Rel: November 5, 2021

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2021-2022

1190872

Ex parte Living By Faith Christian Church

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS

(In re: Living By Faith Christian Church

v.

Young Men's Christian Association of Birmingham)

(Jefferson Circuit Court, CV-18-349; Court of Civil Appeals, 2180674)

STEWART, Justice.

We granted the certiorari petition of Living By Faith Christian Church ("the Church") to consider, as a question of first impression, whether Rule 55(b)(2), Ala. R. Civ. P., requires a trial court to hold a hearing before entering a default judgment. The Court of Civil Appeals, in Living By Faith Christian Church v. Young Men's Christian Ass'n of Birmingham, [Ms. 2180674, Mar. 20, 2020] ___ So. 3d ___ (Ala. Civ. App. 2020), determined that the Jefferson Circuit Court ("the trial court") did not err in granting the application for a default judgment filed by the Young Men's Christian Association of Birmingham ("the YMCA") without first holding a hearing. Based on the reasons expressed below, we agree with the Court of Civil Appeals' determination and conclude that Rule 55(b)(2) does not require a trial court to hold a hearing on every application or motion for a default judgment.

Background

The Court of Civil Appeals provided the following relevant factual and procedural history:

"On August 14, 2018, the Young Men's Christian Association of Birmingham ('the YMCA') commenced an action against the Church and four of its employees, Jeremy Price, Johnitra Price, Tavares Cook, and Jessica Cook. The YMCA's complaint alleged that the YMCA had given the Church permission to use one of the YMCA's buildings ('the building') in Birmingham on a temporary basis, that the YMCA had subsequently notified the Church that it would have to vacate the building, and that the Church had refused to vacate the building. As relief, the YMCA's complaint sought possession of the building and an award of damages. All five defendants were served with process, with Jeremy Price being served not only individually but also as the Church's agent. On September 7, 2018, a single answer signed by both of the Prices and both of the Cooks was filed on behalf of all five defendants. In the answer, the defendants described the Church as 'a domestic non-profit corporation organized and existing under the laws of the State of Alabama.' Jeremy Price signed the answer as 'Founder & Senior Pastor, Living By Faith Christian Church,' and Johnitra Price signed the answer as 'Executive Pastor, Living By Faith Christian Church.' A licensed attorney did not sign the answer on behalf of any of the defendants.

"On October 15, 2018, the YMCA filed a motion for a partial summary judgment against all five defendants insofar as the YMCA's complaint sought possession of the building. On October 22, 2018, a response opposing the YMCA's partial-summary-judgment motion was filed on behalf of all five defendants. Jeremy Price signed that response as 'Founder & Senior Pastor, Living By Faith Christian Church,' and Johnitra Price signed that response as 'Executive Pastor, Living By Faith Christian Church.' A licensed attorney did not sign that response on behalf of any of the defendants.

"Also on October 22, 2018, the YMCA filed an application and affidavit for the entry of a default judgment ('the application') against the Church for failure to answer or otherwise defend, presumably based on the fact that neither the Church's answer nor its response in opposition to the partial-summary-judgment motion had been signed by a licensed attorney. See, e.g., Progress Indus., Inc. v. Wilson, 52 So. 3d 500, 597 (Ala. 2010) (recognizing that the general rule in Alabama is that a person must be a licensed attorney in order to represent a separate legal entity, such as a corporation, and that a pleading filed by a nonattorney engaging in the unauthorized practice of law by purporting to represent a separate legal entity is a nullity). The YMCA supported its application with an affidavit signed by Dan Pile, the YMCA's president and chief operating officer, in which he testified that the YMCA owned title to the building, authenticated the attached deed by which the YMCA had acquired title to the building, testified that the YMCA had given the Church permission to use the building for Sunday church services until the YMCA conveyed the building to the A.G. Gaston Boys & Girls Club ('the Boys & Girls Club'), authenticated an e-mail informing the Church that it was permitted to use the building for Sunday church services until the building was conveyed to the Boys & Girls Club, testified that he had notified the Church that they would have to vacate the building so that the YMCA could close the transfer of the building to the Girls & Boys Club, and testified that the Church had refused to vacate the building. The YMCA served the application on both of the Prices and both of the Cooks, but it did not send a service copy addressed to the Church. None of the defendants requested a hearing regarding the application.

"On December 12, 2018, the trial court held a hearing regarding the partial-summary-judgment motion at which the

YMCA's attorney, both of the Prices, and both of the Cooks appeared. The record does not contain a transcript of that hearing. On December 14, 2018, the trial court entered two separate judgments. One of those judgments was a partial default judgment against the Church insofar as the YMCA sought possession of the building. The other judgment was a partial summary judgment against the Prices and the Cooks insofar as the YMCA sought possession of the building. Neither judgment adjudicated the action insofar as the YMCA's claim sought damages. The partial default judgment against the Church contained a certification that it was a final judgment pursuant to Rule 54(b), Ala. R. Civ. P. The partial summary judgment did not contain such a certification; however, in response to a motion filed by the YMCA, the trial court, on January 10, 2019, entered an order certifying the partial summary judgment as a final judgment pursuant to Rule 54(b).

"On January 14, 2019, a motion to set aside the partial default judgment against the Church signed by Johnitra Price as executive pastor of the Church was filed. On January 16, 2019, the YMCA filed a response to the motion to set aside the partial default judgment in which it alleged, among other things, that the Prices and the Cooks had been advised at the December 12, 2018, hearing that the Church had to be represented by a licensed attorney and that, despite being so advised, a nonattorney had improperly filed the motion to set aside the partial default judgment on behalf of the Church. On January 31, 2019, the YMCA filed a motion to strike the motion to set aside the partial default judgment on the ground that it had been filed on behalf of the Church by a nonattorney.

"On April 4, 2019, the trial court held a hearing at which the Prices and the Cooks appeared but no licensed attorney

> appeared on behalf of the Church. The trial court ruled that it could not consider arguments made by nonattorneys on behalf of the Church and denied the motion to set aside the partial default judgment.
>
> "On April 15, 2019, a licensed attorney representing the Church filed a Rule 60(b)(4), Ala. R. Civ. P., motion for relief from the partial default judgment. In that motion, the Church, citing Progress Industries, Inc. v. Wilson, 52 So. 3d 500 (Ala. 2010), and Dial v. State, 374 So. 2d 361 (Ala. Civ. App. 1979), asserted that, regardless of whether the Church had validly defended the action through its having a nonattorney file the September 7, 2018, answer on its behalf, the filing of that answer on its behalf constituted an 'appearance' in the action by the Church for purposes of Rule 55(b)(2), Ala. R. Civ. P.; that, because the Church had appeared in the action for purposes of Rule 55(b)(2), Rule 55(b)(2) required the YMCA to give the Church notice of the filing of the application; that the YMCA had not given the Church such notice; and that, therefore, the partial default judgment against the Church had to be set aside. Following a hearing, the trial court entered an order denying the Church's Rule 60(b)(4) motion on May 6, 2019."

Living By Faith Christian Church, ___ So. 3d at ___ (footnotes omitted).

On appeal, the Church argued, among other things, that the partial default judgment entered against the Church was due to be vacated because the trial court had failed to hold a hearing on the YMCA's application for a default judgment before granting the application. The Church contended that, pursuant to Rule 55(b)(2), Ala. R. Civ. P., a trial

court is required to hold a hearing on an application or motion for a default judgment when the defaulting party has appeared in the action. The Court of Civil Appeals, in affirming the trial court's denial of the Church's Rule 60(b)(4), Ala. R. Civ. P., motion for relief from the partial default judgment entered against the Church, concluded:

> "[B]ased on the presence of permissive language in Rule 55(b)(2) providing that a trial court 'may' hold a hearing on an application for a default judgment, based on the absence of any language in Rule 55(b)(2) requiring a trial court to hold such a hearing, based on the fact that the application itself established the YMCA's prima facie right to possession of the building, and based on the fact that the Church did not request a hearing regarding the application despite having notice of the filing of the application through its agents Jeremy Price and Johnitra Price, we conclude that the trial court in the present case was not required to hold a hearing on the YMCA's application and, therefore, that the trial court did not commit reversible error in denying the Church's Rule 60(b)(4) motion insofar as that motion was based on the ground that the trial court had not held a hearing regarding the application. Accordingly, we affirm the trial court's judgment."

Living By Faith Christian Church, ___ So. 3d at ___.

Standard of Review

> "In reviewing a decision of the Court of Civil Appeals on a petition for a writ of certiorari, this Court 'accords no presumption of correctness to the legal conclusions of the intermediate appellate court. Therefore, we must apply de

> novo the standard of review that was applicable in the Court of Civil Appeals.' Ex parte Toyota Motor Corp., 684 So. 2d 132, 135 (Ala.1996). Because the material facts before the Court of Civil Appeals were undisputed, that court's review of the trial court's ruling would be de novo as well. State Dep't of Revenue v. Robertson, 733 So. 2d 397, 399 (Ala. Civ. App. 1998). This is particularly true where the intermediate appellate court is construing statutory provisions. Robertson, supra; Pilgrim v. Gregory, 594 So. 2d 114, 120 (Ala. Civ. App. 1991)."

Ex parte Exxon Mobil Corp., 926 So. 2d 303, 308 (Ala. 2005).

Discussion

At issue in this certiorari proceeding is whether the language of Rule 55(b)(2) required the trial court to hold a hearing before entering a default judgment. Rule 55(b)(2) states, in pertinent part:

> "If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least three (3) days prior to the hearing on such application, provided, however, that judgment by default may be entered by the court on the day the case is set for trial without such three (3) days notice. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury pursuant to the provisions of Rule 38[, Ala R. Civ. P.]."

Whether Rule 55(b)(2) requires a trial court to hold a hearing on every application or motion for a default judgment is an issue of first impression for this Court. When interpreting a statute, a court must give the language of the statute its plain and commonly understood meaning, and if the language is unambiguous, the court must apply the clearly expressed intent of the legislature. Blue Cross & Blue Shield of Alabama, Inc. v. Nielsen, 714 So. 2d 293, 296 (Ala. 1998). This principal of construction also applies to a court's interpretation of the Rules of Civil Procedure. Moffett v. Stevenson, 909 So. 2d 824, 826 (Ala. Civ. App. 2005).

In arguing that the plain language of Rule 55(b)(2) requires the trial court to hold a hearing before ruling on an application or motion for a default judgment, the Church points to the language of the first sentence of the portion of the rule that we quoted above: "If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least three (3) days prior to the hearing on such application." Because the word "hearing" in

that sentence is preceded with the definite article "the," as opposed to the indefinite article "a," the Church argues that the use of the definite article requires an interpretation of the rule that compels the trial court to hold a hearing before ruling on an application or motion for a default judgment. The second sentence of the previously quoted portion of the rule, however, includes permissive language that "the court may conduct such hearings or order such references as it deems necessary and proper." See Hanover Ins. Co. v. Kiva Lodge Condo. Owners' Ass'n, 221 So. 3d 446, 452 (Ala. 2016)(" '[O]rdinarily, the use of the word "may" indicates a discretionary or permissive act, rather than a mandatory act.' Ex parte Mobile Cty. Bd. of Sch. Comm'rs, 61 So. 3d 292, 294 (Ala. Civ. App. 2010).").

The language of Rule 55(b)(2) is ambiguous, and the Court of Civil Appeals has recognized the lack of clarity the rule provides. In Living By Faith Christian Church, the Court of Civil Appeals relied, in part, on Abernathy v. Green Tree Servicing, LLC, 54 So. 3d 422, 426 (Ala. Civ. App. 2010), in which that court recognized that the rule is not clear regarding whether hearings are required. In Abernathy, the trial court entered a default judgment against the defendant. Id. at 424. The

defendant filed a motion to set aside the default judgment on the ground that her attorney had not received a copy of the motion for a default judgment and that, therefore, she had not received three days' notice before the trial court entered the default judgment. Id. The trial court denied the defendant's motion, and she appealed. The Court of Civil Appeals reversed the trial court's decision, holding that the three days' notice contemplated in the rule is required before the entry of a default judgment, regardless of whether the trial court decides to hold a hearing on the motion. Id. at 426. The Court of Civil Appeals further concluded:

> " That notice must be given can be assumed from the language of the rule. Admittedly, the language of the rule is difficult to apply when a trial court does not hold a hearing on an application for a default judgment. However, given the purpose of providing notice of an application for a default judgment against a party that has appeared in the case, the requirement that notice be provided cannot hinge on whether the trial court holds a hearing on the application, especially given that the notice to be given is that an application for a default judgment has been sought, not that a hearing has been scheduled on that application."

Id. See also Hayes v. Hayes, 472 So. 2d 646, 650 (Ala. Civ. App. 1985)(explaining that a defendant "was entitled to receive the three day

notice before the entry of a judgment by default" but not specifying that a hearing was required).

In interpreting the language of a rule, we can also look to the committee comments to the rule as persuasive authority. Iverson v. Xpert Tune, Inc., 553 So. 2d 82, 88 (Ala. 1989)("Although the committee comments are not binding, they may be highly persuasive. See Thomas v. Liberty National Life Ins. Co., 368 So. 2d 254 (Ala. 1979)."). The Committee Comments on 1973 Adoption of Rule 55 state that Rule 55(b)(2) "provides for three days notice prior to entry of default judgment, when the defendant has once appeared. Note, however, the three day notice is not applicable when the act of default is the failure to appear when the case is set for trial." The committee comments specify that three days' notice is required before the entry of a default judgment; the comments do not state that the three days' notice is required before holding a hearing or that a hearing must be held on an application or motion for a default judgment.

In addition, because the Alabama Rules of Civil Procedure were modeled after the Federal Rules of Civil Procedure, and Federal Rule

55(b)(2) is substantially similar to Alabama Rule 55(b)(2),[1] we can consider as persuasive authority federal decisions construing Rule 55(b)(2) of the Federal Rules of Civil Procedure. Ex parte Novus Utils., Inc., 85 So. 3d 988, 996 (Ala. 2011). Rule 55(b)(2), Fed. R. Civ. P., states, in pertinent part:

> "If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals -- preserving any federal statutory right to a jury trial -- when, to enter or effectuate judgment, it needs to:
>
> "(A) conduct an accounting;
>
> "(B) determine the amount of damages;
>
> "(C) establish the truth of any allegation by evidence; or
>
> "(D) investigate any other matter."

Federal courts have held that Rule 55(b)(2), Fed. R. Civ. P., does not require a hearing before a ruling on a default-judgment motion. See Finkel v. Romanowicz, 577 F.3d 79, 87 (2d Cir. 2009) ("In permitting, but

[1]See Rule 55, Ala. R. Civ. P., Committee Comments on 1973 Adoption (noting the similarity between the rules).

not requiring, a district court to conduct a hearing before ruling on a default judgment, Rule 55(b) commits this decision to the sound discretion of the district court."); Greathouse v. JHS Sec. Inc., 784 F.3d 105, 116 (2d Cir. 2015)(citing, among other cases, Finkel, 577 F.3d at 87) ("The decision whether to enter default judgment is committed to the district court's discretion, ... as is the decision whether to conduct a hearing before deciding the default judgment motion."); Securities & Exch. Comm'n v. Smyth, 420 F.3d 1225, 1232 n.13 (11th Cir. 2005) ("An evidentiary hearing is not a per se requirement; indeed, Rule 55(b)(2) speaks of evidentiary hearings in a permissive tone."); and United States ex rel. Use of Time Equip. Rental & Sales, Inc. v. Harre, 983 F.2d 128, 130 (8th Cir. 1993) (holding that the trial court erred in entering a default judgment on the same day the plaintiff filed a second affidavit of default, because the defendant had appeared in the action, albeit late, and was thus entitled to three days' notice before the entry of a default judgment; the court did not address or indicate whether the trial court had erred by not holding a hearing). See also Segars v. Hagerman, 99 F.R.D. 274, 275 (N.D. Miss. 1983)(describing the three days' notice requirement as notice required

before a default judgment could be entered, not as notice required before a hearing is held). But see City Wholesale Grocery Co. v. Pike (In re Pike), 79 B.R. 41, 45 and n.6 (Bankr. N.D. Ala. 1987)(explaining that a defendant is entitled to "at least an opportunity for a hearing" before the entry of a default judgment and that "the applicable portion of subsection (b)(2) of Rule 55 ... anticipates that a hearing will be held on such application"). Based on the consideration of the foregoing authorities, we conclude that Rule 55(b)(2) does not require a trial court to hold a hearing before entering a default judgment in every circumstance and that, instead, a trial court has the discretion to determine whether a hearing is necessary.

The Church argues that interpreting Rule 55(b)(2) as not requiring a hearing on every application or motion for a default judgment runs afoul of previous holdings of this Court, and it cites Cornelius v. Browning, 85 So. 3d 954 (Ala. 2011), in arguing that the failure to hold a hearing before entering a default judgment violates the defendant's due-process rights. This Court's decision in Cornelius did not directly address whether the trial court's failure to hold a hearing violated the defendant's due-process

rights. Instead, this Court concluded that the plaintiffs' purported attempt to notify the defendant of the default-judgment motion by mailing the motion to an address the plaintiffs knew was incorrect violated due process because the notice was not reasonably calculated to apprise the defendant of the pendency of the default-judgment motion. Cornelius, 85 So. 3d at 961. In the present case, notice of the application for a default judgment, which is absolutely required, is not at issue -- the issue is whether the trial court must always hold a hearing before entering a default judgment, which, as explained above, we answer in the negative.

In further support of its argument that Rule 55(b)(2) requires a hearing, the Church analogizes the language of that rule with the language of Rule 56(c)(2), Ala. R. Civ. P., concerning summary-judgment motions. Rule 56(c)(2) provides that summary-judgment motions "shall be served at least ten (10) days before the time fixed for the hearing" and that "any statement or affidavit in opposition shall be served at least two (2) days prior to the hearing." The Church contends that this Court has interpreted Rule 56(c)(2) as requiring a hearing on summary-judgment motions and, therefore, that we should apply the same interpretation to

Rule 55(b)(2). This Court has stated that "Rule 56(c) does by its language contemplate a hearing upon a motion for summary judgment." Lightsey v. Bessemer Clinic, P.A., 495 So. 2d 35, 38 (Ala. 1986). However, this Court has also explained:

> "In applying the provisions of Rule 56(c), trial courts are given limited discretion. Kelly v. Harrison, 547 So. 2d 443, 445 (Ala.1989). In fact, this Court has stated that a trial court may, within its discretion, dispense with the hearing altogether and rule on the motion without any further proceedings. See Pate v. Rollison Logging Equip., Inc., 628 So. 2d 337, 341 (Ala.1993). But once a hearing is set, the requirements of procedural due process change accordingly."

Hill v. Chambless, 757 So. 2d 409, 411 (Ala. 2000). See also Pate v. Rollison Logging Equip., Inc., 628 So. 2d 337, 341 (Ala. 1993) (holding that disposing of summary-judgment motions after conducting a pretrial conference was sufficient and that a trial court is not required to hold "a special hearing, ... because the trial court has a range of discretion in applying Rule 56(c)"). See also Hendon v. Holloway, 242 So. 3d 1000, 1005 (Ala. Civ. App. 2017)(holding that trial court was not required to allow the defendant an opportunity to be heard orally after summary-judgment motions were filed and noting that trial court had allowed defendant an opportunity to respond to motions, that trial court had advised that it

would take the motions under submission, and that defendant had not requested a hearing). Accordingly, the Church's argument is unavailing because, even in the context of hearings on summary-judgment motions, our caselaw has held that the trial court is afforded some level of discretion.[2]

Conclusion

For the foregoing reasons, we agree with the conclusion of the Court of Civil Appeals that Rule 55(b)(2) affords a trial court discretion to determine whether to hold a hearing before entering a default judgment, and, therefore, we affirm that court's judgment.

AFFIRMED.

Shaw, Wise, Bryan, Sellers, and Mendheim, JJ., concur.

Parker, C.J., and Bolin and Mitchell, JJ., dissent.

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[2]Furthermore, the dissimilarities between the purposes of Rule 55 and Rule 56 dissuade us from interpreting them synonymously. Summary-judgment proceedings differ from default-judgment proceedings in that a default judgment is proper when the defendant has failed to "plead or otherwise defend," Rule 55(a), thus demonstrating the defendant's lack of proper participation in the action, while a summary judgment is proper when there are no genuine issues of material fact in dispute. See Ex parte Rush, 419 So. 2d 1388, 1390 (Ala. 1982).

PARKER, Chief Justice (dissenting).

I believe that the language of Rule 55(b)(2), Ala. R. Civ. P., requires a hearing on an application for a default judgment when the defaulting party has appeared in the action. Subsection (2)'s penultimate sentence tying its three-day-notice deadline to "the hearing" is nonsensical if no hearing is held. And the subsection's last sentence providing that the trial court "may" conduct a hearing refers to a different kind of hearing.

Rule 55(b) provides:

"Judgment by default may be entered as follows:

> "(1) By the Clerk. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk ... shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear ....
>
> "(2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the court therefor .... If the party against whom judgment by default is sought has appeared in the action, the party ... shall be served with written notice of the application for judgment at least three (3) days prior to the hearing on such application .... If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper ...."

(Emphasis added.)

When possible, we must ascribe meaning to every word of a rule and construe the rule in such a way that gives effect to all of its provisions. Southeastern Meats of Pelham, Inc. v. City of Birmingham, 895 So. 2d 909, 913 (Ala. 2004). In the penultimate sentence of subsection (2), the words "the hearing" strongly suggest that a hearing must be held; more than commanding it, the sentence fundamentally assumes that one will be held. Moreover, the Court of Civil Appeals has remarked that the three-day notice deadline is "difficult" to apply if no hearing is held. Abernathy v. Green Tree Servicing, LLC, 54 So. 3d 422, 426 (Ala. Civ. App. 2010). That is an understatement; the deadline is impossible to apply if no hearing is scheduled. Because, in the absence of a hearing, the words "the hearing" have no meaning and the notice deadline cannot be given effect as written, the rule must be interpreted as requiring a hearing.

The main opinion finds ambiguity in subsection (2) because of permissive language in its last sentence:

> "If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other

> matter, the court may conduct such hearings or order such references as it deems necessary and proper ...."

Rule 55(b)(2) (emphasis added).

To understand that sentence, however, it is important to recognize the underlying connections between subsections (1) and (2). Subsection (1) allows a clerk of court to enter a default judgment when two conditions are satisfied: the defendant has failed to appear, and the plaintiff's claim is for a sum certain (or a sum that merely requires computation). "In all other cases," Rule 55(b)(2), i.e., when one of those conditions is not satisfied, then a default judgment can be entered only by the court under subsection (2). The last two sentences of subsection (2) then provide for two kinds of hearings; each kind relates to the absence of one of the conditions in subsection (1). First, if the defendant has appeared, then subsection (2)'s penultimate sentence requires a hearing to determine whether to enter a default judgment: "If the party against whom judgment by default is sought has appeared in the action, the party ... shall be served with written notice of the application for judgment at least three (3) days prior to the hearing on such application ...." (Emphasis added.) Second, if the court determines that a default judgment should be entered

but the amount of damages is not a sum certain (or if other factual issues remain), then subsection (2)'s last sentence allows a hearing to determine the amount of damages (or decide those other factual issues):

> "If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper ...."

(Emphasis added.)

In this way, each of subsection (2)'s last two sentences refers to a different kind of hearing conducted for a different purpose. "[T]he hearing" required by the penultimate sentence is to determine whether a default judgment should be entered at all. In contrast, the hearing that the court "may conduct" under the last sentence presumes that a default judgment will be entered and is held to determine the amount of damages or other factual issues necessary for entry of the judgment. Unlike at the first kind of hearing, at the second kind of hearing the defaulting party cannot argue that a default judgment is improper; he can only contest the amount of damages or other prejudgment factual issues. See 46 Am. Jur. 2d Judgments § 289 (2017) (explaining that "the defaulting party usually is

entitled to participate in any hearing necessary for the adjudication of damages" but that "[t]he [defaulting party] may not introduce evidence tending to defeat the plaintiff's cause of action"). Further, unlike the first kind of hearing, the second kind of hearing is not conditioned on the defaulting party's having appeared; it is conditioned only on a need for further fact-finding. This difference in conditions makes sense because in some cases the defendant has not appeared but the amount of damages (or some other fact) still needs to be established. See J & P Constr. Co. v. Valta Constr. Co., 452 So. 2d 857 (Ala. 1984) (discussing need for hearing on amount of damages when defaulting party had not appeared); see, e.g., Oliver v. Towns, 738 So. 2d 978, 799-800 (Ala. 1999) (illustrating such a situation); Bass Pecan Co. v. Berga, 694 So. 2d 1311, 1313 (Ala. 1997) (same). Conversely, unlike the second kind of hearing, the first kind of hearing is not conditioned on a need for further fact-finding. It is conditioned only on the fact that the allegedly defaulting party has appeared. Because the two kinds of hearings are triggered by different

conditions and are held for different purposes, the two sentences providing for them cannot be referring to the same hearing.[3]

In sum, the penultimate sentence of Rule 55(b)(2) can only be read as requiring a hearing on an application for a default judgment, when the allegedly defaulting party has appeared, to determine whether to enter the judgment. And the discretionary language in the last sentence of Rule 55(b)(2) does not affect that hearing requirement, because that last sentence refers to a different kind of hearing, triggered by a different condition and held for a different purpose.

Bolin, J., concurs.

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[3]As a practical matter, the two kinds of hearings do not have to be held separately. If the allegedly defaulting party has appeared, the first kind of hearing is held to determine whether to enter a default judgment. If there is also a need for further fact-finding and the parties have been apprised that it will be considered at the initial hearing, there is no reason why that fact-finding cannot be conducted in the same hearing.

MITCHELL, Justice (dissenting).

"Perhaps no interpretive fault is more common than the failure to follow the whole-text canon, which calls on the judicial interpreter to consider the entire text, in view of its structure and of the physical and logical relation of its many parts." Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts § 24, at 167 (Thomson/West 2012). That canon should guide our analysis here. We're presented with an interpretive puzzle under Alabama Rule of Civil Procedure 55(b)(2) -- whether the court must always hold a hearing on a motion for default judgment against an appearing defendant. In my view, the majority opinion fails to solve that puzzle because it reads the rule in isolation from the rest of the rulebook. But if we zoom out and take account of all of our Rules of Civil Procedure, the right answer becomes clear: the Rules allow many kinds of motions to be decided without a hearing, but a default-judgment motion under Rule 55(b)(2) is not one of them.

The second sentence of Rule 55(b)(2) states, in part, that an appearing defendant "shall be served with written notice of the

application for [default] judgment at least three (3) days prior to the hearing on such application." (Emphasis added.) As Chief Justice Parker explains, the phrase "the hearing on such application" facially contemplates that the court will hold a hearing on the application. Very similar language appears in Rule 27(a)(2) ("At least thirty (30) days before the date of hearing the notice shall be served ....") and Rule 56(c)(2) ("The motion for summary judgment ... shall be served at least ten (10) days before the time fixed for the hearing ...."), the second of which we've long read as requiring a hearing. See Lightsey v. Bessemer Clinic, P.A., 495 So. 2d 35, 38 (Ala. 1986).

That the language of these rules takes the holding of a hearing for granted -- as opposed to explicitly stating that a hearing must be held -- is in line with the drafting approach of Rule 6(d), a general provision that applies to all written motions under the Rules:

> "A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than five (5) days before the time specified for the hearing, unless a different period is fixed by these rules or by

> order of the court.[4] Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), opposing affidavits may be served not later than one (1) day before the hearing, unless the court permits them to be served at some other time."

(Emphasis added.) Outside the ex parte context, this rule clearly contemplates (1) that every written motion will have a hearing and (2) that notice of the time of that hearing will be served with the motion.[5] The idea of a motion decided without a hearing is foreign to every one of the rules mentioned so far.

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[4]Rules 27(a)(2), 55(b)(2), and 56(c)(2) are all instances of rules that "fix[]" "a different period."

[5]As noted, Rule 6(d) applies to all "written" motions. The only unwritten motions allowed under the Rules are those "made during a hearing or trial," Rule 7(b)(1), Ala. R. Civ. P. (emphasis added), a situation in which the Rules do not need to mandate an additional hearing. Rule 7(b)(1) also provides that "[t]he requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion," further underscoring the intimate connection between a written motion and its notice of hearing (which implies that a hearing will be held).

Also worthy of notice is Rule 12(d), which provides that a motion under Rule 12(b) or (c) "shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial." Once again, the text takes for granted that there will be a hearing; the only question under Rule 12(d) is when.

Of course, trial courts often dispose of motions without hearings. But that is not because the rules cited above do not mean what they say. Rather, it's because another rule expressly allows exceptions: "To expedite its business, the court may make provision by rule or order for the submission and determination of motions not seeking final judgment without oral hearing upon brief written statements of reasons in support and opposition." Rule 78, Ala. R. Civ. P. (emphasis added). The court may also deny, but not grant, "a motion to dismiss without oral hearing." Id.

If we read all of these rules together, the overall structure of the regime governing motion hearings is clear. Rule 6(d), by its terms, requires a hearing on every written motion. Rules like Rules 27(a)(2), 55(b)(2), and 56(c)(2), by their terms, incorporate that requirement for the particular kinds of motions they respectively govern. Rule 78 then qualifies this general requirement, clearing a path -- which would not exist absent this rule -- for courts to resolve at least some motions on the briefs "without oral hearing." Indeed, it's longstanding doctrine under the Federal Rules of Civil Procedure (on which our Rules are based) that Rule 78 is what gives trial courts authority to resolve motions without

hearings.[6]

But in Alabama, Rule 78 allows such treatment only for "motions not seeking final judgment." See Rule 78, Ala. R. Civ. P., Committee Comments on 1973 Adoption (emphasizing that "the rule prohibits the

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[6]12 Charles Alan Wright et al., Federal Practice and Procedure § 3091, at 524 (3d ed. Thomson Reuters 2014) ("Rule 78(b) permits any district court to provide for submitting and determining motions on briefs without oral hearing."); see Cia. Petrolera Caribe, Inc. v. Arco Caribbean, Inc., 754 F.2d 404, 411 (1st Cir. 1985); Morrow v. Topping, 437 F.2d 1155, 1156 (9th Cir. 1971); Goodpasture v. Tennessee Valley Auth., 434 F.2d 760, 764 (6th Cir. 1970); Rose Barge Line, Inc. v. Hicks, 421 F.2d 163, 164 (8th Cir. 1970); Hazen v. Southern Hills Nat'l Bank of Tulsa, 414 F.2d 778, 780 (10th Cir. 1969); Jordan v. County of Montgomery, Pennsylvania, 404 F.2d 747, 748 (3d Cir. 1969); United States Fid. & Guar. Co. v. Lawrenson, 334 F.2d 464, 466-67 (4th Cir. 1964); Enochs v. Sisson, 301 F.2d 125, 126 (5th Cir. 1962); see also FCC v. WJR, the Goodwill Station, Inc., 337 U.S. 265, 284 n.18 (1949) (implying distinctly, though in dicta, that Rule 78 is the source of this authority). True, some more recent federal cases (like those the majority opinion cites) have overlooked Rule 78, reasoning as if the authority to dispense with a hearing is somehow built into Rule 55(b)(2) itself. But see Kitlinski v. United States Dep't of Justice, 994 F.3d 224, 232-33 (4th Cir. 2021) (acknowledging that Rule 78 is the source of trial courts' authority to decide motions without hearings); Santana v. City of Tulsa, 359 F.3d 1241, 1246 (10th Cir. 2004) (same); United States v. Peninsula Commc'ns, Inc., 287 F.3d 832, 839 (9th Cir. 2002) (same). But the question is academic under the Federal Rules because Federal Rule 78(b) covers all motions. See Rule 78(b), Fed. R. Civ. P. ("By rule or order, the court may provide for submitting and determining motions on briefs, without oral hearings."). Our Rule 78 does not, meaning that -- unlike in the federal system -- there are real stakes to where the discretion to bypass a hearing comes from.

granting of a Motion Seeking Final Judgment such as a Motion for Summary Judgment without giving the parties an opportunity to be heard orally" (emphasis added)). A motion for default judgment under Rule 55(b)(2) seeks final judgment, so Rule 78 has no role to play here in qualifying the requirement of a hearing that Rules 6(d) and 55(b)(2) impose by their terms. Read as a whole, our Rules of Civil Procedure make clear that a court must hold a hearing on any motion for default judgment against an appearing defendant, just as the plain language of Rule 55(b)(2) suggests.[7] For these reasons, I respectfully dissent.

[7]This conclusion does not imply an answer either way to the separate question of whether the failure to hold a hearing is always reversible error or might instead sometimes be harmless. See Rule 45, Ala. R. App. P.; Rule 61, Ala. R. Civ. P. Because we granted certiorari review to decide only whether a hearing is required under Rule 55(b)(2), I address only that question.