

FILED: April 23, 2014

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of the Marriage of
DAVID WAYNE DICKSON, acting by and through Judy Hannon, Guardian ad litem,
Petitioner-Respondent,

and

AMY LYNN DICKSON,
Respondent-Appellant.

Washington County Circuit Court
C101090DRE

A150236 (Control)
A151761

Donald R. Letourneau, Judge.

Argued and submitted on March 13, 2014.

Margaret H. Leek Leiberan argued the cause for appellant. With her on the briefs was Jensen & Leiberan.

Ann Y. Lechman-Su argued the cause for respondent. On the brief was Peter Bunch and The Law Firm of Bunch, LLC.

Before Duncan, Presiding Judge, and Wollheim, Judge, and Lagesen, Judge.

LAGESEN, J.

Affirmed.

1 LAGESEN, J.

2 Wife appeals a judgment distributing the parties' marital property and a
3 related supplemental judgment awarding attorney fees. She assigns error to the trial
4 court's denial of her motions to set over the trial date on the property division trial; wife
5 requested the continuance in order to obtain new counsel after the trial court permitted
6 her fifth lawyer to withdraw, and to further prepare for trial. We review for abuse of
7 discretion, *State v. Hug*, 186 Or App 569, 572, 64 P3d 1173, *rev den*, 335 Or 510 (2003),
8 and affirm.¹

9 Wife requested a continuance both for the purpose of obtaining new
10 counsel, and because depositions, including wife's deposition, and other potential
11 discovery had not been completed. The record reflects that, at the time, wife was seeking
12 to employ her sixth lawyer. The trial date on the property division issues had already
13 been set over once, over husband's objection, as a result of wife's transition from her
14 fourth lawyer to her fifth lawyer. Wife's third, fourth, and fifth lawyers withdrew
15 because of their difficulties working with wife. Her third lawyer asked to withdraw
16 because "[t]he attorney-client relationship between me and [wife] is such that I can no
17 longer adequately or effectively represent [wife] in this matter." Her fourth lawyer
18 requested to withdraw because

19 "[i]t is no longer realistic or reasonable for my firm and I to continue
20 representing [wife] in her dissolution case. [Wife] can be difficult to

¹ To the extent that wife's brief can be construed to assign error to the trial court's decision to permit counsel to withdraw, we reject that assignment without discussion.

1 communicate with at times and her communications are erratic. To the best
2 I can discern, [wife] no longer wants me and my firm to represent her."

3 Wife's fifth lawyer requested to withdraw for similar reasons, stating that "[a] conflict of
4 interest has arisen between myself and my client[.]" and that wife had indicated that she
5 intended to file a bar complaint against him. And, although depositions and discovery
6 may not have been finished, the record reflects that the parties had had months in which
7 to complete discovery, and that wife's conduct, which included not showing up for her
8 deposition and directing her lawyer not to appear on her behalf at other depositions,
9 interfered with the completion of discovery.

10 Given that evidence of wife's inability to cooperate with two prior
11 attorneys, as well as that evidence of wife's failure to cooperate during the discovery
12 process, the trial court permissibly inferred that wife's need for a new lawyer arose from
13 wife's inability to cooperate with her fifth lawyer, and that, as the trial court found, there
14 was "no reason to believe that a sixth attorney would end up in a different result than the
15 last five attorneys, which is there'll be a trial date, there'll be a problem, somebody won't
16 be ready and we'll have the same issue[.]" In turn, the trial court acted within its
17 discretion by denying wife's motions for a continuance to the extent that the motions
18 were predicated on wife's need to obtain a new lawyer. "[W]e have consistently held
19 that, in situations in which a party puts *itself* in a position of needing to seek the services
20 of a different attorney before or during trial, a court does not abuse its discretion in
21 denying a motion for a continuance." *Tahvili v. Washington Mutual Bank*, 224 Or App
22 96, 120, 197 P3d 541 (2008) (emphasis in original).

1 For similar reasons, the trial court acted within its discretion by denying
2 wife's motions for a continuance to the extent that the motions were predicated on the
3 need to complete discovery. Again, the record reflects that the parties had ample time to
4 conduct and complete discovery, but that wife's conduct thwarted the process. In other
5 words, wife's situation reasonably could have been avoided; there is no indication that
6 discovery would not have been complete, had wife acted reasonably cooperatively and
7 diligently. *See State v. Knight*, 160 Or App 395, 400, 981 P2d 819 (1999) (no abuse of
8 discretion where the bases for the defendant's motion for a continuance were "reasonably
9 avoidable").

10 Wife nonetheless argues that the trial court abused its discretion by denying
11 the continuance because the trial court knew or should have known that she had
12 "discombobulated" thinking and difficulties communicating that would impair her ability
13 to try her own case. She asserts that, in view of those impediments, the trial court had no
14 choice but to grant the continuance.

15 It may well be that wife suffered from "discombobulated" thinking and
16 communication difficulties, and that those difficulties both contributed to her inability to
17 cooperate with her lawyers and with the discovery process, and impaired her ability to
18 represent herself. However, absent any suggestion that wife was incapacitated and
19 should have had a guardian *ad litem* appointed under ORCP 27,² the trial court faced a

² There was no suggestion below, and there is no suggestion on appeal, that wife's "discombobulated" thinking or communication difficulties incapacitate her to a degree that warrants the appointment of a guardian *ad litem* under ORCP 27.

1 difficult choice. The trial court could have further delayed proceedings in the hope that
2 wife could find a lawyer with whom she could cooperate (notwithstanding the
3 increasingly apparent unlikelihood of that transpiring), or the trial court could have
4 proceeded to trial with wife representing herself and facing the obstacles attendant to
5 self-representation and her condition. Although that choice may have been difficult one,
6 it was one that the trial court was within its discretion to make.

7 Affirmed.