

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2005 CA 1796

FLOYD J. WILLIAMS

VERSUS

CITY OF BATON ROUGE, BATON ROUGE CITY POLICE
DEPARTMENT AND MUNICIPAL FIRE AND POLICE
CIVIL SERVICE BOARD



Judgment Rendered: SEP 01 2006

On Appeal from the 19th Judicial District Court
In and for the Parish of East Baton Rouge, State of Louisiana
Docket No. 442,500 Division " M "

Honorable Kay Bates, Judge Presiding

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BEFORE: PARRO, McDONALD, AND HUGHES, JJ.

McDonald, J. concurs.
Parro, J. concurs.

HUGHES, J.

On the morning of trial, plaintiff informed the trial court that he had discharged his attorney the previous day, and he moved for a continuance so that he could seek new counsel. The trial court denied his motion and trial proceeded with plaintiff representing himself. After the plaintiff completed the presentation of his evidence, the defendant moved for an involuntary dismissal of plaintiff's claims, which the court granted. The plaintiff appeals asserting as error the court's failure to grant a continuance. For the reasons that follow, we reverse and remand.

FACTS AND PROCEDURAL HISTORY

Floyd Williams filed this suit on September 9, 1997 for wrongful termination of his employment as a police officer with the City of Baton Rouge. By early 2000 all answers had been filed and exceptions heard and trial was subsequently set to commence on February 14, 2001. Trial did not take place on that date; the record does not provide an indication why. It does not appear that either party moved for a continuance. We do note, however, that discovery was being conducted at this time. We note also that at some point between January 31st, when Judge Calloway signed a discovery-related order, and February 22nd, when Judge Bates signed a scheduling order, the case was transferred from one division to the other. That scheduling order allowed the "parties . . . until March 10, 2001 for discovery of tape" and re-set the trial for September 5, 2001, with September 20, 2001 designated as a "back-up setting."

On September 4, 2001 plaintiff's counsel filed a motion to withdraw as counsel, citing only "irreconcilable differences" as the reason for his request. Apparently, the court set the motion for hearing to take place on September 17, 2001, as a minute entry from that date indicates that with

counsel for the plaintiff and the City present, the court withheld ruling on the motion to withdraw until September 20, 2001, the date set for trial on the merits.

On the morning of September 20, 2001, prior to trial, Mr. Williams filed a “Pro se Motion for Continuance” requesting that trial set for that day be continued, as he “is no longer represented by counsel in this matter” and “needs time to hire new counsel.” He attached to the motion a signed statement, declaring that he had notified his attorney on the previous day that he no longer desired his representation. The trial court denied his motion to continue and denied his attorney’s motion to withdraw, noting that Mr. Williams could still have his attorney as counsel if he so chose. Mr. Williams argued for time to seek new counsel. The trial court denied his request and instructed Mr. Williams to proceed to trial. Mr. Williams presented his evidence without the assistance of counsel. At the conclusion of his case, defendants moved for an involuntary dismissal on the grounds that plaintiff did not prove his case. Mr. Williams requested that he be allowed to present his case at a later date, due to his having to represent himself at the last minute. The trial court denied his request and granted the defendants’ motion. Judgment was thereafter signed dismissing plaintiff’s suit with prejudice. Mr. Williams filed this appeal, asserting as error the trial court’s denial of his motion for a continuance.

LAW AND ANALYSIS

A continuance may be granted on either peremptory grounds or discretionary grounds. The peremptory grounds that require that a continuance be granted are not at issue in this case. LSA-C.C.P. art. 1602. Nevertheless, a continuance may be granted in any case if there is good ground therefor. LSA-C.C.P. art. 1601. Under Article 1601, a continuance

rests within the sound discretion of the trial court. **Premier Bank, Nat. Ass'n v. Robinson**, 618 So.2d 1037, 1039 (La.App. 1 Cir. 1993). The trial court must consider the particular facts of a case when deciding whether to grant or deny a continuance. The trial court should consider the diligence and good faith of the party seeking the continuance and other reasonable grounds, and may also weigh the condition of the court docket, fairness to the parties and other litigants before the court, and the need for orderly and prompt administration of justice. **Gilmore v. Wickes Lumber**, 2004-2769 (La.App. 1 Cir. 2/17/06), 928 So.2d 668, 674.

The trial court has great discretion in granting or denying a continuance under LSA-C.C.P. art. 1601, and its ruling will not be disturbed on appeal in the absence of a clear abuse of discretion. **Landry v. Leonard J. Chabert Medical Center**, 2002-1559 (La.App. 1 Cir. 5/14/03), 858 So.2d 454, 460, writs denied, 2003-1748 and 1752 (La. 10/17/03), 855 So.2d 761. However, it has never been held that such discretion is absolute or that it may be exercised arbitrarily, and when exercised in a way that deprives a litigant of his day in court, there is an "abuse of discretion." **Rainone v. Exxon Corp.**, 93-2008 (La.App. 1 Cir. 1/13/95), 654 So.2d 707, 710, writ denied, 95-0337 (La. 3/24/95), 655 So.2d 1340. Appellate courts only interfere in matters of trial court discretion with reluctance, but as reviewing courts, have the right and the duty to correct such errors by the trial court in extreme cases. **Sauce v. Bussell**, 298 So.2d 832, 834 (La. 1974).

The sole issue presented for our review is whether the trial court abused its discretion in denying plaintiff's motion for a continuance. In order to resolve this issue, it is necessary to consider the posture of this litigation at the time the trial judge rendered judgment.

As previously noted, Mr. Williams filed his motion to continue the trial on the morning of trial. Immediately upon calling the case, the trial court acknowledged receiving the motion for continuance and, without argument from either party, denied the motion, explaining to the plaintiff that he did in fact have counsel because, although his attorney had attempted to withdraw, the court was not going to allow it. The court advised the plaintiff that he could represent himself if he so chose, but “the trial is going today.”

At this point, the plaintiff’s attorney informed the court that he had been discharged by his client, to which the court responded:

Well, the court recognizes that y’all have had some problems obviously if he is – if – you came in last week, I know, but this matter has been set for a long time for trial, and I’m not going to relieve you. Now, if you want to sit there, and Mr. Williams can proceed with the matter. If he wants to represent himself, he can, or he can have you, but this matter is set for trial.

The court then addressed the defense counsel, inquiring as to whether they “still” object to any continuance; they both answered “yes.” The court again addressed Mr. Williams and the following exchange took place:

The court: And, Mr. Williams, for your benefit, we had a motion to withdraw set here on Monday of this week, and I denied the motion to withdraw. The opposition objected to it because the trial was set for today, and we will proceed with the trial today. All right.

Mr. Williams: May I address the court then?

The court: Yes.

Mr. Williams: Well, at this time - - at this time I would like to file my motion that I disagree with the court’s ruling in that.

The court: Okay.

Mr. Williams: Even though this case was set for trial, I have not been properly represented because there are some key evidence of the case that have not been brought forth or submitted to this court that are pertinent to my defense [*sic*]. I understand the court having this case set for trial, but my attorney failed me, and that’s why he came

here and asked to be relieved, and I filed this motion. I understand that this case has been set for trial.

The court: Actually his reason on the record is that he had stated to the court that he had a difficult time getting in touch with you - -

Mr. Williams: No, Ma'am.

The court: - - and that he had a difficult time getting information from you.

Mr. Williams: That is not true, Ma'am.

The court: Well, be that as it may, this is the - -

Mr. Williams: For the record, I'd like to state that I filed this motion in view of that I have this right under the constitution that if I don't have proper representation, I have the right to seek that proper representation.

The court: You have a responsibility and a duty to make sure if you knew that you weren't receiving proper representation, then you had a duty to come in here and hire somebody and have them enroll before the day of the trial. Your objection is noted for the record, and we're going to proceed with the trial this morning, and you may call your first witness.

Rainone v. Exxon Corp., 654 So.2d 707, presents a substantially similar situation. In **Rainone**, a dispute arose between the plaintiff and his two attorneys approximately one month before the trial date. As a result of this dispute, the attorneys filed a joint motion to withdraw. The trial court deferred a hearing on the matter until the day the trial was set to begin. On that day, the plaintiff's attorneys filed a motion to continue the trial. The trial court held a hearing and found that the plaintiff had discharged his attorneys a month earlier, when the dispute first arose. The trial court granted the motion to withdraw and denied the motion to continue, noting that it had previously informed counsel that it would be reluctant to continue the trial. Trial began with the plaintiff representing himself. At the conclusion of the plaintiff's case, the defendants moved for an involuntary dismissal. The trial court ultimately found that the plaintiff had failed to

prove his case and judgment was rendered in favor of the defendants. On appeal, the court initially noted that whether the plaintiff had discharged his attorneys or whether his attorneys had told him they were withdrawing was not determinative. The court found:

The record further reflects that the trial court repeatedly stated that it would not grant a continuance in the case before the presentation of any evidence on the merits of the attorneys' joint motion to withdraw or the motion for a continuance.

In denying plaintiff's motion for a continuance, the trial court effectively denied plaintiff his day in court. Unrepresented by counsel, plaintiff was not able to properly present his case. Under these circumstances, we hold that the trial court in the present case abused its discretion in denying the continuance.

Under the similar facts and circumstances of the present case, we find that the trial court abused its discretion in denying Mr. Williams' motion for continuance. As in **Rainone**, the trial court in this case noted that a conflict had arisen in the month before trial between the plaintiff and his attorney that led both to desire to end the representation. And whereas in **Rainone**, where the plaintiff clearly became aware of the problem weeks before trial, nothing in the record here suggests that Mr. Williams was aware of a problem until the day before trial, when he informed his attorney he no longer wanted his representation. It does not appear that Mr. Williams was even aware that his attorney had attempted to withdraw. Mr. Williams was not present in court for the hearing on that matter, which had taken place on September 17, 2001. In fact, the trial court found it appropriate to inform Mr. Williams, at trial and after it had denied his motion to continue, that a hearing had taken place three days earlier where his attorney had explained to the court that he had not been able to contact Mr. Williams, that the defendants had objected to a delay of trial, and that the court had indicated that it was not inclined to grant a continuance. The trial court informed Mr.

Williams of his duty to retain new counsel when “you knew that you weren’t receiving proper representation.” Even if we were to assume Mr. Williams had been aware that his attorney had attempted to withdraw three weeks earlier, the record provides no indication that Mr. Williams perceived his own problem with his attorney’s representation until immediately before trial when he actually discharged his attorney.

The discharge of one’s lawyer is not, by itself, grounds for the postponing of another party’s access to the courts for a decision in a pending action. The client bears the burden of showing other circumstances that would justify a continuance. **Sands v. State, Through Louisiana State Medical Center, School of Dentistry**, 458 So.2d 960, 961 (La.App. 4 Cir.), *writ denied*, 460 So.2d 1044 (La. 1984). This court noted in **Rainone** that the plaintiff had discharged his attorneys because they improperly impinged on his right to refuse to settle and his right to have a jury trial. Here, Mr. Williams alleges a lack of diligence by his attorney in failing to obtain evidence. The trial court did not make any inquiry into Mr. Williams’ allegations. Nevertheless, a reasonably diligent client’s having fired his lawyer for unpreparedness could be “good” grounds for a continuance in the absence of counterbalancing circumstances. **Sands**, 458 So.2d at 961.

The trial court indicated to Mr. Williams at trial that the defendants had previously opposed a delay, but whatever opposition was expressed by the defendants was not in response to a motion to continue and is not contained in the record. The defendants did not express any concern of prejudice that might result from a continuance of this case. Nor did the trial court express any particular concern relating to docketing or the orderly administration of justice that would weigh against granting the continuance.

Conversely, Mr. Williams repeatedly expressed, both before and at the close of his case, his need for counsel in order to adequately present his case.

In denying the plaintiff's motion for a continuance, the trial court effectively denied him his day in court. Unrepresented by counsel, Mr. Williams was not able to properly present his case. For all these reasons, we hold that the trial court in the present case abused its discretion in denying the continuance.

CONCLUSION

Accordingly, the judgment of the trial court is reversed and set aside and this matter is remanded to the trial court for a new trial. Costs of this appeal in the amount of \$676.53 are assessed to the defendants/appellees, City of Baton Rouge, Baton Rouge City Police Department, and Baton Rouge Municipal Fire and Police Civil Service Board.

REVERSED AND REMANDED.