

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

GERHARD G. KALKE,

Appellant,

v.

ALICIA E. KALKE,

Appellee.

No. 2D20-3594

December 29, 2021

Appeal from the Circuit Court for Pinellas County; Cynthia
Newtown, Judge.

Jane H. Grossman, St. Petersburg, for Appellant.

Stephen D. Gregg and Peter N. Meros of Meros, Smith, Lazzara,
Brennan & Brennan, P.A., St. Petersburg, for Appellee.

ROTHSTEIN-YOUAKIM, Judge.

Gerhard G. Kalke, the Former Husband, appeals from the final judgment of dissolution that ended his marriage to Alicia E. Kalke, the Former Wife. The Former Husband challenges the judgment on multiple grounds, most of which are offshoots of his core argument that the trial court abused its discretion in denying his request to

continue the trial, unfairly leaving him to proceed pro se and unable to effectively present his case or challenge the Former Wife's case. Accordingly, although concluding without further discussion that the record does not support his challenges, we address that core argument. We affirm.

In evaluating whether a trial court has abused its broad discretion in denying a motion for continuance, this court considers

1) whether the movant suffers injustice from the denial of the motion; 2) whether the underlying cause for the motion was unforeseen by the movant and whether the motion is based on dilatory tactics; and 3) whether prejudice and injustice will befall the opposing party if the motion is granted.

Riley v. Riley, 14 So. 3d 1284, 1287 (Fla. 2d DCA 2009) (quoting *Neal v. Swaby*, 975 So. 2d 431, 433 (Fla. 2d DCA 2007)). We take these considerations out of turn.

As to whether the underlying cause for the request was unforeseeable by the Former Husband and not the result of dilatory practices, when the trial court permitted the Former Husband's *third* attorney to withdraw, on September 3, 2020, it was with the parties' understanding that the trial would still take place as scheduled on November 9, 2020. The trial remained on the trial

calendar, and the Former Husband never moved to continue it for any reason. The court found incredible both the Former Husband's unsworn protestations that he had nonetheless believed that the trial would not proceed on that date and his evolving litany of excuses for not being prepared, and we will not second-guess the court's credibility determination.

As to whether a continuance would have resulted in prejudice or injustice to the Former Wife, the record establishes that the Former Wife, her counsel, and her accountant were all present and prepared for trial. By that time, her petition for dissolution had been pending for more than two years—partially because of COVID-19 but also because the Former Husband had been far from cooperative during this litigation. Indeed, at one point, the trial court found that he was simply declining to comply with the court's orders despite numerous requests by the Former Wife and that his noncompliance had caused unnecessary litigation. In light of this conduct by the Former Husband, we are not persuaded by counsel's suggestion in the brief or at oral argument that any prejudice to the Former Wife could have been resolved merely by ordering the Former Husband to pay her attorney and accountant for their time.

Finally, we cannot conclude that the denial of the continuance created an injustice for the Former Husband. The trial court's findings at trial were consistent with its findings at a March 2019 evidentiary hearing on the parties' temporary support issues, at which the Former Husband was represented by counsel of his choice and presented the testimony of the accountant of his choice.¹ Those findings were also consistent with the court's findings at a June 2019 evidentiary hearing on one of the Former Wife's motions

¹ The Former Husband argues that the trial court "disallowed" the testimony of his accountant of choice at trial, but the court unquestionably gave him the opportunity to call his accountant. Given that opportunity, however, the Former Husband did not call the forensic accountant listed on his witness list for trial or even the accountant who had appeared at the March 2019 hearing but yet another accountant who had not been listed as a trial witness and had never testified previously despite the Former Husband's claim that this was his business accountant who prepared his tax returns and possessed key financial information. According to counsel for the Former Wife, this business accountant had never been deposed, had never produced any documents, and had never rendered any opinions.

After the trial court refused to allow this new business accountant to testify, the Former Husband asked if he could call the forensic accountant who *was* listed on his witness list. In his brief on appeal, the Former Husband misquotes the court as responding, "Sure, but he must appear *right now*," and rather disingenuously emphasizes the "right now." What the court actually said was: "Sure. He needs to be available right now," to which the Former Husband replied: "I will try. I don't think he's

for contempt and for sanctions. At that hearing, the Former Husband claimed that his financial circumstances had changed, but he introduced no documentation supporting that claim and had brought no accountant to so testify.² The record therefore establishes not only that the accountant and evidence that the Former Husband claimed he needed for trial were solely within his control but that he had been on notice that he needed them since at least June 2019—well before his third counsel had withdrawn and well before he had filed his witness list. *Cf. Ramadan v. Ramadan*,

going to be available, but I will try." The Former Husband, however, did not try.

² In its written order entered after that hearing, the trial court stated:

Concerning the Wife's claim for temporary attorney's fees, C.P.A. fees and costs, the Court finds the testimony of C. Todd Burg, the Wife's forensic accountant, to be credible related to the Husband's assets, income and ability to pay. The Husband's only financial affidavit was done in October of 2018. Although he claims that things have changed significantly since that time, he brought no documentation of any nature to support his claims, did not bring his forensic C.P.A. to testify, and the Court completely rejects his testimony that he has no ability to pay. The Court finds that the evidence supports that he has \$134,000 in excess working capital in his business; \$100,000 in personal cash; three Porsches, a yacht, and a helicopter. He has paid his attorney and his C.P.A. approximately \$67,000. His ability to pay is well documented and overwhelming.

216 So. 3d 26, 29–30 (Fla. 2d DCA 2017) (concluding that "the denial of the continuance created a clear injustice for the Former Wife," whose need for a continuance "was the direct result of the Former Husband's continued refusal to provide his business financial records for a forensic accounting").

Accordingly, the judgment is affirmed.

CASANUEVA and KELLY, JJ., Concur.

Opinion subject to revision prior to official publication.