

No. 1-12-0727

**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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<i>In re</i> MARRIAGE OF:	)	Appeal from the
	)	Circuit Court of
KRISTA FERDINAND,	)	Cook County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 10 D 7552
	)	
WILLIAM FERDINAND,	)	The Honorable
	)	Leida Gonzalez-Santiago,
Respondent-Appellant.	)	Judge Presiding.

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JUSTICE FITZGERALD SMITH delivered the judgment of the court.  
Presiding Justice Lavin and Justice Epstein concurred in the judgment.

**ORDER**

*HELD:* Trial court's denial of motion for continuance in divorce proceeding was proper where husband-movant knew of trial date six months in advance but did not file motion until only days before and did not provide a persuasive reason nor exercised due diligence. In addition, husband did not have a right to counsel in this civil proceeding and trial court afforded him ample opportunity to obtain representation.

¶ 1 Following the entry of judgment for dissolution of marriage between petitioner-appellee Krista Ferdinand (Krista) and respondent-appellant William Ferdinand (William), William filed the instant appeal. In it, he contends that he was denied due process of law and a fair trial when the trial court denied his motion for a continuance and that he did not possess "a sound state of mind" to "competently stand trial" without an attorney. He asks that we vacate the judgment for dissolution of marriage and remand this cause to the trial court for a hearing and for any other appropriate relief. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 The following facts are taken from the record.

¶ 4 Krista and William were married in October 1984 and had three children during their union. On July 29, 2010, Krista, as represented by her attorneys, filed a petition for dissolution of marriage and an ex-parte emergency petition for injunctive relief. In addition to asking for a divorce, Krista alleged that William had transferred \$68,914.70 of marital assets from a joint bank account into an account in his own name. She further alleged that William had withdrawn, without her knowledge, two sums of money from a home equity line of credit secured by the marital residence, which was owned jointly. Following a hearing on the emergency petition for injunctive relief, the trial court enjoined William from withdrawing any money from the joint bank account or the home equity line of credit. The court further enjoined William from withdrawing any money from his personal checking account except for necessities of life, and from withdrawing any money from his business checking account except in the ordinary course of business. The court then ordered him to return \$68,914.70 to the joint bank account.

¶ 5 On August 9, 2010, Krista filed a petition for rule to show cause citing William's failure to comply with the July 29, 2010 order to return \$68,914.70 to the joint bank account. On this date, William's attorney filed an appearance on his behalf. In an agreed order, the court dissolved Krista's petition for temporary restraining order regarding the joint bank account and William's business checking account after William paid \$4,000 to himself, \$4,000 to Krista and \$34,000 to Krista's attorneys' client fund account. William continued to be enjoined from withdrawing any money from his personal checking account, and both parties were enjoined from withdrawing any money on the home equity line of credit.

¶ 6 In October 2010, William's attorney filed a motion to withdraw as his counsel. The trial court heard the matter and granted her motion on November 1, 2010. A new attorney, Juan Soliz, entered an appearance on William's behalf on December 8, 2010.

¶ 7 In April 2011, Krista filed a second petition for rule to show cause citing William's failure to comply with the August 9, 2010 agreed order by withdrawing approximately \$60,000 from his personal checking and withdrawing \$30,000 from the home equity line of credit. On April 7, 2011, the trial court issued a rule to show cause against William, setting a date of May 3, 2011. The court also ordered William to immediately transfer all the funds currently in his personal checking account and his Paypal account to Krista's accounts.

¶ 8 On April 13, 2011, Krista filed another petition for temporary restraining order and preliminary injunction, alleging that William did not transfer any funds from his personal checking account to her as per the April 7, 2011 court order. Following argument, the trial court enjoined William from withdrawing, borrowing, transferring or diminishing his IRA accounts

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held at Raymond James and all other IRA accounts he may hold, and ordered him to immediately transfer all funds in these, his investment accounts and his 401(k) account to Krista's IRA account. The court also allowed Krista leave to file a fee petition.

¶ 9 On May 3, 2011, the trial court held the hearing it had scheduled regarding Krista's second rule to show cause. The court found William in indirect civil contempt for his failure to comply with the August 9, 2010 agreed order and ordered him to pay a purge of \$57,000 to Krista by June 1, 2011. The court also ordered him to be incarcerated until his contempt was purged, but stayed this until June 7, 2011. In addition, and in accordance with the trial court's prior orders, Krista filed a petition for payment of attorney fees and costs. Then, on May 19, 2011, the trial court set trial dates in the matter for November 21 and 22, 2011.

¶ 10 On June 7, 2011, the court issued an order finding that William had only paid \$9,100 toward the ordered purge of \$57,000, and requiring him to pay Krista a partial purge of \$15,966.67 by June 10, 2011 and then \$15,966.66 from each of two upcoming installments of a business contract William had with a certain company, with the first of these payments to be made within 60 days. The court also ordered him to provide documentation within seven days regarding this business contract and future contract payments until he purged the contempt. At a June 22, 2011 court date, the court found that William had not produced this required documentation.

¶ 11 On August 25, 2011, Krista filed a petition for lift of stay of incarceration and immediate incarceration citing William's failure to comply with the June 7, 2011 order. After reviewing this, the court ordered William to pay \$5,425 in fees to Krista's attorneys within 60 days, and set

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a hearing on Krista's petition for lift of stay. At that hearing, conducted in September 2011, the court held William in indirect civil contempt of court for violating the June 7, 2011 order and granted Krista leave to file another petition for attorney fees.

¶ 12 In September 2011, William's attorney Soliz filed a motion to withdraw as his counsel. In its October 6, 2011 order granting his motion, the trial court gave William "30 days to retain other counsel or otherwise file his own appearance," and stated that, as he was "present in court and not objecting," he was "ordered to file [a] *pro se* appearance today." William immediately filed his *pro se* appearance that day. Then, on the following day, he filed a motion to vacate, modify and/or reconsider the finding of contempt from September 2011. Krista, in turn, and in accordance with a prior order, filed another petition for attorney fees. The trial court set both motions for hearing.

¶ 13 On November 15, 2011, William filed a *pro se* "Emergency Notice of Motion and Motion for Continuance" of the November 21 and 22, 2011 trial dates the court had set back in May 2011. In his motion, William asserted he needed a continuance so he could "issue supplemental written discovery" and depose Krista. A hearing was held, during which William appeared in court and argued his motion. The trial court denied it.

¶ 14 The cause then proceeded to trial, as scheduled, on November 21, 2011. On this day, William filed a *pro se* motion to reconsider the denial of his motion for continuance, without providing notice to Krista. Krista argued that the motion should be denied because it suffered from legal deficiencies. William, meanwhile, argued that the motion should be granted because he was "unable to properly represent [him]self" due to a diagnosis of attention deficit

hyperactivity disorder (ADHD), which he sought to verify to the court via documents he brought that day. He told the court that this diagnosis affected his "state of mind and [] mental well-being." He also informed the court that he had spoken to "10 or 11" attorneys beginning before Soliz withdrew in an attempt to retain one, but all of them refused to take his case. The trial court denied his motion to reconsider and called for trial to begin immediately.

¶ 15 At this point, as some preliminary procedural matters were being discussed, William began to walk out of the courtroom. When it asked him where he was going, William told the court that proceeding with trial was "improper" and "wrong" in light of his motion and argument and that, although he had been diligent, he was "not prepared" to proceed to trial. The court told William that, if he left the courtroom, "the trial will proceed without" him. William responded, "[t]hen that's what it has to be," and told the court that this was "not fair" since he had "been trying [his] best" due to his inability to retain counsel. The court again asked William if he was going to leave and warned him that he "either sit here and proceed with the trial or [he] walk out," whereupon the court would find him in default and proceed without him. William responded, "I will walk out. You can proceed without me. Good day." He then left the courtroom.

¶ 16 Krista told the court that, because William had already filed an appearance and the matter had been set for trial, she did not want an order of default but instead wanted to proceed with trial. After the trial court verified, via a copy of his October 6, 2011 *pro se* appearance, that William had indeed filed an appearance in court, the court proceeded with trial. Krista presented her case-in-chief and accompanying evidence; William did not present his case. At the close of

trial, the court ordered written closing arguments to be submitted by December 19, 2011. While Krista submitted hers, William never submitted his written closing arguments.<sup>1</sup> On February 10, 2012, the trial court entered a Judgment for Dissolution of Marriage.

¶ 17

#### ANALYSIS

¶ 18 William presents two main contentions in his brief on appeal. In the first, he contends that he was denied due process of law and a fair trial because he was "being forced into *pro se* representation against his wishes." In the second, he contends that he "did not possess a sound state of mind as to enable him to competently stand trial unrepresented by counsel."

¶ 19 As a threshold matter, William states that a *de novo* standard of review is applicable here, since a "question of the legal effect of undisputed facts" is involved. However, William's appeal attacks the trial court's denial of his motion for continuance as well as the court's denial of his motion to reconsider. The essence of William's cause here, then, asks us to review whether these denials were proper. It is well established that litigants do not have an absolute right to a continuance. See *Somers v. Quinn*, 373 Ill. App. 3d 87, 96 (2007); accord *In re Marriage of Ward*, 282 Ill. App. 3d 423, 430 (1996). Instead, the decision whether to grant or deny a continuance depends on the facts and circumstances surrounding the request. See *In re Hannah E.*, 376 Ill. App. 3d 648, 655 (2007). A key factor in this determination is whether the party making the request has demonstrated a lack of due diligence in proceeding with the cause. See

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<sup>1</sup>During the time the trial court gave for the parties to submit these, the guardian representing the minor children filed a petition for attorney fees. William never filed a response to his motion, nor did he respond to a subsequent motion filed by Krista for contribution of payment for attorney fees and costs.

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*Marriage of Ward*, 282 Ill. App. 3d at 431; accord *Somers*, 373 Ill. App. 3d at 96; *Hannah E.*, 376 Ill. App. 3d at 655. Significantly, when a continuance is not requested until the cause has reached the trial stage, the moving party must give an especially persuasive reason for the continuance, due to the potential inconvenience to the witnesses, the parties and the court. See *Marriage of Ward*, 282 Ill. App. 3d at 430-31 (as per Illinois Supreme Court Rule 231(f), no motion for continuance shall be heard after cause reaches trial unless "a significant excuse is shown for the delay" by the moving party, and that excuse must be "especially grave"); *In re Marriage of Gallagher*, 256 Ill. App. 3d 439, 442 (1993); *Hermann v. Hermann*, 219 Ill. App. 3d 195, 198 (1991). Ultimately, and contrary to William's insistence, the denial of a continuance is within the sound discretion of the trial court and will not be set aside unless it amounts to an abuse of that discretion (see *Hermann*, 219 Ill. App. 3d at 198), which would require a finding that the trial court acted arbitrarily without the employment of conscientious judgment or exceeded the bounds of reason to cause substantial prejudice. See *Marriage of Gallagher*, 256 Ill. App. 3d at 442-43; *Hannah E.*, 376 Ill. App. 3d at 655; *Somers*, 373 Ill. App. 3d at 96.

Upon our review of the instant cause, we conclude that William's argument regarding the denial of his request for continuance does not meet these standards for reversal. This is because, as the record clearly demonstrates, William did not exercise due diligence in proceeding with the cause, nor did he provide any persuasive reason or significant excuse meriting the grant of his motion for continuance.

¶ 20 After multiple instances in which he violated court orders issued throughout the divorce proceedings, and after being found in indirect civil contempt on more than one occasion, William



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waited until November 15, 2011, a few days before trial, to file his motion for continuance.

William had six months of advance notice regarding the date of trial; as the record shows, on May 19, 2011, the trial court set and notified the parties that trial would begin on November 21, 2011. It is true that William was represented by attorney Soliz and that Soliz moved to withdraw as trial neared. However, Soliz did so in September 2011, and the trial court granted Soliz's motion on October 6, 2011—more than a month and a half before trial was to begin.

¶ 21 In that time, instead of securing new representation, William chose to file a *pro se* appearance and proceed accordingly. The record indicates that, on the day Soliz was discharged, the trial court gave William 30 days to retain other counsel, or to file his own appearance. The court then noted for the record that William was present in court that day and did not object to filing his own appearance, which he did immediately. Significantly, William went on to exercise his *pro se* appearance several times. For example, as soon as the day after he filed his *pro se* appearance, he, of his own accord, filed a motion to vacate, modify and/or reconsider the finding of contempt the trial court had issued against him in September 2011. He later filed two more motions under his *pro se* appearance: his motion for continuance and his motion to reconsider. In addition, William appeared in court and argued these himself. He even appeared in court at the start of trial, before choosing to walk out of the courtroom despite the trial court's warning that trial would proceed without him. Having chosen to exercise his *pro se* appearance, and having never raised a formal objection for the record, William cannot now complain that what occurred was improper.

¶ 22 We further note for the record that William never provided a grave, or even consistent,

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reason for his request for continuance. In his motion for continuance, filed only days before trial, he explained to the court that he wanted a continuance but because he needed more time to "issue supplemental written discovery" and depose Krista, and to provide "a pleasant and peaceful home environment for the children, family and friends for the enjoyment of the Thanksgiving Holiday." The trial court denied his request. Then, in his motion to reconsider, which he presented at the start of trial, he argued his need for a continuance based on the fact that he did not have an attorney. However, again, he knew more than a month and a half earlier that trial was to begin that day. And, during his argument to the court, he further cited that he needed a continuance because he had mental health issues. He explained to the court that he wanted to present documentation that he suffered from ADHD and that this hindered his ability to proceed *pro se*. However, this documentation, which is contained in the record, is dated April 28, 2011—some seven months before the day trial was scheduled to begin.

¶ 23 Ultimately, William did not allege that any good cause existed for his failure to procure counsel. Nor did he act diligently in remedying his unrepresented status. The trial court gave him more than ample opportunity to obtain counsel and proceed with this cause in a represented capacity. He simply chose not to do so. Accordingly, denying his motion to continue filed only days before a trial which he knew would occur six months in advance, as well as his motion to reconsider based on claims supported with documentation dated even earlier than that, was not an abuse of discretion.

¶ 24 In his brief on appeal, William argues that the trial court denied him "due process of law and a fair trial" by denying his motion for continuance and by "forc[ing him] to go to trial *pro*

*se.*" Clearly, William is intimating Sixth Amendment grounds here, namely, that the trial court violated his right to counsel when it refused to grant him a continuance as he requested.

However, the Sixth Amendment applies to criminal prosecutions, and its language is clear that the right to counsel is limited according. See U.S. Const., amend. VI (accused enjoys assistance of counsel for his defense "[i]n all criminal prosecutions"); *Faretta v. California*, 422 U.S. 806 (1975). Thus, and contrary to William's assertion, the right to counsel does not apply equally to civil and criminal proceedings. Indeed, William had the right to hire an attorney and employ him to be his counsel during the proceedings. However, under the circumstances presented here, and with the trial court having given him every opportunity to do so, he did not have a constitutional right to be represented nor to have his motion for continuance granted. See *Hermann*, 219 Ill. App. 3d at 198-99 (where husband in divorce proceeding argued on appeal that trial court improperly denied his motion for continuance to obtain counsel and that he was required to proceed *pro se*, reviewing court held that trial court's denial was not abuse of discretion since he did not allege any good cause, trial court had treated him fairly, and no constitutional ground existed to extend right to counsel in that civil case; to the contrary, trial court had given him every opportunity to secure counsel during course of proceedings and husband waived this by his own delay).

¶ 25 Finally, William argues that he "did not possess a sound state of mind as to enable him to competently stand trial unrepresented by counsel." Citing *Kirkland v. Kirkland*, 38 Ill. App. 2d 280 (1962), he insists that, because of his mental disorder, the trial court should have either appointed counsel for him or allowed him time to find substitute counsel. *Kirkland* involved a

suit between the decedent's first and third wives; a decree had been entered annulling the first marriage because the first wife had been declared mentally ill, and the third wife sought to set aside an order which vacated the annulment. The issue was whether the decree of annulment was valid. In discussing this, the *Kirkland* court stated that when an insane person is present in court without representation, it is a court's duty to appoint a representative for her. See *Kirkland*, 38 Ill. App. 2d at 284. It is upon this statement in the case that William hinges his argument that, because he has ADHD, the trial court was required to appoint counsel or allow him more time to find counsel. However, as a whole, *Kirkland* is inapplicable and does not support his position. First, the wife in *Kirkland* was adjudicated mentally ill by a court of law and had an official medical diagnosis of paranoid schizophrenia. See *Kirkland*, 38 Ill. App. 2d at 283. Moreover, the "representation" the *Kirkland* court held it was a duty to provide for insane litigants was a guardian *ad litem*. Here, William has never been adjudged mentally ill in any fashion, and even if he were, all the trial court would have been able to secure for him, in light of *Kirkland*, would have been a representative guardian, not trial counsel.

¶ 26 Again, the trial court here gave William ample opportunity to employ counsel. William had known for some six months when his trial was to begin and, upon the withdrawal of his counsel, the court generously gave him 30 days to obtain a new attorney. See, e.g., Ill. Sup. Ct. R. 13(c)(2) (eff. Feb. 16, 2011) (following attorney's notice of withdrawal, client is to retain new counsel or file his own appearance within 21 days). Instead of doing so, William filed a *pro se* appearance and proceeded to exercise this throughout the litigation process, until the day of trial. Based on all this, as well as on our review of the record, we do not find that the trial court treated

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him unfairly or improperly in any way in denying his motion for continuance and his motion to reconsider the same.

¶ 27

#### CONCLUSION

¶ 28 Accordingly, for all the foregoing reasons, we affirm the judgment of the trial court.

¶ 29 Affirmed.