

No. 20-1219

IN THE
SUPREME COURT OF THE UNITED STATES

CARLINE CURRY ---- PRO SE PETITIONER

V.S

Douglas Mackenzie ----- RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF OHIO 2020-0727
(NAME OF COURT THAT LAST RULED ON MERITS OF CASE)

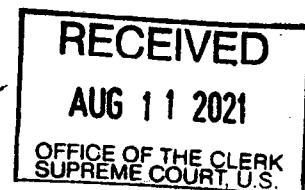
PETITION FOR REHEARING

Carline Curry (Pro Se)

606 Bowman Street

Mansfield, Ohio 44903

567-274-9130 or 567-3907



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QUESTION PRESENTED**THIS IS A QUESTION OF CONSTITUTION CHALLENGE FOR DEFAULT****JUDGEMENT**

**SHOULD PLAINTIFF CURRY BEEN AWARDED DEFAULT JUDGEMENT
UNDER OHIO RULE OF CIVIL PROCEDURE RULE 54 (C) AND OHIO
RULE 4 OF CIVIL PROCEDURE RULE 4 PROCESS OF SUMMONS WHEN
DEFENDANT MACKENZIE FAILED TO DEFEND AND ANSWER THE
COMPLAINT AND DEFAULT JUDGEMENT WAS NOT JOURNALED FOR
THE AMOUNT PRAYED FOR IN THE INITIAL COMPLAINT.**

**THE DENIAL OF THE WRIT WAS RECEIVED 30 DAYS LATE. SHOULD
PLAINTIFF CURRY HAVE AN OPPORTUNITY TO A REHEARING. THE
LETTER WAS EITHER HELD UP AT THE POST OFFICE OR LOST**

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties do not appear in the caption of the case on the cover page. A list of all the parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

Douglas Mackenzie 19 Saucito Ave. Del Ray Oaks, CA 93940
Attorney General Dave Yost, 30 E. Broad Street; 14 th floor; Columbus, Ohio 43215
28 U.S.C. 451 may apply.
Solicitor General, Elizabeth Prelogar; Department of Justice Room 5616; 950
Pennsylvania Ave. N.W. Washington D.C 20530

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TABLE OF AUTHORITIES CITED

CASES

Bank of America vs. William Chad Sullivan Trial Court CV20140743

Thomas V. State Farm Fire & Casualty Company No 2002 CA-00656-C)A

Brandon Apparel Group vs. Kirkland Ellis NO. 1-06-1432

Fitzgerald v. Harris (County Sheriff Department U.S. D. C. (S.D Tx) No. 4:14

CV-01330

Joyce vs. Pepsi Inc. May 25, 2012 813 N.W. 2d. 247 Wis.

Columbus v. Hodge 37 Ohio App. 3d8, 523 N.E. 2S 515 (1987)

Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388
(1971)

CONSTITUTIONAL PROVISIONS & STATUTES

Ohio Rule of Civil Procedure 55 Default Judgement

Ohio Rule of Civil Procedure Rule 58 Entry of Judgment

Ohio Rule of Civil Procedure Rule 4 B Summons Process

Ohio Rule of Civil Procedure Rule 7

Ohio Rule of Civil Procedure Rule 12

Ohio Rule of Civil Procedure Rule 54 C JUDGEMENT COST

U. S.C. 1983 DEPRIVATION OF RIGHTS

Amendment 7 of the US Constitution (right to trial by jury)

42 U.S.C. 1985 Conspiracy to Interfere with Civil Rights

5th Amendent of the Bill of Rights ***Protection of Rights to Life, Liberty, and Property***

16 th Amendment of the Bill of Rights (due process)

Ohio Rule of Civil Procedure Rule 38

5 USC 706

28 USC 1361 action to compel an officer of the United States to perform his or her duty (mandamus)

28 USC 451 & 28 U.S.C 2403 (b) may apply

Constitutional Challenge of Ohio Rules of Civil Procedures

This case was a constitutional challenge of the Default Judgement Rule: Ohio Rule 55 Default Judgement, the Process of Summons Rule 4, Rule 7 Pleadings and Motions, Rule 12 Defenses and Objections, and Rule 54 (C) Demand for Judgement, and Rule 58 Entry of Judgement

RULE 4. Process: Summons (A) Summons: issuance. Upon the filing of the complaint the clerk shall forthwith issue a summons for service upon each defendant listed in the caption. Upon request of the plaintiff separate or additional summons shall issue at any time against any defendant. (B) Summons: form; copy of complaint. The summons shall be signed by the clerk, contain the name and address of the court and the names and addresses of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the times within which these rules or any statutory provision require the defendant to appear and defend, and shall notify the defendant that in case of failure to do so, judgment by default will be rendered against the defendant for the relief demanded in the complaint.

RULE 7. Pleadings and Motions (A) Pleadings. There shall be a complaint and an answer;

RULE 12. Defenses and Objections--When and How Presented--by Pleading or Motion--Motion for Judgment on the Pleadings (A) When answer presented.

(1) Generally. The defendant shall serve his answer within twenty-eight days after service of the summons and complaint upon him; if service of notice has been made by publication, he shall serve his answer within twenty-eight days after the completion of service by publication.

RULE 4. Process: Summons (A) Summons: issuance. ...

and shall notify the defendant that in case of failure to do so, judgment by default will be rendered against the defendant for the relief demanded in the complaint.

TITLE VII. JUDGMENT RULE 54. Judgments; Costs

(A) Definition; Form. "Judgment" as used in these rules means a written entry ordering or declining to order a form of relief, signed by a judge, and journalized on the docket of the court.

(C) Rule 54 (C) Demand for judgment.

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

(D) Costs. Except when express provision therefor is made either in a statute or in these rules, costs shall be allowed to the prevailing party unless the court otherwise directs.

(E) Attorney Fees. Whenever a provision of these rules authorizes a court to award attorney fees, including attorney fees described in the provision as "caused" or "incurred," the court may award the reasonable value of the services performed by the attorney, whether or not the party represented by that attorney actually paid or is obligated to pay the attorney for such services performed.

RULE 55. Default

(A) **Entry of judgment.** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules...

(B) Plaintiffs, counter claimants, cross-claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(C).

(C) Plaintiffs, counter claimants, cross-claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(C).

My case was originally filed with the Court of Common Pleas in Columbus Ohio Case Number 18 cv 01560 The Judge entered a default judgement in my favor for liability only. Mr. Mackenzie failed to defend nor did he have a representative appear. Therefore the Judgement was not according to law. " The Law States, "under Ohio Rule of Civil Procedure "Rule 54 (C) Demand for judgment."

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

The judge did not include tort liability or compensatory damages for financial losses. I should had been awarded Default Judgement according to law under Ohio rule of Civil Procedure Rule 54 (C). The Judgement entry was not according to Law and the Judge erred.

The 10 th Appeals District Court of Appeals dismissed my case because they said I failed to file my brief on time. They failed to docket my brief I upload it on the docket on February 10, 2020. I had a copy of the receipt that it was received on February 10, 2020: that document was in the Writ of Certiorari, I did not include the brief because it was over 40 pages and I could not afford to include it. I resent the brief on March 11, 2020, when the clerk told me they did not received it. The brief had 25 pages of exhibits. I don' t know how they could have not received it when I have a copy of the docket that said they received it.

What Happened to my Brief ?

OPINIONS BELOW

This case was not heard in federal courts or the United States district court

For cases from state courts;

The opinion of the highest state court to review the merits appears at

Appendix A to the petition and is

reported at _____; or,

has been designated for publication but is not yet reported; or

is unpublished.

The court denied to hear my case on **December 2, 2020**

JURISDICTION

This case was not heard before federal court;

for cases from state courts

The date on which the highest state court decided my case was December 2, 2020

A copy of that decision appears at Appendix A.

A timely petition for rehearing was denied by the Court of Appeals on the following date; _____ and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a Writ of Certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____.

The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

The court denied to hear my case on December 2, 2020

Argument / Reason for Granting the Writ

Mr. Mackenzie failed to Appear when I filed Litigation against him.

Ohio Rule of Civil Procedure Rule 4 Process of Summons says if a defendant fails to plead default judgement will be entered against him.

Ohio Rule of Civil Procedures Rule 7 says there shall be a complaint and an answer. Mr. Mackenzie failed to answer.

Ohio Rule of Civil Procedure Rule 12 says the defendant must answer the complaint within 28 days of receiving it. Mr. Mackenzie did not answer the complaint.

Ohio Rule of Civil Procedure Rule 54

(A) Definition; Form. "Judgment" as used in these rules means a written entry ordering or declining to order a form of relief; signed by a judge, and journalized on the docket of the court. The court did not enter a Default Judgment according to law.

"Rule 54 (C) Demand for judgment.

A judgment by default shall not be different in kind from or exceed in amount that I 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 rendered is entitled, even if the party has not demanded the relief in the pleadings."

RULE 55. Default (A) Entry of judgment. 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;

(C) Plaintiffs, counterclaimants, cross-claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(C).

(D) Costs. Except when express provision therefor is made either in a statute or in these rules, costs shall be allowed to the prevailing party unless the court otherwise directs.

Mr. Mackenzie failed to plead upon requesting a demand for Judgment. According to Rule 54 © the default should not be different in kind from or exceed in the amount that I prayed for in the complaint. I was not awarded the amount prayed for in the complaint. Therefore, the default judgement entry was not according to law and the Judge erred.

RULE 58. Entry of Judgment (A) Preparation; entry; effect; approval. (1)

Subject to the provisions of Rule 54(B), upon a general verdict of a jury, upon a decision announced, or upon the determination of a periodic payment plan, the court shall promptly cause the judgment to be prepared and, the court having signed it, the clerk shall thereupon enter it upon the journal.

A judgment is effective only when entered by the clerk upon the journal.

Default Judgment failure to appear

Conclusions

The Judge errored by not granting entry judgment as requested in the initial complaint according to Rule 4 and 54 (c) under Default Judgement.

Plaintiff Curry was not awarded Default Judgement according to law and the Ohio Rules of Civil Procedure. Rule 4 Process of Summons and Rule 54 (C) Demand for Judgement.

RULE 4. Process: Summons (A) Summons: issuance. Upon the filing of the complaint the clerk shall forthwith issue a summons for service upon each defendant listed in the caption. Upon request of the plaintiff separate or additional summons shall issue at any time against any defendant. (B) Summons: form; copy of complaint. The summons shall be signed by the clerk, contain the name and address of the court and the names and addresses of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the times within which these rules or any statutory provision require the defendant to appear and defend, and shall notify the defendant that in case of failure to do so, judgment by default will be rendered against the defendant for the relief demanded in the complaint.

Only unreasoning minds could conclude that Default Judgement was

Not granted by the Law of Ohio Civil Rules of Civil Procedure Rule 4 and Rule 54 (C). As a matter of law Plaintiff Curry should be entitled to the amount of prayer requested in the initial complaint because Mr. Mackenzie failed to defend. Which is Default Judgement Ohio Rules of Civil Procedure Rule 55, 4, and 54 (c).

The Judge awarded Plaintiff Curry 11,761 dollars as a judgement entry for liability claims only when 14,784.00 dollars was actually spent: (not including money spent trying to contact Mr. Mackenzie) no Compensatory, Punitive, or Tort damages were considered. The Judge misunderstood the amount spent: when she held a hearing in which the defendant never appeared.

Plaintiff Curry is petitioning the court to accept my Rehearing due to the fact I received it almost 45 days late and reverse the lower court Decision and award Plaintiff Curry 100,000,0000 Million dollars as requested in the initial complaint (and according to law) for loss opportunities and profits, loss of quality time spent with family, mental anguish and stress, and for a financial hardship caused to me and my family by Mr. Mackenzie' s negligence.

The constitutionality of statues of the State are drawn into question. Rule 4 (b) Process of Summons, Rule 54 (C), Rule 55 Default Judgement and RULE 4.6 D Process: Limits; Amendment; Service Refused; Service Unclaimed

The Rehearing of Certiorari should be granted

Respectfully Submitted

Carline Curry 8-7-2021
Carline Curry Pro SE

Attached are Appendixes A thru G

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Appendix A

A1 - The Supreme Court denied new trial and to accept Jurisdiction..

A2 - Tenth Appellate Dismissed my case for failing to submit a timely brief. The brief was submitted

A3 - Letter to court asking them where my brief went it was filed on 2-10-2020

A4 - A9 Brief submitted on 2-10-2020 did not include 25 pages of exhibits

A10 - A11 Magistrates Decision from Franklin County Court of Common Pleas not according to Ohio Civil Rule 4 B Process of Service

A12 - A14 Documents showing Mr. Mackenzie Abandoned my Patent Application and was disciplined by the Office of Discipline and Enrollment

CERTIFICATE OF COUNSEL

COUNSEL FOR DEFENDANTS

Mr. Mackenzie had no Concil on Record

16 Saucity Ave. Del Rey Oaks, California 93940

Council for Plaintiff Pro Se.

Carline Curry, 606 Bowman Stret, Mansfield, Ohio 44903;
Phone Number 567-274-9130

The Petition and Certification of Council is presented in
good faith and not for delay.

Carline Curry Carline Curry Pro Se

Date 8-7-2021

**Additional material
from this filing is
available in the
Clerk's Office.**