

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
SCIOTO COUNTY

Stephen A. Rice, et al.,	:	
	:	
Plaintiff-Appellee,	:	
	:	Case No. 09CA3307
v.	:	
	:	<u>DECISION AND</u>
Cherish Lewis,	:	<u>JUDGMENT ENTRY</u>
	:	
Defendant-Appellant.	:	File-stamped date: 3-11-10

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APPEARANCES:

Holly P. Regoli, Law Offices of Holly P. Regoli, Lancaster, OH, and Gregory P. Barwell, E. Joel Wesp, and Randi Ostry LeHoty, Wesp/Barwell, L.L.C., Columbus, Ohio, for Appellant.

Rebecca L. Bennett, Portsmouth, Ohio, for Appellee.

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Kline, J.:

{¶1} Cherish Lewis (hereinafter “Lewis”) appeals the judgment of the Scioto County Court of Common Pleas, Domestic Relations Division, which found her in contempt of court. On appeal, Lewis contends that the trial court erred in denying her motion for a continuance. We agree. First, Lewis requested a continuance for legitimate reasons. Second, Lewis had not requested and received a continuance after this case was remanded to the trial court, but the Plaintiff-Appellee had. Third, Lewis requested a reasonable delay of time. Fourth, we believe Lewis did not contribute to the circumstances that gave rise to her request for a continuance. And finally, the denial of Lewis’s motion for a continuance put her at an unfair disadvantage. Because the prejudice to Lewis outweighs any competing interests, we find that the trial court

abused its discretion by denying Lewis's motion for a continuance. Accordingly, we reverse the judgment of the trial court and remand this cause for further proceedings consistent with this opinion.

I.

{¶2} This matter is before this court for a second time. See *Rice v. Lewis*, Scioto App. No. 08CA3238, 2009-Ohio-1823 (hereinafter "*Rice I*"). Because *Rice I* recounts many of the facts of this case, we will not repeat those facts here. Instead, we will discuss only the facts pertinent to this particular appeal.

{¶3} Stephen A. Rice (hereinafter "Rice") and Lewis are the biological parents of the Child, and Regina Kelley (hereinafter "Kelley") is Rice's mother. In *Rice I*, we reversed an order that designated Rice as the Child's residential parent. We found that the trial court abused its discretion because, in determining the best interest of the Child, "the trial court relied on too many [R.C. 3109.04(F)] factors that were not supported by competent and credible evidence[.]" *Id.* at ¶94. Accordingly, we "remand[ed] this cause to the trial court for further proceedings consistent with [*Rice I*]." *Id.* at ¶95.

{¶4} One of Lewis's prior attorneys (hereinafter "The Fired Attorney") made his first appearance in this case on July 16, 2007. From that day on, The Fired Attorney represented Lewis throughout the trial court proceedings, during our consideration of *Rice I*, and immediately after we remanded this cause to the trial court. Different attorneys represent Lewis in this appeal.

{¶5} After our decision in *Rice I*, the trial court set a hearing for May 22, 2009. On May 14, 2009, Rice filed a Motion to Continue because of a previously scheduled

vacation. The trial court granted Rice's motion and rescheduled the hearing for July 24, 2009.

{¶6} Before the July 24, 2009 hearing, Rice and Lewis filed the following motions: (1) Lewis's Motion For Recusal of the trial court judge; (2) Lewis's two-branch Motion To Find Contempt; (3) Rice's Motion For Compensatory Parenting Time; (4) Lewis's second Motion To Find Contempt; and (5) Rice's two-branch Motion To Cite In Contempt; Motion For Attorney Fees. The trial court was to consider these motions at the July 24, 2009 hearing.

{¶7} On July 20, 2009, Lewis filed a pro se Motion For Continuance, wherein she asked the trial court for "a continuance based on her loss of legal counsel. Attorney for the Defendant, [The Fired Attorney], has been requested to file a MOTION TO WITHDRAW AS COUNSEL, due to a conflict of professional interest." Lewis further stated that she was "actively seeking counsel to properly represent her in this matter and [was] requesting a 90 day continuance to allow her counsel proper time to acclimate themselves with the case at hand."

{¶8} On July 22, 2009, The Fired Attorney filed the aforementioned Motion To Withdraw Of Counsel.

{¶9} On July 23, 2009, Lewis filed an affidavit to supplement her Motion For Continuance. In her affidavit, Lewis stated the following:

{¶10} "2. On or about July 16, 2009 I discovered information that [The Fired Attorney had] represented Stephen Rice on a previous matter. I was never informed by [The Fired Attorney] or anyone else that [The Fired Attorney] had previously represented Stephen Rice in a criminal matter which is under seal by the juvenile court.

The attached transcript will demonstrate that Regina Kelley states under oath that [The Fired Attorney] previously represented Stephen Rice on sexual abuse allegations involving a minor child.

{¶11} “3. On July 20, 2009, due to this extreme conflict of interest I released [The Fired Attorney] as counsel. Please see attached letter of disengagement dated 7/20/09<sup>1</sup> which includes a request for [The Fired Attorney] to immediately file a Motion to Withdraw as counsel, and request for copy of my case file in its entirety. To date [The Fired Attorney] has not provided a copy of my file.

{¶12} “4. On July 20, 2009 I filed a Motion for Continuance with this court because of the clear conflict of interest on behalf of my attorney[, The Fired Attorney].

{¶13} “5. I am actively seeking new counsel at this time.

{¶14} “6. In the best interest of my child, this matter, the fact that [The Fired Attorney] will not provide me with a copy of my file, in consideration of the facts presented, and in order to have reasonable time to obtain new counsel and for new counsel to have reasonable time to acclimate themselves with the case, I pray the court grant my Motion for Continuance for at least 90 Days.”

{¶15} The July 24, 2009 hearing proceeded as scheduled. Lewis, The Fired Attorney, Rice, and Rice’s attorney all attended the hearing. At the hearing, the trial court heard arguments on the various motions and, initially, overruled Lewis’s Motion For Continuance. The trial court kept The Fired Attorney at the hearing and told The Fired Attorney that Lewis “can use you if she wants you here.” 7/24/09 Transcript at 18.

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<sup>1</sup> The letter is actually dated June 20, 2009. Presumably, the letter contains a typographical error, and July 20, 2009 is the letter’s correct date. Lewis’s affidavit, the contents of the letter, and The Fired Attorney’s actions between June 20, 2009, and July 22, 2009, support this presumption.

{¶16} During the hearing, the trial court (1) found Rice in contempt (based on one branch of Lewis's two-branch contempt motion) and (2) granted Rice's Motion For Compensatory Parenting Time. Towards the end of the hearing, the trial court also granted Lewis's Motion For Continuance and The Fired Attorney's Motion To Withdraw Of Counsel. Further, the trial court ordered Lewis to turn the Child over to Rice at 6:00 p.m. that evening.

{¶17} At the close of the hearing, the following events unfolded:

{¶18} "[RICE'S ATTORNEY]: I do have some concerns. There was a statement that Miss Lewis made out in the hallway that was overheard by the former . . . the guardian ad litem that she would be refusing to return the child today.

{¶19} "THE COURT: Then she's gonna go to jail if she does that. File an affidavit and then I'm going to put her into jail. You understand, ma'am?

{¶20} "MS. LEWIS: Yes, sir.

{¶21} "THE COURT: We can't . . . every time we exchange children, we can't allege abuse and not do it.

{¶22} "MS. LEWIS: It's substantiated, your Honor.

{¶23} "THE COURT: Huh?

{¶24} "MS. LEWIS: It is substantiated. It's no longer alleged.

{¶25} "THE COURT: Alright. We'll order the exchange to take place right now.

Where is the child at?

{¶26} "MS. LEWIS: I don't know, your Honor.

{¶27} "THE COURT: Alright. Remanded to the custody of the sheriff until you find out where the child is and . . .

{¶28} “[THE FIRED ATTORNEY]: Go ask your dad where the child is?”

{¶29} “MS. LEWIS: He doesn’t know either.”

{¶30} “[THE FIRED ATTORNEY]: The child’s with your mother. Where’s your mother?”

{¶31} “MS. LEWIS: No, she’s not. My mother’s at home. You can send an officer if you’d like.”

{¶32} THE COURT: Alright. She’s remanded to the custody of the sheriff until she produces the child, Mr. Bailiff.” 7/24/09 Transcript at 106-08 (ellipses sic).

{¶33} Lewis was immediately taken into custody. On November 5, 2009, this court granted Lewis a temporary stay of the trial court’s order. However, she had to fulfill several conditions before the stay was to become effective. Lewis refused to comply with those conditions, and the stay never went into effect. As a result, she remains in jail, and the Child’s whereabouts are undetermined.

{¶34} Lewis appeals the trial court’s order and asserts the following five assignments of error: I. “The trial court’s July 24, 2009 contempt order and the order granting Plaintiff-Appellee Stephen Rice compensatory parenting time should be set aside because the trial court erred in denying Defendant Cherish Lewis’ Motion for a Continuance to obtain new counsel upon discovery of the irreconcilable conflict arising from her then counsel’s prior representation of Plaintiff in a juvenile sexual abuse criminal matter.” II. “The trial court abused its discretion in convicting Defendant Cherish Lewis of contempt because the court never had filed and journalized the order requiring Ms. Lewis to produce the child, hence rendering the order invalid and unenforceable.” III. “The trial court’s July 24, 2009 contempt order must be set aside

because the trial court abused its discretion by *sua sponte* orally modifying the initial 'order' requiring Defendant Cherish Lewis to turn the child over to Plaintiff at 6 PM that evening by then requiring her to immediately turn the child over with no prior notice that she was required to have the child present in the courtroom during that same hearing."

IV. "The trial court's July 24, 2009 contempt order should be set aside because the trial court erred in *sua sponte* modifying the initial order to turn the child over to Plaintiff at 6 PM that evening by requiring Defendant Cherish Lewis to turn the child over to Plaintiff immediately at the hearing because the trial court improperly concluded that she was refusing to comply with the court's initial order [t]o turn the child over to Plaintiff at 6 PM that evening because the court's erroneous conclusion was based on inadmissible hearsay upon hearsay and without affording Defendant the opportunity to present or cross-examine witnesses and without even questioning Defendant directly as to whether she was then and there refusing to comply with the initial 6 PM turn over order."

And, V. "The trial court's July 24, 2009 contempt order and the order granting Plaintiff-Appellee Stephen Rice compensatory parenting time should be set aside because the trial court erred by not allowing Defendant Cherish Lewis to present evidence substantiating the sexual abuse of her daughter. This evidence, if sufficient, as this court has held, is a valid defense to a violation of a visitation order and would also be extremely relevant to the issue of compensatory parenting time."

## II.

{¶135} In her first assignment of error, Lewis contends that the trial court erred in denying Lewis's Motion For Continuance. For that reason, Lewis argues that the orders resulting from the July 24, 2009 hearing should be set aside.

{¶36} The trial court's rulings on Lewis's Motion For Continuance are not entirely clear. Early in the July 24, 2009 hearing, the trial court judge said, "obviously, I've overruled the Motion for a continuance at this time." 7/24/09 Transcript at 30. Then, the trial court (1) heard testimony from Rice and Lewis, (2) heard arguments related to the various motions, (3) tried to sort out the custody situation after our decision in *Rice I*, and (4) ruled on some of the pending motions. Toward the end of the hearing, the trial court judge said, "We'll grant the Motion for a continuance at this stage." *Id.* at 80. Despite this ruling, the trial court then proceeded to hear additional evidence related to the various motions. Thus, the trial court's actions are somewhat hard to follow. Nevertheless, under this assignment of error, we will focus on the trial court's initial denial of Lewis's Motion For Continuance.

{¶37} "We review the denial of a motion for a continuance for abuse of discretion." *State ex rel. Athens Cty. Dept. of Job & Family Servs. v. Martin*, Athens App. No. 07CA11, 2008-Ohio-1849, at ¶22. See, also, *Gussler v. Morris*, Ross App. No. 06CA2884, 2006-Ohio-6627, at ¶8. An abuse of discretion connotes more than a mere error of judgment; it implies that the court's attitude is arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. "The trial court has broad discretion in ruling on requests for continuances. \* \* \* However, that discretion is not unlimited." *State v. Miller* (Apr. 20, 1987), Tuscarawas App. No. 86AP060038 (internal citation omitted).

{¶38} "Our review of a denial of a motion for a continuance requires us to 'apply a balancing test, thereby weighing the trial court's interest in controlling its own docket, including the efficient dispensation of justice, versus the potential prejudice to the



moving party.” *Foley v. Foley*, Franklin App. Nos. 05AP-242 & 05AP-463, 2006-Ohio-946, at ¶16, quoting *Fiocca v. Fiocca*, Franklin App. No. 04AP-962, 2005-Ohio-2199, at ¶7.

{¶39} “In evaluating a motion for a continuance, a court should note, inter alia: the length of the delay requested; whether other continuances have been requested and received; the inconvenience to litigants, witnesses, opposing counsel and the court; whether the requested delay is for legitimate reasons or whether it is dilatory, purposeful, or contrived; whether the defendant contributed to the circumstance which gives rise to the request for a continuance; and other relevant factors, depending on the unique facts of each case.” *State v. Unger* (1981), 67 Ohio St.2d 65, 67-68. Although *Unger* was a criminal matter, appellate courts have also applied these factors in civil cases. See, e.g., *King v. Kelly*, Lawrence App. No. 02CA42, 2003-Ohio-4412, at ¶11; *Henson v. Highland Dist. Hosp.*, 143 Ohio App.3d 699, 707, fn. 4, 2001-Ohio-2513; *Integrated Payment Systems, Inc. v. A & M 87th Inc.*, Cuyahoga App. Nos. 91454 & 91473, 2009-Ohio-2715, at ¶73; *Truex v. Truex*, 179 Ohio App.3d 188, 2008-Ohio-5690, at ¶15.

{¶40} Here, we find the *Unger* factors to be in Lewis’s favor. Most significantly, we believe that Lewis requested a continuance for compelling, legitimate reasons. Throughout this case, Lewis has alleged that Rice may have sexually abused the Child. And shortly before the July 24, 2009 hearing, Lewis discovered that her attorney had represented Rice in a previous case where Rice was accused of sexually molesting a young relative. In the affidavit supporting her Motion For Continuance, Lewis stated that “[on] or about July 16, 2009 I discovered information that [The Fired Attorney had]

represented Stephen Rice on a previous matter.” A portion of the transcript from the May 15, 2007 hearing was attached to Lewis’s affidavit. At that hearing, Kelley testified as follows:

{¶41} “Q. And does a document exist that . . . that has . . . it’s basically a confession saying that [Rice] molested your daughter?

{¶42} “A. No. There is not.

{¶43} “Q. There is no document as such as that?

{¶44} “A. Not that I know of.

{¶45} “Q. Okay.

{¶46} “THE COURT: What happened to the investigation?

{¶47} “MS. KELLEY: What happened to the investigation is [The Fired Attorney] was his lawyer and he decided that it would in our best interest that my son not be put through this type of trial so . . . I don’t understand all the legal part. All I know is that charges, I think, were dropped and it was put in . . . it was sealed and everything was dropped with Children Services.” 5/5/07 Transcript at 36-37 (ellipses sic).

{¶48} A different attorney represented Lewis at the May 15, 2007 hearing. The Fired Attorney did not make an appearance in this case until July 16, 2007.

{¶49} Even if The Fired Attorney initially forgot about previously representing Rice, Lewis contends that The Fired Attorney continued to represent her despite learning of the potential conflict. A December 20, 2007 Defendant’s Exhibit List includes the transcript of a voice mail message that Rice left for The Fired Attorney. “Yeah! Hi! This message is for [The Fired Attorney;] this is Steven Rice the plaintiff against your defendant Cherish Lewis. I have recently been informed that she is trying to get me for

sexual abuse charges. Well, [The Fired Attorney], if you remember correctly you defended me for a similar case and I don't see how there is any possible way that you can represent her in the same matter that you have already represented me for. So I am going to do some further research and I would like a phone call back \* \* \* because I just want to make sure that everything is legal and that there is gonna be no miscommunications [sic] or any lawsuits. Thank you." Lewis claims that her attorney should have disclosed the potential conflict after receiving this voice mail message.

{¶50} In relevant part, Rule 1.7(a) of the Rules of Professional Conduct provides: "A lawyer's acceptance or continuation of representation of a client creates a conflict of interest if \* \* \* there is a *substantial* risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer's responsibilities to \* \* \* a former client[.]" (Emphasis sic.) Lewis presented evidence of alleged sexual abuse at hearings before our decision in *Rice I*. And during the July 24, 2009 hearing, Lewis testified about the potential conflict created by the sexual abuse allegations. "I was advised by [The Fired Attorney] to stop reporting every time there was a sexual assault. \* \* \* There is a direct conflict here and I filed the Motion for a continuance so I could seek new counsel and I was not prepared for today's hearing to hear all of these Motions. \* \* \* Without having an opportunity to weigh the evidence of sexual abuse, you know, what am I, as a mother, supposed to do? You know, there was evidence and court hearings before where he had molested \* \* \* a young child and, you know, now my daughter[.]" 7/24/09 Transcript at 95-96.

{¶51} As an appellate court, we do "not have jurisdiction over the issue of whether an attorney violated the Rules of Professional Conduct[.]" *State v. Snyder, Williams*

App. No. WM-08-004, 2009-Ohio-49, at ¶35. Thus, we offer no opinion as to whether The Fired Attorney's prior representation of Rice created an actual conflict of interest. Instead, Rule 1.7(a) merely provides insight into the reason for Lewis's Motion For Continuance. Here, Lewis believes that evidence of sexual abuse is relevant in determining the best interest of the Child. The Fired Attorney represented Rice in a prior matter involving sexual abuse charges. And because the prior case is under seal, The Fired Attorney necessarily has (1) confidential information about that case and (2) responsibilities to Rice as to that information. Thus, it was reasonable for Lewis to believe that her attorney may have been limited in pursuing the allegations of sexual abuse. Further, because The Fired Attorney failed to disclose his prior representation of Rice, Lewis apparently lost confidence and trust in her attorney. These are legitimate reasons for a continuance. See, e.g., *State v. Landingham*, Lucas App. No. L-03-1339, 2005-Ohio-1216, at ¶20 (finding the trial court should have considered "clear and uncontroverted breakdown \* \* \* in the attorney-client relationship" before denying a continuance).

{¶52} Other *Unger* factors also weigh in favor of granting Lewis's Motion For Continuance. By themselves, the following factors are not necessarily dispositive. But when considering the totality of the circumstances, and in light of the compelling reasons behind Lewis's request for a continuance, we believe the following factors are relevant. First, Lewis had not requested and received a continuance after we remanded this matter to the trial court. In contrast, Rice *had* requested and received a continuance after *Rice I*. The trial court set a hearing for May 22, 2009. On May 14, 2009, Rice filed a Motion to Continue because of a previously scheduled, prepaid

vacation. The trial court granted Rice's motion and continued the hearing until July 24, 2009. Thus, the trial court granted Rice a continuance shortly before a hearing date, but denied one to Lewis.<sup>2</sup> Second, we believe that Lewis's request would have amounted to a reasonable delay of time. Ninety days seems appropriate in light of (1) Lewis having to find a new attorney and (2) the new attorney having to become acquainted with such a complex matter. Lewis's request seems all the more reasonable considering the trial court had already continued the original hearing date for sixty-three days because of Rice's vacation, a reason wholly unrelated to the proceedings.

{¶53} Finally, we do not believe that Lewis contributed to the circumstance that gave rise to her request for a continuance. Rice argues that Lewis's Motion For Continuance was untimely because she already knew, or should have known, of the potential conflict. Essentially, Rice argues that Lewis was at fault because she was present for the May 15, 2007 hearing where Kelley testified that The Fired Attorney had previously represented Rice. We disagree. Before hiring The Fired Attorney, Lewis had attended five hearings and heard extensive testimony from multiple witnesses. Furthermore, The Fired Attorney's name was mentioned just one time during the May 15, 2007 hearing. Therefore, we do not believe that Lewis should be charged with remembering The Fired Attorney's name simply because she was present for Kelley's testimony.

{¶54} On the contrary, we find it more likely that Lewis did not remember The Fired Attorney's name and, thus, had no actual knowledge of the potential conflict. It makes

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<sup>2</sup> On May 8, 2009, The Fired Attorney filed a Motion to Continue because he had a previously scheduled medical procedure on the hearing date. However, the procedure was rescheduled, and The Fired Attorney withdrew the motion on May 13, 2009.

little sense for Lewis to know of the potential conflict; have The Fired Attorney represent her throughout the trial court proceedings; have The Fired Attorney continue to represent her on appeal, even after an adverse outcome at the trial court level; and then release The Fired Attorney after he obtained a reversal of the trial court's decision. If Lewis had known of the conflict, it seems much more likely that she would have released The Fired Attorney after the trial court designated Rice as the Child's residential parent. But instead, Lewis released The Fired Attorney after he had achieved his greatest success in this case. This seems like an unlikely time for Lewis to suddenly act upon any hidden knowledge of the potential conflict.

**{¶55}** Finally, attorneys must disclose conflicts of interest. See Comment 29 to Rule 1.7 of the Rules of Professional Conduct ("Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that a conflict could have adverse effects on the interests of that client."). Here, The Fired Attorney did not disclose that he had represented Rice in a previous matter where Rice was accused of sexually molesting a young relative. At the July 24, 2009 hearing, The Fired Attorney said, "It's not in my mind a conflict." 7/24/09 Transcript at 14. Whether or not it created an actual conflict, The Fired Attorney's prior representation of Rice created at least the appearance of a potential conflict of interest. Because The Fired Attorney did not disclose the prior representation to Lewis, it was reasonable for Lewis to assume that her attorney had no potential conflicts.

**{¶56}** For the foregoing reasons, we do not believe that Lewis already knew of the potential conflict. Rather, we find it more likely that Lewis did indeed discover the

potential conflict after reviewing the transcripts of the May 15, 2007 hearing. As such, we do not believe that Lewis contributed to the circumstance that gave rise to her request for a continuance.

{¶57} Additionally, we believe that a unique, case-specific factor weighs in favor of granting a continuance. That is, it quickly became apparent that Lewis would be at an unfair disadvantage during the July 24, 2009 hearing. The trial court addressed several important matters at that hearing, including motions for contempt and Rice's Motion for Compensatory Parenting Time. And before the trial court denied Lewis's Motion For Continuance, The Fired Attorney expressed that he did not want to be there. He said, "she doesn't want me here, your Honor, and I really don't want to be here at this point. I think I've been professionally somehow slammed." 7/24/09 Transcript at 18.

Nevertheless, the trial court judge told The Fired Attorney, "I'm keepin' you here and then [Lewis] can use you if she wants you here." Id. By denying Lewis's Motion For Continuance, the trial court forced Lewis into the unenviable position of arguing these matters either (1) by herself or (2) with the assistance of an attorney she had just fired for a perceived "inexcusable act." Letter of Disengagement Attached to Lewis's July 23, 2009 Affidavit.

{¶58} It soon became apparent that Lewis was unprepared to argue the pending motions. Lewis's letter to The Fired Attorney asked for the complete case file. But for whatever reason, Lewis did not receive the pending motions. After saying that she had not received them, the trial court judge told Lewis, "Your letter asked for all pending Motions. So, you listen here and you tell me what the pending Motions are." Id. at 19. At this point, *Rice's attorney* described Lewis's pending motions to the court.

{¶59} The foregoing events transpired before the trial court overruled Lewis's Motion For Continuance. Based on these events, Lewis clearly had a fractured attorney-client relationship and little knowledge of the pending motions. Thus, it should have been clear that, without a continuance, Lewis would be at an unfair disadvantage during the July 24, 2009 hearing. Accordingly, we believe this case-specific factor weighs in favor of granting Lewis's Motion For Continuance.

{¶60} In total, the following *Unger* factors weigh in Lewis's favor: (1) she requested a continuance for legitimate reasons; (2) she did not receive a continuance after remand, but Rice did; (3) she requested a reasonable delay of time; (4) she did not contribute to the circumstances that gave rise to her request for a continuance; and (5) the unique, case-specific factor related to Lewis's unfair disadvantage. In our view, the inconvenience factor does not weigh either for or against granting the continuance. Rice lives in Florida, so a continuance would have inconvenienced him. However, there is no evidence that a continuance would have inconvenienced anyone else – especially because Rice and Lewis were the only witnesses present for the July 24, 2009 hearing. Further, the trial court itself did not appear inconvenienced by Rice's May 14, 2009 request for a continuance. Thus, of the six *Unger* factors, five weigh in favor of granting the continuance, and one is neutral. Where the *Unger* factors favor granting a continuance, other courts have found that a trial court abuses its discretion by failing to do so. See, e.g., *Burton v. Burton* (1999), 132 Ohio App.3d 473, 476-77; *Griffin v. Lamberjack* (1994), 96 Ohio App.3d 257, 264. At a very minimum, the trial court did not discuss its reasons for denying Lewis's Motion For Continuance, and at least one other trial court has been reversed for failing to conduct a proper analysis. See *DeFranco v.*



*DeFranco*, Lake App. No. 2000-L-147, 2001-Ohio-4338 (The trial court “failed to conduct a sufficient inquiry regarding these factors. \* \* \* [B]y failing to utilize the *Unger* analysis, the trial court abused its discretion.”).

{¶61} We recognize that a trial court has considerable discretion in deciding whether to grant a continuance. But in the present case, the prejudice to Lewis outweighs the trial “court’s right to control its own docket [or] the public’s interest in the prompt and efficient dispatch of justice.” *Unger* at 67. The Supreme Court of Ohio has defined “judicial discretion” as “the option which a judge may exercise between the doing and not doing of a thing which cannot be demanded as an absolute legal right, guided by the spirit, principles and analogies of the law, and founded upon the reason and conscience of the judge, to a just result in the light of the particular circumstances of the case.” *Krupp v. Poor* (1970), 24 Ohio St.2d 123, at paragraph two of the syllabus. Additionally, fairness is one of the basic philosophies of judicial procedure. See *Cunningham v. Jerry Spears Co.* (1963), 119 Ohio App. 169, 174. And here, forcing Lewis to proceed despite the total breakdown in her attorney-client relationship was neither just nor fair. Guided by the spirit and principles of the law, and based on the circumstances of this particular case, the trial court should have allowed Lewis the opportunity to obtain a new attorney. In conclusion, we can see no compelling interest that outweighs the considerable prejudice done to Lewis. Therefore, we conclude that the trial court abused its discretion.

{¶62} Accordingly, we sustain Lewis’s first assignment of error. Because the trial court abused its discretion in denying Lewis’s Motion For Continuance, the July 24, 2009 hearing is moot. As such, we vacate all of the orders that resulted from the July

24, 2009 hearing. Furthermore, we order the immediate release of Cherish Lewis from the Scioto County Jail.

III.

{¶63} Our resolution of Lewis's first assignment of error renders her remaining assignments of error moot. As such, we decline to address them. See App.R. 12(A)(1)(c).

IV.

{¶64} In conclusion, we reverse the trial court's judgment and remand this cause to the trial court for further proceedings consistent with this opinion. Based on our resolution of Lewis's first assignment of error, we vacate all of the orders that resulted from the July 24, 2009 hearing. Further, we order the immediate release of Cherish Lewis from the Scioto County Jail.

**JUDGMENT REVERSED AND  
CAUSE REMANDED.**

**JUDGMENT ENTRY**

It is ordered that the JUDGMENT BE REVERSED and this cause BE REMANDED to the trial court for further proceedings consistent with this opinion and Appellee pay the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Scioto County Common Pleas Court, Domestic Relations Division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Abele, J.: Concurs in Judgment and Opinion.

Harsha, J.: Concurs in Judgment Only.

For the Court

BY: \_\_\_\_\_  
Roger L. Kline, Judge

**NOTICE TO COUNSEL**

**Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.**