

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
GREENE COUNTY

WILBERFORCE UNIVERSITY	:	
	:	C.A. No. 2026-CA-2
Appellees	:	
	:	Trial Court Case No. 2024 CV 0459
v.	:	
	:	(Civil Appeal from Common Pleas
PROJECT ONE GLOBE, LLC, ET AL.	:	Court)
	:	
Appellant	:	FINAL JUDGMENT ENTRY &
	:	OPINION

.....

Pursuant to the opinion of this court rendered on October 9, 2026, the judgment of the trial court is reversed, and the matter is remanded for further proceedings consistent with the opinion.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), the clerk of the court of appeals shall immediately send a copy of the court's ruling to each party and note that action on the docket. Additionally, pursuant to App.R. 27, the clerk of the court of appeals shall send a certified copy of this judgment, which constitutes a mandate, to the clerk of the trial court and note the service on the appellate docket.

For the court,



MARY K. HUFFMAN, JUDGE

LEWIS, P.J., and HANSEMAN, J., concur.

OPINION
GREENE C.A. No. 2026-CA-2

DAVOS FRANCOIS, Appellant, Pro Se
WALTER REYNOLDS, Attorney for Appellee

HUFFMAN, J.

{¶ 1} Davos Francois appeals from the Greene County Common Pleas Court's entry of default judgment in favor of Wilberforce University on its civil claims against Francois based on theories of alter ego and piercing the corporate veil.

{¶ 2} After reviewing the record, we find that because Francois had appeared in Wilberforce's civil action, the trial court erred when it granted default judgment against him without satisfying the seven-day notice and hearing requirements of Civ.R. 55(A). We therefore reverse the judgment of the trial court and remand this matter for further proceedings.

I. Background Facts and Procedural History

{¶ 3} In July 2023, Wilberforce University entered into a construction contract with Project One. The contract required Project One to construct a dormitory building for a price of \$581,160, payable in \$300,000 cash and the conveyance of four parcels of real property valued at \$281,160.

{¶ 4} Wilberforce and Project One executed a memorandum of understanding, which required that Project One provide a performance bond issued by My Place Finance in an amount sufficient to guarantee that Project One would pay all subcontractors, laborers, material suppliers for the work performed and material delivered and to guarantee that the project would be constructed and completed in a workmanlike manner. The receipt and sufficiency of the performance bond was a condition precedent to the transfers of the four

property parcels from Wilberforce to Project One. Wilberforce conveyed the four parcels to Project One by deed but retained a mortgage on the four parcels as additional security.

{¶ 5} My Place Finance and Project One also promised Wilberforce that My Place Finance would hold not less than \$581,000 on deposit at Wells Fargo Bank as security to guarantee the financial wherewithal to complete the construction project. After promising to maintain the security deposit, My Place Finance and Project One provided Wilberforce with a copy of My Place Finance's June 2023 Wells Fargo Bank checking account statement showing an ending balance of \$5,084,533.40, which Wilberforce claimed resulted in its justifiable reliance on My Place Finance's ability to perform all of the obligations of the performance bond.

{¶ 6} The construction project was to commence in July 2023 and to be completed within 75 days. Timely completion was essential because Wilberforce needed dormitory space for housing students. By September 24, 2023, Project One had allegedly failed to obtain the necessary construction permits for the project but had received \$480,160.00 in consideration, including cash (\$200,000) and four parcels of real estate (\$280,160.00) from Wilberforce, which purportedly exceeded the value of the work that had been performed at that stage. Although Project One had paid Guardian Structural Technologies \$75,900 for materials and Dalton Architects \$11,591.90 for architectural services related to the project, Wilberforce claimed that Project One had used \$112,508.10 for other projects unrelated to its contracted work.

{¶ 7} On December 7, 2023, Wilberforce provided a Notice of Non-Performance and Demand for Strict Compliance to be served on Project One and then provided a Second Notice of Non-Performance and Demand for Strict Compliance on January 17, 2024. On February 5, Wilberforce provided Project One and My Place Finance its Notice of Intent

to Terminate Contract. On February 6, 2024, Dalton Architects and Guardian Structural Technologies confirmed that Project One had not paid them for past due invoices of \$24,733.90 and \$84,600.00, respectively. Wilberforce ultimately paid the unpaid invoice to Guardian Structural Technologies for \$84,600.00.

{¶ 8} On February 7, 2024, Wilberforce issued a Default Certification and Seven-Day Termination Notice to Project One and My Place Finance. On February 16, 2024, Wilberforce issued a 30-day Notice Prior to Civil Action and Demand for Payment to My Place Finance and Project One, demanding liquidated damages of \$1,200,067.50 (an amount equal to three times the value of the property) as authorized by R.C. 2307.60 and 2307.61(A)(1)(b)(ii). In the notice, Wilberforce stated that the parties could avoid being subjected to a lawsuit by reimbursing Wilberforce \$400,022.50, representing damages for an alleged theft offense under R.C. 2913.02(A)(3) (theft by deception) and the value of the property given to Project One, or alternatively, that Wilberforce would file an action and seek liquidated damages.

{¶ 9} On June 10, 2024, Wilberforce filed its complaint against several defendants. Wilberforce brought claims for breach of contract against Project One; unjust enrichment against Project One; foreclosure of the mortgage on the four parcels conveyed to Project One as partial consideration for the project; breach of surety contract against My Place Finance; fraud and fraudulent inducement against My Place Finance and Project One; theft against Project One and My Place Finance; alter ego liability against Thomas Johnson as part of Project One; alter ego liability against Davos Francois as part of My Place Finance; piercing the corporate veil against Thomas Johnson and Francois; constructive trust against My Place Finance; punitive damages against Project One, My Place Finance, Johnson, and Francois; and conversion against Project One. The caption on the complaint incorrectly

spelled Francois's name as "Dovos Francois," but each claim against him within the complaint spelled his name correctly as "Davos Francois."

{¶ 10} Francois was the president of My Place Finance. Wilberforce alleged that Francois exercised control over My Place Finance; that My Place Finance was a mere façade with no will or identity of its own separate from Francois; and that My Place Finance was grossly under-capitalized, failed to observe corporate formalities regarding the activities of the company, and was insolvent at the time the obligations were incurred. Wilberforce also alleged that Francois controlled My Place Finance and that My Place Finance had no separate mind, will, or legal existence of its own. Wilberforce alleged that Francois exercised control over My Place Finance in a manner to commit fraud, illegal acts, or wrongful conduct.

{¶ 11} Wilberforce served its complaint on Francois by certified mail, and the signed receipt was returned and dated July 1, 2024. Francois's name on the certified mail receipt was spelled incorrectly as it was in the complaint ("Dovos"), but the receipt was signed and included the printed name "Davos Francois." Francois never answered or otherwise pleaded.

{¶ 12} On November 13, 2024, Wilberforce filed its motion for default judgment against Francois, seeking liquidated damages of \$1,200,067.50 and arguing that Francois failed to file a responsive pleading to the complaint. Wilberforce specifically argued that Francois was the alter ego of My Place Finance and thus was liable for damages to the same extent as My Place Finance with respect to Wilberforce's claims. Wilberforce sought to pierce the corporate veil to hold Francois individually liable. It argued that Francois was the principal in control of My Place Finance and thus had knowingly participated in certain fraudulent activities while receiving personal benefits. Wilberforce requested judgment on its claims against My Place Finance, asserting that Francois was jointly and severally liable.

{¶ 13} In support of its motion for default judgment, Wilberforce submitted the affidavit of Vann Newkirk, President of Wilberforce. Newkirk stated that Wilberforce had paid Project One \$481,160.00 in cash and property but had only received \$86,591.90 in value. He asserted that Wilberforce relied on the performance bond issued by My Place Finance when it executed the contract with Project One and signed the deed conveying the four parcels to Project One as consideration to Project One's agreement to construct the dormitory; that, as surety, My Place Finance agreed to be bound to Wilberforce for \$581,000.00 if Project One defaulted in its performance; that My Place Finance promised Wilberforce that it would retain \$581,000.00 on deposit in its account at Wells Fargo Bank as security for its performance under the performance bond; that the performance bond provided that My Place Finance would remedy Project One's default; that My Place Finance breached its obligations under the performance bond by failing to comply; that Wilberforce was damaged by My Place Finance's breach of its obligations under the performance bond in excess of \$581,000.00, plus attorney fees; that My Place Finance knew that the performance bond was a condition precedent to Wilberforce entering into the contract with Project One; that My Place Finance knew that Wilberforce relied on My Place Finance's financial strength to complete the contract in the event that Project One defaulted; and that My Place Finance and Project One fraudulently issued the performance bond without any intention or ability to honor their obligations.

{¶ 14} Newkirk also stated that Wilberforce discovered that My Place Finance did not have the statutory qualifications to be a surety under R.C. 1341.01, which requires that the surety be a resident of Ohio and worth, in the aggregate, double the sum to be secured beyond the amount of its debts and to have property liable to execution in Ohio equal to the sum to be secured. Newkirk asserted that My Place Finance was not a resident of Ohio, did

not have worth double the sum of \$581,000.00 in the aggregate beyond the amount of its debts, and did not own property in Ohio liable to execution equal to \$581,000.00. Newkirk asserted that My Place Finance concealed that it did not qualify under Ohio law to issue the performance bond and knew or should have known that the issuance of the bond was an affirmative misrepresentation; that Wilberforce was fraudulently induced into contracting with Project One and accepting the performance bond from My Place Finance; that Wilberforce justifiably relied on the fraudulent and misleading representations of My Place Finance contained in the performance bond; and that, as direct and proximate result of My Place Finance's fraudulent inducement, Wilberforce was damaged in excess of \$581,000.00.

{¶ 15} With respect to its alter ego and piercing the corporate veil theories of liability against Francois, Newkirk maintained that My Place Finance was grossly undercapitalized, failed to observe corporate formalities, and was insolvent at the time the performance bond obligations were incurred; that My Place Finance was a mere façade; and that Francois exercised control over My Place Finance. Newkirk also stated that My Place Finance had no separate will or legal existence of its own beyond that of Francois and that Francois admitted to these factual allegations when he failed to answer to otherwise plead in this matter.

{¶ 16} On November 22, 2024, apparently in response to Wilberforce's motion for default judgment, Francois filed an untimely pro se "rebuttal to claims." Francois's filing sought dismissal of the complaint based on the defenses of lack of personal jurisdiction (as he was a nonresident of Ohio); failure to state a claim; and lack of standing. Thereafter, without leave of court, he filed a series of motions and affidavits arguing that service was improper; that his signing of the performance bond was administrative in nature because he was the president of My Place Finance; that his delay in filing his responsive pleading was

not willful; and that the damages sought by Wilberforce were speculative. In an affidavit filed December 2, 2024, he stated that he had never been properly served; that he had never received any legal documents related to this matter; and that he had become aware of the action only when he “discovered Plaintiff’s motion for default judgment.”

{¶ 17} On December 4, Wilberforce responded that service was successful and that Francois had waived his new defenses of insufficiency of process or insufficiency of service of process because he had failed to raise them in his “rebuttal to claims” (which was presumed to be his untimely answer). On February 24, 2025, Francois filed a formalized “motion to dismiss for lack of personal jurisdiction, insufficient service of process, and failure to state a claim”; the trial court never ruled on his motion to dismiss.

{¶ 18} On June 25, 2025, the trial court granted Wilberforce’s motion for default judgment against Francois. The trial court noted that Francois’s “rebuttal to claims” was filed without leave of court, without a motion requesting leave of court, and without any showing of excusable neglect or other reason why his “rebuttal” was filed out of time. The court stated that Francois filed his late “answer” (the “rebuttal” presumably being his “answer”) without moving for leave to file out of time and without complying with the requirements of Civ.R. 6(B)(2). The trial court entered default judgment due to Francois’s failure to timely answer or otherwise plead and awarded damages to Wilberforce of \$1,200,067.50 based on the undisputed testimonial evidence in Newkirk’s affidavit.

{¶ 19} On June 27, 2025, Francois timely filed a motion to vacate default judgment. The trial court had not ruled on the motion to vacate before Francois filed a notice of appeal on July 22, 2025.

II. Assignments of Error

{¶ 20} On appeal, Francois asserts the following three assignments of error:

The trial court committed reversible error by entering default judgment while a timely motion to dismiss was pending and unadjudicated, in violation of Civ.R. 12(A)(2).

The trial court erred by failing to provide the mandatory seven-day notice required by Civ.R. 55(A) despite appellant's established appearance on November 22, 2024.

The judgment is void ab initio for lack of personal jurisdiction due to fatally defective service of process ("misnomer") and plaintiff's failure to amend the complaint.

Service of Process and Other Defenses

{¶ 21} Pleadings consist of a complaint and an answer. Civ.R. 7(A). "Upon the filing of the complaint the clerk shall forthwith issue a summons for service upon each defendant listed in the caption." Civ.R. 4(A). "[T]he names appearing in the caption of a case do not determine who the parties are to the suit; rather, whether or not a defendant is properly in the case hinges upon the allegations in the body of the complaint, and not upon his inclusion in the caption." *Rismiller v. Wagner*, 1982 WL 3850, *1 (2d Dist. Nov. 10, 1982); *Accord Newark Orthopedics, Inc. v. Brock*, 1995 WL 584353, *3 (10th Dist. Oct. 5, 1995), and *Briggs v. Wilcox*, 2013-Ohio-1541, ¶ 37 (8th Dist.). "A copy of the complaint shall be attached to each summons." Civ.R. 4(B).

{¶ 22} Under Ohio law, the plaintiff bears the ultimate responsibility of ensuring proper and timely service of process of the summons and complaint upon the defendant. Service of process provides the defendant with legal notice of the lawsuit. Due process

requires that service of process be made “in a manner reasonably calculated to apprise interested parties of the action and to afford them an opportunity to respond.” *Rice v. Kyte*, 2012-Ohio-841, ¶ 8 (2d Dist.), citing *Money Tree Loan Co. v. Williams*, 2006-Ohio-5568, ¶ 9 (8th Dist.).

{¶ 23} To determine whether service of process was properly completed, the trial court first looks to Civ.R. 4.1, which sets forth the general methods of service of the summons and complaint upon a defendant in Ohio. Civ.R. 4.1(A)(1) specifically describes service by United States Certified Mail, stating:

Evidenced by return receipt signed by any person accepting delivery, service of any process accepting delivery shall be by United States certified or express mail unless otherwise permitted by these rules. The clerk shall deliver a copy of the process and complaint or other document to be served to the United States Postal Service for mailing at the address set forth in the caption or at the address set forth in written instructions furnished to the clerk as certified or express mail return receipt requested, with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered.

“Generally, a party’s address listed on the complaint is presumed to be accurate.” *United Home Federal v. Rhonehouse*, 76 Ohio App.3d 115, 124 (6th Dist. 1991).

{¶ 24} A defendant “shall serve his answer within twenty-eight days after service of the summons and complaint upon him.” Civ.R. 12(A). Once a defendant is served with a summons and a copy of the complaint, he has an affirmative duty to respond to the complaint in a timely manner, and to let the court know what his answer is. *Natl. City Bank v. Kessler*, 2003-Ohio-6938, ¶ 16 (10th Dist.). A defendant has an affirmative duty to take some action

after being served with a complaint or risk being subject to an adverse judgment. *James Remodeling & Bldg., Inc. v. Rhines*, 2006-Ohio-6962, ¶ 10 (9th Dist.), citing *Adomeit v. Baltimore*, 39 Ohio App.2d 97, 106 (8th Dist. 1974).

{¶ 25} Before a trial court can enter judgment against a defendant, it must have personal jurisdiction over him. *Cappellino v. Marcheskie*, 2008-Ohio-5322, ¶ 12 (11th Dist.), citing *Sweeney v. Smythe*, 2003-Ohio-4032, ¶ 12 (11th Dist.). “Personal jurisdiction is a basic tenant of law in the United States.” *Huntington Natl. Bank v. Fisher*, 2003-Ohio-5902, ¶ 13 (9th Dist.). It is the power of a court to make a legal decision over a specific defendant. “A court acquires personal jurisdiction over a party in one of three ways: (1) proper and effective service of process, (2) voluntary appearance by the party, or (3) limited acts by the party or their counsel that involuntarily submit them to the court’s jurisdiction.” *Id.*, citing *Austin v. Payne*, 107 Ohio App.3d 818, 821 (9th Dist. 1995), citing *Maryhew v. Yova*, 11 Ohio St.3d 154, 156 (1984). A default judgment issued by a court without personal jurisdiction over the defendant is *void ab initio*. *Cappellino* at ¶ 12, citing *Sweeney* at ¶ 12.

{¶ 26} Civ.R. 12(B) governs how defenses and objections must be raised in a defendant’s answer or other responsive motion. Civ.R. 12(B) states:

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

- (1) Lack of jurisdiction over the subject matter;
- (2) Lack of jurisdiction over the person;
- (3) Improper venue;
- (4) Insufficiency of process;

- (5) Insufficiency of service of process;
- (6) Failure to state a claim upon which relief can be granted;
- (7) Failure to join a party under Rule 19 or Rule 19.1.

{¶ 27} In addition to determining how and when defenses must be raised, Civ.R. 12 describes how defenses may be waived. A defense of lack of personal jurisdiction, insufficiency of process, or insufficiency of service of process is waived if a party fails to include the defenses available to him in a properly raised motion or responsive pleading. Civ.R. 12(H)(1). Any defense of insufficiency of process, insufficiency of service of process, or lack of personal jurisdiction is waived if it is omitted from a motion raising other Civ.R. 12(B) defenses or, if there is no such motion, it is not raised by separate motion or included in the responsive pleading. See *Glozzo v. Univ. Urologists of Cleveland, Inc.*, 2007-Ohio-3762, ¶ 9.

Timing of Filings and Default Judgment

{¶ 28} Civ.R. 6 dictates the computation, extension, and setting of time periods in civil actions. If a party does not file a timely answer or responsive pleading, the party must ask for leave of court to file later. If a party seeks an extension to file an answer or responsive motion, the trial court may act on a motion “made after the particular date or the expiration of the specified time *if the moving party failed to act because of excusable neglect.*” (Emphasis added.) Civ.R. 6(B)(2)(d). In other words, once the standard 28-day deadline to respond to a civil complaint has passed, the answer or responsive motion cannot be filed automatically. If a party files a late answer or responsive motion without getting formal permission from the trial court, the court may not consider the answer, and the plaintiff can request a default judgment.

{¶ 29} “A default judgment is a judgment entered against a defendant who has failed to timely plead in response to an affirmative pleading.” *Ohio Valley Radiology Assocs., Inc. v. Ohio Valley Hosp. Assn.*, 28 Ohio St.3d 118, 121 (1986), citing *McCabe v. Tom*, 35 Ohio App. 73 (6th Dist. 1929). The proper procedure for holding a party in default is set forth in Civ.R. 55(A), which provides:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, the party entitled to a judgment by default shall apply in writing or orally to the court therefor; but no judgment by default shall be entered against a minor or an incompetent person unless represented in the action by a guardian or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment at least seven days prior to the hearing on such application. 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.

{¶ 30} When considering a motion for default judgment, a trial court may enter judgment against the party who failed to plead, if warranted. “If the defending party has failed to appear in the action, a default judgment may be entered without notice.” *Ohio Valley Radiology Assocs.* at 120. “If, however, the defending party has appeared in the action, the

trial court must, by virtue of Civ.R. 55(A), afford that party seven days' notice of the hearing on the motion for default judgment before entering judgment." *Id.*

Standard of Review

{¶ 31} A trial court's decision to grant a motion for default judgment is reviewed for an abuse of discretion. *McEnteer v. Moss*, 2005-Ohio-2679, ¶ 6 (9th Dist.), citing *Natl. City Bank v. Shuman*, 2003-Ohio-6116, ¶ 6 (9th Dist.). To find an abuse of discretion, we must find that the trial court's decision was unreasonable, arbitrary, or unconscionable. *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161 (1990).

First Assignment of Error

{¶ 32} In his first assignment of error, Francois contends that the trial court committed reversible error in violation of Civ.R. 12(A)(2) by entering default judgment against him while a timely motion to dismiss was pending. Francois argues that his motion to dismiss for lack of personal jurisdiction, insufficient service of process, and failure to state a claim from February 2025 tolled his answer deadline until the trial court ruled on his motion. We disagree.

{¶ 33} Under Civ.R. 12(A), a defendant "shall serve his answer within twenty-eight days after service of the summons and complaint upon him." Accordingly, given that Francois was apparently served on July 1, 2024, he was required to file his answer or motion to dismiss or, alternatively, to request an extension to file on or before July 29, 2024. The record reveals that he did neither. In the absence of any action by Francois, Wilberforce exercised its right to move for default judgment pursuant to Civ.R. 55(A).

{¶ 34} Upon receiving the notice of the motion for default judgment, Francois filed his "rebuttal to claims" on November 22, 2024. His submission did not comport with the

requirements of Civ.R. 6(B)(2). Under the rule, a late answer or responsive motion can be accomplished only “upon motion made after the expiration of the specified period” and “where the failure to act was the result of excusable neglect.” Francois then waited until February 24, 2025, to file his untimely motion to dismiss. Francois claims that the February 2025 motion tolled the deadline to file his answer and that the trial court erred by entering default judgment against him while his motion to dismiss was pending.

{¶ 35} In its decision, the trial court determined that Francois had not demonstrated excusable neglect or any other reason to explain his failure to file a timely answer. Some showing of excusable neglect is necessary before filing an untimely answer. *Johnson v. Gutter & Downspout LLC*, 2024-Ohio-5237, ¶ 17 (2d Dist.), quoting *Allred v. Allred*, 1998 WL 769814, *2 (2d Dist. Nov. 6, 1988), citing *Miller v. Lint*, 62 Ohio St.2d 209, 214 (1980). “In determining whether neglect is excusable or inexcusable, all the surrounding facts and circumstances must be taken into consideration.” *Id.*, quoting *Davis v. Immediate Med. Servs., Inc.*, 80 Ohio St.3d 10, 14 (1997), citing *Griffey v. Rajan*, 33 Ohio St.3d 75 (1987), syllabus. “Neglect under Civ.R. 6(B)(2) has been described as conduct that falls substantially below what is reasonable under the circumstances.” *Id.*, quoting *Davis* at 14, citing *State ex rel. Weiss v. Indus. Comm.*, 65 Ohio St.3d 470, 473 (1992).

{¶ 36} The test for excusable neglect in the context of Civ.R. 6(B)(2) “is less stringent than the standard used for Civ.R. 60(B) motions.” *Id.* at ¶ 18. When determining whether excusable neglect exists under Civ.R. 6(B)(2), courts “must examine “the danger of prejudice to the [movant], the length of delay and its potential impact on judicial proceedings, the reasons for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.”” *Id.*, quoting *First Union-Lehman Bros.-Bank of Am. Commercial Mtge. Trust v. Pillar Real Estate Advisors, Inc.*, 2014-Ohio-

1105, ¶ 15 (2d Dist.), quoting *Cleveland Mun. School Dist. v. Farson*, 2008-Ohio-912, ¶ 12 (8th Dist.).

{¶ 37} Here, Francois waited to file his “rebuttal of claims” until several months after the complaint had been filed and he had been served. When he did file, he neither sought leave of court to file an out-of-time answer nor attempted to show cause or excusable neglect for his delay. He simply filed a late “rebuttal to claims” after receiving notice of Wilberforce’s default judgment motion. However, under Civ.R. 12(A), he was obliged to file his answer or his motion to dismiss within twenty-eight days after service of the summons and complaint. The record reveals that after Francois was served on July 1, 2024, he did not timely file a response to the complaint. Francois was obligated to request a timely extension or, if the time period for filing had already expired, to demonstrate some showing of excusable neglect. In this instance, Francois’s failure “to comply, even substantially, with the procedures outlined in the Civil Rules” subjected him to the motion for a default judgment. *Johnson* at ¶ 21.

{¶ 38} Furthermore, while Francois was a pro se litigant at the time, “[l]itigants who choose to proceed pro se are presumed to know the law and correct procedure, and are held to the same standards as other litigants.” *Yocum v. Means*, 2002-Ohio-3803, ¶ 20 (2d Dist.), citing *Kilroy v. B.H. Lakeshore Co.*, 111 Ohio App.3d 357, 363 (8th Dist. 1996). Consequently, “a pro se litigant ‘cannot expect or demand special treatment from the judge, who is to sit as impartial arbiter.’” *Id.*, quoting *Kilroy* at 363.

{¶ 39} Under these circumstances, we recognize that Francois’s February 2025 motion to dismiss was untimely and thus did not toll his answer deadline. The motion to dismiss was filed after his “rebuttal to claims” (presumed answer) and the 28-day deadline to respond to the complaint. Therefore, we cannot say that the trial court abused its

discretion in ruling on Wilberforce's motion for default judgment simply because Francois's untimely motion to dismiss was still pending. Francois's first assignment of error is overruled.

Second Assignment of Error

{¶ 40} In his second assignment of error, Francois argues that because he had appeared in this matter, the trial court erred by failing to provide the mandatory seven-day notice required under Civ.R. 55(A) before entering default judgment.

{¶ 41} With respect to entry of default judgment, Civ.R. 55(A) provides in pertinent part:

If the party against whom judgment by default is sought *has appeared* in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment at least seven days prior to the hearing on such application.

"By its plain language, Civ.R. 55(A) prohibits a default judgment against a party who has 'appeared in the action' unless that party receives written notice of the application for judgment at least seven days prior to the hearing on the application." *GMAC Mtge., LLC v. Lee*, 2012-Ohio-1157, ¶ 10 (10th Dist.), citing *Am. Communications of Ohio, Inc. v. Hussein*, 2011-Ohio-6766, ¶ 9 (10th Dist.). "When the trial court fails to comply with Civ.R. 55(A), entry of default judgment is improper." *Id.*, citing *AMCA Internatl. Corp. v. Carlton*, 10 Ohio St.3d 88, 91 (1984).

{¶ 42} "An appearance is ordinarily made when a party comes into court by some overt act of that party that submits a presentation to the court." *Columbia Credit Servs., Inc. v. Ruetschle*, 2007-Ohio-4332, ¶ 8 (2d Dist.), citing *Alliance Group Inc. v. Rosenfield*, 115 Ohio App.3d 380, 390 (1st Dist. 2005). "Once 'a party or his representative has appeared as a matter of record in any manner, the notice and hearing required by

Civ.R. 55(A) must be given [to] that party before default judgment can be properly granted Even where a defendant's filings are subsequent to a plaintiff's motion for default, the defendant is deemed to have made an appearance and is entitled to the notice and hearing required under Civ.R. 55(A).” *Columbia Credit* at ¶ 9, quoting *Hartmann v. Ohio Crime Victims Reparations Fund*, 138 Ohio App.3d 235, 238 (10th Dist. 2000).

{¶ 43} We liberally construe the term “appeared” when applying Civ.R. 55(A). *Am. Communications* at ¶ 10, quoting *Columbus Mgt. Co. v. Nichols*, 1992 WL 193694, *3 (10th Dist. Aug. 4, 1992). In this case, the applicability of the Civ.R. 55(A) notice requirement hinged on whether Francois appeared in this action despite his failure to file a timely answer.

{¶ 44} Francois made an appearance on November 22, 2024, when he filed his “rebuttal to claims.” He then proceeded to file numerous documents in the trial court over the next several months. Thus, we conclude that his actions constituted an appearance for notice purposes under Civ.R. 55(A). Francois was therefore entitled to seven days’ written notice and a hearing on the default judgment motion before the trial court rendered its decision on the motion. See *GMAC Mtge.*, 2012-Ohio-1157, at ¶ 12 (10th Dist.); *Columbia Credit* at ¶ 10.

{¶ 45} Wilberforce argues that Francois was not entitled to notice because he had not filed a proper answer, but that argument is directly contrary to Civ.R. 55(A)’s distinction between filing a pleading and otherwise appearing in an action. *GMAC Mtge.* at ¶ 12. Because it is undisputed that the trial court failed to provide Francois with seven days’ notice and a hearing on Wilberforce’s motion prior to entering default judgment against him, we conclude that the trial court erred when it granted Wilberforce’s motion for default judgment. Civ. R. 55(A); *Columbia Credit*, 2007-Ohio-4332, at ¶ 10 (2d Dist.). Francois’s second assignment of error is sustained.

Third Assignment of Error

{¶ 46} Francois's third assignment of error argues for reversal based on lack of personal jurisdiction, and having sustained Francois's second assignment of error, the third assignment of error is overruled as moot.

III. Conclusion

{¶ 47} Because the trial court erred in granting Wilberforce's default judgment without giving Francois the seven-day notice and hearing required under Civ.R. 55(A), we reverse the trial court's judgment and remand this matter for further proceedings.

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LEWIS, P.J., and HANSEMAN, J., concur.