

IN THE SUPREME COURT OF THE STATE OF NEVADA

O.F. DUFFIELD, AN INDIVIDUAL,  
Appellant,  
vs.  
FRONTERA RESOURCES, LTD., A  
NEVADA LIMITED COMPANY,  
Respondent.

No. 43257

**FILED**

APR 21 2006

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CNEF DEPUTY CLERK

ORDER REVERSING AND  
REMANDING

This is an appeal from a district court judgment in a contract action. Fifth Judicial District Court, Nye County; John P. Davis, Judge.

On May 20, 2003, respondent Frontera Resources, Ltd. instituted the underlying action against numerous defendants, including appellant O.F. Duffield, in part, to determine the validity of an assignment of rights to Duffield in certain oil and gas leases purportedly held by Frontera. Thereafter, Frontera filed a "motion for a declaratory relief" on its claim of rights in the oil and gas leases. The district court granted the motion on January 27, 2004. The district court denied Duffield's subsequent motion for a new trial, which sought relief from the order granting judgment, and later, the district court entered an order granting respondent's motion for voluntary dismissal of the remaining causes of action against Duffield. This appeal followed.

On appeal, Duffield contends that the district court's order granting declaratory relief to Frontera is effectively a summary judgment, and, as the district court granted the motion approximately only eight months after Frontera instituted the underlying action, he was denied an adequate opportunity to conduct discovery. We agree.

As an initial matter, we conclude that, by granting judgment to Frontera on its motion for declaratory relief, the district court, in effect, granted summary judgment to Frontera on that claim even though no proper motion for summary judgment was pending. Specifically, in light of the district court's subsequent order granting Frontera's voluntary dismissal of its remaining claims against Duffield, the district court's January 27, 2004 order granting declaratory judgment to Frontera substantively operated as the final—and only—adjudication of Frontera's claim for declaratory relief. Moreover, as Frontera provided supporting affidavits in favor of its request for declaratory relief, it was, in form, a motion for summary judgment.<sup>1</sup>

Relevantly, then, in his opposition to Frontera's request for judgment on its claim of rights to the oil and gas leases, Duffield included a NRCP 56(f) request for a continuance to allow him to conduct discovery. The district court denied this request by its order granting declaratory relief to Frontera. "NRCP 56(f) permits a district court to grant a continuance when a party opposing a motion for summary judgment is unable to marshal facts in support of its opposition."<sup>2</sup> And, although the denial of such a request is reviewed for an abuse of discretion,<sup>3</sup> we have held that when a party properly seeks additional time to conduct

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<sup>1</sup>See NRCP 56(a) and (e) (noting that summary judgment is specifically available to obtain a declaratory judgment and that such a motion may be supported by affidavits). NRCP 56 has since been amended, and the former rule applies. Nevertheless, the relevant parts of the new rule contain essentially the same language as the former rule.

<sup>2</sup>Aviation Ventures v. Joan Morris, Inc., 121 Nev. \_\_, \_\_, 110 P.3d 59, 62 (2005).

<sup>3</sup>Id.

discovery,<sup>4</sup> the district court abuses its discretion when, as here, it denies the request at a preliminary stage of the proceedings.<sup>5</sup> Thus, because the district court effectively granted summary judgment to Frontera only months after it instituted the underlying action, and without allowing Duffield an opportunity to conduct discovery, we conclude that the district court erred when it denied Duffield's request for additional time to conduct discovery and granted declaratory relief to Frontera.<sup>6</sup>

Moreover, we note that Frontera argues, and the district court apparently found, that Duffield, by filing an untimely opposition to Frontera's request for a declaratory judgment, consented to the granting of Frontera's request. District Court Rule 13(3) requires a party to file an opposition within ten days after service of a motion, and provides that failure to file and serve an opposition may be construed as an admission that the motion has merit and consent to granting it. Here, Duffield did not fail to file and serve an opposition, but apparently filed and served his opposition late. Accordingly, the district court erred by construing

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<sup>4</sup>See id. (noting that, in addition to the requirement that there be no dilatory motive, a proper motion for a continuance must demonstrate "how further discovery will lead to the creation of a genuine issue of material fact"). In this respect, we note that appellant's failure to appear at the June 20, 2003 NRCP 16.1 early case conference, when respondent served, by facsimile, notice of the conference on June 16, 2003, hardly demonstrates Duffield's lack of diligence in conducting discovery.


<sup>5</sup>Id.

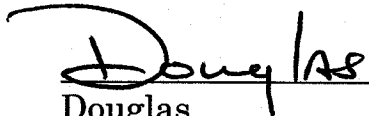
<sup>6</sup>See id. (stating that "summary judgment is improper when a party seeks additional time to conduct discovery to compile facts to oppose the motion").

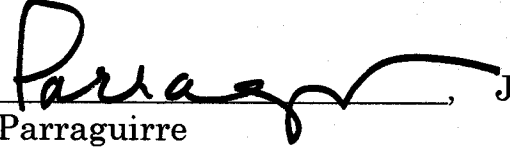
Duffield's merely untimely opposition as consent to Frontera's request and to thereby preclude Duffield from the opportunity to conduct discovery.<sup>7</sup>

Based on these circumstances, we conclude that the district court abused its discretion by not affording Duffield additional time to conduct discovery, particularly at such an early stage of the proceedings. Accordingly, we reverse the order of the district court and remand this matter for further proceedings.<sup>8</sup>

It is so ORDERED.<sup>9</sup>

  
\_\_\_\_\_, C.J.  
Rose

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Parraguirre

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<sup>7</sup>See generally Halimi v. Blacketer, 105 Nev. 105, 770 P.2d 531 (1989) (recognizing that, when summary judgment was granted less than one year after an action was instituted, and when a party requests additional time to conduct discovery, and thereby demonstrates the requisite diligence, the district court's denial of the request is an abuse of discretion).

<sup>8</sup>As a result, we need not address Duffield's other arguments. Notably, because the district court's order is reversed and this matter is remanded for further proceedings, Duffield's assignment of error concerning the district court's denial of his motion for a new trial is moot.

<sup>9</sup>Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

cc: Hon. John P. Davis, District Judge  
David C. Polley  
Goodman Brown & Premsrirut  
Nye County Clerk