



## **Washington Court of Appeals Affirms Summary Judgment Against Unrepresented Plaintiff for Failing to Follow Procedural Rules**

**From the Desk of Josh P. Hayward:** Unrepresented parties occasionally get the benefit of the doubt from trial courts when they miss deadlines. Often, an unrepresented party must miss several deadlines and/or court appearances before their case is dismissed. How much leeway must the trial court give an unrepresented plaintiff before the Court of Appeals upholds a dismissal? Read on to find out.

**Claims Pointer:** In this slip and fall case, an unrepresented plaintiff brought a premises liability claim against WinCo foods after falling in one of its stores. After missing two deadlines to file responses to WinCo's Motion for Summary Judgment, the judge denied plaintiff's requested continuance and granted WinCo's Motion for Summary Judgment. The Court of Appeals upheld the dismissal. This case, although unreported, provides guidance on how much leeway a trial judge needs to give an unrepresented party.

**[George v. Winco Foods, LLC, No. 76661-9-1, 2018 Wash. App. LEXIS 2200, \(Ct. App. Sep. 24, 2018\) \(unpublished\).](#)**

In June of 2015, Margaret George ("Plaintiff") slipped and fell in the aisle of a WinCo Foods ("WinCo") in Washington. On May 5, 2016, Plaintiff filed suit, claiming that she slipped on a "clear waxy substance" and was injured as a result. The court set a discovery cutoff date of March 13, 2017. During the course of litigation, Plaintiff became an unrepresented party (The opinion is unclear on when this occurred).

Prior to the discovery cutoff, WinCo filed a Motion for Summary Judgment ("MSJ"), relying on an affidavit provided by its employee, Steven Kneller. The affidavit established that Plaintiff had spoken with a WinCo employee sometime after the incident and said that "she didn't see anything on the floor." Additionally, Mr. Kneller stated that he had inspected the area after Plaintiff's fall and had observed nothing on the floor. WinCo also included a copy of surveillance footage showing Plaintiff's fall.

A hearing on WinCo's MSJ was set for February 24, 2017, but Plaintiff failed to file a response. Instead, Plaintiff filed a motion for a subpoena *dues tecum* seeking any surveillance video in WinCo's possession showing the subject incident as well as a list of cleaning agents used at the store in question. At the hearing, the court noted that Plaintiff had failed to respond to WinCo's MSJ, and sought an explanation for her failure to do so. Plaintiff explained that her busy work schedule and personal life prevented her from examining the evidence and filing her response. The court, after describing to Plaintiff the requirements of the Washington Rules of Civil Procedure, asked her if she wanted a continuance of the MSJ hearing. Plaintiff responded that she did, and the hearing was continued until March 10, 2017.

Prior to the second hearing date, Plaintiff again failed to provide a response to WinCo's MSJ. At the hearing, she asked for a second continuance, arguing that she did not have adequate time to view the surveillance video provided to her and that she needed to locate an "expert floor witness" to testify. The court denied her request, noting that the discovery



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cutoff date was only three days after the hearing. After reviewing WinCo's motion and the evidence provided, the court granted the motion and dismissed the case.

Plaintiff appealed, arguing that the trial court erred in denying her second requested continuance. The Washington Court of Appeals reviewed the trial court's ruling for abuse of discretion, noting that "[a] court abuses its discretion when it bases its decision on unreasonable or untenable grounds." The court explained that to prevail in a motion requesting a continuance of a summary judgment hearing, the moving party "must provide an affidavit stating what evidence it seeks and how th[at] evidence will raise an issue of material fact precluding summary judgment." A court may deny a motion for a continuance when "(1) the requesting party does not offer a good reason for the delay in obtaining the desired evidence; (2) the requesting party does not state what evidence would be established through the additional discovery; or (3) the desired evidence will not raise a genuine issue of material fact."

After reviewing the record from the trial court, the Court of Appeals held that Plaintiff "failed to establish any reason for the delay in obtaining evidence other than her pro se status and her own busy schedule." Plaintiff argued that the trial court erred in denying her second requested continuance "because she was unaware that she needed to provide affidavits in opposition to [WinCo]'s summary judgment motion, and she was unaware of the case schedule." Further, she argued that "she did not understand how to file pleadings or serve them on opposing counsel" and that the trial court denied her second requested continuance "on technicalities."

The Court of Appeals was unpersuaded by Plaintiff's arguments. In response to her blanket argument that the trial court granted WinCo's MSJ on "technicalities," the court noted that "complying with the case schedule and timely filing a proper response to a motion for summary judgment are not technicalities." Moreover, it noted that a "pro se litigant is held to the same standard as an attorney, including compliance with all procedural rules." Accordingly, the court ruled that Plaintiff had failed to establish that the trial court abused its discretion by denying her second requested continuance. Further, because Plaintiff failed to appeal the trial court's grant of summary judgment in favor of WinCo, it affirmed the grant of summary judgment and dismissed Plaintiff's lawsuit.

This case serves as a reminder that, although unrepresented parties are often given leeway, such leeway is not unlimited. Unrepresented parties should be held to the same standard as attorneys in following the Washington procedural rules.

**NOTE:** This opinion has not been published. It is provided to demonstrate how the court approaches the issues involved in the case. It cannot be cited as authority to a court of law.

View full opinion at: <https://www.courts.wa.gov/opinions/pdf/766619.pdf>



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