

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND MININNI,
Appellant,

vs.

WYNN LAS VEGAS, LLC D/B/A WYNN
LAS VEGAS,
Respondent.

No. 54644

RAYMOND MININNI,
Appellant,

vs.

WYNN LAS VEGAS, LLC D/B/A WYNN
LAS VEGAS,
Respondent.

No. 55414

FILED

DEC 13 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND
AND VACATING ATTORNEY FEES AWARD

These are consolidated appeals from a district court summary judgment (Docket No. 54644) and a post-judgment order granting attorney fees and costs to respondent (Docket No. 55414). Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Appellant filed a district court personal injury action, alleging that he slipped and fell while on respondent's property as a result of respondent's negligence. After some discovery had been conducted, respondent moved for summary judgment, arguing that appellant could not establish a genuine factual issue with regard to whether respondent had breached its duty of care to appellant. Appellant opposed the motion on the ground that he needed more time to conduct discovery. Specifically, he asserted that he intended to depose three of respondent's employees who were present when he fell and could establish whether a hazard was present on the floor that caused him to slip and injure himself. The

district court granted summary judgment to respondent without permitting more time for discovery.

Upon consideration of the parties' briefs and appendices, we conclude that the district court abused its discretion by granting summary judgment without giving appellant more time to conduct discovery. See Halimi v. Blacketor, 105 Nev. 105, 770 P.2d 531 (1989) (reviewing the district court's grant of summary judgment without permitting a continuance for discovery for an abuse of discretion). As an initial matter, appellant's request for additional time for discovery in his opposition to the motion for summary judgment was sufficient for purposes of an NRCP 59(f) continuance. Halimi, 105 Nev. at 106, 770 P.2d at 531. Moreover, the proceedings were at a relatively early stage, appellant had not been dilatory in conducting discovery, and appellant explained the factual evidence he expected to learn by deposing additional witnesses. See Aviation Ventures v. Joan Morris, Inc., 121 Nev. 113, 118, 110 P.3d 59, 62 (2005) (explaining that an NRCP 59(f) continuance "is appropriate only when the movant expresses how further discovery will lead to the creation of a genuine issue of material fact"); see also Harrison v. Falcon Products, 103 Nev. 558, 746 P.2d 642 (1987) (reversing summary judgment where less than two years had passed between the filing of the complaint and the summary judgment and where the plaintiff demonstrated diligence by seeking additional time to conduct discovery). Accordingly, we reverse the summary judgment order and remand this matter to the district court for further proceedings.

In light of our reversal of the summary judgment, the award of attorney fees must also be vacated. See NRS 18.010(2) (providing for an award of attorney fees to the prevailing party); NRS 17.115(4)(d)(3)

(providing for an award of attorney fees against a party who rejects an offer and fails to obtain a more favorable judgment).

It is so ORDERED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Susan Johnson, District Judge
Howard Roitman, Settlement Judge
Henness & Haight
Wilson, Elser, Moskowitz, Edelman & Dicker, LLP
Eighth District Court Clerk