

No. 1-12-1053

**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).

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IN THE APPELLATE COURT  
OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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MANAL ZAHDAN, )  
 ) Appeal from the  
 ) Circuit Court of  
 Plaintiff-Appellant ) Cook County  
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 v. ) No. 09 L 12102  
 ) cons. with 09 L 12103  
 DANA AL-SOUDI and AHMAD ZAHDAN, )  
 ) Honorable  
 Defendants-Appellees. ) Sanjay Tailor,  
 ) Judge Presiding.

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JUSTICE STERBA delivered the judgment of the court.  
Presiding Justice Neville and Justice Steele concurred in the judgment.

**ORDER**

*Held:* The circuit court did not abuse its discretion in denying either of plaintiff's motions to continue trial where counsel did not support her claim of inadequate time to prepare with specific facts and where plaintiff was not prejudiced by the absence of a material witness.

¶ 1 Plaintiff-appellant Manal Zahdan filed complaints alleging slander against defendants-appellees Ahmad Zahdan and Dana Al-Soudi, her brother and sister-in-law, based on what she contended was their practice of naming her as the owner of certain convenience stores and gas

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stations in Illinois without her permission. Shortly after discovery on the complaint was completed in August 2011, plaintiff's attorney sought and was granted leave to withdraw. When plaintiff failed to secure new representation by January 2012, the court set the case for trial on March 12, 2012. Plaintiff was ultimately able to retain an attorney in February, who immediately filed an appearance and a motion to re-open discovery and continue trial. The trial court denied the motion to continue trial and later denied an emergency motion making the same request.

¶ 2 The case proceeded to a bench trial after which the court found in favor of defendants. On appeal, plaintiff argues that it was an abuse of discretion for the court to deny her two motions for a continuance. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 On October 13, 2009, plaintiff, proceeding *pro se*, filed separate complaints against the two defendants, both of which alleged that defendants were "using [her] name in illegal way." The complaints were each given their own case number – 09 L 12102 and 09 L 12103. Nine months after the initial complaints were filed, on June 28, 2010, the court ordered that the cases be transferred to Judge William Maddux for consolidation. For the next year and a half, the parties proceeded under the assumption that the cases were consolidated; however, a formal order of consolidation was never in fact entered.

¶ 5 In July 2010, plaintiff retained an attorney who filed an appearance on her behalf in both cases. That some month, plaintiff filed a two-count amended complaint alleging that defendants had named her as the owner of certain convenience stores without her permission. The complaint went on to allege that as a result of this misrepresentation, plaintiff was identified as one of

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several convenience store owners who failed to pay state taxes on cigarette sales in an article that was published in the Chicago Tribune in October 2009. Plaintiff sought damages for slander and an injunction ordering defendants to remove her name from any corporate filings listing her as the owner of the subject convenience stores and pay all outstanding taxes. Subsequently, plaintiff filed a second amended complaint which omitted the count seeking an injunction.

¶ 6 Over the next year, discovery proceeded in the form of answers to interrogatories, requests for production, and depositions. In plaintiff's answer to Rule 213(f) interrogatories, she stated that she expected her former employer, Sayed Abulela, to testify to the fact that the allegations against her in the Chicago Tribune article were the reason for her termination. Abulela's deposition, along with the deposition of both defendants and plaintiff, was taken in July and August 2011. The notices of deposition indicated that they were being taken in case number 09 L 12102 consolidated with 09 L 12103.

¶ 7 After non-opinion oral discovery was closed at the beginning of August 2011, plaintiff's counsel moved to withdraw as attorney of record.<sup>1</sup> Judge Sanjay Tailor heard and granted the motion on September 27, 2011, at which time he also ordered plaintiff to either file a substitute appearance or obtain new representation by October 20, 2011. The caption of the order granting the motion to withdraw included both case numbers and referred to the cases as consolidated.

¶ 8 Plaintiff failed to appear before Judge Tailor on October 25, 2011, but did appear *pro se* before Judge Bill Taylor, who was the initial judge assigned to case number 09 L 12103, on

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<sup>1</sup> The order setting the close of discovery was captioned only with case number 09 L 12102.

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November 2, 2011. There, she sought an explanation as to why her attorney had withdrawn from the case. Judge B. Taylor continued the case until November 29, at which time plaintiff's attorney was to present a firm accounting. On December 13, 2011, after plaintiff's attorney had submitted an accounting,<sup>2</sup> Judge B. Taylor granted his motion for leave to withdraw in case number 09 L 12103 and ordered plaintiff to file a substitute appearance or obtain new counsel by January 11, 2012. He further ordered that the previous order purporting to consolidate the cases be modified and that the language referring to consolidation be stricken. All orders entered by Judge B. Taylor referred only to case number 09 L 12103.

¶ 9 In the meantime, plaintiff continued to appear before Judge S. Taylor on November 8, 2011 and December 1, 2011, for status on her attempt to retain new counsel in case number 09 L 12102 consolidated with 09 L 12103. At the court date on January 6, the court's order read: "Failure of plaintiff to retain counsel will result in this matter being set for further case management/trial." As plaintiff still had not retained counsel one week later when the case was next before the court, Judge S. Taylor set case number 09 L 12102 for a bench trial on March 12, 2012.

¶ 10 On February 10, 2012, attorney Andrea M.B. Ott filed an appearance on behalf of plaintiff as to both cases. That same day, Ott filed a motion to strike and postpone trial and re-open discovery so that she could review the depositions and become familiar with the case. The court heard the motion on February 23, after which the court re-opened discovery to allow plaintiff to take the deposition of her treating psychiatrist, but otherwise denied the motion to

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<sup>2</sup> Plaintiff's attorney was later ordered to refund \$4,000 in attorney's fees to plaintiff.

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continue the trial. Also on February 23, plaintiff filed a motion to consolidate the cases, which was granted.

¶ 11 On March 6, plaintiff filed an emergency motion to reconsider the motion to continue trial, having recently learned that Abulela was out of the country in Egypt, tending to his ill father. In an affidavit, plaintiff requested a continuance until May 2012 so that she would be able to present this material witness. The court denied the emergency motion, and the case proceeded to a bench trial six days later. Following testimony, judgment was entered in favor of defendants. This timely appeal follows.

¶ 12 ANALYSIS

¶ 13 The only issue on appeal is whether the trial court erred in denying either plaintiff's original motion for a continuance or her emergency motion to continue trial. It is axiomatic that a party does not have an absolute right to a continuance. *In re Marriage of Chesrow*, 255 Ill. App. 3d 613, 617 (1994). Instead, the decision of whether to grant a continuance is within the sound discretion of the trial court. *Id.* In making this decision, the "decisive factor" is whether the moving party has exercised diligence in proceeding with the case. *Williams v. Covenant Medical Center*, 316 Ill. App. 3d 682, 692 (2000). Moreover, the need for a prompt disposition of the case must be balanced with the equally compelling interest in obtaining justice. *Merchants Bank v. Roberts*, 292 Ill. App. 3d 925, 927 (1997); see also *Adcock v. Adcock*, 339 Ill. App. 543, 547 (1950) (court should not deny a continuance where ends of justice clearly require it).

¶ 14 A reviewing court will only disturb a grant or denial of a motion for continuance where there has been a palpable injustice or a manifest abuse of discretion. *Maslanka v. Blanchett*, 239

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Ill. App. 3d 548, 553 (1992). A abuse of discretion occurs when no reasonable person would take the view of the trial court. *In re Marriage of Knoche and Meyer*, 322 Ill. App. 3d 297, 308 (2001).

¶ 15 We first examine the trial court's denial of plaintiff's initial motion for continuance made one month before trial. Plaintiff argues it was an abuse of discretion for the court to deny this motion due to the fact that substitute counsel had only recently been retained and did not have an opportunity to become familiar with the case in one month's time. We disagree.

¶ 16 Counsel's affidavit in support of her motion to continue did not adequately specify the basis for her request for additional time to prepare. Instead, she stated only that she needed to order and review the deposition transcripts and file a motion to consolidate the cases. There was no estimation given as to the amount of time these actions would take, and it is not self-evident that they would require more than one month to accomplish. To the contrary, we see no reason the motion to consolidate could not be disposed of relatively quickly, given that the cases had been treated as consolidated during almost the entirety of the litigation.

¶ 17 *Martinez v. Scandroli*, 130 Ill. App. 3d 712 (1985), is analogous. There, we held the trial court properly denied the plaintiff's motion to continue based on lack of time to prepare where the motion was made by substitute counsel who had entered an appearance less than a month before trial. *Martinez*, 130 Ill. App. 3d at 714. We found that the motion was deficient in that it failed to explain why the time given to prepare was insufficient, or the steps counsel had taken to contact necessary witnesses. *Id.* at 715. Further, we reasoned: "[t]here was no indication that the case was complex or difficult to prepare, or that plaintiff's preparation was frustrated by any

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unique or unforeseeable intervening circumstances." *Id.* The motion to continue in the instant case is likewise devoid of facts going to show unique circumstances that would prevent counsel from becoming prepared in time for trial. Nor did counsel suggest the complexity of the case would necessarily require additional time. Instead, on appeal, plaintiff argues that the alleged incompetency of her former counsel merited an extension of time once she retained new counsel. This is not persuasive for several reasons.

¶ 18 First, notwithstanding the \$4,000 refund of attorney's fees to plaintiff, there is little evidence of former counsel's incompetency. We do not agree that the trial court's decision to re-open discovery in February 2012 to allow plaintiff to depose her psychiatrist implies that her former counsel was ineffective for failing to take this deposition earlier. More significantly, even assuming *arguendo* that plaintiff's original counsel was incompetent, this is irrelevant to the issue of whether substitute counsel was entitled to additional time to prepare. Where we have reversed a denial of a motion to continue based on insufficient preparation time, the motion was based on counsel's unavailability due to scheduling conflicts or illness. See, *e.g.*, *Robinson v. Thompson*, 58 Ill. App. 3d 269, 270 (1978) (error to deny motion to continue where attorney was scheduled to appear before another judge on the date the subject case was set for a jury trial); see also *Reecy v. Reecy*, 132 Ill. App. 2d 1024, 1026 (1971) (lower court's denial of motion to continue reversed where evidence revealed counsel had a heavy trial schedule, was absent from the state in days preceding trial, and was confined to bed with influenza on the date of trial). Here, there is no evidence of comparable extenuating circumstances. Instead, plaintiff's counsel only stated that she needed an unspecified amount of time to become familiar with the case and obtain deposition

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transcripts. She did not indicate that her schedule would prohibit her from undertaking these tasks in a timely manner. Therefore, we cannot conclude that the trial court's denial of the motion on the basis of lack of time to prepare was an abuse of discretion.

¶ 19 Nor do we agree with plaintiff that the court's denial of her emergency motion to continue constituted an abuse of discretion. The basis for this emergency motion was the absence of Sayed Abulela, a material witness, from the country during the time trial was scheduled. Illinois Supreme Court Rule 231(a) governs the procedure for obtaining a continuance based on the absence of material evidence. Specifically, the motion must be supported by affidavit, which shall show: "(1) that due diligence has been used to obtain the evidence, or the want of time to obtain it; (2) of what particular fact or facts the evidence consists; (3) if the evidence consists of the testimony of a witness his place of residence \*\*\* ; and (4) that if further time is given the evidence can be procured." Ill. S. Ct. R. 231(a) (eff. Jan. 1, 1970).

¶ 20 It is undisputed that plaintiff's affidavit satisfied these requirements. Moreover, plaintiff has also shown that Abulela's testimony regarding the reasons behind plaintiff's termination from employment could have been material. As plaintiff's claim sounds in defamation *per quod*, she was required to prove special damages, which are actual damages of a pecuniary nature. *Bryson v. News America Publications, Inc.*, 174 Ill. 2d 77, 87-88 (1996). Certainly, Abulela's testimony that he terminated plaintiff after becoming aware of the article in the Chicago Tribune accusing her of selling cigarettes without collecting taxes would go towards proving this element.

¶ 21 Nevertheless, the materiality of Abulela's testimony is not dispositive where plaintiff has failed to show that she was prejudiced by its absence. It has long been held that without a

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showing of prejudice, a denial of a motion for continuance is not a basis for reversal. *DeBow v. City of East St. Louis*, 158 Ill. App. 3d 27, 38 (1987) (citing *Midwest Home Savings and Loan Association v. Ridgewood*, 123 Ill. App. 3d 1001, 1005 (1984)). For example, in *DeBow*, we affirmed the trial court's denial of the defendant's request for a continuance to depose a material witness on the grounds that the witness's prospective testimony would have been cumulative to that elicited from other witnesses at trial. *DeBow*, 158 Ill. App. 3d at 38-39; see also *Schnuck Markets, Inc. v. Soffer*, 213 Ill. App. 3d 957, 982-83 (1991) (where the plaintiffs were not prejudiced by the trial court's denial of their motion for continuance to conduct discovery on counterclaim, no abuse of discretion occurred).

¶ 22 In the case *sub judice*, we are unable to determine whether plaintiff suffered prejudice from the absence of Abulela's testimony because no record of the trial proceedings has been provided to us. It is appellant's burden to provide a complete record on appeal, and where she fails to do so, we must construe all doubts arising from the incompleteness of the record against appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Without a trial transcript or bystander's report, we cannot ascertain the basis for the trial court's decision in favor of defendants. Therefore, we must presume that no prejudice inured to plaintiff from the denial of her motion to continue.

¶ 23 This case is thus distinguishable from both *Bethany Reformed Church v. Hager*, 68 Ill. App. 3d 509 (1979) and *Jack v. Pugeda*, 184 Ill. App. 3d 66 (1989), relied on by plaintiff. In *Hager*, there was a dispute as to the defendant pastor's right to live in the pastoral residence provided by the church. *Hager*, 68 Ill. App. 3d at 509. On the day of trial, the defendant

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requested a continuance on account of his illness, which the trial court denied. *Id.* at 510.

Following trial, a directed verdict was entered in favor of the plaintiff. *Id.* We reversed the court's denial of the motion for continuance in part because the defendant would have testified to the existence of a contract permitting him to remain in the residence, and without this testimony, no evidence regarding the contract's origins and terms was elicited. *Id.* at 511. Similarly, in *Pugeda*, the court reversed a denial of a continuance where the testimony of a missing witness "would have been devastating to the defendant's position given the way the case had developed." *Pugeda*, 184 Ill. App. 3d at 79. Here, in contrast, there is no evidence of prejudice to plaintiff so as to warrant reversal of the trial court's denial of plaintiff's emergency motion to continue.

¶ 24

#### CONCLUSION

¶ 25 For the reasons stated, we affirm the trial court's order denying plaintiff's motions to continue trial.

¶ 26 Affirmed.