

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

12-2021

Sirtos vs. Yemenidjian, 137 Nev. Adv. Op. 73 (Dec. 02,2021)

Michael Goutsaliouk

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

Recommended Citation

Goutsaliouk, Michael, "Sirtos vs. Yemenidjian, 137 Nev. Adv. Op. 73 (Dec. 02,2021)" (2021). *Nevada Supreme Court Summaries*. 1461.

<https://scholars.law.unlv.edu/nvscs/1461>

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 MOTIONS AND PARTIES THAT DISAGREE

Summary

The case deals with NRS 41. 635-670, which are colloquially known as the anti-SLAPP statutes.² The anti-SLAPP statutes provide a two-step procedural mechanism under which a district court may dismiss a meritless lawsuit aimed at chilling speech. The primary issue in this case is how a district court should proceed when the appellant denies the details of an alleged statement. Here, appellant Sirtos claimed that he never made the statements brought forth in respondent Yemenidjian’s complaint. The Court found that the appellants denial had no relevance at step one of the district court’s anti-SLAPP evaluation. Additionally, Sirtos argued that even if the Yemenidjian’s version of events was true, that Sirtos made the statement in good faith in furtherance of an issue public concern. The Court rejected this contention as Sirtos presented no evidence that showed the statement was true or made without knowledge of its falsehood. Finally, Sirtos claimed that Yemenidjian’s version of his statement was a nonactionable opinion. The Court disagreed with this contention.

Background

Appellant Nicola Sirtos served as a co-owner of D.H. Flamingo; a company interested in entering the marijuana business in Nevada. In 2018, D.H. Flamingo submitted three applications for recreational-marijuana licenses to the Nevada Department of Taxation. The Nevada Department of Taxation rejected all three of D.H. Flamingo’s applications. D.H.

¹ Michael Goutsaliouk.

² NEV. REV. STAT. § 41.635 (1997); NEV. REV. STAT. § 41.637 (2013); NEV. REV. STAT. § 41.640 (1997); NEV. REV. STAT. § 41.650 (2013); NEV. REV. STAT. § 41.660 (2015); NEV. REV. STAT. § 41.665 (2015); NEV. REV. STAT. § 41.670 (2013).

Flamingo and several other companies that the Department of Taxation similarly rejected sued the Department and many of the successful applicants, some of which were Respondent Armen Yemenidjian's former companies. The companies alleged the process was, "corrupted and certain application[s] were favored over others".

Two weeks after the filing of the suit, Spirtos attend a political event. At this event, he spoke to John Ocegura, a former Nevada Assemblyperson. It is undisputed that during the conversation Spirtos conveyed his belief that the Department's licensing process was corrupt. However, it is disputed whether Spirtos specifically mentioned Yemenidjian. After the conversation, Ocegura relayed the contents of the conversation to Yemenidjian.

Yemenidjian sued Spirtos for slander and conspiracy, alleging that Spirtos had accused him of criminal activity in his conversation with Ocegura. Spirtos countered with an anti-Slapp motion to dismiss, in which he denied mentioning Yemendjian by name during his conversation with Ocegura. Spirtos claimed that he merely commented the marijuana-licensing process in general had been corrupted. Spirtos claimed that his statement was a "good faith communication" that was made regarding an issue of public interest in a public place. Spirtos claimed that this good faith communication complied with NRS 41.637(4) because it was either truthful or made with no knowledge of its falsity.³ Yemenidjian countered that Spirtos did make derogatory comments towards him and that Spirtos's declaration failed to explain how any statement about Yemenidjian could have been truthful or made without knowledge of its falsity. Yemenidjian attached a declaration from Ocegura. In the declaration, Ocegura attested that Spirtos claimed that Yemenidjian was "knee deep in corruption". Spirtos responded that even if

³ NEV. REV. STAT. § 41.637 (2013).

Yemenidjian's version of events was accurate, that version constituted a nonactionable opinion because no reasonable person would believe that Spirtos was serious.

The district court denied Spirtos's motion to dismiss. The district court accepted as accurate Yemenidjian's version of Spirtos's statements. The district court further found that the statement did not satisfy NRS 41.637(4) because the statement dealt with a personal matter and was made in a private conversation. The district court did not discuss Spirtos's argument that his statement was a nonactionable opinion.

Discussion

Spirtos' denial that he made the alleged statement is irrelevant to step one of the anti-SLAPP analysis

The Court began by stating that the evaluation of an anti-SLAPP motion to dismiss involves a two-step analysis.⁴ In step one, the moving party must establish, by a preponderance of the evidence, that the claim is based on a good faith communication using free speech in connection with an issue of public concern. In step two, the moving party must present prima facie evidence of a probability of prevailing on the claim.

The Court concluded that the district court properly disregarded Spirtos's claim that he did not mention Yemenidjian by name and that he only spoke about the licensing process. The Court focused on the language of NRS 41.660(3)(a) and found that the district court properly hinged its analysis on "the claim".⁵ By looking at "the claim", the district court properly focused on the statement comprising the basis of the plaintiff's complaint, which was the version of the statement that Yemenidjian alleged Spirtos made. Additionally, NRS 41.660(3)(a) requires that

⁴ NEV. REV. STAT. § 41.660 (2015).

⁵ *Id.*

the statement be a “good faith communication.”⁶ A “good faith communication” is a communication that is truthful or is made with no knowledge of its falsity.⁷ The Court concluded Spirtos could not deny accusing Yemenidjian of corruption in his conversation with Ocegüera while simultaneously suggesting that his (non)accusation was truthful or made without Spirtos knowing it was false.

Spirtos’ alleged statement was made in direct connection with an issue of public interest in a place open to the public or in a public forum, but he has not shown that the alleged statement was made in good faith

Spirtos also contended that the district court erroneously determined that Spirtos’s statement, as alleged by Yemenidjian, was not in furtherance of the right to petition or the right to free speech directly connected to issues of public concern.⁸ The Court disagreed with the district court by stating that Spirtos’s statement was made in direct connection with an issue of public concern. In determining whether a statement falls within NRS 41.637(4)’s definition of public concern, the Court looked at the five-factor framework adopted in *Shapiro v. Welt*. The factors are as follows: (1) the “public interest” isn’t analogous to mere curiosity, (2) a matter of public concern should be of concern to a substantial number of people, (3) there should be some relation between the challenged statements and the public concern, (4) the speaker’s focus should be on public interest rather than “a mere effort to gather ammunition for another round of private controversy; and (5) a person cannot convert otherwise private information into a matter of public interest merely by broadcasting it to a substantial number of people.⁹

⁶ *Id.*

⁷ NEV. REV. STAT. § 41.637 (2013).

⁸ *Id.*

⁹ *Shapiro v. Welt*, P.3d 262, 268 (Nev. 2017) (quoting *Piping Rock Partners, Inc. v. David Lerner Assocs., Inc.*, 946 F. Supp. 2d 957, 968 (N.D. Cal. 2013)).

The Court stated that under the first and second factors, there was no dispute that the alleged corruption in a public agency is of concern to a substantial number of people. Also, under the third factor, there was some degree of closeness between Spirtos's statement and the asserted public interest of public corruption. Further, under the fourth factor, it was apparent that Ocegura interpreted Spirtos's statement as something more than, "a mere effort to gather ammunition for another round of private controversy." Nevertheless, the Court didn't feel that it was appropriate to overturn the district court's decision as they did not find Spirtos's statement was a "good faith communication". In his anti-SLAPP motion, Spirtos listed several factual bases in support of his belief that the Department's licensing process was corrupt. However, he included no factual basis for why he believed that Yemenidjian was involved in the corruption. Therefore, Spirtos was unable to prove by a preponderance of the evidence that his statement was a "good faith communication".

Spirtos' alleged statement did not constitute a nonactionable opinion

Spirtos final argument was that his "opinion" was not capable of being untrue or being made without knowledge of its falsehood. Spirtos contended that his alleged statement that Yemenidjian was "knee deep in the corruption at the center of the licensing process" was hyperbolic language that negated any impression that Spirtos was seriously accusing Yemenidjian of committing a crime.

The Court disagreed with Spirtos. The Court found that accusing a public official or corruption is usually "defamatory *per se*." ¹⁰ Further, expressions of opinion that suggest the speaker knows certain facts to be true or implies that certain facts exist can render the statement

¹⁰ Bentley v. Bunton, 94S.W.3d 561, 582 (Tex. 2002).

defamatory if found to be false. The Court stated that it was disingenuous for Spirtos to attempt to pass himself off as a uniformed member of the general public.

Additionally, the Court considered whether a reasonable person would understand the remark as an expression of an opinion or a statement of fact. After hearing the allegation from Spirtos, Ocegura proceeded to tell them to Yemenidjian. This served as definitive proof that a “reasonable person” inferred that Spirtos made the accusation with knowledge of factual support for the accusation. Thus, the Court found that Spirtos’s statement was not nonactionable opinion.

Conclusion

Based on NRS 41.660(3)(a)’s plain language, the Court concluded that Spirtos’s denial that he made the alleged statement had no relevance at step one of the anti-SLAPP evaluation. Although the district court was wrong in concluding that the alleged version of Spirtos’s statement didn’t fall under NRS 41.637(4), Spirtos failed to show that his statement was a “good faith communication”. For these reasons, and because the Court disagreed with Spirtos’s contention that his alleged statement was a nonactionable opinion, the Court affirmed the district Court’s order denying his motion.