



dissolving the marriage, the court left "all remaining issues \*\*\* reserved for further hearing."

¶ 5 On December 18, 2001, the court entered a final order incorporating written stipulations of the parties regarding property division, maintenance, and other issues into the March 26 dissolution order. The court also awarded the parties joint custody of the children, with Amy being named primary custodial caretaker and Harold being granted liberal visitation.

¶ 6 No further proceedings relevant to the disposition of this appeal occurred until July 2, 2010, when Amy filed a petition to remove the children from Illinois so that she and the children could relocate to Alabama to live with Amy's husband. The court denied the petition on January 31, 2011, and instead awarded temporary primary custody to Harold, who lives in Kinmundy, Illinois, and visitation to Amy, who had been living with her husband in Birmingham, Alabama, since September 2010.

¶ 7 On March 25, 2011, Amy filed an emergency petition to modify custody, wherein she alleged that subsequent to the court's January 31 order the children had been subjected to physical abuse and excessive corporal punishment by Harold and Harold's father. Harold then filed a petition to modify custody, in which he sought sole custody of the children.

¶ 8 Pretrial discovery was completed by May 12, when the matter proceeded to a bench trial. The trial took place over the course of four days spanning almost three months. Central to Harold's contention of error are the proceedings conducted on July 11, 2011. At the opening of his case in chief on that day, Harold called Amy to the stand as an adverse witness. Under questioning by Harold's counsel, Amy disclosed that she had recently been suffering from medical problems. She testified that she had experienced symptoms for approximately a year and a half, but that her doctors were "still trying to nail down exactly what it is." She testified that she thought they had narrowed it down to either

hyperthyroidism or cervical dystonia.

¶ 9 After extensive questioning from counsel and the court concerning Amy's symptoms and their possible impact on her ability to care for the children, Harold's counsel moved for a continuance, arguing that because she had just learned of Amy's condition Harold was entitled to additional time to conduct research or speak to an expert. The court asked counsel what she planned to do if granted a continuance, to which counsel replied that she did not know if she would "gain anything" from a continuance, but that if the motion were granted she would look into the conditions from which Amy disclosed she might be suffering.

¶ 10 The court told counsel that she had not "yet laid a sufficient foundation or basis for the court to grant a continuance." The court went on to tell counsel that she could further question the witness, "but at the present time," the court was denying the motion for a continuance.

¶ 11 Upon further questioning, Amy elaborated on her symptoms and said that at times her pain level had briefly risen to a 10 on a scale of 1 to 10. She acknowledged that she would be unable to care for the children were it to rise to that level in their presence. At the conclusion of the day's proceedings the court continued the trial until August 2.

¶ 12 In an October 18 written order, the court, after reciting the litany of factors it had taken into consideration in making its judgment, including Amy's medical condition, entered an order denying both Amy's petition for leave to remove and Harold's petition for modification of custody. The court instead terminated joint custody of the children, awarded sole custody to Amy, and granted visitation to Harold.

¶ 13 On appeal, Harold argues that the circuit court erred in denying his motion to continue. Harold argues that because he had no way of knowing about Amy's medical condition until it was revealed at the trial, the court should have granted his motion for a

continuance so that he could adequately investigate the possible diagnoses and their potential effect on Amy's ability to care for the children.

¶ 14 Amy argues that because Harold failed to renew his motion to continue he has forfeited the issue. She also argues that the court did not abuse its discretion in denying the motion and contends that because Harold failed to exercise due diligence during pretrial discovery the court was precluded from granting the motion to continue.

¶ 15 **DISCUSSION**

¶ 16 No party has an absolute right to a continuance. *Sinram v. Nolan*, 227 Ill. App. 3d 241, 243, 591 N.E.2d 128, 129 (1992). The decision whether to grant or deny a party's motion for a continuance lies within the discretion of the circuit court, and this court will not disturb its decision absent an abuse of that discretion. *Waltz v. Schlattman*, 81 Ill. App. 3d 971, 974, 401 N.E.2d 994, 997 (1980).

¶ 17 Once a trial has commenced, a motion to continue should only be granted when the moving party presents the court "particularly grave reasons" for the continuance. *In re Marriage of Earhart*, 149 Ill. App. 3d 469, 474-75, 500 N.E.2d 560, 563 (1986). This is especially true after the nonmoving party has concluded its case in chief. *Id.* Where a motion to continue is premised on a development during trial that "the applicant might have anticipated by the exercise of reasonable diligence or forethought, a continuance grounded on surprise is properly denied." *Waltz*, 81 Ill. App. 3d at 975, 401 N.E.2d at 995 (quoting 17 Am. Jur. 2d *Continuance* § 23 (1964)). "Surprise alone is not sufficient; an applicant must show that he would be prejudiced unless a continuance is granted." *Id.*

¶ 18 Under questioning from both the court and counsel, Amy gave a very detailed explanation of her symptoms and her understanding of how each of her potential diagnoses might develop. At the conclusion of her testimony, Harold failed to renew his motion to continue, and he made reference neither to Amy's condition nor his motion to continue until

page 9 of his written closing argument, where he argued that her condition should be taken into consideration by the court in making its judgment.

¶ 19 Furthermore, Harold had the opportunity to discover the petitioner's medical condition during pretrial discovery but failed to do so. A specifically enumerated statutory factor in awarding custody is "the mental and physical health of all individuals involved." 750 ILCS 5/602(a)(5) (West 2010). Due diligence thus required that Harold adequately investigate any potential health problems during discovery. Had Harold been more diligent in conducting pretrial discovery, he could have discovered that Amy was suffering from health issues, even if specific potential diagnoses had not yet been made. The burden was on Harold to demonstrate that he exercised diligence in discovery sufficient to warrant a continuance subsequent to the petitioner presenting her entire case in chief, and he failed to do so.

¶ 20 Regardless of all of this, though, the circuit court did, in effect, grant the remedy sought by Harold. At the conclusion of the day's proceedings, the court continued the matter until August 2, which provided Harold ample time to investigate how Amy's condition might impact her ability to care for the children. He apparently did not learn anything worthy of bringing to the court's attention, as the record fails to reflect that he sought to introduce any evidence or call any witnesses regarding Amy's health, and the court's denial of his motion to continue did not prejudice him.

¶ 21 **CONCLUSION**

¶ 22 Harold failed to establish sufficient justification for the court to grant a continuance, failed to offer additional information in support of the motion upon its initial denial, and failed to establish that he suffered prejudice. The circuit court thus did not abuse its discretion in denying Harold's motion to continue, and its judgment is hereby affirmed.

¶ 23 Affirmed.