February 2023

Nevada Bar Exam

FEBRUARY 2023

NEVADA BAR EXAM

QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET

Lucy and Marla went to Beauty Land, a new full-service beauty spa on the Las Vegas Strip. Lucy asked for a pedicure. Marla wanted her eyebrows tattooed.

At the salon, Lucy was seated in one of several new pedicure chairs received that morning from Deluxe Pedi-Chair, a local commercial supplier. When Lucy put her feet in the water and turned on the chair's massage feature, she was violently jolted out of the chair and onto the floor by an electrical shock. Daisy, Beauty Land's manager, rushed to Lucy and asked if she was okay. Lucy nodded and was helped to another chair for her pedicure but she did not turn on the chair's massage feature because her ribs hurt from the fall. Daisy had noticed a slight spark that morning as she plugged in the first chair Lucy sat in, but thought nothing of it.

Meanwhile, Marla had been shown to a room at Beauty Land, where Roberto, a Beauty Land independent contractor, explained the tattooing process. Roberto had years of tattooing experience, but he had never tattooed eyebrows before. Roberto handed Marla a Beauty Land consent form that stated, "Wait at least two weeks after receiving Botox before tattooing eyebrows." Marla handed the form back to Roberto, unsigned, and told him that she had a Botox injection the day before. Roberto said, "no problem," and proceeded to tattoo Marla's eyebrows in the color and shape they had discussed.

Lucy, who had been diagnosed with brittle bone syndrome years ago, was told by her doctor one week after her fall that she had fractured her ribs. Marla's eyebrows, which had migrated up her forehead because of the Botox injection, looked ridiculous. Furious, Marla posted multiple negative on-line reviews and went back to Beauty Land when it was full of customers and screamed, "This place stole my money. They knew they shouldn't have tattooed my eyebrows and then ruined them! They also electrocuted my friend. Get out before it's too late." The customers, mostly tourists, ignored Marla's outburst. Beauty Land terminated its relationships with Daisy and Roberto. Thereafter, no one in the beauty salon market would hire Daisy as a result of her negative on-line reviews. Beauty Land continues to do a thriving business on the Las Vegas Strip.

Please fully discuss all claims for relief that may be brought by the following plaintiffs and any defenses to those claims:

1. **Lucy;**
2. **Marla;**
3. **Beauty Land; and**
4. **Daisy.**

FEBRUARY 2023

NEVADA BAR EXAM

QUESTION NO. 2: ANSWER IN RED BOOKLET

Victor and Danielle were business partners and housemates. While going through the statements from their business account, Victor discovered that Danielle had stolen money from their business. Victor texted Danielle to let her know that he was on his way home and needed to speak with her. Danielle was afraid that Victor had discovered she took the money. Danielle had five shots of alcohol while waiting for Victor to get home. When Victor arrived, he immediately started yelling and approached Danielle in a menacing manner.

Danielle was scared because she had never seen Victor so upset. Victor continued to yell and followed her around the home. Danielle knew that Victor owned a gun that he typically carried with him, so she ran to her room to get her gun. After grabbing her gun, she went back to the kitchen where she saw Victor reach into his pocket. She immediately shot Victor in the head.

Danielle checked and saw that Victor was dead. She reached into his pockets and found only his phone, which she took. She dropped her gun and fled the home.

Neighbors called law enforcement when they heard loud yelling. Officers Abel and Brady arrived after Danielle left the home. Officer Abel knocked on the front door while Officer Brady walked around the side of the home and climbed over the fence to enter the backyard. Using a flashlight, Officer Brady looked into the kitchen window where he saw Danielle's gun on the floor. Officer Brady told Officer Abel what he saw and the two broke down the front door to enter the home where they found Victor's body and collected the gun.

The officers located Danielle a few blocks away with Victor's phone. She was arrested and charged with murder.

Please fully discuss the following under Nevada law:

1. **Under what theories of murder can Danielle be prosecuted?**
2. **What defenses should Danielle's defense attorney consider?**
3. **Prior to trial, Danielle's defense attorney filed a motion to suppress Danielle's gun. How should the court rule?**

FEBRUARY 2023

NEVADA BAR EXAM

QUESTION NO. 3: ANSWER IN DARK GREEN BOOKLET

Upon becoming licensed to practice law in Nevada, Billy partnered with his uncle Ray, a civil litigator with a solo practice in Reno. A couple months later, Ray died of a heart attack. Despite having never tried a case, Billy attempted to take on Ray's large caseload. Billy did not have time to work on some of the smaller cases and, as a result, missed a few discovery deadlines.

To free up some time, Billy decided to withdraw from a breach of contract case Ray had filed against Donald on behalf of Pam. Billy drafted, signed, and filed with the court a document entitled Withdrawal of Attorney and served a copy on Donald's attorney and Pam. Pam sent several emails to Billy protesting the withdrawal, but Billy never replied. When Donald's attorney called to ask about the withdrawal, Billy stated that Ray should have never agreed to take the case due to the lack of evidence.

Pam showed up at Billy's office demanding a refund of her remaining retainer deposit and the return of her original promissory note that was at issue in the case. Billy said he would forward the money and note to Pam's new attorney. Pam said, "You better, 'cuz if I don't win this case, I'm gonna lose my house." Billy did not actually have a record of Pam's retainer balance. After Ray died, Billy transferred all client funds into the firm's operating account to cover overhead. As for the original promissory note, Billy's assistant accidentally shredded it when Billy instructed her to clean out Ray's office.

A few days later, Billy ran into Donald at the grocery store. Donald, thinking Billy still represented Pam, asked about the case. Billy, worried about Pam's demands, thought he might be able to settle the case. Billy told Donald that Pam has a "smoking gun email," and Donald would be wise to offer a quick settlement. Donald began to protest, but Billy cut him off and said it would only get worse for him after Pam loses her house.

Please fully discuss all ethical issues arising under the Nevada Rules of Professional Conduct.

FEBRUARY 2023

NEVADA BAR EXAM

QUESTION NO. 4: ANSWER IN ORANGE BOOKLET

Bill robbed a bank. As he was fleeing the scene, he slammed into Tom causing Tom to fall and hit his head. Bill continued running and bumped into Whitney and knocked her down. Whitney immediately called 911, and hysterically screamed that she saw Bill running from the bank carrying a gun. An ambulance arrived and rendered aid to Tom. As Tom was being rushed to the hospital, he said "get Bill for this."

The next day, Bill retained a lawyer and told him what happened. The lawyer advised Bill to turn himself in. The next week, when Bill still had not turned himself in, and there was a dispute about the lawyer's retainer, the lawyer terminated the representation. Shortly thereafter, Bill was arrested for the robbery. Bill gave a statement and said that his friend forced him to commit the robbery but he did not kill Tom.

Bill was tried for the robbery and Tom's murder in a Nevada state court. At trial, the following evidence was offered and objected to, by the opposing party.

Please discuss admission of the offered evidence under the Nevada Rules of Evidence:

1. The prosecution called Bill's former lawyer to testify that, after talking with Bill about the charges, he notified the sheriff's office they could find the gun used in the robbery buried in Bill's backyard.

2. The prosecution called Bill's neighbor to testify that his stepson, who had been involved in minor brushes with the law, told him that Bill asked him to help with a robbery, but that his stepson claimed he had refused to participate. The stepson has left the state and his whereabouts are unknown.

3. The prosecution called Whitney to testify, and was surprised when she testified that she did not see Bill fleeing the scene. The prosecution then sought to admit a recording of Whitney's 911 call immediately after the robbery in which she hysterically screamed that she saw Bill flee the scene of the robbery.

4. In its case-in-chief, the prosecution called Bill's former neighbor, to testify that three years earlier, Bill pulled a gun on him and took his wireless speaker because he was playing loud music in his backyard.

5. The prosecution called a hospital worker to testify that on the day Tom died, he told her that Bill slammed into him after he committed the robbery.

6. The defense called an expert to testify that based on his new forensic process, the gun found in Bill's backyard was not the same gun used in the robbery because, in his opinion, the gun had been in the ground for at least a year before the robbery.

FEBRUARY 2023

NEVADA BAR EXAM

QUESTION NO. 5: ANSWER IN PURPLE BOOKLET

Paulie, a world-renowned pizza chef, was planning his annual artisan pizza festival to be held in Northern Nevada on August 1, 2022. On March 1, 2022, Paulie emailed Dave's Imports ("DI") a purchase order for San Marzano tomatoes. Paulie ordered 5,000 bushels at a price of $100 per bushel. Paulie's order indicated that DI should deliver the tomatoes to Paulie's facility in Reno no later than July 15, 2022.

DI responded to Paulie's email agreeing to all of Paulie's terms. In addition, DI's reply stated that DI would add a charge of five percent of the total purchase price for increased labor costs consistent with all agricultural providers doing business in 2022. Paulie did not respond.

On June 2nd, DI emailed Paulie and stated "drought and then heavy rain have slowed tomato ripening. Delivery may be late and we may not have enough tomatoes to fulfill your order." Paulie responded "I need a firm commitment by July 1st or I'll have to get the tomatoes elsewhere. Can't move the date of the festival." DI responded: "Standby."

DI did not contact Paulie by July 1, 2022. On July 10th, Paulie contacted another supplier to obtain tomatoes for the festival. The supplier did not have San Marzano tomatoes so Paulie had to order 5,000 bushels of a lesser quality tomato at $120 per bushel. Paulie did not inform DI he had contacted another supplier.

On July 14th, DI emailed Paulie stating "All set. Will have the 5,000 bushels of San Marzanos to you tomorrow." That same day, while en route to Paulie's facility, DI's truck was involved in an accident and all of the tomatoes were destroyed.

Paulie's festival occurred as scheduled, but many attendees complained about the quality of the replacement tomatoes. Sales were much lower than prior years. Paulie refused to pay DI and sued DI for damages from the festival. DI responded and demanded payment for the 5,000 bushels destroyed in the accident at $120 per bushel as well as the five percent labor charge.

Please fully discuss the following:

1. **Do Paulie and DI have an enforceable contract? If so, what are its terms?**
2. **What is the effect of DI's statement that delivery may be late and Paulie's response thereto?**
3. **What claims can Paulie raise against DI and what are DI's defenses thereto?**
4. **What claims can DI raise against Paulie and what are Paulie's defenses thereto?**
5. **What types of damages will Paulie and DI seek and will they likely be successful?**

FEBRUARY 2023

NEVADA BAR EXAM

QUESTION NO. 6: ANSWER IN YELLOW BOOKLET

The White Pine County Commission ("WPCC") became alarmed at news reports that the U.S. Department of Energy ("DOE") planned to transport nuclear material, using private transportation contractors, from a temporary storage facility in California to the Idaho National Engineering Laboratory ("INEL") for processing. The intended one-way transport route was through White Pine County, Nevada. Under federal law, nuclear materials can only be transported in sealed canisters (which prevent the release of any radiation) and stored only with permits from the DOE. Federal statutes and regulations are silent as to state regulation of nuclear materials.

Concerned for the health and safety of White Pine County residents, the WPCC passed an ordinance that all transportation of nuclear material through White Pine County must be by train, and that trains transporting nuclear material must not exceed 15 miles per hour when traveling through White Pine County. Nuclear transport companies complained that the regulation impeded their transport of nuclear materials. The WPCC then amended the ordinance to provide for the construction of two transfer centers, at the northern and southern borders of White Pine County, where trains enter and leave White Pine County. The White Pine County transfer centers were used for transfer of nuclear material from trucks, which were disallowed in White Pine County under the ordinance, onto trains when entering White Pine County and then, if desired by the transport contractors, transferred from trains to trucks when leaving White Pine County. At the transfer centers, trucks that had been carrying nuclear material were decontaminated.

One of the transfer centers was adjacent to a large dairy farm that provides milk exclusively to three grocery chains in Salt Lake City, Utah. After the locations of the White Pine County transfer centers became public, two of the grocery chains (making up about 60% of the dairy farm's orders) cancelled their milk orders from the dairy farm.

Please fully discuss the claims by the following parties against White Pine County, and White Pine County's defenses thereto, under applicable provisions of the United States Constitution.

1. **Claims of the transportation contractors; and**
2. **Claims of the dairy farm.**

NEVADA PERFORMANCE TEST (NPT)

Each NPT is a 2 hour exam designed to test the ability to complete a common legal task that a beginning lawyer would be expected to perform. You are required to use necessary legal skills in a real-life scenario.

You will be provided with a File. The File will contain source documents that will set forth the facts of the case and other background information. These materials may include interview transcripts, correspondence, investigative reports, client records, pleadings, internal memorandum, newspaper articles, legislative materials, medical records and correspondence between counsel. All facts recited are not relevant, and maybe incomplete, ambiguous or conflicting. You are expected to recognize what facts are relevant and to identify when facts are ambiguous and how such ambiguities could be resolved.

The second component of the exam materials is the Library. The Library may contain cases, statutes, administrative regulations and other legal authority commonly cited in a legal memorandum or used for reference. All legal sources are based on Nevada law. You may use abbreviated titles and omit page references when citing cases found in the Library.

The NPT is not a test of your knowledge of substantive law. The NPT is designed to evaluate your fundamental lawyering skills. Your answer will be evaluated on the content, thoroughness, and organization of your document based on these criteria:

- Ability to determine relevant factual details, to distinguish relevant from irrelevant facts, and to resolve potentially conflicting facts;
- Analysis of source legal authorities to determine applicable principles of law;
- Application of the controlling law to the relevant facts and circumstances;
- Effective communication in writing;
- Performing task in a timely matter; and
- Ability to follow the directives provided.

In preparing your written document, it is important that you concentrate on the materials in the File and Library, which provide the specific materials from which you should use. Use your general legal knowledge to assist you with analyzing the issues presented.

FILE

MEMORANDUM

FROM: Supervising Attorney, Office of the Attorney General
TO: Candidate
SUBJECT: Marsy's Law Litigation – *Smith v. DPP*
DATE: February 22, 2023

As you know, our office handles lawsuits filed against the Nevada Division of Parole and Probation (DPP). We are now defending against lawsuits attempting to bring claims against the DPP for supposed violations of Marsy's Law, the victims' rights provisions added to the Nevada Constitution in 2018.

Charles Smith is suing the DPP under Marsy's Law to recover approximately $150,000 in damages for expenses he claims he has because he was never informed of Mr. Richard White's parole decision and release. Mr. White was charged and convicted of multiple counts of grand larceny. Mr. White was sentenced, imprisoned, and paroled in June 2022.

We have conducted sufficient discovery to decide that Smith is misreading Marsy's Law for multiple reasons and that his case should be dismissed before trial on summary judgment.

Please use the File and Library attached to draft the relevant arguments for summary judgment on any grounds you see from the text of the constitutional provision or caselaw. Do not concern yourself with other potential arguments we may have, such as immunity, exhaustion of administrative remedies, etc.

Use our *Guidelines for Persuasive Briefs Filed in Trial Courts*, also attached. You do not need to include the caption or statement of facts, just argument sections with proper headings.

OFFICE MEMORANDUM

TO: All Attorneys, Office of the Attorney General
FROM: Supervising Attorney
SUBJECT: Guidelines for Persuasive Briefs for Trial Courts
DATE: November 10, 2022

The following guidelines apply to persuasive briefs filed by our office in trial courts in support of motions, including motions for summary judgment.

III. Legal Argument

The body of each argument should analyze applicable legal authority and persuasively argue that both the facts and the law support our position. Supporting authority should be emphasized, but contrary authority should also be cited, addressed in the argument, and explained or distinguished. Courts are not persuaded by exaggerated, unsupported arguments.

A brief should not contain a single broad argument heading. Break the argument into its major components and write carefully crafted subject headings that summarize the arguments each covers. The argument headings should be complete sentences that succinctly summarize the reasons the tribunal should take the position you are advocating. A heading should be a specific application of a rule of law to the facts of the case and not a bare legal or factual conclusion or a statement of an abstract principle. Examples:

> Improper: Plaintiff has satisfied the exhaustion of administrative remedies requirement
>
> Proper: Where Plaintiff requested an administrative hearing by timely completing Form 3B, but the prison has refused to schedule a hearing, Plaintiff has satisfied the exhaustion of remedies requirement.

Do not prepare a table of contents, a table of cases, a statement of the case, or an index; these will be prepared, as required, after the draft is approved.

Charles Smith v. Department of Parole and Probation
Excerpts of Deposition Transcript of Charles Smith
January 15, 2023

Present: Mr. Charles Smith, plaintiff; Ms. Georgia Best, attorney for plaintiff; Mr. Marshall Lowe, Asst. A.G.

Direct Examination (by Ms. Best)

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Ms. Best: How were you victimized by Mr. White's crimes?

Mr. Smith: Dick, that is, Mr. White, and I owned a restaurant together, Dick and Charley's, in Fallon on Main Street. Actually we still own it together, which is one of the problems here. Immediately after Dick was arrested for grand theft against all those people business boomed for a couple of days because people were curious and wanted to find out what had happened. But as soon as the terrible facts of all the sad people Dick stole from became public, nobody wanted to come to our restaurant anymore. They knew Dick and I were close and didn't want to associate with either of us. Business dropped to a tiny fraction of what it was before.

Ms. Best: Did you talk to the prosecutor about the case?

Mr. Smith: Yes. I told the number two man in the D.A.'s office that I wanted to be informed of every step in the proceedings against Dick, and they were great about doing that. I watched a lot of the trial.

Ms. Best: Why are you suing the Department of Parole and Probation?

Mr. Smith: As a business partner with Dick, my finances were horribly entangled with Dick's. He owed me money, he owed our business money, and I needed to get it disentangled. I told the D.A. all that from the beginning. But the parole people granted Dick parole early, without giving me any notice that they were even considering it. As soon as Dick was paroled, he fled to parts unknown. Nobody can find him. I needed to know about the parole hearing, because he had promised that when he got released he would sign over the restaurant to me in exchange for all the money he owed me. He had the paperwork in prison, but he told me he wanted to sign it as a free man. That made sense to me. But no one told me that he was getting paroled and then he jumped. It's costing me a lot of money to try to extricate myself from this mess with him. It would have been much easier, cheaper to get it done as we had planned, with him signing the papers. And he's gone anyway. He doesn't care that the restaurant is now Charley's.

Ms. Best: So you are suing under Marsy's Law to recover the expenses you have because the Department failed to notify you of Mr. Smith's parole and release?

Mr. Smith: Absolutely. I'm as much of a victim as the people Dick stole money from, so I had a right to be told and they failed and it cost me six figures in attorneys fees and it's not even finished.

Ms. Best: And you have provided documentation of your attorneys' fees to the other side as part of this lawsuit?

Mr. Smith: Yes, I sure have. Lawyers' bills, investigators bills for trying to find Dick, the whole shebang. It has totaled more than $130,000.

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Cross Examination (by Mr. Lowe)

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Mr. Lowe: To be perfectly clear, was Mr. White ever arrested or charged with stealing money from you?

Mr. Smith: No. The guys Dick stole from weren't very smart. He never tried that baloney with me because he knew it wouldn't work.

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Mr. Lowe: Let's go over some of the law firm bills you have provided us. You submitted a bill for $78,000 from the law firm of Courage & Strand for work they performed over two months on matters related to the dissolution of your partnership agreement with Mr. White and the lease for your restaurant business. The attorney at Courage & Strand who did most of this work billed you for 72 hours of work at $950.00 per hour over that two month period. Is that correct?

Mr. Smith: Yes, that's correct, that sounds right. Paul Courage is a very good lawyer. Friend of mine. Smart guy. I've used him for years.

Mr. Lowe: How much have you paid Courage & Strand for the work billed here?

Mr. Smith: I've paid them about fifteen, twenty thousand.

Mr. Lowe: Do you intend to pay them the full amount they billed?

Mr. Smith: Yes, of course. I mean, maybe I'll be able to work something out.

Mr. Lowe: You said that Mr. Courage had done legal work for you before?

Mr. Smith: Yes. Many years. He drew up the papers I was trying to get Dick to sign.

Mr. Lowe: Had Mr. Courage billed you at $950.00 per hour in the previous work he has done for you?

Mr. Smith: Well, no. Lower. But he and I agreed that this work is difficult, and that $950 per hour is what would be fair for this, especially because it's not my fault that all this work needs to be done anyway.

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Mr. Lowe: Did you plan to speak at Mr. White's Parole Hearing?

Mr. Smith: No, I didn't need to say anything to the people there. I wanted Dick paroled so he would get his freedom and sign my papers. And I wanted him to see me there, so it would maybe remind him of his promise to me and our unfinished business. But that was between me and him, not the parole people.

Mr. Lowe: How did you arrange for the D.A.'s Office to notify you about the trial court proceedings involving Mr. White?

Mr. Smith: I've got lots of friends in this town. I see George Cornish every week at church, and he told me whenever anything was going to happen in Dick's trial.

Mr. Lowe: Who is George Cornish?

Mr. Smith: He's the number two guy in the D.A.'s office here.

Mr. Lowe: Did you speak or make any kind of statement at Mr. White's sentencing?

Mr. Smith: No, I didn't want to do that. Never even thought about that.

Mr. Lowe: Did you ever make any more formal request or sign any paperwork related to notifications of the proceedings in Mr. White's case?

Mr. Smith: No, I didn't need to. But after Dick was convicted the judge announced to all of us in the courtroom that under the law all the victims would continue to be notified about anything related to parole. Judge Martin is a fair guy so I took him at his word.

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LIBRARY

EXCERPTS FROM NEVADA RULES OF CIVIL PROCEDURE
Rule 56. Summary Judgment

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense--or the part of each claim or defense--on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) Time to File a Motion. Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(c) Procedures.

(1) *Supporting Factual Positions.* A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection That a Fact Is Not Supported by Admissible Evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) *Materials Not Cited.* The court need consider only the cited materials, but it may consider other materials in the record.

(4) *Affidavits or Declarations.* An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

(e) Failing to Properly Support or Address a Fact. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule56(c), the court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials--including the facts considered undisputed--show that the movant is entitled to it; or

(4) issue any other appropriate order.

(f) Judgment Independent of the Motion. After giving notice and a reasonable time to respond, the court may:

(1) grant summary judgment for a nonmovant;

(2) grant the motion on grounds not raised by a party; or

(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) Failing to Grant All the Requested Relief. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact--including an item of damages or other relief--that is not genuinely in dispute and treating the fact as established in the case.

(h) Affidavit or Declaration Submitted in Bad Faith. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court--after notice and a reasonable time to respond--may order the submitting party to pay the other party the

reasonable expenses, including attorney fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

Credits

Amended effective March 16, 1964; February 11, 1986; January 1, 2005; March 1, 2019.

EXCERPTS FROM N.R.S. Const. Art. 1, § 8A
§ 8A. Rights of victims of crime

1. Each person who is the victim of a crime is entitled to the following rights:

(a) To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment and abuse, throughout the criminal or juvenile justice process.

(b) To be reasonably protected from the defendant and persons acting on behalf of the defendant.

(c) To have the safety of the victim and the victim's family considered as a factor in fixing the amount of bail and release conditions for the defendant.

(d) To prevent the disclosure of confidential information or records to the defendant which could be used to locate or harass the victim or the victim's family.

(e) To refuse an interview or deposition request, unless under court order, and to set reasonable conditions on the conduct of any such interview to which the victim consents.

(f) To reasonably confer with the prosecuting agency, upon request, regarding the case.

(g) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other postconviction release proceedings, and to be present at all such proceedings.

(h) To be reasonably heard, upon request, at any public proceeding, including any delinquency proceeding, in any court involving release or sentencing, and at any parole proceeding.

(i) To the timely disposition of the case following the arrest of the defendant.

(j) To provide information to any public officer or employee conducting a presentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.

(k) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant and the release of or the escape by the defendant from custody.

(l) To full and timely restitution.

(m) To the prompt return of legal property when no longer needed as evidence.

(n) To be informed of all postconviction proceedings, to participate and provide information to the parole authority to be considered before the parole of the offender and to be notified, upon request, of the parole or other release of the offender.

(o) To have the safety of the victim, the victim's family and the general public considered before any parole or other post judgment release decision is made.

(p) To have all monetary payments, money and property collected from any person who has been ordered to make restitution be first applied to pay the amounts ordered as restitution to the victim.

(q) To be specifically informed of the rights enumerated in this section, and to have information concerning those rights be made available to the general public.

2. A victim has standing to assert the rights enumerated in this section in any court with jurisdiction over the case. The court shall promptly rule on a victim's request. A defendant does not have standing to assert the rights of his or her victim. This section does not alter the powers, duties or responsibilities of a prosecuting attorney. A victim does not have the status of a party in a criminal proceeding.

3. Except as otherwise provided in subsection 4, no person may maintain an action against this State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of this section or any statute enacted by the Legislature pursuant thereto. No such violation authorizes setting aside a conviction.

4. A person may maintain an action to compel a public officer or employee to carry out any duty required by this section or any statute enacted by the Legislature pursuant thereto.

5. The granting of these rights to victims must not be construed to deny or disparage other rights possessed by victims. A parole authority shall extend the right to be heard at a parole hearing to any person harmed by the offender.

6. The Legislature shall by law provide any other measure necessary or useful to secure to victims of crime the benefit of the rights set forth in this section.

7. As used in this section, “victim” means any person directly and proximately harmed by the commission of a criminal offense under any law of this State. If the victim is less than 18 years of age, incompetent, incapacitated or deceased, the term includes the legal guardian of the victim or a representative of the victim’s estate, member of the victim’s family or any other person who is appointed by the court to act on the victim’s behalf, except that the court shall not appoint the defendant as such a person.

Credits

Approved and ratified 2018.

N. R. S. Const. Art. 1, § 8A, NV CONST Art. 1, § 8A

Current through Ch. 2 (End) of the 33rd Special Session (2021). Text subject to revision and classification by the Legislative Counsel Bureau.

WOOD v. SAFEWAY & Action Cleaning
Supreme Court of Nevada
Oct. 20, 2005

Jane Doe was working for Safeway Stores, Inc., when she was assaulted by Emilio Ronquillo–Nino, who was employed by a company that provided janitorial services at the Safeway where Doe worked. Doe, through her guardian ad litem, filed a complaint against Safeway and Ronquillo–Nino's employer, Action Cleaning, alleging five causes of action. The district court granted summary judgment in favor of Safeway, determining that it was immune from suit because of coverage provided by the Nevada Industrial Insurance Act (NIIA). The district court also granted summary judgment in favor of Action Cleaning because it was not liable for intentional torts committed by its employee and because Ronquillo–Nino's intervening criminal acts were a superseding cause that relieved Action Cleaning of responsibility.

We conclude that the district court properly granted summary judgment in favor of Safeway and Action Cleaning. We also take this opportunity to clarify that the "slightest doubt" standard in our summary judgment jurisprudence is an incorrect statement of the law and should no longer be used when analyzing motions for summary judgment.

Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings and other evidence on file demonstrate that no "genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law." This court has noted that when reviewing a motion for summary judgment on appeal, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party.

In 1986 the United States Supreme Court noted that Rule 56 should not be regarded as a "disfavored procedural shortcut" but instead "as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.' " *Celotex Corp. v. Catrett.* In *Liberty Lobby,* the U.S. Supreme Court focused on the rule's requirement that there be no "genuine" issues of "material" fact:

> By its very terms [the summary judgment standard] provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.

> ... [T]he substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.

Colorable evidence may, in any given case, raise doubts as to a factual dispute between the parties while, at the same time, not being probative on the operative facts that are significant to the outcome under the controlling law.

This court has often stated that the nonmoving party may not defeat a motion for summary judgment by relying "on the gossamer threads of whimsy, speculation and conjecture." Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant. A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party.

APARICIO v. STATE of Nevada
Supreme Court of Nevada
OCTOBER 07, 2021

Article 1, Section 8A of the Nevada Constitution, also known as Marsy's Law, and NRS 176.015 both afford a victim the right to be heard at sentencing. The provisions differ, however, in their definitions of "victim." Marsy's Law defines "victim" as "any person *directly and proximately* harmed by the commission of a criminal offense under any law of this State." Nev. Const. art. 1, § 8A(7) (emphasis added). NRS 176.015(5)(d)(1)-(3) defines "victim" in part as any person or relative of any person "against whom a crime has been committed" or "who has been injured or killed as a direct result of the commission of a crime."

In this opinion, we clarify that the definitions of "victim" under Marsy's Law and NRS 176.015(5)(d) are harmonious, if not identical. Although "victim" under Marsy's Law may include individuals that NRS 176.015 does not, and vice versa, neither definition includes anyone and everyone impacted by a crime, as the district court found here. Accordingly, when presented with an objection to impact statement(s) during sentencing, a district court must first determine if an individual falls under either the constitutional definition or the statutory definition of "victim." If the statement is from a nonvictim, a district court may consider it only if the court first determines that the statement is relevant and reliable. *See* NRS 176.015(6). Because the district court here wrongly concluded that Marsy's Law broadly applies "to anyone who's impacted by the crime" and thus considered statements, over objection, from persons who do not fall under either definition of victim without making the required relevance and reliability findings, we affirm the judgment of conviction, vacate the sentence, and remand for resentencing.

FACTS AND PROCEDURAL HISTORY

After an evening of drinking with his girlfriend, appellant Henry Biderman Aparicio rear-ended Christa and Damaso Puentes's vehicle at the intersection of Sahara Avenue and Hualapai Way in Las Vegas. At the time of impact, the Puentes's vehicle was stopped, while Aparicio's vehicle was traveling roughly 100 miles per hour. Christa and Damaso died from their injuries.

The State charged Aparicio with two counts of driving under the influence resulting in death, three counts of felony reckless driving, and one count of driving under the influence resulting in substantial bodily harm. Aparicio pleaded guilty to two counts of driving under the

influence resulting in death and one count of felony reckless driving, naming Christa and Damaso as the victims. The State agreed to recommend concurrent prison time on the reckless driving charge.

Shortly before sentencing, the State provided the district court and Aparicio with approximately 50 victim impact letters written by family, friends, and coworkers of the deceased victims. Aparicio filed a written objection to the admission of 46 of the victim impact letters, arguing that the individuals who drafted those letters did not qualify as victims under NRS 176.015(5)(d). Aparicio also voiced multiple objections during the sentencing hearing in response to various in-court witnesses' statements because the testimony exceeded the bounds of victim impact information. Aparicio presented mitigating evidence, including that he had no prior criminal record. The district court overruled the objections and sentenced Aparicio to an aggregate prison term of 15 to 44 years. Aparicio timely appealed, challenging various aspects of his sentencing hearing.

DISCUSSION

The crux of Aparicio's argument on appeal is that the district court abused its discretion by overruling his objection to the admission of dozens of improper impact letters because they were written almost entirely by nonvictims and relied upon when determining his sentence. Accordingly, Aparicio contends that he is entitled to a new sentencing hearing. We agree with Aparicio and therefore vacate the sentence and remand for a new sentencing hearing.

The district court erred when it summarily overruled Aparicio's objection to 46 of the approximately 50 victim impact letters

NRS 176.015(5)(d) defines "victim" as "(1) A person, including a governmental entity, against whom a crime has been committed; (2) A person who has been injured or killed as a direct result of the commission of a crime; and (3) A relative of a person described in subparagraph (1) or (2)." Under NRS 176.015(5)(b)(l)-(4), a "relative" includes "[a] spouse, parent, grandparent or stepparent," "[a] natural born child, stepchild or adopted child," "[a] grandchild, brother, sister, half brother or half sister," and "[a] parent of a spouse."

Under Marsy's Law, "victim" is defined as "any person *directly and proximately* harmed by the commission of a criminal offense under any law of this State." Nev. Const. art. 1, § 8A(7)

(emphasis added). The clause states further that "[i]f the victim is ... deceased, the term [victim also] includes the legal guardian of the victim or a representative of the victim's estate, *member of the victim's family* or any other person who is appointed by the court to act on the victim's behalf." *Id.* (emphasis added).

The constitutional and statutory definitions of "victim" are similar, in particular, they both recognize that a victim is the person (or persons) who is legally injured or harmed as a direct result of the defendant's criminal conduct—i.e., the person who was the target or object of the offense, or one who was directly and proximately harmed as a result of the criminal act—as well as certain close family members. Neither definition for "victim," however, includes anyone and everyone who was affected by the crime. Under either definition, a "victim" must still be injured or directly and proximately harmed.

Here, the prosecutor submitted approximately 50 impact letters to the district court and characterized all of them as "victim" impact statements. The district court accepted all of the letters and relied on them in making its sentencing decision. However, the district court reviewed the letters in their entirety based upon an erroneous interpretation of Marsy's Law—that "the Nevada Constitution broadly defines victim [as] anyone who's impacted by the crime." We conclude that the district court erred in admitting these letters based upon its erroneous interpretation of Marsy's Law. Once an objection had been lodged, the district court was required to determine, on the record, how each author of the impact statements was "directly and proximately harmed." Nev. Const. art. 1, § 8A(7).

Upon objection, a district court is required to examine each statement and determine, in the first instance, whether it is from an individual who is a "victim" under either Marsy's Law or NRS 176.015(5)(d). If the statements are not from "victims," then a district court may still examine the statements, but only after a finding that they are relevant and reliable. The district court here adopted all of the impact statements as "victim" impact statements under an erroneous interpretation of Marsy's Law and did not otherwise determine whether the nonvictim letters were relevant and reliable. We thus conclude that the district court erred.

CONCLUSION

When a district court is faced with an objected-to impact statement at sentencing, it is required to determine whether that statement is from an individual who is a "victim" under Marsy's

Law or NRS 176.015(5)(d). A "victim" under Marsy's Law must be directly and proximately harmed; the term does not include anyone and everyone incidentally impacted by the crime. If the district court determines the statement is from a nonvictim, the district court may nonetheless examine the statement so long as it determines that the statement is relevant and reliable. Here, the district court examined all of the letters under an erroneous belief that they were from "victims" as defined in Marsy's Law. Thus, we are required to vacate the sentence and remand this case, despite the inevitable pain and distress this will cause the surviving family members to again participate in a sentencing hearing, because it is not clear that the district court would have imposed the same sentence absent these errors.

Accordingly, we affirm the judgment of conviction, vacate Aparicio's sentence, and remand to the district court for resentencing.

STATE of Ohio v. JONES
Court of Appeals of Ohio, First District, Hamilton County
January 15, 2020

Defendant-appellant Tranell Jones pleaded guilty to one count of attempted misuse of a credit card in violation of R.C. 2923.02, a first-degree misdemeanor. On February 16, 2018, Jones had used her employer's credit card, without her employer's permission, to rent a storage container from 1-800-Pack-Rat, LLC ("Pack Rat"). Once the employer, an elderly woman that Jones cared for, discovered the unauthorized charge, she contacted the credit card company, which promptly reversed the charge, resulting in an economic loss to Pack Rat.

At sentencing, the trial court imposed three years of community control and ordered Ms. Jones to pay $90.94 in restitution to Pack Rat. Ms. Jones challenged the order of restitution, arguing that Pack Rat was not the victim of her crime and thus, not entitled to restitution. At Ms. Jones's request, the trial court stayed the order of restitution.

Ms. Jones now appeals, challenging the order of restitution. For the following reasons, we affirm the trial court's judgment.

R.C. 2929.18(A)(1) allows a trial court to order restitution "by the offender to the victim of the offender's crime * * * in an amount based on the victim's economic loss." If the court imposes restitution, the statute further provides that restitution may be made "to the victim in open court, to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court."

The issue of who constitutes a "victim" under R.C. 2929.18(A)(1) or to whom restitution may appropriately be awarded under the statute is a question of law that is reviewed de novo.

In this case the trial court did not rely on the definition of victim found in R.C. 2930.01(H)(1) to determine that Pack Rat was a victim, and instead relied on Marsy's Law.

On February 5, 2018, the amendment to Article I, Section 10a of the Ohio Constitution, known as Marsy's Law, became effective. The amendment expands the rights afforded to victims of crimes. Specifically, Marsy's Law affords the right to "full and timely restitution from the person who committed the criminal offense or delinquent act." Ohio Constitution, Article I, Section 10a(A)(7). Importantly, Marsy's Law defines the term "victim" as "a person against whom the criminal offense or delinquent act is committed or who is directly and proximately harmed by the commission of the offense or act." Ohio Constitution, Article I, Section 10a(D).

Applying the definition of victim found in Marsy's Law, we agree with the trial court and find that Pack Rat meets the definition of victim for purposes of restitution. In this case, Ms. Jones used the credit card she had stolen from her employer to deceive Pack Rat into delivering its product to Ms. Jones. While Ms. Jones's employer was a victim of her crime, so was Pack Rat, which suffered actual harm; i.e., economic loss, as a proximate result of Ms. Jones's criminal conduct. Accordingly, we hold that Pack Rat is a victim entitled to restitution under R.C. 2929.18.

NEVADA PERFORMANCE TEST (NPT)

Each NPT is a 2 hour exam designed to test the ability to complete a common legal task that a beginning lawyer would be expected to perform. You are required to use necessary legal skills in a real-life scenario.

You will be provided with a File. The File will contain source documents that will set forth the facts of the case and other background information. These materials may include interview transcripts, correspondence, investigative reports, client records, pleadings, internal memorandum, newspaper articles, legislative materials, medical records and correspondence between counsel. All facts recited are not relevant, and maybe incomplete, ambiguous or conflicting. You are expected to recognize what facts are relevant and to identify when facts are ambiguous and how such ambiguities could be resolved.

The second component of the exam materials is the Library. The Library may contain cases, statutes, administrative regulations and other legal authority commonly cited in a legal memorandum or used for reference. All legal sources are based on Nevada law. You may use abbreviated titles and omit page references when citing cases found in the Library.

The NPT is not a test of your knowledge of substantive law. The NPT is designed to evaluate your fundamental lawyering skills. Your answer will be evaluated on the content, thoroughness, and organization of your document based on these criteria:

- Ability to determine relevant factual details, to distinguish relevant from irrelevant facts, and to resolve potentially conflicting facts;
- Analysis of source legal authorities to determine applicable principles of law;
- Application of the controlling law to the relevant facts and circumstances;
- Effective communication in writing;
- Performing task in a timely matter; and
- Ability to follow the directives provided.

In preparing your written document, it is important that you concentrate on the materials in the File and Library, which provide the specific materials from which you should use. Use your general legal knowledge to assist you with analyzing the issues presented.

FILE

NEVADA SUPREME COURT
MEMORANDUM

FROM: Chief Justice Adams
TO: Applicant
RE: Bench Memo for *Jones v. Miller*

As background, the Division of Animal Resources of the Nevada Department of Agriculture has jurisdiction over the management of certain wild horses in northern Nevada. On February 1, 2022, the Division adopted a plan to transfer ownership of the wild horses to a private party. Shortly thereafter, Mr. and Mrs. Miller, who are wild horse advocates, posted a statement on the Facebook Group page for the Northern Nevada Wild Horse Advocates criticizing Jeff Jones, the Division Administrator who is in charge of the wild horse management program. In addition, on March 1, 2022, the Millers, who had owned a horse that escaped and joined the wild horse herds, filed a lawsuit against the Division challenging the legality of the plan with respect to their ownership rights of their horse. The Millers sent an email about the lawsuit to other members of the Facebook Group who had also lost horses to the wild herds.

Jones v. Miller was commenced on April 1, 2022, when Jeff Jones served a complaint on Mr. and Mrs. Miller alleging defamation based on the Facebook post and email. On July 1, 2022, the Millers filed an anti-SLAPP special motion to dismiss Jones' complaint pursuant to NRS 41.660. On July 20, 2022, the district court dismissed Jones' complaint. The district court then awarded the Millers attorney's fees and costs for their legal representation related to the anti-SLAPP special motion but not for any of their attorney's prior work on the defamation lawsuit. The district court calculated the amount of the attorney's fees based on the average billable hour for attorneys statewide set forth in the most recent annual survey published by the State Bar of Nevada. The district court also awarded to the Millers the "maximum amount for the lawsuit" of $10,000 in additional statutory damages under NRS 41.670.

Mr. Jones appealed the dismissal of the defamation complaint on the following grounds:

1. The special motion to dismiss was filed more than 60 days after the defamation complaint was served on the Millers.
2. The statement posted on the Facebook Group page for the Northern Nevada Wild Horse Advocates and the email sent by the Millers were not "good faith communication[s] in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern."

The Millers appealed the amounts of the awards of: (1) attorney's fees and costs and (2) additional statutory damages.

Using the File and Library attached, please provide me with a bench memorandum advising me on the issues that have been appealed in *Jones v. Miller*.

NEVADA SUPREME COURT
MEMORANDUM

FROM: Court Administrator
TO: Applicants
RE: Format of Bench Memoranda

The purpose of a bench memorandum is to help the judge prepare a final order or prepare for a hearing or oral argument. The bench memorandum is not designed to be a brief as would be submitted by counsel nor a judicial order or opinion.

You are expected to identify key issues and analyze the applicable law. You also are expected to provide a recommendation for the resolution of each of the issues you have identified. The format to be used should be as follows:

(1) Statement of Issue: Provide a brief statement of the question. Statements should be limited to a single sentence.
(2) Analysis: Discussion of the issue based on the relevant facts and applicable law. You may use abbreviations when citing to cases. Omit page references.
(3) Recommendation: A recommendation for a proposed resolution of each issue.

A separate statement of facts should not be provided. The relevant facts should be addressed as part of the analysis or recommendation for each issue. The analysis and recommendations should be closely tied to the relevant case facts. You may use abbreviations when citing to cases. Omit page references.

THE FOLLOWING DECLARATION AND AN IDENTICAL DECLARATION SIGNED BY MRS. MILLER WAS INCLUDED AS PART OF THE APPELLATE TRANSCRIPT:

DECLARATION OF JAMES MILLER IN SUPPORT OF SPECIAL ANTI-SLAPP MOTION TO DISMISS

I, JAMES MILLER, hereby declare as follows:

1. I make this declaration in support of my special anti-SLAPP Motion to Dismiss. This declaration is based on my personal knowledge. I am competent to testify as to the truth of these statements if called upon to do so.
2. I am an advocate for the preservation and protection of wild horses.
3. In 2019, one of my mares escaped from her pen and joined the wild horse herds in northern Nevada.
4. I regularly post information on the Facebook Group page for the Northern Nevada Wild Horse Advocates, which has approximately 1,000 members.
5. On February 5, 2022, I posted on the Facebook Group page the following statement: "Jeff Jones at NDA is lazy and incompetent and should be charged with animal cruelty. If he did his job, wild horses wouldn't be getting killed on our highways or starving to death. He belongs in jail!"
6. On March 1, 2022, I filed a lawsuit against the Division of Animal Resources based on the effect of the Division's adopted plan to transfer ownership of the wild horses herds on my ownership rights in a wild horse.
7. On March 5, 2022, I sent an email regarding the lawsuit to other members of the Facebook Group who had lost horses to the wild herds. The email stated: "Jeff Jones' plan regarding the transfer of ownership of wild horses under the Division's jurisdiction is a blatant violation of state law and will result in the sale or extermination of the wild horses by a private party that is not accountable to anybody. Jeff Jones is probably getting a financial kickback from this illegal deal. I'm enforcing my legal rights to my horse – how about you?"
8. I have only personally posted true facts and opinions on the Facebook Group page.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct to the best of my knowledge and belief.

Dated this 30th day of June, 2022

James Miller

LIBRARY

LIABILITY OF PERSONS WHO ENGAGE IN RIGHT TO PETITION OR FREE SPEECH IN DIRECT CONNECTION WITH AN ISSUE OF PUBLIC CONCERN

NRS 41.635 Definitions. As used in NRS 41.635 to 41.670, inclusive, unless the context otherwise requires, the words and terms defined in NRS 41.637 and 41.640 have the meanings ascribed to them in those sections.

NRS 41.637 "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" defined. "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" means any:

1. Communication that is aimed at procuring any governmental or electoral action, result or outcome;
2. Communication of information or a complaint to a Legislator, officer or employee of the Federal Government, this state or a political subdivision of this state, regarding a matter reasonably of concern to the respective governmental entity;
3. Written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law; or
4. 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.

NRS 41.640 "Political subdivision" defined. "Political subdivision" includes an airport authority created by special act of the Legislature, a regional transportation commission and a fire protection district, an irrigation district, a school district, the governing body of a charter school, any other special district that performs a governmental function, even though it does not exercise general governmental powers, and the governing body of a university school for profoundly gifted pupils.

NRS 41.650 Limitation of liability. A person who engages in 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 is immune from any civil action for claims based upon the communication.

NRS 41.660 Attorney General or chief legal officer of political subdivision may defend or provide support to person sued for engaging in right to petition or free speech in direct connection with an issue of public concern; special counsel; filing special motion to dismiss; stay of discovery; adjudication upon merits.

1. If an action is brought against a person based upon 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:

(a) The person against whom the action is brought may file a special motion to dismiss; and

(b) The Attorney General or the chief legal officer or attorney of a political subdivision of this State may defend or otherwise support the person against whom the action is brought. If the Attorney General or the chief legal officer or attorney of a political subdivision has a conflict of interest in, or is otherwise disqualified from, defending or otherwise supporting the person, the Attorney General or the chief legal officer or attorney of a political subdivision may employ special counsel to defend or otherwise support the person.

2. A special motion to dismiss must be filed within 60 days after service of the complaint, which period may be extended by the court for good cause shown.

3. If a special motion to dismiss is filed pursuant to subsection 2, the court shall:

(a) Determine whether the moving party has established, by a preponderance of the evidence, that the claim is based upon 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;

(b) If the court determines that the moving party has met the burden pursuant to paragraph (a), determine whether the plaintiff has demonstrated with prima facie evidence a probability of prevailing on the claim;

(c) If the court determines that the plaintiff has established a probability of prevailing on the claim pursuant to paragraph (b), ensure that such determination will not:

(1) Be admitted into evidence at any later stage of the underlying action or subsequent proceeding; or

(2) Affect the burden of proof that is applied in the underlying action or subsequent proceeding;

(d) Consider such evidence, written or oral, by witnesses or affidavits, as may be material in making a determination pursuant to paragraphs (a) and (b);

(e) Except as otherwise provided in subsection 4, stay discovery pending:

(1) A ruling by the court on the motion; and

(2) The disposition of any appeal from the ruling on the motion; and

(f) Rule on the motion within 20 judicial days after the motion is served upon the plaintiff.

4. Upon a showing by a party that information necessary to meet or oppose the burden pursuant to paragraph (b) of subsection 3 is in the possession of another party or a third party and is not reasonably available without discovery, the court shall allow limited discovery for the purpose of ascertaining such information.

5. If the court dismisses the action pursuant to a special motion to dismiss filed pursuant to subsection 2, the dismissal operates as an adjudication upon the merits.

6. The court shall modify any deadlines pursuant to this section or any other deadlines relating to a complaint filed pursuant to this section if such modification would serve the interests of justice.

7. As used in this section:

(a) "Complaint" means any action brought against a person based upon 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, including, without limitation, a counterclaim or cross-claim.

(b) "Plaintiff" means any person asserting a claim, including, without limitation, a counterclaim or cross-claim.

NRS 41.665 Legislative findings and declaration regarding plaintiff's burden of proof under NRS 41.660. The Legislature finds and declares that:

1. NRS 41.660 provides certain protections to a person against whom an action is brought, if the action is based upon 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.

2. When a plaintiff must demonstrate a probability of success of prevailing on a claim pursuant to NRS 41.660, the Legislature intends that in determining whether the plaintiff "has demonstrated with prima facie evidence a probability of prevailing on the claim" the plaintiff must meet the same burden of proof that a plaintiff has been required to meet pursuant to California's anti-Strategic Lawsuits Against Public Participation law as of June 8, 2015.

NRS 41.670 Award of reasonable costs, attorney's fees and monetary relief under certain circumstances; separate action for damages; sanctions for frivolous or vexatious special motion to dismiss; interlocutory appeal.

1. If the court grants a special motion to dismiss filed pursuant to NRS 41.660:

(a) The court shall award reasonable costs and attorney's fees to the person against whom the action was brought, except that the court shall award reasonable costs and attorney's fees to this State or to the appropriate political subdivision of this State if the Attorney General, the chief legal

officer or attorney of the political subdivision or special counsel provided the defense for the person pursuant to NRS 41.660.

(b) The court may award, in addition to reasonable costs and attorney's fees awarded pursuant to paragraph (a), an amount of up to $10,000 to the person against whom the action was brought.

(c) The person against whom the action is brought may bring a separate action to recover:

(1) Compensatory damages;

(2) Punitive damages; and

(3) Attorney's fees and costs of bringing the separate action.

2. If the court denies a special motion to dismiss filed pursuant to NRS 41.660 and finds that the motion was frivolous or vexatious, the court shall award to the prevailing party reasonable costs and attorney's fees incurred in responding to the motion.

3. In addition to reasonable costs and attorney's fees awarded pursuant to subsection 2, the court may award:

(a) An amount of up to $10,000; and

(b) Any such additional relief as the court deems proper to punish and deter the filing of frivolous or vexatious motions.

4. If the court denies the special motion to dismiss filed pursuant to NRS 41.660, an interlocutory appeal lies to the Supreme Court.

SHAPIRO v. WELT

Nevada Supreme Court (2017)

In this appeal, we are asked to decide whether statements made in relation to a conservatorship action constitute an issue of public interest under NRS 41.637(4).

FACTUAL AND PROCEDURAL BACKGROUND

Appellant Howard Shapiro petitioned a New Jersey court to appoint him as conservator for his father, Walter Shapiro. The respondents, Glen Welt, Rhoda Welt, Lynn Welt, and Michelle Welt, opposed the petition. During the course of the conservatorship matter, Howard received an email from Glen stating that Howard's "actions have been deemed worthy of [his] own website" and declaring that Glen was "personally inviting EVERY one of [Howard's] known victims to appear in court along with other caretakers, neighbors[,] acquaintances[,] and relatives [Howard] threatened." The Welts published a website that contained several allegations regarding Howard's past debts, criminal history, and alleged mistreatment of his father, in addition to Howard's personal information. Further, the website stated that it is "dedicated to helping victims of Howard Andrew Shapiro & warning others" and encouraged any person "with knowledge of Howard A. Shapiro's actions against Walter Shapiro or other illegal acts committed by Howard Shapiro ... to appear in court."

Howard and Jenna Shapiro filed a complaint in Nevada alleging various causes of action related to the Welts' statements on the website. The Shapiros' causes of action included, among other allegations, defamation per se, defamation, extortion, civil conspiracy, and fraud. The Welts subsequently filed a motion to dismiss pursuant to NRS 41.660, Nevada's anti-SLAPP statute. The Welts argued that the website constituted a good-faith communication in furtherance of the right to free speech in direct connection with an issue of public concern pursuant to NRS 41.637. Citing to NRS 41.637(3) and (4), the Welts argued that the statements on the website were protected as statements made in direct connection with an issue under consideration by a judicial body and as communications made in direct connection with an issue of public interest in a place open to the public or in a public forum.

The district court issued an order granting the Welts' motion to dismiss. The district court concluded that the Welts met their burden to show by a preponderance of the evidence that the Shapiros' complaint was filed in an attempt to prevent a good-faith communication in connection with an issue of public concern. Specifically, the district court concluded that the website was a "communication regarding an ongoing lawsuit concerning the rights of an elderly individual, and a matter of public concern under NRS 41.637(4)." The Shapiros timely

appealed the district court's order granting the Welts' motion to dismiss.

DISCUSSION

Anti–SLAPP litigation

Under Nevada's anti-SLAPP statutes, a defendant may file a special motion to dismiss if the defendant can show "by a preponderance of the evidence, that the claim is based upon 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." NRS 41.660(3)(a). If a defendant makes this initial showing, the burden shifts to the plaintiff to show "with prima facie evidence a probability of prevailing on the claim." NRS 41.660(3)(b). The Shapiros challenge the district court's conclusions that the Welts met their burden because their statements were 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" under NRS 41.660(3)(a).

Issue of public interest

The Shapiros argue that the district court erred in granting the Welts' special motion to dismiss pursuant to NRS 41.660 due to an improper analysis of whether the conservatorship action is an issue of public interest under NRS 41.637(4). We agree.

NRS 41.637(4) defines a "[g]ood faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" as any "[c]ommunication 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."

This court has not yet determined what constitutes "an issue of public interest" in the anti-SLAPP context. However, California courts have addressed this question. Because this court has recognized that California's and Nevada's anti-SLAPP "statutes are similar in purpose and language," we look to California law for guidance on this issue.

While California's anti-SLAPP law, similar to Nevada's, provides no statutory definition of "an issue of public interest," California "courts have established guiding principles for what distinguishes a public interest from a private one." Specifically:

> (1) "public interest" does not equate with mere curiosity;
> (2) a matter of public interest should be something of concern to a substantial number of people; a matter of concern to a speaker and a relatively small specific audience is not a matter of public interest;
> (3) there should be some degree of closeness between the challenged statements and the

asserted public interest—the assertion of a broad and amorphous public interest is not sufficient;

(4) the focus of the speaker's conduct should be the public interest rather than a mere effort to gather ammunition for another round of private controversy; and

(5) a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people.

We take this opportunity to adopt California's guiding principles for determining whether an issue is of public interest under NRS 41.637(4). If a court determines the issue is of public interest, it must next determine whether the communication was made "in a place open to the public or in a public forum." NRS 41.637. Finally, no communication falls within the purview of NRS 41.660 unless it is "truthful or is made without knowledge of its falsehood."

The district court did not apply those guiding principles enunciated in its analysis of the Welts' statements. Accordingly, we reverse the district court's order and remand for further proceedings. On remand, we instruct the district court to apply California's guiding principles in analyzing whether the Welts' statements were made in direct connection with an issue of public interest under NRS 41.637(4).

CONCLUSION

We conclude that the district court erred in its analysis of whether the Welts' statements concerned an issue of public interest, and we explicitly adopt the California guidelines, for determining whether an issue is of public interest under NRS 41.637(4). Therefore, we reverse, in part, the district court's order granting the Welts' special motion to dismiss pursuant to NRS 41.660 and remand with instructions to apply California's guiding principles for determining whether an issue is of public interest under NRS 41.637(4).

PATIN V. LEE

Nevada Supreme Court (2018)

Under NRS 41.660(1), Nevada's anti-SLAPP (Strategic Lawsuit Against Public Participation) statute, a defendant may file a special motion to dismiss a plaintiff's complaint if the complaint is based upon the defendant's "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." NRS 41.637 provides four alternative definitions for what can constitute 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," one of which includes a "statement made in direct connection with an issue under consideration by a ... judicial body." NRS 41.637(3). In this appeal, we must determine whether an attorney's statement on a website summarizing a jury's verdict is a statement in direct connection with an issue under consideration by a judicial body.

FACTS AND PROCEDURAL HISTORY

In a previous case, 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. After trial, a jury rendered a $3.4 million verdict in favor of Patin's client. In so doing, the jury determined that Summerlin Smiles and Dr. Traivai had been negligent but that Dr. Lee had not been negligent. Thereafter, Summerlin Smiles and Dr. Traivai moved to vacate the jury's verdict, which the district court granted in 2014. Patin's client appealed that order, and in 2016, this court reversed and directed the district court to reinstate the jury's verdict. That reversal, however, did not affect Dr. Lee since Patin's client had not challenged the portion of the jury's verdict that found Dr. Lee was not negligent.

At some point between when the jury's verdict was entered and when this court directed the district court to reinstate the jury's verdict, Patin posted on her law firm's website the following statement:

> DENTAL MALPRACTICE/WRONGFUL DEATH - ***PLAINTIFF'S VERDICT $3.4M, 2014 Description: Singletary v. Ton Vinh Lee, DDS, et al.***
>
> A dental malpractice-based wrongful death action that arose out of the death of Decedent Reginald Singletary following the extraction of the No. 32 wisdom tooth by Defendants on or about April 16, 2011. Plaintiff sued the dental office, Summerlin Smiles, the owner, Ton Vinh Lee, DDS, and the treating dentists, Florida Traivai, DMD and Jai Park, DDS, on behalf of the Estate, herself and minor son.

Thereafter, Dr. Lee filed the underlying action asserting a single claim of defamation per se, which was based on the premise that the emphasized portion of Patin's statement could be

construed as stating that the jury found Dr. Lee to have been negligent, which, as indicated, was false. In response, Patin filed a special motion to dismiss pursuant to NRS 41.660(1).[1] Among other things, Patin argued that the statement was a "statement made in direct connection with an issue under consideration by a ... judicial body," NRS 41.637(3), such that the statement constituted 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" that per NRS 41.660(3)(a) could not form the basis for defamation liability. The district court denied Patin's motion, reasoning that because the statement did not reference the pending appeal in the dental malpractice case, the statement was not in direct connection with an issue under consideration by a judicial body. The district court alternatively concluded that even if the statement had fallen within NRS 41.637(3)'s definition, dismissal was still not warranted as Dr. Lee had "demonstrated with prima facie evidence a probability of prevailing on [his] claim," NRS 41.660(3)(b), by providing an interpretation of Patin's statement that could be construed as false and defamatory. This appeal followed.

DISCUSSION

As indicated, resolution of this appeal implicates a single issue of statutory interpretation: whether Patin's statement regarding the jury verdict in the dental malpractice case is a "statement made in direct connection with an issue under consideration by a ... judicial body" under NRS 41.637(3). Because no Nevada precedent is instructive on this issue, we look to California precedent for guidance.

California's analogous anti-SLAPP statute protects "any written or oral statement or writing made in connection with an issue under consideration or review by a ... judicial body." In this respect, we believe *Neville v. Chudacoff,* 160 Cal.App.4th 1255 (2008) is particularly instructive. The *Neville* court concluded that a statement is "made in connection with an issue under consideration or review by ... a judicial body" for purposes of the California anti-SLAPP statute if the statement "relates to the substantive issues in the litigation and is directed to persons having some interest in the litigation."

We are persuaded by the *Neville* court's analysis and conclude that in order for a statement to be

[1] We note that the respondent argues that the anti-SLAPP motion should not have been considered on the merits because it was untimely, as it was filed well after the 60-day filing period in NRS 41.660(2). The district court has discretion to extend the time for filing an anti-SLAPP motion "for good cause shown," NRS 41.660(2), or if an extension "would serve the interests of justice," NRS 41.660(6). Though the district court made no explicit finding that "good cause" was shown or that the "interests of justice" were served by allowing the untimely filing, we conclude that such a finding was implicit in the district court's order and that the district court acted within its discretion in considering the merits motion.

protected under NRS 41.637(3), which requires a statement to be "*in direct* connection with an issue under consideration by a ... judicial body" (emphasis added), the statement must (1) relate to the substantive issues in the litigation and (2) be directed to persons having some interest in the litigation. If we were to accept Patin's argument that simply referencing a jury verdict in a court case is sufficient to be in direct connection with an issue under consideration by a judicial body, we would essentially be providing anti-SLAPP protection to "any act having any connection, however remote, with [a judicial] proceeding." Doing so would not further the anti-SLAPP statute's purpose of "protect[ing] the right of litigants to the utmost freedom of access to the courts without the fear of being harassed subsequently by derivative tort actions."

Having adopted the *Neville* court's standard for what qualifies for protection under NRS 41.637(3), it is clear that Patin's statement fails to meet that standard. Accordingly, we conclude that the district court correctly determined that Patin's statement was not "in direct connection with an issue under consideration by a ... judicial body" for purposes of anti-SLAPP protection under NRS 41.637(3) and NRS 41.660(3)(a). We therefore need not address whether Dr. Lee satisfied the second step of the anti-SLAPP statute, NRS 41.660(3)(b), which, as indicated, would require Dr. Lee to "demonstrate with prima facie evidence a probability of prevailing on [his] claim."

CONCLUSION

We affirm the district court's order denying Patin's special motion to dismiss.

SMITH V. ZILVERBERG

Nevada Supreme Court (2021)

These appeals present issues concerning the scope of Nevada's anti-SLAPP statutory protections. As to the merits, appellant Jason Smith challenges the district court's finding that these provisions shield respondents Katy Zilverberg and Victoria Eagan against liability for allegedly defamatory statements they made about him on social media platforms. In addition, Smith contests the district court's conclusion that Zilverberg and Eagan are entitled to the attorney fees and costs they incurred from the beginning of the proceedings, not just those incurred in bringing their anti-SLAPP special motion to dismiss. Smith further challenges the district court's determination that Zilverberg and Eagan are entitled to an additional discretionary award of $10,000 each under Nevada's anti-SLAPP provisions.

FACTS AND PROCEDURAL HISTORY

Smith is a professional thrifter who tours the United States teaching others how to thrift, i.e., buy items from thrift and antique stores and then resell those items through online marketplaces. He currently hosts two YouTube shows related to thrifting and previously starred in a Spike TV show. He has guest starred on *Pawn Stars* and has a business relationship with eBay and WorthPoint, two of the largest resources for finding, valuing, and pricing antiques and collectibles. He operates a Facebook group—The Thrifting Board—where he assists individuals in learning how to thrift.

Zilverberg and Eagan are thrifters who had both friendship and professional relationships with Smith through the thrifting community, before having a falling out. Zilverberg and Eagan operate a YouTube channel and have their own personal Facebook pages. Zilverberg, a former administrator of Smith's Facebook group, posted a YouTube video where she (1) criticized Smith for bullying behavior, (2) alleged that Smith retaliated against members of the thrifting community by releasing their personal information online or attempting to bar those individuals from thrifting events, and (3) implied that his behavior caused members of the thrifting community to contemplate self-harm. Eagan posted a statement on her personal Facebook page (1) criticizing Smith for what she considered misogynistic and bullying behavior and (2) stating that other individuals have sought restraining orders to stop Smith's behavior.

Smith filed a complaint alleging that

Zilverberg's and Eagan's statements were false and defamatory. He brought claims for defamation per se, conspiracy, and injunctive relief. Zilverberg and Eagan filed an anti-SLAPP special motion to dismiss, which the district court granted, concluding that they met their burden under the first prong of the anti-SLAPP framework. The court further concluded that Smith did not satisfy his burden under the second prong of the anti-SLAPP framework to demonstrate a probability of prevailing on his claims with prima facie evidence that Zilverberg and Eagan knowingly made any false statements.

Zilverberg and Eagan timely moved for attorney fees and costs under NRS 41.670(1)(a) for prevailing on their anti-SLAPP motion to dismiss, as well as an additional discretionary statutory award of $10,000 each under NRS 41.670(1)(b). The district court granted the motion, awarding Zilverberg and Eagan the attorney fees and costs they incurred from the inception of the proceedings and additional discretionary awards of $10,000 each. On appeal, Smith challenges the dismissal order and the order awarding fees, costs, and statutory damages.

DISCUSSION

The district court correctly granted the anti-SLAPP special motion to dismiss

We review a decision to grant or deny an anti-SLAPP special motion to dismiss de novo.

Zilverberg's and Eagan's statements were made in good faith and in direct connection with a matter of public interest

Smith argues that Zilverberg's and Eagan's statements were not made in good faith and in direct connection with a matter of public interest as defined under NRS 41.637(4) and that the district court improperly applied the *Shapiro* factors in concluding otherwise. Smith asserts the statements are not entitled to protection under Nevada's anti-SLAPP statutes because they do not relate to the thrifting community, are the result of a private vendetta, and were an attempt to gather ammunition for another round of private controversy. We disagree.[1]

A court must grant an anti-SLAPP special motion to dismiss where (1) the defendant shows, by a preponderance of the evidence, that the claim is based on a "good faith

[1] The parties do not dispute that the statements at issue were made in a public forum—Facebook and YouTube. Accordingly, we only address whether the statements relate to a public interest and whether they were made in 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 claim. NRS 41.660(3)(a)-(b). To satisfy the first prong, the defendant must show that (1) "the comments at issue fall into one of the four categories of protected communications enumerated in NRS 41.637" and (2) "the communication 'is truthful or is made without knowledge of its falsehood.'"

We define an issue of public concern broadly, and previously adopted in *Shapiro* the following guiding principles for district courts to use in distinguishing issues of private and public interest:

> "(1) 'public interest' does not equate with mere curiosity;
> (2) a matter of public interest should be something of concern to a substantial number of people; a matter of concern to a speaker and a relatively small specific audience is not a matter of public interest;
> (3) there should be some degree of closeness between the challenged statements and the asserted public interest—the assertion of a broad and amorphous public interest is not sufficient;
> (4) the focus of the speaker's conduct should be the public interest rather than a mere effort to gather ammunition for another round of private controversy; and
> (5) a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people."

Relying on California caselaw, Zilverberg and Eagan argue that statements about a public figure are per se statements related to an issue of public concern. However, while the public might have a heightened interest in Smith given his status as a public figure, statements about a public figure may still concern matters that are private under the *Shapiro* factors. Accordingly, we reject the notion that statements regarding public figures necessarily relate to a public interest. Instead, we reiterate that district courts must apply the *Shapiro* factors to determine whether statements relate to a public interest even if the statements concern a public figure.

Applying the *Shapiro* analysis, we conclude that Zilverberg's and Eagan's statements relate to a public interest. In particular, we hold that consumers' interest in Smith's alleged behavior surpasses mere curiosity and is a matter of concern to a substantial number of people. This is especially apparent given Smith's status in the community, which

includes a business where he teaches individuals how to thrift successfully. As Smith conceded, he is a public figure of widespread fame in the thrifting community, and his reputation is important to those who choose to seek his guidance and do business with him. Accordingly, disclosure of Smith's behavior, which occurred in connection with his thrifting business and related activities, informs the public's decision on whether to do business with him. Moreover, the record shows that the thrifting community is extensive and includes parties around the world, such that statements about Smith's behavior are of concern to a substantial number of people.[2] *See Kosor* (finding that statements regarding alleged misfeasance in the management of an HOA of more than 8,000 homes to be of public interest); *cf. Barnes* (finding that HOA's communications did not impact a substantial number of people as there were only 20 homes in the neighborhood).

While Smith provided a declaration stating that Zilverberg's and Eagan's actions arose from "animosity and personal spite," it contained conclusory statements that were not based on first-hand factual information. Moreover, Zilverberg's and Eagan's statements concern Smith's actions regarding others in the thrifting community, not simply their personal conflicts with him. In sum, Zilverberg's and Eagan's statements concern Smith's character as a leading figure in the thrifting community and are of interest to a broad swath of the public. Thus, the district court correctly determined that their statements directly relate to a public interest under the *Shapiro* factors.

Zilverberg's and Eagan's statements were truthful or made without knowledge of falsehood, or were opinions incapable of being false

Smith next argues that the district court erred by concluding that Zilverberg's and Eagan's statements were made in good faith or were opinions because they knew their statements were false and failed to provide any substantive evidence to show the statements were true.

A statement is made in good faith if it is either "truthful or is made without knowledge of its falsehood." NRS 41.637(4). We do not parse the individual words to determine the

[2] As a case in point, Smith's closed Facebook group, The Thrifting Board, has over 55,000 members.

truthfulness of a statement; rather, we ask "whether a preponderance of the evidence demonstrates that the gist of the story, or the portion of the story that carries the sting of the [statement], is true." Generally, "an affidavit stating that the defendant believed the communications to be truthful or made them without knowledge of their falsehood is sufficient to meet the defendant's burden absent contradictory evidence in the record." Additionally, statements of opinion cannot be false.

The record shows that Zilverberg's statements criticizing Smith for bullying or retaliatory behavior, and outlining what she perceived to be the consequences of such behavior, were either truthful or made without knowledge of falsity. Zilverberg supported those statements with a declaration and other admissible evidence demonstrating her good-faith basis for making the statements. Such evidence included screenshots of a Facebook post where Smith published the personal information of an anonymous critic, a YouTube video where Smith exposed the anonymous critic's identity and hometown, screenshots of a Facebook conversation where Smith bragged about convincing the organizers of a major thrifting event to remove a target of Smith's displeasure as a speaker, and screenshots of a Facebook chat where Smith claimed he was arrested twice and committed felonies. Zilverberg's declaration, coupled with this evidence, shows that the gist of her statements was either true or made without knowledge of falsity. Moreover, Zilverberg's characterization of Smith's behavior as "bullying" is an opinion incapable of being false.

Similarly, Eagan's statement characterizing Smith's behavior as misogynistic bullying is an opinion incapable of being false. Moreover, the record shows that her statements about Smith's harassing behavior were based on her personal knowledge and were truthful or at least made without knowledge of falsity. The record likewise shows that Eagan's statements about Smith being the subject of restraining orders were based on her personal knowledge and were either truthful or at least made without knowledge of falsity. Accordingly, we conclude that the district court correctly determined that Zilverberg and Eagan met their burden under the first prong of the anti-SLAPP analysis.

The district court acted within its sound discretion by awarding respondents attorney fees and costs

We generally review a district court's decision to grant attorney fees and costs for an abuse of discretion. However, if the decision implicates a question of law, including matters of statutory interpretation, we review the ruling de novo.

Smith contends that the district court erred in concluding that Zilverberg and Eagan are entitled, under NRS 41.670(1)(a), to all reasonable attorney fees and costs they incurred from the inception of the litigation rather than only those attorney fees and costs related to their anti-SLAPP motion. In addition, Smith argues that the amount of the attorney fees and costs the district court awarded was unreasonable under the factors set forth in *Brunzell v. Golden Gate National Bank,* 85 Nev. 345, 349 (1969).

When interpreting a statute, we look to its plain language. If a statute's language is plain and unambiguous, we enforce the statute as written, without resorting to the rules of construction. If a statute's language is ambiguous, we will examine the provision's legislative history and the scheme as a whole to ascertain the Legislature's intent. "Statutory language is ambiguous if it is capable of more than one reasonable interpretation."

The statute at issue here, NRS 41.670(1)(a), states that "[i]f the court grants a special motion to dismiss filed pursuant to NRS 41.660 ... [t]he court shall award reasonable costs and attorney's fees to the person against whom the action was brought." The statute does not specify if the costs and fees to be awarded are those incurred litigating the entire action or only the costs and fees incurred litigating the anti-SLAPP motion. Because NRS 41.670(1)(a) is ambiguous on this point, we turn to the rules of statutory construction to determine the Legislature's intent.

"One basic tenet of statutory construction dictates that, if the legislature includes a qualification in one statute but omits the qualification in another similar statute, it should be inferred that the omission was intentional." Comparing NRS 41.670(1)(a) to NRS 41.670(2) is instructive here. NRS 41.670(2) provides that, when a special motion to dismiss is denied, the prevailing plaintiff can recover "reasonable costs and attorney's fees incurred in responding to the motion." In contrast, NRS 41.670(1)(a) contains no similar qualification limiting the period for which prevailing defendants can recover attorney fees and costs. Because these are not simply similar attorney fees

provisions, but are part of the same statutory scheme, the omission of any such qualification in NRS 41.670(1)(a) is particularly illuminating. Consequently, we conclude that the Legislature intended for prevailing defendants to recover reasonable attorney fees and costs incurred from the inception of the litigation, rather than just those incurred in litigating the anti-SLAPP motion.

The purpose of Nevada's anti-SLAPP statutes supports such an interpretation. As we have observed, the Legislature enacted these provisions in 1993 to filter out "unmeritorious claims in an effort to protect citizens from costly retaliatory lawsuits arising from their right to free speech under both the Nevada and Federal Constitutions." When the Legislature amended the statute in 1997, it reiterated that the intent of Nevada's anti-SLAPP statutes is to protect citizens' First Amendment right to free speech by limiting the chilling effect of civil actions filed against valid exercises of that right. Thus, consistent with the Legislature's goals of preventing the chilling effect of SLAPP suits and protecting free speech, we conclude that it intended to permit a prevailing defendant to recover all reasonable fees and costs incurred from the inception of the litigation under NRS 41.670(1)(a). Accordingly, the district court did not abuse its discretion by awarding Zilverberg and Eagan attorney fees and costs incurred for the entire action.

Further, the district court acted within its sound discretion in awarding $2,387.53 in costs and $66,615.00 in attorney fees. In determining the amount of fees to award, the district court can follow any rational method so long as it applies the *Brunzell* factors. Under *Brunzell,* a district court must consider the following factors when awarding attorney fees: (1) the qualities of the attorney, (2) the character of the work done, (3) the actual work performed by the attorney, and (4) the result achieved. So long as the district court considers the *Brunzell* factors, "its award of attorney fees will be upheld if it is supported by substantial evidence."

Here, the district court considered each of the *Brunzell* factors and the documentation provided in support of the attorney fees in finding them reasonable. While Smith challenges the time spent on the anti-SLAPP motion to dismiss as excessive in light of Zilverberg and Eagan's counsel's expertise in First Amendment litigation, the billing logs in the record show that their lead counsel delegated much of the work to other qualified

attorneys who billed at a lower rate and support the district court's finding that the time spent and fees incurred were reasonable. Further, Zilverberg and Eagan's counsel achieved a complete dismissal, which favors awarding attorney fees. Accordingly, the district court acted within its sound discretion in awarding Zilverberg and Eagan their attorney fees and costs.[3]

The district court acted within its sound discretion by awarding Zilverberg and Eagan each statutory damages

Finally, Smith argues that the district court erred by awarding Zilverberg and Eagan an additional $10,000 each under NRS 41.670(1)(b). He argues that, because he brought the action against Zilverberg and Eagan collectively and they lodged a joint defense through the same law firm, they can only be awarded a total of $10,000 under NRS 41.670(1)(b). We disagree.

The plain language of NRS 41.670 does not limit the statutory award to $10,000 per lawsuit. Instead, NRS 41.670(1)(b) states that "[t]he court may award, in addition to reasonable costs and attorney's fees awarded pursuant to paragraph (a), an amount of up to $10,000 to the *person* against whom the action was brought." (Emphasis added.) "Person" is defined as "[a] human being" or "[a]n entity (such as a corporation) that is recognized by law as having most of the rights and duties of a human being." *Person*, *Black's Law Dictionary* (11th ed. 2019). Thus, the plain language of the statute allows the district court to award up to $10,000 to any individual against whom the action was brought. Further, Zilverberg and Eagan's joint representation is irrelevant to their entitlement to additional awards under NRS 41.670(1)(b) because NRS 41.670(1)(b) is not an attorney fees award. NRS 41.670(1)(b) (providing that a district court may award up to $10,000 "*in addition* to reasonable costs and attorney's fees" (emphasis added)). Accordingly, the district court acted within its sound discretion by awarding each $10,000 in statutory damages.

CONCLUSION

We conclude that the district court correctly determined that the Zilverberg's and Eagan's

[3] Smith does not challenge the reasonableness of the portion of the fees the district court awarded for the work of Zilverberg and Eagan's prior counsel that was unrelated to the anti-SLAPP special motion to dismiss. Instead, he merely argues that they could not recover those fees because they were not related to the anti-SLAPP motion. Thus, we affirm the district court's order awarding fees and costs in its entirety.

statements fall within the protections of Nevada's anti-SLAPP statutes. We further hold that NRS 41.670(1)(a) allows a prevailing defendant to recover reasonable attorney fees and costs incurred in the entire action, not just those incurred litigating the anti-SLAPP special motion to dismiss. As the district court properly considered the *Brunzell* factors and substantial evidence supports its findings, we conclude that the district court did not abuse its discretion by awarding attorney fees and costs for the entire action. Finally, we hold that NRS 41.670(1)(b) gives district courts the discretion to award up to an additional $10,000 to each individual defendant. Thus, the district court did not abuse its discretion by awarding Zilverberg and Eagan an additional $10,000 each under this statute. Accordingly, we affirm the district court's orders.