

[Cite as *Baker, Dublikar, Beck, Wiley & Mathews v. Gamiere*, 2011-Ohio-42.]

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

BAKER, DUBLIKAR, BECK,  
WILEY & MATHEWS

Plaintiff-Appellee

-vs-

DOROTHY S. GAMIERE

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P. J.  
Hon. Sheila G. Farmer, J.  
Hon. John W. Wise, J.

Case No. 2010 CA 00091

OPINION

CHARACTER OF PROCEEDING:

Civil Appeal from the Canton Municipal  
Court, Case No. 2010 CVF 404

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

January 10, 2011

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellee

RALPH DUBLIKAR  
BAKER, DUBLIKAR,  
BECK, WILEY & MATHEWS  
400 South Main Street  
North Canton, Ohio 44720

LAWRENCE R. HUPERTZ  
25550 Chagrin Boulevard  
Suite 320  
Beachwood, Ohio 44122

*Wise, J.*

{¶1} Defendant-Appellant Dorothy S. Gamiere appeals the April 19, 2010, decision of the Canton Municipal Court denying her motion for a continuance of trial.

**STATEMENT OF THE CASE AND FACTS**

{¶2} The relevant facts are as follows:

{¶3} On or about January 19, 2010, Appellee Baker, Dublikar, Beck, Wiley and Mathews filed a Complaint for money damages in the amount of \$3,600.00 against Appellant Dorothy S. Gamiere.

{¶4} On or about March 8, 2010, Appellant filed an Answer to such Complaint.

{¶5} On March 10, 2010, the trial court filed a Trial Notice scheduling the trial in this matter for Monday, April 19, 2010.

{¶6} On Friday, April 16, 2010, at approximately 1:24 p.m., Appellant faxed and mailed a Motion to Continue the trial. Attached to such motion was a letter from Dr. Peter Fragotos, dated April 16, 2010, stating it was his medical opinion that Appellant would not be able to attend the April 19, 2010, trial “due to her medical condition and degree of pain.”

{¶7} By order filed April 19, 2010, the trial court denied Appellant’s motion to continue and the trial in this matter commenced at the scheduled time. Appellee failed to show for trial. At the conclusion of the trial, the trial court entered judgment against Appellant in the amount of \$2,600.00 plus 4% interest per annum.

{¶8} Appellant now appeals, assigning the following error for review:

### **ASSIGNMENT OF ERROR**

{¶9} “I. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT FAILED TO GRANT A REASONABLE CONTINUANCE TO DEFENDANT DUE TO A DOCUMENTED MEDICAL CONDITION REQUIRING SURGERY.”

#### **I.**

{¶10} In her sole assignment of error, Appellant asserts that the trial court erred in denying her motion for continuance. We disagree.

{¶11} The grant or denial of a continuance is a matter which is entrusted to the broad, sound discretion of the trial court. *State v. Unger* (1981), 67 Ohio St.2d 65. A trial court's denial of a motion for a continuance will not be reversed on appeal absent an abuse of discretion, i.e. a showing that the trial court's decision was arbitrary, unreasonable or unconscionable and not merely an error of law or judgment. See: *State v. Christon* (1990), 68 Ohio App.3d 471; *State v. Jones* (1987), 42 Ohio App.3d 14.

{¶12} In determining whether a trial court abused its discretion in denying a motion for a continuance, an appellate court should consider the following factors: (1) the length of the delay requested; (2) whether other continuances have been requested and received; (3) the inconvenience to witnesses, opposing counsel and the court; (4) whether there is a legitimate reason for the continuance, (5) whether the defendant contributed to the circumstances giving rise to the need for the continuance, and other relevant factors, depending on the unique facts of each case. See: *State v. Unger, supra*; *State v. Holmes* (1987), 36 Ohio App.3d 44.

{¶13} In *Village of New Straitsville v. Whitley*, (May 30, 1996), 5<sup>th</sup> Dist. App. No. 488, this Court found that because the appellant therein had been given more than thirty

days notice of the trial date and could have, but failed to, request a continuance prior to the date of trial, the decision to deny a continuance and proceed directly to trial was neither arbitrary, unreasonable nor unconscionable.

{¶14} Upon review of the record before us, we likewise find the trial court did not abuse its discretion in denying appellant's motion for a continuance and proceeding with the trial. Appellant's medical problems were not a new condition and were, in fact, part of the reason she initiated a consultation with Appellee's law firm back in 2007 and had been ongoing since that time. Additionally, Appellant had more than five weeks notice of the trial date but waited until the Friday afternoon before the scheduled Monday trial date to file her motion for continuance.

{¶15} Appellant's sole assignment of error is overruled.

{¶16} For the foregoing reason, the judgment of Canton Municipal Court, Stark County, Ohio, is affirmed.

By: Wise, J.

Gwin, P. J., and

Farmer, J., concur.

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JUDGES

