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Summary of Stubbs v. Strickland, 129 Nev. Adv. Op. 15

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CIVIL PROCEDURE – ANTI-SLAPP LITIGATION

Summary

This is a consolidated appeal from a district court order dismissing an action for anti-SLAPP relief and from a post judgment district court order denying attorney fees and costs.

Disposition/Outcome

Where a plaintiff voluntarily dismisses an action before the defendant files either a responsive pleading or a special motion to dismiss pursuant to N.R.S. 41.670, the defendant cannot thereafter file an anti-SLAPP suit against the plaintiff based on that action.

Facts and Procedural History

In December 2011, Steven Stubbs (Stubbs) gave a speech during the public comment portion of a Boulder City Council meeting in which he accused Boulder City Councilwoman Linda Strickland (Councilwoman) and her husband, Terry Strickland (Strickland), of not following municipal code requirements for the licensure of their law firm. Thereafter, Strickland, represented by the Councilwoman, filed a complaint against Stubbs for libel per se and negligent infliction of emotional distress. Nine days after Stubbs received the complaint, and before he filed any responsive pleading in the matter, Strickland voluntarily dismissed the suit under N.R.C.P. 41(a).

Following the voluntary dismissal, Stubbs filed a separate complaint against Strickland seeking damages and attorney fees pursuant to Nevada’s anti-SLAPP statute. In response, Strickland filed an N.R.C.P. 12(b)(5) motion to dismiss the complaint. The district court granted Strickland’s motion. Thereafter, Strickland moved for attorney fees and sanctions. The district court denied his motion. Stubbs appealed the order dismissing the anti-SLAPP complaint, and Strickland appealed the denial of attorney fees and sanctions.

Discussion

Justice Gibbons delivered the opinion on behalf of a unanimous court.

Dismissal of Stubbs anti-SLAPP complaint

A SLAPP suit is defined as a meritless lawsuit that a party initiates with the intent of chilling a defendant’s exercise of his or her First Amendment rights.² The Nevada Legislature has created an anti-SLAPP statute meant to curb such suits.³ When a plaintiff files a SLAPP suit against a defendant, the statute allows the defendant to file a special motion to dismiss in

¹ By David H. Rigdon.

² *John v. Douglas County School District*, 219 P.3d 1276, 1280 (Nev. 2009).

³ Nev. Rev. Stat. §§ 41.635-41.670

response to the action.⁴ The statute further provides, “[i]f the court grants a special motion to dismiss filed pursuant to NRS 41.660 . . . [t]he person against whom the action is brought may bring a separate action to recover: (a) [c]ompensatory damages; (b) [p]unitive damages; and (c) [a]ttorney fees and costs of bringing the separate action.”⁵

The Court concluded that the plain and unambiguous meaning of the statute “conditions a defendant’s ability to bring a separate action for damages and attorney fees in response to a SLAPP suit on the district court’s grant of a special motion to dismiss.”⁶ Because Strickland voluntarily dismissed his original complaint before a special motion to dismiss was filed, the district court was unable to grant a special motion to dismiss. Without this precondition, Stubbs lacks the ability to bring an action under N.R.S. 41.670(2).

Dismissal of Strickland’s motion for attorney fees and sanctions

Nevada law permits a district court to award attorney fees to a prevailing party if the court determines the claim was brought without reasonable grounds or to harass the prevailing party.⁷ Although Strickland argued that Stubbs’ anti-SLAPP complaint was misleading, misrepresented the law, and was filed for an improper purpose, the Court concluded that the complaint met Nevada’s notice-pleading standard and was not filed for an improper purpose. Rather Stubbs properly argued for a change or clarification in existing law and, therefore, the district court did not abuse its discretion by denying Strickland’s motion for attorney fees and sanctions.

Conclusion

The Court affirmed both orders and held that if a plaintiff voluntarily dismisses an action before a defendant files either an initial responsive pleading or a special motion to dismiss pursuant to N.R.S. 41.670, the defendant cannot file an anti-SLAPP suit against the plaintiff based on that action.

⁴ Nev. Rev. Stat. § 41.660(1).

⁵ Nev. Rev. Stat. § 41.670(2).

⁶ Stubbs v. Strickland, 129 Nev. Adv. Op. 15 at 4.

⁷ Nev. Rev. Stat. § 18.010(2)(b).