

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

YOLANDA HOLLIDAY,	:	
	:	
Plaintiff-Appellee,	:	No. 108374
	:	
v.	:	
	:	
CALANNI ENTERPRISES, INC.,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: February 20, 2020

Civil Appeal from the Lakewood Municipal Court
Case No. 2018-CVI-01295

Appearances:

Kenneth D. Myers, *for appellant.*

KATHLEEN ANN KEOUGH, J.:

{¶ 1} Defendant-appellant, Calanni Enterprises, Inc., (“Calanni”) appeals the trial court’s decision entering judgment in favor of the plaintiff-appellee, Yolanda Holliday. For the reasons that follow, we reverse and remand for a new trial.

{¶ 2} On July 12, 2018, Holliday filed a small claims complaint against Calanni for money damages associated with repairs made to her vehicle. Holliday sought reimbursement of the entire amount paid, \$1,699.87. The matter was scheduled for trial before a magistrate. On September 7, 2018, the day of trial, counsel for Calanni appeared asking for a continuance because Charles Calanni (“Mr. Calanni”), owner of Calanni and the witness for trial, had a family medical emergency. The magistrate requested that counsel obtain verification that Calanni was at the hospital. The magistrate waited for verification from Mr. Calanni, however, after nothing was received by 10:00 a.m., the magistrate denied the request for a continuance.

{¶ 3} Unbeknownst to the court and the parties, the hospital faxed over verification that Mr. Calanni was at the hospital’s emergency department with his daughter. The record reveals that this verification was not given to the magistrate during the trial. The fax document bears a time-stamp of 10:17 a.m.

{¶ 4} The magistrate subsequently issued a decision finding in favor of Holliday and against Calanni for the full amount of damages requested. Calanni filed objections to the magistrate’s decision, and later filed supplemental objections after the transcript of the hearing was prepared. Calanni raised two objections (1) the magistrate should have granted a continuance; and (2) the judgment was not supported by the record.

{¶ 5} In a written decision, the trial court overruled the objections, adopted the magistrate’s recommendation, and entered judgment in favor of Holliday for the

full reimbursed amount of \$1,699.87, plus interest. Calanni now appeals, raising two assignments of error for our review.

{¶ 6} In his first assignment of error, Calanni contends that the trial court erred in failing to grant him a continuance of trial.

{¶ 7} “The grant[ing] or denial of a continuance is a matter which is entrusted to the broad, sound discretion of the trial judge. An appellate court must not reverse the denial of a continuance unless there has been an abuse of discretion.” *State v. Unger*, 67 Ohio St.2d 65, 67, 423 N.E.2d 1078 (1981); *Fitworks Holding, L.L.C. v. Sciranko*, 8th Dist. Cuyahoga No. 90593, 2008-Ohio-4861, ¶ 4. Courts should consider the following objective factors when ruling on a motion for a continuance:

the length of the delay requested; whether other continuances have been requested and received; the inconvenience to litigants, witnesses, opposing counsel and the court; whether the requested delay is for legitimate reasons or whether it is dilatory, purposeful, or contrived; whether the [requesting party] contributed to the circumstance which gives rise to the request for a continuance; and other relevant factors, depending on the unique facts of each case.

Unger at 67-68.

{¶ 8} “There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied.” *Unger* at 67, quoting *Ungar v. Sarafite*, 376 U.S. 575, 589, 84 S.Ct. 841, 11 L.Ed.2d 921 (1964). “Weighed against any potential prejudice to a defendant are concerns such as a court’s right to control

its own docket and the public's interest in prompt and efficient dispatch of justice.”

Unger at id.

{¶ 9} In this case, the trial court determined that after weighing all the factors “and equities for both sides,” that it was not an abuse of discretion to proceed with the hearing as scheduled. In finding no abuse of discretion, the trial court noted that the case was initially scheduled for August 20, 2018, but continued to September 7, 2018 “due to Mr. Calanni’s refusal to accept service of the summons and complaint.” This finding is not supported by the record. A review of the record indicates that service was returned as “unclaimed”; not “refused.” The record further reveals that no other continuances had been requested or received by Calanni.

{¶ 10} Additionally, the court found that that impact to the parties was considered. The court noted that Holliday and her father took a day off work, and that Calanni still had possession of the vehicle. The court made no finding regarding the impact of proceeding with trial would have on Calanni.

{¶ 11} The court also determined that the “notice” that “Mr. Calanni later filed” was insufficient. The record does not support this determination. First, the “notice” was not a notice, but a faxed verification from the hospital that Mr. Calanni was with his daughter in the emergency department. This verification was submitted directly to the trial court by the hospital. The time-stamp on the verification is 10:17 a.m.; thus, not a “later filing” by Calanni. The record reveals that the magistrate waited until 10:00 a.m. before proceeding with the trial. We find that

the magistrate was not unreasonable in starting the trial after nothing was received. However, the verification was received by the court shortly after trial commenced, but it was not relayed to the magistrate or the parties.

{¶ 12} Despite this fact, the trial court discounted the verification. The trial court essentially determined that the faxed document, which is exactly what the magistrate requested, was insufficient because the verification “did not set out any emergency reason that would require his attendance at the hospital or whether it was an unforeseen incident or a previously scheduled visit.” The court further questioned whether it was an emergency situation because defense counsel “presented no specific facts or documents in support.”

{¶ 13} We find the trial court’s requirements for Mr. Calanni to substantiate his absence to be unreasonable. First, we note that the patient being treated was Mr. Calanni’s adult daughter, and considering HIPAA implications, Calanni’s daughter would have to consent to the release of medical information to the court. Moreover, the verification clearly indicated that it was sent from the emergency department and that Calanni’s daughter was treated for emergency-room services.

{¶ 14} Notwithstanding, the trial court also sua sponte interpreted information contained in exhibits to refute the assertion that Mr. Calanni was the only witness to this action because he was the only person who performed the repairs to Holliday’s vehicle. Mr. Calanni was not offered the opportunity to rebut the trial court’s interpretation.

{¶ 15} In *Jones v. Cynet*, 8th Dist. Cuyahoga No. 79769, 2002-Ohio-2617, this court held that a municipal court abused its discretion in taking judicial notice of the value of property to determine damages without conducting a hearing to allow the appellant an opportunity to advance arguments about the court's own valuation. *Id.* at ¶ 31.

{¶ 16} The same conclusion applies here. The trial court, without any testimony explaining or deciphering the wording on a receipt, marked as exhibit No. 1, determined that the receipt revealed that the work was performed by another individual, and not Mr. Calanni. Our review of the receipt does not support the trial court's conclusion, and no testimony was offered regarding the content of the receipt, except that it proved that Holliday paid money toward the invoice. And considering that the trial court used this information to find that Mr. Calanni did not have a meritorious defense, it appears that the trial court essentially concluded that Mr. Calanni's presence at trial was not necessary. It was improper to make such conclusion.

{¶ 17} Although small claims cases by their nature are informal and the Rules of Civil Procedure are not applicable in their entirety or the Rules of Evidence at all, fundamental due process principles still apply. *See Jones v. Cynet, Inc.*, 8th Dist. Cuyahoga No. 79769, 2002-Ohio-2617, ¶ 31. "A fundamental requirement of due process is 'the opportunity to be heard.' *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S.Ct. 779, 783, 58 L. Ed. 1363. It is an opportunity which must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545,

552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965). We find that based on the circumstances of this case, Calanni was deprived of an opportunity to be heard.

{¶ 18} Accordingly, his first assignment of error is sustained. The trial court's decision is reversed, and the case is remanded for a new trial. Having sustained his first assignment of error, Calanni's second assignment of error challenging the monetary judgment is hereby rendered moot. *See* App.R. 12(A).

{¶ 19} Judgment reversed and remanded.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KATHLEEN ANN KEOUGH, JUDGE

ANITA LASTER MAYS, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR