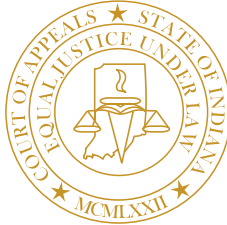


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Rex Collins,
Appellant-Respondent

v.

Linda Collins,
Appellee-Petitioner



July 9, 2024

Court of Appeals Case No.
24A-DN-185

Appeal from the Johnson Superior Court
The Honorable Peter D. Nugent, Judge

Trial Court Cause No.
41D02-2304-DN-213

Memorandum Decision by Judge Vaidik
Judges Weissmann and Foley concur.

Vaidik, Judge.

Case Summary

- [1] Rex Collins (“Husband”) appeals the final decree entered by the trial court in the dissolution of his marriage to Linda Collins (“Wife”). He argues the trial court abused its discretion by denying his motion to continue the final hearing. We disagree and affirm.

Facts and Procedural History

- [2] In April 2023, Wife petitioned for dissolution of the parties’ marriage. Husband didn’t enter an appearance or take any other action in response to the petition. He also failed to respond to Wife’s discovery requests, so Wife moved to compel. The trial court set a hearing for September 26 and sent notice to Husband via email. Husband didn’t attend the hearing. The court granted Wife’s motion to compel and set the final hearing for December 11. Notice of the final hearing was also sent to Husband via email.
- [3] Husband, unrepresented, appeared for the final hearing but said he wasn’t ready to proceed. When asked why, he said he didn’t know about the hearing until “about four weeks ago” and that he had hired an attorney but had been “unable to complete [his] meetings” with the attorney. Tr. pp. 17, 18. He said the notification emails went to his “junk or other email” and that he only learned of the final hearing when he went to the clerk’s office “to find out what was going on” (he didn’t say what prompted him to go to the clerk’s office). *Id.* at 18. The court treated Husband’s comments as a motion to continue the hearing, denied

the motion, and proceeded with the hearing. Two weeks later, the court issued its decree of dissolution. Among other things, the court awarded Wife just over half of the marital estate (52%) and ordered Husband to pay \$5,000 of her attorney's fees.

[4] Husband now appeals.

Discussion and Decision

[5] Husband contends the trial court should have granted his motion to continue the final hearing. "A trial court's decision to grant or deny a motion to continue a trial date is reviewed for an abuse of discretion, and there is a strong presumption the trial court properly exercised its discretion." *Blackford v. Boone Cnty. Area Plan Comm'n*, 43 N.E.3d 655, 664 (Ind. Ct. App. 2015) (quotation omitted). If good cause is shown for granting the motion, denial of a continuance will be considered an abuse of discretion. *J.P. v. G.M.*, 14 N.E.3d 786, 790 (Ind. Ct. App. 2014).

[6] Husband argues that he didn't know about the final hearing until four weeks before it was held and that this wasn't enough time for him to prepare. This argument fails for two reasons. First, the trial court wasn't required to credit Husband's claim that the notification email went to his junk folder and that he didn't see it. Second, even if Husband had only four weeks' notice, he didn't explain to the trial court and doesn't explain to us why he waited until the day of the hearing to request a continuance rather than doing so sometime during those four weeks. Either way, Husband failed to show good cause for a

continuance. *See Gunashekar v. Grose*, 915 N.E.2d 953, 955-56 (Ind. 2009) (holding trial court didn't abuse its discretion by denying motion to continue filed eleven days before trial and without explanation for delay).

- [7] In his reply brief, Husband argues that Wife didn't prove that he received the dissolution petition and summons. He doesn't explicitly claim that he never received those documents or that he didn't know Wife had filed for dissolution, but that is the obvious implication. Wife filed the petition on April 13, 2023. On April 21, she filed a notice of service stating that on April 14 copies of the petition and summons were sent via priority mail to Husband at the home the parties were still sharing (Husband didn't move out until May 2023) and that on April 17 the documents were received at that address. The USPS delivery confirmation attached to the notice states, "Left with Individual." Appellant's App. Vol. II p. 15. Husband doesn't argue that service of process was legally insufficient or that the trial court lacked personal jurisdiction over him. Rather, he claims that the petition and summons might have been left with someone other than him (possibly Wife) and that the lack of proof that he received them was grounds for a continuance. The problem with this argument is that Husband didn't make these allegations when asking the trial court to continue the hearing. If he had, the court could have inquired further, and Wife may have presented evidence that Husband was aware of the case from the beginning. By failing to make this argument in the trial court, Husband waived it for purposes of appeal. *See Wilkes v. Celadon Grp., Inc.*, 177 N.E.3d 786, 788-89 (Ind. 2021).

[8] Husband has not shown that the trial court abused its discretion by denying his motion to continue.

[9] Affirmed.

Weissmann, J., and Foley, J., concur.

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