

IN THE UTAH COURT OF APPEALS

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David Charles Nicholls,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20100396-CA
v.)	
)	
<u>George Weinstein</u> and Seleal)	F I L E D
Associates,)	(September 30, 2010)
)	
Defendant and Appellant.)	2010 UT App 271

Third District, Silver Summit Department, 090500397
The Honorable Bruce C. Lubeck

Attorneys: George Weinstein, Park City, Appellant Pro Se
Natalie C. Segall and Cameron M. Banko, Park City,
for Appellee

Before Judges Davis, McHugh, and Voros.

PER CURIAM:

George Weinstein appeals the trial court's judgment in favor of David Charles Nicholls. This is before the court on its own motion for summary disposition based on the lack of a substantial question for review warranting further consideration by this court.

The trial court "may postpone a trial for good cause." Utah R. Civ. P. 40(b). "[T]rial courts have substantial discretion in deciding whether to grant continuances, and their decision will not be overturned unless that discretion has been clearly abused." Brown v. Glover, 2000 UT 89, ¶ 43, 16 P.3d 540 (citation omitted). However, "an abuse of discretion may be found if a party has made timely objections, [has] given necessary notice, and has made a reasonable effort to have the trial date changed for good cause." Id.

Weinstein has not shown that the trial court abused its discretion in denying his motion for a continuance, which was

made orally at the beginning of the bench trial on March 25, 2010. The trial date had been set at a scheduling conference on December 1, 2009, almost four months prior. Weinstein made no timely objection to the date or the duration of the trial and made no reasonable effort to change the date for good cause. Even considering a letter written to the court ten days before trial, the suggestion of difficulty with the trial date was not timely under the circumstances.

Furthermore, the letter was insufficient under the rules to require any action. "An application to the court for an order shall be by motion." Utah R. Civ. P. 7(b)(1). Weinstein's correspondence to the court did not comply with the rules and, even if generously construed, did not specifically request a continuance of the trial date.

Weinstein asserts several reasons that the court should have postponed the trial, but none constitute good cause for a continuance. For the most part, Weinstein's arguments are irrelevant to the issue at trial and unsupported by the record. For example, although Weinstein asserts that the trial could not have been completed in a single day due to the number of witnesses listed, he had not filed a witness list before trial. Moreover, the witness list filed with the court by Nicholls was not so lengthy that more than one day would be needed.

Weinstein also asserts that discovery was not completed because he had not received responses to interrogatories sent to Nicholls on the date on which discovery was to be complete. However, the interrogatories were untimely and were irrelevant to the civil proceeding. Accordingly, they do not provide any legitimate reason for postponing trial.

Weinstein further contends that the civil proceedings should have been continued until the criminal charge against him was resolved. However, the ongoing criminal case was unrelated to the instant dispute. The alleged incident on which the criminal charge was based occurred after this case had been filed and has no factual overlap with the basis for the claim here.

We have reviewed Weinstein's other stated reasons for a continuance and find them similarly insufficient to show good cause. We do not address them further. See Beehive Brick Co. v. Robinson Brick Co., 780 P.2d 827, 833 (Utah Ct. App. 1989) (noting that the court "need not analyze and address in writing each and every argument"). In sum, Weinstein has not shown that

the trial court abused its discretion in denying his motion for a continuance.

Affirmed.

James Z. Davis,
Presiding Judge

Carolyn B. McHugh,
Associate Presiding Judge

J. Frederic Voros Jr., Judge