An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-878

Filed: 7 August 2018

Wake County, No. 16-CVD-578

THE TRACTOR PLACE, INC., Plaintiff,

v.

JERRY ALLEN BOLTON, JR., Defendant.

Appeal by defendant from judgment entered 11 May 2017 by Judge Michael J. Denning in Wake County District Court. Heard in the Court of Appeals 30 November 2017.

Kirk, Kirk, Howell, Cutler & Thomas, L.L.P., by Philip G. Kirk, for plaintiff-appellee.

Williams and Bagshawe LLP, by E.N. Bagshawe, for defendant-appellant.

BERGER, Judge.

On January 13, 2016, The Tractor Place, Inc. ("Plaintiff") filed a complaint in Wake County District Court against Jerry Allen Bolton, Jr. ("Defendant") to perfect a lien against Defendant's tractor for unpaid repairs. The trial was held in the absence of Defendant and his trial counsel, who unsuccessfully sought to continue the trial. The trial court entered judgment in favor of Plaintiff on May 11, 2017, in the

amount of $5,844.54. The judgment also permitted Plaintiff to conduct a private sale of Defendant's tractor, ordered Defendant to reimburse Plaintiff's attorney's fees and court costs, and dismissed Defendant's counterclaims. Defendant appeals, arguing the trial court abused its discretion in denying Defendant's motion to continue. We disagree.

Factual and Procedural Background

On January 13, 2016, Plaintiff filed suit in Wake County District Court seeking, among other things, a lien on Defendant's tractor for outstanding repair payments and storage fees. On March 14, 2016, Defendant filed an answer and counterclaims alleging Plaintiff damaged the air conditioning unit on the tractor and failed to complete agreed upon repairs.

The case was scheduled for trial on March 27, 2017. Defendant filed a motion to continue, and the trial was rescheduled for May 8, 2017. On May 5, 2017, Defendant's counsel filed another motion to continue, citing a conflict he had in Vance County Superior Court for the week of May 8, 2017.

At 5:04 p.m. on May 5, 2017, a Friday, the trial court coordinator for Wake County sent an email message to counsel for Plaintiff and Defendant notifying them the case was still scheduled on May 8, 2017, the following Monday. The email informed the parties that Wake County District Court Judge Michael J. Denning had contacted the presiding superior court judge in Vance County, Michael O'Foghludha,

to resolve the scheduling conflict. The email instructed Defendant's counsel to appear in Wake County District Court first and stated that he would then be released to appear in Vance County Superior Court. Defendant's counsel claimed he did not see the email until 1:00 p.m. on May 8, 2017 because he did not check his email after 5:00 p.m. on May 5, 2017.

At 8:39 a.m. on May 8, 2017, the trial court coordinator again informed Defendant's counsel by email that the "motion is still pending, [and the] parties are expected to appear this morning at calendar call" in Wake County District Court. Defendant's counsel replied at 9:00 a.m., stating that he would not be in Wake County and it was unlikely his client would attend because he was "a general contractor in the middle of a project." Neither Defendant nor Defendant's counsel was present in Wake County District Court when the case was called.

Following calendar call and pursuant to the trial court's instructions, Plaintiff's counsel contacted Defendant's counsel to determine if he was coming to court. Defendant's counsel informed him that he was in Warren County and would be going from there to Vance County Superior Court. Defendant's counsel also informed Plaintiff's counsel that Defendant would not appear in Wake County District Court because he was with his son at a doctor's appointment.

After hearing the report concerning the whereabouts of Defendant and his counsel, the trial court called the case for trial. Defendant's counsel then sent

Plaintiff's counsel a text message indicating Defendant would be in Wake County District Court around noon that day. The trial began at 9:29 a.m. The trial court heard Plaintiff's evidence and dismissed Defendant's counterclaims. The trial court entered written judgment in Plaintiff's favor on May 11, 2017. Defendant timely filed notice of appeal.

Standard of Review

"[A] motion to continue is addressed to the sound discretion of the trial judge . . . ." *Shankle v. Shankle*, 289 N.C. 473, 483, 223 S.E.2d 380, 386 (1976). "The standard of review for denial of a motion to continue is generally whether the trial court abused its discretion." *Morin v. Sharp*, 144 N.C. App. 369, 373, 549 S.E.2d 871, 873, *disc. review denied*, 354 N.C. 219, 557 S.E.2d 531 (2001). "This Court will find such an abuse of discretion on a motion for continuance only if the trial court's decision was unsupported by reason and could not have been a result of competent inquiry." *McIntosh v. Mcintosh*, 184 N.C. App. 697, 702, 646 S.E. 2d 820, 823 (2007) (citation and quotation marks omitted).

Analysis

Defendant contends that the trial court abused its discretion when it denied his motion to continue, dismissed his counterclaims, and entered a judgment in favor of Plaintiff because Defendant's counsel was required to be in Vance County Superior

Court on the same date as the trial in this Wake County District Court matter.[1] We disagree and affirm the trial court.

"The Supreme Court is hereby authorized to prescribe rules of practice and procedure for the superior and district courts supplementary to, and not inconsistent with acts of the General Assembly." N.C. Gen. Stat. § 7A-34 (2017). "Pursuant to this authority, our Supreme Court requires the senior resident judge and chief district judge in each judicial district to take appropriate actions such as the promulgation of local rules to insure prompt disposition of any pending motions or other matters to move the cases toward a conclusion." *In re Baker Investigation*, 220 N.C. App 108, 112, 727 S.E.2d 316, 319 (2012) (*purgandum*[2]). "In order to insure general uniformity throughout each respective judicial district, all trial judges shall observe and enforce the local rules in effect in any judicial district where they are assigned to hold court." N.C. Super. & Dist. Cts. Rule 22 (2018). "Wide discretion should be afforded in the application of local rules so long as proper regard is given to their purpose." *In re J.S.*, 182 N.C. App. 79, 84, 641 S.E.2d 395, 398 (2007)

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[1] Defendant's counterclaims were dismissed in the order on appeal. However, Defendant does not argue this issue in his brief. "The scope of review on appeal is limited to issues so presented in the several briefs. Issues not presented and discussed in a party's brief are deemed abandoned." N.C.R. App. P. 28(a). Accordingly, we do not review this issue.

[2] Our shortening of the Latin phrase "*Lex purgandum est.*" This phrase, which roughly translates "that which is superfluous must be removed from the law," was used by Dr. Martin Luther during the Heidelberg Disputation on April 26, 1518 in which Dr. Luther elaborated on his theology of sovereign grace. Here, we use *purgandum* to simply mean that there has been the removal of superfluous items, such as quotation marks, ellipses, brackets, citations, and the like, for ease of reading.

(*purgandum*). When ruling on a motion to continue, the trial court "must adhere to the particular rules of the reviewing jurisdiction." *ABC Servs., LLC v. Wheatly Boys, LLC.*, ___ N.C. App. ___, ___, ___ S.E.2d ___, ___, COA17-981, 2018 WL 2207327, *1 (2018) (citing *Forman & Zuckerman, P.A. v. Schupak*, 38 N.C. App. 17, 20, 247 S.E.2d 266, 269 (1978)).

Rule 8.1 states that "[m]otions to continue a case set for trial are generally disfavored and will be granted only upon good cause shown." N.C. Tenth Judicial District Civil Rule 8.1 (2015). "A motion to continue must be filed no later than 3 business days before the day of court on which the case is set." N.C. Tenth Judicial District Civil Rule 8.3 (2015). "Motions to continue filed thereafter will not be considered until the calling of the calendar, except where the motion reflects extreme hardship or extraordinary circumstances." *Id.*

Here, Defendant's counsel filed his motion to continue on Friday, May 5, 2017, less than three business days prior to trial. Pursuant to the local rules, his motion could only be considered at the calling of the calendar, unless some extreme hardship or extraordinary circumstances existed. *Id.* Defendant's counsel included his email address below the signature line on his March 13 and May 5 motions to continue. Counsel's failure or refusal to check an email account he published to the court as an acceptable means of communication does not amount to "extreme hardship or extraordinary circumstances." *Id.* Parties to a lawsuit must pay "that attention

which a man of ordinary prudence usually gives his important business, and failure to do so is not excuseable." *Croom v. Hendrick*, 188 N.C. App. 262, 268, 654 S.E.2d 716, 720 (2008) (citation and quotation marks omitted).

According to the "Guidelines for Resolving Scheduling Conflicts in the General Rules of Practice for the Superior and District Courts," the "priority [in resolving scheduling conflicts] shall be: superior court, district court, magistrate's court." N.C. Super. & Dist. Cts. Rule 3.1(a)(3) (2018). Further, "[n]othing in these guidelines is intended to prevent courts from voluntarily yielding a favorable scheduling position, and judges of all courts are urged to communicate with each other in an effort to lessen the impact of conflicts and continuances on all courts." N.C. Super. & Dist. Cts. Rule 3.1(f).

On May 5, 2017, both attorneys were notified by email that Wake County District Court Judge Denning contacted Judge O'Foghludha, who was presiding in Vance County Superior Court. The two judges communicated with one another to resolve defense counsel's scheduling conflict as contemplated by the rules of court. Because of the judges' communication with one another, defense counsel no longer had a scheduling conflict. He simply needed to appear in Wake County District Court as directed. Defense counsel's assertion in the motion to continue that he had a conflicting case in Vance County Superior Court was no longer a legitimate point to argue, and thus, good cause did not exist to grant counsel's motion to continue.

In the case *sub judice*, we conclude that the trial court did not abuse its discretion and followed the local rules in denying defense counsel's motion to continue. *In re J.S.*, 182 N.C. App. at 84, 641 S.E.2d at 398. No extreme hardship or good cause was apparent to prevent Defendant's counsel from proceeding with the trial.

Conclusion

The trial court did not abuse its discretion in denying Defendant's motion to continue and conducting the trial in the absence of Defendant and his counsel. Therefore, we affirm the trial court's denial of Defendant's motion to continue.

AFFIRMED.

Judges HUNTER and INMAN concur.

Report per Rule 30(e).