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Taylor v. Colon, 136 Nev. Adv. Op. 50 (July 30, 2020)

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TORT LAW: NEVADA'S ANTI-SLAPP STATUTES DO NOT VIOLATE A PLAINTIFF'S
RIGHT TO A JURY TRIAL

Summary

The Court held that Nevada's anti-SLAPP statutes do not violate a plaintiff's right to a jury trial because the district court does not engage in any fact-finding. Under prong one of the two-prong test, the district court does not engage in any fact finding involving the plaintiff's claim and cannot defeat a plaintiff's claim. Similarly, under prong two, the district court does not engage in fact finding, but instead considers whether the plaintiff's claim is legally sufficient. Therefore, the Court concluded that the two-prong test is very similar to summary judgement because it allows district courts to dismiss claims that will not reasonably succeed.

Background

Appellant James Taylor, acting in his position as Deputy Chief of the Enforcement Division of the Nevada Gaming Control Board gave a presentation at the Global Gaming Expo about the types of fraud, cheating, and cheating devices that the Gaming Control Board investigated. During this presentation, Taylor showed a nine-second video of Respondent Nicholas Colon holding a standard tally counter device under a blackjack table. Taylor spoke about the counting device and told the audience that it was the only illicit device the Gaming Control Board recovered that year. Colon alleged that Taylor also told the audience that the man pictured in the video was a cheater and a criminal, though appellants deny Taylor making these statements. Colon sued Taylor, the Gaming Control Board, and the American Gaming Association for defamation.

In response, appellants filed an anti-SLAPP motion to dismiss, contending that Taylor's presentation was a good-faith statement made in direct connection with a matter of public concern. To support their motion, appellants attached Taylor's declaration that he gathered his presentation materials from Gaming Control Board investigations. Appellants again denied that Taylor called Colon a cheater. Colon opposed the motion and in response argued that Nevada's anti-SLAPP statutes violated his constitutional right to a jury trial. Colon also argued that Taylor's presentation was not made in good faith.

The district court denied appellants' anti-SLAPP motion to dismiss. It found that Taylor's presentation was not made in good faith, relying on Colon's statement that the counting device could not be used to cheat at blackjack and the fact that Taylor did not dispute Colon's statement. However, it ruled that Nevada's anti-SLAPP statutes do not violate petitioner's constitutional right to a jury trial. This appeal ensued.

¹ By Alexandra Russell

Discussion

Nevada's anti-SLAPP statutes do not violate Colon's constitutional right to a jury trial

The Court first considered if Nevada's anti-SLAPP statutes ran afoul of Colon's constitutional right to a jury trial.

The Court held that Nevada's anti-SLAPP statutes give defendants a procedural method to dismiss meritless lawsuits before spending money on litigation.² In order to succeed, the party filing the anti-SLAPP motion must satisfy a two-prong test. To satisfy prong one, the defendant must demonstrate by a preponderance of the evidence that the plaintiff's claim rests on a "good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern."³ Under prong two, the burden shifts from the defendant to the plaintiff, who must prove "with prima facie evidence a probability of prevailing on the claim."⁴

The Court held that this two-prong test does not deprive Colon of his constitutional right to a jury trial because under prong one, the district court must determine whether the defendant successfully demonstrated that the communications were made in good faith. The district court does not need to engage in any fact finding involving the plaintiff's claim and cannot defeat a plaintiff's claim under prong one. Similarly, under prong two, the district court does not engage in fact finding, but instead considers whether the plaintiff's claim is legally sufficient. Therefore, the Court concluded that the two-prong test is very similar to summary judgement because it allows district courts to dismiss claims that will not reasonably succeed.

Colon's use of Minnesota and Washington Supreme Court decisions holding that Minnesota and Washington anti-SLAPP statutes violated the constitutional right to a jury trial is misdirected. Minnesota and Washington anti-SLAPP statutes incorporated a higher burden of proof under prong two of the test, the "clear and convincing evidence" standard.⁵ However, Nevada's anti-SLAPP statutes only require the plaintiff to present evidence of prevailing on the claim. Though the "clear and convincing" evidence standard may impede a party's constitutional right to a jury trial, Nevada's standard does not.

Appellants demonstrated that Taylor's presentation was made in good faith

The Court reviewed the district court's denial of the anti-SLAPP motion to dismiss de novo. NRS 41.637 defines a good faith communication as a "communications 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."⁶ The Court determined that

² Coker v. Sassone, 135 Nev. 8, 10, 432 P.3d 746, 748 (2019).

³ NEV. REV. STAT. § 41.660(3)(a) (2019).

⁴ NEV. REV. STAT. § 41.660(3)(b) (2019).

⁵ See Leindecker v. Asian Women United of Minn., 895 N.W.2d 623, 636 (Minn. 2017); Davis v. Cox, 351 P.3d 862, 874-75 (Wash. 2015).

⁶ NEV. REV. STAT. § 41.637 (2019); Shapiro v. Welt, 133 Nev. 35, 40, 389 P.3d 262, 268 (2017).

Taylor's presentation was directly related to an issues of public interest and was held in a public forum.

When considering whether the communication was made in good faith, the Court considers the communication as a whole, rather than specific words spoken.⁷ The Court determined that Taylor's presentation was made in good faith because all of the materials he used were obtained through Gaming Control Board investigations. The Court also concluded that this information was true and accurate. Finally, the Court held that Taylor's denial that he called Colon a cheater was a showing of good faith. If the Court held otherwise, a defendant could not feasibly make a showing of good faith when the parties disagree about what was said. Thus, the district court erred in denying appellants' anti-SLAPP motion to dismiss.

Conclusion

The Court concluded that Colon's right to a jury trial was not violated by Nevada's anti-SLAPP statute. Therefore, the district court properly considered appellants' motion to dismiss. However, the district court erred in denying the anti-SLAPP motion to dismiss under prong one because the appellants successfully showed that Taylor's presentation was made in good faith. The Court reversed the district court's order and remanded to the district court to proceed with prong two of the anti-SLAPP analysis.

⁷ Rosen v. Tarkanian, 135 Nev. 436, 437, 453 P.3d 1220, 1222 (2019).