

IN THE COURT OF COMMON PLEAS OF MEIGS COUNTY, OHIO
GENERAL DIVISION

2004 MAY 27 PM 12:31

Ricky McClellan,

Plaintiff,

-vs-

Lucille Hagerty,

Defendant.

FILED
Maureen Hamilton
CLERK OF COURTS
MEIGS COUNTY, OHIO

Case No. 04 CV 008

JOURNAL ENTRY

This matter came on to be heard this 25th day of May, 2004, to determine any amount of damages as a result of default judgment being entered against Defendant as journalized and filed on April 29, 2004. Present were Plaintiff, Ricky McClellan, with his attorney, Amanda M. Beck, and Lucille Hagerty, the Defendant, assisted by her son, Chip Hagerty.

By way of background, Plaintiff filed his Complaint and supporting materials on January 23, 2004, with request to the Clerk of Courts to serve Defendant, Lucille Hagerty, with a copy of same at 825 Beech Street, Middleport, OH 45760 by personal service. The Sheriff's return as shown in the file indicates that service was made upon said Defendant on February 9, 2004, by Deputy Edward Patterson.

The file further indicates that notice of initial pretrial was filed and copy sent to Defendant Hagerty on March 19, 2004. On April 23, 2004, as a result of Defendant's failure to answer or otherwise respond to the

Complaint and her failure to appear at the initial pretrial, Plaintiff filed his Application For Default Judgment.

Defendant was not sent a copy of the Application For Default Judgment by Plaintiff pursuant to Civ. R. 55 (A) which in part reads:

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 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.

The Court finds that Defendant had made no appearance in these proceedings after being served with summons and a copy of the complaint and other included materials, nor by responding to the notice of initial pre-trial hearing and as a result thereof judgment by default was proper.

The Court then scheduled a hearing regarding damages to which Defendant did appear, pro-se.

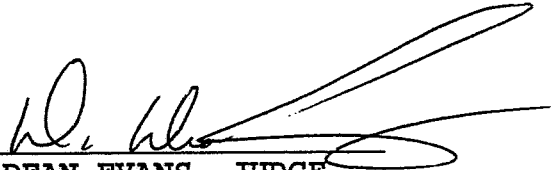
At the damages hearing, Plaintiff presented evidence as to the cost of heating fuel being \$256.36 plus \$100.00 incidental costs in obtaining the fuel which amounted to having to go to various fuel stations approximately every three days over a period of approximately four months. Defendant presented no evidence to refute these damages.

The Court finds that Plaintiff should be awarded damages in the total amount of \$356.36.

IT IS, THEREFORE, ORDERED that judgment in the amount of \$356.36 be and same is awarded to Plaintiff against Defendant.

Costs to Defendant.

This is a judgment or final order, which may be appealed. The Clerk, pursuant to Civil Rule 58(B), shall serve notice of same on all parties who are not in default of entry of appearance. Within three (3) days after journalization of this entry, the Clerk is required to serve notice of the judgment pursuant to Civil Rule 5(B).


D. DEAN EVANS, JUDGE
BY ASSIGNMENT

The Clerk is directed to furnish a copy of the foregoing entry to Judge Fred W. Crow, III; Judge D. Dean Evans; Ricky McClellan, Plaintiff; Lucille Hagerty, Defendant; and Amanda M. Beck, Attorney for Plaintiff.