

[Cite as *Minnier v. Gotschall*, 2017-Ohio-8476.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

WILLIAM R. MINNIER

Plaintiff-Appellant

-vs-

TOSHA D. GOTSCHALL

Defendant-Appellee

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Craig R. Baldwin, J.

Hon. Earle E. Wise, Jr., J.

Case No. 17-CA-21

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Licking County Court of
Common Pleas, Domestic Relations
Division Case No. 13-DR-00119 DF

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

November 6, 2017

Appearance for Plaintiff-Appellant

Defendant-Appellee

MAX SUTTON
3 N. 3rd Street
Newark, Ohio 43055

TOSHA D. GOTSCHALL
105 Lakewood Dr., Apt. C
Hebron, Ohio 43025

Hoffman, P.J.

{¶1} Plaintiff-appellant William R. Minnier appeals the February 23, 2017 Judgment Entry entered by the Licking County Court of Common Pleas, Domestic Relations Division, which approved and adopted the magistrate's February 23, 2017 Decision as order of the court. Defendant-appellee is Tosha D. Gotschall.¹

STATEMENT OF THE CASE AND FACTS

{¶2} Appellant and Appellee entered into an Agreed Judgment Entry/Decree of Shared Parenting with respect to their minor child on February 7, 2014. Pursuant thereto, both parties were deemed residential parent of the child. Appellee was deemed residential parent for purposes of qualifying for public assistance and daycare assistance. Both parties were named residential parent for school placement purposes as long as they resided in the same school district. The parties split parenting time on a weekly basis.

{¶3} Appellant filed a Motion to Terminate and/or Modify Shared Parenting Plan/Motion for Reallocation of Parental Rights and Responsibilities on May 15, 2015. Appellant asked the trial court to name him sole residential parent. In response, Appellee filed a Motion for Contempt, Change of Parental Rights and Responsibilities, et al. The parties were ordered to engage in mediation and attend cooperative parenting classes. Following a hearing, the trial court granted, in part, both parties' motions, making modifications to the parenting time schedule.

¹ Appellee did not file a Brief in this matter.

{¶4} On June 17, 2016, Appellant filed another Motion to Modify/Terminate Shared Parenting Plan. Appellee filed a Motion to Terminate the Shared Parenting Plan on September 9, 2016. The trial court scheduled a hearing for September 26, 2016. On September 14, 2016, Appellant filed a motion to continue. Via Magistrate's Order filed September 20, 2016, the trial court granted Appellant's request for a continuance and rescheduled the matter for January 19, 2017. On September 22, 2016, Appellant filed a second motion to continue the September 26, 2016 hearing. In the motion, Attorney Jennifer Amos, counsel for Appellant, indicated current medical issues prevented her from representing Appellant at the hearing. Attorney Amos subsequently filed a motion to withdraw on October 3, 2016, informing the trial court she was retiring and closing her law office. In her motion, Attorney Amos advised the trial court she had given notice to Appellant of her intent to withdraw. The trial court granted Attorney Amos leave to withdraw via Order filed October 5, 2016.

{¶5} On January 10, 2017, Appellant filed a motion for continuance. Therein, Appellant explained he needed a continuance because his attorney was no longer representing him and he had not been given his file. Appellant requested additional time to gather necessary information and find new counsel. The magistrate found Appellant's motion not well taken and denied the same via Order filed January 12, 2017. The magistrate noted Appellant had been aware of the hearing date since September, 2016, yet waited nine days before the scheduled hearing to request the continuance.

{¶6} The magistrate conducted the hearing on January 19, 2017, as scheduled. Via Magistrate's Decision filed February 23, 2017, the magistrate terminated the parties' shared parenting plan, and named Appellee the sole residential parent and legal

custodian of the minor child. Appellant did not file objections to the magistrate's decision. Via Judgment Entry filed February 23, 2017, the trial court approved and adopted the magistrate's decision and entered such as order of the court.

{¶7} Appellant now appeals, raising as his sole assignment of error:

I. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING PLAINTIFF-APPELLANT'S REQUEST FOR A CONTINUANCE IN LIGHT OF THE FACTORS DELINEATED IN *STATE V. UNGER* (1981), 67 OHIO ST.2d 65.

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{¶8} Initially, we note Appellant did not object to the magistrate's denial of his request for a continuance; therefore, he has waived all but plain error on appeal. "Notice of plain error * * * is to be taken with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice." *State v. Long* (1978), 53 Ohio St.2d 91, 372 N.E.2d 804.

{¶9} The grant or denial of a continuance is a matter that is entrusted to the broad, sound discretion of the trial court. *State v. Unger* (1981), 67 Ohio St.2d 65. In order to find an abuse of discretion, we must determine that the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217.

{¶10} 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. *Unger*, supra, at 67–68, 423 N.E.2d 1078. The reviewing court must also weigh the potential prejudice to the movant against the trial court's right to control its own docket. *In re Barnick*, Cuyahoga App. No. 88334, 2007–Ohio–1720, ¶ 10, quoting *Unger*.

{¶11} Under the facts of this case, we find the trial court did not commit plain error in failing to grant a continuance. We further find, upon review of the record, the trial court did not abuse its discretion in denying Appellant's request for a continuance. Appellant contributed to the circumstances giving rise to the need for the continuance. Appellant was aware in October, 2016, his attorney would no longer be representing him. Appellant did not seek new counsel at that time, but waited several months before requesting additional time to retain new counsel. Appellant had been aware of the hearing date since September, 2016, yet waited nine days before the scheduled hearing to request the continuance. Further, Appellant had previously requested and received a continuance.

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

{¶13} The judgment of the Licking County Court of Common Pleas, Domestic Relations Division, is affirmed.

By: Hoffman, P.J.

Baldwin, J. and

Wise, Earle, J. concur