

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

DAMEON COLE, R13404,)
)
Plaintiff,)
)
vs.) Case No. 14-cv-01059-JPG-PMF
)
CEDRICK L. JOHNSON, *et al.*,)
)
Defendants.)

MEMORANDUM AND ORDER

This matter comes before the court on Motion for Default Judgment or Motion for Entry of Contempt (Doc. 55). Defendant Marc Hodge filed a Response in Opposition (Doc.61). A prerequisite of obtaining a default judgment is the obtainment of a default order. Plaintiff has not motioned for a default order and as such, a Motion for default judgment is premature.

In Defendant's Response, he acknowledges that, due to a clerical error, his response was filed untimely and without leave of the Court. (Doc. 61). "The Supreme Court has concluded that the determination of "excusable neglect" is "at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." *Lewis v. School Dist. #70*, 523 F.3d 730, (7th Cir. 2008) citing *Pioneer*, 507 U.S. at 395, 113 S.Ct. 1489. "The factors to consider include the danger of prejudice, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, and whether the movant had acted in good faith." *Id.*

In this matter, there is no reason to believe that the Plaintiff was prejudiced by the defendant's answer being filed late. The length of the delay and the potential impact on judicial proceedings is minimal, and there is no reason to believe that the defendant acted in bad faith. As such, the Court finds that the tardy filing was a result of excusable neglect.

It should be noted that defendant Hodge should have filed request for an extension of time in the form of a motion (and not a response), but “courts give effect to the substance of a document and not to its caption.” *Gleash v. Yuswak*, 308 F.3d 758, 761 (7th Cir. 2002).

Based on the above, Plaintiff’s Motion for Default Judgment or Motion for Entry of Contempt (Doc. 55) is **DENIED** and Defendant’s Marc Hodge’s **Answer (Doc. 56) is deemed timely filed.**

IT IS SO ORDERED.

DATED: 3/9/2015

s/J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE