ineligible for workers' compensation. However, appellant was told she was eligible for up to 26 weeks of short-term disability benefits.

{¶6} Appellant received short-term benefits for the maximum duration allowed and never returned to work after July 15, 1996. Appellant received benefits through January 14, 1997, and was then sent a letter from GCRTA stating that if her absence from work exceeded six months, she would be terminated. Appellant did not return to work and was terminated with a contractual right to reinstatement within one year of July 15, 1996. Appellant needed to provide a full medical release before returning to work and never did so. After appellant was terminated, her treating psychologist forwarded a letter to GCRTA. The letter indicated that appellant was ready and willing to work, provided she be transferred to another work setting or location that effectively eliminated the possibility of contact with the individuals involved in her trauma. GCRTA's position was that it had no way of effectively eliminating contact with the individuals involved since the majority of contact occurred while the individuals were off-duty. Appellant never exercised her right of reinstatement after her termination.

II

{¶7} According to the case history, appellant originally filed

her lawsuit on July 10, 1997 in the United States District Court, Northern District of Ohio, Eastern Division, in which she alleged Title VII and R.C. 4112 violations against GCRTA. On May 19, 1999, the federal court granted GCRTA's motion for summary judgment on the federal claims and dismissed the state claims without prejudice. Appellant filed an appeal with the federal court of appeals, which was subsequently denied.

{¶8} After the federal court granted GCRTA's motion for summary judgment, appellant filed her case in state court on May 17, 2000. During the federal case, GCRTA provided appellant with voluminous amounts of documents. In addition, appellant took the deposition of six witnesses, including McKinney. In the state case, appellant did not take any additional depositions *because the parties agreed to use the discovery from the federal case*. With the exception of the Title VII and Section 1983 claims, appellant's complaint is nearly identical to the case filed in federal court. Appellant's claims before the state court primarily involve four different counts. The claims include the following: retaliation in violation of R.C. 4112, a state law claim of intentional infliction of emotional distress, civil assault and battery, and the state law claim of defamation.

{¶9} On January 10, 2002, the parties appeared in trial court and argued their respective motions in limine. On February 11, 2002, the parties proceeded with the trial on appellant's state law claims. The next day, after appellant's opening statements to the jury, GCRTA filed its motion for directed verdict. GCRTA argued

that appellant was precluded from relitigating her claims based on the doctrines of res judicata and collateral estoppel. On February 13, 2002, after receiving briefs and hearing arguments, the trial judge granted GCRTA's motion for directed verdict stating that the federal claims and remedies were identical to the state claims and remedies. The state claim was dismissed against appellee GCRTA; however, appellee McKinney remains a defendant in the lawsuit.

{¶10} As previously stated, appellant is now appealing the trial court's docketed entry of April 5, 2002, denying appellant's motion for a new trial and the trial judge's February 13, 2002 memorandum of opinion.

III

{¶11} Appellant's first two assignments of error will be addressed together below. Appellant's first assignment of error states: "The trial court's decision to grant a directed verdict in favor of the Appellee RTA is against the manifest weight of the evidence." Appellant's second assignment of error states: "The trial court's decision to grant Appellee RTA's Motion for a Directed Verdict was contrary to law."

{¶12} Civ.R. 50(A), which sets forth the grounds upon which a motion for directed verdict may be granted, states:

> **"(A) Motion for directed verdict.**
>
> ***When made.*** **A motion for a directed verdict may be made on the opening statement of the opponent, at the close of the opponent's evidence or at the close of all the evidence.**
>
> ***When not granted.*** **A party who moves for a directed verdict**

> **at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts.**
> ***Grounds.*** **A motion for a directed verdict shall state the specific grounds therefor.**
>
> ***When granted on the evidence.*** **When a motion for a directed verdict has been properly made, and the trial court, after construing the evidence most strongly in favor of the party against whom the motion is directed, finds that upon any determinative issue reasonable minds could come to but one conclusion upon the evidence submitted and that conclusion is adverse to such party, the court shall sustain the motion and direct a verdict for the moving party as to that issue."** (Emphasis in original.)

{¶13} A motion for directed verdict is to be granted when, construing the evidence most strongly in favor of the party opposing the motion, the trial court finds that reasonable minds could come to only one conclusion and that conclusion is adverse to such party. Civ.R. 50(A)(4); *Crawford v. Halkovics* (1982), 1 Ohio St.3d 184; *The Limited Stores, Inc. v. Pan American World Airways, Inc.* (1992), 65 Ohio St.3d 66.

{¶14} A directed verdict is appropriate where the party opposing it has failed to adduce any evidence on the essential elements of this claim. *Cooper v. Grace Baptist Church* (1992), 81 Ohio App.3d 728, 734. The issue to be determined involves a test of the legal sufficiency of the evidence to allow the case to proceed to the jury, and it constitutes a question of law, not one of fact. *Hargrove v. Tanner* (1990), 66 Ohio App.3d 693, 695. Accordingly,

the courts are testing the legal sufficiency of the evidence rather than its weight or the credibility of the witnesses. *Ruta v. Breckenridge-Remy Co.* (1982), 69 Ohio St.2d 66, 68-69. Since a directed verdict presents a question of law, an appellate court conducts a de novo review of the lower court's judgment. *Howell v. Dayton Power and Light Co.* (1995), 102 Ohio App.3d 6. *Keeton v. Telemedia Co. of S. Ohio* (1994), 98 Ohio App.3d 405.

{¶15} It is with the above in mind that we now turn to the case at bar. Appellant's claims are barred by the doctrine of res judicata and collateral estoppel. Collateral estoppel (issue preclusion) prevents parties or their privies from relitigating facts and issues in a subsequent suit that were fully litigated in a prior suit. Collateral estoppel applies when the fact or issue (1) was actually and directly litigated in the prior action; (2) was passed upon and determined by a court of competent jurisdiction; and (3) when the party against whom collateral estoppel is asserted was a party in privity with a party to the prior action.

{¶16} In the case at bar, the federal court judge specifically addressed appellant's retaliation claim in the opinion. The trial judge stated that no reasonable jury could conclude from the evidence that GCRTA's reason for terminating appellant was based on anything but a legitimate, non-discriminatory, and non-pretextual reason. The federal court went on to state that appellant's claim

of gender discrimination failed as a matter of law.[3] Appellant was represented by legal counsel and had a full and fair opportunity to support her position in federal court. She may not bring the same issues up again in state court because she is dissatisfied with the federal outcome.

{¶17} In addition, according to the doctrine of res judicata, appellant is barred from bringing the same cause of action after judgment is rendered for a defendant. Today, we expressly adhere to the modern application of the doctrine of res judicata, and hold that a valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action. *Grava v. Parkman Township* (1995), 73 Ohio St.3d 379, 382.

[3]May 21, 1999, United States District Court, memorandum and order, p. 17.

{¶18} 1 Restatement of the Law 2d, Judgments (1982), Section 24(1), provides: "When a valid and final judgment rendered in an action extinguishes the plaintiff's claim pursuant to the rules of merger or bar ***, the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose." Section 24(1) of the Restatement of Judgments, supra, at 196. See, also, 46 American Jurisprudence 2d, supra, at Sections 516 and 533. Comment b to Section 24 of the Restatement of Judgments, supra, at 198-199, defines a "transaction" as a "common nucleus of operative facts."

{¶19} As previously stated, in appellant's state claims for retaliation and intentional infliction of emotional distress, she relies on the same transaction with the same nucleus of operative facts. In addition, due to the similarities involved, appellant and appellees agree to utilize the discovery from the federal case in the second state case. The trial court in the case only made its decision after hearing oral arguments, receiving the written briefs and the appellate decision, and properly evaluating the evidence. We find that the trial court acted properly and did not err when it granted GCRTA's motion for a directed verdict.

{¶20} Appellant's first and second assignments of error are overruled.

IV

{¶21} Appellant's third assignment of error states: "The trial court's denial of Appellant's Motion for a New Trial was contrary to law and an abuse of discretion."

{¶22} Appellant contends that she should receive a new trial under Civ.R. 59. Civ.R. 59 states the following:

> **"(A) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues upon any of the following grounds:**
>
> **Irregularity in the proceedings of the court, jury, magistrate, or prevailing party, or any order of the court or magistrate, or abuse of discretion, by which an aggrieved party was prevented from having a fair trial;**
>
> **Misconduct of the jury or prevailing party;**
>
> **Accident or surprise which ordinary prudence could not have guarded against;**
>
> **Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice;**
>
> **Error in the amount of recovery, whether too large or too small, when the action is upon a contract or for the injury or detention of property;**
>
> **The judgment is not sustained by the weight of the evidence; however, only one new trial may be granted on the weight of the evidence in the same case;**
>
> **The judgment is contrary to law;**
>
> **Newly discovered evidence, material for the party applying, which with reasonable diligence he could not have discovered and produced at trial;**
>
> **Error of law occurring at the trial and brought to the attention of the trial court by the party making the application.**
>
> **In addition to the above grounds, a new trial may also be granted in the sound discretion of the court for good cause**

shown."

{¶23} Civ.R. 59(A)(6) provides that a trial court may order a new trial if it is apparent that the verdict is not sustained by the manifest weight of the evidence. A reviewing court may reverse the trial court's order if the trial court abused its discretion in failing to order a new trial. *Antal v. Olde Worlde Products* (1984), 9 Ohio St.3d 144, 145. The term "abuse of discretion" connotes more than an error of law or judgment; it implies that the trial court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217. The high abuse of discretion standard defers to the trial court order because the trial court's ruling may require an evaluation of witness credibility which is not apparent from the trial transcript and record. *Schlundt v. Wank* (Apr. 17, 1997), Cuyahoga App. No. 70978, unreported.

{¶24} Granting a motion for new trial rests largely in the sound discretion of the trial court, and the granting or refusal of such motion will not be disturbed upon review unless there is an abuse of judicial discretion. An abuse of discretion implies an unreasonable, arbitrary or unconscionable attitude upon the part of the court. A trial court abuses its discretion in granting a motion for new trial after a jury verdict where substantial evidence supports its verdict. *Verbon v. Pennese* (1982), 7 Ohio App.3d 182.

{¶25} A court may not set aside such a verdict based upon a mere difference of opinion. A judgment may not be vacated on the ground

that a verdict is against the weight of the evidence except as a matter of law. *Poske v. Mergl* (1959), 169 Ohio St. 70, *Dyer v. Hastings* (1950), 87 Ohio App. 147. A new trial will not be granted where the verdict is supported by competent, substantial and apparently credible evidence. 40 Ohio Jurisprudence 2d 975, New Trial, Section 65. The court does not undertake to judge the credibility of the evidence, but only to judge whether it has the semblance of credibility. *Dyer*, supra, at 150.

{¶26} The record in this case fails to indicate that the court's decision is not supported by credible evidence. A careful review of the evidence reveals the following: appellant's counsel delivered his opening statements to the jury and GCRTA moved for a directed verdict at the conclusion of appellant's opening statement. Instead of making an immediate ruling, the trial court then allowed appellant time to formulate a response. Appellant came into court the next day and presented a rebuttal argument. It was only at the conclusion of appellant's rebuttal that the trial court issued its ruling. The trial court considered all of the information before it made its decision. As such, the trial judge did not act in any way that could be construed to be unreasonable, arbitrary, or unconscionable.

{¶27} Appellant's third assignment of error is overruled.

V

{¶28} Appellant's fourth, fifth, and tenth assignments of error will be addressed in this section. Appellant's fourth assignment of

error states: "The trial court erred when the Judge discussed the Appellant's case with the jury when Appellant's counsel was, by Judge's instruction, out of the courtroom." Appellant's fifth assignment of error states: "The trial court's refusal to hear any of Appellant's pending Motions was contrary to law." Appellant's tenth assignment of error states: "The trial court erred when it granted several parts of Appellee's Motion in Limine."

{¶29} The general rule regarding jury communication is that communication by the judge to the jury outside the presence of the parties is error, which *may* warrant a new trial. However, as is the case with most rules, there are exceptions. If the communication is not of a substantive nature resulting in prejudice to the complaining party, it does not warrant a new trial.

{¶30} As a general rule, any communication with the jury outside the presence of the defendant or parties to a case by either the judge or court personnel is error which may warrant the ordering of a new trial. *Rushen v. Spain* (1983), 464 U.S. 114. The communication must have been of a substantive nature and in some way prejudicial to the party complaining. To prevail on a claim of prejudice due to an ex parte communication between judge and jury, the complaining party must first produce some evidence that a private contact, without full knowledge of the parties, occurred between the judge and jurors which involved substantive matters. *State v. Murphy* (1992), 65 Ohio St.3d 554.

{¶31} The dialogue in the case at bar, included the following:

"The Court: When the lawyers come back, we're gonna have them question you about being an alternate, so you want to take a seat now?

Juror Waitkus: Sure.

The Court: And the other two gentlemen out there, just be patient. We'll have you on your way also shortly. They have two witnesses outside that have been here all day and I scolded the lawyers. So what we'll do as soon as we seat Mr. Waitkus or one of the other gentlemen, we will take a very short break and then we'll have them make opening statements. Then we'll go home, okay? So that shouldn't take too long. All right. The extra juror –

Mr. Gilbert: We just arrived back, your Honor, for the record.

The Court: What?

Mr. Gilbert: We just came back in.

The Court: All right. That's fine. Now you can start questioning this gentleman who is the ninth juror. No you may question the ninth juror."[4]

{¶32} The communication in the case at bar is clearly not substantive or prejudicial in any way. The communication in this case was harmless error. Furthermore, the jury did not even reach a verdict in this case. Appellant claims in her brief that, throughout the proceedings, counsel tried to get the court to hear appellant's motions without success. As previously stated, a review of the record demonstrates that the trial judge did address appellant's concerns regarding various motions. In fact, the trial court asked appellant's counsel several times if he was going to argue his motion, at which time appellant did finally argue his

[4]Tr. at 243-244, Feb. 11, 2002, Visiting Judge Norman Fuerst.

motion.[5] Appellant's other motions were addressed during this time as well; however, they were denied.[6]

{¶33} As far as appellee's motion in limine being granted, it is our finding that the trial court acted properly. On January 10, 2002, before the case was sent to the visiting judge, the trial court judge initially considered the parties' motions in limine. During that time, the judge granted a motion for the appellant as well as a motion for the appellee, as evidenced later in the visiting judge's transcript.[7] Furthermore, on February 11, 2002, the visiting judge asked appellant's counsel if he had any further motions that he would like addressed before selecting the jury. Appellant's counsel responded by stating: "Your Honor, my motions can be dealt with after the jury is selected *** before we get *** before we get into opening statement. That's the way it is generally done. That's fine with me."[8] There was no evidence presented that either judge ruled in any way that was arbitrary or unconscionable when considering what testimony to allow.

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[5]Tr. at 272-279, Feb. 11, 2002, Visiting Judge Norman Fuerst. "The Court: You were asked or given the right overnight to address the motion that was made at the end of your opening statement. Have you done so? *** The Court: Anything else, any – – do you want to say anything? *** Mr. Gilbert: I will argue the motion. *** Mr. Gilbert: I do wish to argue it. I'm prepared to argue it. *** The Court: All right. Go ahead. Go ahead then, please."

[6]Tr. at 276.

[7]Tr. at 24-26 & 51.

[8]Tr. at 174-204.

{¶34} Accordingly, appellant's fourth, fifth, and tenth assignments of error are overruled.

V

{¶35} Appellant's sixth, seventh, eighth, and ninth assignments of error will be addressed in this section. Appellant's sixth assignment of error states: "The trial court erred when it selected an alternate juror in a manner contrary to the Ohio Rules of Civil Procedure." Appellant's seventh assignment of error states: "The trial court erred when it selected the jury in a manner contrary to the Ohio Revised Code." Appellant's eighth assignment of error states: "The trial court erred when it limited the questioning of the new panel of jurors to areas not previously discussed with the previous jurors." Appellant's ninth assignment of error states: "The trial court improperly went beyond the authority given a visiting judge."

{¶36} Appellant argues that the trial judge abused his discretion when he allowed members of the jury panel who were in their second week to be excused. In addition, appellant argues that the judge erred when he limited the number of preemptory challenges and the question asked of the prospective jurors.

{¶37} The determination of whether a prospective juror should be disqualified for cause is a discretionary function of the trial court. Such determination will not be reversed on appeal absent an abuse of discretion. *Zachariah v. Rockwell Internatl.* (1998), 127 Ohio App.3d 298; *Berk v. Matthews* (1990), 53 Ohio St.3d 161, 169;

see also, *State v. Smith* (1997), 80 Ohio St.3d 89. During the selection of the jury, the trial court judge asked by a show of hands how many jurors were in the second week of their service.[9] All of the jurors responded affirmatively. The judge then asked each juror individually who would be able to continue to serve on a second case. The jurors who indicated that they could not serve were excused by the court. The judge's actions were proper and within his broad discretion. Therefore, appellant's seventh assignment of error is overruled.

{¶38} Additionally, appellant argues that the court erred when it limited the questioning of the new panel of jurors; we find this not to be the case. In the case at bar, both parties and the court examined the original jurors, the prospective jurors, and the alternate juror. The last jurors impaneled did not hear the questions asked of the first set. However, the parties were permitted to ask the newly-seated jurors questions that would show any bias or prejudice relevant to the case. As previously stated, the trial court is given broad discretion in deciding what questions are to be asked on voir dire. As a general rule, "voir dire may constitute reversible error only upon a showing of abuse of discretion by the trial court. Moreover, a trial court has "great latitude in deciding what questions should be asked on voir dire." *State v. Twyford* (2002), 94 Ohio St.3d 340, 345.

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[9]Tr. at 144.

{¶39} In appellant's ninth assignment of error she argues the visiting judge exceeded his authority when he granted GCRTA's motion for a directed verdict. We do not find merit in appellant's claims. In the case sub judice, after appellant's opening statement to the jury, GCRTA presented an oral motion for directed verdict. GCRTA later filed its written motion with the court. The trial judge heard arguments and received briefs regarding the motion for directed verdict. The trial judge did not rule on the motion immediately; instead he gave the appellant until the next day to prepare a response. On February 12, 2002, the court granted GCRTA's motion and later issued a written opinion with its rationale. The visiting judge did not overrule or vacate either of the two judges who were previously involved with the case; he simply ruled on a motion newly presented to the court. Appellant claims that the judge had already made up his mind after he heard only one side of the story because the judge asked appellant's counsel to put forth his argument orally.[10] Appellant's counsel clearly does not have the ability to presuppose the trial court's thought process. This court understands appellant's unhappiness with the trial court's adverse ruling regarding her motion. However, appellant was given a full opportunity to argue her side of the motion, and indeed did so. Appellant's argument just so happened to be oral and not written, and that changing dynamic is inherent in every trial.

[10]See p. 20, appellant's brief, filed Aug. 19, 2003.

{¶40} Appellant's sixth, seventh, eighth, and ninth assignments of error are overruled.

{¶41} Appellee's cross-appeal states that McKinney is appealing the May 5, 2003 order. The trial court's journal entry grants a default judgment in the amount of $360,267.92, plus interest. The entry states the following:

{¶42} "Plaintiff's motion for a ruling on amount of judgment against Defendant Earl McKinney, filed 3/11/2002, is granted. Based on the testimony of Plaintiff Terri Gwen at Default Hearing against Defendant Earl McKinney on 05/08/01 before Judge Nancy M. Russo. This court grants Default Judgment against Defendant Earl McKinney on Plaintiff's claim for violation of ORC 4112, Intentional Infliction of Emotional Distress, Civil Assault and Battery, and Defamation of Character. This court awards Plaintiff $160,267.92 for compensatory lost wages and health care coverage in addition to $200,000 for punitive damages, totaling $360,267.92. The parties agreed that this court would review Default Hearing transcript by Judge Nancy M. Russo and determine amount of damages based on the 5/08/01 transcript. Default Judgment granted in the amount of $360,267.92 plus interest at 10 percent per annum from the date of judgment and costs."[11]

[11]See journal entry of May 5, 2003.

{¶43} A trial court's ruling on a motion for default judgment will not be reversed absent an abuse of discretion. *Davis v. Immediate Medical Servs.* (1997), 80 Ohio St.3d 10.

{¶44} In the case at bar, appellant McKinney and his counsel filed their answer approximately 60 days late. However, the lower court granted McKinney leave to file his answer. Appellee's answer appears on the docket and is dated October 12, 2000, therefore demonstrating that appellee McKinney did file an answer in this case. In addition, appellee McKinney had participated in depositions, settlement conferences, and numerous conference calls with opposing counsel. We hereby find that the trial court erred when it granted default judgment in favor of appellant.

{¶45} Appellee McKinney's cross-appeal is hereby granted, and this case is hereby remanded.

{¶46} Judgment affirmed in part, reversed in part, and remanded to the trial court for further proceedings consistent with this opinion.

ANN DYKE, P.J., and KENNETH A. ROCCO, J., concur.

It is ordered that appellant and appellees shall each pay their respective costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

_____

ANTHONY O. CALABRESE, JR.
JUDGE

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).