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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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*In re* ESTATE OF H.K.L. PETERSON ) Appeal from the Circuit Court  
and H.K.L. PETERSON, ) of Winnebago County.  
)  
) No. 15-P-223  
)  
) Honorable  
(Virginia P., Petitioner-Appellant, v. ) Lisa R. Fabiano,  
Deborah P., Respondent-Appellant.) Judge, Presiding.

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PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.  
Justices Burke and Hudson concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not abuse its discretion in denying the petitioner's motion for a continuance.

¶ 2 On April 30, 2015, the petitioner, Virginia P., filed a petition for temporary and permanent guardianship of her two minor grandchildren. The matter was set for trial on February 1, 2016. On January 25, 2016, the petitioner filed a motion to continue the hearing. On January 29, 2016, the trial court denied the motion to continue. On February 1, 2016, following a hearing at which the petitioner represented herself *pro se*, the trial court denied her petition for temporary and permanent guardianship. On appeal, the petitioner argues that the trial court abused its discretion in denying her motion to continue. We affirm.

¶ 3

BACKGROUND

¶ 4 On April 30, 2015, the petitioner filed a petition for temporary and permanent guardianship of her two minor grandchildren: a female, H.K.L. Peterson, born in October 2006, and a male, H.K.L. Peterson, born in April 2009. In the petition, the petitioner alleged the following facts. The minors had resided with her since 2006. The respondent, Deborah P., was the minors' mother. The respondent periodically visited with the children. In June 2009, the respondent consented to granting guardianship of the minors to the petitioner. On August 26, 2013, the respondent filed a petition to terminate guardianship. On July 22, 2014, following an evidentiary hearing, the trial court granted the petition to terminate guardianship. That order set forth a transition period for the children from the petitioner's residence to the respondent's residence. The transition was to be completed by August 25, 2014. The respondent did not take steps to accomplish the transition and the minors were anxious and upset about being taken away from the only home they had ever known. The petitioner needed to attend to the medical needs of the children and could not do so in the absence of guardianship.

¶ 5 On May 8, 2015, the trial court appointed a guardian *ad litem* (GAL) for the minors and granted the petitioner temporary guardianship of the minors. On October 1, 2015, after an in-chambers pre-trial conference between the trial court, the parties' attorneys, and the GAL, the trial court entered an order terminating the temporary guardianship and revoking the letters of office issued to the petitioner. There is no record of what was discussed during this conference. The trial court also set the hearing on the petition for permanent guardianship for December 14, 2015.

¶ 6 On October 19, 2015, the petitioner's attorney filed a motion to withdraw, which was granted. On October 29, 2015, substitute counsel filed an appearance. On November 9, 2015, the petitioner filed a motion to reconsider the order terminating temporary guardianship. The trial court denied that motion on the same day and reset the hearing on the petition for permanent

guardianship for February 1, 2016. On December 14, 2015, the petitioner's substitute counsel filed a motion to withdraw. On December 18, 2015, the trial court granted the motion to withdraw, granted the petition 21 days to obtain new counsel, and set the case for status on January 11, 2016.

¶ 7 On January 11, 2016, following the status hearing, the trial court entered an order indicating that the matter remained set for hearing on February 1, 2016, and that the petitioner would be expected to appear with counsel or proceed *pro se* on that date. On January 25, 2016, the petitioner filed a *pro se* appearance and a motion to continue the hearing. In that motion, the petitioner alleged that she began experiencing eye problems on December 25, 2015, and since that time she had undergone three eye surgeries and still needed further medical attention. She further alleged that she had retained new counsel on January 12, 2016, but on January 22, 2016, the attorney advised her that he would no longer represent her. The petitioner requested additional time to obtain another attorney. On January 29, 2016, the trial court entered an order denying the motion to continue. The written order did not contain the reasons for the trial court's determination. Although the record indicates that the parties appeared in court on that date for hearing on the motion, there is no report of proceedings contained in the record on appeal. On February 1, 2016, following a hearing at which the petitioner represented herself *pro se*, the trial court denied the petition for temporary and permanent guardianship. Thereafter, the petitioner filed a *pro se* notice of appeal.

¶ 8

#### ANALYSIS

¶ 9 On appeal, the petitioner, now represented by counsel, argues that the trial court erred in denying her motion to continue. The decision to grant or deny a motion for continuance is a matter within the trial court's discretion and should not be overturned on appeal unless that discretion has been abused. *Martinez v. Scandrolis*, 130 Ill. App. 3d 712, 715 (1985). "A critical

factor in the review of such rulings is whether the party which sought the continuance showed diligence in proceeding with the cause.” *Id.* A party does not have an absolute right to a continuance. *Thilman & Co. v. Esposito*, 87 Ill. App. 3d 289, 294 (1980).

¶ 10 In the present case, we cannot say the trial court abused its discretion in denying the petitioner’s motion to continue. Under the rule in *Foutch v. O’Bryant*, 99 Ill. 2d 389 (1984), the “appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis.” *Foutch*, 99 Ill. 2d at 391-92. “Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.” *Foutch*, 99 Ill. 2d at 392. In this case, the record indicates that there was a hearing on the motion to continue. However, we lack transcripts (or transcript substitutes) for that hearing, and, under the principles of *Foutch*, we therefore must presume that the trial court’s determination was in conformity with the law.

¶ 11 Moreover, the evidence in the record before us supports the trial court’s determination. At the time of the motion to continue, the trial court had already allowed substitution of counsel on two occasions. The petitioner was aware of the February 1, 2016, hearing date on her petition since November 9, 2015. On January 11, 2016, the petitioner informed the trial court that she still had not retained counsel. However, there is no indication in the record that she informed the trial court of her health issues on that date or indicated that those issues were compromising her ability to retain counsel. The petitioner did not file her motion to continue until six days before trial was set to begin. We acknowledge that the petitioner alleged that she had retained counsel on January 12, 2016, and that counsel had informed her that he would not represent her on January 22, 2016. However, on December 18, 2015, the trial court had informed the petitioner that she had 21 days to secure new counsel. By the time of the February 1, 2016, hearing, the

petitioner had had twice that amount of time to secure new counsel. As such, the record reveals that the petitioner had adequate time to secure a new attorney, but failed to do so. “Abuse of discretion is only found if no reasonable person would decide as did the trial court.” *Selvy v. Beigel*, 309 Ill. App. 3d 768, 774 (1999). Based on the record before us, we cannot say that the trial court abused its discretion in denying the petitioner’s motion for a continuance.

¶ 12 The petitioner argues that the trial court’s order denying her petition for temporary and permanent guardianship should be reversed because she was prejudiced by the denial of her motion to continue. The denial of a motion to continue is not grounds for reversal of the final judgment unless the complaining party was prejudiced by such denial. *In re M.R.*, 305 Ill. App. 3d 1083, 1086 (1999). Such prejudice must be shown by demonstrating a fair probability of a different outcome. *In re A.F.*, 2012 IL App (2d) 111079, ¶ 37. Here, the petitioner argues only that she was prejudiced by being forced to pursue her case without the benefit of counsel but does not provide any argument as to how or why being represented by counsel would have changed the outcome with respect to her guardianship petition. The appellate court is not a depository in which the appealing party may dump the burden of argument and research. *Pecora v. Szabo*, 109 Ill. App. 3d 824, 825-26 (1982). Accordingly, any argument that she was prejudiced is forfeited. *Id.* at 826.

¶ 13 CONCLUSION

¶ 14 For the foregoing reasons, the judgment of the circuit court of Winnebago County is affirmed.<sup>1</sup>

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<sup>1</sup> Illinois Supreme Court Rule 311 (eff. Feb. 26, 2010) mandates that where, as here, an appeal involves an issue of child custody, this court must file its decision within 150 days after the filing of the notice of appeal “[e]xcept for good cause shown.” In this case, 150 days expired

¶ 15 Affirmed.

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on July 28, 2016. This court was not able to resolve this appeal by that date because of the petitioner's repeated motions for extension of time to file her briefs. Because we granted the petitioner's motions, the briefing in this case was not complete until July 14, 2016. As this court has made every effort to handle this matter efficiently and expeditiously, we find good cause for issuing our disposition after the 150-day deadline.