

IN THE SUPREME COURT OF THE STATE OF NEVADA

TURAN PETROLEUM, INC., A
NEVADA CORPORATION, BY AND
THROUGH "THE BEKTAYEV BOARD,"
Appellant,

vs.

LUBERSKI, INC., A CALIFORNIA
CORPORATION D/B/A HIDDEN VILLA
RANCH; TIMOTHY E. LUBERSKI;
NICK L. JIORAS; AND TURAN
PETROLEUM, INC., A NEVADA
CORPORATION, BY AND THROUGH
"THE VANETIK BOARD,"

Respondents.

No. 55488

FILED

APR 02 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

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Respondents.

No. 56908

ORDER OF REVERSAL AND REMAND

These are consolidated appeals from (1) a district court order granting declaratory relief and a permanent injunction in a corporate law action, in the context of which appellant challenges the district court's decision that it is not the legitimately elected board of directors with authority to defend litigation against the corporation, and (2) a post-

judgment district court order denying NRCP 60(b) relief. First Judicial District Court, Carson City; James E. Wilson, Judge.

Respondent shareholders Luberski, Inc., d.b.a Hidden Villa Ranch, a California corporation, Timothy E. Luberski, and Nick L. Jioras (collectively, the Luberski Group) filed suit against appellant Turan Petroleum, Inc., a Nevada corporation, seeking a declaration that the appellant board of directors (the Bektayev Board) was not properly elected and seeking to prevent Turan from taking actions in accordance with the Bektayev Board's directions, including transferring Turan's primary asset, an oil and gas reserve in Kazakhstan, to an entity allegedly also controlled by the Bektayev Board. Two boards of directors—the Bektayev Board and the Vanetik Board¹—responded on Turan's behalf, but neither board attempted to intervene. The district court determined that the Vanetik Board was the properly elected board and then refused to allow the Bektayev Board to further participate in the litigation. The district court then granted declaratory and injunctive relief to the Luberski Group via summary judgment without opposition. The court also refused to permit the Bektayev Board to seek NRCP 60(b) relief, due to its earlier ruling that it was not the legitimate board.² This appeal followed.

¹The Vanetik Board was the initial board of directors of Turan.

²The parties are familiar with the facts, and we do not recount them further except as necessary to our disposition.

The Bektayev Board's appeal raises a number of issues, some of which are threshold. The Bektayev Board argues that it should have been joined as a party and the district court should have allowed further discovery and an evidentiary hearing. We agree.

Standard of review

The district court's factual findings are given deference and will be upheld if not clearly erroneous and if supported by substantial evidence. International Fid. Ins. v. State of Nevada, 122 Nev. 39, 42, 126 P.3d 1133, 1134-35 (2006). "Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion." Whitemaine v. Aniskovich, 124 Nev. 302, 308, 183 P.3d 137, 141 (2008). However, this court reviews a district court's conclusions of law de novo. Grosjean v. Imperial Palace, 125 Nev. 349, 359, 212 P.3d 1068, 1075 (2009).

The Bektayev Board should have been made a party

The Bektayev Board first argues that it was a party even though it was not named as a proper party defendant. The Bektayev Board further contends that the orders entered by the district court below adversely and substantially affected the rights of the Bektayev Board such that, if it was not a party below, it should have been made a party.

We conclude that the district court violated Nevada's declaratory relief statutes in entering the orders. Declaratory relief actions require that "all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding." NRS 30.130; see also NRS 30.080 (stating that "[t]he court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the

uncertainty or controversy giving rise to the proceeding.”). We conclude that the Bektayev Board should have been made a party in the district court proceedings pursuant to these statutes. The Bektayev Board, on behalf of Turan, participated in the underlying proceedings claiming that they were the rightful and legal board of directors of Turan. The Bektayev Board’s right to control the company was in dispute and the district court judgment, while directed at Turan, ostensibly affects and binds the Bektayev Board from further action. As such, the district court should have joined the Bektayev Board and, because it failed to do so, the grant of declaratory relief was improper.

Additional discovery and an evidentiary hearing should have been allowed

The Bektayev Board also argues that the district court abused its discretion in determining that it was not the controlling board of Turan without holding an evidentiary hearing, allowing discovery on the issue, and/or otherwise allowing it an adequate opportunity to be heard. The Bektayev Board points out that the district court issued its crucial decision regarding board control on the briefs alone, without a trial, and despite the existence of conflicting evidence on the controlling issues. We agree.

“Hearing and trial procedures . . . are matters vested in the sound discretion of the trial court,” and this court will not interfere “[a]bsent an abuse of discretion and/or substantial prejudice to the complaining parties’ rights.” Zupancic v. Sierra Vista Recreation, 97 Nev. 187, 192-93, 625 P.2d 1177, 1180 (1981). We conclude that the Bektayev Board was substantially prejudiced by the lack of a hearing and inadequate discovery such that our intervention is necessary.

We conclude that the district court should have allowed for a hearing and additional discovery as there were substantial issues of

material fact in dispute in this case at the time that the district court granted declaratory relief. We conclude that it was unreasonable for the district court to make a ruling on corporate control without further discovery and an evidentiary hearing when questions regarding authenticity and evidence of fraud were being raised and discovered as the evidence was incoming. These issues include the authorized number of common stock shares, whether the stock was properly issued, whether a shareholder meeting authorized an increase in the number of authorized shares, whether the Vanetik Board was engaged in fraudulent activity that would invalidate the stock and the identity of the majority shareholder. The record in this case is riddled with inconsistencies concerning these questions. Based on the undeveloped nature of these important factual disputes, the district court abused its discretion in proceeding to decision without a hearing on the matter and adequate development of the issues presented.

Moreover, in the brief that the Bektayev Board submitted on the issue of board control, it requested more time for discovery concerning the number of outstanding shares and the consideration paid for those shares. See Harrison v. Falcon Products, 103 Nev. 558, 560, 746 P.2d 642, 642-43 (1987) (stating that a party is entitled to additional time for discovery where the party is unable to gather enough information to support their claim and they are not dilatory in conducting discovery). It listed examples of what it needed and intended to obtain through further discovery. There remained throughout discovery the overarching issue as to the validity of the evidence that was submitted by all parties. We conclude that the district court should have allowed further discovery

because this contradicting evidence raises issues of material fact that must be addressed by the fact finder.³

Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. James E. Wilson, District Judge
Lemons, Grundy & Eisenberg
Kaempfer Crowell Renshaw Gronauer & Fiorentino
Martin Hyman, LLC
Santacroce Law Offices, LTD
Carson City Clerk

³Upon remand, we direct the district court to conduct a forum non conveniens analysis. All other arguments raised on appeal from the district court order granting declaratory relief or the post-judgment district court order denying NRCP 60(b) relief either lack merit or are rendered moot by this disposition.