

SUPREME COURT OF THE STATE OF ALASKA

Wagner v. Wagner

299 P.3d 170 (Alaska 2013) · No. S-14403 · Decided April 5, 2013

SUMMARY

The Alaska Supreme Court held that the superior court abused its discretion by denying a pro se litigant’s continuance request and proceeding to trial without first determining whether his work obligations constituted good cause for his absence. The court reversed the finding that the absence was voluntary and remanded for further proceedings, retaining jurisdiction; the dissent would have affirmed.

CASE DETAILS

COURT	Supreme Court of the State of Alaska
WRITING FOR THE COURT	Stowers, Justice; Fabe, Chief Justice; Carpeneti, Justice; Winfree, Justice; Maassen, Justice
JURISDICTION	Alaska
DECIDED	April 5, 2013
DOCKET	S-14403
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Richard Wagner appealed from a divorce decree and related property and debt findings after the superior court denied his request for a continuance, proceeded to trial in his absence, and denied his motion for reconsideration.
STANDARD OF REVIEW	A refusal to grant a continuance is reviewed for abuse of discretion. Abuse of discretion exists when a party has been deprived of a substantial right or seriously prejudiced by the ruling. Whether an absence was voluntary and without good cause is a factual question.
PRECEDENTIAL VALUE	published opinion; precedential
PARTIES	Richard Wagner v. Felicia Wagner

TOPICS

- family law procedure
- divorce
- motion for reconsideration
- appellate procedure
- standard of review

PRACTICE AREAS

family law

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether Richard's telephone call to the court's judicial assistant constituted a legitimate request for a continuance despite not complying with Alaska Civil Rule 40(e)'s written-motion and affidavit requirements.
2. Whether the superior court abused its discretion by denying the continuance and proceeding to trial without determining whether Richard's work obligations provided good cause for his absence.
3. Whether the superior court's property and debt division was proper.

HOLDINGS

1. On the unique facts of the case, Richard's telephone call to the judicial assistant the day before trial constituted a legitimate request for a continuance, even though it did not comply with Civil Rule 40(e)'s formal requirements.
2. The superior court abused its discretion by finding Richard's absence voluntary based solely on his awareness of the trial date and proceeding to trial without first determining whether his work obligations provided good cause for his absence.

KEY QUOTATIONS

"It was error for the superior court to deny Richard's request for a continuance without informing him of the proper manner by which to make a request." (299 P.3d at 172)

"The superior court should have inquired into whether Richard had good cause for failing to attend trial — that is, whether his work commitments demanded his presence on the day of trial — or whether his absence was actually voluntary." (299 P.3d at 175)

"It was an abuse of discretion for the superior court to find that Richard's awareness of the trial date in itself warranted the denial of his continuance request without first considering whether Richard's absence was supported by good cause." (299 P.3d at 176)

FACTUAL BACKGROUND

Felicia and Richard Wagner married in 1993, separated in 2009, and Felicia filed for divorce in 2010. Both parties represented themselves, and the parties disputed the division of two vehicles and Felicia's student-loan debt. Richard missed several hearings and, without filing a written motion or affidavit, telephoned the court's judicial assistant the day before trial to report that work obligations involving emergency fire transportation would prevent his attendance. The superior court treated his absence as voluntary, proceeded without him, and based its property and debt findings on Felicia's testimony alone.

PROCEDURAL HISTORY

Felicia Wagner filed for divorce in the Alaska Superior Court. After several hearings at which Richard did not appear, the superior court denied Richard's telephonic request for a continuance, found his absence from trial voluntary, conducted a one-day trial based solely on Felicia's testimony, divided the parties' property and debt, and entered a divorce decree. Richard's motion for reconsideration was denied, and he appealed. The Alaska Supreme Court reversed the finding that Richard's absence was voluntary and remanded for further proceedings concerning good cause.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The superior court must determine whether Richard's absence from trial was voluntary or supported by good cause, potentially by requesting additional affidavits or conducting an evidentiary hearing. The Supreme Court retained jurisdiction to review the findings unless the superior court finds good cause and orders a new trial.

CASES CITED

- Azimi v. Johns, 254 P.3d 1054, 1059-60 (Alaska 2011)
- House v. House, 779 P.2d 1204, 1206 (Alaska 1989)
- Kaiser v. Sakata, 40 P.3d 800, 803 (Alaska 2002)
- Wright v. Shorten, 964 P.2d 441, 444 (Alaska 1998)
- Breck v. Ulmer, 745 P.2d 66, 75 (Alaska 1987)
- Bauman v. State, Div. of Family & Youth Servs., 768 P.2d 1097, 1099 (Alaska 1989)
- Genaro v. Municipality of Anchorage, 76 P.3d 844, 846 (Alaska 2003)
- Gregoire v. National Bank of Alaska, 413 P.2d 27, 33 (Alaska 1966)
- Siggelkow v. Siggelkow, 643 P.2d 985, 986-87 (Alaska 1982)
- Barrett v. Gagnon, 516 P.2d 1202, 1203 (Alaska 1973)
- Shooshanian v. Dire, 237 P.3d 618, 623 (Alaska 2010)