

## ROBINSON v. WOODS

California Court of Appeal, Second District, 2008.

168 Cal.App.4th 1258, 86 Cal.Rptr.3d 241.

MALLANO, PRESIDING JUSTICE.

Defendants moved for summary judgment, noticing the hearing for less than the statutorily required period and setting the hearing within 30 days of the trial date absent prior court approval. Plaintiffs filed opposition papers raising these errors but did not address the motion on the merits.

At the noticed hearing, the trial court continued the hearing for four days, directed defendants to file papers showing good cause for entertaining the motion within 30 days of trial, and gave plaintiffs an opportunity to file opposition papers on the merits, which plaintiffs ultimately chose not to do. Plaintiffs' counsel objected to this procedure and moved to dismiss the motion. The trial court denied the motion to dismiss.

At the hearing four days later, the trial court ruled that defendants had shown good cause to have the summary judgment motion heard within 30 days of trial. Commenting that plaintiffs had not filed an opposition on the merits, the trial court proceeded to discuss the arguments raised in the motion and granted it. Plaintiffs appealed.

We conclude that the trial court abused its discretion by continuing the noticed hearing for only four days instead of the statutorily required period. In addition, the trial court erred when, after deciding at the continued hearing that defendants had made the requisite showing of good cause, it then proceeded to rule on the summary judgment motion. Accordingly, we reverse.

### I. BACKGROUND

On November 16, 2004, plaintiffs Terry Robinson and Stephanie Hammonds (plaintiffs) filed this action against Aaron Woods and Woodland Properties, LLC (defendants), seeking to quiet title to real property. Amended complaints followed. Defendants filed an answer. A trial date of April 30, 2007, was set.

On January 26, 2007, defendants served plaintiffs with a motion for summary judgment, mailing it to an office in California. The motion was noticed for hearing on April 12, 2007—76 days after the date of mailing and 18 days before trial.

On March 22, 2007, plaintiffs filed their opposition papers, arguing that the motion was untimely on two grounds. First, the hearing had to be set at least 80 days after service by mail—the standard 75 days plus five days if mailed to a location in California. Second, the motion had to be heard no later than 30 days before the trial date unless the trial court ruled otherwise for “good cause;” defendants had not sought such a ruling, nor

had the court made one. The opposition papers did not address the merits of the summary judgment motion. Plaintiffs did not file a [statutorily required] separate statement of undisputed and disputed facts.

At the hearing on Thursday, April 12, 2007, the trial court faulted defendants for (1) failing to serve the mailed motion at least 80 days before the hearing, (2) scheduling the hearing “within 30 days of trial . . . [where] there has been no showing of good cause,” and (3) exceeding the 20-page limit on a memorandum of points and authorities without leave of court. The trial court further stated that plaintiffs had not filed a separate statement, “so I have imperfection on both sides, and I have procedure problems on both sides.”

In an attempt to resolve these issues, the trial court (1) continued the hearing for four days, to Monday, April 16, 2007—the 80th day after the mailing of the motion; (2) advised defendants to file a declaration setting forth the reasons why the motion should be heard within 30 days of trial; (3) “waived” the 20-page limit on defendants’ memorandum of points and authorities; and (4) invited plaintiffs to file a separate statement. Counsel for plaintiffs responded that the motion should be dismissed, not continued, and that plaintiffs were under no obligation to file a separate statement. The trial court denied the request to dismiss the motion.

At the hearing on Monday, April 16, 2007, the trial court stated that it had received a declaration from defendants by facsimile late Friday, April 13, 2007, and that, having read the declaration “this morning,” the court “finds good cause for the motion being brought within 30 days of trial.” The court commented that, although plaintiffs had filed an opposition on March 22, 2007, “it contains no arguments that rebut the substance of defendants’ motion.” The court discussed the arguments presented in the motion, concluding that “plaintiffs have failed to meet their burden on rebuttal, and the motion must be granted.” Plaintiffs’ counsel again objected to the procedure adopted by the trial court, saying he should have had more than “just four days . . . to file my response.” The court’s minute order, dated April 16, 2007, analyzed the motion on the merits and noted that plaintiffs did not file a separate statement despite the court’s invitation to do so. Judgment for defendants was duly entered. Plaintiffs appealed.

## II. DISCUSSION

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The summary judgment statute provides that “[n]otice of the motion and supporting papers *shall* be served on all other parties to the action at least 75 days before the time appointed for hearing. However, if the notice is served by mail, the required 75-day period of notice *shall* be increased by five days if the place of address is within the State of California . . . . The motion *shall* be heard no later than 30 days before the date of trial, unless the court for good cause orders otherwise . . . .”

The importance of providing the minimum statutory notice of a summary

judgment hearing cannot be overemphasized. In *McMahon v. Superior Court* (2003) 106 Cal.App.4th 112, 130 Cal.Rptr.2d 407, the trial court issued an order permitting the moving parties to notice a summary judgment hearing on 21 days' notice despite the [then] statutorily required notice—28 days at the time. The parties opposing the motion filed a petition for a writ of mandate with the Court of Appeal. In granting the petition, the court stated: “While [trial] courts have inherent authority to manage their calendars and control proceedings before them . . . , the [moving parties] do not explain, and we fail to see, how a statute precluding [trial] courts from shortening the notice period for the hearing of summary judgment motions defeats or materially impairs this authority . . . .”

“Because it is potentially case dispositive and usually requires considerable time and effort to prepare, a summary judgment motion is perhaps the most important pretrial motion in a civil case. Therefore, the Legislature was entitled to conclude that parties should be afforded a minimum notice period for the hearing of summary judgment motions so that they have sufficient time to assemble the relevant evidence and prepare an adequate opposition.

“[W]e hold that, in light of the express statutory language, trial courts do not have authority to shorten the minimum notice period for summary judgment hearings.”

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In [*Carlton v. Quint*, (2000) 77 Cal.App.4th 690, 91 Cal.Rptr.2d 844,] \* \* \* , the plaintiff, against whom summary judgment was sought, asserted that the moving party had failed to serve the motion at least 28 days before the hearing—the time period then statutorily required. The Court of Appeal in *Quint* agreed with the trial court that the motion was, in fact, timely served but went on to say that the timeliness argument had been waived in any event: “[D]espite his claim of inadequate service and notice[, which was raised] in his opposition to the motion and at the summary judgment hearing, [the plaintiff] *did* file an opposition to the motion, appeared and argued at the hearing, never requested a continuance of the hearing and never claimed prejudice by reason of insufficient notice or service. Under these circumstances, we conclude [the plaintiff] waived any claim of inadequate service or notice assuming, without deciding, that claim had any merit.”

In dicta, *Quint* provided some practical advice: “This court understands the dilemma faced by an attorney who claims his client was not properly served with motion papers and/or that inadequate notice of the hearing was received. If counsel is convinced his or her legal position is correct, he or she may appear at the hearing without filing a response to the motion and *request a continuance for the purpose of preparing a proper response*. If counsel makes a complete record relating to both the defective service and/or inadequate notice and the inability to prepare a proper response, and the court denies the continuance, the record will be well preserved for any future writ proceeding or appeal.

“If counsel is *unwilling to take the chance that a continuance will be granted*, he or she should file the best opposition possible under the circumstances. The opposition

should include counsel's position on the defective-service/inadequate-notice issue, as well as the merits. The opposition should contain a complete discussion of counsel's position as to *why a more complete opposition was not able to be filed* (e.g., because the defective notice of motion did not give counsel adequate time to prepare a response). Counsel should then appear at the hearing, object to the hearing taking place because the service was defective and/or inadequate notice of the hearing was received; again explain to the court the *prejudice that has been suffered* by reason of the defective service and/or inadequate notice; and request a continuance of the hearing so that a proper response to the motion may be filed. Obviously, if the court denies a continuance, counsel should be prepared to argue the motion on the merits. If, however, the steps described in this paragraph are taken, the record will be well preserved for any future writ proceeding or appeal.

“None of these steps were taken by [the plaintiff] in this case [*Quint*]. Although he did raise the issue of inadequate service in his opposition and at the summary judgment hearing, he nevertheless filed a response to the motion for summary judgment, never claimed he did not have adequate time to prepare a response, appeared at the hearing, *argued the merits*, never requested a continuance, and *never claimed he was prejudiced* by the defective service or inadequate notice of hearing. As stated, under these circumstances, we conclude [the plaintiff] waived any alleged defective service or inadequate notice.”

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[T]he opposing party faces a difficult question in deciding whether to discuss the merits at all or to what extent. Where inadequate notice is approved by the trial court—through either a case-specific order or a local court order—a full-blown opposition on the merits, in writing and at the hearing, does not appear to waive a timeliness objection. In contrast, if untimely notice is attributable to a *statutory* violation by the moving party, the opposing party faces the dilemma of risking a loss on the motion if (1) it does not address the merits at all and the trial court declines to continue the hearing or (2) it addresses the merits to some extent but does not adequately show prejudice due to the untimely notice. We need not consider how this trilogy may apply to all possible scenarios.

Here, plaintiffs responded to the summary judgment motion by filing a written opposition containing *only the notice objections* and never argued the merits \* \* \* . Under *Quint*, plaintiffs did not have to claim or show prejudice because they did not address the merits, in writing or otherwise. Further, \* \* \* , the 76-day notice given by defendants on the mailed motion was invalid. Thus, at the noticed hearing on April 12, 2007, the trial court had no authority to continue the hearing a mere four days. At that point, notice had to begin anew, and 75 days is mandatory where notice is given personally. If the trial court did not want to continue the impending trial date for the necessary amount of time, it could have taken the motion off calendar. The four-day continuance was a violation of due process and an abuse of discretion.

A second reason justified plaintiffs' lack of an opposition on the merits and

rendered the April 12, 2007 hearing improper. Defendants noticed their motion for hearing within 30 days of the trial date without first obtaining a determination of good cause from the trial court. Unless and until the trial court found good cause, the notice of the hearing was invalid. The party opposing a summary judgment motion should not be under an obligation to respond on the merits—and risk wasting its resources—given that the trial court may ultimately decide that good cause does not exist. Nevertheless, as it turned out here, the trial court *did* eventually find good cause but not until April 16, 2007—when the parties returned to court as instructed. The court proceeded to hear the summary judgment motion at the same hearing. Thus, April 16 did not *legally* become the hearing date on the motion until that very day. Plaintiffs had *no* time to prepare an opposition on the merits after the court granted the defendants’ request to hear the motion within 30 days of the trial date—another due process violation and abuse of discretion.

Finally, we see no reason why plaintiffs should be forced to seek a continuance of the trial to remedy defendants’ mistake in setting the hearing within 30 days of the trial date absent prior court permission.

In sum, the trial court abused its discretion by: (1) continuing the noticed hearing for only four days, in an effort to provide 80 days’ notice; and (2) ruling at the continued hearing on both the summary judgment motion and the defendants’ request to entertain that motion within 30 days of trial.

### III. DISPOSITION

The judgment is reversed. Plaintiffs are entitled to costs on appeal.