

STATE OF MICHIGAN
COURT OF APPEALS

JAMES RUMPS,

Plaintiff-Appellant,

v

JAMES J. FAREMOUTH, M.D.,

Defendant-Appellee.

UNPUBLISHED
February 27, 2001

No. 216647
Macomb Circuit Court
LC No. 94-004041-NH

Before: Meter, P.J., and Neff and O'Connell, JJ.

MEMORANDUM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for a directed verdict. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's motion resulted from plaintiff's inability to provide the requisite expert testimony after the trial court denied a motion for a continuance in order to secure that testimony. We review the trial court's ruling on a motion for a continuance for an abuse of discretion. *Soumis v Soumis*, 218 Mich App 27, 32; 553 NW2d 619 (1996).

A motion to adjourn must be based on good cause. MCR 2.503(B)(1). An adjournment may be granted because of the unavailability of a witness or evidence, but "only if the court finds that the evidence is material and that diligent efforts have been made to produce the witness or evidence." MCR 2.503(C)(1), (2). Such a motion must be brought "as soon as possible after ascertaining the facts." MCR 2.503(C)(1).

Plaintiff took a video deposition of his expert while trial was in progress, but the audio portion of the tape was lost. Plaintiff was unable to take a second deposition before the trial resumed. The trial court noted that plaintiff's counsel had "done everything you can," but denied a continuance because of inconvenience to itself, defendant, and the jurors. While we understand the court's reluctance to inconvenience everyone for the sake of one uncooperative witness, such inconvenience is insignificant when compared to the drastic consequences to plaintiff's case. Defendant and his attorney could have been adequately compensated by an award of costs. MCR 2.503(D)(2). Given that plaintiff brought the motion promptly, that the missing testimony was crucial to his case, and that the trial court had found that due diligence was shown, we conclude that the trial court abused its discretion in denying a continuance.

Reversed and remanded for a new trial. We do not retain jurisdiction.

/s/ Patrick M. Meter

/s/ Janet T. Neff

/s/ Peter D. O'Connell