FILED
MAR 24 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ACEY ADRIAN HAROLDSON, Plaintiff-Appellant,	)	Filed March 24, 1981
vs.	)	
EDNA RODENBORN, As Magistrate of Hamilton County, Iowa, Defendant-Appellee.	)	1-20 64579

Appeal from Hamilton District Court - Ralph F. McCartney, Judge.

Plaintiff appeals from district court's order quashing a writ of certiorari to defendant-magistrate alleging that district court erred in quashing the writ because defendant's denial of the continuance in a criminal action involving plaintiff was in excess of her jurisdiction and illegal. AFFIRMED.

Gary S. Gill of Des Moines, Iowa, for plaintiff-appellant.

Thomas J. Miller, Attorney General of Iowa, and Shirley Ann Steffe, Assistant Attorney General, for defendant-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Plaintiff, Acey Adrian Haroldson, appeals from district court's order quashing a writ of certiorari to defendant-magistrate, Edna Rodenborn. He alleges that the district court erred in quashing the writ because defendant's denial of a continuance in a criminal action involving plaintiff was in excess of defendant's jurisdiction and illegal. We affirm.

The parties stipulated to the pertinent facts. A citation and complaint was issued July 7, 1978, charging plaintiff herein with driving 72 miles per hour in a 55 miles per hour zone in violation of section 321.285, The Code 1979 [sic]. On July 17, attorney Gary S. Gill entered an appearance on behalf of plaintiff. Plaintiff entered a plea of not guilty the following day. Trial was set for August 15, 1978. On August 7, attorney Gill made a telephone request for continuance and jury trial. Trial was continued to 9:00 a.m., October 24, 1978. Plaintiff waived his right to speedy trial on August 8. On October 13, 1978, plaintiff requested a second continuance. An October 18 order granted his request and set trial for 9:30 a.m., December 19, 1978. On December 6, defendant granted the State's request for continuance until December 20, 1978, at 9:30 a.m. Notice was mailed to attorney Gill that day. Early in the morning of December 15, 1978, attorney Gill's secretary called defendant and left a message with defendant's secretary requesting another continuance. Defendant called attorney Gill's office but he was not in. Defendant then advised Gill's secretary that she should inform attorney Gill that defendant would grant no further continuance in plaintiff's traffic case. Neither plaintiff nor attorney Gill contacted defendant between December 15th and December 20th. Plaintiff's traffic case was called for trial at approximately 10:00 a.m., December 20, 1978. The county attorney and defendant were present. Plaintiff orally requested a continuance because attorney Gill could not be present due to his involvement in trial of another case in Marion County; plaintiff also produced a copy of the request for continuance but defendant denied the request. Shortly thereafter the Clerk's Office received a copy of the motion for continuance through the mail.

Trial commenced and, after exercising one strike, plaintiff refused to participate further in the proceedings. Defendant thereafter appointed local counsel to represent plaintiff but plaintiff refused to participate in the trial or with appointed counsel. The jury found plaintiff guilty and defendant sentenced him to pay a fine of $30 plus court costs.

Plaintiff filed his petition for writ of certiorari in district court on January 15, 1979, alleging that defendant was without jurisdiction to proceed to try plaintiff without representation of counsel of plaintiff's choice and that defendant proceeded illegally in proceeding with the trial, in attempting to force upon plaintiff a court-appointed counsel, by picking a jury, by submitting the case to the jury, and by entering a judgment against the plaintiff thereon. Following a hearing, district court quashed the writ. Plaintiff's appeal followed.

I. Scope of Review. Iowa's Rules of Civil Procedure limit district court's review in certiorari actions to a determination of whether defendant exceeded her proper jurisdiction or otherwise acted illegally. See Iowa R. Civ. P. 306 and 316. District court's "[r]eview of . . . [defendant's exercise of] discretion is very limited, being merely to determine whether there has been an abuse thereof." Farley v. Glanton, 280 N.W.2d 411, 414 (Iowa 1979). Our review of district court's judgment is governed by rules applicable to appeals in ordinary actions and is limited to assigned error. Iowa R. Civ. P. 318. Because there is no factual dispute in the case before us, no conflicting inferences may be drawn from those undisputed facts. Consequently, our review of the rulings below is at law. State v. Cullison, 227 N.W.2d 121, 126 (Iowa 1975). Our task thus is to determine whether district court erred in concluding that defendant did not abuse her discretion in refusing to grant plaintiff's third request for continuance.

II. Refusal to Grant Motion for Continuance. Plaintiff contends that defendant's refusal to grant his third requested continuance was illegal and in excess of her jurisdiction because: 1) plaintiff was entitled to assistance of counsel at his trial; 2) appointment of local counsel for plaintiff during trial did not overcome his constitutional right to counsel due to the lack of time for preparation by appointed counsel; 3) defendant's failure to give appointed counsel adequate time to fully investigate and prepare and failure to grant the third continuance constituted an abuse of discretion of such magnitude that defendant's act was illegal. After careful review of the entire record, we find no abuse of discretion.

A trial court has broad discretion in ruling on a motion for continuance. That ruling ". . . will be disturbed only where it appears that the trial court has abused its discretion." State v. Wright, 274 N.W.2d 307, 310 (Iowa 1979), (quoting State v. McGinnis, 243 N.W.2d 583, 586 (Iowa 1976)). The court in State v. Gartin, 271 N.W.2d 902 (Iowa 1978), discussed abuse of discretion as follows:

> [The burden upon one alleging an abuse of the court's discretion] is heavy, indeed, for it can only be sustained by showing abuse and prejudice. In the words of a leading treatise on discretion: ". . . The action complained of must have been unreasonable in the light of attendant circumstances—the discretion must have been exercised for reasons clearly untenable or to an extent clearly unreasonable [and] the action must have resulted prejudicially to the rights of the party complaining. Without a union of these conditions, the ruling will stand; and, they concurring, it is seldom that a reversal is refused."

271 N.W.2d at 910-11 (quoting Donahoo, The Scope of Judicial Discretion in the Iowa Criminal Trial Practice, 58 Iowa L. Rev. 1023, 1024 (June 1973) (emphasis in original)).

In this case plaintiff had received two prior continuances grounded on attorney Gill's engagement in other trials. Defendant's refusal to grant the third motion, submitted on the morning of trial, after attorney Gill had been apprised that no further continuance would be granted, does not constitute an abuse of discretion. We further find no authority requiring defendant to sua sponte grant a continuance after appointing local counsel. Finding no abuse of discretion in defendant's actions, we affirm district court's order quashing the writ.

AFFIRMED.