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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0618**

Lyon Financial Services, Inc.,
d/b/a USBancorp Manifest Funding Services
with its principal offices in Marshall, Minnesota,
Respondent,

vs.

Around the Clock Bail Bonds, Inc., a California corporation,
Defendant,

Albert Arzate,
Appellant.

**Filed May 6, 2008
Affirmed
Ross, Judge**

Lyon County District Court
File No. C8-05-458

Ronald E. Seanor, Kevin K. Stroup, Stoneberg, Giles & Stroup, P.A., 300 O'Connell
Street, Marshall, MN 56258 (for respondents)

Albert Arzate, 1032 Torrey Pines Drive, Colton CA 92324 (pro se appellant)

Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Crippen,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving as judge of the Minnesota
Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

ROSS, Judge

Albert Arzate appeals from a judgment entered against him after a bench trial for failure to make payments due to Lyon Financial Services, Inc., under a lease of vehicles. Arzate argues that the district court should have granted his motion for a continuance and that the district court's factual conclusions are erroneous. Because Arzate has not shown that the district court abused its discretion by denying his motion to continue or that the district court's factual determinations are clearly erroneous, we affirm.

FACTS

Lyon Financial Services, Inc. sued Albert Arzate and Around the Clock Bail Bonds, Inc. (ATC) to recover a balance due under a lease of vehicles. Arzate is ATC's sole shareholder and guarantor on the lease. Arzate stopped paying after making fifteen lease payments.

Trial was originally scheduled for July 2006, but it was continued until October on Arzate's motion. In early September 2006, Arzate's attorney withdrew from the case. No representative for either ATC or Arzate appeared at the pretrial hearing on October 18, 2006. A default trial was then scheduled for October 26, 2006.

Two days before the default trial, Arzate again filed a motion to continue, and he waited until the day of trial to serve the motion on Lyon Financial. The district court denied the motion, noting that Arzate had not conducted any discovery since his first continuance. The district court reasoned that there was no indication that a further delay would bring Arzate's witnesses to court. It denied his second motion for a continuance

because Arzate had not interviewed any of the identified witnesses or taken their depositions, and the discovery deadline had passed. Arzate offered no explanation as to how he would secure witness testimony for trial. But the district court removed the case from the default calendar and conducted a trial on the merits.

At trial, Lyon Financial presented evidence that ATC breached the lease agreement. It offered the lease agreement, signed by Arzate, which acknowledged that Arzate had received the three leased vehicles. A Lyon Financial employee also testified that five days after Arzate signed the lease, Lyon Financial called Arzate and he orally confirmed that he had received the vehicles. The employee also testified that the vendor who sold the vehicles to ATC told her that he had seen Arzate and his girlfriend driving in the vehicles. The employee testified that after making the fifteenth payment, Arzate first claimed to Lyon Financial that he did not have the vehicles.

As Lyon Financial presented its evidence, Arzate repeatedly protested, saying that without an attorney he was not prepared to defend himself. But Arzate did not make any objections even when prompted by the district court. When the district court asked Arzate if he wished to call any witnesses and twice asked if he would testify himself, he declined. The district court entered findings of fact and conclusions of law, determining that Lyon Financial is entitled to judgment for damages under the lease.

Arzate appeals from the judgment, arguing that the district court should have granted his motion for a continuance so he could prepare for trial and find a new attorney. He also challenges the district court's factual findings.

DECISION

I

We disagree with Arzate's argument that the district court's denial of his motion for a continuance requires reversal. "[W]hether to stay a proceeding is discretionary with the district court, its decision on the issue will not be altered on appeal absent an abuse of that discretion, and the test for whether an abuse of discretion occurs is whether a denial of a continuance would prejudice the outcome of the trial." *Real Estate Equity Strategies, LLC v. Jones*, 720 N.W.2d 352, 358 (Minn. App. 2006) (quotation omitted).

Arzate has not demonstrated that the denial of his motion for a continuance prejudiced the outcome at trial. Given his failure to avail himself of the additional time to prepare for trial after his first continuance, the district court had no reason to conclude that Arzate would have applied any more diligence during a second extension. He admitted that he still might not be able to secure the testimony of witnesses even if the court were to grant his second continuance motion. The district court reasonably determined that it had no basis to conclude that another delay would bring different results. On the eve of trial, Arzate had not interviewed any of the witnesses he had identified. He had completed no formal discovery after receiving the initial continuance and he allowed the discovery deadline to pass without action. We conclude that Arzate has not established that he was prejudiced by the court's denial of his motion to continue.

II

Arzate also challenges the district court's factual findings, offering a different version of events. We adopt a district court's findings of fact unless they are clearly

erroneous. *Rife v. One 1987 Chevrolet Cavalier*, 485 N.W.2d 318, 321 (Minn. App. 1992), *review denied* (Minn. June 30, 1992). A finding is clearly erroneous if it is “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *Tonka Tours, Inc. v. Chadima*, 372 N.W.2d 723, 726 (Minn. 1985).

Arzate offers this court an explanation as to why he signed the lease and why he stopped making the lease payments. He admits that he signed the lease agreement indicating that he had received the vehicles, but he claims that he was required to sign the lease in advance and that the vehicles were never actually delivered. But Arzate declined to testify at the district court and his account was not produced or put into evidence. An appellate court may not rely on matters outside the appellate record. *Plowman v. Copeland, Buhl & Co.*, 261 N.W.2d 581, 583 (Minn. 1977). Specifically, “matters not produced and received in evidence below may not be considered.” *Id.* We cannot consider Arzate’s version of the facts presented for the first time on appeal because the district court, as factfinder, has not had the opportunity to assess it.

Arzate also contends that the testimony of Lyon Financial’s employee was hearsay and that the district court should not have relied on that evidence. That employee testified that Arzate told Lyon Financial over the telephone that he had received the vehicles, and that the vendor had told her that Arzate and his girlfriend were seen in the vehicles. When allegedly inadmissible evidence has been admitted without objection, its admissibility may not be challenged for the first time on appeal. *Estate of Hartz v. Nelson*, 437 N.W.2d 749, 752 (Minn. App. 1989), *review denied* (Minn. July 12, 1989).

At trial, Arzate did not object to the testimony that he now challenges as hearsay, and he raises the issue for the first time on appeal. We will not review the district court's treatment of this evidence admitted without contest at trial.

We observe that the record contains other evidence that supports the district court's findings of fact. The lease agreement, which Arzate does not claim is hearsay, by itself supports the district court's most critical findings of fact. The district court's findings are not clearly erroneous.

Affirmed.