

IN THE IOWA DISTRICT COURT FOR MITCHELL COUNTY

MARVIN BRINCKS,

Plaintiff,

v.

CLETUS BRINCKS, INC.,

Defendant.

No. LACV015705

SUPPLEMENTAL ORDER
FOLLOWING JURY TRIAL

This case came before the Court for jury trial beginning August 9, 2023. Plaintiff Marvin Brincks appeared and represented himself. Defendant Cletus Brincks, Inc., appeared by its representative, Jeffrey Johnson, and by its attorney, Aaron Ahrendsen.

This case was submitted to the jury on August 21, 2023. The circumstances of the Court proceeding to submit this case to the jury were unusual, and the Court finds that further explanation is appropriate. Plaintiff Marvin Brincks objected to submitting this case to the jury under the circumstances of this case, and this order addresses this objection.

History of Case

Marvin Brincks and Cletus Brincks were brothers. Cletus Brincks was the sole shareholder of Cletus Brincks, Inc. Cletus Brincks, Inc., owned 216 acres in Mitchell County. Marvin Brincks brought a breach of contract claim against Cletus Brincks, Inc., alleging that Cletus Brincks, Inc., breached an October 3, 2015, contract signed by Cletus Brincks on behalf of Cletus Brincks, Inc. This contract was admitted into evidence as Exhibit 1. This document promises to leave to Marvin Brincks the 216 acres in Mitchell County in the event that Cletus Brincks dies before Marvin Brincks. In addition to this breach of contract action, Defendant and Intervenor brought counterclaims against Marvin Brincks and claims against other persons. The

Court bifurcated the plaintiff's claim from the claims of counterclaim plaintiffs and third-party plaintiffs.

This case was filed in 2019. Trial was scheduled on April 13, 2021. Plaintiff Marvin Brincks moved to continue trial about three weeks prior to trial. The basis for his motion to continue was due to Marvin Brincks' precarious health condition, due to his concerns about wearing a mask pursuant to the Court's COVID protocols, and having difficulty hearing. Marvin Brincks contended that he would have difficulty following the court proceedings if other persons wore masks since, due to his poor hearing, he relies upon being able to see the faces of other speakers. Marvin Brincks also expressed his concern of being exposed to COVID by having to go to trial. The motion to continue was denied on April 6, 2021.

On April 8, 2021, another motion to continue was filed based upon Marvin Brincks' doctor's note from Mayo Clinic indicating that Marvin Brincks would medically be unable to take part in trial. Following receipt of this doctor's note, the Court continued the trial.

Trial was rescheduled on July 19, 2022. At this point in the case, Marvin Brincks no longer had an attorney and was representing himself. On July 11, 2022, Marvin Brincks filed a motion to continue the trial. Marvin Brincks expressed his desire to have more time to find an attorney. This motion was denied by the Court on July 13, 2022. The case proceeded to trial on July 19, 2022. After the jury was selected, Marvin Brincks was unable to continue due to health reasons and was taken to the hospital by ambulance. The Court declared a mistrial.

This case was subject to a dismissal pursuant to rule 1.944 based upon the age of the case. On December 6, 2022, Marvin Brincks filed a motion to continue the case under rule 1.944 to allow the case to be tried as scheduled in 2023. Defendant resisted the motion to remove the case from the application of rule 1.944. The Court granted the motion to remove the application

of rule 1.944 but provided that without further notice or order, the case would be dismissed December 31, 2023, unless the case had been tried or otherwise resolved by that date.

Trial was scheduled to begin August 8, 2023. Due to a shortage of court reporters, the Court found it necessary to move the start of trial to Wednesday, August 9, 2023. During the final pretrial conference, Marvin Brincks read a note from his doctor stating that it was not in his best health interest to take part in trial. The Court questioned Marvin Brincks as to what he would propose. The only suggestion was to let his son, Russell Brincks, represent him at trial. Since Russell Brincks is not a licensed Iowa attorney, the request to have Russell Brincks represent Marvin Brincks was denied. The Court reminded Marvin Brincks that he was the plaintiff in the case and he was the one who was electing to pursue the matter.

On August 8, 2023, Marvin Brincks filed a motion to continue, as Marvin Brincks expressed his concerns that the Court was only allowing three days for trial when he thought it would take more than three days. He noted that a three-day trial pushes him to race and go against his doctor's health recommendations. The Court denied the motion to continue.

During trial, the Court attempted to take more breaks and longer breaks than it would normally take during a jury trial. The first day of trial on Wednesday, August 9, was not a full day, as Plaintiff did not have witnesses available to complete the entire day. Marvin Brincks was able to present his evidence and rest his case during the second day of trial. The second day of trial, Thursday, August 10, was a full day of trial, with most of the afternoon of the second day of trial utilized by Marvin Brincks to cross-examine Defendant's handwriting expert. Cross-examination of the handwriting expert was completed on the third day of trial, Friday morning, August 11. Late in the morning of the third day of trial, Defendant called Witness John Werden and had completed John Werden's direct examination. Marvin Brincks was cross-examining

Witness Werden. In the Court's opinion, Marvin Brincks had completed the essential portions of this cross-examination. Many of his questions of John Werden were objected to by the defendant as being asked and answered, and many of those objections were sustained. The Court was contemplating intervening to cut off further cross-examination since Marvin Brincks appeared to be unable to ask any further questions that had not been already addressed to the witness. At about 11:40 a.m., Marvin Brincks indicated that he was having difficulty hearing apparently due to his hearing aid batteries needing to be replaced. The Court recessed early for lunch. Prior to resuming with the case at 1:00 p.m., the Court was informed that Marvin Brincks had gone to the hospital and was unable to appear as scheduled. The Court continued the case until the following Monday, August 14, 2023. The Court exchanged emails with Marvin Brincks' son, Russell Brincks, and understood that Marvin Brincks was hopeful he could return to trial the following Monday in order to get the case done. However, on Monday morning the Court was informed that Marvin Brincks had again gone to the hospital for treatment. (The email exchanges are attached to this order.) The case was then recessed and was scheduled to resume the following Monday, on August 21, 2023.

On Friday, August 18, 2023, the Court was informed that Marvin Brincks' doctor had told him he should not appear at trial due to his health condition. A doctor's note was filed requesting Marvin Brincks be excused from trial. The Court entered an order excusing Marvin Brincks from trial. The Court, however, also indicated by email correspondence that the Court contemplated submitting this matter to the jury even without Marvin Brincks. By email correspondence, the Court received an objection to proceeding in that manner.

On August 19, 2023, an email was sent to the Court stating that Marvin Brincks did not intend to appear and that because of his health condition, he had decided to give up on his breach

of contract claim. The Court was asked whether or not they needed to file something the next Monday morning. The Court did not see this email until Monday morning, August 21, 2023. On the morning of August 21, 2023, Marvin Brincks did not file a dismissal, but instead filed a Motion to Object to Proceeding to Jury Verdict with Unfinished Trial and Objection to 7 Member Jury Trial. The defendant, who did appear on August 21, 2023, moved that the Court find Marvin Brincks in default due to his failure to appear. The Court made a brief record at that time but believes that a more thorough discussion of these unusual circumstances is warranted.

Discussion of Applicable Law

As noted, this case is now four years old. The usual method in Iowa to clear the dockets of cases that have not been brought to trial is pursuant to Iowa Rule 1.944, which provides dismissal after a certain period of time if the case has not been tried. This issue was before the Court in December of 2022, but the Court elected to continue this case to give Marvin Brincks another opportunity to bring his case to trial. Rule 9.144 reflects the need to bring cases to trial. It is to discourage dilatory tactics and require reasonable diligence to see that court actions are brought to trial promptly and to clear dockets of old or stale cases. *Baty v. City of West Des Moines*, 259 Iowa 1017, 147 N.W.2d 204, 208 (1966).

Due to the application of rule 9.144, Iowa has few cases where there is a situation where the Court has to decide what to do with the case when a party is unable to complete the case even if the failure to complete the case is beyond factors that a party can control. The Court has reviewed a few cases from other states. In *Gaines v. Alexander*, 69 Ga. App. 512, 26 S.E.2d 130 (1943), the defendant sought a continuance of trial due to her illness. It was without dispute that she was ill and was not in a condition to make depositions without serious jeopardy to her health and life. It was recognized that she was aged and decrepit, was about 80 years of age, and had

complications which rendered her too sick to attend any court at all for any conceivable purpose. The trial court denied the motion to continue. The appellate court noted that, “A holding that the court erred in refusing further continuance on the ground of the absence of the defendant on account of sickness from which it appeared that she would never recover, would be equivalent to holding that the plaintiff will never be able to obtain a trial of the case. The law does not contemplate that a plaintiff can never bring his case to trial. Such a situation would be a denial of a plaintiff’s right to have his case adjudicated in a court of justice.” 26 S.E.2d at 133.

In *Chahla v. City of St. Paul*, 507 N.W.2d 29, 32 (Minn. App. 1993), the plaintiff appeared at trial requesting a continuance arguing that he was sick and unable to proceed. The trial court denied the request for continuance and dismissed the action with prejudice. Plaintiff asserted that a continuance was necessitated by his incapacity. The appellate court noted that ordinarily medical incapacity is grounds for a continuance. Plaintiff had made numerous previous continuance requests, and the trial court did not believe that the latest continuance request was justifiably based upon his alleged illness. Affirming the trial court decision, the Minnesota Court of Appeals concluded that the continuance might have been prejudicial to the defendants due to various witness problems. The Court concluded the court did not abuse its discretion by denying the motion to continue. The Court of Appeals reversed because the court dismissed the case with prejudice. The Court found that the trial court, after denial of the continuance, had to give the plaintiff an opportunity to proceed to trial. *Id.* If after being given that opportunity, and if the plaintiff did not go to trial, the trial court could have then properly exercised its discretion to dismiss the case. Since the Court did not give the plaintiff this opportunity, the dismissal was reversed. *Id.*

In *Wasson v. Cox*, 176 Georgia App. 684, 337 S.E.2d 445 (Ga. App. 1985), the defendant sought to continue trial because he was ill and unable to travel to Augusta, Georgia, where the trial was to take place. The request from the defendant did not state when he would be able to travel. The trial court denied the motion to continue. In reviewing the trial court's position, the Court noted that the defendant failed to make any showing that he was expected to improve so as to enable him to be present at a future trial of the case. Under those circumstances, the trial court did not abuse its discretion by denying the motion to continue.

Discussion

Marvin Brincks' health condition was verified by several doctor's notes. Marvin Brincks is of advanced age and was further handicapped by his hearing difficulties. The Court does not question the sincerity of his health concerns. It is significant that there was nothing in any of the medical information that had any promise that Marvin Brincks' condition will improve in the future such that he would be able to complete trial at a later date. Marvin Brincks has been given three opportunities to go to trial, and he has not demonstrated an ability to complete any of the scheduled trials. It is unlikely that if this case was continued or scheduled for a future trial, that the result would be any different.

Even though Marvin Brincks is physically unable to complete trial, as a plaintiff, he still has the duty to use reasonable diligence to see this case is brought to trial promptly. It is unfair to other parties in a case to have endless delayed resolution of cases. The law does not contemplate that parties will never get their case resolved. Endless litigation is unfair to the parties. One of the essential functions of the court system is to allow citizens to come to court and have a final determination made regarding their disputes. If there is no final determination regarding a dispute, the court system is not fulfilling its function. Failure to resolve cases also

negatively impacts other court cases. The Court has limited dates to hear cases and limited staff to assist with cases. Multiple trials and an unresolved case takes away trial dates and court staff that could be used to complete other cases. The docket needs to be cleared out of old or stale cases.

When Marvin Brincks did not appear for trial on August 21, 2023, Defendant moved to find the plaintiff in default and to dismiss the case. Marvin Brincks had been given multiple opportunities to bring this case to trial and to obtain a final determination of this matter. There was ample reason to conclude Marvin Brincks would never be able to complete this case. A dismissal at that time would have been well within the Court's discretion. While the Court decided to take the motion for finding of default under advisement, if no other options were available to the Court, the Court would have granted the motion for a finding of default and dismissed this case.

When Marvin Brincks was unable to appear for trial on August 21, 2023, the Court considered several options, including dismissal of the case. Marvin Brincks' email of August 19, 2023, suggested this result. ("I am willing to drop my plaintiff lawsuit on the breach of contract.") However, no motion to dismiss was filed. Although Marvin Brincks did not move to further continue the trial, the Court considered whether a further continuance would be appropriate. The jury started work on August 9, 2023, and was told it would be done with the trial by Friday, August 11, or Monday, August 14. A further continuance would have extended the jury's possible commitment from three to four days to almost a month. By August 21, it had been ten days from the last time it heard evidence in this case. To further delay trial would have pushed too far the jury's ability to recall the evidence. To continue trial would have also been difficult for the Court to schedule, in that courtroom space and court reporter availability would

limit when further trial dates could be scheduled. Further, the Court had no information that any further delay in trial would have made any difference. Marvin Brincks had ten days without trial and yet was unable to return to trial. A further delay of a week or a month likely would not have mattered. Even though a continuance had not been requested, the Court considered a continuance and rejected any continuance.

The Court also considered declaring a mistrial, as it did in 2022. If the Court declared a mistrial, it is questionable when this case could have been rescheduled for trial. This case is subject to dismissal December 31, 2023, pursuant to rule 1.944 and the Court's prior order. In light of the history of this case, it is unlikely that the Court would have granted any further relief from rule 1.944. Thus, if a mistrial had been declared, an eventual dismissal was likely. This result was even contemplated by Marvin Brincks in the email sent to the Court on August 18, 2023. ("If your honor wants to throw the plaintiff's case out because it wasn't able to finish trial before December 2023, you may do so.")

Instead of continuing or dismissing the case, the Court took the unusual approach of submitting this case to the jury even without Marvin Brincks being present. Marvin Brincks objected to this procedure. Marvin Brincks objected that not all of the evidence had been presented. Marvin Brincks had completed his case, and if there were matters he failed to present during his case, it was his fault and not the Court's. Even though Marvin Brincks contends he had not completed the cross-examination of John Werden, the Court finds that Plaintiff had thoroughly exhausted possible lines of inquiry with John Werden, and the Court was prepared to terminate further cross-examination questions.

Defendant also had plans to call Jeffrey Johnson as a witness but elected not to do so. Accordingly, there cannot be any prejudice to the plaintiff when the defendant decides not to call a witness.

Marvin Brincks complains that Defendant did not put in evidence regarding value of the 216 acres. However, that is not the defendant's burden. Instead, that is a matter that the plaintiff should have presented during his case in chief. For these reasons, the Court finds the plaintiff was not prejudiced by terminating the case without the presentation of further evidence.

Marvin Brincks did not have an opportunity to make a closing argument before the jury. He did not waive his opportunity to make a closing argument, and generally any litigant who would be deprived of the opportunity to make a closing argument to the jury would be prejudiced. This prejudice is lessened because Defendant waived his right to make a closing argument. Further, the Court believes that the jury fully understood the issues and could render a fair and impartial verdict even without closing arguments to explain the facts and the application of the facts to the Court's instructions. The Court also questions how effective Marvin Brincks' closing arguments would have been given his difficulties in attempting to litigate this lawsuit without the assistance of an attorney.

If the Court had not submitted this case to the jury, the result of this case would have been a dismissal based upon the defendant's motion to find the plaintiff in default or based upon dismissal pursuant to rule 1.944. By submitting this case to the jury, at least there was a possibility the jury would return a verdict in favor of the plaintiff. The jury, however, did find against Marvin Brincks, but Marvin Brincks was no worse off because the other options before the Court would have also resulted in dismissal of his claim.

Marvin Brincks also objects to the Court utilizing seven jurors for this case. Marvin Brincks suggests that the Court should have selected alternate jurors. However, the rules of civil procedure do not provide for alternate jurors in a civil case. A panel of 16 jurors are reduced to a jury of eight members. Rule 1.915. The safety valve provided by the rules allows the case to proceed with less than eight jurors in the event that one of the selected eight jurors is incapacitated. Rule 1.917. The Court finds there was no prejudice or violation of the rules to proceed with this case with seven jurors.

For these reasons, Plaintiff's objection to proceeding to the jury verdict with an unfinished trial and objection to a seven-member jury is denied. The Court believes its choice to submit this case to the jury was appropriate under the circumstances of this case.

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[EXTERNAL] Re: Mitchell County Case, LACV015705
Russ Brincks
to:
Rustin Davenport
08/19/2023 12:32 PM
Cc:
"Aaron Ahrendsen"
Hide Details
From: "Russ Brincks" <farmboyminis@gmail.com>
To: "Rustin Davenport" <Rustin.Davenport@iowacourts.gov>
Cc: "Aaron Ahrendsen" <aahrendsen@eichlaw.com>

Your Honor,

My father wishes for me to relay his thoughts to you. Marvin Brincks said, " after careful consideration with my doctors ... 2 emergency room trips and multiple doctors telling me that the high blood pressure and high blood sugars are factors with my diabetes that can result in a heart attack or stroke at any time and may result in my death... I can not ignore medical advice anymore or jeopardize my life for any trial or court case. My health is declining rapidly and I can't even finish a trial that I tried greatly to finish . The last 14 + days I've battled and ignored my serious health issues for the good of the trial and after 2 ER trips I have since concentrated on my doctors recommendations to focus on getting my high blood pressure and high blood sugars under control. I do not have legal counsel (due to my former attorney hanging on with his contract) I have no attorney to rely on for help in understanding court rules while I focus on my health. But I'm making an honest effort to be forthcoming to you in a timely manner while I juggle my health issues.

Therefore, I am willing to drop my plaintiff lawsuit on the breach of contract claim. If there is something I need to officially file to the court could someone please tell me to do so. I do not have a file or the ability to have someone else help me this weekend file it. It would have to be done Monday morning in person by sending my wife or son to the Mitchell county clerk of court office or emailing it to you. I pray to the court for guidance.
Thank You, Marvin Brincks "

On Friday, August 18, 2023, Rustin Davenport <Rustin.Davenport@iowacourts.gov> wrote:
I understand your position.

From: "Russ Brincks" <farmboyminis@gmail.com>
To: "Rustin Davenport" <Rustin.Davenport@iowacourts.gov>
Cc: "Aaron Ahrendsen" <aahrendsen@eichlaw.com>
Date: 08/18/2023 03:43 PM
Subject: [EXTERNAL] Re: Mitchell County Case, LACV015705

Your Honor,

I've just relayed your email to my dad. He would need time digest this... he is objecting and stating Werden and Johnson had not finished on the witness stand. He wanted to question them especially Mr. Johnson. There were no closing statements made... witnesses were not finished . The trial was condensed already in length, a 7 member jury was selected. The jury can't reach a full unbiased conclusion to make a verdict without hearing from all witnesses, including the one already on the

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8/22/2023

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stand. Closing statements are important and part of judicial process to a fair trial. The jury knows the defense hasn't rested their case.

To go to verdict without finishing a trial would not serve justice or the ability for the jury to have all the facts in order to reach a clear verdict.

If your honor wants to throw the plaintiffs case out because it wasn't able to finish trial before December 2023 you may do so. But to go forward without a plaintiff and a completed normal trial would be unfair justice and biased toward the defense. Marvin Brincks wishes you to know he objects to the case going forward to a jury without him physically able to finish the trial. He has not hid his health conditions and put forth earnest effort at trial.

Marvin said without him in attendance to finish the trial the jury may make many assumptions why Marvin Brincks didn't finish. The truth is his health was the SOLE factor in not being able to finish and the jury cannot be told that because it would be a bias. In jury selection we all heard jurors discarded because they questioned why Marvin Brincks didn't have a attorney. It is reasonable to assume these jurors serving will have similar curious questions why the trial didn't fully finish and where Marvin Brincks is at. That's legitimate for any open ended trial that stops abruptly to leave a jury confused. The bias formed from this could work either way. Mr. Ahrendsen would be the first to appeal if the plaintiff prevailed.

Inevitably, Marvin Brincks wants you to know he doesn't have legal counsel and needs more time to obtain legal advice and understand this latest development . This added stress is opposite to what the doctors recommended to my dad. If Mr. Ahrendsen wants my dad to die from this case he made succeed. Throw the case out Your Honor but please don't allow a ruling when trial witnesses were on stand and no closing statements or plaintiff can be present.

Sincerely, Marvin Brincks

Russell Brincks

On Friday, August 18, 2023, Rustin Davenport <Rustin.Davenport@iowacourts.gov> wrote:

Thank you for letting us know. I respect your decision. I believe that it is possible to submit this case to the jury, and I plan to proceed to do so on Monday. I will have the jury report Monday morning as scheduled, and I will make a further record at that time. Judge Davenport.

From: "Russ Brincks" <farmboyminis@gmail.com>
To: "Rustin Davenport" <Rustin.Davenport@iowacourts.gov>
Cc: "Aaron Ahrendsen" <aahrendsen@eichlaw.com>
Date: 08/18/2023 01:55 PM
Subject: [EXTERNAL] Re: Mitchell County Case, LACV015705

Your Honor,

My father has asked me to relay this message to you by email. After an appointment with one of my doctors today I have to go by the recommendation of all my doctors to stop the stress that's causing my continued high blood pressure and high blood sugars to spike. Putting my life in danger. Due to my current health issues and my doctors recommendations I will not be able to attend or represent myself at trial August 21, 2023.

I'm letting you know today (August 18, 2023) so the court and court reporter are aware.

Thank You,
Marvin Brincks

On Monday, August 14, 2023, Rustin Davenport <Rustin.Davenport@iowacourts.gov> wrote:

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8/22/2023

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We are in recess until Monday, June 21, 2023 at 9:00 a.m. If for any reason Marvin is unable to be in court next Monday, please let me know.

From: "Russ Brincks" <farmboyminis@gmail.com>
To: "Rustin Davenport" <Rustin.Davenport@iowacourts.gov>
Cc: "Aaron Ahrendsen" <aahrendsen@eichlaw.com>
Date: 08/14/2023 07:46 AM
Subject: [EXTERNAL] Re: Mitchell County Case, LACV015705

Headed to ER. He woke up nauseous dizzy . Please pray for him.
Russell

On Sunday, August 13, 2023, Rustin Davenport <Rustin.Davenport@iowacourts.gov> wrote:
Thank you for getting back to me. I am crossing my fingers that your father can be in court on Monday.

From: "Russ Brincks" <farmboyminis@gmail.com>
To: "Rustin Davenport" <Rustin.Davenport@iowacourts.gov>
Cc: "Aaron Ahrendsen" <aahrendsen@eichlaw.com>
Date: 08/13/2023 01:03 AM
Subject: [EXTERNAL] Re: Mitchell County Case, LACV015705

Judge, thank you! I've had my hands full and apologize for the lateness of this email . Dad's blood sugars were dangerously high and he got sick to his stomach and very dizzy which throws off everything including his balance . ER said he's got to rest and get those blood sugars down or get him up to Rochester to see Dr. Wermers. Blood sugars aren't just what you eat. Sitting with limited physical activity during court hours and stress aren't helpful but in honesty diabetes you can do everything right and it still takes control. Something you learn to live with. I missed a big clue Friday when he started mumbling more and his thoughts slow down. He's trying hard to get those blood sugars down and wants to finish court. If anything new comes up I'll let you know as soon as possible.
Good night, Russ Brincks

On Friday, August 11, 2023, Rustin Davenport <Rustin.Davenport@iowacourts.gov> wrote:
Russell, my best to your father. I sent the jury home today. We will try to resume Monday at 9:00 a.m. I am having the jury report at 10:00 a.m. Monday. If you have information you can share regarding your father, you can email me. I will be checking my emails during the weekend. Thank you. Judge Davenport.



State of Iowa Courts

Case Number
LACV015705
Type:

Case Title
(RTD)MARVIN BRINCKS V. JEFFREY A. JOHNSON, ET AL.
OTHER ORDER

So Ordered

Rustin Davenport, District Court Judge,
Second Judicial District of Iowa

Electronically signed on 2023-08-23 14:07:50