

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

2015 CA 0857

THOMAS R. ABINGTON, SR. AND JACQULYN ABINGTON

VERSUS

LOUISIANA ROOFING U.S.A., INC. D/B/A LOUISIANA ROOFING
INCORPORATED

Judgment Rendered: DEC 23 2015

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On Appeal from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
No. C618865

The Honorable William A. Morvant, Judge Presiding

* * * * *

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Louisiana Roofing Incorporated, et al.

* * * * *

BEFORE: GUIDRY, HOLDRIDGE AND CHUTZ, JJ.

Chatz. J. - Concur

HOLDRIDGE, J.

Following a trial that resulted in an adverse judgment against them, the defendants have appealed alleging that the trial court abused its discretion in denying their motion to continue the trial. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

This case arises out of a roof replacement contract. In 2012, Thomas and Jacquelyn Abington (then 77 years old and 61 years old respectively) sustained severe damage to the roof of their home as a result of Hurricane Isaac. They entered into a roof replacement contract with Louisiana Roofing USA, Inc. d/b/a Louisiana Roofing Incorporated (“Louisiana Roofing”), through its authorized representative and purported owner/operator, Carl Augustus Spears. The agreed upon price of the contract was \$18,700, the amount of the Abingtons’ insurance payout. The Abingtons paid over \$14,000 for supplies and labor and retained the balance pending satisfactory completion of the job. The Abingtons soon discovered numerous alleged defects with the roof installation. The Abingtons offered Louisiana Roofing the opportunity to rectify the problems. Unfortunately, the Abingtons contend that further damage resulted from this remedial work, and, as a result, water began entering their home, and they lack sufficient funds to remedy the problem. Therefore, the Abingtons filed suit against Louisiana Roofing on February 1, 2013, asserting various claims, including breach of contract and unfair trade practices. Louisiana Roofing answered the petition and asserted a reconventional demand seeking payment of the outstanding balance of the contract price.

Trial on the parties’ claims was scheduled for May 2, 2014. In March 2014, the Abingtons filed a motion to compel due to Louisiana Roofing’s repeated failure to respond to their discovery requests. Thereafter, the Abingtons also filed a

motion for contempt due to Mr. Spears' failure to appear for a trial deposition on April 2, 2014, despite being subpoenaed. Judgment was ultimately rendered in favor of the Abingtons on both motions. Presumably as a result of Louisiana Roofing's refusal to comply with discovery, the May 2, 2014 trial was continued.¹

On May 7, 2014, another pretrial conference was held, and the parties were given a new trial date of June 27, 2014. Approximately one month later, Tiffany Crosby, the attorney for Louisiana Roofing, filed a motion to withdraw as counsel of record. Therein, she alleged that Mr. Spears' "continual harassing and irrational behavior,"² his "abusive language" and treatment of her staff, his adamant insistence that she meet with him outside of office hours, and his unwillingness to cooperate with scheduling depositions and answering discovery requests, despite numerous warnings, left her emotionally and mentally drained and caused her to fear for her personal safety. A hearing on the motion was set for June 23, 2014.

In the interim, the Abingtons were forced to file yet another motion for contempt based on Louisiana Roofing's continued failure to fully comply with the trial court's judgment on their motion to compel.

At the hearing on Ms. Crosby's motion, Mr. Spears appeared and apparently opposed her withdrawal. After hearing testimony and argument, the trial court granted Ms. Crosby's motion to withdraw.³ Thereafter, the trial court granted Mr.

¹ The trial court ordered Louisiana Roofing to respond to the outstanding discovery requests by April 28, 2014, and pay the Abingtons' attorney fees in connection with the motion to compel. The record indicates that Louisiana Roofing did not respond to the discovery requests until May 1, 2014, and even then, its responses were incomplete. Mr. Spears was not deposed until May 2, 2014, the original trial date. According to Louisiana Roofing's attorney, Mr. Spears' behavior during the deposition "was so out of hand that the deposition had to be stopped numerous times in order for him to adequately cooperate."

On appeal, the defendants contend that the record does not reveal the express reason for this initial continuance; nevertheless, they do not rebut the trial court's stated assertion that this continuance was attributable to them.

² According to Ms. Crosby's motion, such behavior included Mr. Spears sending "numerous harassing emails ... as well as [appearing] at [her] office, after refusing to make an appointment, barging into [her] office while meeting with another client, yelling, slamming doors, and throwing himself onto his knees."

³ No transcript of this hearing appears in the record.

Spears' request for a continuance so that he could obtain new counsel. Trial on the matter was reset for August 14, 2014.

Purportedly as a result of the responses they finally received to their discovery requests, the Abingtons sought to file a first supplemental and amending petition to name as additional defendants Mr. Spears, in his individual capacity, as well as other entities that he allegedly owned and operated.⁴ According to the Abingtons' motion for leave, they learned that Louisiana Roofing "never existed" and that Mr. Spears used multiple entities "interchangeably to scam individuals" and avoid liability. On July 17, 2014, the trial court granted the Abingtons leave to file their supplemental and amending petition.

On August 11, 2014, Teresa Hatfield and Dale Glover, the new attorneys for Mr. Spears and his business entities (collectively defendants), filed a motion to continue the August 14, 2014 trial to allow them additional time to prepare. Citing the newly filed supplemental and amending petition, the trial court granted the continuance. On September 3, 2014, attorneys for the parties appeared at a status conference at which new discovery and filing cutoff dates were set and a December 17, 2014 pretrial conference was scheduled. At the subsequent December 2014 pretrial conference, the parties' attorneys agreed to a trial date of March 20, 2015.

Despite the fact that he was represented by counsel and despite the fact that the discovery cutoff date had long since passed, on March 12, 2015, a mere eight days before trial, Mr. Spears filed a pro se motion for a continuance so that he could "complete discovery." Noting the trial had already been continued three times and that defense counsel had agreed to the March 20, 2015 trial date, the trial court denied the motion.

⁴ These included A-1 Louisiana Roofing USA, LLC; Statewide USA, Inc.; and Spears Consulting, Inc.

In an email sent on March 17, 2015, at 10:19 p.m., Mr. Spears terminated his attorneys, Ms. Hatfield and Mr. Glover, and on the morning of March 18, 2015, Mr. Spears sent them a fax confirming their termination. Thus, Mr. Spears essentially discharged his attorneys two days before trial. That same day, March 18, 2015, a new attorney, Mr. C. Hunter King, filed a motion to enroll as counsel for Mr. Spears and his various entities. He also filed a motion to continue the trial. In support of the request for a continuance, Mr. King offered only two reasons: (1) he needed additional time to become familiar with the case; and (2) he had a hearing on a rule scheduled in Orleans Parish on the same day as trial. The trial court granted the motion to enroll provided the enrollment was not used as a basis to seek a continuance of the March 20, 2015 trial, and it denied the motion for a continuance. In conjunction with these orders, the trial court conducted a telephone conference with Mr. King and informed him that no continuance would be granted.

On March 20, 2015, the date of trial, Ms. Hatfield and Mr. Glover appeared. They informed the trial court that Mr. Spears had terminated them, and, therefore, they felt obliged to make an oral motion to withdraw pursuant to Rule 1.16 of the Louisiana Rules of Professional Conduct.⁵ Upon questioning by the trial court, Mr. Spears reiterated his desire to discharge Ms. Hatfield and Mr. Glover. Again, he provided no reasons for their termination. The trial court granted Ms. Hatfield's and Mr. Glover's motion to withdraw. Mr. Spears' newly enrolled attorney, Mr. King, did not appear for trial. Mr. Spears again requested a continuance, which

⁵ Rule 1.16 provides, in pertinent part:

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
- (1) the representation will result in violation of the rules of professional conduct or other law;
 - (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
 - (3) the lawyer is discharged.

was denied, and the case proceeded to trial. Mr. Spears repeatedly refused to participate in the trial in any manner.⁶

Following trial, the trial court rendered judgment in favor of the Abingtons and against defendants, Mr. Spears and his various business entities. From this judgment, the defendants appeal asserting the following two assignments of error:

I. The District Court erred and abused its discretion when it denied Defendant[s]-Appellant[s'] Motion for Continuance but allowed former counsel to [withdraw] from the case on the morning of trial, and proceeded with the trial, although new ... counsel had previously notified the Court he was unavailable for trial on March 20, 2015 and was unfamiliar with the case and needed a continuance in order to provide adequate representation of Defendant[s]-Appellant[s] in this matter.

II. The District Court erred and denied Defendant[s]-Appellant[s] [their] Due Process guarantees in proceeding with the trial on March 20, 2015 and rendering Judgment in the case when Defendant[s]-Appellant[s] had good ground for a continuance, Defendant[s]-Appellant[s'] counsel was allowed to withdraw from the case, and

⁶ At trial, the following exchange occurred:

THE COURT: Mr. Spears, is that your desire, to terminate Ms. Hatfield and Mr. Glover from your representation?

MR. SPEARS: Yes, sir, that is my desire.

THE COURT: All right.

I think you're correct; under 1.16, you have an ethical obligation to withdraw. So I will grant the request. And the Court has signed earlier this week, I granted the motion to enroll, on behalf of Mr. C. Hunter King to enroll, with the understanding that this matter was set for trial this morning, and that we were starting at 9:30 and that there would be no delays, no continuances, and that his enrollment would not result in this thing being moved. This is the fourth time this case has been set for trial. It's been continued each time prior on motion of the defendant. This is the second time we've had a termination and/or withdrawal of his counsel right at the eve of trial, and I have advised Mr. King and I have advised Mr. Spears that this was not going to result in a delay of this trial. Mr. Spears wants to fire his current counsel and hire someone who can't be here, we're going forward today, because Mr. Spears has completely ignored the rules of discovery throughout this case, he has completely thumbed his nose at this Court's pretrial procedure, he has not participated in preparation and filing of pretrial inserts, we've had several motions to compel -- he's done everything he can to delay and disrupt the orderly process of this case.

And as I said, this is at least the fourth time I've had it set for trial. And I'm not bumping it again. The Abingtons are entitled to their day in court. We've been going with this since May of last year. May 2nd was the first time we had it set for trial. We re-set it at defendant's request for June 27th. We re-set it for August 14th. We then re-set it again and set a pretrial conference in September, September 3rd. Status, set a pretrial conference December 17th, and set this trial date four months later.

So we've had plenty of time for Mr. Spears to conduct whatever discovery he needed to conduct to prepare his case and to participate as he should. And for whatever reason, he has chosen not to. And I want to make sure that the record in this matter is crystal clear, that this is not in any way, shape, or form the fault of counsel. Or the lack of effort, or lack of participation on behalf of counsel, but the lack of cooperation and lack of participation and the repeated attempts for delays on the part of Mr. Spears. And the Court is not going to let Mr. Spears run this docket.

So, I will allow you to withdraw. We will begin the trial this morning, as I told Mr. King we would when he enrolled and we had a telephone status on Wednesday.

new ... counsel was unavailable; thus, Defendant[s]-Appellant[s] had no representation at trial.

Thus, the defendants' appeal only implicates the trial court's denial of their motion for a continuance.⁷

DISCUSSION

Absent peremptory grounds, a continuance rests within the sound discretion of the trial court. St. Tammany Parish Hospital v. Burris, 00-2639 (La.App. 1 Cir. 12/28/01), 804 So.2d 960, 963. Louisiana Code of Civil Procedure article 1601 provides, "A continuance may be granted in any case if there is good ground therefor."

In deciding whether to grant or deny a motion for a continuance, the trial court must consider the particular facts of a case. Gilmore v. Wickes Lumber, 04-2769 (La.App. 1 Cir. 2/17/06), 928 So.2d 668, 674. Specifically, the trial court should consider the diligence and good faith of the party seeking the continuance and other reasonable grounds. St. Tammany Parish Hospital, 804 So.2d at 963. The trial court may also weigh the condition of the court docket, fairness to the parties and other litigants before the court, and the need for orderly and prompt administration of justice. Id.

The trial court's ruling on a motion to continue will not be disturbed on appeal in the absence of a clear showing of abuse of discretion. Gilmore, 928 So.2d at 674. A trial court has wide discretion in the control of its docket, in case management, and in determining whether a motion for continuance should be granted. Thus, appellate courts interfere in such matters only with reluctance and in extreme cases. Willey v. Roberts, 95-1037 (La.App. 1 Cir. 12/15/95), 664 So.2d 1371, 1374, writ denied, 96-0164 (La. 3/15/96), 669 So.2d 422. Having

⁷ Although the denial of a motion for a continuance is an interlocutory judgment and, thus, is generally not appealable, it is subject to review by an appellate court when an appealable judgment is rendered in the same case. Ballard v. Waitz, 06-0307 (La.App. 1 Cir. 12/28/06), 951 So.2d 335, 338 writ denied, 07-0846 (La. 6/15/07), 958 So.2d 1193. See also People of Living God v. Chantilly Corp., 251 La. 943, 947-48, 207 So.2d 752, 753 (1968).

thoroughly reviewed this matter, we conclude that this is not an extreme case requiring our intervention.

Our conclusion that the trial court did not abuse its discretion in denying the defendants' motion for continuance rests, as it must, on the particular facts of this case. Even so, we feel compelled to point out that the cases discussed by the defendants in their brief⁸ are materially distinguishable and, thus, fail to provide support for their position as none involved a party who unilaterally discharged his attorneys two days before trial, without proffering any explanation or justification, and hired a new attorney who was unfamiliar with the case and was unable to appear at trial due to a scheduling conflict. Indeed, we are aware of cases that are more factually similar to the case at hand where no abuse of discretion was found. See Coffman v. Mainhardt, 602 So.2d 264 (La.App. 2 Cir. 1992) (denial of motion for continuance was not an abuse of discretion where the defendant waited until three days before his trial date to retain counsel and then employed counsel who had a scheduling conflict on the trial date); Green v. Gary Memorial Hospital, 505 So.2d 196 (La. App. 3 Cir. 1987) (worker's compensation claimant was properly denied a continuance and required to proceed to trial without counsel, where claimant's attorney informed the trial judge that claimant had discharged attorney the preceding week and claimant never said anything to contradict the impression that she had discharged her attorney nor did she offer any exigent circumstances or grounds for the abrupt dismissal of her attorney); Hall v. Doctor's Hospital of Tioga, 486 So.2d 1164 (La.App. 3 Cir. 1986) (denial of employee's motion for a continuance after having allowed employee's counsel of record to withdraw on day of trial, leaving employee without an attorney during trial, was not an abuse of

⁸ The specific cases discussed by the defendants are Walker v. Aulds, 28,968 (La.App. 2 Cir. 12/11/96), 685 So.2d 421, 422-23; Shields v. Crump, 499 So.2d 479 (La.App. 2 Cir. 1986), writ denied, 501 So.2d 214 (La. 1987); and Halley v. Halley, 457 So.2d 108 (La.App. 2 Cir.), writ denied, 461 So.2d 316 (La. 1984).

discretion where the employee's situation at time of trial was entirely of her own making in that she knew of scheduled trial date for about four and one-half months, discharged her counsel of record by her own choice less than one week prior to trial for no apparent reason, and failed to obtain new counsel prior to date of trial). See also Sands v. State, Through Louisiana State Medical Center, School of Dentistry, (La.App. 4 Cir.), 458 So.2d 960, 961, writ denied, 460 So.2d 1044 (La. 1984) (noting that a “continuance is not due on a naked showing that a client has discharged his or her attorney” and that a movant bears the burden of proving other circumstances justifying the continuance, such as termination due to counsel’s unpreparedness for trial).

Nevertheless, we reiterate that our decision necessarily turns on the particular facts of this case as well as the factors that must be considered when ruling on a motion for a continuance. With respect to the facts, we note that three continuances were previously granted in this case. The first two continuances were arguably attributable to the actions of the defendants in failing to comply with discovery requests and in engaging in questionable conduct toward prior counsel, Ms. Crosby. Although, on appeal, the defendants try to assign blame to various acts by Ms. Crosby, in so doing, they fail to acknowledge that after her withdrawal, new attorneys enrolled on their behalf in August 2014, a third continuance was granted, and trial was rescheduled for March 20, 2015. Thus, following the third continuance, the defendants had seven months in which to prepare for trial.

Despite this ample period of time, and notwithstanding the fact that he was represented by counsel and discovery had long since concluded, Mr. Spears filed a pro se motion for a continuance eight days before trial contending that he needed additional time to “complete discovery.” Shortly after this motion was denied, and two days before trial, Mr. Spears terminated his attorneys, without providing any

explanation, and hired a new attorney who was unable to try the case on its scheduled date. This last action formed the basis of the defendants' motion for continuance at issue herein.

Considering the timing of Mr. Spears' hiring of new counsel two days before trial, it cannot be reasonably argued that he acted diligently. Moreover, Mr. Spears' previous pro se motion for a continuance; his failure to provide any reasons for his desire to terminate his attorneys and hire new counsel; his questionable conduct directed toward prior counsel necessitating a previous continuance; as well as defendants' repeated dilatory actions including failing to comply with discovery requests, failing to appear for a deposition, and failing to timely and/or adequately comply with previous judgments rendered by the trial court all negate a finding of good faith and/or reasonable grounds for the motion.

In addition, the record amply supports a finding that Mr. and Mrs. Abington, (79 years old and 63 years old respectively at the time of trial) would have suffered considerable prejudice had the trial been continued yet again. As a result of the damage to their roof caused by the defendants, water continues to enter their home causing ever more damage, and they lack the financial wherewithal to repair it. Finally, with respect to the trial court's docket and the need for the orderly and prompt administration of justice, we note, as did the trial court, this case has been pending since February 2013, and four different trial dates were set. Accordingly, we find that the trial court did not abuse its discretion in denying the defendants' motion to continue the trial again.

Finally, the defendants offer scant authority for their additional argument that trial court's decision to deny their motion and proceed with trial violated their due process rights. Nevertheless, we find this argument to be equally unavailing. In Ungar v. Sarafite, 376 U.S. 575, 589 84 S.Ct. 841, 849-50, 11 L.Ed.2d 921

(1964), the United States Supreme Court held that “[t]here are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances presented in every case, particularly in the reasons presented to the trial judge at the time the request is denied.” However, in the absence of an abuse of discretion, there generally can be no violation of due process. See Hicks v. Wainwright, 633 F.2d 1146, 1148 (5th Cir. 1981). Just as the trial court did not abuse its discretion, it did not deny the defendants due process. Rather, any difficulties the defendants encountered in proceeding to trial were entirely of their own making.

CONCLUSION

For all of the reasons set forth herein, we affirm the judgment of the trial court. All costs of this appeal are assessed to the defendants Carl Augustus Spears; Louisiana Roofing USA, Inc. d/b/a Louisiana Roofing Incorporated; A-1 Louisiana Roofing USA, LLC; Statewide USA, Inc.; and Spears Consulting, Inc.

AFFIRMED.