

## CASE DECISION LIST

January 2, 2020

**108682** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
MARVIN F. JOHNSON, SR. v GREGORY ROBNEY

Affirmed.

Mary Eileen Kilbane, P.J., Sean C. Gallagher, J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Request for an extension to file answer; Civ.R. 6(B)(2); excusable neglect; Civ.R. 12(C) motion for judgment on the pleadings; dismissal of a complaint; legal malpractice.*

*If a defendant moves for leave to answer after the date the answer is due, Civ.R. 6(B)(2) permits the trial court to grant the defendant's motion upon a showing of excusable neglect. A trial court's Civ.R. 6(B)(2) determination is addressed to the sound discretion of the trial court and will not be disturbed on appeal absent a showing of an abuse of discretion. The test for excusable neglect under Civ.R. 6(B)(2) is less stringent than that applied under Civ.R. 60(B). The determination must take into consideration all the surrounding facts and circumstances, with the admonition that cases should be decided on their merits.*

*In the instant case, Robey's counsel stated that he had been retained that afternoon, that he had just received the complaint, that he had reviewed the docket and noted that the answer had been due two days ago. In addition, Robey's counsel stated that he was unable to contact Johnson's counsel, as Johnson is pro se and appears to be in a correctional institution. Further, at the time of the request, Robey was out of rule by only two days and Johnson had yet to file a motion for default judgment.*

*Considering all the surrounding facts and circumstances, as well as being mindful that cases should be decided on their merits, Johnson was not prejudiced by the trial court granting Robey a two-day extension to file his answer. We conclude there was no abuse of discretion in granting the two-day extension.*

**108803** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v TOMARIO BENJAMIN

Vacated and remanded.

Eileen A. Gallagher, J., Mary J. Boyle, P.J., and Patricia Ann Blackmon, J., concur.

**KEY WORDS:** *Conceded error; no entry of guilty plea by defendant.*

*Where defendant was exposed to a different range of potential penalties after he initially pled guilty, trial court erred in sentencing defendant without vacating defendant's prior guilty plea and having*

## **CASE DECISION LIST**

(Case 108803 continued)

**defendant enter a new plea in contemplation of the new range of potential penalties. The state conceded the error. Defendant's convictions and sentences vacated; case remanded.**