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# Revised Rule 55 Revisited

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## I. INTRODUCTION

Two Arkansas attorneys, one a distinguished professor, the other a perceptive student, have made detailed inquiries into the body of default judgment law in Arkansas.[1] This article is a further study into this critical and unique area of litigation practice. Our supreme court has handed down several default judgment cases since the earlier articles. These cases provide valuable insight into this evolving area of law. Professor Watkins summarizes: "[this] court has handed down nine decisions in which the propriety of a default judgment was at issue and has upheld the trial judge in all of them."[2] Since Professor Watkins' 1996 article, the Arkansas Supreme Court has handed down five additional decisions involving default judgments.[3] In all of these cases, the supreme court upheld the trial judge's discretion in entering the defaults, except for *Richardson v. Rodgers*.[4] Whether the court will continue this trend, in light of the anomalous decision of *Richardson v. Rodgers*, is anybody's guess.

Prior to the *Richardson* decision, a defaulting defendant had two major hurdles to leap to set aside a default judgment.[5] First, the defaulting defendant must meet one of the four provisions of Rule 55(c)(1-4).[6] Second, the

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1. *See* John J. Watkins, *Revised Rule 55, Five Years Later*, 49 ARK. L. REV. 23 (1996); Mark A. Mayfield, *Setting Aside Default Judgments in Arkansas*, 45 ARK. L. REV. 971 (1993).

2. Watkins, *supra* note 1, at 57. These Arkansas cases are *Martin v. Jetkins*, 320 Ark. 478, 897 S.W.2d 567 (1995); *Truhe v. Grimes*, 318 Ark. 117, 884 S.W.2d 255 (1994); *Harold M. v. Clark*, 316 Ark. 439, 872 S.W.2d 410 (1994); *Arnold & Arnold v. Williams*, 315 Ark. 632, 870 S.W.2d 365 (1994); *Hubbard v. Shores Group, Inc.*, 313 Ark. 498, 855 S.W.2d 924 (1993); *Maple Leaf Canvas, Inc. v. Rogers*, 311 Ark. 171, 842 S.W.2d 22 (1992); *Divelbliss v. Suchor*, 311 Ark. 8, 841 S.W.2d 600 (1992), *B & F Eng'g, Inc. v. Cotroneo*, 309 Ark. 175, 830 S.W.2d 835 (1992); *Arnold Fireworks Display, Inc. v. Schmidt*, 307 Ark. 316, 820 S.W.2d 444 (1991).

3. *See* Tharp v. Smith, 326 Ark. 260, 930 S.W.2d 350 (1996); Reeves v. Hinkle, 326 Ark. 724, 934 S.W.2d 216 (1996); Southern Transit Co. v. Collums, 333 Ark. 170, 966 S.W.2d 906 (1982); Layman v. Bone, 333 Ark. 121, 967 S.W.2d 561 (1998); Richardson v. Rodgers, 334 Ark. 606, 976 S.W.2d 941 (1998).

4. 334 Ark. 606, 976 S.W.2d 941 (1998). Also, in *Tharp v. Smith*, the trial court had mistakenly entered judgment as to damages without conducting a hearing. The Rules of Civil Procedure make clear that a hearing is to be held, so the court reversed on that issue but upheld the trial judge's entering a default as to liability.

5. *See Tharp*, 326 Ark. at 260, 930 S.W.2d at 350.

6. *See id.* These elements will be discussed in detail later in this article.

defendant must present a meritorious defense to the action.[7] However, after *Richardson* it appears the above showing is obviated if the defendant can successfully assert that the "trial court improperly enter[ed] a default judgment."[8]

## II. THE DISCRETIONARY NATURE OF THE INQUIRY

In *Truhe v. Grimes*, the court indelibly marked on paper its position that trial courts have "wide discretion" with respect to default judgments.[9] Of course, such discretion is vested with the trial court because it is better positioned to observe the circumstances of a particular case.[10] More importantly, prior to 1990, a trial court was required to enter a default judgment whenever a party failed to appear or defend.[11] The former language of the rule provided that a default judgment "shall" be entered.[12]

Revised Rule 55(a) uses discretionary "may" language, thus vesting trial courts with considerable latitude before the judgment is ever entered.[13] But this discretionary power in entering the default "should not be confused with [the] discretionary power to set aside."[14] A well-reasoned decision by the Arkansas Court of Appeals manifests the distinction:

> A judgment by default is just as binding and forceful as a judgment entered after a trial on the merits in a case; and it is not to be discredited or regarded lightly because of the manner in which it was acquired. A default judgment determines a plaintiff's right to recover and a defendant's liability just as any conventional judgment or decree. It has been stated authoritatively that an additional purpose of the entry of a default judgment is to keep the dockets current and expedite disposal of litigation, thereby preventing dilatory tactics on the part of a defendant from impeding the plaintiff in the establishment of his claim.[15]

As the court of appeals indicates, an attack on a final judgment is not to be taken lightly.[16] "Frequent grants of relief from default judgment also

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7. *See id.*
8. *See Richardson*, 334 Ark. at 606, 976 S.W.2d at 941.
9. *See Truhe*, 318 Ark. at 117, 884 S.W.2d at 256.
10. *See* Mayfield, *supra* note 1, at 991.
11. *See* Mayfield, *supra* note 1, at 990.
12. *See* Mayfield, *supra* note 1, at 990.
13. *See* Mayfield, *supra* note 1, at 990; ARK. R. CIV. P. 55(a).
14. *See* Mayfield, *supra* note 1, at 990.
15. Meisch v. Brady, 270 Ark. 652, 658, 606 S.W.2d 112, 114 (Ark. App. 1980) (internal citations and punctuation omitted).
16. *See* Mayfield, *supra* note 1, at 990.

impair its effectiveness as a penalty. Consequently, relief from default judgment is more difficult to obtain than the initial judgment."[17]

Certainly, under the pre-1990 language of Rule 55 mandating entry of a default judgment when a party has failed to defend, it is understandable that appellate courts would scrutinize these decisions with a careful eye. But with the latitude given trial courts in revised Rule 55, it has been nearly impossible to challenge a judge's discretion surrounding a default judgment: hence, the reason the court had to circumvent Rule 55 in its *Richardson* decision.[18]

The Reporter's Notes to revised Rule 55 suggest that the factors embraced by federal courts should guide a trial court's analysis when deciding whether or not to enter a default judgment.[19] The federal courts have made clear "a stricter standard applies for setting aside a default judgment once it has ripened into a judgment [because of the] public policy favoring finality of judgments and termination of litigation."[20] When a trial judge has presided over a detailed hearing on damages and carefully reviewed all aspects of a case, then granted a default judgment, his or her discretion in doing so should generally not be questioned, especially in light of the final judgment and the notion that litigation should end.[21] The appropriate standard of review is whether the trial judge abused his discretion—an onerous burden for an appellant to carry.[22]

As the foregoing discussion manifests, and as Professor Watkins points out, "Arkansas appellate courts, in contrast to their federal counterparts, will give extraordinary deference to trial judges in Rule 55(c) cases."[23] "To be sure, not every mistake justifies setting aside a default judgment, and the court correctly held in *Divelbliss* that unexplained carelessness will not suffice."[24] As will be explained in detail later in this article, before the *Richardson* decision, the defending party needed to show a reason why it failed to appear or defend the suit. Failure to do so would decide the case.

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17. *See* Mayfield, *supra* note 1, at 990.

18. *See Richardson,* 334 Ark. at 606, 976 S.W.2d at 941.

19. *See* ARK. R. CIV. P. 55 (Addition to Reporter's Notes, 1990 Amendment).

20. Waifersong, Ltd. v. Classic Music Vending, 976 F.2d 290, 292 (6th Cir. 1992); *See also* Watkins, *supra* note 1, at 35 n.57.

21. *See* Watkins, *supra* note 1, at 35 n.57.

22. *See* B & F Eng'g Inc. v. Cotroneo, 309 Ark. 175, 181, 830 S.W.2d 835, 838 (1992). A 1996 article in *The Arkansas Lawyer* indicates that an excellent way to write a losing brief is for the appellant to pretend a standard of review does not exist. *See* Collen M. Barger, *How To Write A Losing Brief,* 30 ARK. LAW., Spring 1996, at 10.

23. Watkins, *supra* note 1, at 43.

24. Watkins, *supra* note 1, at 43 (citations omitted).

In *Divelbliss v. Suchor*,[25] the trial court entered a default judgment, refused to set it aside, and an appeal ensued. On appeal, the Arkansas Supreme Court affirmed, stating:

> There is no showing that the agent made an excusable mistake, or that there was some inadvertent occurrence, or that any excusable neglect took place. The trial court found, "The agent apparently did not tend to business." The proof in the record discloses nothing more than carelessness on the part of the agent, and, on such proof, the trial court ruled correctly in refusing to set aside the default judgments.[26]

Professor Watkins states this result is "surely correct if no evidence had been offered to explain the agent's failure to 'tend to business.'"[27] This follows our courts' unequivocal mandate that "[a]ll litigants . . . must conform to the rules . . . or else demonstrate good cause for not doing so."[28]

As previously mentioned, the Reporter's Notes to Rule 55 indicate the factors used by federal courts should inform a judge in exercising his or her discretionary power to grant or deny a default judgment.[29] These touchstones are: (1) whether the default is largely technical; (2) whether prejudice to the plaintiff has resulted from the defendant's failure to appear or respond; (3) whether the defendant is ready to defend; and (4) whether the judgment would later be set aside for the standards listed in Rule 55(c).[30]

One of the more interesting cases discussing the above-described factors is *B & F Engineering, Inc. v. Cotroneo*.[31] In that case, the plaintiff moved for and received a default judgment when the defendant, whose drunk employee caused a horrible automobile accident, failed to answer within 20 days.[32] The defendant answered nine days late.[33] Following a hearing, the trial judge entered a default judgment on liability, and the subsequent jury trial on damages resulted in the plaintiff being awarded $1.5 million in compensatory and $1 million in punitive damages.[34]

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25. 311 Ark. 8, 841 S.W.2d 600 (1992).
26. *Id.* at 13, 841 S.W.2d at 602-03.
27. Watkins, *supra* note 1, at 43.
28. Arnold & Arnold v. Williams, 315 Ark. 632, 638, 870 S.W.2d 365, 368 (1994).
29. *See* ARK. R. CIV. P. 55 (Addition to Reporter's Notes, 1990 Amendment).
30. *See id.* In discussing Rule 55(c)(4), one Arkansas commentator has noted, "[t]his provision, which is rarely used, is unpredictable because decisions are based on subjective factors. In effect, the court is making new default judgment law. If this is the sole standard for relief, the chances of success are slight." Mayfield, *supra* note 1, at 992-93.
31. 309 Ark. 175, 830 S.W.2d 835 (1992).
32. *See id.* at 177, 830 S.W.2d at 836.
33. *See id.*, 830 S.W.2d at 836.
34. *See id.*, 830 S.W.2d at 836.

The supreme court resoundingly affirmed on appeal with only one justice dissenting.[35] As Professor Watkins discusses in his article, "[t]his case was a prime candidate for application of Rule 55(a)."[36] His commentary is certainly worth quoting in its entirety:

> First, the default was technical in nature and the defendant filed an answer shortly after the plaintiff moved for a default judgment. Second, the defendant's failure could be attributed to a good faith mistake; this was one of two lawsuits filed in the same court as a result of the accident, and the defendant's insurance company filed a timely answer to the other complaint. Third, as the majority conceded in its discussion of Rule 55(c), the plaintiff would not have suffered "substantial prejudice" had the motion for default judgment been denied. Fourth, the amount of money at stake was not insignificant, witness the $2.4 million jury award. Finally, the effect of the default judgment was quite harsh, since the defendant was prevented from litigating liability in a case stemming from the drunken driving of an employee who had previously been dependable.[37]

Premised on the court's holding in *B & F Engineering, Inc. v. Cotroneo*, it appeared the only result which could follow in most default judgment cases was the trial court's discretion being left intact. But *Richardson v. Rodgers* has entered the picture.

In the fourteen cases decided by the supreme court since the revision of Rule 55, the apparent application of these four factors has resulted in the trial judges' discretion being upheld in all cases but *Richardson v. Rodgers*,[38] the court's most recent study of Rule 55.

In *Richardson*, the court found the trial court mistaken in its refusal to set aside a default judgment when an answering co-defendant had filed an answer asserting defenses common to both defendants.[39] Interestingly, the court held that "Rule 55(c) does not govern when the trial court improperly enters a default judgment by failing to recognize clear authority in an area."[40]

However, the appellant never argued that 55(c) did not apply and sought to utilize the subsection to have the judgment set aside.[41] The supreme court brought the issue up *sua sponte*, and reversed and remanded.[42] One might ask how a trial judge could have abused his discretion for applying Rule 55(c)

35. *See id.* at 183-89, 830 S.W.2d at 840-42.
36. Watkins, *supra* note 1, at 35.
37. Watkins, *supra* note 1, at 35-36.
38. *See Richardson*, 334 Ark. at 606, 976 S.W.2d at 941. This case was litigated and handled on appeal by the author of this article.
39. *See id.* at 610, 976 S.W.2d at 943.
40. *See id.* at 612, 976 S.W.2d at 944.
41. *See id.* at 611, 976 S.W.2d at 944.
42. *See id.* at 611-12, 976 S.W.2d at 944.

when the defaulting party embraced the rule in attempting to overturn the default.[43] Moreover, if appellate courts choose to ignore the Rule 55(c) factors whenever they believe a trial court has "improperly"[44] entered a default judgment, is not the rule and the decisions flowing therefrom vitiated?

The only intellectually and procedurally consistent path for the court to follow in *Richardson* was application of the two hurdle Rule 55(c) analysis. The common defense doctrine, used to wholly circumvent the rule, was simply a meritorious defense, thus meeting the second hurdle of Rule 55(c). But prior to jumping the second hurdle, the *Richardson* appellant should have been required to hop the first hurdle of Rule 55(c)(1-4) by asserting a reason why it failed to appear or defend. This was the path required to be followed by prior appellants.

But, Justice Glaze, writing for a unanimous court in *Richardson* stated,

> What neither party recognizes, though, is that there is a difference between a trial court's decision to enter a default judgment and its refusal to set one aside. Rule 55(c) contemplates a circumstance where a default judgment has been entered properly. Rule 55(c) does not govern when the trial court improperly entered a default judgment by failing to recognize clear authority in an area. In this case, the area of clear authority is that of the common defense doctrine.[45]

But in *Richardson*, the default had matured into a judgment in the amount of $1,500,000.00.[46] The trial court subsequently refused to set aside the default premised on Rule 55(c).[47]

Interestingly, the supreme court heard a default judgment case involving the common defense doctrine in 1991 – seven years prior to *Richardson.* In *Arnold Fireworks Display, Inc. v. Schmidt*,[48] a defaulting defendant's untimely answer was stricken.[49] A co-defendant had filed a timely answer exactly as in *Richardson*.[50] Both the trial and appellate courts reviewed the case under the recently revised Rule 55(c),[51] and the supreme court affirmed the trial judge's award of the default. This is in stark contrast to the *Richardson* decision where the common defense doctrine was used to take the case out of the framework of Rule 55(c).

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43. *See id.*, 976 S.W.2d at 944.
44. *See Richardson*, 334 Ark. at 612, 976 S.W.2d at 944.
45. *See id.*, 976 S.W.2d at 944.
46. *See id.* at 609, 976 S.W.2d at 943.
47. *See id.*, 976 S.W.2d at 943.
48. 307 Ark. 316, 820 S.W.2d 444 (1991).
49. *See id.* at 318, 820 S.W.2d at 445.
50. *See id.*, 820 S.W.2d at 445.
51. *See id.*, 820 S.W.2d at 445.

Although the supreme court held the common defense doctrine was inapplicable in *Arnold Fireworks*, the court followed the two-pronged analysis of Rule 55(c).[52] The defaulting defendants in *Arnold Fireworks* provided no reason why they failed to appear or defend, so their appeal failed.[53] One must ask if the two-factor analysis was applied in *Arnold Fireworks*, why was Rule 55(c) not embraced in *Richardson*? Both cases involved defaulting co-defendants and the common defense doctrine.

It appears that post-*Richardson*, the Rule 55(c) factors will no longer be the first focus of inquiry into whether the default judgment will be disturbed. *Richardson* adds a step, absent supporting authority, before Rule 55(c) is initially addressed.[54] A litigant must first make a determination as to whether the default judgment has been "entered properly."[55] Only then does the Rule 55(c) analysis come into play.

## III. APPLICATION OF RULE 55(C)

Rule 55(c) has two additional hurdles that must be cleared by a defendant seeking to have a default judgment set aside. Rule 55 provides that a trial court may set aside a default judgment due to: (1) mistake, inadvertence, surprise, or excusable neglect; (2) the judgment is void; (3) fraud, misrepresentation, or other misconduct of an adverse party; or (4) any other reason justifying relief from the operation of the judgment.[56] Asserting and proving one of the above factors as a reason why it failed to appear or defend is the first hurdle the defending party needs to jump before having a default judgment set aside. Justice Corbin, writing for a unanimous court in *Tharp v. Smith*, explained the analysis best:

> On this record, we cannot say the trial court abused its discretion in finding that there was no excuse for [a]ppellant's default or that the trial court failed to apply the relevant consideration of Rule 55(c).
>
> Appellant cites Rule 55(c)(4) and argues that a miscarriage of justice will result if he is not allowed to present a defense and that such miscarriage of justice constitutes "any other reason justifying relief from the operation of the judgment." This is nothing more than a back-door attempt to satisfy Rule 55(c), which requires, in effect, two steps to having a default judgment set aside. First, a defaulting defendant must show one of the four enumerated categories of reasons to have the judgment set aside.

52. *See id.* at 319-20, 820 S.W.2d at 446.
53. *See id.* at 320, 820 S.W.2d at 446.
54. *See Richardson*, 334 Ark. at 611-12, 976 S.W.2d at 944.
55. *See id.* at 612, 976 S.W.2d at 944.
56. *See* ARK. R. CIV. P. 55(c).

> Second, if the reason is any other than that the judgment is void, a defaulting defendant must then demonstrate a meritorious defense to the action. Here, [a]ppellant argues that the "reason" to set aside the judgment is because he has a meritorious defense and a miscarriage of justice will result if he is not allowed to present it. This argument clearly circumvents the dual requirements of Rule 55(c). Moreover, it ignores the cogent fact that the reason [a]ppellant was not allowed to present a defense in the first place is because of his own unexcusable default.
>
> Because [a]ppellant did not file an answer or otherwise appear in this case, [a]ppellee was entitled to the default as to liability without further notice.[57]

Obviously, the defending party must meet one of the Rule 55(c)(1-4) factors in seeking to have a default judgment set aside. A careful analysis of appellate decisions indicates the defaulting party must meet one of the factors via an excuse for the failure to timely answer. Unless the judgment is void, the Rule 55(c) factors must be met with a reason why the defendant failed to appear or defend.

A review of the supreme court's default judgment opinions manifests the truism that a defaulting party must show one of the Rule 55(c)(1-4) factors as a reason why they failed to appear or defend. This fact is clearly shown in *Tharp v. Smith*[58](stating that appellant claimed he was justified in failing to answer but could not "back door" in his alleged meritorious defense to meet the Rule 55(c)(1-4) requirements); *Martin v. Jetkins*[59] (alleging Rule 55(c)(1) as a reason for the defendant's failure to appear and defend but no evidence was presented so the default judgment stood); *Truhe v. Grimes*[60] (holding that insurance company's failure to tend to business did not constitute excusable neglect so as to excuse the defendant's failure to appear or defend); *Arnold & Arnold v. Williams*[61] (finding that defendant made no showing of unavoidable casualty or delay, thus constituting a reason for him to fail to appear or defend); *Maple Leaf Canvas, Inc. v. Rogers*[62] (failing to file an answer because no one opened the letter with summons and it sat on an insurance agent's desk for over two months was not a valid excuse for the defendant's failure to appear or defend); *Divelbliss v. Suchor*[63] (holding that default judgment should not have been set aside when insurance agent simply failed

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57. *Tharp*, 326 Ark. at 264-65, 930 S.W.2d at 353 (1996).
58. 326 Ark. 260, 264-65, 930 S.W.2d 350, 353 (1996).
59. 320 Ark. 478, 479, 897 S.W.2d 567, 567 (1995).
60. 318 Ark. 117, 120, 884 S.W.2d 255, 256 (1994).
61. 315 Ark. 632, 636, 870 S.W.2d 365, 366-67 (1994) (Hays, J., dissenting), *cert. denied*, 513 U.S. 990 (1994).
62. 311 Ark. 171, 174, 842 S.W.2d 22, 24 (1992).
63. 311 Ark. 8, 13, 841 S.W.2d 600, 601-02 (1992).

to get the complaint answered, Rule 55(c)(1-4) factors simply not met under this circumstance); *B & F Engineering, Inc. v. Cotroneo*[64] (insurer failing to notify counsel of an additional complaint was not a reason to fail to appear or defend under Rule 55(c)(1)); and in *Arnold Fireworks Display, Inc. v. Schmidt*[65] (holding there was no meaningful evidence in the case of a mistake or inadvertent failure to file an answer, this was not a justifiable reason for the defendant to fail to appear or defend).

In reviewing how the Arkansas Supreme Court has analyzed the 55(c)(1-4) factors, this author was reminded of a Dr. Leflar lecture in Conflicts. Dr. Leflar described his analysis of many cases throughout the country and how courts made choice-of-law decisions. Ultimately, all the complex decisions led to Dr. Leflar's observation that five basic factors govern choice-of-law.[66] A similar study of default judgment cases makes clear that the 55(c) factors are always reasons why the defendant failed to appear or defend.

Rule 55(c) has a second hurdle that a party must overcome to set aside a default judgment. "The party seeking to have the judgment set aside must demonstrate a meritorious defense to the action . . . ."[67] As the decisions indicate, this second hurdle has been difficult to jump.

The supreme court stated with unmistakable clarity in *B&F Engineering, Inc. v. Cotroneo* that,

> A majority of courts that have considered the question refuse to accept general denials or conclusory statements that a defense exists and "the only real exception to the requirement is where the judgment is void, such as for lack of jurisdiction . . . ." The underlying basis for this theory is that to determine whether there is a possibility that, after a full trial, the outcome of the suit would be contrary to the result achieved by the default. Finding an abuse of discretion where the appellant offers no defense is difficult to say the least.[68]

Further, in *Truhe v. Grimes*, the court stated that the issue of setting aside default judgments "involves the sound discretion of the trial court . . . and where the record is bereft of explanation for the failure to respond to a complaint we are hard pressed to hold that an abuse of discretion occurred."[69]

Also, in *Truhe*, it was not an abuse of discretion for the trial court to refuse to consider a meritorious defense where the defendant offered no

64. 309 Ark. 175, 179, 830 S.W.2d 835, 836 (1992) (Brown, J., dissenting).
65. 307 Ark. 316, 318, 820 S.W.2d 444, 445 (1991).
66. *See* ROBERT A. LEFLAR, AMERICAN CONFLICTS LAW 277-79 (4th ed. 1986).
67. ARK. R. CIV. P. 55(c).
68. *B & F Eng'g, Inc.*, 309 Ark. at 180-81, 830 S.W.2d at 838 (citations omitted).
69. *Truhe*, 318 Ark. at 122, 884 S.W.2d at 258 (citations omitted).

explanation for his failure to respond to the complaint.[70] This same issue was addressed in *Maple Leaf Canvas, Inc. v. Rogers*.[71] Seeking relief from a default judgment, the appellant in *Maple Leaf* argued it had a meritorious defense. The court responded:

> [Appellant] contends that no prejudice resulted to the appellees and that it has a meritorious defense. [Appellant] however, must first satisfy the court that a threshold reason exists for denying default judgment. The reason it presents is not convincing. The failure to answer the complaint seems due more to carelessness . . . , a result of not attending to business.[72]

Certainly, a defaulting party must have a solid meritorious defense if it has any hope in challenging the default. Prior litigants have met with little success.

## IV. CONCLUSION

The Arkansas Supreme Court has upheld the trial judge in thirteen of fourteen decisions in which a judge's discretion surrounding a default judgment was being questioned.[73] But with the *Richardson v. Rodgers*[74] decision, a once clear area of the law is no longer so certain. First, the defaulting party should claim the judgment was not "entered properly" pursuant to *Richardson*.[75] This will be the easiest course of action because the defendant avoids having to navigate Rule 55(c). All prior default judgment decisions have been brought into question by the *Richardson* decision. At the very least *Arnold Fireworks* has been overruled and an additional analytical hurdle has been set forth prior to the two-factor Rule 55(c) analysis. A more expansive reading of *Richardson* overrules all appellate decisions involving Rule 55(c).

However, if the judgment in question is deemed to have been properly entered, a defaulting defendant must then meet the first hurdle of Rule 55(c)(1-4) and clear the second hurdle of Rule 55(c) by demonstrating a meritorious defense. A defendant without a reason why he failed to appear or defend will meet with little success under Rule 55(c)(1-4). "Back door" attempts at meeting the Rule 55(c)(1-4) factors will likely fail as they did in *Tharp*.

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70. *See id.*, 884 S.W.2d at 258.
71. 311 Ark. 171, 842 S.W.2d 22 (1992).
72. *Id.* at 171, 842 S.W.2d at 23 (citation omitted).
73. *See* Watkins, *supra* note 1, at 57.
74. 334 Ark. 606, 976 S.W.2d 941 (1998).
75. *See id.* at 612, 976 S.W.2d at 944.

Arkansas appellate courts failing to uphold a trial judge's discretion will offend the sound logic of *B & F Engineering, Inc. v. Cotroneo*, where it was stated:

> Nevertheless, under the circumstances of this case we are constrained to hold that the trial court did not abuse its discretion by granting the default judgment in favor of the appellant. To hold otherwise would, we believe, give sanction to a slipshod treatment of writs of summons by defendants.[76]

No sound legal policy is embraced by slipshod conduct of litigants. And once a default has matured into a judgment, the analytical framework to set aside the judgment should be found solely within Rule 55(c). Further guidance will be needed to determine if this is true in light of *Richardson v. Rodgers*.

76. *B & F Eng'g, Inc.*, 309 Ark. at 179, 830 S.W.2d at 837.