UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1370

September Term, 2014

VERA YANCEY

v.

CITY WIDE BUS COMPANY, et al.

Woodward,
Kehoe,
Arthur,

JJ.

Opinion by Arthur, J.

Filed: July 14, 2015

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In 2012 and 2013, appellant Vera Yancey unsuccessfully pursued claims before the Maryland Workers' Compensation Commission (the "Commission") for accidental injury and temporary total disability benefits. In 2014, Yancey filed a claim for permanent partial disability benefits as a result of the same accident. The Commission denied that claim as well. Yancey challenged this last finding in the Circuit Court for Baltimore City.

Yancey's employer, City Wide Bus Co., moved for summary judgment, arguing that Yancey had failed to produce expert medical testimony sufficient to rebut the Commission's ruling. At a hearing, the trial court denied Yancey's motion for a continuance, heard arguments from both parties on the summary judgment motion, and affirmed the Commission's ruling.

QUESTIONS PRESENTED

Yancey has taken a timely appeal to this Court. She presents one, multi-part question, which we have rephrased as follows:

> Did the trial court abuse its discretion in denying Yancey's motion for a continuance, or otherwise erroneously deny her a hearing pursuant to Maryland Rule 2-311(f)?[1]

For reasons we discuss below, we answer in the negative and affirm the judgment.

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[1] Yancey originally phrased her questions on appeal as follows:

1. Did the trial court err in failing to allow medical evidence or postponement? Maryland Rule 2-311(f) requires the trial court to hold a hearing before rendering a decision disposing of a claim or a defense?

FACTUAL BACKGROUND

1. Injury and Claims

Yancey claims to have suffered injuries in a work-related accident on December 20, 2011. As a result of that accident, she filed her first workers' compensation claim in February 2012. After a hearing, the Commission found, on September 25, 2012, that Yancey had sustained an accidental injury, but that her "current complaints are not causally connected to the aforesaid accidental injury."

At some indeterminate point, Yancey filed issues with the Commission. She claimed temporary total disability benefits from the date of the accident on December 20, 2011, to the present, and she requested the payment of medical expenses. By order dated April 25, 2013, the Commission denied that claim as to both issues, stating that neither Yancey's claim of disability nor her asserted medical expenses were "causally connected to the incident at work."

Ten months later Yancey filed new issues, this time claiming permanent partial disability benefits as a result of the same accident on December 20, 2011. After a hearing on April 16, 2014, the Commission denied Yancey's claim, concluding as follows:

> [T]he Commission previously found that the claimant had a work related accident but that the claimant's medical condition was not causally related to the accident. The Commission disallowed all temporary total disability and disallowed payment for any medical treatment. Accordingly, the Commission finds no permanent partial disability associated with this claim.

2. Circuit Court Review

Yancey, proceeding without counsel, filed a timely petition for judicial review of this last order in the Circuit Court for Baltimore City on May 15, 2014. The court set a trial date of July 31, 2014.

Although City Wide designated an expert witness, Yancey designated none. Furthermore, in response to City Wide's interrogatories, Yancey stated that she intended to call no witnesses.

On July 30, 2014, one day before the date of trial, City Wide moved for summary judgment. It argued that the Commission's findings were presumed to be correct (*see* Md. Code (1991, 2008 Repl. Vol.), § 9-745(b) of the Labor and Employment Article), and that Yancey had not met her burden of producing sufficient evidence, including expert testimony on the complicated medical question of causation, to establish that the decision was incorrect.

3. Circuit Court Ruling

On the day of trial, the trial court asked Yancey to identify the medical evidence that she would present to make her prima facie case. Yancey replied that she would not present any medical experts, but that she had brought a report from her physical therapist. The following exchange ensued:

[THE COURT]: Well, unless the employer has consented to the presentation of that medical evidence by record only, you're going to need to have witnesses to support the opinion that you're

permanently and partially disabled by reason of this accident. Do you have any such evidence?

[YANCEY]: Well, the evidence came from a medical report. But I just don't have the witness. I put it in the interrogatory when I answered it and the report came today.

[THE COURT]: Mr. Fox?

MR. FOX: Your Honor, for the record, we are not consenting to the authenticity or to accept any medical results in this matter. And we would only proceed with the requirements of the mandates of Maryland law, which do require the expert medical testimony. Without out [*sic*] that, it's our position that we are entitled to judgment as a matter of law.

[THE COURT]: Ms. Yancy [*sic*], I think that puts you in a difficult position in terms of being able to prove your case.

[YANCEY]: Well, can I postpone it and see if I can get a medical witness, a medical provider?

[THE COURT]: No, because the issue is, we have to go all the way back into discovery. We'd have to roll back the schedule to the point where you had an obligation to disclose witnesses so that they could be deposed if necessary. This is the trial date.

. . . .

The request for postponement is denied. The case is called for trial and I will grant judgment for the employer, because the Petitioner acknowledges that she does not have an expert medical witness to support the claim of permanent partial disability. I'm sorry, Ms. Yancy [*sic*], if that seems harsh. But you have to be able to prove your case. And this is the trial date.

[YANCEY]:	Right. I figured that at the end, at the end on the interrogatories, I should have submitted it. As far as being a witness, I put no at this time. When I should have just put the name of my witness.
[THE COURT]:	You should have identified the experts, had them lined up, and have them here.

. . . .

[THE COURT]:	If you had identified and they chose not to depose them . . . then you could have called them as witnesses.

On that same day, the court signed a written order in which it affirmed the Commission's decision because City Wide was entitled to judgment as a matter of law.

DISCUSSION

Yancey, again proceeding *pro se*, does not dispute the legal correctness of the court's summary judgment ruling, but rather challenges its decision to deny her motion to postpone the hearing so that she could come forward with a medical expert witness sufficient to rebut the Commission's findings. Although the court denied the motion for a postponement after hearing from Yancey in open court, she appears to argue that the court could not rule against her without affording her a hearing under Md. Rule 2-311(f).

We are not persuaded. The court properly exercised its discretion in denying Yancey's motion for continuance. In no way was Yancey denied a hearing to which she was entitled under the Maryland Rules.

Ordinarily, the trial court enjoys broad discretion in deciding whether or not to grant a party's motion for a continuance. *See Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006); Md. Rule 2-508.[2] Absent an abuse of that discretion, Maryland appellate courts have not disturbed a trial court's decision to deny such a motion. *See Touzeau*, 394 Md. at 669 (citing *Greenstein v. Meister*, 279 Md. 275, 294 (1977)).

The Court of Appeals has defined abuse of discretion as "'discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.'" *Touzeau*, 394 Md. at 669 (quoting *Jenkins v. City of Coll. Park*, 379 Md. 142, 165 (2003)). The Court of Appeals has specifically held, for example, that denials of motions for continuances constitute abuse when either (1) "the continuance was mandated by law," (2) when "counsel was taken by surprise by an unforeseen event at trial, when he [or she] had acted diligently to prepare for trial," or (3) when, "in the face of an unforeseen event, counsel had acted with diligence to mitigate the effects of the surprise[.]" *Touzeau*, 394 Md. at 669-70 (citations omitted).

Here, the trial court was well within its discretion to refuse Yancey's motion to continue the trial to allow her to identify the expert witness whom she should previously have identified. Yancey openly told the court that she had come to the hearing without any medical expert prepared to rebut the Commission's findings against her. Yancey also told

[2] Rule 2-508(a) states, in pertinent part: "On motion of any party or on its own initiative, the court may continue a trial or other proceeding as justice may require."

the court that at no time since discovery began had she designated any medical expert witness, including in response to City Wide's specific interrogatory on that question. This failure of proof, in itself, provided the court with grounds to enter judgment against her. *See S.B. Thomas, Inc. v. Thompson*, 114 Md. App. 357, 385 (1997) (holding that employer failed to make prima facie case absent medical expert testimony, as connection between accident and asserted disability was a "complicated" subject matter not "within the common understanding of laymen[]")

The trial court rightly noted that by failing to give previous notice of any expert witnesses, Yancey prevented City Wide from deposing them. To grant Yancey a continuance would therefore have permitted Yancey to re-open discovery after the trial was supposed to have occurred. The trial court was unprepared to make such a generous accommodation at such a late date, and we find nothing unreasonable in its conclusion. *See Lancaster v. Gardiner*, 225 Md. 260, 269 (1961) (holding that court did not abuse discretion in refusing continuance because "the hoped for testimony of some undetermined [witness] brought up in the midst of a hearing was at best a dubious basis for granting a postponement"); *Quarles v. Quarles*, 62 Md. App. 394, 401 (1985) ("[f]ailure to adequately prepare for trial is ordinarily not a proper ground for continuance or postponement").

Nor did the circuit court deny Yancey the right to a hearing under Rule 2-311(f).[3] The court denied the postponement at a hearing, in open court, at which Yancey had the opportunity to address the court. If the court were to have set a hearing on the postponement request for some future date, it would have effectively granted the postponement itself. In any event, Yancey never formally requested a hearing, other than the one that she received in open court at the time of her postponement request.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[3] Maryland Rule 2-311(f), in relevant part, states:

> *Hearing—Other motions.*— A party desiring a hearing on a motion . . . shall request the hearing in the motion or response under the heading "Request for Hearing." Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.