

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

VALERIE MITCHELL,	:	APPEAL NO. C-080094
	:	TRIAL NO. A-0404296
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
	:	
LILLIAN PENNINGTON,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant, Lillian Pennington, appeals the default judgment entered by the Hamilton County Court of Common Pleas in favor of plaintiff-appellee, Valerie Mitchell, in a personal-injury action.

On May 27, 2004, Mitchell filed a complaint alleging that Pennington had negligently entrusted her automobile to her son. Pennington did not file an answer, and on October 15, 2004, Mitchell filed a motion for default judgment.

Pennington did not respond to Mitchell's motion, and she did not appear for the hearings scheduled before a magistrate on the motion. On February 24, 2005, the magistrate issued a decision recommending that Mitchell be awarded \$500,000 in damages.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

OHIO FIRST DISTRICT COURT OF APPEALS

Then, on March 4, 2005, Pennington filed a request to answer Mitchell's complaint out of time, contending that she had been physically unable to present a defense. On the same date, she filed objections to the magistrate's decision. The request and the objections were filed before the trial court had entered final judgment on the magistrate's decision.

On August 18, 2005, the trial court denied Pennington's request to file an answer, and it overruled her objections to the magistrate's decision. On August 30, 2005, the court entered judgment in favor of Mitchell in the amount of \$500,000. Finally, on January 9, 2008, the trial court denied Pennington's motion to set aside the default judgment and overruled her renewed objections to the magistrate's decision.

In her first assignment of error, Pennington now argues that the trial court erred in denying her request to file an answer out of time.

It is within the trial court's discretion to grant or deny a request for leave to file an answer out of time.² In this case, though, we hold that the denial was unreasonable. Pennington filed her request before the trial court had ruled upon the magistrate's decision, and Mitchell did not demonstrate that any unfair prejudice would have resulted had the trial court permitted Pennington to answer. In light of the general principle that cases should be decided on their merits,³ the trial court abused its discretion in denying the request for leave to file an answer out of time. We sustain the first assignment of error.

In the second and third assignments of error, Pennington argues that the trial court erred in denying her Civ.R. 60(B) motion for relief from the default judgment and in entering judgment without holding a hearing on unliquidated damages. Our disposition

² See *Banc One Financial Services v. Hancock* (Nov. 2, 1998), 12th Dist. No. CA98-02-015, citing *Miller v. Lint* (1980), 62 Ohio St.2d 209, 213-214, 404 N.E.2d 752.

³ See, e.g., *Watts v. Forest Ridge Apts.*, 1st Dist. No. C-060079, 2007-Ohio-1176, ¶12, jurisdictional motion overruled, 114 Ohio St.3d 1510, 2007-Ohio-4285, 872 N.E.2d 952.

OHIO FIRST DISTRICT COURT OF APPEALS

of the first assignment of error renders these assignments moot, and we need not address them on their merits.

We reverse the judgment of the trial court and remand the cause for further proceedings consistent with this judgment entry.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27.

HILDEBRANDT, P.J., PAINTER and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on October 8, 2008
per order of the Court _____.
Presiding Judge