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Patin v. Lee, 134 Nev. Adv. Op. 87 (Nov. 15, 2018) (en banc)

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FIRST AMENDMENT: ANTI-SLAPP STATUTE PROTECTION

Summary

The Court held that a statement by an attorney on her firm’s website summarizing a jury’s verdict is not a statement in direct connection with an issue under consideration by a judicial body. The Court explained that because the statement is not a “good faith communication in furtherance of the right . . . to free speech in direct connection with an issue of public concern,”² it would not receive anti-SLAPP (Strategic Lawsuit Against Public Participation) protection under NRS § 41.660(1).³

Background

Appellants Ingrid Patin and Patin Law Group represented a client in a dental malpractice lawsuit against Summerlin Smiles, Dr. Florida Traivai, and respondent Dr. Ton Vinh Lee. A jury awarded \$3.4 million to Patin’s client, finding that Summerlin Smiles and Dr. Traivai had been negligent, but that Dr. Lee had not been negligent. Summerlin Smiles and Dr. Traivai filed a motion to vacate the jury’s verdict, which the district court granted in 2014. Upon appeal by Patin’s client, the Court reversed and directed the district court to reinstate the verdict. The reversal did not affect Dr. Lee since Patin’s client did not challenge the jury’s finding that he was not negligent.

Between the time the verdict was entered and the Court’s direction to reinstate the verdict, Patin posted a statement, titled “*Singletary v. Ton Vinh Lee, DDS, et al.*”, on her firm’s website describing the \$3.4 million verdict, and stating that the wrongful death action arose out of the decedent Singletary’s tooth extraction performed at Summerlin Smiles, which was owned by Lee.

Lee filed an action asserting defamation per se, based upon the argument that Patin’s description of the case and the inclusion of Lee’s name in her statement, could be construed as stating the jury found Lee to have been negligent. In response, Patin filed a special motion to dismiss pursuant to NRS § 41.660(1). She asserted that her statement was made in direct connection with an issue under consideration by a judicial body, such that it constituted a “good faith communication in furtherance of the . . . right to free speech in direct connection with an issue of public concern.” Patin stated that per NRS § 41.660(3)(a), her good faith communication could not form the basis for defamation liability. The district court denied Patin’s motion, finding that the statement was not in direct connection with an issue under judicial consideration because Patin did not reference the pending appeal. This appeal followed.

Discussion

Resolution of this appeal implicated a single statutory interpretation issue: whether or not Patin’s statement about the jury verdict was in direct connection with an issue under judicial consideration per NRS § 41.637(3).⁴ Because there was no instructive Nevada precedent on the

¹ By Haley Jaramillo.

² NEV. REV. STAT. § 41.660(1) (2017).

³ *Id.*

⁴ NEV. REV. STAT. § 41.637(3) (2017).

issue and because California's and Nevada's anti-SLAPP statutes are similar in both purpose and language, the Court looked to California law to inform their analysis. California's anti-SLAPP statute protects both written and oral statements, as well as writings, so long as they are made in connection with an issue under consideration by a judicial body.

The Court relied on *Neville v. Chudacoff*, in which a company fired one of its employees after the employee stole the company's customer lists and solicited its customers to start a competitive business.⁵ The company sent a letter to its customers warning them not to do business with the fired employee because he breached the company's confidentiality agreement. The company then sued the employee. The employee asserted a cross-claim for defamation, arguing that the company defamed him in the letters. The company's attorney filed an anti-SLAPP motion, which the district court granted. The employee appealed that decision.

Upon appeal, the *Neville* court reviewed California's law with regard to defining "in connection with" as used in the anti-SLAPP statute⁶. After canvassing the relevant precedent, that court concluded a statement is "made in connection with an issue under consideration or review by . . . a judicial body" for purposes of the statute if the statement "relates to the substantive issues in the litigation and is directed to persons having some interest in the litigation."⁷ The *Neville* court held that the attorney's letter was protected under § 425.16(e)(2) because the letter was directly related to the company's claims against the employee and was directed to the company's customers, parties reasonably believed to have an interest in the lawsuit.

This Court, persuaded by the *Neville* court's reasoning, concluded that for a statement to be protected by NRS § 41.637(3), the statement must (1) relate to the substantive issues in the litigation and (2) be directed to persons having an interest in the litigation. The Court rejected Patin's argument that solely referencing a jury verdict is sufficient to be in direct connection with an issue under judicial consideration. The Court stated that protecting Patin's statement would result in providing anti-SLAPP protection to anything that was even remotely connected to a judicial proceeding, thus defeating the statute's purpose of protecting litigants' right of access to the courts without fear of harassment.

Patin's statement fails to meet the standards for protection under NRS § 41.637(3). Even if her statement had referenced the pending appeal, the statement did not relate to any substantive issues in the appeal or the proceedings at the district court level. Additionally, the statement was not directed at someone with an interest in the litigation. The Court affirmed the district court's conclusion that Patin's statement was not in direct connection with an issue under judicial consideration for purposes of anti-SLAPP protection.

Conclusion

The Court concluded that NRS § 41.637(3) provides anti-SLAPP protection to statements made in direct connection with an issue under consideration by a judicial body if it: (1) relates to the substantive issues in the litigation, and (2) is directed at persons having some interest in the litigation. Here, Patin's statement on her firm's website regarding the \$3.4 million verdict in favor of her client did not meet the standards of this test and therefore does not receive anti-SLAPP protection. The Court affirmed the district court's order denying Patin's special motion to dismiss.

⁵ CAL. CIV. PROC. CODE § 425.16(e)(2) (2018); 73 Cal. Rptr. 3d 383, 391–92 (Ct. App. 2008).

⁶ § 425.16(e)(2).

⁷ 73 Cal. Rptr. at 391.