

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ASPEN SPECIALTY INSURANCE COMPANY,)	
)	
Plaintiff,)	
)	CIVIL ACTION
v.)	
)	No. 21-4072-KHV
BRIAN D. NEWELL, D.D.S.,)	
)	
Defendant.)	
<hr style="width:100%; border: 0.5px solid black;"/>		

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff’s Motion And Memorandum In Support Of Default Judgment (Doc. #7) filed December 6, 2021 and plaintiff’s Motion For Entry Of Default Against Brian D. Newell, D.D.S. (Doc. #8) filed December 29, 2021. For reasons stated below, the Court overrules both motions.

Rule 55, Fed. R. Civ. P., which governs default judgments in federal court, provides a two-step process for obtaining default judgment. See Sheldon v. Khanal, No. 07-2112-KHV, 2007 WL 2213540, at *2 (D. Kan. Aug. 1, 2007). First, the moving party must ask the clerk to enter default against the opposing party for failing to timely plead or otherwise defend. Fed. R. Civ. P. 55(a). Second, following an entry of default by the clerk, the moving party may apply to the court for default judgment. Fed. R. Civ. P. 55(b).

On January 4, 2022, based on plaintiff’s Application For Entry Of Default Against Brian D. Newell, D.D.S. (Doc. #8) filed December 29, 2021, the Clerk entered default. See Entry Of Default (Doc. #10). Therefore, the Court overrules as moot plaintiff’s motion for entry of default.

On December 6, 2021, nearly one month before the Clerk entered default, plaintiff filed its motion for default judgment. Because the Clerk had not entered default before plaintiff sought a

default judgment, the Court overrules without prejudice plaintiff's motion for default judgment. See Life Ins. Co. of N. Am. v. Jenkins-Dyer, No. 08-2129-KHV, 2009 WL 297481, at *3 (D. Kan. Feb. 6, 2009) (plaintiff cannot proceed directly to default judgment).

IT IS THEREFORE ORDERED that plaintiff's Motion For Entry Of Default Against Brian D. Newell, D.D.S. (Doc. #8) filed December 29, 2021 is **OVERRULED as moot**.

IT IS FURTHER ORDERED that plaintiff's Motion And Memorandum In Support Of Default Judgment (Doc. #7) filed December 6, 2021 is **OVERRULED**.

Dated this 6th day of January, 2022 at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge