



On November 2, 2018, respondent moved to continue the trial for a second time. Ms. Griggs had informed respondent's counsel that she intended to seek innocent spouse relief for the years at issue, and the Internal Revenue Service (IRS or respondent) needed more time to process her request. The Court granted respondent's motion, and the case was subsequently calendared for the November 12, 2019, Portland, Oregon, Trial Session.

The parties appeared in court on November 12, 2019, but Mr. Griggs was not prepared for trial. He and respondent's counsel explained that, although they had spoken several times and met in person, they had been unable to reach an agreement on a stipulation of facts. Tax Court Rule 91(a) requires the parties "to stipulate, to the fullest extent to which complete or qualified agreement can or fairly should be reached, \* \* \* all documents and \* \* \* evidence which fairly should not be in dispute." Mr. Griggs had not agreed to stipulate to anything, even such basic documents as the notice of deficiency or his own tax returns.

Respondent's counsel asked the Court to proceed to trial on the deficiency issues, but the Court continued the case for a third time because the IRS was still processing Ms. Griggs' request for innocent spouse relief. However, the Court explained to Mr. Griggs that, had his case proceeded to trial that day, he would likely have lost on most (if not all) issues because he did not bring with him any documents to substantiate any of his claimed deductions. The Court noted that the two prior continuances had given Mr. Griggs more than enough time to secure and provide to respondent's counsel whatever documents he had to support his deductions. The Court likewise emphasized, multiple times, how important it was for Mr. Griggs to work with respondent's counsel toward a stipulation. The Court walked the parties through a list of items that Mr. Griggs needed to provide to respondent and set a date for exchanging those documents in respondent's office.

Mr. Griggs and counsel for respondent met as directed by the Court but they were not able to agree to a stipulation of facts. On January 28, 2020, respondent's counsel mailed Mr. Griggs a settlement offer and requested that he respond by February 14, 2020. Mr. Griggs never responded to the settlement offer. Indeed, Mr. Griggs ceased all communication with respondent's counsel in February 2020 after the parties filed a joint status report with the Court. Respondent's counsel tried to call Mr. Griggs several times to coordinate their next joint status report, which was due by March 20, 2020, but Mr. Griggs did not respond to these communications.

On July 7, 2020, this case was calendared for trial, to be conducted remotely via Zoomgov, during the Court's October 5, 2020, Portland, Oregon, Trial Session. The standing pre-trial order directed that a stipulation of facts and any unstipulated documents that a party proposed to use at trial were to be filed with the Court "no later than 14 days before the first day of the trial session." We warned Mr. Griggs that "[a]ll facts and documents shall be stipulated \* \* \* to the maximum extent possible" and that "[t]he Court may impose appropriate sanctions, including dismissal, for any unexcused failure to comply with this Order." We also warned that "[t]he Court may refuse to receive in evidence any document or material that is not filed as a Proposed Trial Exhibit no later than 14 days before the first day of the trial session."

During August and September respondent's counsel called Mr. Griggs five times in an effort to discuss this case, but Mr. Griggs did not answer the phone. Respondent's counsel left a voice message each time asking Mr. Griggs to call him back, but Mr. Griggs did not return any of the calls. Respondent's counsel sent Mr. Griggs a letter dated August 17, 2020, seeking to confer about the upcoming trial and warning that "failure to respond to my contact attempts or to cooperate in the stipulation process could lead to the Court dismissing you from the case." Mr. Griggs did not reply to this letter. Anticipating that Mr. Griggs would not appear at trial, respondent filed a Motion to Dismiss for Lack of Prosecution, as to Mr. Griggs only, on September 14, 2020.

Our pre-trial order directed that a stipulation of facts and all proposed trial exhibits be filed by September 21, 2020. No stipulation of facts was received by the Court. Respondent timely filed a Stipulation of Settled Issues reciting his concession that petitioner Valerie D. Griggs is entitled to full innocent spouse relief under I.R.C. § 6015(f) for tax years 2007, 2010, 2011, and 2012 with respect to all deficiencies and penalties. Respondent concurrently filed 185 pages of proposed trial exhibits. Mr. Griggs filed no proposed trial exhibits by September 21, 2020, or subsequently.

Mr. Griggs' only contacts with the Court since February 2020 have been two motions for continuance (both filed without informing respondent's counsel or asking for his views). On September 5, 2020, Mr. Griggs alleged as a justification for continuing the trial that Oregon law libraries were then closed. We denied that motion on September 16, 2020, because the only issues remaining in the case concern substantiation of business expense deductions. No legal issues are involved, and Mr. Griggs does not need access to a law library in order to supply substantiating documents to respondent or the Court.

On October 2, 2020, Mr. Griggs filed a document styled Response to Motion for Continuance of Trial Generally, which we characterized as a renewed motion for continuance. He repeated his excuse about the law libraries and also cited the recent Oregon forest fires. We denied that motion later that day because Mr. Griggs had not shown that forest fires would prevent him from attending, by telephone or the internet, the calendar call on October 5, 2020, which was scheduled to be held remotely.

Indeed Mr. Griggs appeared, by telephone, when this case was called from the calendar on October 5, 2020. He again asserted that he needed additional time to prepare his case. We accordingly scheduled the trial for Tuesday, October 6, at 10 a.m. Pacific time (1 p.m. Eastern time). We reserved ruling on respondent's motion to dismiss Mr. Griggs from the case for lack of proper prosecution. But we warned Mr. Griggs that he needed to appear for trial the following day and that, if he did not appear, he incurred the risk that we would grant respondent's motion.

Mr. Griggs did not appear for trial. Instead he filed, on the morning of the scheduled trial, a Notice of Appeal from our orders denying his motions for continuance. On October 8, 2020, we issued an order recharacterizing that document as a Motion to Certify for Interlocutory Appeal and denying it as such.

Tax Court Rule 123(b) provides that, “[u]pon failure of a petitioner properly to prosecute or to comply with these Rules or any order of the Court \* \* \*, the Court may dismiss a case at any time and enter a decision against the petitioner.” Mr. Griggs has repeatedly failed to comply with this Court's Rules requiring that he cooperate with respondent's counsel to prepare this case for trial. Despite the Court's repeated warnings of the adverse consequences that could flow from his failure to supply documents to respondent and the Court, Mr. Griggs has persisted in his refusal to do so.

Mr. Griggs then failed to appear for trial, despite the Court's warning the previous day that he must appear or risk dismissal. We recalled the case 30 minutes later, and still he did not appear. Indeed, Mr. Griggs did not contact the Court at any point during the remainder of the Portland Trial Session, even after being notified that we had denied his request for interlocutory appeal. Neither Ms. Griggs, counsel for respondent, nor any other participants residing in Oregon experienced any difficulty in participating in the calendar call or the trial, owing to forest fires or otherwise. And Mr. Griggs himself participated in the calendar call without any difficulty or technical problems. It is clear to the Court that the ex-

cuses Mr. Griggs alleged in his motions for continuance were spurious efforts to delay trial of this case indefinitely.

Our conclusion to that effect is fortified by Mr. Griggs' failure to submit any proposed trial exhibits by the Court's September 21, 2020, deadline (or subsequently). Virtually all the issues in this case involve substantiation of Mr. Griggs' alleged business expenses. Most of his claimed deductions--e.g., for travel expenses, vehicle expenses, hotel expenses, and airfare--require heightened substantiation under I.R.C. § 274(d). As such, the business purpose and amounts of these expense deductions had to be "substantiate[d] by adequate records or by sufficient evidence corroborating the taxpayer's own statement." Ibid. Unless Mr. Griggs presented documentary evidence, he had virtually no chance of prevailing on any of these issues at trial. The record makes clear that Mr. Griggs had no intention of trying this case but merely hoped to defer its resolution indefinitely. Dismissal is warranted under these circumstances. See Stearman v. Commissioner, 436 F.3d 533, 535-537 (5th Cir. 2006), aff'g T.C. Memo. 2005-39; Edelson v. Commissioner, 829 F.2d 828, 831 (9th Cir. 1987), aff'g T.C. Memo. 1986-223.

In consideration of the foregoing, it is

ORDERED that Respondent's Motion to Dismiss for Failure to Properly Prosecute As To Petitioner Bryan M. Griggs, filed September 14, 2020, is granted. A decision will be entered in due course. It is further

ORDERED that the Clerk of the Court shall change the address of record for petitioner Valerie D. Griggs to: Valerie D. Griggs, 490 Lake Bay Court, Lake Oswego, OR 97034-3048.

**(Signed) Albert G. Lauber  
Judge**

ENTERED: **OCT 15 2020**