[Cite as *Johnny Automatic Transm. v. Greathouse Transp.*, 2023-Ohio-2184.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOHNNY AUTOMATIC TRANSMISSION, :

Plaintiff-Appellant, :

No. 112273

v. :

GREATHOUSE TRANSPORTATION, :

Defendant-Appellee. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: June 29, 2023

Civil Appeal from the Cleveland Municipal Court
Case No. 2022-CVI-008415

Appearances:

Thurman Tyus, II, operating as a sole proprietorship under the name Johnny Automatic Transmission, *pro se*.

EILEEN A. GALLAGHER, P.J.:

{¶ 1} This appeal is before the court on the accelerated docket pursuant to App.R. 11.1 and Loc.App.R. 11.1. The purpose of an accelerated appeal is to allow an appellate court to render a brief and conclusory decision. *E.g.*, *Univ. Hts. v. Johanan*, 8th Dist. Cuyahoga No. 110887, 2022-Ohio-2578, ¶ 1; *State v. Trone*, 8th

Dist. Cuyahoga Nos. 108952 and 108966, 2020-Ohio-384, ¶ 1, citing *State v. Priest*, 8th Dist. Cuyahoga No. 100614, 2014-Ohio-1735, ¶ 1; *see also* App.R. 11.1(E).

{¶ 2} Plaintiff-appellant Thurman Tyus, II — apparently operating as a sole proprietorship under the name Johnny Automatic Transmission[1] — appeals the small claims default judgment issued in his favor against defendant-appellee Greathouse Transportation, which has made no appearance in this case.

{¶ 3} Tyus ("Johnny Automatic") contends that the municipal court erred by requiring the presentation of evidence with respect to damages and by awarding him just $799.20. He claims to be entitled to $5,000 — the amount he asked for in his complaint — because Greathouse Transportation defaulted.

{¶ 4} For the reasons that follow, we affirm.

I. Factual Background and Procedural History

{¶ 5} On September 19, 2022, Johnny Automatic filed a small claims complaint in the Cleveland Municipal Court against Greathouse Transportation, a limited-liability company. The complaint alleged as follows.

{¶ 6} In 2022, the parties entered into an agreement for Johnny Automatic to repair a vehicle owned by Greathouse Transportation in exchange for remuneration. Johnny Automatic completed the repairs in August 2022 and

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[1] The complaint alleges that Johnny Automatic Transmission is a sole proprietorship; Tyus' appellate filings say the same. "A sole proprietorship has no legal identity separate from that of the individual who owns it." *Patterson v. V & M Auto Body*, 63 Ohio St.3d 573, 574–575, 589 N.E.2d 1306 (1992). We note that Greathouse Transportation, never having appeared in the case, did not file an objection before the municipal court or raise an issue in this appeal regarding the fact that Tyus sued in the name of Johnny Automatic.

invoiced Greathouse Transportation for $799.20 ($740 for parts and labor and $59.20 for tax). A representative of Greathouse Transportation, Christine Greathouse, came to Johnny Automatic to pick up the vehicle but said she would have to return later to pay the invoice. The representative took the vehicle and signed a handwritten note that stated, "I Christine Greathouse will bring back $800.00 to [Johnny Automatic] today 8/30/22 by 5:00 NO later." Despite this promise, Christine Greathouse never returned with payment. Johnny Automatic mailed several requests for payment but Greathouse Transportation never paid the invoice.

{¶ 7} The complaint asserted two claims — the first a claim for breach of contract and the second alleging "fraud/theft by deception" — and requested $5,000 in damages ($2,500 for each claim).

{¶ 8} The municipal court scheduled the case for trial to take place on November 2, 2022 and mailed a summons to Greathouse Transportation.

{¶ 9} The case was called for trial on November 2 before a magistrate judge and Greathouse Transportation did not appear. The magistrate entered a default judgment against Greathouse Transportation in the amount of $799.20 and awarded postjudgment interest and costs.

{¶ 10} Johnny Automatic filed objections in the municipal court to the magistrate's decision, arguing that the magistrate (1) was not permitted to award damages in an amount less than that prayed for in the complaint and (2) failed to consider other damages Johnny Automatic suffered as a result of Greathouse

Transportation's non-payment of this invoice, including the costs of "research, legwork, paper work [and] filing fees"; "mental stress" and "interrupted cash flow, inability to pay employees, [and] inability to pay vendors."

{¶ 11} Johnny Automatic did not provide the municipal court with a transcript of the November 2 hearing and there is no indication in the record that the trial court reviewed an audio recording of the hearing. Instead, Tyus attached to his objections an affidavit describing his recollection of the hearing.

{¶ 12} On December 2, 2022 the municipal court approved and confirmed the magistrate's decision over Johnny Automatic's objections and rendered default judgment in favor of Johnny Automatic in the amount of $799.20 plus interest and costs.

{¶ 13} Johnny Automatic appealed and raises the following two assignments of error for review:

> Assignment of Error 1: The trial court committed reversible error in changing the demand for damages requested without compliance with the requirement set forth in Ohio Civ.R. 54 and 55 when entertaining Plaintiff's motion for default judgment on his claim of breach of service contract and unjust enrichment. [sic]
>
> Assignment of Error 2: The trial court erred as a matter of law when it willfully ignore[d] the overriding principle and civil procedure rules that govern the application of Civ.R. 54 and 55 of the court proceedings. [sic]

{¶ 14} Johnny Automatic did not provide a transcript of the November 2, 2022 hearing for our consideration.[2] The company filed its appeal brief on March 23, 2023. Greathouse Transportation has not made an appearance in the appeal.

II. Law and Analysis

{¶ 15} We address the assignments of error together because they raise the same argument.

{¶ 16} Civ.R. 55 provides as follows, in relevant part:

> 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[.] * * * 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 * * *.
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> * * *
>
> In all cases a judgment by default is subject to the limitations of Rule 54(C).

Civ.R. 55(A), (C).

{¶ 17} Civ.R. 54(C) provides as follows:

> A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is

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[2] Tyus filed in our court an affidavit describing his recollection of this hearing; he filed it over a month after he filed his appeal brief and long after the record on appeal was due. We struck the affidavit for failure to comply with App.R. 9. *See Johnny Automatic Transm. v. Greathouse Transp.*, 8th Dist. Cuyahoga No. 112273, Motion No. 564427 (May 17, 2023).

rendered is entitled, even if the party has not demanded the relief in the pleadings.

{¶ 18} Johnny Automatic reads the latter rule to mean that when a defendant defaults, the plaintiff is entitled to exactly what they asked for in the complaint — no more and (as relevant here) no less. It contends that the municipal court was required to enter default judgment in the amount of $5,000 because that was the amount it asked for in its complaint. Further, it says that the magistrate erred by requiring the presentation of evidence to determine the amount of damages. These arguments are meritless.

{¶ 19} "The determination of the kind and the maximum amount of damages that may be awarded" in a default judgment "'is subject to the mandates of Civ.R. 55(C) and Civ.R. 54(C).'" *Skiver v. Wilson*, 2018-Ohio-3795, 119 N.E.3d 969, ¶ 13 (8th Dist.), quoting *Arendt v. Price*, 8th Dist. Cuyahoga No. 101710, 2015-Ohio-528, ¶ 8. "Therefore, the question of whether a trial court complied with Civ.R. 55 and 54 is one of law, which we review de novo." *Skiver* at ¶ 13.

{¶ 20} Johnny Automatic's reading of Civ.R. 54(C) is incorrect; the rule does not require a court to rubber-stamp the plaintiff's request for damages in the complaint when there is a default. The rule is primarily intended to ensure that defendants are "'clearly notified of the maximum potential liability to which they are exposed, so that they may make an informed, rational choice to either: (1) enable a default judgment by not responding, or (2) invest the time and expense involved in defending an action.'" *Dye v. Smith*, 189 Ohio App.3d 116, 2010-Ohio-3539, 937

N.E.2d 628, ¶ 8 (4th Dist.), quoting *Natl. City Bank v. Shuman*, 9th Dist. Summit No. 21484, 2003-Ohio-6116, ¶ 11; *see also Masny v. Vallo*, 8th Dist. Cuyahoga No. 84983, 2005-Ohio-2178, ¶ 18 ("The Civil Rules, along with fundamental due process, require that a defendant not be subjected to an additional, unpled monetary liability as a consequence of his failure to answer a complaint."). Thus, courts have reversed default judgments that awarded monetary damages and other relief when those types of relief were not sought in the complaint. *See, e.g.*, *Fors v. Beroske*, 6th Dist. Fulton No. F-12-001, 2013-Ohio-1079 (money damages and an obligation to defend and indemnify the plaintiff); *Shuman*, 2003-Ohio-6116 (money damages); *First Natl. Bank of Bellevue v. NE Port Invests., LLC*, 6th Dist. Ottawa No. OT-14-027, 2015-Ohio-558, ¶ 25 (attorney fees and expenses). Courts have also reversed default judgments that awarded more money than a party prayed for in its claim. *E.g.*, *Masny v. Vallo*, 8th Dist. Cuyahoga No. 84983, 2005-Ohio-2178, ¶ 16.

{¶ 21} Here, no similar concerns are present. The default judgment does not violate Civ.R. 54(C) because (1) the kind of relief granted (money damages) does not differ from the kind requested in the complaint (money damages) and (2) the amount of damages ($799.20) does not exceed the amount requested in the complaint ($5,000).

{¶ 22} Further, the trial court was permitted to require Johnny Automatic to put forth evidence to determine the measure of damages, especially because the company was seeking damages well in excess of the $799.20 reflected on the invoice attached to the complaint. Civ.R. 55(A) specifically provides that, in issuing a default

judgment, "the court may conduct such hearings or order such references as it deems necessary and proper" when "it is necessary to take an account or to determine the amount of damages" in order to enable the court to enter judgment. *See also Buckeye Supply Co. v. N.E. Drilling Co.*, 24 Ohio App.3d 134, 136, 493 N.E.2d 964 (9th Dist.1985) ("It has always been within the discretion of the trial court to determine whether further evidence is required to support a claim against a defaulting defendant.").

{¶ 23} In fact, under our precedent the municipal court was required to hold a hearing before granting Johnny Automatic any damages beyond the $799.20 reflected in the invoice attached to the complaint. "Generally, no proof of damages is required for a liquidated damages claim," a claim "'that can be determined with exactness from the agreement between the parties or by arithmetical process or by the application of definite rules of law.'" *Skiver* at ¶ 16, quoting *Huo Chin Yin v. Amino Prods. Co.*, 141 Ohio St. 21, 46 N.E.2d 610 (1943). But "'Ohio law requires the presentation of proof of damages for an unliquidated claim before any can be awarded.'" *Skiver* at ¶ 17, quoting *Faulkner v. Integrated Servs. Network, Inc.*, 8th Dist. Cuyahoga Nos. 81877 and 83083, 2003-Ohio-6474, ¶ 26. Johnny Automatic's claimed damages stemming from the collateral effects of Greathouse Transportation's failure to pay the invoice were unliquidated damages; the municipal court was required to demand a presentation of proof of those damages before it could award them. *See Skiver* at ¶ 17 ("[W]here the judgment is * * * only partially liquidated, the court must hold a hearing on the damages.").

{¶ 24} For these reasons, we overrule both of Johnny Automatic's assignments of error. The municipal court acted within its discretion by holding a hearing and requiring the presentation of evidence on damages and the court did not violate Civ.R. 54 or 55 by awarding money damages in an amount less than that prayed for in the complaint.

{¶ 25} Before concluding, we note that we are not asked to, nor would we be able to, review whether the municipal court's award of damages was an abuse of discretion considering the evidence actually presented at the November 2, 2022 hearing. It is the appellant's duty to ensure the completeness of the record on appeal. *E.g.*, *O'Donnell v. Northeast Ohio Neighborhood Health Servs.*, 8th Dist. Cuyahoga No. 108541, 2020-Ohio-1609, ¶ 75, fn. 6; *Pietrangelo v. Hudson*, 2019-Ohio-1988, 136 N.E.3d 867, ¶ 22 (8th Dist.). In the absence of a transcript or alternative App.R. 9(C) or (D) record from the hearing, we "'must presume regularity in the proceedings on any finding of fact made by the trial court.'" *Pedra Properties, LLC v. Justmann*, 8th Dist. Cuyahoga No. 102909, 2015-Ohio-5427, ¶ 15, quoting *Calabrese v. Zmijewski*, 8th Dist. Cuyahoga No. 86185, 2006-Ohio-2322, ¶ 10.

{¶ 26} Because we do not know what testimony or other evidence was produced at the November 2 hearing to support Johnny Automatic's claimed unliquidated damages, we must presume that the evidence supported the municipal court's finding that Johnny Automatic was entitled only to liquidated damages in the amount of $799.20.

III. Conclusion

{¶ 27} Having overruled Johnny Automatic Transmission's assignments of error for the reasons stated above, we affirm.

It is ordered that the appellant recover from the appellee the costs herein taxed.

It is ordered that a special mandate issue out of this court directing the Cleveland Municipal Court 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.

EILEEN A. GALLAGHER, PRESIDING JUDGE

MARY EILEEN KILBANE, J., and
EILEEN T. GALLAGHER, J., CONCUR