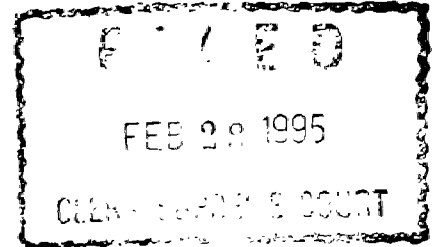


IN THE COURT OF APPEALS OF IOWA

No. 4-570 / 93-1884



IN RE THE MARRIAGE OF JON D.
WEETS AND LOUISE M. LAGE-WEETS

Upon the Petition of
JON D. WEETS,

Appellant,

And Concerning
LOUISE M. LAGE-WEETS, n/k/a
LOUISE M. LAGE,

Appellee.

Appeal from the Iowa District Court for Scott County,
David J. Sohr, Judge.

Jon Weets appeals a modification of the parties'
dissolution decree. **REVERSED AND REMANDED FOR NEW TRIAL.**

Jon D. Weets, Davenport, pro se.

Patricia Zamora of Dwyer, Wing, Zamora, Taylor &
Walters, Davenport, for appellee.

Heard by Hayden, P.J., and Sackett and Huitink, JJ.

HUITINK, J.

Jon Weets appeals a district court order modifying the parties' dissolution decree. We reverse and remand for a new trial.

Jon and Louise Weets's four-year marriage was dissolved in November 1990. The decree ordered Jon to pay alimony in the form of payment of house mortgage debt, real estate taxes and insurance for five years, one-half of the mutually-agreed home maintenance expenses, health insurance premiums and \$650 per month for five years, and premium payments on his own life insurance to guarantee Louise's alimony continue in the event of his death.

In November 1991 Jon was found in contempt for failing to abide by the terms of the decree and sentenced to thirty days in jail. The day before the contempt hearing Jon had filed a petition to vacate or modify the alimony provisions of the dissolution decree based on newly-discovered evidence as well as a substantial change in circumstances.

In January 1992 Louise filed a second contempt action against Jon. Trial on Jon's application to vacate or modify the decree and Louise's second contempt charge was scheduled for August 11, 1993.

On August 10, 1993, Jon's attorney informed him that his anticipated continuance had been denied and these matters would proceed to trial on August 11. Since it was impossible to return from his vacation, counsel assigned trial responsibility to an associate of his law firm. Jon

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objected to this arrangement when he learned this lawyer was opposing counsel's daughter and she did not intend to call Jon's expected witnesses.

Jon's concerns about the propriety of this arrangement were expressed to the trial judge by substitute counsel in his renewed motion to continue. The trial judge summarily denied Jon's requested continuance citing his mandatory deference to the assignment judge's discretion to grant a date of trial continuance. He also referred to other examples of closely-related lawyers representing adverse parties.

On appeal Jon argues the trial judge erred in failing to grant his requested continuance on August 11, 1993. He contends his substitute attorney was not prepared and her relationship with opposing counsel was a prohibited conflict of interest.

Our review of rulings on a motion for continuance is for abuse of discretion. Hawkeye Bank & Trust Nat'l Assn. v. Baugh, 463 N.W.2d 22, 26 (Iowa 1990). In deciding whether to grant or deny a motion for continuance the district court must determine whether substantial justice to the litigants will be better obtained by granting the request. Id. (citation omitted). Injustice may result when a court denies a continuance for less than weighty reasons. Id. (citation omitted). The party requesting the motion must show he or she was prejudiced by the trial court's refusal to grant the requested continuance. Id.

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We believe the trial court's stated deference to the discretion of the assignment judge conflicts with the obligations imposed by the foregoing authorities. The record shows the district court failed to determine whether substantial justice or prejudice would result if the continuance was granted or denied. Even if substitute counsel's stated reasons supporting Jon's requested continuance were not sufficient, the district court's refusal or failure to exercise discretion will not be affirmed by demonstrating the result reached would have been the same upon the exercise of the discretion withheld. Sullivan v. Chicago and Northwestern R.R., 326 N.W.2d 320, 328 (Iowa 1982)(citations omitted).

Even if we assume the court's reasons for failing to grant a continuance constitute an exercise of its discretion, the reasons provided are clearly less than weighty. Id. The trial court's references to the experiences of other lawyers closely related to their opponents offer little if any guidance in making a fair resolution of Jon's dilemma. We find it unnecessary to resolve the allegation of ethical impropriety and simply state Jon's circumstances supported granting his requested continuance. He was forced to rely on substitute counsel whose trial preparations were unknown to him and who also failed to fully express Jon's reasons for requesting a continuance. After considering all of these circumstances, we conclude the motion to continue should have been

granted. Because of our determination on this issue, we need not address the other issue raised. The judgment of the district court is reversed and remanded for new trial.

REVERSED AND REMANDED FOR NEW TRIAL.