IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHELLE WILSON, AN INDIVIDUAL; AND DAVID WILSON, AN INDIVIDUAL,
Appellants,
vs.
SHEELA RANGEN, AN INDIVIDUAL,
Respondent.

No. 85989

MICHELLE WILSON, AN INDIVIDUAL; AND DAVID WILSON, AN INDIVIDUAL,
Appellants,
vs.
SHEELA RANGEN, AN INDIVIDUAL,
Respondent.

No. 86284

ORDER AFFIRMING IN PART, REVERSING IN PART, VACATING IN PART, AND REMANDING

These are consolidated appeals from a district court order granting an anti-SLAPP motion to dismiss and an order awarding attorney fees in a tort action. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Appellants David and Michelle Wilson are part of a group of homeowners who sought to recall their HOA president, respondent Sheela Rangen. Before the recall election, Michelle authored online posts about perceived problems with Rangen's handling of HOA issues and distributed a letter to fellow homeowners opposing Rangen's candidacy. Also before the recall election, Rangen was the subject of online posts criticizing her in her role as HOA president and she received anonymous letters, some of which contained either racial epithets or emojis of guns or knives. In response, Rangen sent a three-page letter (the recall letter) to community

homeowners outlining her successes as HOA president and the recent hostilities directed at her. In one paragraph of the letter, Rangen wrote,

> A small minority of the community, who have their own personal agenda, have resisted my well-intentioned efforts and made me the target of repeated criticism and harassment, both online and in person. I have been silent for a very long time enduring all the bullying, stalking, anonymous threatening letters, and phone calls. These individuals continue to make numerous false statements about me and my actions as Board President. One of them, Michelle Wilson, also targeted me by making a baseless complaint to Clark County Code Enforcement, which was promptly dismissed.

The Wilsons sued Rangen, asserting claims for defamation per se, intentional infliction of emotional distress (IIED), declaratory relief, injunctive relief, invasion of privacy: false light, and retaliation under NRS 116.31183. After a hearing, the district court granted Rangen's anti-SLAPP motion to dismiss under NRS 41.660. As relevant here, the district court determined that the recall letter qualified for anti-SLAPP protection under NRS 41.637(4) and that the Wilsons failed to demonstrate with prima facie evidence a probability of prevailing on the merits of their claims. The district court granted Rangen $50,182.50 in attorney fees. The Wilsons appeal.

Reviewing the decision to grant an anti-SLAPP special motion to dismiss de novo, *Coker v. Sassone*, 135 Nev. 8, 10, 432 P.3d 746, 748-49 (2019), we affirm as to the claims grounded on statements Rangen made in the recall letter and reverse as to the retaliation claim, which is grounded on conduct outside the recall letter, and which does not concern protected speech. We first address the anti-SLAPP framework and then each of the two categories of claims in turn.

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 by a preponderance of the evidence that the claims against the moving party are based on protected good faith communications, 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); *see also* NRS 41.660(3)(a) (describing first prong); NRS 41.637 (defining good faith communications protected under Nevada's anti-SLAPP statutes).

Claims based on Rangen's statements in the recall letter

The Wilsons first argue the district court erred because Rangen's statements were not made in a public forum in direct connection with an issue of public interest under NRS 41.637(4). Considering the undisputed facts about the recall letter and the applicable legal standards, we agree with the district court that the distribution of the recall letter constituted a public forum under NRS 41.637(4), because the recall letter was sent to community homeowners in an "effort[ ] to drive civic engagement among community members and to affect management changes via [the] democratic [process]." *Kosor v. Olympia Cos.*, 136 Nev. 705, 710, 478 P.3d 390, 395 (2020) (concluding that HOA board candidate's campaign letter to homeowners constituted a public forum for purposes of NRS 41.637(4)). To determine whether the district court properly concluded that Rangen's statements concerned an issue of public interest, we apply the five factors set forth in *Shapiro v. Welt*, 133 Nev. 35, 39, 389 P.3d 262, 268 (2017).

The recall letter (1) discussed Rangen's candidacy and HOA governance strategies, rather than topics of "mere curiosity"; (2) encouraged the owners of all 155 homes in the community to vote in the recall election; (3) directly addressed issues about the community's governance; (4) directly responded to the recall petition's allegations challenging Rangen's fitness as president; and (5) discussed matters already openly discussed over public online forums, such as critiques of Rangen's governance. Thus, we perceive no error in the district court's determination that the recall letter concerned a matter of public interest under NRS 41.637(4). *Cf. Kosor*, 136 Nev. at 708, 478 P.3d at 394 (holding that allegedly defamatory statements made in an HOA board candidate's campaign letter discussing ongoing HOA management issues addressed issues of public interest).

The Wilsons next argue that the district court erred in granting the motion to dismiss because the recall letter's statements were not truthful or made without knowledge of their falsehood. *See* NRS 41.637 (providing that a statement is made in good faith if it is either "truthful or is made without knowledge of its falsehood"). We conclude that the district court correctly determined Rangen established by a preponderance of the evidence that the challenged statements in the recall letter were either true or made without knowledge of their falsehood. Specifically, the record supports the district court's conclusion that Rangen's statements about bullying, stalking, and harassing behavior from a minority of community members were Rangen's opinions based on personal knowledge and experience, as supported by Rangen's declaration, signed under penalty of perjury under NRS 53.045, and other admissible evidence demonstrating a

good-faith basis for making the statements.[1] *Abrams v. Sanson*, 136 Nev. 83, 89, 458 P.3d 1062, 1068 (2020) (explaining that "statements of opinion are statements made without knowledge of their falsehood under Nevada's anti-SLAPP statutes"); *see Smith v. Zilverberg*, 137 Nev. 65, 70, 481 P.3d 1222, 1228 (2021) (holding that statement characterizing harassing behavior as "bullying" is an opinion incapable of being false). And Rangen's statement characterizing Michelle's code enforcement complaint as "baseless" is also a statement of opinion, which cannot be false. *Abrams*, 136 Nev. at 89, 458 P.3d at 1068. Accordingly, we conclude that the district court correctly determined Rangen met her burden under the first prong of the anti-SLAPP analysis as to the defamation per se, IIED, declaratory and injunctive relief, and false light claims.

The Wilsons next argue the district court erred when it found they did not meet their burden under the second prong of the anti-SLAPP analysis: demonstrating "with prima facie evidence a probability of prevailing on the[ir] claims" for relief. NRS 41.660(3)(b). As to the Wilsons' defamation per se, declaratory and injunctive relief, and false light claims, we agree with the district court that the Wilsons failed to demonstrate that Rangen's statements in the recall letter were false, thereby defeating those claims. *See Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 715, 57 P.3d 82, 90 (2002) (excluding statements of opinion from defamation); *Abrams*, 136 Nev. at 92 & n.5, 458 P.3d at 1070 & n.5 (recognizing that a false light invasion of privacy claim requires that the actor had knowledge of or recklessly disregarded the falsity of the publicized matter). The Wilsons'

[1]In this, we agree with the district court's finding that Rangen's recall letter did not specifically accuse Michelle of committing the crime of stalking.

IIED claim also fails as a matter of law because they did not show with prima facie evidence that Rangen's recall letter constituted extreme and outrageous conduct beyond the bounds of decency. *See Candelore v. Clark Cty. Sanitation Dist.*, 975 F.2d 588, 591 (9th Cir. 1992) (considering claim for IIED under Nevada law and observing that "[l]iability for emotional distress will not extend to 'mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities'" (quoting Restatement (Second) of Torts § 46 cmt. d (1965))). Accordingly, the district court properly concluded that the Wilsons failed to meet their burden under the second prong of the anti-SLAPP analysis. We therefore affirm the portion of the district court's order dismissing the Wilson's claims for defamation per se, declaratory and injunctive relief, false light, and IIED.

Retaliation claim

Turning to the retaliation claim, we conclude that the district court erred in determining this claim concerned protected good-faith communications. *Abrams*, 136 Nev. at 91, 458 P.3d at 1069 ("A complaint should not be dismissed in its entirety where it contains claims arising from both protected and unprotected communications."). The record reveals the retaliation claim is based on alleged increased HOA violation notices and a rescinded pre-approved housing renovation plan, all of which occurred before the petition to recall Rangen and the recall letter's dissemination. Because the retaliation claim does not concern protected good-faith communications, the anti-SLAPP motion to dismiss fails under the first prong, and we need not address the second prong concerning whether the Wilsons demonstrated the requisite probability of prevailing on this claim. *Coker*, 135 Nev. at 15, 432 P.3d at 751 (declining to analyze the second prong after determining the first prong was not met). Rangen's arguments below

that the claim fails because the Wilsons sued the wrong party and the parties failed to mediate under NRS 38.310 do not support dismissal under the anti-SLAPP framework. Thus, the district court erred in dismissing this claim under NRS 41.660, and we revere the district court's order as to this claim.[2]

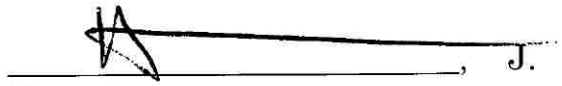
Attorney fees

Because we reverse the district court's dismissal order as to the retaliation claim, Rangen did not fully prevail on the anti-SLAPP dismissal motion. Generally, in mixed-result cases, an award of all fees incurred is unwarranted. *See, e.g.*, Thomas R. Burke, *Anti-SLAPP Litigation* § 2:107 (2022) ("Only those fees and costs incurred in connection with the successful portion of the anti-SLAPP motion may be recovered."); *ComputerXpress, Inc. v. Jackson*, 113 Cal. Rptr. 2d 625, 644 (Ct. App. 2001) (comparing a fee award in the anti-SLAPP framework to similar fee award statutes and concluding that a defendant's "partial success reduces but does not eliminate the entitlement to attorney fees"). The district court thus must reassess its attorney fees award. *See Pollack v. Fournier*, 237 A.3d 149, 156 (Me. 2020) (requiring the district court to reassess an attorney fee award under Maine's anti-SLAPP statute based on reversal of the dismissal of certain claims); *see also Mann v. Quality Old Time Serv., Inc.*, 42 Cal. Rptr. 3d 607, 618-19 (Ct. App. 2006) (discussing factors to consider when reducing an anti-SLAPP attorney fee award in a mixed-results case). We therefore

[2]We express no opinion as to whether the retaliation claim could survive a motion to dismiss under NRCP 12(b).

vacate the attorney fee and costs award and remand for the district court to reevaluate the award.[3] Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED IN PART, REVERSED IN PART, AND VACATED IN PART, AND REMAND this matter to the district court for proceedings consistent with this order.



_____, J.
Herndon

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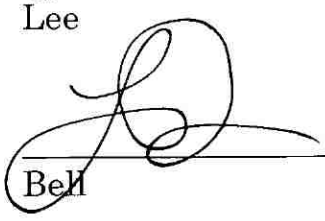

_____, J.
Bell

cc: Hon. Joseph Hardy, Jr., District Judge
Dana Jonathon Nitz, Settlement Judge
Mushkin & Coppedge
King Scow Koch Durham LLC
Eighth District Court Clerk

[3]As we vacate and remand the fee and costs order, this should not be construed as a bar on the Wilsons' ability to appeal from any adverse fees and costs order entered following remand.