

No. _____

In the
Supreme Court of The United States

Linda A. Petralia,

Petitioner,

v.

AMERICAN EXPRESS NATIONAL BANK,

Respondent.

APPENDIX A: DECISIONS OF STATE COURT OF APPEALS

NH Supreme Court Case No. 2021-0468
NH Superior Court Case No. 226-2021-CV-00078

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2021-0468, American Express National Bank v. Linda Petralia, the court on February 22, 2022, issued the following order:

The defendant's expedited motions to stay all proceedings in superior court, to remove the presiding superior court judge, and for "intervention" by this court are denied without prejudice to seeking relief from the superior court. The defendant's motion to stay all proceedings in this court is denied. Having considered the defendant's brief, the plaintiff's memorandum of law, and the record submitted on appeal, we conclude that oral argument is unnecessary in this case. See Sup. Ct. R. 18(1). The defendant, Linda Petralia, appeals decisions of the Superior Court (Temple, J.) denying her motion to dismiss, denying her motion to strike a default entered in favor of the plaintiff, American Express National Bank, entering final judgment for the plaintiff, and denying her motion to "correct" the docket, strike the final judgment, and reopen the case. She argues that the trial court erred by: (1) entering final default judgment in the absence of a request for final judgment by the plaintiff; (2) not dismissing the case pursuant to the doctrine of res judicata and for lack of standing; and (3) considering objections to her motions seeking to strike the entry of default that were signed by an attorney who had not entered an appearance for the plaintiff. We reverse the entry of final default judgment, but otherwise affirm and remand for further proceedings consistent with this order.

The plaintiff served its complaint upon the defendant on March 10, 2021. The defendant did not file an answer, but instead, on April 7, she moved to dismiss, see Super. Ct. R. 9(b) (providing that, in lieu of an answer, a defendant may file a motion to dismiss), asserting that she had received "many correspondences from several different collection firms," and that the plaintiff "previously sold this alleged debt" and, thus, lacked standing. The trial court denied the motion, explaining that "the complaint sets forth a claim for relief (breach of contract)." The defendant moved for reconsideration, arguing that she had challenged the plaintiff's standing, and that the plaintiff had failed to establish a "genuine issue of material fact . . . that proves that the Plaintiff owns the alleged debt." In denying the motion, the trial court observed that the defendant was "conflating the summary judgment standard with the applicable dismissal standard," and that the plaintiff had "alleged sufficient facts to establish standing." We note that the record on appeal does not include the complaint or the objections to the motions to dismiss and for reconsideration.

Following the denial of her motion to dismiss, the defendant did not file an answer, and on June 8, 2021, the trial court issued a notice of default. See Super. Ct. R. 9(b) (requiring defendant to file answer within thirty days of denial of motion to dismiss filed in lieu of an answer), 42(a) (providing that, if a defendant fails to timely answer or otherwise defend a complaint, the trial court shall enter default). The defendant moved to strike the default, see Super. Ct. R. 42(a), and after the trial court denied that motion, she unsuccessfully moved to reconsider. The plaintiff's objections to both motions included certificates of service containing a signature block that listed both the plaintiff's counsel of record and an attorney associated with counsel of record, and a physical signature that appears to have been executed by the attorney associated with counsel of record; the associated attorney had not filed an appearance.

Thereafter, the trial court entered final default judgment and closed the case. The defendant moved to "correct" the docket and to reopen the case, correctly observing that the plaintiff had not moved for the entry of final judgment. See Super. Ct. R. 42(d). The trial court denied the motion, referring to its earlier orders denying the defendant's motions to strike the default and to reconsider the denial of her motion to strike, and reasoning that, because the defendant had not timely appealed those orders, the case would "remain[] closed." This appeal followed.

An entry of default is not a final judgment on the merits. See Cole v. Hobson, 143 N.H. 14, 16 (1998); Donovan v. Canobie Lake Park Corp., 127 N.H. 762, 763 (1986). Rather, it merely admits the material allegations in the complaint, and in a civil action seeking an award of damages, requires the trial court then to determine and award damages. See Cole, 143 N.H. at 16. Under Superior Court Rule 42, following an entry of default for failure to file an answer, the docket is required to be marked, "final default entered, continued for entry of judgment or decree upon compliance with Rule 42." Super. Ct. R. 42(c). The non-defaulting party "may then request entry of final judgment or decree" by motion supported by an affidavit of damages or proposed decree, and the defaulted party is entitled, upon request, to a hearing as to final judgment. Super. Ct. R. 42(d), (e). Here, the plaintiff never requested final judgment. In its memorandum of law, the plaintiff effectively concedes that the trial court erred by entering final judgment, and that the earlier orders denying the motions to strike the default and for reconsideration did not constitute a final decision on the merits for purposes of Supreme Court Rules 3 and 7. Accordingly, we reverse the entry of final judgment and the denial of the motion to correct the docket and reopen the case, and remand for further proceedings consistent with this order.¹

¹ In its memorandum of law, the plaintiff represents that, after the defendant had filed this appeal, it contacted the trial court clerk and inquired why judgment had been entered in the absence of a motion, and that the clerk "advised [the plaintiff's] counsel that this was an error" and amended the docket to read, "Default Continued for Judgment." By that point, however,

We next address whether the trial court erred by denying the motion to dismiss. In ruling on a motion to dismiss, the trial court is generally required to determine whether the allegations in the plaintiff's pleadings state a basis upon which relief may be granted, and to accept all facts pleaded by the plaintiff as true and construe such facts in the plaintiff's favor. Alward v. Johnston, 171 N.H. 574, 580 (2018). When, however, a motion to dismiss challenges the plaintiff's standing, the trial court must look beyond the unsubstantiated allegations and determine, based on the facts, whether the plaintiff has sufficiently demonstrated its right to claim relief. Avery v. Comm'r, N.H. Dep't of Corr., 173 N.H. 726, 736-37 (2020). As the appealing party, the defendant has the burden of providing a record that is sufficient to decide the issues she is raising, and we assume that relevant portions of the trial court record that the appealing party has not provided on appeal support the result reached by the trial court. See Bean v. Red Oak Prop. Mgmt., 151 N.H. 248, 250 (2004); see also In the Matter of Silva & Silva, 171 N.H. 1, 12 (2018) (applying Bean to failure to provide relevant motion or trial court order as part of record on appeal); Estate of Day v. Hanover Ins. Co., 162 N.H. 415, 422 (2011) (applying Bean to a failure to provide relevant trial court pleadings).

The defendant argues that the trial court engaged in plain error, see Sup. Ct. R. 16-A, by not dismissing this case under the doctrine of res judicata based upon its earlier dismissal "with prejudice" of a separate lawsuit brought by the plaintiff against the defendant. Additionally, she suggests that the plaintiff in fact lacked standing, and that the trial court erred by not dismissing the case on that basis. However, the defendant has not provided a sufficient record to address these arguments. Specifically, she has not provided the plaintiff's complaint or its objections to her motions to dismiss and to reconsider the denial of her motion to dismiss. Nor has she provided relevant pleadings from the prior case that she claims constituted res judicata.² Under these circumstances, we cannot conclude that the trial court engaged in error, plain or otherwise, by denying the motion to dismiss. See Silva, 171 N.H. at 12; Estate of Day, 162 N.H. at 422.

the defendant had already perfected her appeal, thereby "vest[ing this court] with the exclusive power and jurisdiction over the subject matter of the proceedings" and suspending "the authority and control of the [trial] court with reference thereto." Rautenberg v. Munnis, 107 N.H. 446, 447 (1966) (quotations omitted).

² In the prior case upon which the defendant relies to argue that res judicata requires dismissal of this case, although the trial court initially dismissed that case with prejudice, it subsequently granted a timely motion to vacate the dismissal, and it ultimately awarded the plaintiff summary judgment. We upheld those rulings on appeal. See American Express National Bank v. Linda A. Petralia, No. 2021-0315 (N.H. Jan. 14, 2022) (Petralia I). Neither the appellate record in this case nor the appellate record in Petralia I includes a copy of the Petralia I complaint, the motion to vacate the Petralia I dismissal order, or the trial court's order granting the motion to vacate the dismissal. We note further that, in its memorandum of law in this case, the plaintiff represents that: (1) the two cases arise out of separate accounts, not the same account; and (2) it never, in fact, sold the debt at issue in this case.

Finally, we reject the defendant's argument that the trial court engaged in plain error, see Sup. Ct. R. 16-A, by considering objections to her motions to strike the default and to reconsider the denial of her motion to strike that were signed by an attorney who had not entered an appearance. The defendant cites no authority standing for the proposition that when, as in this case, a pleading contains a signature block listing both the party's counsel of record in the case and an attorney associated with counsel of record who has not filed an appearance, the trial court is required to disregard the pleading. Nor are we aware of any such authority. Even if the trial court had been required to disregard the objections, however, it does not follow that the defendant would have been entitled to the granting of her corresponding motions. See Super. Ct. R. 13(b) (stating that failure to object to a motion "shall not, in and of itself, be grounds for granting the motion"); McGann v. Steenstra, 130 N.H. 411, 412 (1988) (holding that trial court may not ministerially grant a motion based only on the lack of an objection, but may grant the motion only after considering the law and the relevant pleadings). We note that the defendant, in her brief, does not challenge the merits of the trial court's decision to deny her motion to strike the default, but argues only that in denying the motion, the trial court erred by considering objections signed by an attorney who had not appeared.³

The defendant's remaining arguments are either insufficiently developed, see State v. Blackmer, 149 N.H. 47, 49 (2003), or otherwise do not warrant further discussion, see Vogel v. Vogel, 137 N.H. 321, 322 (1993).

Affirmed in part; reversed in part; and remanded.

MacDonald, C.J., and Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

**Timothy A. Gudas,
Clerk**

³ Even if the defendant were challenging the merits of the decision not to strike the default, we could not conclude, on this record, that the trial court's decision to deny the motion to strike the default amounted to an error of law or an unsustainable exercise of discretion. See Brito v. Ryan, 151 N.H. 635, 637 (2005).

Distribution:

Hillsborough County Superior Court South, 226-2021-CV-00078
Honorable Charles S. Temple
Honorable Tina L. Nadeau
Ms. Linda Petralia
Brittney A. Millay, Esq.
Carolyn A. Koegler, Supreme Court
Lin Willis, Supreme Court
File

No. _____

In the
Supreme Court of The United States

Linda A. Petralia,

Petitioner,

v.

AMERICAN EXPRESS NATIONAL BANK,

Respondent.

APPENDIX B: DECISIONS OF THE STATE TRIAL COURT

NH Supreme Court Case No. 2021-0468
NH Superior Court Case No. 226-2021-CV-00078

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
<http://www.courts.state.nh.us>**

Court Name: Hillsborough - Superior Court-Southern District
Case Name: American Express National Bank v Linda A. Petralia
Case Number: 226-2020-CV-00517
(if known)

MOTION: Motion to Dismiss

1. I Linda A. Petralia am filing this motion on my own behalf
AND/OR

I am a person authorized by court rules to appear on behalf of another in this case. I am filing this motion on behalf of

2. The facts supporting this motion are:

Case # 226-2020-CV-00517

I am currently in receipt of many correspondences from several different collection firms regarding this matter. The Plaintiff previously sold this alleged debt and therefore, has no standing to bring forth their claim.

[See Attachment(s), item 'Item 2' (continued)]

3. With this motion, I am requesting the following relief:

Case # 226-2020-CV-00517

I motion the court to dismiss this case with prejudice.

Thank you.

4. The other party does does not agree with the relief requested in this motion.

OR

I was unable to or did not obtain the other party's opinion on this motion because:

Case # 226-2020-CV-00517

I am currently in receipt of many correspondences from several different collection firms regarding this matter. The Plaintiff previously sold this alleged debt and therefore,

Case Name: American Express National Bank v Linda A. Petralia

Case Number: 226-2020-CV-00517

MOTION:

For non e-filed cases:

I state that on this date I am mailing by U.S. mail, or Email (only when there is a prior agreement of the parties to use this method), or hand delivering a copy of this document to:

Other party

or

Other party's attorney

OR

For e-filed cases:

I state that on this date I am sending a copy of this document as required by the rules of the court. I am electronically sending this document through the court's electronic filing system to all attorneys and to all other parties who have entered electronic service contacts (email addresses) in this case. I am mailing or hand-delivering copies to all other interested parties.

Linda A. Petralia

Name of Filer

Law Firm, if applicable

Bar ID # of attorney

12 Fernwood Dr.

Address

Merrimack, NH 03054

City

State

Zip code

/s/ Linda A. Petralia

Signature of Filer

11/18/20

Date

(617) 901-8190

Telephone

rosemarypetralia@gmail.com

E-mail

FOR COURT USE ONLY

Granted(without objection by plaintiff)



Honorable Charles S. Temple

December 2, 2020

Clerk's Notice of Decision
Document Sent to Parties
on 12/02/2020

To Motion to Dismiss

Item 2 (continued)

With this, I motion the court to dismiss this case with prejudice. Thank you.

Service Information

I state that on this date I am

e-serving through the court's electronic filing system,

or mailing by U.S. mail,

or hand-delivering a copy of this document to:

Other party's attorney: Marci Jean Pearson

I state that on this date I am

e-serving through the court's electronic filing system,

or mailing by U.S. mail,

or hand-delivering a copy of this document to:

Other party's attorney: Randall L. Pratt

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
<http://www.courts.state.nh.us>

Court Name: Hillsborough - Superior Court-Southern District
Case Name: American Express National Bank v Linda Petralia
Case Number: 226-2021-CV-00078
(if known)

MOTION: Defendant's Motion to Correct Case Register of Act

1. I Linda Petralia am filing this motion on my own behalf
AND/OR
I am a person authorized by court rules to appear on behalf of another in this case. I am filing this motion on behalf of

2. The facts supporting this motion are:

Defendant's Motion to Correct Case Register of Actions/Case Summary to
Reflect a True and Accurate Depiction of Events
Defendant, Linda A. Petralia, Pro Se, motions this court to correct the Register of
Actions/Case Summary in the above-mentioned case as follows: 1). Strike Default Judgment
[See Attachment(s), item 'Item 2' (continued)]

3. With this motion, I am requesting the following relief:

Wherefore, in accordance with the Rule of Law, the Defendant moves for the following:

(a) Remove Default Judgment dated September 13, 2021, on the Register of Records/Case Summary entered sua sponte by Justice Charles S. Temple; and,

(b) Change Closed status of the case to Pending; and then,

(c) Dismiss this case with prejudice in favor of the Defendant.

4. The other party does does not agree with the relief requested in this motion.

OR

I was unable to or did not obtain the other party's opinion on this motion because:

not applicable

Case Name: American Express National Bank v Linda Petralia

Case Number: 226-2021-CV-00078

MOTION:

For non e-filed cases:

I state that on this date I am mailing by U.S. mail, or Email (only when there is a prior agreement of the parties to use this method), or hand delivering a copy of this document to:

or

Other party

Other party's attorney

OR

For e-filed cases:

I state that on this date I am sending a copy of this document as required by the rules of the court. I am electronically sending this document through the court's electronic filing system to all attorneys and to all other parties who have entered electronic service contacts (email addresses) in this case. I am mailing or hand-delivering copies to all other interested parties.

Linda Petralia

Name of Filer

Law Firm, if applicable

Bar ID # of attorney

12 Fernwood Dr.

Address

Merrimack, NH 03054

City

State

Zip code

/s/ Linda Petralia

Signature of Filer

9/22/21

Date

(603) 424-7670

Telephone

fredaflynow@gmail.com

E-mail

FOR COURT USE ONLY

Denied-see Orders dated July 7, 2021 and August 2, 2021. The defendant has failed to appeal the denial of the motion to reconsider in a timely fashion. As such, this case remains closed. Any future pleadings filed in this case by the defendant shall be

Honorable Charles S. Temple administratively rejected by the Clerk.

October 7, 2021

Clerk's Notice of Decision
Document Sent to Parties
on 10/07/2021

35.

To Motion

Item 2 (continued)

dated September 13, 2021, entered sua sponte by Justice Charles S. Temple; and, 2). Change Closed status of the case to Pending, as these inconsistencies are not a true and accurate depiction of the case events. In justification of this motion, Defendant asserts the following facts:1. On June 6, 2021, this court advanced this case via a sua sponte Notice of Default.2. On September 13, 2021, via sua sponte, a Default Judgment was entered by Justice Charles S. Temple. (See attached Exhibit A file.)3. On this same day, September 13, 2021, via sua sponte by this court, the case was closed. (See attached Exhibit A file.)4. Defendant did not receive any notification or documentation of this action and entry by the court in accordance with New Hampshire Superior Court Rule 42 (d).5. It was only by the Defendant's own diligence that she first became aware of the entry in question on 9/20/2021.6. On September 20, 2021, the Defendant submitted a Turbo Court Help Request #591623433 to this court requesting the following: "According to the case file, the judge entered a default judgment on 9/13/2021. However, Defendant did not receive an email to this effect. There is no mention (icon) of official paper work on this order along with the judgement on the portal. Please respond with the official paperwork including the envelope number from the 9/13/2021 default judgment." (See attached Exhibit A file email.)7. On September 21, 2021, this court responded as follows, "Good day, a default judgment order has not been issued, you may see it as an entry in the portal, but it has not been issued and sent out yet; the attached "notice of default" was emailed on 6/08 and opened on 6/08."8. Therefore, if a default judgment "has not been issued and sent out yet", it begs the question why does it appear on an official court register? And likewise, without final judgment, how can this case be closed and simultaneously defaulted on the same day judgment was recorded?9. In plain sight, a reviewer of this case would assume an actual default judgment exists and the parties were notified in accordance with Superior Court Rule 42(d).10. New Hampshire Superior Court Rule 42(d) states, that, "The non-defaulting party may then request entry of final judgment or decree, by filing a motion, together with an affidavit of damages or, in cases where equitable relief is requested, a proposed decree. Where the default is based on a failure to file an Answer, the motion shall include a military service statement. The moving party shall certify to the court that a copy of all pleadings has been mailed to the defaulting party and shall include a notice that entry of final judgment or decree is being sought. Any party may request a hearing as to final judgment or decree. All notices under this rule shall be sufficient if mailed to the last known address of the

To Motion

defaulting party."11. By the courts inappropriately advancing this case via sua sponte and circumventing the Rule of Law, New Hampshire Superior Court Rule 42(b), the court has simultaneously violated the Defendant's right to exercise the remedies within New Hampshire Superior Court Rule 42 (e), in addition to other afforded rights and remedies by law.

Service Information

I state that on this date I am

e-serving through the court's electronic filing system,

or mailing by U.S. mail,

or hand-delivering a copy of this document to:

Other party's attorney: Lawrence Philip Gagnon

I state that on this date I am

e-serving through the court's electronic filing system,

or mailing by U.S. mail,

or hand-delivering a copy of this document to:

Other party: American Express National Bank

I state that on this date I am

e-serving through the court's electronic filing system,

or mailing by U.S. mail,

or hand-delivering a copy of this document to:

Other party's attorney: Richard S Tirrell

Hillsborough South

Case Summary

226-2021-CV-00078

Case No. 226-2021-CV-00078

American Express National Bank v Linda Petralia

§
§
§

Location: Hillsborough South
Judicial Officer: Temple, Charles S
Filed on: 02/22/2021

Case Information

Case Type: Contract-Collection
Case Status: 09/13/2021 Closed
02/22/2021 Pending

Assignment Information

Current Case Assignment

Case Number 226-2021-CV-00078
Court Hillsborough South
Date Assigned 02/22/2021
Judicial Officer Temple, Charles S

Party Information

Plaintiff American Express National Bank **Tirrell, Richard S ESQ**
Retained
978-681-1828(F)
978-686-2255(W)
rtirrell@zwickerpc.com

Gagnon, Lawrence Philip
Retained
978-681-1828(F)
978-686-2255(W)
lgagnon@zwickerpc.com

Defendant Petralia, Linda **Pro Se**
Also Known As Petralia, Linda A
603-424-7670(H)
fredaflynow@gmail.com

Events and Orders of the Court

02/22/2021 Complaint - Civil Index # 1
Bench Trial
Party: Plaintiff American Express National Bank

02/23/2021 Service Index # 2
Petralia, Linda
Served: 03/10/2021

02/23/2021 Summons on Complaint Index # 2
Env 1586280

03/10/2021 Service

03/17/2021 Return of Service Index # 3
on Def

Hillsborough South

Case Summary

Case No. 226-2021-CV-00078

04/07/2021	✉ Appearance <i>Filer: Linda Petralia Pro Se</i>	Index # 4
04/07/2021	✉ Email-Address Notification or Change <i>Def</i>	Index # 5
04/07/2021	✉ Motion to Dismiss <i>Def</i>	Index # 6
04/12/2021	✉ Obj-Motion to Dismiss <i>Plt</i> Filed by: Plaintiff American Express National Bank	Index # 7
04/16/2021	Denied (Judicial Officer: Temple, Charles S) <i>Env #1686759</i>	
04/23/2021	✉ Motion to Reconsider <i>4-16-21 order on Mo Dismiss/Def</i>	Index # 8
04/29/2021	✉ Obj-Motion to Reconsider <i>Denial of Motion to Dismiss -Plt</i> Filed by: Plaintiff American Express National Bank	Index # 9
05/06/2021	Denied (Judicial Officer: Temple, Charles S) <i>Env #1721931</i>	
06/08/2021	✉ Notice of Default <i>Env #1773046</i>	Index # 10
06/28/2021	✉ Motion to Strike <i>Default/Dft</i>	Index # 11
06/28/2021	✉ Affidavit <i>Dft</i>	Index # 12
06/30/2021	✉ Obj-Mot to Strike Default Judgment <i>plf</i> Party: Plaintiff American Express National Bank	Index # 13
07/07/2021	Denied (Judicial Officer: Temple, Charles S) <i>Env #1823692</i>	
07/15/2021	✉ Email-Address Notification or Change <i>Dft</i>	Index # 14
07/15/2021	✉ Motion to Reconsider <i>Motion to Strike/Dft</i>	Index # 15
07/15/2021	✉ Other <i>Attachment to Mo</i>	Index # 16
07/23/2021	✉ Obj-Motion to Reconsider <i>Plt</i> Filed by: Plaintiff American Express National Bank	Index # 17
08/02/2021	Denied (Judicial Officer: Temple, Charles S) <i>Env #1868113</i>	
09/13/2021	Default Judgment (Judicial Officer: Temple, Charles S)	



freda fly <fredaflynow@gmail.com>

Turbo Court help response #591623433.

1 message

NHTrialCourt_DoNotReply <NHTrialCourt_DoNotReply@courts.state.nh.us>
To: "fredaflynow@gmail.com" <fredaflynow@gmail.com>

Tue, Sep 21, 2021 at 8:25 AM

Thank you for contacting the NH Trial Courts Turbo Court Help request. Below is the information you requested.

Request/Message: According to the case file, the judge entered a default judgment on 9/13/2021. However, defendant did not receive an email to this effect. There is no mention (icon) of official paper work on this order along with the judgment on the portal. Please respond with the official paperwork including the envelope number from the 9/13/2021 default judgment.

Good day, a default judgement order has not been issued, you may see it as an entry in the portal, but it has not been issued and sent out yet; the attached "notice of default" was emailed on 06/08 and opened 06/08.

If you have additional questions, please contact us at 1-855-212-1234 Monday-Friday 8 am to 4 pm.

Further information about the NH Trial Court Electronic Services: <https://www.courts.state.nh.us/nh-e-court-project/self.htm>

Further information about the NH Trial Courts: <http://www.courts.state.nh.us/circuitcourt/index.htm>

NOTE: This is a one-way e-mail transmission. Please do not reply. All replies are immediately deleted and are not read.

Thank You

Tammy

1-855-212-1234

MST3B55.pdf
372K

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