IN THE SUPREME COURT OF THE STATE OF NEVADA

SHANNON RUTH, AN INDIVIDUAL,
Appellant,
vs.
NICKOLAS CARTER, AN INDIVIDUAL,
Respondent.

No. 86582

FILED

NOV 26 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a district court order denying an anti-SLAPP special motion to dismiss counterclaims. Eighth Judicial District Court, Clark County; Nancy L. Allf, Senior Judge.

Appellant Shannon Ruth sued respondent Nickolas Carter for sexual battery, intentional infliction of emotional distress, and negligent infliction of emotional distress, alleging that Carter sexually assaulted Ruth following a Backstreet Boys concert in 2001, and that Carter had also sexually assaulted several other women. Carter asserted counterclaims for defamation, civil conspiracy, abuse of process, intentional interference with prospective economic advantage, and intentional interference with contractual relations.[1] Carter's counterclaims were based on statements by Ruth that generally alleged that Carter sexually assaulted Ruth and that Carter is a "serial" rapist and abuser of "multiple people."[2]

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[1]Carter's counterclaims also named other defendants who are not party to this appeal.

[2]Although the parties do not expressly separate the at-issue communications in this way, we do so for ease of analysis. In this respect, our resolution of this appeal has been hindered by Ruth's failure to identify with specificity any of the statements that form the basis of Ruth's anti-SLAPP motion. We therefore conclude that any statements on which

Ruth moved to dismiss Carter's counterclaims under Nevada's anti-SLAPP statutes. The district court denied Ruth's motion, concluding that Ruth failed to satisfy her burden under NRS 41.660(3)(a). The court also found that Carter satisfied his burden under NRS 41.660(3)(b). The court denied both parties' attorney fees requests. Ruth appeals. Reviewing the decision de novo, *Abrams v. Sanson*, 136 Nev. 83, 86, 458 P.3d 1062, 1065 (2020), we affirm the district court's order as to all of Carter's claims except for the defamation claim to the extent that claim is based on Ruth's statements alleging that Carter sexually assaulted other people.

Under Nevada's anti-SLAPP statutes, the district court must use a two-prong analysis to determine whether to grant a special motion to dismiss. *Coker v. Sassone*, 135 Nev. 8, 12, 432 P.3d 746, 749 (2019). First, the district court must determine whether the defendant has established, by a preponderance of the evidence, that the plaintiff's "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). If the defendant satisfies the first prong, the burden shifts to the plaintiff under the second prong to show "with prima facie evidence a probability of prevailing on the claim." NRS 41.660(3)(b). Only a claim that satisfies *both* prongs of the anti-SLAPP statute—*i.e.*, a claim based on a good faith communication *and* that lacks minimal merit—is subject to dismissal. NRS 41.660(3); *Abrams*, 136 Nev. at 91, 458 P.3d at 1069 (discussing the "minimal merit" burden for the plaintiff in prong two). Because Ruth filed the anti-SLAPP motion to dismiss Carter's

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Carter's counterclaim is based that are not specifically addressed in this order do not warrant reversal of the district court's order.

counterclaims, Carter is the plaintiff and Ruth is the defendant for purposes of the anti-SLAPP analysis. *See* NRS 41.660(7).

Ruth satisfied her prong-one burden as to the statements accusing Carter of assaulting other people but not as to the statements accusing Carter of assaulting Ruth

The showing required by the defendant at prong one contains two components. First, "the defendant must show 'that the comments at issue fall into one of the four categories of protected communications enumerated in NRS 41.637.'" *Panik v. TMM, Inc.*, 139 Nev., Adv. Op. 53, 538 P.3d 1149, 1152 (quoting *Stark v. Lackey*, 136 Nev. 38, 40, 458 P.3d 342, 345 (2020)). "Once the defendant establishes that the communications fall within one of those categories, the[defendant] must then demonstrate 'that the communication is truthful or [wa]s made without knowledge of its falsehood.'" *Id.* at 1152-53 (quoting *Stark*, 136 Nev. at 40, 458 P.3d at 345).

The subject communications are within the purview of NRS 41.637(4), which applies to "[c]ommunication[s] made in direct connection with an issue of public interest in a place open to the public or in a public forum." Ruth's statements, including those made on Twitter, Facebook Live, during a podcast, and at a press conference, were made in a public forum. *Cf., e.g., Stark*, 136 Nev. at 41 n.2, 458 P.3d at 345 n.2 (agreeing that a government watch group's Facebook page was a public forum); *Kosor v. Olympia Cos., LLC*, 136 Nev. 705, 710, 478 P.3d 390, 395 (2020) (Nextdoor.com and defendant's private campaign website qualified as a public forum); *Jackson v. Mayweather*, 217 Cal. Rptr. 3d 234, 245-46 (Ct. App. 2017), *as modified* (Apr. 19, 2017) (statements made during a radio interview satisfy the public forum requirement).

The communications were also made in connection with an issue of public interest. In particular, they all concerned accusations of

sexual assaults committed by Carter, a prominent public figure. *See Shapiro v. Welt*, 133 Nev. 35, 39, 389 P.3d 262, 268 (2017) (setting forth five factors for evaluating whether an issue is of public interest); *Wynn v. Associated Press*, 140 Nev., Adv. Op. 56, 555 P.3d 272, 277 (2024) (concluding that "reports of sexual misconduct would be of concern to a substantial number of people, including consumers . . . and the business and governmental entities investigating precisely this kind of behavior").

The more contentious issue is whether Ruth established, by a preponderance of the evidence, that the communications were made in good faith—that the communications were "truthful or made without knowledge of [their] falsehood." NRS 41.637. Rather than looking to the individual words, we ask "'whether a preponderance of the evidence demonstrates that the gist of the story, or the portion of the story that carries the sting of the [statement], is true." *Smith v. Zilverberg*, 137 Nev. 65, 69, 481 P.3d 1222, 1228 (2021) (quoting *Rosen v. Tarkanian*, 135 Nev. 436, 441, 453 P.3d 1220, 1224 (2021)).

The "gist" or "sting" of Ruth's communications is twofold: (1) Carter sexually assaulted Ruth after a Backstreet Boys concert; and (2) Carter is a "serial" rapist and abuser who had sexually assaulted other people. We conclude that these communications are distinct and thus analyze them separately.

Ruth provided an affidavit stating that "[t]he allegations in [Ruth's] Complaint in this action are true and correct to [Ruth's] own knowledge and experience." We conclude that Ruth's affidavit adequately addresses the communications at issue. *Cf. Stark*, 136 Nev. at 43, 458 P.3d at 347 ("Though the affidavit did not address the individual factual allegations in the statements or specifically attest to the truthfulness of the

speaker who made the statements, we have previously held that a sworn declaration like Stark's is sufficient evidence that the statements were truthful or made without knowledge of their falsehood."). But when, as here, there is contradictory evidence in the record, we must consider that evidence in determining whether the defendant demonstrated good faith. *See Stark*, 136 Nev. at 43, 458 P.3d at 347 ("[A]n affidavit stating that the defendant believed the communications to be truthful or made them without knowledge of their falsehood is sufficient to meet the defendant's burden *absent contradictory evidence in the record*." (emphasis added)); *see also Wynn*, 140 Nev., Adv. Op. 56, 555 P.3d at 277 (considering the plaintiff's contradictory evidence in determining whether defendants satisfied their burden under prong one).

Carter produced affidavits from multiple witnesses that, if believed, would establish that the incident of Carter assaulting Ruth as Ruth described it did not and could not have occurred. *Cf. generally Taylor v. Colon*, 136 Nev., Adv. Op. 50, 482 P.3d 1212, 1218 (2020) (considering what plaintiff's contradictory evidence would establish, if believed). For example, although Ruth stated that she met Carter in an autograph line at the venue after the subject Backstreet Boys concert, Carter produced affidavits from several witnesses who personally observed the Backstreet Boys and Carter leave the venue right after the concert and stated that there were no autograph lines after the concert. Carter also produced affidavits from members of the Backstreet Boys' security detail stating that the band, including Carter, performed a "quick out" following the subject concert, "which meant that the band would rush to their individual tour buses and leave the [concert venue]," and that "it would be impossible for any fan to be alone with any of the band members on their tour bus" because

of security protocols. Carter also produced an affidavit from Ruth's close friend at the time, who had discussed the subject concert with Ruth both before and shortly after it occurred, stating that she believed that Ruth did not even attend the subject concert.

Carter also produced evidence of prior inconsistent communications by Ruth. For example, in October 2019, Ruth wrote a private direct message to a woman whom Ruth befriended online in which Ruth stated, "I didn't get hurt by Nick like [others] did. He hurt me by saying really mean things and bullying me. I feel like I don't really have a right to talk about it or be in the fight because what [others] went through is much worse." Carter also noted inconsistencies in Ruth's various reports to the Tacoma Police Department, including that in one of Ruth's initial calls to the police, Ruth reported that Carter only grabbed her arm, and no other physical activity occurred. Finally, Carter provided his own affidavit, denying that he assaulted Ruth and stating that the band engaged in a "quick out" after the show and that Carter's security guard would not have allowed Ruth, or any other fan, to board the tour bus during the subject tour.

We conclude that Carter's evidence, if believed, establishes that Carter did not sexually assault Ruth following the Backstreet Boys concert in 2001, such that Ruth's statements describing such an incident would perforce be made with knowledge of their falsity. *Cf. Williams v. Lazer*, 137 Nev. 437, 441-42, 495 P.3d 93, 98 (2021) (considering whether the plaintiff's declarations constituted contrary evidence to refute the defendant's affidavit, but concluding the declarations failed to show that the defendant *knew* any statements were false when made); *Taylor*, 136 Nev., Adv. Op. 50, 482 P.3d at 1218 (observing that "contradictory evidence in the record may

undermine a defendant's sworn declaration establishing good faith") (internal quotation marks omitted), *cf. also Chastain v. Hodgdon*, 202 F. Supp. 3d 1216, 1221-22 (D. Kan. 2016) (applying a different procedural standard but explaining that "[i]f defendant knew that the events were false, and nonetheless wrote the detailed narrative describing exactly how plaintiff sexually assaulted . . . her when it actually never occurred, it is *axiomatic* that she wrote the narrative with actual malice, or *actual knowledge that it was false*" (emphases added); *see generally Rosen*, 135 Nev. at 441, 453 P.3d at 1224 ("[B]ecause the standard for 'actual malice' is essentially the same as the test for 'good faith' in prong one, only differing in the party with whom the burden of proof lies, it is appropriate to use the inquiry in defamation cases for determining the truthfulness of a statement in prong one."). Ruth discounts Carter's evidence, arguing that because *only* Ruth—and none of Carter's witnesses—can speak to Ruth's *knowledge* of the truth or falsity of her statements, none of Carter's evidence contradicts or overcomes Ruth's affidavit. But this argument ignores the relevant caselaw. We therefore conclude that Ruth did not satisfy her burden under prong one with respect to the statements that Carter sexually assaulted Ruth.

Ruth did, however, satisfy her burden to demonstrate by a preponderance of the evidence that her statements that Carter is a "known" and "serial" "rapist and abuser of multiple people" were truthful or made without knowledge of falsity. Carter's evidence primarily focuses on the 2001 concert, which does not directly pertain to Ruth's knowledge when stating that Carter has raped or abused other people. In fact, some of Carter's evidence may support that Ruth *believed* that Carter sexually assaulted others. It is also undisputed, and Carter's evidence corroborates,

that other women had accused Carter of sexually assaulting them before Ruth made the statements at issue. On balance, Carter's evidence does not adequately contradict or overcome Ruth's affidavit of good faith with respect to this category of statements. *See Williams*, 137 Nev. at 441, 495 P.3d at 98 ("While Lazer provided several declarations that allege some of Williams's statements are factually wrong, such declarations do not constitute contrary evidence to refute Williams's affidavit because they do not allege, much less show, that *Williams knew* any of the statements were false when she made them."); *Taylor*, 136 Nev., Adv. Op. 50, 482 P.3d at 1218 (stating that the correct issue in prong one is whether the defendant *believed* the statements, not whether the defendant is correct).

Carter did not satisfy the second prong with respect to the part of the defamation claim based on Ruth's statements accusing Carter of assaulting other people

Under the second prong, Carter bears the burden of proving that his claims have at least minimal merit to proceed with the litigation. *Williams*, 137 Nev. at 442, 495 P.3d at 98. Ruth argues that Carter cannot show enough merit to proceed because the at-issue statements are protected by the litigation privilege and regardless, Carter cannot demonstrate actual malice. We address each argument in turn as to the claims based on statements for which Ruth met her burden under the first prong (that Carter had assaulted other people). *See Abrams*, 136 Nev. at 91 & n.3, 458 P.3d at 1069 & n.3 (evaluating the plaintiff's claims under the second prong only to the extent they were based on statements for which the defendant satisfied the first prong).

The absolute litigation privilege does not bar Carter's claims

"[T]he absolute litigation privilege applies at the second prong of the anti-SLAPP analysis because a plaintiff cannot show a probability of

prevailing on [a] claim if a privilege applies to preclude the defendant's liability." *Williams*, 137 Nev. at 443, 495 P.3d at 99. Although our review of this issue is complicated by the fact that the district court made no findings on the litigation privilege, the record contains sufficient information for a de novo review of the issue. *See Jacobs v. Adelson*, 130 Nev. 408, 412, 325 P.3d 1282, 1285 (2014) ("We . . . review de novo the applicability of an absolute privilege."); *Cucinotta v. Deloitte & Touche, L.L.P.*, 129 Nev. 322, 325, 302 P.3d 1099, 1101 (2013) ("Although the district court did not reach a conclusion as to whether [respondent's] communications . . . were absolutely privileged, we have the discretion to address [respondent's] contention.").

"Nevada has long recognized the existence of an absolute litigation privilege for defamatory statements made during the course of judicial and quasi-judicial proceedings." *Jacobs*, 130 Nev. at 412-13, 325 P.3d at 1285. That privilege bars claims based on "communications made by either an attorney or a nonattorney that are related to ongoing litigation or future litigation contemplated in good faith," even if malicious or made with knowledge of falsity. *Id.* Relevant here, "a '[party's] statements to someone who is not directly involved with the actual or anticipated judicial proceeding will be covered by the absolute privilege only if the recipient of the communication is significantly interested in the proceeding.'" *Shapiro*, 133 Nev. at 40, 389 P.3d at 268-69 (quoting *Fink v. Oshins*, 118 Nev. 428, 436, 49 P.3d 640, 645-46 (2002)). And "assessing the significant interest of the recipient requires review of the recipient's legal relationship to the litigation, not their interest as an observer." *Jacobs*, 130 Nev. at 416, 325 P.3d at 1287. For example, "communications made to the media in an extrajudicial setting are not absolutely privileged, at least when the media

holds no more significant interest in the litigation than the general public." *Id.* at 411, 325 P.3d at 1284.

Ruth's social media, podcast, announcement, and press conference statements forming the bases for Carter's claims fall outside the scope of the absolute litigation privilege because the statements were made to recipients lacking a significant interest in the lawsuit.[3] Ruth tries to distinguish *Jacobs* on the basis that the statements in this case were made to the general public. We are not persuaded. Even assuming that the statements were made to the public rather than the media, Ruth's argument presents a distinction without a difference for purposes of the litigation privilege. Just as with statements made to the media, statements made to the general public "do little, if anything, to promote the truth finding process in a judicial proceeding . . . . [They] do not generally encourage open and honest discussion between the parties and their counsel in order to resolve disputes; indeed, such statements often do just the opposite." *Jacobs*, 130 Nev. at 415, 325 P.3d at 1286 (internal quotations omitted). Moreover, in *Jacobs*, we equated statements to the media and statements to the general public when rejecting the notion that extensive media coverage of the underlying judicial proceedings may result in "both the

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[3]In addressing the privilege, Ruth only cursorily asserts that the statements in Ruth's complaint form one of the bases for Carter's claims, without further specification or cogent argument. We therefore do not determine whether, or the extent to which, any of Carter's claims are based on Ruth's complaint. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that this court need not consider an issue not cogently argued); *Summa Corp. v. Brooks Rent-A-Car*, 95 Nev. 779, 780, 602 P.2d 192, 193 (1979) ("This court will not comb the record to ascertain matters which should have been set forth in [a party's] brief.").

media and the public becoming 'significantly interested' in the proceedings." *Id.* at 411, 415-16, 325 P.3d at 1284, 1287 (emphasis added).

Ruth's argument that the public "by definition" has a significant interest in the proceedings because Carter is a public figure is also unavailing. Ruth cites no authority for this argument; nor does she identify what *legal* relationship the public has to a lawsuit asserting claims against a public figure. *Cf. Jacobs*, 130 Nev. at 416, 417, 325 P.3d at 1287, 1288 (holding that "assessing the significant interest of the recipient requires review of the recipient's *legal relationship to the litigation*, not their interest as an observer," and concluding the newspaper recipient lacked a "legal or financial interest in the underlying litigation" and was therefore not significantly interested in the litigation for purposes of the privilege (emphasis added)).

That Ruth *also* made similar statements in a complaint does not bring the social media, podcast, announcement, and press conference statements within the scope of the privilege. "[P]rotecting speech made during a judicial proceeding does not warrant allowing the dissemination of defamatory communications outside of the judicial proceedings." *Id.* at 415, 325 P.3d at 1287; *see Landry's, Inc. v. Animal Legal Def. Fund*, 631 S.W.3d 40, 49 (Tex. 2021) ("Extending the privilege to publicity statements about litigation would detach the privilege from its underlying justifications and allow parties who publicize defamatory allegations to escape liability for [defamation] damages just because they ha[ve] made similar charges in [their] court pleadings." (internal quotation marks omitted)). Ruth's reliance on the *Jacobs* dissent is similarly unavailing. The *Jacobs* majority rejected the arguments advocated by Ruth, 130 Nev. at 415-16, 325 P.3d at 1287, and Ruth provides no compelling reasons for us to overturn *Jacobs*.

See Miller v. Burk, 124 Nev. 579, 597, 188 P.3d 1112, 1124 (2008) ("[U]nder the doctrine of *stare decisis*, we will not overturn [precedent] absent compelling reasons for so doing." (footnote omitted)). Because Ruth's statements are not privileged, the litigation privilege does not bar Carter's claims.

Carter has not demonstrated a probability of prevailing on his defamation claim to the extent the claim is based on Ruth's statements that Carter sexually assaulted other women

Given that no privilege applies, we turn to the remaining question: whether Carter has set forth prima facie evidence indicating that his claims possess minimal merit. "In conducting the second prong analysis, the district court must review each claim and assess the plaintiff's probability of prevailing, which is determined by comparing the evidence presented with the elements of the claim." *Panik*, 538 P.3d at 1155 (internal quotation marks omitted). Under this prong, "the evidence, and any reasonable inference drawn from it, must be viewed in [the] light most favorable to the nonmoving party." *Wynn*, 140 Nev., Adv. Op. 56, 555 P.3d at 279 (internal quotation marks omitted).

Ruth argues that the district court erred in concluding that Carter satisfied his prima facie burden under NRS 41.660(3)(b). In so doing, Ruth argues only that Carter failed to demonstrate actual malice by clear and convincing evidence, and Ruth only specifically references Carter's defamation claim. We therefore affirm the district court's order insofar as it denied Ruth's motion with respect to Carter's remaining claims and address only Ruth's arguments about Carter's defamation claim. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (it is an appellant's responsibility to present cogent arguments supported by salient authority).

"[T]o demonstrate by prima facie evidence a probability of success on the merits of a public figure defamation claim, the plaintiff's evidence must be sufficient for a jury, by clear and convincing evidence, to reasonably infer that the publication was made with actual malice." *Wynn*, 140 Nev., Adv. Op. 56, 555 P3d. at 278. Applying *Wynn*'s requirement to Carter's defamation claim to the extent the claim is based on statements for which Ruth satisfied the first prong (the statements that Carter sexually assaulted *other* women), we conclude that Carter failed to establish actual malice by clear and convincing evidence to sustain a favorable verdict.

"[A]ctual malice is proven when a statement is published with knowledge that it was false or with reckless disregard for its veracity." *Id.* at 279 (internal quotation marks omitted). "Reckless disregard for the truth may be found when the defendant entertained serious doubts as to the truth of the statement, but published it anyway." *Id.* (internal quotation marks omitted).

Although Carter provided evidence casting doubt on the veracity of other women's assault allegations and provided witness testimony supporting that Ruth was at least tangentially involved in a plot to extort and defame Carter, this evidence on its own does not clearly and convincingly show actual malice. Further, as discussed *supra*, Carter also produced evidence suggesting that Ruth *did* believe the truth of her statements. Carter has thus failed to establish actual malice for these statements by sufficient evidence for purposes of the second prong of the anti-SLAPP framework.

Because Carter did not produce sufficient evidence that Ruth acted with actual malice when stating that Carter had sexually assaulted other women, Carter failed to establish with prima facie evidence a

probability of prevailing on his defamation claim to the extent it is based on those statements. *See id.* at 280; *Baral v. Schnitt,* 376 P.3d 604, 616 (Cal. 2016) (explaining that the review should focus on the particular allegations, their basis in protected communications, and their probability of prevailing, rather than the form of the complaint). This requires partial reversal of the district court's order, as the district court erred in denying Ruth's anti-SLAPP motion to the extent that Carter's defamation claim is based on Ruth's statements that Carter sexually assaulted multiple women other than Ruth.[4]

Attorney fees

Ruth also challenges the portion of the decision denying her request for attorney fees under NRS 41.670. Given that the result on remand will now be mixed (*i.e.*, Ruth will prevail on at least a subset of Carter's claims), we direct the district court on remand to reassess its denial of attorney fees. *See Richmond Compassionate Care Collective v. 7 Stars Holistic Found.*, 244 Cal. Rptr. 3d 636, 640 (Ct. App. 2019) (explaining the circumstances under which a defendant who partially succeeds on an anti-SLAPP motion is a prevailing party, which "lies within the broad discretion of the trial court," and noting that "only those fees and costs incurred in connection with the portion of the anti-SLAPP motion that is granted may be recovered" (internal quotation marks omitted)).

Accordingly, we reverse and remand for the district court to dismiss Carter's defamation claim to the extent that the claim is based on

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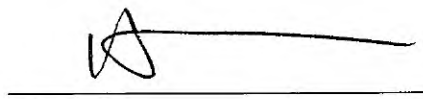
[4]Carter's defamation claim is also based on Ruth's statements that Carter sexually assaulted Ruth. Because Ruth did not satisfy her prong-one burden as to those statements, Carter's defamation claim is not subject to dismissal under NRS 41.660 to the extent premised on the statements that Carter sexually assaulted Ruth.

Ruth's statements that Carter sexually assaulted other women. On remand, the district court also must reassess the denial of attorney fees. We affirm the district court's order denying the anti-SLAPP motion as to Carter's remaining claims. Insofar as the parties raise other arguments that are not addressed in this order, we decline to address them because they lack merit or do not change our determination.

It is so ORDERED.



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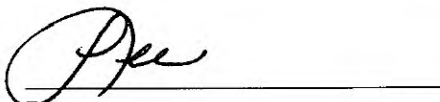

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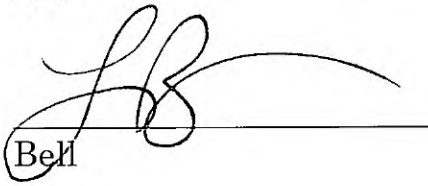

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