IN THE SUPREME COURT OF THE STATE OF NEVADA

STAVROS S. ANTHONY, THALIA DONDERO, DOROTHY GALLAGHER, JACK SCHOFIELD, BRETT WHIPPLE AND MICHAEL WIXOM, MEMBERS OF THE UNIVERSITY OF NEVADA BOARD OF REGENTS,
Appellants,
vs.
COMMITTEE TO REGULATE AND CONTROL MARIJUANA; AND MATTHEW WITEMYRE,
Respondents.

No. 48894

FILED

MAY 09 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART AND REMANDING

This is an appeal from a final district court order that, among other things, denied appellants' special motion to dismiss and their request for attorney fees and costs under Nevada's anti-SLAPP provisions. Eighth Judicial District Court, Clark County; David Wall, Judge.

In October 2006, respondents, the Committee to Regulate and Control Marijuana and Matthew Witemyre, sought mandamus, injunctive, and declaratory relief against appellants, members of the University of Nevada Board of Regents. Respondents' petition and complaint alleged that, during a public meeting, appellants requested the Board to consider and adopt a resolution pertaining to a ballot initiative and, in so doing, used public funds to support or oppose the ballot initiative in violation of former NRS 281.554, which prohibited public officials from requesting or

causing a governmental entity to incur expenses or make expenditures to support or oppose a ballot question.[1] In response to the complaint, appellants apparently filed a special motion to dismiss under Nevada's anti-SLAPP provisions,[2] which direct district courts to dismiss and award attorney fees and costs in actions "based upon a good faith communication in furtherance of the right to petition."[3]

The district court denied respondents' petition and complaint and appellants' motion. With respect to appellants' motion, the court determined that respondents' action was not based on "communications per se," but rather, on whether in making those communications, public funds were expended in violation of former NRS 281.554. Both appellants and respondents appealed. On January 29, 2008, however, we dismissed respondents' appeal as moot and allowed appellants' appeal to proceed. We deferred ruling on respondents' opposed request to remand this matter to the district court so that it could vacate the portion of its order denying them relief, pending our consideration of appellants' appeal.

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[1]See NRS 281A.520 (current statute).

[2]NRS 41.635-.670. The motion to dismiss was not included in the parties' joint appendix, although the exhibits thereto were included.

[3]NRS 41.660(1)(a) (allowing parties to file special motions to dismiss actions based on certain communications) and NRS 41.670(1) (directing the district court to award attorney fees and costs to a party who obtains a dismissal under NRS 41.660). NRS 41.637 defines "good faith communication in furtherance of the right to petition," most relevantly, as any "[c]ommunication that is aimed at procuring any governmental or electoral action, result or outcome," so long as the communication is truthful or made without knowledge of its falsehood. NRS 41.637(1).

Having reviewed the parties' briefs and supporting documentation with regard to appellants' appeal, we conclude that the district court did not err when it denied appellants' motion to dismiss and for attorney fees and costs.[4] Although appellants argue, in essence, that respondents abused the legal process in an attempt to silence political opposition, as evidenced by respondents' "targeting" only opposing viewpoints, appellants' petition and complaint plainly challenged purported public expenditures under former NRS 281.554. Therefore, while respondents contested the communications' "appropriateness" to the extent that any public funds were expended, the district court appropriately determined that their district court proceeding was not based so much on the public officials' communications themselves as on the purported public expenditures.

Accordingly, as the district court did not err in denying the motion to dismiss, attorney fees and costs likewise were not available under Nevada's anti-SLAPP provisions, and we affirm the district court's order insofar as it denied appellants' special motion to dismiss and their request for attorney fees and costs under Nevada's anti-SLAPP provisions.

With respect to the remaining portion of the district court's order, which denied respondents relief, as respondents' appeal became moot through no fault of their own, we grant respondents' request and

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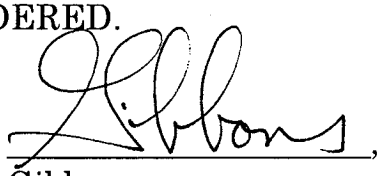
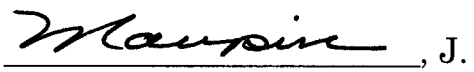
[4]See NRS 41.660(3)(a) (directing the district court to treat a special motion to dismiss as one for summary judgment); Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026 (2005) (noting that orders resolving summary judgment motions are reviewed de novo).

remand this matter with instructions that the district court vacate that portion of the order and dismiss respondents' complaint.[5]

It is so ORDERED.



_____, C.J.
Gibbons



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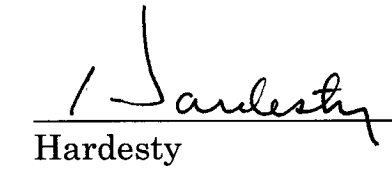

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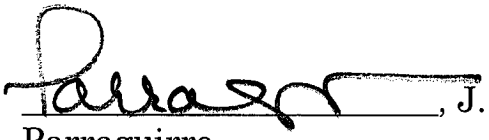

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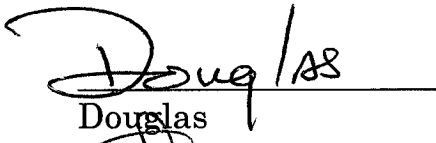
Parraguirre



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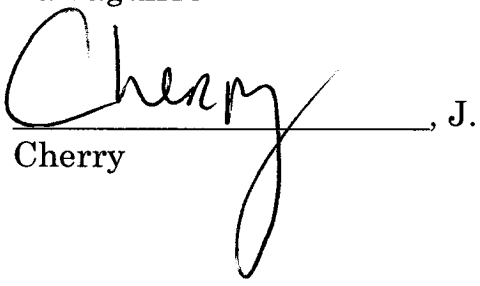
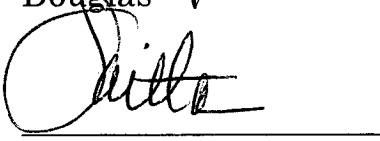
Douglas



_____, J.
Cherry



_____, J.
Saitta

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[5]See U.S. Bancorp Mortg. Co. v. Bonner Mall Partnership, 513 U.S. 18, 25 (1994) ("A party who seeks review of the merits of an adverse ruling, but is frustrated by the vagaries of circumstance, ought not in fairness be forced to acquiesce in the judgment." (citing U.S. v. Munsingwear, Inc., 340 U.S. 36, 39 (1950))); see also Panterra Corp. v. American Dairy Queen, 908 S.W.2d 300 (Tex. Ct. App. 1995); cf. Boulet v. City of Las Vegas, 96 Nev. 611, 614, 614 P.2d 8, 10 (1980) (declining to agree that vacatur is the proper remedy in a moot case when the party invoking it has "slept on its rights").

cc: Hon. David Wall, District Judge
Clark County District Attorney David J. Roger/Civil Division
Emery Celli Brinckerhoff & Abady, LLP
Kwasi Nyamekye
Bart J. Patterson
Washoe County District Attorney Richard A. Gammick/Civil Division
Chuck R. Gardner
Eighth District Court Clerk