

No. 1-10-3599

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
FIRST JUDICIAL DISTRICT

SUSAN DOMINO and VINCENT DOMINO,)	Appeal from the
)	Circuit Court of
Plaintiffs-Appellants,)	Cook County.
)	
v.)	No. 06 L 1539
)	
STAVROS MALTEZOS, M.D.,)	Honorable
)	John B. Grogan,
Defendant-Appellee.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court did not abuse its discretion when it allowed civil defendant to file jury demand on the eve of trial, as inadvertence is not inherently a bar to finding good cause for permitting a late filing in a civil case.
- ¶ 2 Plaintiffs Susan and Vincent Domino appeal from a judgment, following a jury trial, for defendant Dr. Stavros Maltezos in their medical malpractice action. Plaintiffs contend on appeal that the trial court erred in allowing defendant to make a late jury demand because he failed to make the prerequisite showing of good cause.

¶ 3 Section 2-1105(a) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1105(a) (West 2010)) provides that a "defendant desirous of a trial by jury must file a demand therefor not later than the filing of his or her answer. Otherwise, the party waives a jury."

¶ 4 Section 2-1007 of the Code (735 ILCS 5/2-1007 (West 2010)) allows the trial court to, "[o]n good cause shown, in the discretion of the court and on just terms, [grant] additional time *** for the doing of any act or the taking of any step or proceeding prior to judgment."

Similarly, Supreme Court Rule 183 (eff. Feb. 16, 2011) provides that the trial court, "for good cause shown on motion after notice to the opposite party, may extend the time for filing any pleading or the doing of any act which is required by the rules to be done within a limited period, either before or after the expiration of the time." The determination of what constitutes good cause "is fact-dependent and rests within the sound discretion of the circuit court." *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 353 (2007).

¶ 5 Thus, good cause must be shown to obtain leave to file a late jury demand, and a showing that no inconvenience or prejudice would result from the late filing is not sufficient. *Christenson v. Rincker*, 288 Ill. App. 3d 185, 192 (1997), citing *Greene v. City of Chicago*, 73 Ill. 2d 100, 107 (1978). Our supreme court in *Greene* expressly rejected the contention:

"that the showing that permitting the late filing of a jury demand would not cause inconvenience to the parties litigant or the court, or in any manner prejudice them, is sufficient to supply the requisite 'good cause shown.' To so construe [the Code] would in effect permit the demand to be made at any time so long as neither the court nor a litigant was inconvenienced or prejudiced."

Greene, 73 Ill. 2d at 107.

More recently, our supreme court reiterated that "whether the nonmovant was inconvenienced or suffered prejudice [is] not the proper inquiry in ruling on a Rule 183 motion, and th[us] good cause is not synonymous with the nonmovant's lack of harm" but also stated "that we have never held in this context that 'mistake, inadvertence, or attorney neglect' is automatically excluded from the trial court's consideration in determining whether good cause exists to grant an extension of time pursuant to Rule 183." *Vision Point of Sale*, 226 Ill. 2d at 350, 352.

¶ 6 Here, this case was commenced originally in 2003, voluntarily dismissed in 2006, and refiled in 2007. While both plaintiff and defendant made jury demands in the 2003 case, plaintiffs did not make a jury demand with their refiled complaint and defendant did not make a jury demand in his 2007 answer or subsequently. The court on October 21, 2010, scheduled a jury trial for the next day, October 22, but on that day the court noted the absence of a jury demand. Defendant's emergency motion for leave to file a late jury demand was filed and heard on October 22. In the motion, defendant conceded that he had not paid a jury fee in the refiled case but noted that he had filed a jury demand in 2003 in the voluntarily-dismissed case while arguing that he did not file one with his answer upon refiling "through pure inadvertence." He also argued that the parties had anticipated, and the court had ordered a date for, a jury trial. Plaintiffs argued that defendant had forfeited the right to demand a jury by not asserting it earlier and that he failed to show good cause for his oversight. In particular, plaintiffs argued that the court's discretion to allow a late filing was not unlimited and that it was insufficient for defendant to show that plaintiffs were not prejudiced. The court stated that "I don't see why either side is prejudiced," noting that parties prepare for trial in the same manner for jury and bench trials and that this circuit court does not have separate jury and non-jury case calls. That said, the court concluded that it was within its discretion to grant the motion and allowed defendant to file his jury demand *instanter*.

¶ 7 Under these circumstances, we find that the court did not abuse its discretion in accepting the late jury demand. While plaintiffs are correct that mere lack of prejudice to the party not seeking to file a jury demand is insufficient to constitute good cause, inadvertence by the party seeking leave (or by his counsel) is not irrelevant to the determination of good cause. Moreover, this court in *Christenson* found no abuse of discretion where leave to file a late demand was based upon the court's order scheduling a jury trial and the parties' assumption that there would be a jury trial. *Christenson*, 288 Ill. App. 3d at 192.

¶ 8 In their notice of appeal, plaintiffs appeal from the order of October 22, 2010, granting defendant leave to file his jury demand *instanter*, from the order of October 27 denying plaintiffs' motion to add appealability language (*see* Ill. S. Ct. 304(a) (eff. Feb. 26, 2010)) to the October 22 order, and from the order of November 5 entering judgment for defendant upon the jury's verdict. However, plaintiffs' only contention of error concerns the October 22 order, and the other orders either directly concern (the October 27 order on appealability) or arise from (the November 5 judgment) that order. Having determined that the court did not err in allowing defendant to file a late jury demand, we affirm the court's October 22 order to that effect and the orders of October 27 and November 5, 2010.

¶ 9 Affirmed.