

The Supreme Court of the State of Louisiana

ORIA LEE HADWIN, JR.

No. 2024-CC-00072

VS.

ABC INSURANCE COMPANY, CHRISTIAN
D. CHESSON, APLC AND CHRISTIAN D.
CHESSON

IN RE: Christian Drew Chesson - Applicant Defendant; Christian D. Chesson,
APLC - Applicant Defendant; Applying For Supervisory Writ, Parish of Calcasieu,
14th Judicial District Court Number(s) 2022-0341-F, Court of Appeal, Third Circuit,
Number(s) CW 23-00533;

April 09, 2024

Writ application granted. See per curiam.

JB
M

SJC

JTG

WJC

Weimer, C.J., dissents and would grant and docket.
Griffin, J., dissents and would grant and docket.
Hughes, J., recused.

Supreme Court of Louisiana
April 09, 2024

Katio Marjanovic
Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2024-CC-00072

ORIA LEE HADWIN, JR.

VS.

**ABC INSURANCE COMPANY, CHRISTIAN D. CHESSON, APLC AND
CHRISTIAN D. CHESSON**

On Supervisory Writ to the 14th Judicial District Court, Parish of Calcasieu

PER CURIAM¹

At issue is whether the district court abused its discretion in granting plaintiff’s motion to continue a hearing on defendants’ motion for summary judgment.

FACTS AND PROCEDURAL HISTORY

Plaintiff, Oria Lee Hadwin, Jr., filed the instant legal malpractice action against defendants, alleging defendants committed legal malpractice in connection with its representation of him in an earlier suit. Defendants filed a motion for summary judgment, or alternatively, exception of no right of action, arguing plaintiff could not meet his burden of proving any malpractice.

The trial court scheduled a hearing on defendants’ motion for summary judgment on June 1, 2023. Plaintiff and defendants consented to a continuance of the hearing, which was reset to July 19, 2023. Accordingly, under La. Code Civ. P. art. 966(B)(2), plaintiff’s opposition to defendants’ motion for summary judgment was due on July 5, 2023.

On July 10, 2023, five days after the opposition deadline expired, plaintiff filed a motion to continue the hearing, averring his counsel’s office had mis-

¹ Hughes, J. recused.

calendared the deadline to file the opposition. Plaintiff asserted good cause existed for the continuance because the notice of hearing, forwarded by the judge's assistant, requested copies of pleadings be delivered to the judge eight days before the hearing, which caused the confusion with the deadline. He also argued the title of the pleading, styled as a motion for summary judgment or alternatively, exception of no cause of action, caused confusion. Finally, he asserted his expert was unavailable to sign an affidavit until July 10, 2023.

Defendants opposed the motion. They argued plaintiff failed to show good cause for the continuance.

After a hearing, the district court granted plaintiff's motion and continued the summary judgment hearing without date.

Defendants sought supervisory review of this ruling. The court of appeal denied writs.

Defendants now apply to this court.

DISCUSSION

Article 966(B)(2) of the Louisiana Code of Civil Procedure provides, in pertinent part, “[a]ny opposition to the motion and all documents in support of the opposition shall be filed and served in accordance with Article 1313 **not less than fifteen days prior to the hearing on the motion.**” [emphasis added].

In *Auricchio v. Harriston*, 2020-01167 (La. 10/10/21), 332 So. 3d 660, 661, we held that “in the absence of consent by the parties, a trial court has no discretion to extend that article’s fifteen-day deadline for filing an opposition.” Nonetheless, *Auricchio* recognized the trial court could have considered equitable concerns and continued the summary judgment hearing for good cause under the provisions of La. Code Civ. P. art. 966(C)(2), although the trial court in that case did not do so. *Id.* at 663.

We subsequently clarified this portion of *Auricchio*'s holding in *Mahe v. LCMC Health Holdings LLC*, 2023-00025 (La. 3/14/23), 357 So. 3d 322 (per curiam), in which we explained that a continuance under La. Code Civ. P. art. 966(C)(2), cannot serve as a pretext to circumvent the deadlines set forth in La. Code Civ. P. art. 966(B)(2). In *Mahe*, the plaintiff argued the fact that her expert was out of town constituted good cause for a continuance. However, plaintiff failed to move for a continuance prior to the expiration of the fifteen-day deadline. We concluded these facts did not constitute a showing of good cause for purposes of granting a continuance under La. Code Civ. P. art. 966(C)(2).

The facts of the case currently before us are strikingly similar to those in *Mahe*. As in *Mahe*, plaintiff in the instant case asserts his expert was unavailable, but plaintiff did not move for a continuance until five days after the fifteen-day opposition deadline expired. Plaintiff also cites purported confusion stemming from the court's notice of hearing, which requested copies of pleadings be delivered to the judge eight days before the hearing but fails to show any reason why this language would supersede the mandatory deadlines set forth in La. Code Civ. P. art. 966(B)(2), nor does he indicate he made any effort to clarify any alleged conflict prior to expiration of the deadline.

Under these circumstances, we must conclude the trial court erred in finding plaintiff demonstrated good cause for a continuance of the summary judgment hearing. Accordingly, we reverse the ruling of the trial court granting plaintiff's motion for continuance and remand the case to the trial court to rule on defendants' motion for summary judgment without consideration of plaintiff's untimely-filed opposition.²

² Of course, the "failure to file an opposition does not automatically require that the motion for summary judgment be granted, as the initial burden of proof is on the mover." *Auricchio*, 332 So. 3d at 663 (citing *Crockerham v. Louisiana Med. Mut. Ins. Co.*, 2017-1590 (La. App. 1 Cir. 6/21/18), 255 So.3d 604, 608). Despite the exclusion of plaintiff's untimely-filed opposition, the (continued...)

DECREE

For the reasons assigned, the judgment of the trial court granting plaintiff's motion for continuance is reversed. The case is remanded to the trial court to rule on defendants' motion for summary judgment without consideration of plaintiff's untimely opposition.

trial court will still need to make a determination as to whether defendants have satisfied their burden of proof under La. Code Civ. P. art. 966(D)(1).