

IN THE UTAH COURT OF APPEALS

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Tiffany F. Curtis,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner and Appellee,	)	
	)	Case No. 20090454-CA
v.	)	
	)	F I L E D
S. Steven Maese,	)	(July 9, 2010)
	)	
Respondent and Appellant.	)	<span style="border: 1px solid black; padding: 2px;">2010 UT App 183</span>

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Third District, Salt Lake Department, 080920085  
The Honorable Anthony B. Quinn

Attorneys: S. Steven Maese, Holladay, Appellant Pro Se  
Rebecca Hyde Skordas and Tasha M. Williams, Salt Lake  
City, for Appellee

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Before Judges Davis, Orme, and Thorne.

ORME, Judge:

"The decision to grant or deny a continuance is within the trial court's discretion, and we do not reverse the trial court's decision absent a clear abuse of that discretion." Layton City v. Longcrier, 943 P.2d 655, 659 (Utah Ct. App.), cert. denied, 953 P.2d 449 (Utah 1997), cert. denied, 523 U.S. 1125 (1998). To prove an abuse of discretion, Maese "must show the trial court's decision was an unreasonable action that" resulted in prejudice. Id. (citation and internal quotation marks omitted).

The parties agree that to determine whether the trial court abused its discretion in denying Maese's motion to continue, we should consider the five factors outlined in Longcrier:

"[1] whether other continuances have been requested and granted; [2] the balanced convenience or inconvenience to the litigants, witnesses, counsel, and the court; [3] whether the requested delay is for legitimate reasons, or whether it is dilatory, purposeful, or contrived; [4] whether the defendant contributed to the circumstance which gives rise to the request for a continuance; . . . [and 5] whether denying the continuance will result in

identifiable prejudice to defendant's case, and if so, whether this prejudice is of a material or substantial nature."

Id. (alterations and omission in original) (quoting United States v. Burton, 584 F.2d 485, 490-91 (D.C. Cir. 1978)).

First, multiple continuances were stipulated to, including the continuation of an evidentiary hearing and of the civil stalking injunction hearing, out of concern for Maese's constitutional rights in a separate case.<sup>1</sup> Ultimately, the stalking hearing took place more than three months after its originally scheduled date and approximately four months after Maese requested it, rather than the ten days anticipated by statute, see Utah Code Ann. § 77-3a-101(6)(a) (2008).

The second Longcrier factor addresses "inconvenience to the litigants, witnesses, counsel, and the court." 943 P.2d at 659 (citation and internal quotation marks omitted). Curtis, although protected by the ex parte civil stalking injunction at the time Maese moved for a continuance, claims that both she and the court were inconvenienced because it took months, not the ten days contemplated by statute, to carry out the hearing. Maese, of course, claims he was inconvenienced when he was forced to proceed without counsel, but the onus of his inability to get along with his retained counsel in this civil case falls on him, not Curtis. Be that as it may, Maese's argument that he was prejudiced because three potential witnesses were not in attendance at the hearing misses the point of Longcrier. The second Longcrier factor, insofar as it bears upon witnesses, is concerned with inconvenience to witnesses in attendance whose time is wasted when they are told to come back another day. See id.

Third, Maese argues that his legitimate reason for the motion to continue was the "spontaneous" withdrawal of his counsel. Yet, at least ten days before the hearing at which his counsel withdrew, Maese contacted another attorney, who attempted to influence the manner in which Maese's retained counsel represented him. Moreover, several days prior to the hearing, Maese asked this other attorney to help him secure new counsel. It is clear that the withdrawal of Maese's counsel at the outset of the hearing was neither spontaneous nor unexpected.

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1. The parties stipulated to one continuance based on Maese's concerns regarding his Fifth Amendment privilege in his separate, upcoming criminal stalking jury trial. Yet despite Curtis's commendable accommodation, Maese also had his criminal jury trial continued shortly after obtaining the continuance in this case.

The fourth Longcrier factor looks at whether Maese "contributed to the circumstance which [gave] rise to the request for a continuance." Id. (citation and internal quotation marks omitted). In addition to the facts described in the preceding paragraph, Maese admits that his counsel's refusal to file motions to compel discovery and for a continuance--insisted upon by Maese--precipitated his counsel's withdrawal. That withdrawal was the sole basis for the continuance requested by Maese.

Fifth, Maese argues that he was prejudiced by the court's refusal to grant a continuance because he had no witnesses present to testify on his behalf, he "was unable to enforce his discovery order," and he "was ill-prepared to defend himself pro se." However, it is undisputed that Maese had ample notice of the hearing and nevertheless failed to secure the attendance of his witnesses even after learning that his retained counsel would not make the arguments Maese requested. Moreover, the testimony Maese alleges that his witnesses would have offered was largely irrelevant to the subject matter of the hearing. Furthermore, Maese's claimed inability to represent himself is without basis in the record before us. Indeed, Maese represented himself throughout much of the case: he submitted a memorandum with proper citations; made objections based on relevancy, opinion testimony, prejudice, and lack of foundation; cited recent changes in relevant statutory authority; moved to strike testimony; asked to voir dire a witness; and limited a witness's testimony on cross-examination. In short, not only did Maese represent himself with some degree of proficiency throughout the proceedings,<sup>2</sup> but more importantly, he failed to show how additional time granted through a continuance would have aided his preparation or how representation by hired counsel would have increased the likelihood of "a more favorable result," see id. at 660 (citation and internal quotation marks omitted).

When taken together, the five Longcrier factors demonstrate that the trial court's decision to deny the motion to continue was not an unreasonable action that resulted in prejudice. Accordingly, we conclude that the court did not abuse its discretion in denying the continuance.

We also reject Maese's assertion that the evidentiary hearing violated rule 74(c) of the Utah Rules of Civil Procedure, see Utah R. Civ. P. 74(c). Maese concedes that, based on a breakdown of the attorney-client relationship, the trial court was required to permit Maese's counsel to withdraw. Maese seems to argue, however, that absent a waiver of the rule 74(c)

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2. We note that Maese has chosen to represent himself on appeal in this case rather than to engage new counsel. Similarly, he has opted to represent himself in at least two other appeals before this court.

protections, opposing counsel was required to file a Notice to Appear or Appoint Counsel and, thereafter, the court was required to wait twenty days before holding further proceedings. We are persuaded that it was unnecessary to give Maese formal notice under rule 74(c) when he already had notice of his counsel's impending withdrawal, was present at the hearing where the withdrawal was permitted, and did not object on rule 74 grounds to the trial court's proceeding with the hearing.<sup>3</sup> Cf. Migliore v. Migliore, 2008 UT App 208, ¶ 19, 186 P.3d 973 ("[T]here was a waiver by implication when Husband proceeded with the case in the absence of raising a rule 74 objection.").

Affirmed. The parties will bear their own attorney fees incurred on appeal.

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Gregory K. Orme, Judge

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WE CONCUR:

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James Z. Davis,  
Presiding Judge

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William A. Thorne Jr., Judge

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3. Maese's reliance on Loporto v. Hoegemann, 1999 UT App 175, 982 P.2d 586, is misplaced because the facts of that case are easily distinguished from the case at bar. In Loporto, the litigant was unable to attend trial and her attorney told her that "it was unnecessary for her to personally appear." Id. ¶ 3. At trial, her attorney then moved to withdraw, and the trial court granted the motion and entered a default against the absent party. See id. ¶ 4. Additionally, Loporto involved a prior version of rule 74 that did not allow waiver of rule 74's requirements. See Migliore v. Migliore, 2008 UT App 208, ¶ 16, 186 P.3d 973 (distinguishing Loporto based on waiver).