MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jody Smedley,
Appellant-Plaintiff,

v.

John W. Arbuckle, M.D. and Indiana Spine Group, P.C.,
Appellees-Defendants.

May 1, 2023

Court of Appeals Case No. 22A-CT-1903

Appeal from the Hamilton Circuit Court

The Honorable Paul A. Felix, Judge

Trial Court Cause No. 29C01-2003-CT-2539

Memorandum Decision by Judge Robb
Judges Crone and Kenworthy concur.

Robb, Judge.

Case Summary and Issue

[1] Jody Smedley appeals the trial court's denial of his motion for continuance of trial. Smedley raises one issue for our review, which we restate as whether the trial court abused its discretion by denying Smedley's motion for continuance. Concluding the trial court did not abuse its discretion, we affirm.

Facts and Procedural History

[2] On May 10, 2017, Smedley underwent a laminotomy performed by Dr. Rick Sasso. On June 5, Smedley had an epidural steroid injection administered by Dr. John Arbuckle for continued post-operative pain. More than six weeks later, Smedley noticed signs of a possible infection above the injection site and required additional medical treatment.

[3] On April 3, 2018, Smedley filed a proposed complaint for medical malpractice with the Indiana Department of Insurance against Dr. Arbuckle, Dr. Sasso, and Indiana Spine Group, P.C. ("Indiana Spine") (collectively "Defendants"). A medical review panel found in favor of the Defendants. Smedley then filed a complaint in the trial court.

[4] The Defendants filed a motion for summary judgment. Subsequently, Smedley filed a response together with Plaintiff's Designation of Evidence in Opposition to Summary Judgment Motion ("Designation of Evidence"). Smedley's Designation of Evidence consisted of the affidavit of Dr. Robert Prince. Dr.

Prince opined that Dr. Arbuckle's breach of the appropriate standard of care was the cause of "Smedley's post-surgical spread of infection and the subsequent physical injuries and additional medical care[.]" Appendix of Appellant, Volume 2 at 76. Prior to replying to Smedley's response, the Defendants deposed Dr. Prince.

[5] On November 18, 2020, following a hearing, the trial court entered an order granting summary judgment to Dr. Sasso and Indiana Spine only. Smedley then appealed the trial court's grant of summary judgment in favor of Indiana Spine.[1] This court reversed, in part, the trial court's grant of summary judgment to Indiana Spine.[2] *See Smedley v. Ind. Spine Grp., P.C.*, 20A-CT-2320, 2021 WL 1657551 (Ind. Ct. App. Apr. 28, 2021). We remanded for further proceedings.

[6] On September 15, 2021, the trial court entered an Agreed Case Management Order ("CMO") which set a final pre-trial conference for July 8, 2022, and a trial date of August 8, 2022. Further, the CMO required all expert witnesses for trial be identified 120 days prior to trial, and any motions for continuance be filed no later than fourteen days prior to the final pre-trial conference. Smedley identified Dr. Prince as his sole expert witness.

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[1] After Defendants filed their reply and prior to the hearing on the motion for summary judgment, Smedley had consented to the entry of summary judgment in favor of Dr. Sasso. *See* App. of Appellant, Vol. 2 at 148.

[2] Specifically, we reversed "the trial court's grant of summary judgment to [Indiana Spine] on Smedley's vicarious liability claim related to Dr. Arbuckle's actions." *Smedley v. Ind. Spine Grp., P.C.*, 20A-CT-2320, 2021 WL 1657551 at *5 (Ind. Ct. App. Apr. 28, 2021).

[7] On July 6, 2022, Dr. Prince sent Smedley an email indicating he had decided to decline from testifying "either in person or by video" for the following reasons:

> First, I took a lot of time from my practice and family to prepare the case, and calculated I would at least break even. I make about $400 an hour from my practice. I did it because the malpractice case was straightforward, and I thought it would be interesting work. I had never testified against another physician and didn't plan to again. I knew it was hard for patients to find doctors to testify on their behalf.
>
> Second, I did not get paid by the defense until about a year later, and had emotionally written it off by then. I wasn't going to sue a lawyer over non payment! Therefore, from my perspective, the affair had actually cost me money. I was bitter about it for a while, and ultimately getting paid didn't do much to lessen the experience. They simply claimed my bill was too high, after the fact, in a continuation of the bullying described below, and then paid nothing (until recently).
>
> Finally, the cross exam was unbelievably patronizing and insulting, from my perspective. In addition[,] medical chart information was presented that was never given to me to review in advance in attempted "gotcha" moments. I understand that the doctor deserves a vigorous defense, but this was so unpleasant, I simply won't subject myself to it again. I spent 7 years training at Johns Hopkins becoming a doctor and this was worse! Professional witnesses do this for a living, and are no doubt used to this. I'm not.

App. of Appellant, Vol. 2 at 198.[3]

[8] Smedley then filed an Emergency Motion for Continuance of Trial Date. The trial court addressed Smedley's motion at the final pre-trial conference. Smedley told the trial court that he first became aware of Dr. Prince's hesitation to testify "two or three weeks" prior to the pre-trial conference. Transcript, Volume 2 at 15. Following the hearing, the trial court entered the following order:

> The Court denies Plaintiff's Motion to Continue. Because the parties agree that Plaintiff is unable to make its case without expert testimony, the case is dismissed based upon the Court's decision to deny Plaintiff's Motion to Continue.

Appealed Order at 4.

[9] Smedley now appeals. Additional facts will be provided as necessary.

Discussion and Decision

I. Standard of Review

[10] The decision to grant or deny a motion for a continuance rests within the sound discretion of the trial court. *Rowlett v. Vanderburgh Cnty. Off. of Fam. & Child.*, 841 N.E.2d 615, 619 (Ind. Ct. App. 2006), *trans. denied.* Therefore, we will reverse

[3] Smedley told the trial court, "I don't join in my expert's opinions about how [defense counsel] conducted the deposition. . . . He's a good lawyer, he does what he needs to do[.]" Transcript, Volume 2 at 5.

the trial court only for an abuse of discretion. *Id.* An abuse of discretion may be found in the denial of a motion for a continuance when the moving party has shown good cause for granting the motion. *Id.* However, if the moving party has not demonstrated that he or she was prejudiced by the denial, then there is no abuse of discretion. *Id.*

II. Motion to Continue

[11] Smedley argues the trial court abused its discretion by denying his motion for continuance. Smedley brought a medical malpractice claim against the Defendants. A medical review panel unanimously found the Defendants did not breach the applicable standard of care. Therefore, Smedley was required to rebut the medical review panel with expert testimony, without which his claim fails. *See Narducci v. Tedrow*, 736 N.E.2d 1288, 1292 (Ind. Ct. App. 2000) ("To establish the applicable standard of care and to show a breach of that standard, a plaintiff must generally present expert testimony."). Therefore, because the denial of Smedley's motion for continuance led to the dismissal of his claim, prejudice is not at issue here.

[12] Rather, we must determine whether Smedley demonstrated good cause. *See Blackford v. Boone Cnty. Area Plan Comm'n,* 43 N.E.3d 655, 664 (Ind. Ct. App. 2015) ("A denial of a motion for continuance is [considered to be an] abuse of discretion only if the movant demonstrates good cause for granting it.") (alteration in original). There is no mechanical test for good cause. *Matter of*

M.S., 140 N.E.3d 279, 285 (Ind. 2020). The decision to grant or deny a continuance turns on the circumstances of each case. *Id.* Further, when considering whether there is good cause for a motion for continuance, the moving party must be free from fault. *Scott v. Crussen*, 741 N.E.2d 743, 746 (Ind. Ct. App. 2000)*, trans. denied.*

[13] Smedley contends the trial court "improperly, impliedly partially faults [him] for Dr. Prince's refusal to testify[.]"[4] Appellant's Brief at 17. Here, the case management order dictated that any motions for continuance must be filed no later than fourteen days prior to the final pre-trial conference. However, Smedley filed his motion for continuance on July 7, 2020, one day before the pre-trial conference. *See Wright v. Miller*, 989 N.E.2d 324, 331 (Ind. 2013) ("The use and enforcement of case management orders and deadlines are essential to sound judicial administration."). At the final pre-trial conference, Smedley indicated to the trial court that he first became aware of Dr. Prince's hesitation to testify "two or three weeks" prior. Tr., Vol. 2 at 15. Based on this timeline, Smedley could have met the CMO deadline. Yet, Smedley did not file a motion for continuance at that time to secure either a second expert witness or a

[4] We note that Dr. Prince's email to Smedley blames defense counsel for his decision to not testify. However, Smedley defends defense counsel's conduct at the deposition. Further, any failure to prepare Dr. Prince for the deposition or the litigation process falls on Smedley, not the defense.

potential back-up if Dr. Prince refused to testify. Therefore, we cannot say that Smedley was completely without fault.

[14] Accordingly, we conclude Smedley failed to demonstrate good cause.

Conclusion

[15] We conclude the trial court did not abuse its discretion by denying Smedley's motion for continuance. Accordingly, we affirm.

[16] Affirmed.

Crone, J., and Kenworthy, J., concur.