

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

UNIVERSITY OF DAYTON,

CASE NO. 2020 CV 02221

Plaintiff,

JUDGE DENNIS J. ADKINS

-VS-

**DECISION, ORDER, AND ENTRY
SUSTAINING PLAINTIFF'S MOTION
FOR DEFAULT JUDGMENT AND
DECLARING DEFENDANT A
VEXATIOUS LITIGATOR PURSUANT
TO R.C. 2323.52**

PETER NEWMAN,

Defendant.

This matter is before the Court on *Plaintiff's Motion for Default Judgment* ("Motion for Default Judgment"), filed by Plaintiff on August 13, 2020. On the same day, Defendant filed *Defendant's Response to the Court's Rule 55 Notice of Default and Motion for Leave of Court for an Extension of Time to Answer or Otherwise Plead in Response to Plaintiff's Complaint* ("Response"). On August 27, 2020, Plaintiff filed *Plaintiff's Memorandum in Opposition to Defendant's Response to the Court's Rule 55 Notice of Default and Motion for Leave for an Extension of Time to Answer or Otherwise Plead* ("Opposition to Defendant's Response"), and Defendant filed his *Memorandum in Opposition to Plaintiff's Motion for Default Judgment* ("Defendant's Opposition to Default Judgment"). This matter is now properly before the Court and, for the reasons contained herein, the Court **SUSTAINS** Plaintiff's *Motion for Default Judgment* and declares that Defendant is a vexatious litigator pursuant to R.C. 2323.52.

I. Facts and Procedural History

This matter arises out of a *Motion for Leave to File Complaint Requesting Peter Newman to be Declared a Vexatious Litigator* ("Motion for Leave"), filed by Plaintiff on June 2, 2020. On the same day, Plaintiff filed its *Complaint*. Additionally, Plaintiff instructed the Montgomery County Clerk of Courts to serve Defendant with copies of the *Motion for Leave*, as well as the *Complaint*. See Docket; June 3, 2020

Instructions for Service. Notably, Defendant responded to Plaintiff's *Motion for Leave* on June 16, 2020 by filing *Defendant's Memorandum in Opposition to Plaintiff's Motion for Leave to File a Vexatious Litigator Complaint and Defendant's Motion for Civ.R.11 Sanctions*. Ultimately, the Court held that Plaintiff's *Motion for Leave* was not necessary in order for it to file its *Complaint* and, therefore, it was overruled as moot. Further, Defendant's *Memorandum in Opposition to Plaintiff's Motion for Leave* did not constitute a sufficient answer or pleading in response to Plaintiff's *Complaint*, which had been properly filed on June 2, 2020. Accordingly, the Court issued a *Notice* on July 30, 2020, stating that Defendant "is in default for answer or appearance."

In its *Motion for Default Judgment*, Plaintiff notes that Defendant was properly served with the *Complaint*, but has not filed an answer or other responsive pleading. *Motion for Default Judgment* at 2. Plaintiff further asserts that, although Plaintiff filed a *Memorandum in Opposition to Plaintiff's Motion for Leave to File a Vexatious Litigator Complaint and Defendant's Motion for Civ.R.11 Sanctions*, a request for sanctions is not a defense that can be raised in a motion in lieu of an answer. *Id.* Therefore, Plaintiff requests that the Court grant default judgment in its favor.

Conversely, in his *Response*, Defendant argues that he did not file an answer in this matter because he was not properly served with a copy of the *Complaint*. *Response* at 1. Accordingly, he requests that Plaintiff issue proper service and, alternatively, he asks that the Court grant him until August 21, 2020 to file an answer or other responsive pleading. *Id.*

In its *Opposition to Defendant's Response*, Plaintiff notes that, not only has Defendant acknowledged receipt of the *Complaint* in his request for sanctions, but the Summons issued by the Court was issued to Defendant, notifying him that he was a named defendant in this matter. *Id.* at 2. Further, the docket indicates that Defendant was served with the Summons and *Complaint* on June 9, 2020. *Id.* Accordingly, because Defendant received the *Complaint* and remains in default, Plaintiff maintains that it is entitled to judgment in its favor. *Id.*

Finally, in *Defendant's Opposition to Default Judgment*, he argues that Plaintiff's *Motion for Default Judgment* should be overruled because the *Complaint* was filed in bad faith and prematurely. *Defendant's Opposition to Default Judgment* at 1.

II. Law and Analysis

It is well-settled that “[a]fter being served with a complaint, if the defendant fails to contest the opposing party’s allegations by either pleading or otherwise defending, a default arises.” *Bank of Am. N.A. v. Shultz*, Second District Clark County No. 2012-CA-70, 2013 Ohio App. LEXIS 2542, ¶ 12 (June 21, 2013). Pursuant to Civ.R. 55(A), “[w]hen a party against whom a judgment or affirmative relief is sought has failed to plead or otherwise defend, *** the party entitled to a judgment by default shall apply in writing or orally to the court therefor[.]”

In the present case, the docket clearly establishes that Defendant was served with a copy of the *Complaint* on June 9, 2020. Therefore, according to the Ohio Rules of Civil Procedure, Defendant was required to file an answer or other responsive pleading by July 7, 2020. However, Defendant failed to do so. The Court further notes that Defendant’s claim that he was not properly served lacks merit because he referenced the allegations in the *Complaint* throughout his *Memorandum in Opposition to Plaintiff’s Motion for Leave to File a Vexatious Litigator Complaint and Defendant’s Motion for Civ.R.11 Sanctions*. In addition, Defendant is a licensed attorney, and should be aware of the deadlines set forth in the Ohio Rules of Civil Procedure regarding the filing of responsive pleadings. In sum, although Defendant was aware that he was a named defendant in this matter and was properly served with a copy of the *Complaint*, he failed to timely answer or otherwise plead and, therefore, default judgment in Plaintiff’s favor is appropriate.

III. Conclusion

Based upon the foregoing, the Court **SUSTAINS** Plaintiff’s *Motion for Default Judgment* and **ORDERS** that Defendant, Peter Newman, is hereby declared a vexatious litigator, pursuant to R.C. 2323.52. The Court further **ORDERS** that Defendant, Peter Newman, is **prohibited from instituting proceedings in a court of common pleas, municipal court, or county court, and from continuing existing legal proceedings, without first obtaining leave of court.**

THIS IS A FINAL APPEALABLE ORDER, AND THERE IS NO JUST CAUSE FOR DELAY FOR PURPOSES OF CIV. R. 54. PURSUANT TO APP. R. 4, THE PARTIES SHALL FILE A NOTICE OF APPEAL WITHIN THIRTY (30) DAYS.

SO ORDERED:

JUDGE DENNIS J. ADKINS

To the Clerk of Courts:

Please serve the attorney for each party and each party not represented by counsel with Notice of Judgment and its date of entry upon the journal.

This document is electronically filed by using the Clerk of Courts e-Filing system. The system will post a record of the filing to the e-Filing account "Notifications" tab of the following case participants:

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Copies of this document were sent to all parties listed below by ordinary mail:

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General Division
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Case Number:
2020 CV 02221

Case Title:
UNIVERSITY OF DAYTON vs PETER NEWMAN

Type:

Decision

So Ordered,

Electronically signed by dadkins on 09/03/2020 01:32:48 PM Page 5 of 5

I hereby certify this to be a true and
correct copy.

Witness my hand and seal this 2
day of December 20 20

Clerk of Common Pleas
Court of Montgomery County, Ohio

By E. Barnett
Deputy