

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

9-2021

Williams v. Lazar, 137 Nev. Adv. Op. 44 (Sep 16, 2021)

Anne-Greyson Long

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>

Recommended Citation

Long, Anne-Greyson, "Williams v. Lazar, 137 Nev. Adv. Op. 44 (Sep 16, 2021)" (2021). *Nevada Supreme Court Summaries*. 1446.

<https://scholars.law.unlv.edu/nvscs/1446>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

Anti-SLAPP: Motion to Dismiss

Summary

This case discusses the requirements for meeting an anti-SLAPP special motion to dismiss when it pertains to defamation and opinion-based statements.¹ The court reversed the district court's order denying the anti-SLAPP motion to dismiss and remanded with instructions that the district court grant the motion. This court concluded that the appellant had met the burden of proof under the two-prong anti-SLAPP analysis.

Facts and Procedural History

This is an appeal from the district court after an anti-SLAPP special motion to dismiss was denied. The original case was between Daphne Williams (now the appellant) and Charles Lazer (now the respondent). Ms. Williams is an African American woman who purchased a condominium. Ms. Williams acted without a real estate agent. Mr. Lazer, a real estate agent, represented the seller of the condominium. After on-going problems, Ms. Williams sent a text message to Mr. Lazer explaining that she was considering filing a complaint with the Nevada Real Estate Division (NRED) due to his behavior which Ms. Williams perceived as racist, sexist, and overall unprofessional. After receiving the message, Mr. Lazer contacted the seller of the property, NRED, Ms. William's mortgage lender, an attorney, and an additional real estate agent and explained his perception of what happened.

Once the sale was complete, Mr. Lazer sent Ms. Williams a demand letter seeking an apology and several thousand dollars. If she obliged, he would refrain from filing a tort action against her because of the text message she sent to him. Ms. Williams refused and then filed an NRED complaint alleging that Mr. Lazer displayed unethical, unprofessional, racist and sexist behavior during the transaction; inappropriately shared confidential information with her about his personal relationship with the seller; contacted the appraiser before the appraisal; and falsely claimed that Ms. Williams would not allow the seller's movers to enter the property which caused delays in closing; failed to send her a fully executed copy of the signed purchase agreement; and had the seller call Ms. Williams urging her to apologize to Mr. Lazer for her text message.

Lazer then filed a complaint claiming defamation, negligence, business disparagement, and intentional infliction of emotional distress. Ms. Williams then filed an anti-SLAPP special motion to dismiss claiming her statements were protected.

¹ By Anne-Greyson Long

Discussion

The issue in this case concerns the scope of Nevada’s anti-SLAPP statute; particularly what the defendant must demonstrate to meet that statute’s good faith standard for protected speech, how the statute works with common law-based speech privileges, and what is required of the plaintiff in terms of showing a probability of prevailing on the merits of the claim.

Williams satisfied her burden under the first prong of the anti-SLAPP analysis

Ms. Williams believes that her statement about Mr. Lazer being raciest, sexist, unprofessional, and unethical, is a non-actionable opinion. Ms. Williams argues that her remaining statements were either true, factual statements, or Mr. Lazer failed to provide evidence that demonstrated Ms. Lazer knew the statements were false-this court agrees. In order to have a successful anti-SLAPP motion to dismiss where (1) the defendant shows, by a preponderance of the evidence, that the claim is based on a “good faith communication in furtherance of...the right to free speech in direct connection with an issue of public concern and (2) the plaintiff fails to show, with prima facie evidence, a probability of prevailing on the claims.² In order to satisfy the first prong of the anti-SLAPP special motion to dismiss analysis, the defendant must show that (1) the comments at issue fall into one of four categories of protected communications enumerated in 41.637 and (2) the communication is made in good faith in that it is trustful and made without knowledge of its falsehood.³ Ms. Williams put forth a sworn affidavit in which she described the problems she had with respondent-similar cases have found that a sworn affidavit is enough to prove good faith.

Opinions cannot be false. The Court concludes that Ms. Williams has satisfied the first prong of the anti-SLAPP framework. Additionally, *Rosen* explains that courts do not parse words but instead consider whether a preponderance of the evidence demonstrates the gist of the story, or the portion of the story that carries the sting of the statement is true.⁴ Further, Mr. Lazer did not demonstrate a probability of prevailing on his claims of which he had the burden of showing their merit to proceed with the litigation. Absolute litigation privilege applies at the second prong of the anti-SLAPP analysis because the appellant’s statements were made in good faith and the appellant’s communication was related to litigation.

Lazer did not demonstrate a probability of prevailing on his claims

Mr. Lazer had the burden of showing that his claims had some merit to proceed with litigation under the second prong of the anti-SLAPP analysis, *Abrams*. The second prong of the anti-SLAPP analysis includes absolute litigation privilege for which Ms. Wallace qualified as a result of her complaint filed with the NRED.

² NEV. REV. STAT. §41.660(3).

³ *Stark v. Lackey*, 136 Nev. 38,40, 458 P.3d 342 (2020) (quoting NRS 41.637).

⁴ *Rosen v. Tarkanian*, 135 Nev. 436 P.3d 1220 (2019).

The absolute litigation privilege applies at the second prong of the anti-SLAPP analysis

This court has previously acknowledged and provided clarification that the absolute litigation privilege is relevant and is the second prong of the anti-SLAPP analysis, *Shapiro v. Welt*. Simply put and of particular relevance to this case, Mr. Lazer cannot demonstrate his probability of prevailing in the case if the absolute litigation privilege applies to Ms. Wallace's NRED claim. Ms. Wallace's liability would therefore be negated. The court noted California authority as "instructive" in its decision.

Statements made in a complaint filed with NRED are subject to the absolute litigation privilege

Whether or not the absolute privilege applies is a question of law. Ms. Williams argues that the absolute litigation privilege protects her from liability from her NRED complaint because her statements were made within the context of a quasi-judicial proceeding. The court concluded that an NRED proceeding initiated by a complaint from a party in a real estate transaction is quasi-judicial because it meets the criteria outlined in *Spencer v. Klementi*.⁵ Further, the Real Estate Commission, to whom the complaint is lodged, has the authority to administer oaths, issue subpoenas, and serve process. Importantly, Mr. Lazer is provided with the opportunity to refute evidence presented and witness testimony which is a crucial element in establishing absolute litigation privilege. The NRED provides the licensee with the opportunity to file an answer to any charges and to ask for a judicial review of an unfavorable ruling or decision. The similarities of the NRED with a court of law qualifies it as quasi-judicial.

Williams filed her NRED complaint in good faith and in anticipation of future litigation

The court concluded that Ms. Williams filed her NRED complaint in good faith and in relation to litigation. Ms. Williams complaint is a complaint in a quasi-judicial proceeding and the absolute litigation privilege applies and protects her complaint. For absolute privilege to apply to statements made in the context of judicial or quasi-judicial proceedings, (1) a judicial proceeding must be contemplated in good faith and under serious consideration, and (2) the communication must be related to the litigation.⁶ Because Mr. Lazer's claims are derived from defamatory statements contained in Ms. William's complaint, which is protected by absolute privilege, the court holds that Mr. Lazer cannot show by prima facie evidence a probability of prevailing on his claims.

⁵ *Spencer v. Klementi*, 136 Nev. 325, 332, 466 P.3d 1241, 1247 (2020)

⁶ *Jacobs v. Adelson*, 130 Nev. 408, 413, 325 P.3d 1283, 1285 (2014)

Conclusion

On appeal, this Court concludes that the appellant met the good faith requirement under the anti-SLAPP statute. The appellant's statements were either opinions, truthful statements, or were supported by the appellant's sworn affidavit. The court concludes that the absolute litigation privilege applies at the second prong of the anti-SLAPP analysis and an NRED proceeding is quasi-judicial for purposes of privilege. The appellant's statements met the requirements for anti-SLAPP protection and absolute litigation privilege applies. Whether or not the privilege applies to particular statements is relevant to the second prong of the anti-SLAPP analysis due to the fact that a plaintiff cannot prevail on defamation-based claims and related torts if the privilege applies. The respondent cannot prevail on his claims. The Court reversed the district court's decision.