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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

LAUREN KATTUAH,

Plaintiff and Appellant,

v.

UCLA MEDICAL CENTER,

Defendant and Respondent.

B255474

(Los Angeles County
Super. Ct. No. SC116086)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Samantha P. Jessner, Judge. Affirmed.

The Arkin Law Firm and Sharon J. Arkin for Plaintiff and Appellant.

Bonne Bridges Mueller O'Keefe & Nichols, Carolyn Lindholm; Greines, Martin,
Stein & Richland, Alison Turner, and Carolyn Oill for Defendant and Respondent.

Plaintiff Lauren Kattuah appeals from the summary judgment in favor of defendants Regents of the University of California (Regents) and Langston Holly, M.D. She contends that the court erred by refusing to grant her request for a second continuance of the hearing on the defendants' motion for summary judgment. We affirm.

FACTUAL SUMMARY

Plaintiff was involved in an automobile collision in March 2011 in which she suffered severe injuries to her spine. Paramedics took her to UCLA Medical Center where she underwent surgery led by Dr. Holly.

In February 2012 plaintiff filed a complaint for medical malpractice and medical battery against the Regents (erroneously named as UCLA Medical Center) and Dr. Holly. She alleged that while she was being evaluated by physicians at UCLA Medical Center she was sedated and rendered unconscious; as a result, she was unable to consent to surgery; if she had been conscious and informed of the risks of surgery, she would not have given her consent; defendants thereafter performed surgery on her without her consent and acted negligently toward her in numerous ways that proximately caused her damages.

Plaintiff initially represented herself in propria persona. In March 2012, attorney Doug Linde substituted in as her counsel of record. In October 2012, Bradley Kramer replaced Linde.

On January 15, 2013, defendants filed a motion for summary judgment on the grounds that the treatment of plaintiff complied with the relevant standard of care and did not cause her alleged damages. The motion was supported by the declaration of Michael Wang, M.D., who opined that the surgery performed by Dr. Holly was the only treatment option for plaintiff's spinal injuries and "that Dr. Holly obtained excellent results" He declared that while "[m]ost individuals who sustain injuries such as [plaintiff] sustained . . . become paralyzed," plaintiff "had an amazingly good outcome, with preservation of her neurological function, and full use of all four of her extremities." Based on his review of the medical records, Dr. Wang further opined that plaintiff had

not been sedated to the point of being unable to consent and plaintiff did consent to the surgery.

One week after defendants filed the motion for summary judgment, Kramer filed a motion to withdraw as plaintiff's counsel. Kramer based the motion on the ground that there was "a complete breakdown of communication" between him and plaintiff, which made it "unreasonably difficult to carry out [his] employment and/or representation of [plaintiff] effectively." On January 24, 2013 the court granted the motion but left unchanged the dates for the hearing on the motion for summary judgment: April 17, 2013, and trial, October 7, 2013.

From January through early March 2013, plaintiff contacted 14 attorneys about representing her in this case. None was willing to do so because of the pending motion for summary judgment. Some of the attorneys said they would be willing to discuss taking the case if the hearing on the motion was continued for six months or more. Plaintiff attempted to retain a medical expert to provide an opinion in opposition to the motion for summary judgment, but was informed by the service that represented the expert that the expert would only give his opinion to an attorney of record.

Plaintiff filed an ex parte application for a continuance of the summary judgment motion and the trial.¹ In a declaration supporting the request, plaintiff described her efforts to obtain new counsel and an expert witness, as well as ongoing medical issues related to her injuries. On April 10, 2013, the court granted the request and continued the hearing on the motion to October 17, 2013, and the trial to May 12, 2014.

Plaintiff contacted the lawyers she had previously met and several additional attorneys, but none would take her case.

Plaintiff did not file any opposition to the motion for summary judgment.

On October 15, 2013, two days before the hearing on the motion for summary judgment, plaintiff filed her declaration "in response to defendants' motion for summary

¹ The ex parte application was ostensibly made "via a special appearance by counsel [David C. Byers] appearing solely and exclusively" for the purpose of making the application.

judgment” She set forth her efforts to obtain new counsel and described ongoing medical issues, including having undergone surgery in Germany in July 2013, and her plans for further surgery in November 2013. She concluded: “On October 14, 2013 I met with attorney Randy McMurray who expressed interest in both my underlying motor vehicle case and my medical malpractice case. If I can have a continuance of the motion for summary judgment closer to the trial date so that attorney Randy McMurray can work up the case. Please see his declaration.” Our record does not include any declaration by McMurray or indicate that one was filed.

On October 17, 2013, defendants’ counsel and plaintiff were present in the court. Attorney Randy McMurray was also in the courtroom. Although McMurray could have appeared on behalf of plaintiff for the limited purpose of requesting a continuance (see Cal. Rules of Court, rule 3.36; Judicial Council Forms, form MC-950), he did not do so, and informed the court that he was not counsel of record. The court thereafter denied plaintiff’s request for a further continuance. Nonetheless, the court continued the motion to October 30, 2013, because the court did not have the case file.

On October 30, 2013, the court granted defendants’ motion for summary judgment. The court stated that plaintiff’s declaration did not comply with the requirements for requesting a continuance under Code of Civil Procedure section 437c, subdivision (h).² In addition, the court explained that plaintiff had been previously “granted a very generous continuance” and “[d]efendants are entitled to have the case heard on the merits without further delay.”

Following the entry of judgment, plaintiff timely appealed.

DISCUSSION

Plaintiff contends that the court abused its discretion in denying her October 2013 request for a continuance of the hearing on the motion for summary judgment. She relies in part on subdivision (h) of Section 437c. That subdivision provides: “If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary

² All statutory references are to the Code of Civil Procedure.

adjudication or both that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented, the court shall deny the motion, or order a continuance to permit affidavits to be obtained or discovery to be had or may make any other order as may be just. The application to continue the motion to obtain necessary discovery may also be made by ex parte motion at any time on or before the date the opposition response to the motion is due.”

A party seeking a continuance under this subdivision must submit the required affidavit “*on or before the due date* for the opposition to the motion for summary judgment.” (*Ambrose v. Michelin North America, Inc.* (2005) 134 Cal.App.4th 1350, 1353.) The affidavit ““must show: (1) the facts to be obtained are essential to opposing the motion; (2) there is reason to believe such facts may exist; and (3) the reasons why additional time is needed to obtain these facts. [Citations.]” [Citation.]’ Generally speaking, the party seeking the continuance must ‘provide supporting affidavits or declarations detailing facts that would establish the existence of controverting evidence [Citation.]’ [Citation.]” (*Lerma v. County of Orange* (2004) 120 Cal.App.4th 709, 715.) “[I]t ‘is not sufficient under the statute merely to indicate further discovery or investigation is contemplated. The statute makes it a condition that the party moving for a continuance show “facts essential to justify opposition may exist.”’ (*Bahl v. Bank of America* (2001) 89 Cal.App.4th 389, 397, quoting *Roth v. Rhodes* (1994) 25 Cal.App.4th 530, 548.) The ruling on an application for a continuance under subdivision (h) of section 437c is reviewed for abuse of discretion. (*Jade Fashion & Co., Inc. v. Harkham Industries, Inc.* (2014) 229 Cal.App.4th 635, 643.)

Plaintiff’s October 15, 2013 declaration, filed two days before the date set for the hearing on the motion for summary judgment,³ does not comply with section 437c, subdivision (h). In her declaration, plaintiff summarized her experience with her prior attorneys, her efforts to retain new counsel, and her ongoing medical and personal issues.

³ Although it appears that Plaintiff’s declaration was not served or filed by the date her opposition was due, as required by section 437c, subdivision (h), defendants did not object on that basis and do not assert this issue on appeal.

She concluded with the suggestion that attorney McMurray, who she had met the day before, could “work up the case” if she was given another continuance. The declaration fails to set forth the existence of any facts controverting the evidence offered in support of the motion. The trial court did not, therefore, abuse its discretion in denying a continuance based on section 437c, subdivision (h). (See *Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 101 [no abuse of discretion when application did not comply with statutory requirements].)

Even if the statutory requirements are not met, the trial court has discretion to grant a continuance for good cause. (*Lerma v. County of Orange, supra*, 120 Cal.App.4th at p. 716.) Among the factors bearing on the court’s exercise of discretion are: (1) the length of time the case has been pending; (2) the length of time the requesting party had to oppose the motion; (3) the proximity of the trial date and discovery cutoff; (4) whether the request could have been made earlier; (4) prior continuances; (5) whether the evidence sought is essential to an issue to be adjudicated; and (6) the death or serious illness of an attorney or party. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶ 10:208.1, pp. 10-90 to 10-91 (rev. # 1, 2014).)

Most of these factors weigh in favor of denying the request. The lawsuit had been pending for approximately 20 months. The defendants filed the motion for summary judgment nine months before plaintiff’s request and plaintiff had previously been granted a six-month continuance. At the time plaintiff filed her October 15, 2013 declaration, the trial date was seven months away and it might have been necessary to continue it a second time if plaintiff’s request was granted. As discussed above, she failed to point to any controverting evidence that could be obtained if the continuance was granted. The only factor weighing in favor of plaintiff’s request is the burden of her ongoing medical issues. The court acknowledged this by telling plaintiff: “I understand that you have had a lot of complicating factors in your life.” Even so, the court did not abuse its discretion in concluding that the balance of factors weighed in favor of denying the request for a continuance.

DISPOSITION

The judgment is affirmed. Defendants shall recover their costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

BENDIX, J.*

* Judge of the Los Angeles Superior Court, Assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.