

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARTIN CROWLEY,
Appellant,
vs.
DRUSCILLA THYSSEN,
Respondent.

No. 69120

FILED

JAN 05 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a grant of a special motion to dismiss pursuant to NRS 41.660. First Judicial District Court, Storey County; James E. Wilson, Judge.

Disputes arose between appellant, Martin Crowley, and the respondent, Drusilla Thyssen, during Crowley's representation of both Thyssen and her boyfriend Joe Panicaro in two public records cases. Crowley sued Thyssen relating to this arrangement, and asserted claims for "monies due and owing," breach of contract, tortious breach of contract, unjust enrichment and quantum meruit. Thyssen filed a special motion to dismiss, arguing that Crowley's suit was a meritless, "strategic lawsuit against public participation," or a SLAPP.

The district court denied the motion, holding that Thyssen failed to establish that she engaged in protected activity under Nevada's "anti-SLAPP" statute, NRS 41.660. The case proceeded, but was dismissed without prejudice after Crowley failed to comply with Nevada Rule of Civil Procedure 16.1. Crowley re-filed his complaint nearly two years later, after Panicaro reported Crowley to the Nevada State Bar for allegedly violating his suspension order. Thyssen again filed a special

motion to dismiss and this time, the district court granted the motion on the grounds that Crowley failed to adequately oppose it.¹

Crowley appeals the order granting the special motion to dismiss, arguing that the district court erred by not applying the burden-shifting framework described in NRS 41.660.

Nevada's anti-SLAPP laws provide for a "special motion to dismiss" that the defendant can file within a short time of receiving the complaint to request the court to dismiss the suit with prejudice. NRS 41.660. Nevada's first anti-SLAPP law was passed in 1993 and has been modified by the Legislature several times, in 1997, 2013, and 2015. The 2013 anti-SLAPP statute governs the resolution of this appeal as the 2015 anti-SLAPP statutes took effect on June 8, 2015.

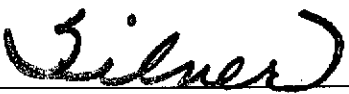
Under the 2013 version of the statute, the defendant was required to demonstrate that the plaintiff's lawsuit was "based on their good faith communication in furtherance of the right to petition" by "a preponderance of the evidence." NRS 41.660(1)-(3) (2013). If the defendant successfully met her burden, the burden would shift to the plaintiff, who had to demonstrate "by clear and convincing evidence a probability of prevailing on the claim." NRS 41.660(3)(b) (2013). Thus, the 2013 version of the statute requires weighing of evidence, and this court reviews for an abuse of discretion. *See Sowers v. Forest Hills Subdivision*, 129 Nev. 99, 105, 294 P.3d 427, 432 (2013) (this court reviews a district court's factual findings for an abuse of discretion).

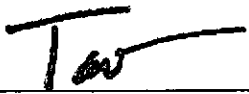
Unfortunately, the district court made no determination as to whether Thyssen satisfied her initial burden under NRS 41.660. The

¹We do not recount the facts except as necessary to our disposition.

plain language of the statute, NRS 41.660, places the burden on the moving party to first make a threshold showing that she can invoke anti-SLAPP protection. Only after Thyssen made such a threshold showing would the burden shift to Crowley. Thus, the district court erred by first considering the sufficiency of Crowley's response before establishing that Thyssen met her initial burden.²

Accordingly, we ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

²We have carefully considered Crowley's remaining arguments and conclude they do not warrant reversal. First, we disagree that a failure to rule on the motion within the seven judicial days prescribed in 41.660(3)(f) (2013) requires reversal. *See Vill. League to Save Incline Assets, Inc. v. State ex rel. Bd. of Equalization*, 124 Nev. 1079, 1088, 194 P.3d 1254, 1260 (2008) (holding that a statute using the word "shall" was directory instead of mandatory in light of the Legislature's intent and the practical effect); *see also* NRS 41.660(6) as amended in 2015 (allowing the court to modify the deadlines). Additionally, we note that after the subject motion was filed in this case, the case changed venues and then departments. The district judge that ultimately ruled on the motion issued the order within seven judicial days of receiving it. Second, we have considered Crowley's argument that the special motion to dismiss should have been denied because Thyssen did not satisfy her initial burden under NRS 41.660, but we leave such fact-finding for the district court on remand.

cc: Hon. James E. Wilson, District Judge
Martin G. Crowley
Kozak Lusiani Law
Storey County Clerk