

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

CHASE BANKS, USA, N.A.,)	Appeal from the Circuit Court
)	of McHenry County.
Plaintiff-Appellee,)	
)	
v.)	No. 10—SC—964
)	
DUNCAN KENNEDY,)	Honorable
)	John D. Bolger,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Schostok and Hudson concurred in the judgment.

ORDER

Held: We could not say that the trial court abused its discretion in denying defendant's motion to continue the trial, as defendant did not provide an official record of the hearing on the motion, he conceded that his motion did not comply with local and supreme court rules, and he did not develop his asserted justification for a continuance.

Defendant, Duncan Kennedy, appeals the trial court's order granting judgment to plaintiff, Chase Banks, USA, N.A., on its small-claims complaint. Defendant contends that the trial court abused its discretion by denying his motion for a continuance. We affirm.

Plaintiff sued defendant, alleging that he failed to pay a past-due balance on his credit card. Defendant filed an appearance and the matter was set for trial on May 24, 2010. On May 20, 2010, defendant filed a motion for a continuance, contending that he needed more time to search through and organize his records in order to prepare a defense. A notice of motion states that it was mailed to opposing counsel at 3 p.m. on May 20, 2010.

On May 24, 2010, the case was called for trial. The trial court denied defendant's motion to continue, holding that defendant did not comply with a local rule requiring five days' advance notice if notice is mailed. The court proceeded to trial and awarded plaintiff \$4,746.40. After the court denied defendant's motion to vacate, this court allowed him to file a late notice of appeal.

Defendant contends that the trial court abused its discretion by denying his motion to continue. Plaintiff has not filed a brief. However, the issue is straightforward, and we can proceed without the benefit of an appellee's brief pursuant to *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

A more serious impediment to our ability to reach the merits of the appeal is that the record does not contain a transcript, or substitute therefor, of the trial court proceedings, including the hearing on defendant's motion to continue. Generally, the appellant must present a sufficiently complete record of the trial court proceedings to support his claim of error. Absent such a record, we presume that the trial court's order conformed with the applicable law and had a sufficient factual basis. Any doubts arising from the incompleteness of the record will be resolved against the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Supreme Court Rule 323 allows an appellant to present a bystander's report or agreed statement of facts if a verbatim transcript is unavailable. Ill. S. Ct. R. 323(c), (d) (eff. Dec. 13, 2005). Defendant has done neither.

Whether to grant a continuance depends on the particular facts and circumstances surrounding the request. Ultimately, the decision is within the trial court's sound discretion and we will not disturb it unless it amounts to an abuse of this discretion. *In re Hannah E.*, 376 Ill. App. 3d 648, 655 (2007). Here, it is virtually impossible to review the trial court's exercise of its discretion without knowing what facts influenced its decision.

The only basis given in the order for denying the motion was that plaintiff did not comply with local rule 2.01(j),¹ which requires that, if notice of a hearing is given by mail, "then Notice shall be deposited in the United States Post Office or Post Office Box on the 5th day preceding the hearing of the Motion, not counting the day of the hearing." 22d Judicial Cir. Ct. R. 2.01(j) (eff. June 1, 2007). Defendant concedes that he did not comply with the local rule and, indeed, the proof of service states that the notice was mailed late in the afternoon of May 20, which was less than four days before the hearing/trial date.

Defendant presents various reasons why his failure to comply strictly with the local rule should be excused, but none of these are supported by the record. In fact, defendant acknowledges that his motion also was not supported by an affidavit as required by Supreme Court Rule 231 (eff. Jan. 1, 1979). Thus, there is simply no evidentiary basis for defendant's claims.

Finally, we note that defendant has never suggested what possible defense he was trying to establish. This was apparently a relatively simple case involving a \$4,700 credit card balance. Defendant claims to have kept meticulous records but, despite having had more than two months after being served with notice of the suit, still needed more time to organize his records and prepare

¹The order erroneously cites local rule 1.01 (22d Judicial Cir. Ct. R. 1.01(j) (eff. June 1, 2007)).

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a defense. Under the circumstances, we simply cannot say that the trial court abused its discretion by denying the motion for a continuance.

The judgment of the circuit court of McHenry County is affirmed.

Affirmed.