

Fifth Circuit Court of Appeal State of Louisiana

No. 26-C-271

WILLIESTEEN BURROUGHS

versus

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONS, OFFICE OF MOTOR VEHICLES AND CITY OF
WESTWEGO

IN RE STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONS
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT
COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE
FRANK A. BRINDISI, DIVISION "E", No. 862,813

TRUE COPY

September 03, 2026



LINDA TRAN
DEPUTY CLERK

Panel composed of Judges Stephen J. Windhorst,
Timothy S. Marcel, and Michael P. Mentz, Pro Tempore

WRIT DENIED

In this trip-and-fall matter, defendant contests the trial court's grant of a motion to continue a hearing on its motion for summary judgment. For the reasons that follow, this writ is denied.

FACTS:

Plaintiff Williesteen Burroughs tripped and fell outside of Westwego City Hall. Plaintiff alleged in her petition that either the City of Westwego or Louisiana Department of Public Safety and Corrections (defendant or "DPSC") or both held garde over the building. Westwego initiated discovery a little over a year after plaintiff filed.

Plaintiff and DPSC deposed Westwego under La. C.C.P. art. 1442. DPSC filed the motion for summary judgment on the issue of DPSC's lack of due diligence on January 30, 2026. On February 5, 2026, Plaintiff received service of the rule to show cause setting the summary judgment hearing on March 19, 2026. Plaintiff's opposition deadline was March 4, 2026, allowing Plaintiff one month to complete the Westwego's 1442 deposition before the hearing. Plaintiff filed a motion to continue the hearing on February 24, 2026, arguing that she did not have an adequate opportunity for discovery because of DPSC's pending 1442 deposition and the pending completion of Westwego's deposition through a second 1442 representative. Plaintiff took DPSC's full deposition on March 2, 2026. On March 4, 2026, Plaintiff filed an opposition to the motion for summary judgment out of an abundance of caution in the event the motion to continue was denied, and attached the entire transcript of DPSC's 1442 deposition. Westwego filed no opposition to the motion for summary judgment.

DPSC opposed plaintiff's motion to continue, arguing that the continuance should be denied because Plaintiff failed to file an La. C.C.P. art. 967(C) affidavit or show good cause for a continuance due to an inadequate opportunity for discovery.

At the hearing on the motion to continue, Plaintiff argued that she was entitled to a continuance to submit Westwego's completed 1442 deposition in opposition to summary judgment. Plaintiff's counsel claimed that he had made "diligent efforts to try to get this deposition scheduled," to no avail.

The trial court granted the continuance without assigning reasons. DPSC offered Westwego's March 26, 2025 interrogatories into evidence without objection at the hearing, showing that the parties were engaged in discovery for nearly ten months before DPSC filed the motion for summary judgment and almost a year

before the hearing. Counsel for Westwego did not appear at the hearing or file any memorandum regarding the motion to continue.

Now before this court, plaintiff argues that La. C.C.P. art. 966(C)(2) governs plaintiff's motion to continue, which was filed before the opposition deadline, before the hearing and by contradictory motion heard in open court. The text of La. C.C.P. art. 966(C)(2) reads simply, "For good cause show, the court may order a continuance of the hearing." Plaintiff underscores that the Article lacks an affidavit requirement, unlike Article 967(C).

On the other hand, defendant contends that plaintiff's motion to continue lacked the specificity required to demonstrate that further discovery was necessary, and that it lacks an adequate remedy on appeal because allowing the ruling to stand would allow plaintiff to enter more evidence into the record, when defendant avers it is legally entitled to the record as it stood prior to the motion to continue.

DISCUSSION:

The determination of whether a trial court should have granted a continuance of a summary judgment hearing is reviewed for abuse of discretion. *Colson v. Colfax Treating Co., LLC*, 17-913 (La. App. 3 Cir. 4/18/18), 246 So.3d 15.

Louisiana Code of Civil Procedure article 1601 provides that a continuance may be granted in any case if there is good ground therefor. Furthermore, as stated above, La. C.C.P. art. 966(C)(2) reads as follows: "For good cause shown, the court may order a continuance of the [summary judgment] hearing." Courts have thus recognized that good cause independent of art. 967(C)—such as counsel withdrawal or military duty—can support a continuance even without a formal affidavit under that Article.

In *Badeaux v. Watson*, the trial court initially granted the plaintiff's unopposed motion to continue the summary judgment hearing even though the plaintiff had failed to file an affidavit or other proof showing a genuine issue for trial—the

continuance was granted on the first request, though the court ultimately denied a second continuance and summary judgment was entered. *Badeaux v. Watson*, 22-0634 (La. App. 4 Cir. 12/15/22), 353 So.3d 764. This case presents fairly analogous facts to the case at bar—however, in that matter, the initial continuance the trial court granted was unopposed.

In *Louisiana State Bd. of Dentistry v. Baker*, the Second Circuit held that a dentist was entitled to a continuance of the summary judgment hearing after his counsel withdrew on the day of the hearing, reversing and remanding the trial court’s grant of summary judgment—a circumstance entirely independent of the Article 967(C) affidavit requirement. *Louisiana State Bd. of Dentistry v. Baker*, 33,828 (La. App. 2 Cir. 9/27/00), 768 So.2d 683.

Similarly, in *Bell v. Puyau*, the First Circuit recognized that a trial court’s grant of a continuance based on good cause—there, the plaintiff’s attorney being ordered to report for temporary military duty—was proper and reset the statutory deadlines for filing opposition documents. *Bell v. Puyau*, 20-0265 (La. App. 1 Cir. 12/30/20), 318 So.3d 178.

The defendant in this case largely offered jurisprudence wherein the appellate courts affirmed *denials* of a motion to continue a summary judgment hearing based on the lack of an Article 967(C)¹ affidavit.² However, it pointed to none that *reversed*

¹ Louisiana Code of Civil Procedure article 967(C) reads as follows: “If it appears from the affidavits of a party opposing the motion that for reasons stated he cannot present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.”

² *Duhe v. Weber’s IGA Store*, 01-383 (La. App. 5 Cir. 10/17/01), 800 So.2d 1002 (affirming denial); *Finley v. Lakeland Partners, LLC*, 19-913 (La. App. 3 Cir. 6/3/20), 298 So.3d 837 (affirming denial); *Robinson v. Williams*, 24-0201 (La. App. 1 Cir. 12/11/24), 404 So.3d 821 (affirming summary judgment); *Ellis v. Louisiana Board of Ethics*, 17-0385 (La. App. 1 Cir. 11/1/17), 233 So. 3d 722 (same); *Charlot v. Alabama Great Southern R.R. Co.*, 98-0895 (La. App. 4 Cir. 6/24/98), 716 So.2d 906 (same); *Wiltz v. Floor & Decor Outlets of America*, 15-516 (La. App. 5 Cir. 2/24/16), 186 So.3d 1204 (affirming denial of a second continuance).

a trial court's granting a motion to continue a summary judgment hearing for lack of an Article 967(C) affidavit.

The only cases in which Louisiana's appellate courts have reversed the grant of a summary judgment continuance involved an effort to revive an opposition deadline that had already passed. In *Newsome v. Homer Memorial Medical Center*, 10-0564 (La. 4/9/10), 32 So.3d 800, the Louisiana Supreme Court held that the trial court abused its discretion by granting a continuance solely to allow the plaintiffs' untimely expert affidavit to be filed in compliance with the filing delay. In *Mahe v. LCMC Health Holdings LLC*, 23-0025 (La. 3/14/23), 357 So.3d 322, the Louisiana Supreme Court reversed a continuance sought the day before the hearing, after the plaintiff had already failed to meet the mandatory fifteen-day opposition deadline of Article 966(B)(2), reiterating that when a continuance is granted solely to allow the consideration of untimely filed pleadings or other summary judgment evidence, the "good cause" standard has not been met. *See also Auricchio v. Harriston*, 20-01167 (La. 10/10/21), 332 So.3d 660.

Here, plaintiff filed the motion to continue the hearing on February 24, 2026, well in advance of the May 4, 2026 opposition deadline and three weeks prior to the May 19, 2026 hearing. Out of an abundance of caution, plaintiff also filed an opposition. However, the trial court did not abuse its discretion in choosing to grant the timely-filed motion to continue that was filed prior to the opposition deadline.

Because we do not find that the trial court abused its vast discretion in granting the motion to continue the hearing, this writ is denied.

Gretna, Louisiana, this 3rd day of September, 2026.

MPM
SJW
TSM

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **09/03/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

A handwritten signature in blue ink that reads "Curtis B. Pursell".

CURTIS B. PURSELL
CLERK OF COURT

26-C-271

E-NOTIFIED

24th Judicial District Court (Clerk)
Honorable Frank A. Brindisi (DISTRICT JUDGE)
Patrick K. Doell (Relator)

Elizabeth B. Murrill (Relator)
George B. Recile (Respondent)
James L. Donovan, Jr. (Respondent)

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