

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-30095  
Conference Calendar

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STEVEN E. WETHERINGTON,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Middle District of Louisiana  
USDC No. CA-91-965-B  
- - - - -  
(September 22, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Steven E. Wetherington appeals the denial of his motion to continue the hearing on the defendant's motion for summary judgment and his motion to extend the time limits to allow for additional discovery. He does not appeal the granting of summary judgment in favor of the defendant.

Once a motion for summary judgment has been filed, a nonmoving party may seek a continuance if it believes that additional discovery is necessary to respond to the motion. Fed.

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

R. Civ. P. 56(f); International Shortstop, Inc. v. Rally's, Inc., 939 F.2d 1257, 1266 (5th Cir. 1991), cert. denied, 112 S. Ct. 936 (1992). The nonmoving party must show how the additional discovery will defeat the summary judgment motion. Id. at 1267. A nonmoving party "may not simply rely on vague assertions that additional discovery will produce needed, but unspecified facts," id. (citation omitted), but must demonstrate that further discovery would be more than a "fishing expedition." Krim v. BancTexas Group, Inc., 989 F.2d 1435, 1443 (5th Cir. 1993). The decision to grant or deny such a motion for continuance is within sound discretion of the district court, Saavedra v. Murphy Oil U.S.A., Inc., 930 F.2d 1104, 1107 (5th Cir. 1991), and will be not disturbed on appeal absent an abuse of discretion by the district court. Chevron U.S.A., Inc. v. Traillour Oil Co., 987 F.2d 1138, 1156 (5th Cir. 1993).

Wetherington failed to demonstrate how further discovery would enable him to defeat summary judgment. Even if Wetherington was able to find experts willing to testify on his behalf, the deadlines for designating expert witnesses and submitting their reports had expired several months earlier on June 30, 1993.

Additionally, Wetherington failed to pursue discovery zealously. Wetherington had been granted four extensions of time over 14 months to comply with the court's scheduling order and to submit to the defendant reports of the experts he intended to rely on at trial.

Because Wetherington failed to demonstrate how further discovery would have enabled him to defeat summary judgment and because he failed to pursue discovery zealously, the district court did not abuse its discretion in denying his motion for a continuance. See Krim, 989 F.2d at 1443.

This Court lacks jurisdiction to review the order denying the extension of time limits because a magistrate judge issued the order and Wetherington did not appeal the denial to the district judge. See Singletary v. B.R.X., Inc., 828 F.2d 1135, 1137 (5th Cir. 1987); Fed. R. Civ. P. 72(a).

AFFIRMED.