



Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

LYNDSEY HOWELL

Plaintiff

v.

OHIO UNIVERSITY POLICE
DEPARTMENT

Defendant

Case No. 2013-00001

Magistrate Holly True Shaver

ORDER OF THE MAGISTRATE

2013 APR -5 PM 1:13

FILED
COURT OF CLAIMS
OF OHIO

On January 2, 2013, plaintiff filed her complaint asserting negligence. Defendant failed to timely file an answer. On March 11, 2013, plaintiff filed a motion for default judgment pursuant to Civ.R. 55. On March 19, 2013, defendant filed a response to the motion and a motion for leave to file an answer pursuant to Civ.R. 6(B). On March 26, 2013, plaintiff filed a response in opposition to defendant's motion for leave and a motion to "strike frivolous pleadings."

Civ.R. 6(B) states:

"When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion * * * upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect * * *."

In its motion, counsel for defendant states that although he timely prepared an answer, he did not file it timely due to an administrative oversight. Counsel for defendant relates that the answer should have been filed on February 4, 2013; that he underwent a CAT scan on February 5, 2013, abdominal surgery on February 6, 2013, and that he was out of the office for a period of time thereafter. Counsel for defendant asserts that he was distracted by the upcoming surgery.

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ORDER

"The determination of whether neglect is excusable or inexcusable must take into consideration all the surrounding facts and circumstances, and courts must be mindful of the admonition that cases should be decided on their merits, where possible, rather than procedural grounds." *State ex rel. Lindenschmidt v. Board of Comm'rs*, 72 Ohio St.3d 464, 466, (1995).

In addition, Civ.R. 55(D) states:

"No judgment by default shall be entered against this state, a political subdivision, or officer in his representative capacity or agency of either unless the claimant establishes his claim or right to relief by evidence satisfactory to the court."

Upon review of the motions, the court finds that counsel for defendant's stated reasons constitute excusable neglect. The court further finds that the delay in filing an answer has resulted in no demonstrable prejudice to plaintiff. *See Cart v. Fannie Mae*, 11th Dist. No. 2011-A-0059, 2012-Ohio-2241. Therefore, the court ORDERS the following:

- 1) Plaintiff's March 11, 2013 motion for default judgment is DENIED;
- 2) Defendant's March 19, 2013 motion for leave to file an answer is GRANTED, instanter;
- 3) Plaintiff's March 26, 2013 motion to strike frivolous pleadings is DENIED;
- 4) This case shall be processed in the normal course.



HOLLY TRUE SHAVER
Magistrate

cc:

Christopher P. Conomy
Assistant Attorney General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

Vincent N. DePascale
786 Northwest Blvd.
Grandview Heights, Ohio 43212-3832

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