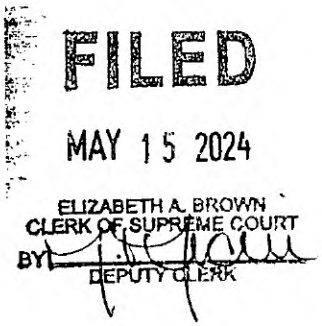
IN THE SUPREME COURT OF THE STATE OF NEVADA

DON C. KEENAN, AN INDIVIDUAL; D.C. KEENAN & ASSOCIATES, P.A., D/B/A KEENAN LAW FIRM, A GEORGIA PROFESSIONAL ASSOCIATION; WILLIAM ENTREKIN; KEENAN'S KIDS FOUNDATION, INC., D/B/A KEENAN TRIAL INSTITUTE AND/OR THE KEENAN EDGE, A GEORGIA NON-PROFIT CORPORATION,
Appellants,
vs.
SEAN K. CLAGGETT & ASSOCIATES, LLC, D/B/A CLAGGETT & SYKES LAW FIRM, A NEVADA LIMITED LIABILITY COMPANY; AND SEAN K. CLAGGETT, AN INDIVIDUAL,
Respondents.

No. 86174



ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellants' anti-SLAPP motion to dismiss in a tort action. Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

Respondents Sean K. Claggett and Claggett & Sykes Law Firm (collectively, Claggett) taught trial seminars operated by appellants Don C. Keenan, William Entrekin, D.C. Keenan & Associates, P.A. and Keenan's Kids Foundation, Inc. (collectively, Keenan). After the relationship deteriorated, Claggett began teaching trial seminars for a rival legal education company. In 2020, Keenan sued Claggett in Georgia federal court, generally alleging that Claggett misappropriated teaching materials. While that litigation was pending, Entrekin (allegedly on behalf of Keenan)

sent an email through a private listserv claiming that Claggett was an unreliable instructor who intentionally misappropriated educational materials. Keenan voluntarily dismissed the Georgia action.

Claggett then sued Keenan in Nevada state district court asserting claims for defamation, defamation per se, civil conspiracy, intentional interference with contractual relations and prospective economic advantage, and declaratory relief. After a hearing, the district court denied Keenans' motion to dismiss pursuant to NRS 41.660 and NRCP 12(b)(5). As relevant here, the district court determined that the listserv email did not qualify for anti-SLAPP protection under NRS 41.637(3) or (4). This appeal follows.[1]

We review the denial of a special anti-SLAPP motion to dismiss de novo. *Coker v. Sassone*, 135 Nev. 8, 10, 432 P.3d 746, 748-49 (2019). Nevada's anti-SLAPP statutes require the district court to undertake a two-prong analysis when reviewing a special motion to dismiss. NRS 41.660(3)(a)-(b). First, the moving party must demonstrate that the claims against them are based on a protected good faith communication, meaning that the communication fits under "one of the four categories enumerated in NRS 41.637 and 'is truthful or is made without knowledge of its falsehood.'" *Delucchi v. Songer*, 133 Nev. 290, 299, 396 P.3d 826, 833 (2017) (quoting NRS 41.637); NRS 41.660(3)(a) (describing first prong); *see* NRS 41.637 (defining good faith communications protected under Nevada's anti-SLAPP statutes).

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[1]"[B]ecause the denial of a motion to dismiss under NRCP 12(b)(5), unlike a special motion to dismiss under the anti-SLAPP statutes, is not independently appealable, we do not address" Keenans' arguments as to the NRCP 12(b)(5)-related issues. *Stark v. Lackey*, 136 Nev. 38, 39 n.1, 458 P.3d 342, 344 n. 1 (2020).

Keenan first argues the district court erred in denying the motion because the speech at issue was made in connection with an issue under consideration by a judicial body under NRS 41.637(3). For a statement to be protected as being one "*in direct* connection with an issue under consideration by a . . . judicial body, the statement must (1) relate to the substantive issues in the litigation and (2) be directed to persons having some interest in the litigation." *Patin v. Ton Vinh Lee*, 134 Nev. 722, 726, 429 P.3d 1248, 1251 (2018) (internal quotation marks omitted).

Applying that definition here, the district court correctly concluded that the statements in the listserv email failed to qualify for protection under NRS 41.637(3). Like in *Patin*, the statements were "not directed to any specific person or group" with an interest in the Georgia litigation. *Id.* at 727, 429 P.3d at 1252. Rather, the listserv recipients included numerous plaintiff lawyers across the country, including approximately 100 Nevada attorneys, who did not have a direct interest in the Georgia litigation. *See Moreira-Brown v. Las Vegas Rev. Journal, Inc.*, 648 F. Supp. 3d 1278, 1286 (D. Nev. 2023) (holding that an allegedly defamatory newspaper article about one attorney's lawsuit against another attorney was not directed to a specific group of people with an interest in the lawsuit and where neither the newspaper nor the reporter who wrote the article were parties to the lawsuit), *aff'd*, 23-15143, 2024 WL 1596456 (9th Cir. Apr. 12, 2024); *cf. Panik v. TMM, Inc.*, 139 Nev., Adv. Op. 53, 538 P.3d 1149, 1154 (2023) (concluding—in contrast to this case—that a statement was made in direct connection with an issue under consideration by a judicial body when the defendant made the statements to a corporation's directors, officers, and shareholders, who all had an interest

in the corporation's counterclaim for conversion of code derivatives in litigation over the rights to the code license).

Keenan next argues the district court erred because the statements were made in direct connection with an issue of public interest and in a public forum under NRS 41.637(4). This challenge also fails as the district court correctly determined that the listserv did not constitute a "public forum." In particular, the listserv was available only to select attorneys who had completed Keenans' courses, subject to Keenans' vetting and approval. In *Abrams v. Sanson*, we recognized that a listserv could constitute a public forum, but in contrast to that listserv, the listserv here is not open to general public access so as to be considered a public forum. 136 Nev. 83, 89-90, 458 P.3d 1062, 1067-68 (2020); *see Stark*, 136 Nev. at 40, 458 P.3d at 345 (discussing the moving party's burden to establish that the claims are based upon protected communications). Instead, the listserv required membership vetting and was available only to those who paid for Keenans' courses and who received Keenans' membership approval. *Cf. Weinberg v. Feisel*, 2 Cal. Rptr. 3d 385, 391-92 (Ct. App. 2003) (affirming denial of an anti-SLAPP motion because, in part, defendants did not provide sufficient evidence proving that a monthly memorabilia newsletter addressed to a limited number of members constituted a public forum, as access to the newsletter was selective). Therefore, we conclude that the district court correctly determined the email was not protected under NRS 41.637(4).[2]

[2]Because the listserv was not a "public forum," we need not address whether the listserv email was "made in direct connection with an issue of public interest." NRS 41.637(4); *see Shapiro v. Welt*, 133 Nev. 35, 39, 389 P.3d 262, 268 (2017) (providing a five-factor test to determine whether a matter is "an issue of public interest").

Having identified two independent grounds for denying the motion to dismiss at the first prong of NRS 41.660's anti-SLAPP analysis, we need not address the second prong concerning whether Claggett demonstrated the requisite probability of prevailing on his claims. *See Coker*, 135 Nev. at 15, 432 P.3d at 751 (declining to perform analysis of the second prong after determining the first prong was not met). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Stiglich, J.

Pickering, J.

Parraguirre, J.

cc: Hon. Erika Mendoza, District Judge
Hon. Jerry A. Wiese, Chief Judge
Paul M. Haire, Settlement Judge
Gordon Rees Scully Mansukhani LLP/Las Vegas
Pisanelli Bice, PLLC
Troutman Pepper Hamilton Sanders LLP/Atlanta
Claggett & Sykes Law Firm
Injury Lawyers of Nevada
Eighth District Court Clerk