



## I.

Seeraj-Montague filed a complaint in November 2015 seeking damages for personal injuries sustained in an automobile accident.<sup>2</sup> The case initially was set for trial in February 2017. After defendants produced a “previously unknown insurance policy shortly before trial,” the trial was continued to March 2017, upon agreement of counsel, “so that [Seeraj-Montague] could provide notice to [the insurer] of the proceedings and ensure availability of the policy funds.” When “it was discovered that [the insurer] had been placed in receivership in the State of Delaware and was no longer operating in Virginia,” the trial was continued to October 17, 2017, upon agreement of counsel, “so that counsel could seek information on and possible service on” the insurer. Because defense counsel was scheduled to appear before this Court in an unrelated matter on that date, the trial was continued, upon agreement of counsel, to October 31, 2017. The circuit court “indicated that there would be no further continuances unless for good cause.”

On October 29, Seeraj-Montague’s counsel, James M. Johnson, became “very ill.” Johnson sought medical treatment on October 30 and notified opposing counsel of his illness. Because Johnson “was still under the effects of the illness on the morning of October 31,” he contacted opposing counsel and the circuit court “to update everyone on [his] condition” and “provided a phone number to chambers in the event that the [court] wanted to verify [his] condition.” When neither Seeraj-Montague nor her counsel appeared for trial, the circuit court *sua sponte* dismissed her action with prejudice.<sup>3</sup>

Seeraj-Montague filed a motion for reconsideration requesting that the circuit court reinstate her complaint in light of the facts surrounding her counsel’s illness justifying a continuance of the trial. Appellees filed a response in which they did not dispute that Johnson was ill and acknowledged that Johnson “called counsel for Defendants and the Court to advise of his need for a continuance.” In her reply, Seeraj-Montague provided details of Johnson’s illness that included vomiting and diarrhea, his medical treatment, as well as Johnson’s communications

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<sup>2</sup> Seeraj-Montague filed a previous complaint that she nonsuited prior to filing the current action.

<sup>3</sup> Although Johnson instructed Seeraj-Montague to appear before the circuit court to request a continuance, she “arrived more than one hour late,” which was after the court had adjourned.

to opposing counsel and court staff. Specifically, she stated that Johnson suffered from “an acute medical condition” that rendered him “unable to ingest food and water for 2 days,” unable “to stand for longer tha[n] 5 minutes,” and ultimately causing Johnson to lose “8 pounds in 3 days.” Seeraj-Montague argued that good cause existed for a continuance of the trial because Johnson was “physically unable to be present at trial” due to the effects of his illness.

The circuit court denied Seeraj-Montague’s motion for reconsideration of the dismissal of her action.

## II.

On appeal, Seeraj-Montague contends that the circuit court erred in refusing to continue the trial and in dismissing her action with prejudice.

The decision whether to continue a proceeding “is addressed to the sound discretion of the [circuit court, which] must consider all the circumstances of the case.” *Autry v. Bryan*, 224 Va. 451, 454 (1982). We will not reverse the decision of a circuit court regarding a continuance unless its action constitutes an abuse of discretion *and* is prejudicial to the rights of the complaining party. *Id.*; *see also Ferguson v. Colonial Pipeline Co.*, 206 Va. 719, 722 (1996). On the other hand, we will “reverse the action of [the circuit court], if, in the exercise of its discretion, it has harshly or unjustly refused a continuance” and where it does not appear that the continuance was sought solely “to delay or evade a trial, and not to prepare for it.” *Myers v. Trice*, 86 Va. 835, 838 (1890).

In particular, we have recognized that generally “a continuance may be granted . . . for the absence of a party or of his counsel, from unavoidable circumstances.” *Id.* at 842. “In all such cases, however, the application should be watched with jealousy, and the discretionary power of the court exercised with caution; but, if there is no sufficient reason to induce the belief that the alleged ground of the motion is feigned, a continuance should be granted, rather than to seriously imperil the just determination of the cause by refusing it.” *Id.*; *see also Mills v. Mills*, 232 Va. 94, 96 (1986).

Under the circumstances of this case, we believe the circuit court’s action constituted an abuse of discretion that was plainly prejudicial to the rights of Seeraj-Montague. Although the circuit court’s initial decision to dismiss the action when neither Seeraj-Montague nor her

counsel appeared for trial may have been a proper exercise of its discretion,<sup>4</sup> the circuit court’s decision to deny the motion for reconsideration upon learning the true nature of Johnson’s illness and the need for a continuance was unduly harsh. There is certainly no indication in the record that counsel’s illness was feigned or that a continuance was sought solely “to delay or evade a trial, and not to prepare for it.” *Myers*, 86 Va. at 838. Furthermore, Johnson’s efforts to communicate his medical condition to Appellees and the circuit court are undisputed.

Accordingly, in consideration of “all the circumstances of the case,” *Autry*, 224 Va. at 454, we conclude the circuit court abused its discretion in denying the motion for reconsideration of its ruling refusing to continue the trial and dismissing Seeraj-Montague’s action with prejudice.

III.

For these reasons, we reverse the judgment of the circuit court and remand this case to the circuit court for further proceedings consistent with the principles stated herein.

This order shall be certified to the said circuit court.

A Copy,

Teste:

A handwritten signature in black ink, appearing to be 'DBA', followed by a horizontal line extending to the right.

Clerk

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<sup>4</sup> The record supports Seeraj-Montague’s assertion that Johnson communicated the fact of his illness to opposing counsel and court staff, but the extent of Judge Smith’s knowledge of the circumstances of Johnson’s illness and need for a continuance is not clear. According to the “Correction Order” entered by Judge Smith, two emails “were received the morning of trial” documenting that Johnson phoned and would not be in court due to a “stomach bug.” Furthermore, the correction order states that Johnson “did not request a continuance but merely informed the Court he would not be present.”