


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARLOS JACKSON,
Appellant,
vs.
DICKINSON WRIGHT PLLC;
TIMOTHY M. STRONG; AND JUSTIN
J. BUSTOS,
Respondents.

No. 84824-COA

FILED

SEP 22 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

CARLOS JACKSON,
Appellant,
vs.
DICKINSON WRIGHT PLLC;
TIMOTHY M. STRONG; AND JUSTIN
J. BUSTOS,
Respondents.¹

No. 85139-COA

ORDER OF AFFIRMANCE

Carlos Jackson appeals from a district court order dismissing a tort action under NRS 41.660, Nevada's anti-SLAPP law, and for failure to state a claim. Jackson also appeals from a district court order awarding costs plus \$30,000 in statutory awards under NRS 41.670 to respondents. These cases are consolidated on appeal. *See* NRAP (3)(b). Eighth Judicial District Court, Clark County; Crystal Eller, Judge.

¹We direct the clerk of the court to amend the captions for these cases to conform to the captions on this order.

Jackson filed an amended complaint on February 17, 2022, alleging that he was entitled to monetary damages due to intentional infliction of emotional distress and breach of the implied covenant of good faith and fair dealing based on respondents Dickson Wright PLLC, Timothy M. Strong, and Justin J. Bustos' (collectively referred to as respondents) statements and actions performed in their capacity as attorneys representing an insurance company. Specifically, Jackson alleged that respondents sought dismissal of his lawsuit against the insurance company and otherwise frustrated his attempts to prevail in that matter or to achieve a favorable settlement.

On March 23, 2022, respondents filed a special motion to dismiss under Nevada's anti-Strategic Lawsuits Against Public Participation (anti-SLAPP) statute. In their motion, respondents argued Jackson's claims were based on statements they made in furtherance of their duties to represent the insurance company against Jackson's lawsuit. Respondents also included exhibits with their motion demonstrating that Jackson threatened to file suit against them if they did not withdraw the motion to dismiss his suit against the insurance company.

Given the nature of Jackson's allegations and the information included in the exhibits, respondents argued dismissal was appropriate pursuant to NRS 41.660(3) because Jackson's claims were based on their good-faith communications made in furtherance of their rights to petition and free speech and the communications were made in direct connection with an issue of public concern in the form of Jackson's lawsuit. Respondents also contended that Jackson was not able to establish a probability of prevailing on his claims for the following reasons: (1)

Jackson's allegations were insufficient to establish respondents' statements were not protected by the litigation privilege, (2) Jackson did not allege respondents' conduct was extreme and outrageous such that he failed to state a claim for intentional infliction of emotional distress, and (3) Jackson did not allege that there was a contract between himself and respondents and he accordingly failed to state a claim based on a breach of the implied covenant of good faith and fair dealing.

Jackson filed a general opposition to the motion to dismiss and also moved for a continuance of the proceedings due to his recent dental surgery and so that he could hire an attorney or file an amended complaint. The district court concluded that Jackson did not demonstrate that a continuance was warranted and denied Jackson's request to continue the proceedings. The district court subsequently entered a written order granting the special motion to dismiss, finding that dismissal was proper pursuant to NRS 41.660 and pursuant to NRCP 12(b)(5) because Jackson's allegations failed to state a claim for which relief could be granted.

Respondents subsequently moved for an award of costs pursuant to NRS 41.670(1)(a) and monetary award pursuant to NRS 41.670(1)(b) in the amount of \$10,000 for each defendant. Jackson opposed the motion. The district court subsequently entered a written order granting respondents' motion. The district court noted that it was required to award reasonable costs to respondents pursuant to NRS 41.670(1)(a) as they prevailed on their special motion to dismiss and it found that they incurred reasonable costs in the amount of \$294.99. The district court also exercised its discretion to award monetary relief pursuant to NRS 41.670(1)(b) because it found that Jackson's claims were frivolous and were

raised with an “improper purpose of extorting and manipulating” respondents into causing their insurance-company client to settle Jackson’s other lawsuit. The district court therefore found that the maximum amount of monetary relief was appropriate and accordingly awarded respondents each \$10,000. These appeals followed.

Special Motion to Dismiss

First, Jackson argues the district court erred by granting the special motion to dismiss under Nevada’s anti-SLAPP statute. Jackson appears to argue that respondents’ statements at issue were not truthful, and thus, the district court should have denied their motion.

We review a district court’s order granting an anti-SLAPP motion to dismiss de novo. *Coker v. Sassone*, 135 Nev. 8, 10, 432 P.3d 746, 748-49 (2019). “Under Nevada’s anti-SLAPP statute[], a moving party may file a special motion to dismiss if an action is filed in retaliation to the exercise of free speech. A district court considering a special motion to dismiss must undertake a two-prong analysis.” *Id.* at 11-12, 432 P.3d at 749. First, the court shall “[d]etermine whether the moving party has established, by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern.” NRS 41.660(3)(a). Second, “[i]f the court determines that the moving party has met [its] burden . . . [the court shall] determine whether the plaintiff has demonstrated with prima facie evidence a probability of prevailing on the claim.” NRS 41.660(3)(b).

A good-faith communication is one “that is aimed at procuring any governmental . . . action, result or outcome,” including “[w]ritten or oral

statement[s] made in direct connection with an issue under consideration by a . . . judicial body” and “is truthful or is made without [the] knowledge of its falsehood.” NRS 41.637. To meet their burden under the first prong of the anti-SLAPP analysis, respondents had to “establish only by a preponderance of the evidence that the statements were true or made without knowledge of their falsity.” *Rosen v. Tarkanian*, 135 Nev. 436, 440, 453 P.3d 1220, 1224 (2019) (internal quotation marks omitted). Moreover, courts should not “parse each individual word in the [relevant] statements” to assess their truthfulness, but rather must review whether the “gist,” or “portion of the story that carries the sting of the [statements], is true.” *Id.* at 440-41, 453 P.3d at 1224 (alteration in original) (internal quotation marks omitted).

Jackson’s allegations contained within his complaint and the evidence presented with the motion established that the challenged communications concerned respondents’ statements made in the course of their representation of an insurance company involved in litigation with Jackson. Thus, the statements were made in direct connection with an issue under consideration by a judicial body.

Moreover, Jackson’s allegations and the evidence presented with the motion demonstrated that the relevant communications concerned respondents’ intention to move for dismissal of Jackson’s case against the insurance company and their additional discussions concerning that matter. And the evidence established that the gist or relevant portion of the communications made by respondents were truthful or made without knowledge of their falsehood. Thus, respondents proved by a preponderance of the evidence that Jackson’s claims were based upon good-faith

communications made in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern. Therefore, respondents established the first prong of the anti-SLAPP analysis.

Next, the district court concluded that the second prong of the anti-SLAPP analysis did not favor Jackson because he did not establish with prima facie evidence a probability of prevailing on his claims. As explained previously, the district court concluded that respondents' statements were protected by the litigation privilege, Jackson did not allege respondents' conduct was extreme and outrageous such that he failed to state a claim for intentional infliction of emotional distress, and Jackson did not allege that there was a contract between himself and respondents and he accordingly failed to state a claim based on a breach of the implied covenant of good faith and fair dealing. Jackson fails to provide cogent argument regarding the district court's conclusions concerning these issues, and therefore, we decline to consider them on appeal. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that the appellate courts need not consider claims unsupported by cogent argument).

Thus, we conclude that both prongs of the analysis of a special motion to dismiss filed under Nevada's anti-SLAPP statute favored respondents. Accordingly, we conclude that the district court did not err by granting respondents' special motion to dismiss.²

²We note that the district court also concluded that dismissal of Jackson's complaint was warranted pursuant to NRCP 12(b)(5) because his allegations failed to state a claim for which relief could be granted. Jackson

Second, Jackson argues that the district court should not have considered respondents' motion to dismiss because it was untimely filed. Pursuant to NRS 41.660(2), "[a] special motion to dismiss must be filed within 60 days after service of the complaint, which period may be extended by the court for good cause shown." Jackson's amended complaint was filed on February 17, 2022. Respondents filed their special motion to dismiss on March 23, 2022, which was within the statutory 60-day period. Therefore, Jackson is not entitled to relief based on this argument.

Third, Jackson argues that the district court abused its discretion by denying his request to continue the proceedings related to respondents' special motion to dismiss. "We review the district court's decision on a motion for continuance for an abuse of discretion." *Bongioui v. Sullivan*, 122 Nev. 556, 570, 138 P.3d 433, 444 (2006).

At the hearing concerning respondents' special motion to dismiss, Jackson requested a continuance because he had recently undergone dental surgery, he wished to hire an attorney, and he wished for additional time in which he could prepare an amended complaint to provide additional detail regarding his allegations about respondents.

The district court responded and explained that it was required to issue a ruling concerning the special motion to dismiss within 20 days of its service pursuant to NRS 41.660(3)(f). The district court also stated that it sympathized with Jackson but that Jackson did not present sufficient grounds for it to continue the proceedings. In addition, the district court

does not challenge on appeal the district court's decision to dismiss his complaint pursuant to NRCP 12(b)(5).

found that Jackson failed to demonstrate that it should permit him leave to file an amended complaint given the nature of his allegations concerning respondents. *See Garmong v. Roney & Sons Constr.*, No. 53427, 2011 WL 1620629, at *3 (Nev. Apr. 27, 2011) (Order of Affirmance) (stating “the decision whether to grant leave to amend a complaint for a second time is within the sound discretion of the district court and a denial may be warranted if undue delay, bad faith, or dilatory motives on the part of the movant are involved”). For those reasons, the district court denied Jackson’s request for a continuance of the proceedings related to the special motion to dismiss.

Based on the record, we conclude that the district court did not abuse its discretion by denying Jackson’s request for a continuance. Therefore, Jackson is not entitled to relief based on this claim.

Judgment for Costs and for \$30,000 in statutory awards

Next, Jackson challenges the district court’s decision to award costs and monetary relief to respondents pursuant to NRS 41.670. Jackson argues that respondents were not entitled to attorney fees. However, respondents did not request attorney fees in this matter because they represented themselves, and the district court’s order did not award attorney fees to respondents. Instead, and as explained previously, the district court awarded reasonable costs to respondents in the amount of \$294.99 pursuant to NRS 41.670(1)(a). The district court also exercised its discretion to award \$10,000 in monetary relief to each of respondents, totaling \$30,000, *see Smith v. Zilverberg*, 137 Nev. 65, 75, 481 P.3d 1222, 1232 (2021) (explaining the district court has the discretion to award monetary relief pursuant to NRS 41.670(1)(b) and the “plain language of

the statute allows the district court to award up to \$10,000 to any individual against whom the action was brought”), and Jackson fails to demonstrate that the district court abused its discretion in so doing. Therefore, we conclude that Jackson is not entitled to relief based on this claim.³


Disqualification of district court judge

Next, Jackson argues that the district court judge should have been disqualified because she was biased against him. We conclude that relief is unwarranted because Jackson has not demonstrated that the district court’s decisions in the underlying case were based on knowledge acquired outside of the proceedings and the decision does not otherwise reflect “a deep-seated favoritism or antagonism that would make fair judgment impossible.” *Canarelli v. Eighth Judicial Dist. Court*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (internal quotation marks omitted) (explaining that unless an alleged bias has its origins in an extrajudicial source, disqualification is unwarranted absent a showing that the judge formed an opinion based on facts introduced during official judicial proceedings and which reflect deep-seated favoritism or antagonism that would render fair judgment impossible); see *In re Petition to Recall*

³Jackson also appears to argue that the district court erred by denying his request for a stay pending appeal upon a reduced bond. However, the Nevada Supreme Court has already considered the issue and concluded that Jackson did not demonstrate “that the district court abused its discretion in determining that appellant’s offer to provide a \$500 bond is insufficient.” *Jackson v. Markel Am. Ins. Co.*, Docket Nos. 84824 & 85139 (Order Denying Stay, March 10, 2023). Because the Nevada Supreme Court has already considered and rejected this issue, we conclude that Jackson is not entitled to relief based on this claim.

Dunleavy, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988) (providing that rulings made during official judicial proceedings generally “do not establish legally cognizable grounds for disqualification”); *see also Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009) (stating that the burden is on the party asserting bias to establish sufficient factual grounds for disqualification), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022). Therefore, Jackson is not entitled to relief based on this claim. Accordingly, for the reasons set forth above, we

ORDER the judgments of the district court AFFIRMED.⁴


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

⁴Insofar as Jackson raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Crystal Eller, District Judge
Carlos Jackson
Dickinson Wright PLLC
Eighth District Court Clerk