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Abrams v. Sanson, 136 Nev. Adv. Op. 9 (Mar. 5, 2020)

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TORT LAW: DEFAMATION, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS,
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS, FALSE LIGHT, BUSINESS
DISPARAGEMENT, CIVIL CONSPIRACY, CONCERT OF ACTION

Summary

The Court determined that statements sent to an email listserv criticizing an attorney's courtroom conduct were good faith communications regarding a matter of public concern and were protected under the Nevada anti-SLAPP statutes. However, the Court held that Abrams did not show a probability of prevailing on her claims with prima facie evidence as her claims did not exhibit minimal merit.

Background

Jennifer Abrams was working as an attorney. Abrams' opposing counsel, Louis Schneider, allegedly provided a video of Abrams to Steve Sanson, president of Veterans in Politics International, Inc. (VIPI). Sanson published five articles criticizing Abrams on the VIPI website. The articles were also distributed to VIPI's email listserv. Additionally, Sanson allegedly made disparaging comments regarding Abrams on a telephone call with an employee of Abrams' law firm.

Abrams filed a complaint against Sanson and Schneider alleging multiple tort claims. Sanson and Schneider filed special motions to dismiss under the Nevada anti-SLAPP statutes. The district court granted Sanson's motion, finding that the statements about Abrams' job performance as an attorney were a matter of public concern made in good faith and that providing the statements to an email listserv constituted communication in a public forum. The district court further found that Abrams did not show a probability of prevailing on her claims with prima facie evidence. Schneider's motion was also granted by the district court, as he had not directly made any of the statements. Abrams appealed.

Discussion

Statements about an attorney's courtroom conduct and practice of sealing cases directly connect to an issue of public interest

Nevada's anti-SLAPP statutes provide that a good faith communication regarding a matter of public concern includes any communication "made in direct connection with an issue of public interest in a place open to the public or in a public forum which is truthful or is made without knowledge of its falsehood."² The Court previously adopted five guiding principles including that "public interest does not equate with mere curiosity", "public interest should be something of concern to a substantial number of people", "there should be some degree of closeness between the challenged statements and the asserted public interest", "the focus of the speaker's conduct should be the public interest" and "a person cannot turn otherwise private information

¹ By Anya Lester.

² NEV. REV. STAT. § 41.637(4).

into a matter of public interest simply by communicating it to a large number of people” to use in determining whether an issue is of public interest.³

Applying the guiding principles, the Court held that Sanson’s statements directly connected to an issue of public interest. Since Abrams’ courtroom conduct could impact her current and future clients, it is an issue that rises above mere curiosity. Additionally, Abrams’ public actions in court concern the public’s interest and impact more than just a small audience. Finally, since the statements involved courtroom behavior and Abrams’ practice of moving to seal cases, the Court held that these were public conduct issues and not private controversy.

An email listerv may constitute a public forum

In order for statements to be protected under Nevada’s anti-SLAPP statutes, they must be communicated “in a place open to the public or in a public forum.”⁴ Here, the statements were sent to approximately 50,000 people who subscribed to the VIPI email listserv. This is distinguishable from a single email exchange between two parties and is akin to a television broadcast. Although the emails were received in private email inboxes, they were still considered to be in a public forum for purposes of the anti-SLAPP statutes, particularly because the statements were also posted on public websites.

A private telephone conversation does not constitute a public forum

To fall within the scope of Nevada’s anti-SLAPP statutes, the statements must be made “in a place open to the public or in a public forum.”⁵ Since a telephone conversation is private by its nature, a telephone conversation is not protected under the anti-SLAPP statutes and Sanson’s statements during the telephone call were not included further in the Court’s analysis.

Sanson’s statements were either truthful or statements of opinion incapable of being false

To receive protection under Nevada’s anti-SLAPP statutes, a statement must be a “good faith communication” which is “truthful or is made without knowledge of its falsehood.”⁶ Some of the statements made about Abrams were based on video recordings of actual court proceedings and as such are truthful portrayals of Abrams. The majority of the statements at issue were Sanson’s opinions criticizing Abrams and as such cannot be knowingly false.

Abrams did not prove with prima facie evidence a probability of prevailing on her claims

After it was determined that Sanson met his burden under the first prong of the Nevada anti-SLAPP statute, the burden shifted to Abrams to determine if she met her burden under the second prong. The plaintiff’s burden for prong two in Nevada is the same as it is in California’s anti-SLAPP statute, whether the claims have “minimal merit.”⁷

³ Shapiro v. Welt, 133 Nev. 35, 389 P.3d 262, 268 (2017).

⁴ NEV. REV. STAT. § 41.637(4).

⁵ *Id.*

⁶ NEV. REV. STAT. § 41.637, NEV. REV. STAT. § 41.637(4).

⁷ NEV. REV. STAT. § 41.665(2), Navellier v. Sletten, 52 P.3d 703, 712-13 (Cal. 2002).

Each of Abrams' tort claims was evaluated independently and the Court concluded that minimal merit was not established. The defamation claim included opinions which could not be defamatory. The intentional infliction of emotional distress claim did not show extreme and outrageous conduct. Since no negligence was demonstrated, the claim for negligent infliction of emotional distress did not show minimal merit. The false light claim failed to show that Abrams was portrayed in a false light. The business disparagement claim did not show economic loss. The civil conspiracy claim did not show an intent to commit an unlawful objective. The concert of action claim did not show any tortious action. Due to these findings, the court held that Abrams failed to meet her burden under the second prong.

Conclusion

Since Sanson's statements were truthful or personal opinions, concerned matters of public interest and were communicated on an email listerv which can be considered a public forum, the Court held that the district court correctly found that first prong of the Nevada anti-SLAPP statutes were satisfied and the statements were protected. The Court further held that the district court correctly found that Abrams' claims did not show minimal merit and therefore she did not satisfy her burden under the second prong. However, the Court held that the district court erred in including the telephone statements under the anti-SLAPP statutes as a telephone conversation is not a public forum. The case was affirmed in part, reversed in part and remanded for further proceedings.