

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below.



/S/ RUSS KENDIG
Russ Kendig
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:)	CHAPTER 7
LORI ANN SKIDMORE,)	CASE NO. 11-61526
)	
Debtor.)	ADV. NO. 11-6072
)	
<u>FRANCES LYNN GRAY,</u>)	JUDGE RUSS KENDIG
)	
Plaintiff,)	
)	
v.)	MEMORANDUM OF OPINION
)	(NOT FOR PUBLICATION)
LORI ANN SKIDMORE,)	
)	
Defendant.)	

Plaintiff's motion for default judgment, filed on November 23, 2011, is before the court. Defendant-debtor ("Debtor") filed a response on December 5, 2011.

The court has jurisdiction of this matter pursuant to 28 U.S.C. § 1334 and the general order of reference entered in this district on July 16, 1984. Venue in this district and division is proper pursuant to 28 U.S.C. § 1409. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I).

This opinion is not intended for publication or citation. The availability of this opinion, in electronic or printed form, is not the result of a direct submission by the court.

DISCUSSION

This adversary is tied to claims pending in the probate court of Medina County. Debtor was the guardian of Plaintiff, who sued her for alleged breaches of fiduciary duties as guardian. Plaintiff filed this adversary on August 29, 2011, alleging nondischargeability under 11 U.S.C. § 523(a)(2), (4) and (6).

Plaintiff moves for default judgment under Federal Rule of Civil Procedure 55, adopted into bankruptcy practice by Federal Rule of Bankruptcy Procedure 7055. The motion alleges that the complaint and summons were served on August 29, 2011, requiring an answer by September 30, 2011. Plaintiff seeks default judgment for Debtor's untimely answer of October 5, 2011.

Federal Rule of Bankruptcy Procedure 7004 outlines the requirements for service of the summons and complaint in an adversary proceeding. The record bares no evidence of execution of the summons following its issuance by the court on August 31, 2011. Consequently, the court cannot find that Debtor's answer dated October 5, 2011 is untimely as alleged by Plaintiff in the motion for default judgment. Additionally, there is no proof that Plaintiff complied with the Initial Pretrial and Case Management Order and served it on Debtor.

An order denying the motion for default judgment will be issued immediately.

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Service List:

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