

Rel: September 18, 2026

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0650), of any typographical or other errors, in order that corrections may be made before the opinion is published in Southern Reporter.

ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2026

CL-2025-1072

Michelle Layne DeMike and Zachary Dewayne Hatfield

v.

**Lisa Littrell, in her capacity as a Trustee of the Wanda England
Littrell Marital Deduction Trust and the
William K. Littrell Credit Shelter Trust**

**Appeal from Morgan Circuit Court
(CV-25-900396)**

PER CURIAM.

This appeal concerns the propriety of a default judgment the Morgan Circuit Court entered in a civil action brought on August 26, 2025, by Lisa Littrell, acting by and through her counsel, against

Michelle Layne DeMike (also known as Michelle Kelsoe) and Zachary Dewayne Hatfield ("the defendants"). In her complaint, Littrell asserted that she, in her capacity as a trustee of the Wanda England Littrell Marital Deduction Trust and the William K. Littrell Credit Shelter Trust, had acquired title to a parcel of real property via a deed executed by Rebecca Ann DeMike and Gregory J. DeMike that had been recorded on August 15, 2025, but averred that defendant Michelle DeMike had claimed an interest in the real property and that the defendants had refused to vacate it. Littrell sought a judgment declaring that she held fee-simple title to the real property, a remedy consistent with that available in a statutory action in the nature of an ejectment action at common law (see generally Ala. Code 1975, § 6-6-280 et seq.),¹ and an award of damages with respect to the defendants' alleged trespass upon the property. A copy of the August 15, 2025, deed was attached to Littrell's complaint, as well as a document identifying Littrell as one of two trustees for each of the pertinent trusts.

¹The origin and perceived necessity for this type of statutory action was discussed at some length by our supreme court in MacMillan Bloedell, Inc. v. Ezell, 475 So. 2d 493, 495-97 (Ala. 1985).

The record indicates that copies of the complaint and the summons directed to each defendant were served on the defendants on September 15, 2025, by a designated process server, and the return on service as to each defendant was filed with the clerk of the circuit court on September 17, 2025. On October 16, 2025, approximately one month after service of the complaint upon the defendants, Hatfield and Michelle DeMike filed personal letters in the circuit court in which they referred to Littrell's action by its style and case number, requested an additional 90 days to respond to the complaint, averred that Michelle DeMike needed foot surgery, and stated that they had been unable to "find an adequate real estate attorney that doesn't have a conflict of interest"; in addition, the defendants filed copies of an October 14, 2025, letter on a primary-care clinic's stationery, addressed "To Whom It May Concern" and signed by a nurse practitioner, in which Michelle DeMike was described as "unable to pursue legal ventures at this time." In response to those letters, the circuit court entered an order noting the defendants' extension requests and affording them until November 17, 2025, to respond to the complaint.

However, on that due date the circuit court specified in its order, the defendants again submitted letters requesting 90-day extensions to

respond; those letters relied on substantially the same grounds as those the defendants had asserted in their October 16, 2025, letters, although Michelle DeMike's foot symptoms were discussed in somewhat greater detail. On November 18, 2025, the circuit court entered an order denying the requested second extension. On November 19, 2025, counsel for Littrell filed in the circuit court a motion for a default judgment in her favor that was supported by Littrell's own affidavit and that bore a certificate of service indicating that it had been served by mail upon the defendants on November 18, 2025; the motion sought a default judgment awarding Littrell the real property at issue, divesting the defendants of any right therein, and granting a money judgment of \$4,500 (which, according to Littrell's affidavit testimony, constituted a "reasonable rental ... for the three months which the [d]efendants ha[d] remained in possession"). On November 24, 2025, four business days after the service of Littrell's motion (see Rules 5(b) and 6(a)(2), Ala. R. Civ. P.) and three business days after the filing of that motion, the circuit court entered a default judgment granting all the relief Littrell requested in her motion; however, there is no indication in the record, even as supplemented, that a hearing was scheduled or held on Littrell's motion.

On December 23, 2025, two notices of appeal to this court from the default judgment, listing Michelle DeMike and Hatfield as appellants and signed by Michelle DeMike, were filed; although those appeals were assigned case numbers CL-2025-1072 and CL-2025-1074 and were initially consolidated by this court, case number CL-2025-1074 was subsequently dismissed at the defendants' request. Littrell moved this court to dismiss Hatfield as a party to this appeal on the basis that he had not personally signed the notice of appeal; however, this court denied that motion on the authority of Papaspiros v. Southeast General Contractors, Inc., 982 So. 2d 1099, 1102 (Ala. Civ. App. 2007), and the appeal has been submitted on the briefs of the three parties.

In their joint pro se brief, the defendants attack the default judgment on eight separate grounds. Littrell correctly notes that, as a general rule, an appealing party may not assert a ground for reversal that the lower court did not have an opportunity to consider. See Dubose v. Dubose, 369 So. 3d 1061, 1067 (Ala. Civ. App. 2022) (quoting numerous earlier cases for the proposition that fairness to all parties requires a litigant to advance contentions at a time when there is an opportunity to respond to them factually). That principle arguably has enhanced force

when the sole filings that appealing parties have made in a lower court -
- before having immediately divested that court of jurisdiction by filing a
notice of appeal without seeking postjudgment relief -- assert only
requests for additional time to retain counsel and to file a substantive
response.

However, one notable exception to the principle Littrell has invoked
is that "[a]n appellate court must dismiss an attempted appeal from ...
a void judgment." Alabama Med. Cannabis Comm'n v. Jemmstone
Alabama, LLC, 429 So. 3d 1002, 1004 (Ala. Civ. App. 2025), (quoting
Redbud Remedies, LLC v. Alabama Med. Cannabis Comm'n, 399 So. 3d
1055, 1062 (Ala. Civ. App. 2024), quoting in turn Vann v. Cook, 989 So.
2d 556, 559 (Ala. Civ. App. 2008)). One of the issues the defendants
raised in their brief is whether the default judgment was inappropriately
entered given the absence of notice and a hearing consistent with Rule
55(b)(2), Ala. R. Civ. P. The defendants, citing Cockrell v. World's Finest
Chocolate Co., 349 So. 2d 1117 (Ala. 1977) (overruled on other grounds
by Ex parte Keith, 771 So. 2d 1018 (Ala. 1998)), assert that they
"appeared" in the action within the scope of Rule 55(b)(2), thus requiring
three days' notice of, and the holding of, a hearing before the entry of a

default judgment. This court has observed that the commentary to the version of Rule 55 originally promulgated by our supreme court indicates that the subsection upon which the defendants rely "'provides for three days[] notice prior to entry of default judgment[] when the defendant has once appeared'" and that, under caselaw following Cockrell, a failure to provide notice of the application for a default judgment renders any ensuing default judgment "'void, and not merely voidable.'" Abernathy v. Green Tree Servicing, LLC, 54 So. 3d 422, 425 (Ala. Civ. App. 2010) (some emphasis omitted) (quoting, respectively, Rule 55, Ala. R. Civ. P., Committee Comments on 1973 Adoption, and Bracknell v. S.E. Belcher, Inc., 517 So.2d 588, 591 (Ala.1987)).

Rule 55(b)(2), as amended effective May 1, 2023, provides, in pertinent part:

"[T]he 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 court shall conduct a hearing on the application for judgment, and the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment and the hearing thereon 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."

(Emphasis added.) As the Committee Comments on that amendment make clear, "Rule 55(b)(2) now requires [both] that a hearing be conducted on an application or motion for a default judgment if the opposing party has appeared" and "that notice of both the application or motion and the hearing thereon ... be served on the opposing party"; that commentary further "directs practitioners to Progress Industries, Inc. v. Wilson, 52 So. 3d 500 (Ala. 2010)," for guidance concerning what constitutes an "appearance" under Rule 55(b)(2). Committee Comments to Amendment to Rule 55(b)(2) Effective May 1, 2023.

In Progress Industries, a worker who had allegedly been injured by a defective product sued, among other parties, several corporations identified as having been "the alleged designers, manufacturers, distributors, and/or installers" of the injurious product and was joined as a plaintiff by his spouse, who sought an award of damages for loss of consortium; the president of one of those corporations subsequently sent a letter to the plaintiffs' counsel asserting that his corporation had not designed, manufactured, sold, or installed the machine or related parts causing the injury at issue, and he forwarded a copy of that letter to the clerk of the trial court, who stamped it as having been filed and docketed

it as an answer denying liability. 52 So. 3d at 502. Notwithstanding that filing, following the failure of any representative of the corporation to appear at status-review conferences, the trial court summarily entered a default judgment against the corporation on the issue of the corporation's liability and (over the objections of later-retained counsel for the corporation) entered a judgment awarding damages of over \$5 million, which judgment was later made final pursuant to Rule 54(b), Ala. R. Civ. P. Id. at 503-04.

Our supreme court, in reversing the trial court's default judgment in favor of the plaintiffs and against the corporation, held that the letter of the corporation's president, despite his lack of a license to practice law, amounted to an "appearance" under Cockrell and its progeny, noting that the letter "included the correct style of the case and the correct case number" and indicated an "intent to submit to the jurisdiction of the court and to defend the action" such that "notice [was] a condition precedent to the entry of a valid default judgment against" the corporation. Progress Indus., 52 So. 3d at 507. In doing so, our supreme court analogized the correspondence filed by the corporation's president to the letter held by this court to have constituted an "appearance" by a defendant in Evans

v. Evans, 441 So. 2d 948, 949 (Ala. Civ. App. 1983), which letter had indicated that the defendant was "'answering the summons'" in a divorce action brought by the defendant's spouse and that she was "'trying to retain'" an attorney and "'intend[ed] to respond to the" complaint.

Although we deem sound Littrell's contentions on appeal that the defendants had indeed "'failed to plead or otherwise defend'" and that there was no "procedural bar" to her default-judgment motion afforded by subsection (a) of Rule 55, Ala. R. Civ. P., (Littrell's brief, p. 23 (citation omitted)) we nonetheless believe that, with respect to the separate inquiry of whether subsection (b) of that rule was satisfied, the letters the defendants filed on October 16, 2025, and November 17, 2025, are substantially similar to the letters in Progress Industries and Evans that were held to qualify as an "appearance," i.e., "some submission or presentation to the court by which [the defendants] show[ed an] intention to submit [themselves] to the jurisdiction of the court" (Cockrell, 349 So. 2d at 1120). Each of the defendants' letters in this case indicated the pertinent case style and number, stated reasons why the defendants deemed themselves unable to substantively respond to the complaint, and sought affirmative relief from the circuit court in the form of requests

cognizable under Rule 6(b)(1), Ala. R. Civ. P., as to "act[s that] may or must be done within a specified time," such as filing an answer or a motion to dismiss within 30 days after service of the summons and complaint pursuant to Rule 12(a), Ala. R. Civ. P. Although the circuit court certainly retained the discretion under the Alabama Rules of Civil Procedure to adjudicate each defendant's requests by granting the first and denying the second, see Rule 6(b)(1), that court was not free to disregard the effect of those letters in considering and ruling upon Littrell's subsequent default-judgment motion. We conclude that the defendants had, at the time that Littrell moved for a default judgment in her favor, made an "appear[ance]" within the scope of Rule 55(b)(2), as revised in 2023, triggering that rule's obligations to schedule and hold a hearing on Littrell's motion and, at least three days before holding that hearing, to serve written notice upon the defendants of both the application for a default judgment and the hearing. The failure of the circuit court to meet those obligations renders the resulting default judgment void. See Abernathy, 54 So. 3d at 425.

The appeal brought by the defendants is due to be dismissed by this court ex mero motu as having been taken from a void judgment. See, e.g.,

Colburn v. Colburn, 14 So. 3d 176, 179 (Ala. Civ. App. 2009). Consistent with our holding in Southworth v. University of South Alabama Medical Center, 637 So. 2d 896, 898 (Ala. Civ. App. 1994), that a failure to comply with the notice provisions of Rule 55(b)(2) "requires a vacation of the default judgment, irrespective of whether" a "meritorious defense" has been alleged, we instruct the circuit court to vacate its default judgment upon the issuance of this court's certificate of judgment (see generally Rule 41, Ala. R. App. P.). In so ruling, we express no opinion regarding any of the other issues the defendants raised in their brief in this appeal.

APPEAL DISMISSED WITH INSTRUCTIONS.

All the judges concur.