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IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re Marriage of JAMES and
ELLEN PERRY.

B268825

(Los Angeles County
Super. Ct. No. BD458464)

JAMES PERRY,

Appellant,

v.

ELLEN PERRY,

Respondent.

APPEAL from an order of the Superior Court of Los
Angeles County, Shelley Kaufman, Judge. Affirmed.

One Stop Legal Services and John Petersen for
Appellant.

Law Offices of Sandord L. Horn and Sanford L. Horn for
Respondent.

* * * * *

This case involves a family law dispute between former spouses James Perry (James) and Ellen Perry (Ellen). James appeals from an order requiring that he reimburse Ellen \$146,500—half the value of a community property asset. James’s sole contention is that the trial court erred in denying him a continuance. His argument lacks merit, and we affirm.

BACKGROUND

The parties were married in 1993, and a judgment of dissolution was entered in 2009. A judgment on reserved issues was entered on July 26, 2011. In the judgment on reserved issues, the trial court determined that real property located on Bandera Street (the property) was community property.

In 2013, the court ordered that the property be sold and that the proceeds of the sale be divided between the parties. Ellen discovered encumbrances in the amount of \$293,000 on the property and sought half of the encumbered value. “The Court set several hearings for Petitioner [James] to produce admissible documents showing an accounting of the expenditures and reasons for the encumbrances.” A hearing was set for June 10, 2015.

On the day of the hearing, James requested a 90- to 180-day continuance. The request was supported by a declaration of counsel stating that James was receiving treatment for cancer. A form dated April 2, 2015 (two months earlier), from

Kaiser Permanente was attached indicating that James had been diagnosed with prostate cancer. A physician at Kaiser Permanente indicated that James was “not homebound or bed bound” and was “not employed.” James did not file a declaration in support of his motion for a continuance.

At the hearing, the court indicated that it had attempted to schedule the hearing for “over a year,” and prior requests for continuances had been granted. Counsel for James acknowledged that the hearing previously had been continued because of James’s illness. The court expressed concern that James had not provided court-ordered discovery to Ellen.

The court asked James’s counsel about submitting on written declarations, and counsel responded, “Certainly, I’m capable of doing that. My hands are somewhat tied because although I have some documents, Mr. Perry seems to think he has other things.” Counsel telephoned James, who indicated that he did not want to proceed based on written submissions. James’s counsel, however, acknowledged in open court that in his opinion “it may be . . . the only way to get i[t] done.”

The court indicated that it would effectively grant James’s request for a continuance, and the court did not proceed with the hearing on that day. The court permitted James to file written responses. The court granted James more than a month until July 24 to file his response. In its order, the court explained: “Finally, on June 10, 2015, the Court agreed to accept exhibits and briefs from the parties in lieu of oral testimony.”

After reviewing the documentary evidence provided by the parties, the court ordered James to reimburse Ellen

\$146,500, half of the value of the encumbrances on the property.

DISCUSSION

James's sole argument on appeal is that the trial court erred in denying him a continuance. "The decision whether to grant a motion for a continuance is within the trial court's discretion and will not be disturbed on appeal absent a clear showing of abused discretion." (*Jurado v. Toys "R" Us, Inc.* (1993) 12 Cal.App.4th 1615, 1617.) " " "The appropriate [appellate] test for abuse of discretion is whether the trial court exceeded the bounds of reason." ' ' ' (*Hernandez v. Superior Court* (2004) 115 Cal.App.4th 1242, 1246.)

To the extent James argues that a party's illness may provide good cause for a continuance, he is correct. A party's illness may constitute good cause for a continuance. (*Lindsey v. Wright* (1927) 84 Cal.App. 499, 503; see *Young v. Redman* (1976) 55 Cal.App.3d 827, 831.) But a party's illness does not necessarily constitute good cause for a continuance. (*McElroy v. McElroy* (1948) 32 Cal.2d 828, 832.)

James's argument that the court erred in denying him a continuance lacks merit for numerous reasons. Most fundamentally, the court granted him a continuance. It allowed James over a month to file written responses instead of holding the hearing at the scheduled time—June 10, 2015. James's counsel expressly admitted that written responses would be the only practical method of resolving this matter. Thus, James's characterization of the court's ruling as a denial of his requested continuance is not accurate.

Second, in arguing that the court abused its discretion in denying a continuance, James ignores the important fact that

numerous continuances previously had been granted. Given the circumstances of the case, the denial of yet another continuance was not error, especially when James failed to provide a declaration indicating that he was unable to attend the hearing. (See *Thorpe v. Thorpe* (1946) 75 Cal.App.2d 605, 610.)

James ignores other critical facts. For example, the court expressed concern that James failed to timely provide documentary evidence to Ellen. The court had “set several hearings for Petitioner [James] to produce admissible documents showing an accounting of the expenditures and reasons for the encumbrances.” The court explained that the case “dragged out” “for over a year.” James provides no explanation of why he failed to produce the documents prior to his illness. Nor does he address the court’s conclusion that because he failed to timely produce documents, he would not be permitted to “come into court and just bring a whole lot of documents that have been ordered for over a year.”

Had the court denied James’s continuance it would not have been an abuse of discretion for the additional reason that James’s request was not timely. It was filed the same day as the hearing. James’s diagnosis from Kaiser indicates he was aware of his condition at least two months before the hearing (as argued by James) and yet waited until the day of the hearing to request a continuance.¹

¹ James’s assertion that he filed his motion for a continuance the day before the hearing is not supported by the record. In any event, assuming he filed it the day before the hearing, it still was not timely.

Finally, assuming the court had denied his requested continuance, James provided no evidence indicating that he was prejudiced. His unsupported assertions are not persuasive. In short, James fails to show that the court abused its discretion in denying him a continuance. Even assuming he demonstrated error, James fails to show prejudice warranting reversal.

DISPOSITION

The order is affirmed. Respondent is entitled to costs on appeal.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.