

STATE OF MICHIGAN
COURT OF APPEALS

LYNN E. ZOBEL,

Plaintiff-Appellee,

v

CAROLYN JUBERIAN,

Defendant-Appellant.

UNPUBLISHED

June 24, 1997

No. 190627

Kent Circuit Court

LC No. 95-000690-CK

Before: Reilly, P.J., and Hood and Murphy, JJ.

PER CURIAM.

Defendant appeals as of right from judgment in favor of plaintiff. We affirm.

I

Defendant argues that the trial court abused its discretion by conditioning adjournment of trial on the granting of an order restraining defendant from disbursing funds from defendant's bank account, which defendant claims would have been tantamount to a pre-judgment garnishment. We disagree.

Adjournments are discretionary. MCR 2.503(D)(1). In granting an adjournment, a court may impose conditions. MCR 2.503(D)(2). If defense counsel did not like the condition which the trial court imposed, he could have avoided it by not accepting the adjournment. If he did accept the adjournment, then he has no right to challenge the condition. *Richardson v Michigan Bell Telephone Co*, 256 Mich 444, 446; 240 NW 65 (1932).

II

Defendant next claims that the trial court abused its discretion in having an ex parte communication with plaintiff. We disagree.

The record shows that the court learned of defendant's rejection of the adjournment via defense counsel's remarks to the court's staff. Defendant's rejection of the adjournment was also made clear by defendant's inquiry about taking an immediate appeal of the court's adjournment decision. Finally,

the fact that defense counsel returned to court at 1:30 p.m., the time originally set for trial, independently demonstrated that defense counsel rejected the adjournment.

The record indicates that the court did engage in an ex parte communication with the office of plaintiff's counsel to notify plaintiff that trial would be pushed back until 3:00 p.m., and the court asked plaintiff's counsel to forward that message to defense counsel. Such ex parte communication was proper as an administrative, scheduling matter. Code of Judicial Conduct, Canon 3, A(4)(a).

III

Finally, defendant argues that the trial court abused its discretion by conducting the trial without notifying defendant of the time of that trial. We disagree.

The record flatly refutes defendant's argument. Originally, trial was scheduled for the afternoon of September 8, 1995, to begin at 1:30. Defense counsel appeared in court at 1:30 p.m., and the court's clerk informed him that trial would begin at 3:00 p.m. At approximately 2:30 or 2:45 p.m. the court itself specifically informed defense counsel that the trial would begin at 3:00 p.m. Defense counsel, according to his own account, "left about a quarter to 3:00 to make a three o'clock appointment elsewhere." In other words, defense counsel chose to attend an appointment instead of a trial scheduled to begin in a few minutes. The fact that the trial was delayed approximately one and one-half hours from its scheduled time did not justify counsel's failure to appear.

Affirmed.

/s/ Maureen Pulte Reilly
/s/ Harold Hood
/s/ William B. Murphy