

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL D. JENSEN; WALT RAPP;
FRANK L. FISHER; AND CYNTHIA
HARRIS,
Appellants,
vs.
THE CITY OF BOULDER CITY,
NEVADA,
Respondent.

No. 57116

FILED

JAN 24 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY K. Malone
DEPUTY CLERK

No. 57635

WALT RAPP; DANIEL D. JENSEN;
JAMES C. DOUGLASS; FRANK L.
FISHER; AND CYNTHIA HARRIS,
Appellants,
vs.
THE CITY OF BOULDER CITY,
NEVADA,
Respondent.

No. 57667

DANIEL D. JENSEN; NANCY A.
NOLETTE; AND JAMES C.
DOUGLASS,
Appellants,
vs.
THE CITY OF BOULDER CITY,
NEVADA,
Respondent.

ORDER OF REVERSAL AND REMAND

These are consolidated appeals from district court orders denying special motions to dismiss under Nevada's anti-SLAPP statute, NRS 41.660. Eighth Judicial District Court, Clark County; Allan R. Earl, Jerome T. Tao, and Susan Scann, Judges.

PROCEDURAL HISTORY

The underlying actions arose when respondent The City of Boulder City filed complaints for declaratory and extraordinary relief regarding the constitutionality of three citizen initiative petitions. These complaints named as defendants individual members of initiative committees who drafted, submitted, and circulated the initiative petitions. In each of the three cases, appellants (the defendants below) filed special motions to dismiss the complaints under Nevada's anti-SLAPP statute, NRS 41.660, arguing that they were immune from civil liability for claims based on the exercise of their constitutional rights to petition. In Docket Nos. 57116 and 57635, the district courts ruled that the immunity from civil liability provided for in NRS 41.650 did not provide for immunity from declaratory relief actions and thus did not apply in those actions. In Docket No. 57667, the district court held that the anti-SLAPP statutes did not apply to the City's claims because the initiative at issue was not a good-faith communication within the meaning of NRS 41.637. Ultimately, all three motions were denied. These appeals followed.

After appellants filed their notices of appeal, this court issued an order to show cause why these appeals should not be dismissed for lack of jurisdiction. Specifically, although the anti-SLAPP statutes referenced a stay of discovery pending appeal, NRS 41.660(3)(b)(2), no statute expressly authorized an appeal from an interlocutory order denying a special motion to dismiss. As directed, appellants responded to the show cause order, but we nevertheless ordered the parties to address the jurisdictional issue in their appellate briefs.

Once briefing of these appeals was complete, but before this court considered the issues presented on appeal, the 2013 Nevada

Legislature amended the anti-SLAPP statutes in response to the Ninth Circuit Court of Appeals' holding in *Metabolic Research, Inc. v. Ferrell*, 693 F.3d 795 (9th Cir. 2012), which allows (1) for a direct appeal from a denial of a special motion to dismiss; (2) provides immunity from civil actions, rather than from civil liability only; and (3) expands the definition of what constitutes a good-faith communication. The legislative amendments codified the *Metabolic Research* holding, and became effective on October 1, 2013. S.B. 286, 77th Leg. (Nev. 2013). Based on these amendments, this court directed the parties to address the Legislature's changes to the anti-SLAPP statutes, as the amendments appeared to confer jurisdiction on this court over these appeals and it appeared that the district court orders should be reversed and remanded. Both appellants and the City have filed responses.

DISCUSSION

In its response to the second show cause order, the City raises several arguments related to the underlying actions' status as pre- and post-election challenges of initiatives, and the City contends that if this court holds that these actions are anti-SLAPP suits, municipalities will not be able to challenge initiatives. In that regard, the City argues that the three actions at issue are not anti-SLAPP suits because specific statutory authority "contemplates and authorizes a lawsuit to question or seek review of the initiative's validity," and because both statutory authority and caselaw allow challenges to initiatives, its three lawsuits cannot be found to be anti-SLAPP suits. The City also argues that the Legislature's amendments to the anti-SLAPP statutes were changes to the law that should not be retroactively applied to these actions. Appellants argue in their response that the City's suits are anti-SLAPP suits because

appellants were named in the cases based on the exercise of their constitutional rights to petition.

In arguing that its three actions do not implicate the anti-SLAPP statutes, the City cites to NRS 295.061(2), which allows for a challenge to the legal sufficiency of initiative petitions after they have been certified as sufficient by the Secretary of State. NRS 295.061 does not require that only the individual proponents of an initiative be named as defendants in a suit challenging an initiative, however. In fact, the Secretary of State or another government entity has always been named as a defendant in previous actions brought before this court based on NRS 295.061. *See, e.g., Nevadans for Nevada v. Beer*, 122 Nev. 930, 142 P.3d 339 (2006) (naming the Secretary of State as a defendant). The same is true of the cases cited by the City where preelection challenges were made by opponents to an initiative. *See, e.g., Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 141 P.2d 1224 (naming the Secretary of State as a defendant in a preelection declaratory relief action seeking to remove an initiative from the general election ballot); *Nevadans for Nevada* 122 Nev. at 930, 142 P.3d at 339 (same). The City appears to concede that it could have challenged the three initiatives at issue without suing appellants because the City proposes in its show cause response that this court should remand these matters to the district court with instructions to add or substitute different defendants under NRCPC 17, add or substitute the attorney general to defend the initiatives, or dismiss the named defendants and direct the City to pursue judicial review under the Judicial Confirmation Law, NRS Chapter 43, as proposed by the district court order in Docket No. 57667.

As to the City's argument regarding the applicability of the Legislature's amendments to these actions, the Legislature's amendments to Nevada's anti-SLAPP statutes appear to clarify, not change, the law. See *In re Estate of Thomas*, 116 Nev. 492, 495, 998 P.2d 560, 562 (2000) (explaining "that [w]here a former statute is amended, or a doubtful interpretation of a former statute rendered certain by subsequent legislation, it has been held that such amendment is persuasive evidence of what the Legislature intended by the first statute" (quoting *Sheriff, Washoe Cnty. v. Smith*, 91 Nev. 729, 734, 542 P.2d 440, 443 (1975))); see also *Pub. Emps. Benefits Program v. Las Vegas Metro. Police Dep't*, 124 Nev. 138, 157, 179 P.3d 542, 554-55 (2008) (stating that "when a statute's doubtful interpretation is made clear through subsequent legislation, we may consider the subsequent legislation persuasive evidence of what the Legislature originally intended") (internal quotation marks omitted); *Metz v. Metz*, 120 Nev. 786, 792, 101 P.3d 779, 783-84 (2004) (noting that the Legislature's change to a statute demonstrates legislative intent). Here, the Legislature's amendments were in response to the Ninth Circuit Court of Appeals' interpretation of Nevada's anti-SLAPP statutes in *Metabolic Research*, 693 F.3d 795, where the court held that Nevada's anti-SLAPP provisions only protect communications made directly to a governmental agency, and only protect defendants from liability, not trial, and that there was no right to an immediate appeal from an order denying a special motion to dismiss. See Hearing on S.B. 286 Before the Senate Committee on Judiciary, 77th Leg. (Nev., March 28, 2013); Hearing on S.B. 286 Before the Assembly Committee on Judiciary, 77th Leg. (Nev., May 6, 2013). It appears, therefore, that the Legislature's amendments to the anti-SLAPP statutes were meant to clarify the law in light of the *Metabolic Research*


holding. *Metz*, 120 Nev. at 792, 101 P.3d at 783-84; *In re Estate of Thomas*, 116 Nev. at 495, 998 P.2d at 562.


As the 2013 amendments to the anti-SLAPP statutes clarify that there is an immediate appeal from a denial of a special motion to dismiss an anti-SLAPP suit, this court has jurisdiction to hear these appeals. NRS 41.670(4). The Legislature's amendment of the anti-SLAPP statutes also clarifies that NRS 41.650 provides for immunity from civil actions, not merely from civil liability. As the district courts denied appellants' special motions to dismiss in Docket Nos. 57116 and 57635, finding that the anti-SLAPP statutory immunity did not apply because the City was not seeking monetary damages or to compel or prohibit appellants' actions, we conclude that the district courts erred in denying appellants' motions to dismiss. NRS 41.650. The district court orders in Docket Nos. 57116 and 57635 are therefore reversed and these cases are remanded to the district courts to grant appellants' special motions to dismiss and to determine the appropriate attorney fees and costs to be awarded to appellants pursuant to NRS 41.670.

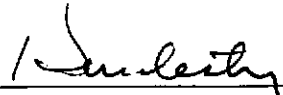
We also conclude, based on the Legislature's clarification of the anti-SLAPP statutes, that the district court erred in denying appellants' special motion to dismiss Docket No. 57667. The changes to the anti-SLAPP statutes and the legislative history show that the Legislature intended for the anti-SLAPP statutes to cover all speech directly connected to matters of public concern, and thus, the district court's holding that the petition at issue in the appeal was not a protected communication was in error. NRS 41.637; see Hearing on S.B. 286 Before the Senate Committee on Judiciary, 77th Leg. (Nev., March 28, 2013). Accordingly, we reverse the district court order in Docket No. 57667 and

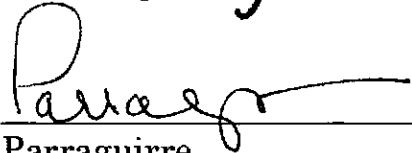
remand that matter to the district court to be dismissed and for the district court to award appropriate attorney fees and costs pursuant to NRS 41.670.

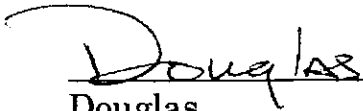
It is so ORDERED.

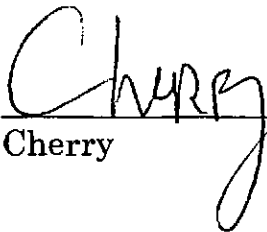

Gibbons, C.J.



Pickering, J.


Hardesty, J.


Parraguirre, J.


Douglas, J.


Cherry, J.


Saitta, J.

cc: Hon. Allan R. Earl, District Judge
Hon. Jerome T. Tao, District Judge
Hon. Susan Scann, District Judge
Linda G. Strickland
Tracy Strickland
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Eighth District Court Clerk