

STATE OF MICHIGAN
COURT OF APPEALS

LILLIAN HOWELL-BELL,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE CO.,

Defendant-Appellee.

UNPUBLISHED

October 13, 2011

No. 299198

Kent Circuit Court

LC No. 08-009701-NF

Before: MARKEY, P.J., and SERVITTO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's denial of her motion to adjourn and the dismissal with prejudice of her claim for no-fault personal insurance benefits. We affirm.

In this case, plaintiff hired substitute counsel two months after her original counsel was permitted to withdraw and just days before trial was scheduled to start. Plaintiff argues that the trial court abused its discretion in denying her motion to adjourn the trial and dismissing her case because she was unprepared for trial. We disagree.

A motion for adjournment must be based on good cause, MCR 2.503(B)(1), and a trial court has discretion to grant an adjournment if doing so promotes justice, MCR 2.503(D)(1). See also *Soumis v Soumis*, 218 Mich App 27, 32; 553 NW2d 619 (1996). This Court reviews for an abuse of discretion a trial court's decision on a motion for an adjournment. *Tisbury v Armstrong*, 194 Mich App 19, 20; 486 NW2d 51 (1992). The trial court abuses its discretion when it chooses an outcome that falls "outside the range of principled outcomes." *Edry v Adelman*, 486 Mich 634, 639; 786 NW2d 567 (2010). Factors that may warrant denial of the motion include: (1) numerous prior adjournments, (2) the failure of the movant to exercise due diligence, and (3) no injustice from the denial of the motion. *Tisbury*, 194 Mich App at 20. Review of any factual findings underlying the trial court's decision is for clear error. MCR 2.613(C).

On March 8, 2010, the trial court scheduled trial to begin on June 14, 2010. On April 16, 2010, plaintiff's original counsel was permitted to withdraw because of a breakdown in the attorney client relationship. On June 10, 2010, plaintiff retained current counsel. On June 11,

2010, plaintiff moved for adjournment, arguing she was not prepared for trial. On June 26, 2010, the trial court denied that motion and dismissed plaintiff's claim.

First, there was no good cause to support plaintiff's request for adjournment. Plaintiff's case had been pending for two years; she was represented by counsel most of that time; she failed to timely replace counsel even though instructed by the trial court, and, regardless of her contrary claims, the record reveals she was aware of the trial date.

Plaintiff argues that because she had not previously moved for adjournment, the trial court abused its discretion in denying her motion. Plaintiff argues *Tisbury*, 194 Mich App at 20, mandated that a party must have requested numerous adjournments before an adjournment motion may be denied. We disagree. The *Tisbury* Court opined that prior cases finding that a trial court's denial of a motion to adjourn was proper "have always involved some combination of numerous past continuances, failure of the movant to exercise due diligence, and lack of any injustice to the movant." *Id.* But the Court did not hold that all three factors must exist before a trial court may properly deny a motion to adjourn. We likewise do not find the rigid formula advocated by plaintiff in the general rule of MCR 2.503(D)(1), which vests the trial court with discretion to grant or deny the motion. A discretionary decision is one made in circumstances where there is no one correct outcome. See *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). The range of principled outcomes will necessarily depend on the facts and circumstances of each case. Thus, the absence of previous requests for adjournment, by itself, does not automatically mandate the conclusion that trial court abused its discretion in denying plaintiff's adjournment motion.

Next, plaintiff argues that she diligently sought alternate counsel. Plaintiff testified that she had spoken with at least two other attorneys before finding her current counsel. While plaintiff may have looked for alternate counsel, the trial court had repeatedly cautioned plaintiff about the upcoming trial and told plaintiff she needed to find new counsel. Plaintiff waited until four days, two business days, before trial to retain counsel. The trial court found that plaintiff did not diligently seek other counsel. This determination was not clearly erroneous.

Finally, plaintiff argues that it was an injustice for the trial court to deny her motion to adjourn because she was denied her day in court. Generally, the policy of this state favors resolving disputes on their merits. *Tisbury*, 194 Mich App at 21. Plaintiff claimed she thought the trial was already adjourned or in "limbo." But the trial court told her in May to retain counsel because of the June 14, 2010 trial date. Plaintiff argues that because she was an unrepresented layperson, she misunderstood the trial's status. While not an attorney, the trial court found it significant that plaintiff is a paralegal. Plaintiff also claimed she never received any notices or defendant's trial brief, but plaintiff came to the settlement conference and provided her newly retained counsel the documents she claimed she never received. We conclude the trial court's decision to deny the motion to adjourn the trial did not frustrate justice considering that plaintiff had filed her case two years earlier, had notice of the trial date, was warned by the trial court of the necessity to retain new counsel but failed to do so in a timely manner. Additionally, the trial court found plaintiff's testimony was not credible and that she had not diligently pursued her claim in good faith. We recognize "the special opportunity of the

trial court to judge the credibility of the witnesses who appeared before it,” MCR 2.613(C), and find no clear error.

We affirm.

/s/ Jane E. Markey

/s/ Deborah A. Servitto

/s/ Amy Ronayne Krause