

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHELLE ROBINSON, AN
INDIVIDUAL,
Appellant,
vs.
RUSSELL SMITH, IN HIS
INDIVIDUAL CAPACITY AND IN HIS
OFFICIAL CAPACITY AS DISTRICT
ATTORNEY OF HUMBOLDT COUNTY,
STATE OF NEVADA,
Respondent.

No. 58298

FILED

MAY 10 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Anderson*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a special motion to dismiss based on Nevada's anti-SLAPP¹ statute in a defamation action. Sixth Judicial District Court, Humboldt County; Richard Wagner, Judge.

A special motion to dismiss under the anti-SLAPP statute is treated as a motion for summary judgment. NRS 41.660(3)(a). Thus, the district court may only grant the special motion to dismiss if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. John v. Douglas County School District, 125 Nev. 746, 753-54, 219 P.3d 1276, 1281 (2009) (setting forth the summary judgment standard and explaining that "the nonmoving party cannot overcome the special motion to dismiss 'on the gossamer threads of

¹"SLAPP" is an acronym for strategic lawsuits against public participation.

whimsy, speculation and conjecture”) (quoting Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1030 (2005)). To avoid summary judgment once the movant has properly supported the motion, the nonmoving party may not rest upon general allegations and conclusions, but must instead set forth by affidavit or otherwise specific facts demonstrating the existence of a genuine issue of material fact for trial. NRCP 56(e); Wood, 121 Nev. at 731, 121 P.3d at 1030-31. This court reviews de novo a district court’s order granting the special anti-SLAPP motion to dismiss. John, 125 Nev. at 753, 219 P.3d at 1281.

On appeal, appellant asserts that it was clear error or an abuse of discretion when the district court determined that respondent had shown his communications were made in good faith and he was thus entitled to immunity under the anti-SLAPP statute. A communication made in good faith is one that is “truthful or is made without knowledge of its falsehood” and that regards a matter of reasonable concern to the governmental entity. NRS 41.637; John, 125 Nev. at 761, 219 P.3d at 1286. Respondent met his threshold showing through the affidavits and deposition testimony of several witnesses from whom he received the underlying information, which indicated that he made the communications at issue without knowledge of their falsehood.² Appellant

²Appellant argues that an affidavit offered by respondent is inadmissible hearsay under NRCP 43(a). Affidavits, however, are admissible to support a motion for summary judgment, and here the affidavit was offered to show that there was no genuine issue of fact regarding whether appellant’s claims failed based on anti-SLAPP immunity and not to prove the truth of the matter asserted. NRCP 56(c); NRS 51.035.


relied on conclusory allegations to deny the truthfulness of respondent's communications, and did not furnish specific facts to demonstrate a genuine issue of material fact as to whether respondent made the communications with knowledge of their falsehood. Thus, she failed to meet her burden of production.³ See John, 125 Nev. at 762, 219 P.3d at 1287.

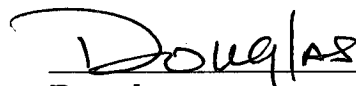
Appellant also argues that respondent's communications were not made in regard to matters of reasonable concern to school officials. Matters that "address[] the school environment as it applie[s] to staff and students and . . . impact[] the school district's potential legal liability" have been held as matters of reasonable concern to the school district. Id. Appellant argues that her alleged conduct from five years prior did not have a "direct bearing on the present staff and students [at the school]." Appellant's prior conduct in positions of influence and involving youth, however, is of reasonable concern to a school district, as appellant engaged with youth on a daily basis as a counselor intern. Thus, appellant failed to meet her burden to demonstrate a genuine issue of material fact as to

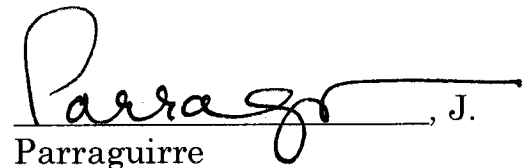
³Appellant claims that "the burden imposed on [her] to prove a lack of knowledge of falsity by [respondent] is tantamount to asking [her] to prove a negative, which is impossible and unreasonable." Appellant misconstrues the standard and the district court order. The district court found that appellant had not provided any evidence to indicate that respondent had knowledge that the information was false at the time it was shared with school officials, thereby failing to demonstrate a genuine issue of material fact. Appellant has not persuaded us that the established law as to the standard for summary judgment is unreasonable.

whether the communications did not regard a matter of reasonable concern to the school district. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. Richard Wagner, District Judge
Laurie A. Yott, Settlement Judge
Dolan Law, LLC
Thorndal Armstrong Delk Balkenbush & Eisinger/Reno
Humboldt County Clerk

⁴We have considered appellant's argument that the district court erred by finding that several of her claims were time-barred under NRS 11.190(4), and that they should have been allowed pursuant to the tolling provisions of 28 USC § 1367(d). Because we affirm the decision that respondent is entitled to the protections of the anti-SLAPP statute, we do not need to reach the merits of this argument. Additionally, we decline to address respondent's argument raised for the first time on appeal that appellant cannot prevail on her claims pursuant to the common interest privilege. See Diamond Enters., Inc. v. Lau, 113 Nev. 1376, 1378, 951 P.2d 73, 74 (1997).

We have determined that this appeal should be submitted for decision on the briefs and appellate record without oral argument. See NRAP 34(f)(1).