

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHNNY MADRID LAWRENCE,
Appellant,
vs.
JAMIE KRAHNE; PRIME
HEALTHCARE D/B/A ST. MARY'S
HOSPITAL; DR. KURT VON
HARTLEBEN; TRACEY HENDERSON;
OFFICER SEAN SCHWARTZ; AND
CITY OF RENO POLICE
DEPARTMENT,
Respondents.

No. 66595

FILED

SEP 16 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from district court orders granting two special motions to dismiss under Nevada's anti-Strategic Lawsuits Against Public Participation (anti-SLAPP) statute and a motion to dismiss for failure to state a claim upon which relief can be granted. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Appellant Johnny Madrid Lawrence first argues the district court erred in granting the special motions to dismiss because he asserts the district court did not properly determine whether the communications at issue were made in good faith. Under Nevada's anti-SLAPP statute, district courts treat a special motion to dismiss as a motion for summary judgment and, if granted, as an adjudication on the merits. NRS 41.660(3)-(4); *John v. Douglas Cnty. Sch. Dist.*, 125 Nev. 746, 753, 219 P.3d 1276, 1281 (2009). The appropriate standard of review for a denial of a special motion to dismiss is the same as for a grant of summary judgment: de novo. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all

other evidence on file demonstrate that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence and any reasonable inferences derived therefrom “must be viewed in a light most favorable to the nonmoving party.” *Id.* General allegations and conclusory statements do not create genuine issues of fact. *Id.* at 731, 121 P.3d at 1030–31.

Lawrence’s allegations involve statements made by medical personnel to law enforcement officers following Lawrence’s threatening outburst at St. Mary’s Hospital. When considering a motion made under Nevada’s anti-SLAPP statute, the district court must determine (a) if “the claim is based upon a good faith communication in furtherance of the right to petition,” and (b) “whether the plaintiff has established by clear and convincing evidence a probability of prevailing on the claim.” NRS 41.660(3)(a)-(b); *see John*, 125 Nev. at 752, 219 P.3d at 1281. A good faith communication is one “that is aimed at procuring any governmental . . . action, result, or outcome,” and “is truthful or made without [the] knowledge of falsehood.” NRS 41.637. “[T]he moving party must first make a threshold showing that the lawsuit is based on good faith communications made in furtherance of the right to petition the government.” *John*, 125 Nev. at 754, 219 P.3d at 1282 (internal brackets and quotation marks omitted). If the moving party makes the threshold showing, the burden shifts to the non-moving party to demonstrate the existence of a genuine issue of material fact. *Id.*

Here, the district court concluded the respondents met their initial burden because their statements to the police were made in good faith and meant to procure governmental action in the form of an

investigation of Lawrence's threats. *See Siam v. Kizilbash*, 31 Cal.Rptr.3d 368, 373-74 (Ct. App. 2005) (explaining statements "designed to prompt action by law enforcement" were protected under California's anti-SLAPP statute); *see also John*, 125 Nev. at 756, 219 P.3d at 1283 (explaining that California's anti-SLAPP statute is "similar in purpose and language to Nevada's"). The district court then concluded Lawrence did not produce any evidence to support his position that the respondents' statements were untrue. The court further concluded Lawrence's unsupported allegations that the respondents committed fraud during a criminal investigation failed to show that there was a genuine issue of material fact or that he had a reasonable likelihood of success on the merits. *See Wood*, 121 Nev. at 731, 121 P.3d at 1030-31 (stating general allegations and conclusory statements do not create genuine issues of fact).

Our review of the record reveals the district court properly granted the special motions to dismiss. The district court correctly concluded the statements at issue were made in a good-faith effort to procure governmental action and Lawrence did not present specific facts demonstrating the existence of a genuine factual issue. Therefore, Lawrence is not entitled to relief for this claim.

Second, Lawrence argues the district court erred in awarding attorneys' fees and costs to the respondents. Lawrence's argument lacks merit. We review a district court's decision regarding the award of attorney's fees and costs for an abuse of discretion. *See Bergmann v. Boyce*, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993); *Vill. Builders 96, L.P. v. U.S. Labs., Inc.*, 121 Nev. 261, 276, 112 P.3d 1082, 1092 (2005). First, NRS 41.670(1) provides for the award of reasonable costs and attorney's fees if the court grants a special motion to dismiss pursuant to NRS

41.660. Here, the district court granted a special motion to dismiss filed by respondent Jamie Krahn pursuant to NRS 41.660. Accordingly, the court properly awarded Krahn her reasonable costs and attorneys' fees pursuant to NRS 41.670(1). Second, NRS 18.010(2) provides for an award of attorney's fees to a prevailing party. Here, the district court properly awarded the City of Reno its attorney's fees pursuant to NRS 18.010(2) because it was a prevailing party. Therefore, Lawrence fails to demonstrate the district court abused its discretion in this regard.

Third, Lawrence argues the district court erred by failing to grant his motion for a default judgment against Officer Sean Schwartz. Lawrence's argument lacks merit. Proper service of process must occur for a court to obtain jurisdiction over a party. *C.H.A. Venture v. G.C. Wallace Consulting Eng'rs, Inc.*, 106 Nev. 381, 384, 794 P.2d 707, 709 (1990). NRCP 4(d)(6) requires personal service of process upon an individual to be delivered "to the defendant personally, or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process." A review of the record reveals Lawrence did not complete personal service of process upon Sean Schwartz as required by NRCP 4(d)(6). Accordingly, the district court lacked jurisdiction over Lawrence's motions for a default judgment against Schwartz. Therefore, Lawrence is not entitled to relief for this claim.


Fourth, Lawrence argues the district court erred in concluding the City of Reno was entitled to relief due to application of *Heck v. Humphrey*, 512 U.S. 477 (1994). Lawrence alleged he was entitled to damages against the City of Reno due to an improper arrest stemming

from the false allegations made by the other respondents. The district court dismissed the claims against City of Reno because Lawrence's charges stemming from the incident at St. Mary's Hospital were still pending. In *Heck*, the United States Supreme Court concluded a plaintiff seeking damages for an allegation of the violation of his rights for an arrest and conviction must first demonstrate the conviction or sentence was invalid. 512 U.S. at 486-87. As Lawrence did not demonstrate the arrest or charges stemming from the incident at the hospital were invalid, the district court properly granted relief to the City of Reno. Therefore, Lawrence is not entitled to relief for this claim.

Having considered Lawrence's claims and concluded they lack merit, we

ORDER the judgments of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

¹We have reviewed all documents Lawrence has submitted in this matter, and we conclude no relief based upon those submissions is warranted.

cc: Hon. Janet J. Berry, District Judge
Johnny Madrid Lawrence
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