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Fed. Rule of Appellate Procedure 32.1 generally  
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after Jan. 1, 2007. See also Eleventh Circuit Rules  
36-2, 36-3. (Find CTA11 Rule 36-2 and Find CTA11  
Rule 36-3)

United States Court of Appeals,  
Eleventh Circuit.

**Jonathan E. PERLMAN**, Esq., as court  
appointed Receiver of Creative Capital  
Consortium, LLC, Plaintiff-Appellee,  
v.

Dorothy DELISFORT-THEODULE, an individual,  
Defendant-Appellant,  
Wealth Builders Circle, LLC., a Georgia limited  
liability company, et al., Defendants.

No. 10-15548 | Non-Argument Calendar. | Jan. 9,  
2012.

#### Attorneys and Law Firms

Nancy Elaine Bergold, Genovese Joblove & Battista, PA,  
Fort Lauderdale, FL, David C. Cimo, Carmen D.  
Contreras-Martinez, David Paul Lemoie, Genovese  
Joblove & Battista, PA, Miami, FL, for  
Plaintiff-Appellee.

Dorothy Delisfort-Theodule, Snellville, GA, pro se.

Appeal from the United States District Court for the  
Southern District of Florida. D.C. Docket No.  
9:09-cv-80480-DTKH.

Before CARNES, BARKETT and ANDERSON, Circuit  
Judges.

#### Opinion

PER CURIAM:

\*1 Dorothy Delisfort-Theodule, proceeding *pro se*,  
appeals the district court's judgment against her in an  
action to recover funds fraudulently transferred to her.  
She contends the court lacked personal jurisdiction over  
her and that the court abused its discretion when it denied  
her motions to transfer venue and for a continuance.

#### I.

The Securities and Exchange Commission brought an  
action against Delisfort-Theodule's husband for violating  
federal securities laws, alleging he engaged in a Ponzi  
scheme. The district court appointed a Receiver and  
ordered him to take action to protect the investors and to  
reclaim fraudulently transferred funds. The Receiver filed  
this action in March 2009 to recover the funds  
fraudulently transferred to Delisfort-Theodule by her  
husband, naming her as a participant in the Ponzi scheme  
and noting two transfers to be set aside.

The district court extended Delisfort-Theodule's time to  
answer the complaint until August 2009, but the deadline  
passed without a response. The court scheduled trial for  
April 2010. In February 2010, she finally filed her answer  
to the complaint, which raised no affirmative defenses.  
Trial was reset for the March 25, 2010 calendar call.

In March, roughly one year after the action was filed,  
Delisfort-Theodule filed a motion for change of venue,  
arguing that Georgia—her state of residence—was the  
proper venue because proceeding in Florida would be  
inconvenient both for her and for her witnesses, and  
because she could not afford to defend herself in Florida.  
The Receiver objected, arguing that because  
Delisfort-Theodule had waited so long to file, granting  
the motion would not promote judicial economy and he  
would be prejudiced. Further, the Receiver argued that  
Delisfort-Theodule would only have to make one more  
trip to Florida and that she had not explained why it  
would be less expensive to retain counsel in Georgia. The  
court agreed with the Receiver, noted that the transfer  
would delay trial and impede efforts to recover  
fraudulently transferred funds, and denied  
Delisfort-Theodule's motion.

In April 2010, the Receiver moved to continue the trial  
because the parties were discussing settlement, and the  
court granted that motion. Trial was set for October 25,  
2010. On October 1, 2010 Allen Alberga, a Georgia  
attorney, filed a motion to appear *pro hac vice* on  
Delisfort-Theodule's behalf, which the court granted on  
October 5. On October 23, the Saturday before trial,  
Alberga filed a motion to continue the trial. He claimed  
he was unable to attend due to personal family issues, that  
he had four other cases for which he had to appear the  
same week, and that he had not had enough time to confer  
with Delisfort-Theodule. The Receiver opposed any  
continuance, arguing that, because of trial preparation and  
arranging for witnesses to be available, he would be  
prejudiced by any delay. The district court denied the

motion to continue.

After a bench trial, at which neither Delisfort–Theodule nor her counsel appeared, the court concluded that Delisfort–Theodule had received \$3,000,200 in fraudulent transfers that were avoidable under Fla. Stat. § 726.105.1 It entered judgment against her in that amount. This is her appeal.

- 1 The Receiver filed a motion for summary judgment as to all of the relevant transfers, which the district court granted in part in the amount of \$545,200. The \$3,000,200 total includes that amount.

## II.

\*2 “[T]he issue of whether personal jurisdiction is present is a question of law and subject to *de novo* review.” *Diamond Crystal Brands, Inc. v. Food Movers Int’l, Inc.*, 593 F.3d 1249, 1257 (11th Cir.2010). “[L]ack of personal jurisdiction is a waivable defect, and ... a defendant waives any objection to the district court’s jurisdiction over [her] person by not objecting to it in a responsive pleading or a Fed.R.Civ.P. 12 motion.” *Palmer v. Braun*, 376 F.3d 1254, 1259 (11th Cir.2004); *see also* Fed.R.Civ.P. 12(b)(2), (h). “A party that fails to raise a defense of lack of personal jurisdiction at the appropriate time is deemed to have conferred personal jurisdiction on the court by consent.” *Pardazi v. Cullman Med. Ctr.*, 896 F.2d 1313, 1317 (11th Cir.1990). Because Delisfort–Theodule did not object to the court’s personal jurisdiction over her in a motion to dismiss or in her answer, she has waived that affirmative defense.

## III.

We review for abuse of discretion a district court’s denial of a motion to change venue. *See Palmer*, 376 F.3d at 1257. A district court may transfer a civil action to any other district or division where it may have been brought “[f]or the convenience of the parties and witnesses, and in the interest of justice.” *Robinson v. Giarmarco & Bill, P.C.*, 74 F.3d 253, 260 (11th Cir.1996) (citing 28 U.S.C. § 1404(a)). However “[t]he plaintiff’s choice of forum should not be disturbed unless it is clearly outweighed by other considerations.” *Id.* It is the movant’s burden to persuade the court that a transfer should be granted. *See In re Ricoh Corp.*, 870 F.2d 570, 573 (11th Cir.1989); *Time, Inc. v. Manning*, 366 F.2d 690, 698 (5th Cir.1966)2.

- 2 In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir.1981) (en banc), we adopted as binding

precedent all decisions of the former Fifth Circuit handed down before October 1, 1981.

The district court found that because Delisfort–Theodule had waited roughly one year to request change of venue, transferring the case would have resulted in unnecessary delay and might have prejudiced the Receiver’s ability to recover and avoid fraudulent transfers. It also concluded that Delisfort–Theodule had not carried her burden to show how transferring the venue would have reduced her costs. Nor did she identify any witnesses who could not or would not testify unless the case was transferred. On these grounds, the court therefore concluded that any additional costs or inconvenience to Delisfort–Theodule was insufficient to disturb the Receiver’s forum choice. We see no abuse of discretion in that decision.

## IV.

We also review for abuse of discretion a district court’s denial of a motion to continue, reversing only if the denial was arbitrary or unreasonable.<sup>3</sup> *See Romero v. Drummond Co., Inc.*, 552 F.3d 1303, 1314 (11th Cir.2008); *Quiet Tech. DC–8, Inc. v. Hurel–Dubois UK Ltd.*, 326 F.3d 1333, 1350–51 (11th Cir.2003). To determine whether the district court abused its discretion we consider in part: (1) “the extent of [Delisfort–Theodule’s] diligence in her efforts to ready her defense prior to the date set for” trial; (2) “the extent to which granting the continuance would have inconvenienced the court and the [Receiver], including its witnesses”; and (3) “the extent to which [Delisfort–Theodule] might have suffered harm as a result of the district court’s denial.” *See Quiet Tech.*, 326 F.3d at 1351 (alterations omitted).

- 3 Although Delisfort–Theodule did not clearly articulate this argument in her brief to this Court, we construe *pro se* briefs liberally. *See Harris v. United Auto. Ins. Grp. Inc.*, 579 F.3d 1227, 1231 (11th Cir.2009).

\*3 The district court denied Delisfort–Theodule’s motion for a continuance, which was “filed just two days before trial was scheduled to commence and after [the Receiver] spent considerable time preparing for trial and arranging for out-of-state witnesses to be present for trial.” Because of the motion’s “eleventh-hour nature,” that decision was not an abuse of discretion.

**AFFIRMED.**

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