IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SWADEEP NIGAM,
Appellant,
vs.
MALIK W. AHMAD,
Respondent.

No. 86901-COA

ORDER AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

Swadeep Nigam appeals from an order denying an anti-SLAPP special motion to dismiss. Eighth Judicial District Court, Clark County; Danielle K. Pieper, Judge.[1]

On April 9, 2021, Nigam published an article on his website VegasDesi.com and its accompanying newsletter about respondent Malik Ahmad's recent domestic violence charge and the status of his professional license.[2] The article headline read, "Suspended Attorney Malik Ahmad Charged with Domestic Violence." But the first sentence of the article read, "Las Vegas *disbarred* attorney Malik Ahmad is charged with domestic violence and an assault with use of a deadly weapon, a category B felony."[3] (Emphasis added.) The rest of the first paragraph went on to describe the criminal charges, but the remainder of the article described Ahmad as a "suspended" attorney, detailing the circumstances leading to his suspension and included a link to the relevant suspension order from 2019. While Ahmad was suspended at the time the article was published, he was not

[1]The Honorable Deborah L. Westbrook did not participate in the decision in this matter.

[2]We recount the facts only as necessary for our disposition.

[3]Ahmad's criminal case was later dismissed on April 19, 2021.

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disbarred. An order of suspension was entered on November 7, 2019, and an order of reinstatement was filed June 25, 2021.

In April 2021, Ahmad sent Nigam a cease-and-desist letter, demanding that Nigam publish his letter in full as a rebuttal to Nigam's article. Ahmad also requested that Nigam publish a separate retraction of the article because of the untruthful statement in the article that Ahmad was a "disbarred" attorney when he was merely suspended. Nigam did not respond to Ahmad's letter, nor did he publish Ahmad's letter or a retraction.

In August 2021, Ahmad filed a complaint in the district court against Nigam, alleging various claims, including claims for (1) libel per se; (2) false light; (3) intentional infliction of emotional distress (IIED); (4) business disparagement; (5) violation of Nevada's Racketeer Influenced and Corrupt Organization (RICO) statutes; and (6) elder abuse. Nigam responded with a special motion to dismiss pursuant to Nevada's anti-SLAPP statute, NRS 41.660, in October 2021. After holding a hearing on the special motion, the district court entered an order denying the motion without prejudice in November 2021. Both parties proceeded with discovery.

After discovery closed, Ahmad moved for summary judgment and Nigam renewed his anti-SLAPP special motion to dismiss. A hearing on the motions was held in May 2023. The district court released a minute order in June 2023, denying both motions. In the minute order, the district court concluded that the anti-SLAPP arguments could not be decided as a matter of law. Both parties subsequently filed a joint motion for clarification of the court's minutes. In June 2021, the district court filed a

decision and order that restated what the minute order stated without clarification. This interlocutory appeal followed.[4]

On appeal, Nigam raises two arguments. First, he argues that he has shown, by a preponderance of the evidence, that he met the first prong of the anti-SLAPP analysis. He maintains that he has demonstrated that the article about Ahmad's suspension was a matter of public interest, in a public forum, and the statement was made in good faith in that he did not know the difference between disbarment and suspension. Second, Nigam argues that Ahmad has not shown a probability of success on the merits for any of his claims, therefore all his claims should be dismissed. Ahmad generally disagrees with both arguments.

This court reviews a district court's decision on an anti-SLAPP special motion to dismiss de novo. *Coker v. Sassone*, 135 Nev. 8, 10-11, 432 P.3d 746, 748-49 (2019). We accept the plaintiff's submissions as true and consider only whether contrary evidence to the plaintiff's submissions entitles a defendant to prevail as a matter of law. *Id.*

In considering an anti-SLAPP special motion to dismiss, the district court must undertake a two-prong analysis. *Id.* at 12, 432 P.3d at 749. First, the court must "[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 free speech in direct connection with an issue of public concern." *Id.* (alterations in original) (quoting NRS 41.660(3)(a)). If the moving party successfully establishes the foregoing, the district court advances to the second prong, and the burden shifts to the opposing party to establish, "with prima facie

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[4]NRS 41.670(4) provides that if the district court denies a special motion to dismiss under NRS 41.660, an interlocutory appeal lies to the Nevada Supreme Court.

evidence a probability of prevailing on the claim." *Shapiro v. Welt*, 133 Nev. 35, 38, 389 P.3d 262, 267 (2017) (quoting NRS 41.660(3)(b)). We address each prong of this analysis below.

Nigam has shown by a preponderance of the evidence that he can meet the first prong of the anti-SLAPP statute

Nigam argues that he has shown by a preponderance of the evidence that met the first prong of Nevada's anti-SLAPP statute as set forth in NRS 41.660. He argues that the statements in his article were in direct connection with a matter of public concern because it informed the public about information that would be valuable in selecting legal services. He also argues that he made the statements in good faith because he did not know the difference between the terms "disbarred" and "suspended." Ahmad responds that Nigam was aware of the difference between the two words, and that Nigam's sole purpose in publishing the article was to ruin Ahmad's reputation out of personal spite and animosity in an attempt to damage his career.

To meet the first prong of NRS 41.660(3), the moving party must establish by a preponderance of the evidence that the claim is based upon a good faith communication in furtherance of a right to free speech in connection with an issue of public concern. A good faith communication in connection with an issue of public concern must fall within one of four categories of speech set forth in NRS 41.637 and be truthful or made without knowledge of falsehood. *Shapiro*, 133 Nev. at 39, 389 P.3d at 267-68.

In this case, the relevant category of speech under NRS 41.637 is a "[c]ommunication made in direct connection with an issue of public interest in a place open to the public or in a public forum." Here, Ahmad does not dispute Nigam's contention that VegasDesi.com was a public forum, and therefore we consider that requirement satisfied. The only

issues that are before this court for purposes of the first prong of the anti-SLAPP analysis are (1) whether Nigam's statement was a communication made in direct connection with an issue of public interest; and (2) whether Nigam's statement was made in good faith in that it was either truthful or made without knowledge of its falsehood.

To determine whether a statement was made in direct connection with an issue of public interest, Nevada courts apply the *Shapiro* principles. *See Coker*, 135 Nev. at 13, 432 P.3d at 750 (citing *Shapiro*, 133 Nev. at 39, 389 P.3d at 268). The *Shapiro* principles, are: (1) "public interest" does not equate with mere curiosity; (2) a matter of public interest should be something of concern to a substantial number of people rather than to the speaker and a relatively small specific audience; (3) there should be some degree of closeness between the challenged statement and the asserted public interest—the assertion of a broad and amorphous public interest is not sufficient; (4) the focus of a speaker's conduct should be the public interest rather than a mere effort to gather ammunition for another round of private controversy; and (5) a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people. *Shapiro*, 133 Nev. at 39, 389 P.3d at 268.

The supreme court has previously applied the *Shapiro* principles to statements concerning attorney misconduct. In *Abrams v. Sanson*, the court determined that an attorney's misconduct in the courtroom was a matter of public interest, rather than a mere curiosity, because it "serves as a warning to both potential and current clients looking to hire or retain the lawyer." 136 Nev. 83, 87, 458 P.3d 1062, 1066 (2020). Moreover, the statements impacted more than a "small, specific audience" because they concerned how an attorney represented clients. *Id.* at 87, 458 P.3d at 1066-67. In *Abrams*, the respondent relied on publicly available information when making statements in articles that criticized an attorney

for her courtroom behavior, so the supreme court determined that the information within the articles was not private. *Id.* Therefore, the supreme court held that the defendant had sufficiently shown that his public statements followed the *Shapiro* principles for protected speech under Nevada's anti-SLAPP statute. *Id.* at 88, 458 P.3d at 1067.

Nigam similarly established, by a preponderance of the evidence, that the statement in his article satisfied all five *Shapiro* principles. Nigam's statements regarding Ahmad's suspension served as a warning to potential future clients like those statements made in *Abrams* regarding attorney misconduct. *Id.* at 87, 458 P.3d at 1067. Nigam's article also impacted more than a "small, specific audience." *Id.* at 87, 458 P.3d at 1066-67. Although Ahmad's practice focuses on the South Asian community, any member of the public could seek to employ Ahmad's services. Further, Nigam's statements could assist potential clients in making informed decisions on whom to hire in the future because the article explains that Ahmad was suspended over fee and communication disputes with his clients. Nigam has also presented substantial evidence to support that this was not a private controversy turned public as he stated in his deposition that he was not familiar with Ahmad on a personal level and that, like the articles in *Abrams*, all the information he reported in his article was taken from public records. As Nigam's conduct closely follows that of the defendant's in *Abrams*, we therefore conclude that Nigam has sufficiently demonstrated his article concerning Ahmad's professional status was a matter of public interest according to the *Shapiro* factors.

Nigam also contends that he made the statements regarding Ahmad's professional status in good faith. Nigam bears the burden of establishing by a preponderance of the evidence that the communication was either truthful or made without knowledge of its falsehood. *Stark v. Lackey*, 136 Nev. 38, 43, 458 P.3d 342, 346-47 (2020). Under the

preponderance of the evidence standard, an affidavit stating that Nigam 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. *Id.* at 43, 458 P.3d at 347; *Taylor v. Colon*, 136 Nev. 434, 439, 482 P.3d 1212, 1217 (2020) ("[A] declaration regarding the defendant's state of mind, is likewise entitled to be believed . . . absent contradictory evidence in the record." (internal quotation marks omitted)).

In this case, Nigam provided an affidavit in which he attested that the statements in his article were either true or made without knowledge of their falsity at the time the article was published. Specifically, he testified in both his affidavit and at a deposition that he believed "disbarment" and "suspension" had similar definitions. Ahmad agreed that the only false statement in Nigam's article was that Ahmad had been "disbarred." Ahmad further asserted that Nigam is a highly educated political operative who "knows the significant difference between the word 'suspended' and 'disbarred,'" and, therefore, Nigam's statements could not have been made without him knowing of their falsity at the time he published the article. However, while Ahmad offered some support in the form of evidence of Nigam's educational and political background, he did not present any evidence that directly demonstrated that Nigam made the statement that Ahmad was a "disbarred" attorney with knowledge of the statement's falsehood. Given the lack of evidence directly contradicting Nigam's affidavit, we conclude it was sufficient under *Stark* to meet his burden of showing, by a preponderance of the evidence, that he made the statement regarding Ahmad's disbarment in good faith. *Stark*, 136 Nev. at 43, 458 P.3d at 347. "Thus, for purposes of the first prong of the anti-SLAPP statute, Nigam has meet his burden because he has demonstrated, by a preponderance of the evidence, that his statements regarding Ahmad's

professional status were made in direct connection with an issue of public concern and made in a public forum, which Ahmad does not dispute, and that the statements were truthful or made without knowledge of their falsity based on his affidavit."

Standard of review for the second prong of Nevada's anti-SLAPP statute

Having concluded Nigam has met his burden under the first prong of the anti-SLAPP test under NRS 41.660(3), we now turn to the second prong of the statute. As with the first prong of the anti-SLAPP statute, our review of the second prong is de novo. *Coker*, 135 Nev. at 10-11, 432 P.3d at 748-49. Under this prong, the burden shifts to Ahmad to establish, with prima facie evidence, a probability of prevailing on each element of his claims. NRS 41.660(3)(b); *Abrams*, 136 Nev. at 91, 458 P.3d at 1069. To determine whether Ahmad has met his burden under the second prong, we consider whether the evidence presented supports the elements of his claims. *Smith v. Zilverberg*, 137 Nev 65, 70-71, 481 P.3d 1222, 1229 (2021). Claims that demonstrate a probability of prevailing on the merits may proceed to trial and claims that do not should be dismissed under Nevada's anti-SLAPP statute. *See id.* at 71, 481 P.3d at 1229.

In determining whether Ahmad has demonstrated the probability of prevailing on his claims so that they may proceed and not be dismissed under Nevada's anti-SLAPP statute, Ahmad must demonstrate that his claims have minimal merit. *See Panik v. TMM, Inc.*, 139 Nev., Adv. Op. 53, 538 P.3d 1149, 1155 (2023). "Minimal merit exists when the plaintiff makes 'a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.'" *Wynn v. Assoc. Press*, 140 Nev., Adv. Op. 56, 555 P.3d 272, 278 (2024) (quoting *Wilson v. Parker, Covert & Chidester*, 50 P.3d 733, 739 (Cal. 2001)). Thus, for each claim that Ahmad can establish a probability of prevailing, assuming his evidence is credited, Ahmad will be entitled to proceed to trial.

See Roche v. Hyde, 265 Cal. Rptr. 3d 301, 358 (Ct. App. 2020). Nigam argues that Ahmad has failed to make the requisite prima facie showing of a probability of prevailing on any of his claims because he fails to meet the required elements for every claim and therefore all his claims should be dismissed. Ahmad counters that all his claims are valid. We agree with Ahmad on his libel per se claim but disagree with him on his remaining claims. Therefore, Ahmad's libel per se claim may proceed but all his other claims must be dismissed pursuant to Nevada's anti-SLAPP statute as discussed more fully below.

Ahmad has made a prima facie showing of a probability of prevailing on his claim for libel per se

Generally, Nigam argues that his statements that Ahmad was suspended or disbarred were substantially true because both words correctly communicated that Ahmad could not practice law at the time the article was published. Thus, the statement that Ahmad was "disbarred" was not defamatory. Ahmad responds that the statement he was "disbarred" is a false statement of fact rather than opinion and, because the reference to his being "disbarred" defamed Ahmad in his profession, the statement is actionable under the claim of libel per se.

Libel is a form of defamation that consists of the publication of defamatory matter by written or printed words. Restatement (Second) of Torts § 568(1) (Am. Law Inst. 1977). Libel per se refers to statements in publications of such a character that the publisher is liable for defamation although no special harm resulted from it. *Id.* at § 569 cmt. b. As relevant to this case, if the libelous communication imputes a "person's lack of fitness for trade, business, or profession," or tends to injure the plaintiff in his or her business, it is deemed libel per se and damages are presumed. *See K-Mart Corp. v. Washington*, 109 Nev. 1180, 1192, 866 P.2d 272, 282 (1993).

In general, an action for any type of defamation requires the plaintiff to prove four elements: (1) a false and defamatory statement; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages. *Clark Cnty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 385, 213 P.3d 496, 503 (2009). In libel per se claims, the fourth element requires only a showing of general rather than special damages. *Id.* at 386, 213 P.3d at 505. Importantly, all elements of a claim for defamation must be met to make a prima facie showing of a probability of success on the merits. *See Zilverberg*, 137 Nev at 71, 481 P.3d at 1229 (determining the plaintiff could not prevail on his defamation claim because two of the elements were not met). Here, the second element is not in dispute.[5] We therefore address only the first, third, and fourth elements of Ahmad's libel per se claim.

The first element of a libel analysis requires that the challenged statements are false and defamatory. *Clark Cnty. Sch. Dist.*, 125 Nev. at 385, 213 P.3d at 503. Truth is an absolute defense to a claim of libel. *See Posadas v. City of Reno*, 109 Nev. 448, 453, 851 P.2d 438, 442 (1993). Nevada examines all defamation claims under a "substantial truth" standard which provides that minor inaccuracies do not amount to falsity unless the inaccuracies would have a different effect on the mind of the reader from that which the truth would have produced. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706 n.17, 715, 57 P.3d 82, 88 n.17 (2002). "A statement is defamatory when it would tend to lower the subject in the

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[5]The second element is not in dispute because Nigam bears the initial burden of properly alleging privilege, which Nigam failed to do. *Lubin v. Kunin*, 117 Nev. 107, 114, 17 P.3d 422, 427 (2001). Moreover, the fact that the challenged statement was communicated to the public on VegasDesi.com is also not in dispute. Thus, for purposes of our anti-SLAPP analysis, the second element to establish libel per se has been satisfied.

estimation of the community, excite derogatory opinions about the subject, and hold the subject up to contempt. *K-Mart Corp.*, 109 Nev. at 1191, 866 P.2d at 281-82. As a general rule, only assertions of fact, not opinion, can be defamatory. *Wynn v. Smith*, 117 Nev. 6, 17, 16 P.3d 424, 431 (2001).

Here, Nigam stated that Ahmad was a "disbarred" attorney who was arrested for domestic violence. This statement contains no language which would alert a reasonable reader that the statement is one of opinion, so it is a statement of fact. *See Miller v. Jones*, 114 Nev. 1291, 1296-98, 970 P.2d 571, 575-76 (1998). The truth or falsity of this statement is also easily verifiable by reviewing public records. *Id.* Moreover, the effect of the statement would tend to lower the opinion of Ahmad in the eyes of the community. *See K-Mart Corp.*, 109 Nev. at 1191, 866 P.2d at 281-82. Given that the statement was both false and a statement of fact that could affect Ahmad's standing in the community, Nigam's statement is susceptible to defamatory construction. *See Miller*, 114 Nev. at 1296-98, 970 P.2d at 575-76.

To determine whether the statement was substantially true, the court must assess the difference in meaning the average reader would subscribe to the terms "disbarred" and "suspended." *See People for Ethical Treatment of Animals v. Bobby Berosini, Ltd.*, 111 Nev. 615, 627, 895 P.2d 1269, 1277 (1995), *overruled on other grounds by City of Las Vegas Downtown Redev. Agency v. Hecht*, 113 Nev. 644, 650, 940 P.2d 134, 138 (1997). For an attorney subject to discipline in Nevada, suspension means an attorney cannot practice for a finite amount of time. *State Bar of Nevada Discipline Key*, State Bar of Nevada, https://nvbar.org/wp-content/uploads/State Bar of Nevada Discipline Key.pdf (last visited December 9, 2024). If an attorney is "disbarred" they may no longer practice law in the state of Nevada at any time. *Id.*; *see* SCR 102(1)(a) (disbarment is irrevocable). In this case, we look to the "gist" of the overall story rather

than a single word. *Rosen v. Tarkanian*, 135 Nev. 436, 440, 453 P.3d 1220, 1224 (2019). The terms suspended and disbarred are both used to refer to an attorney who is ineligible to practice law in the state. *See State Bar of Nevada Discipline Key*. Ahmad could not practice law at the time the article was published in 2021, however, because disbarment is permanent, the general public may have understood the gist of the article to be that Ahmad could never practice law in Nevada again. *See Rosen*, 135 Nev. at 440, 453 P.3d at 1224.

Since the statement that Ahmad was "disbarred" can be construed as a defamatory statement of fact, and was not substantially true, Ahmad met the first element to support a defamation claim for purposes of our analysis of the second prong of the anti-SLAPP statute.

The third element of a libel analysis requires a showing of fault amounting to at least negligence. *Clark Cnty. Sch. Dist.*, 125 Nev. at 385, 213 P.3d at 503. Although libel per se results in presumed damages, fault still must be shown for a respondent to demonstrate the possibility of success on the merits of his claim. *Id.* There are two standards of fault depending on whether the subject of a statement is a public figure or a private figure. Public figures or limited-purpose public figures are subject to the actual malice standard under *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). *Pegasus*, 118 Nev. at 718-720, 57 P.3d at 90-91. Private plaintiffs must only show negligence. *Id.*; *Bui v. Ngo*, 320 Cal. Rptr. 3d 788, 798 (Ct. App. 2024).

Following the United States Supreme Court case, *Gertz v. Welch, Inc.*, 418 U.S. 323, 351-53 (1974), Nevada has categorized public figures as either general public figures or limited-purpose public figures. *Pegasus*, 118 Nev. at 719, 57 P.3d at 91. General public figures are individuals who "achieve such pervasive fame or notoriety" that they are considered a public figure for all purposes. *Id.* (internal quotation marks

omitted). Limited-purpose public figures are figures who voluntarily inject themselves or are thrust into a public controversy or public concern, becoming a public figure for a limited range of issues. *Id.* For example, government attorneys who insert themselves into a matter or controversy of public interest can be considered limited-purpose public figures. *See Weingarten v. Block*, 162 Cal. Rptr. 701, 710-11 (Ct. App. 1980). However, the circumstances in which a "[p]ublic controversy" will be deemed to exist are limited. *See Copp v. Paxton*, 52 Cal. Rptr. 2d 831, 844 (Ct. App. 1996). In particular, courts have determined that a public controversy existed when an "issue was being debated publicly and . . . it had foreseeable and substantial ramifications for nonparticipants." *Id.* (quoting *Waldbaum v. Fairchild Publ'ns, Inc.*, 627 F.2d 1287, 1297 (D.C. Cir. 1980) (describing *Waldbaum* as setting forth a "much cited analysis" on the issue of public controversies).

Here, Ahmad has not achieved "pervasive fame or notoriety," and, therefore, does not qualify as a public figure. Moreover, although Ahmad's discipline is a matter of public interest for purposes of the first prong of the anti-SLAPP analysis, we are not convinced it rises to a public controversy for purposes of determining whether he was a limited-purpose public figure. *See Copp*, 52 Cal. Rptr. 2d at 844. Indeed, despite the disciplinary action against Ahmad, no evidence suggests that his misconduct was publicly debated with foreseeable and substantial ramifications for non-participants, nor is he a public official like a city attorney. *Compare Copp*, 52 Cal. Rptr. 2d at 844, *with Weingarten*, 162 Cal. Rptr. at 710-11. Thus, we conclude that Ahmad is a private figure for the purposes of our defamation analysis related to the second prong of the anti-SLAPP statute.

"[A] private person seeking to recover for defamation must demonstrate the defendant failed to exercise reasonable care in determining

the truth or falsity of the alleged defamatory statement before publishing it." *Bui*, 320 Cal. Rptr. 3d at 803; *DeBoer v. Senior Bridges of Sparks Fam. Hosp., Inc.*, 128 Nev. 406, 412, 282 P.3d 727, 732 (2012) (recognizing that "[n]egligence is failure to exercise that degree of care in a given situation which a reasonable [person]under similar circumstances would exercise" (internal quotation marks omitted)). The party bringing the claim has the burden of proof to demonstrate fault on behalf of the defendant. Restatement (Second) of Torts § 580B cmt. j. In a libel per se claim brought under a negligence theory, the plaintiff must show that the defendant failed to exercise that degree of care expected of a reasonable person when publishing the statement, which is typically a question for the jury to determine. *See Lee v. GNLV Corp.*, 117 Nev. 291, 298, 22 P.3d 209, 213 (2001) (applying the reasonable care standard for a general negligence claim).

Here, Ahmad alleged during the underlying proceeding that Nigam is a highly educated man and politician, so he knew the difference between "disbarred" and "suspended." To support his assertion, Ahmad testified that Nigam was highly educated and provided a printout from Ballotpedia.org concerning Nigam's political background, although he did not produce any evidence to directly demonstrate that Ahmad had knowledge of the distinction between "disbarred" and "suspended." However, Ahmad also submitted Nigam's article that included a link to the suspension order, which briefly differentiates between suspension and disbarment, demonstrating that Nigam easily could have ascertained the accuracy of his statement as to whether Ahmad was either disbarred or suspended before he printed that Ahmad was disbarred.

Under these circumstances, we conclude that Ahmed presented prima facie evidence of minimal merit in support of his libel per se claim under a negligence theory—that Nigam failed to exercise reasonable care in

determining the truth or falsity of the challenged statement that Ahmad was disbarred—before printing it. *See Wynn*, 140 Nev., Adv. Op. 56, 555 P.3d at 278 ("Minimal merit exists when the plaintiff makes a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." (internal quotation marks omitted)). Thus, Ahmad satisfied the third element of libel per se under the second prong of the statute, and we proceed to consider the fourth element of the claim.

Finally, the fourth element of a libel claim requires actual or presumed damages. *Clark Cnty. Sch. Dist.*, 125 Nev. at 385, 213 P.3d at 503. Libel per se is a form of per se defamation. Restatement (Second) of Torts §§ 568(1), 569. In a libel per se claim, a publisher may be liable for a defamatory statement although no special harm resulted from it. *Id.* at § 569 cmt. b. Libel per se thus entitles the plaintiff to presumed general damages, even if only $1. *See Bongiovi v. Sullivan*, 122 Nev. 556, 577, 138 P.3d 433, 448 (2006) (discussing slander per se). Because the statement regarding Ahmad's disbarment is considered libel per se since it imputes his "lack of fitness for trade, business, or profession" or tends to injure him in his business, proof of special damages is not required and general damages can be presumed. *Clark Cnty. Sch. Dist.*, 125 Nev. at 385, 213 P.3d at 503 (internal quotation marks omitted). Therefore, Ahmad's prima facie evidence supports the required elements of his libel per se claim under a negligence theory to satisfy the second prong of the statute, and the district court did not err in denying Nigam's anti-SLAPP special motion to dismiss this claim.[6]

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[6]In reaching this conclusion, we take no position on the merits of this claim which will be resolved by the trier of fact under a preponderance of the evidence standard, as opposed to the prima facie evidence standard we apply here. *See Wynn*, 140 Nev., Adv. Op. 56, 555 P.3d at 278; *see also Mack*

Based on the absence of prima facie evidence to support at least one element of Ahmad's remaining claims, these claims must be dismissed under the second prong of Nevada's anti-SLAPP statute

False light

Nigam argues that Ahmad fails to make a prima facie showing in support of his false light claim because the challenged statements were not "highly offensive." Ahmad argues that the act of incorrectly stating that an attorney is disbarred is highly offensive to a reasonable person. To prevail on a claim for false light, the plaintiff must establish the following: (1) the false light in which the other was placed would be highly offensive to a reasonable person; and (2) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. Restatement (Second) of Torts § 652E.

Focusing on the reckless disregard element, it is a subjective standard that looks to the defendant's state of mind to determine whether they had a "high degree of awareness of the probable falsity" of the statement when they published it. *Nev. Indep. Broad. Corp. v. Allen*, 99 Nev. 404, 414, 664 P.2d 337, 344 (1983) (alterations and internal quotation marks omitted). If the plaintiff presented evidence that the actor entertained "serious doubts" of the statement's veracity, the reckless disregard standard would be met. *See Pegasus*, 118 Nev. at 719, 57 P.3d at 90-91.

Here, Ahmad testified that Nigam was a highly educated political operative, and he presented documentation to establish the foregoing. However, that evidence and testimony does not directly address

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v. Ashlock, 112 Nev. 1062, 1066, 921 P.2d 1258, 1261 (1996) (explaining that, generally, "[a] preponderance of the evidence is all that is needed to resolve a civil matter" (alteration in original) (internal quotation marks omitted)).

Ahmad's awareness of the distinction between the words "suspended" and "disbarred" as they are used in the legal profession, and without more, they do not support a reasonable inference that Nigam had a high degree of awareness of the probable falsity of the statement that Ahmad was "disbarred" when he published it or otherwise acted recklessly. *See Pegasus*, 118 Nev. at 719, 57 P.3d at 90-91; *Nev. Indep. Broad. Corp.*, 99 Nev. at 414, 664 P.2d at 414; *see also Wynn*, 140 Nev., Adv. Op. 56, 555 P.3d at 279 (explaining that, under the second-prong of the anti-SLAPP statute, "the evidence, and any reasonable inferences drawn from it, must be viewed in [the] light most favorable to the nonmoving party" (alteration in original) (internal quotation marks omitted)). Moreover, as discussed above, Nigam presented an affidavit and sworn testimony that he believed the statement that Ahmad was "disbarred" to be true because he considered it to be the same as "suspended," and Ahmad has failed to present contrary evidence directly demonstrating that Nigam acted recklessly in publishing his article. Therefore, because Ahmad has not demonstrated with prima facie evidence a probability of success on the merits of the reckless disregard element of his false light claim, *see Zilverberg*, 137 Nev at 70, 481 P.3d at 1229, the district court should have dismissed Ahmad's the claim under the second prong of Nevada's anti-SLAPP statute.

Intentional infliction of emotional distress (IIED)

With respect to Ahmad's IIED claim, Nigam argues that Ahmad has failed to establish any extreme and outrageous conduct and has also failed to show that Nigam acted intentionally or with reckless disregard. To establish a cause of action for IIED, the plaintiff must establish (1) extreme and outrageous conduct by the defendant with either the intention of, or reckless disregard for, causing emotional distress; (2) the plaintiff's having suffered severe or extreme emotional distress; and (3) actual or

proximate causation. *Olivero v. Lowe*, 116 Nev. 395, 398, 995 P.2d 1023, 1025 (2000).

We need only address the first element of this claim. For an IIED claim to be successful, the challenged conduct must be so extreme and outrageous that it is outside all possible bounds of decency and is regarded as utterly intolerable in a civilized community. *Maduike v. Agency Rent-A-Car*, 114 Nev. 1, 4, 953 P.2d 24, 26 (1998). It is not enough for the conduct to be considered an indignity or unkind. *Id.* For conduct to be considered extreme and outrageous, there must be objectively verifiable indicia that the plaintiff suffered severe emotional distress. *Id.*; *see Blige v. Terry*, 139 Nev., Adv. Op. 60, 540 P.3d 421, 432 (2023).

As a preliminary matter, Nigam's statement regarding disbarment, standing alone, is not the type of statement that is outside all possible bounds of decency and is regarded as utterly intolerable in a civilized society. Nothing in the record suggests Nigam acted in an extreme and outrageous manner in making the statement, particularly since Nigam's article on Ahmad was a matter of public interest, as discussed in our analysis of the first prong of the anti-SLAPP statute.

Ahmad also alleges that Nigam engaged in extreme and outrageous conduct because he tried to extort him by requesting payment after publishing the article in order to take the article down. However, Ahmad did not produce any evidence to show that this occurred. The only evidence that Ahmad provided consisted of general fundraising emails for VegasDesi.com and for the South Asian Bar Association (SABA). The VegasDesi.com fundraising email does not support Ahmad's allegation of extortion because it was sent over a year prior to the article being published and uses the same language as the permanent fundraising webpage on VegasDesi.com. Although the SABA email was sent roughly three weeks after the article was published, it likewise does not support Ahmad's

allegation of extortion, as it simply sought sponsorships for the SABA North American Leadership Retreat without any reference to Ahamad or Nigam's article. Nigam also explained in his deposition that these emails were mass emails sent out to a listserv, not to individual email addresses. And nothing in the record suggests that Ahmad took any action based on the emails by paying Nigam. Thus, Ahmad's evidence does not support his claim that Nigam attempted to extort him—conduct that would rise to the level of extreme and outrageous. *See Blige*, 139 Nev., Adv. Op. 60, 540 P.3d at 432 (concluding that the defendant engaged in extreme and outrageous conduct where the evidence showed that the plaintiff transferred cryptocurrency to the defendant on 70 occasions to protect himself from the defendant publicly releasing compromising photographs and audio recordings of him).

Thus, because Ahmad has not provided sufficient evidence to meet the first element of an IIED claim, the district court erred by failing to grant Nigam's anti-SLAPP special motion to dismiss Ahmad's IIED claim.

Business disparagement

Nigam argues that Ahmad has failed to make a prima facie showing in support of his business disparagement claim because, unlike per se defamation, business disparagement requires proof of malice. Indeed, for a claim of business disparagement, the plaintiff must prove: (1) a false and disparaging statement; (2) the unprivileged publication by the defendant; (3) malice; and (4) special damages. *Clark Cnty. Sch. Dist.*, 125 Nev. at 386, 213 P.3d at 504.

The third element of malice is one of the major differences between a claim for business disparagement and a defamation claim. *Id.* at 385-86, 213 P.3d at 504-05. Unlike defamation, which only requires some fault amounting to at least negligence, business disparagement requires malice in publishing the false statement. *Id.* Malice is proven when the

plaintiff can show that the defendant published the challenged statement with the intent of causing harm to the plaintiff's pecuniary interests or with reckless disregard for the statement's truth. *Id.* at 386, 213 P.3d at 504-05. The supreme court in *Clark County School District* concluded that, although there was substantial evidence for the jury to conclude that the information contained in the school district's emails regarding a company that provided courses to teachers was false and disparaging, the company failed to prove that the school district maliciously intended to cause the company pecuniary loss. *Id.* at 387, 213 P.3d at 505. Here, as discussed in our analyses of Ahmad's libel per se and false light claims, although Ahmad has shown sufficient evidence that Nigam's statement was false, he has not demonstrated that Nigam made the statement with reckless disregard of its falsity. Moreover, Ahmad has not offered any evidence to suggest that Nigam maliciously caused Ahmad pecuniary loss other than his own opinion. Ahmad has only alleged broadly that Nigam wanted to harm the good name of Ahmad as an attorney and his legal practice, but has provided no evidence to substantiate that Nigam acted with the intent to harm his pecuniary interests. Because Ahmad has failed to present prima facie evidence of malice on Nigam's part, his claim for business disparagement fails.

RICO

Nigam argues that Ahmad's RICO claim fails. In particular, Nigam contends that, of the "crimes" Ahmad alleges in his complaint, only two are predicate crimes listed in NRS 207.360—multiple transactions involving fraud or deceit in the course of enterprise (NRS 205.377) and taking of property under circumstances not amounting to robbery (NRS 207.360(9)). Nigam further argues in his opening brief that Ahmad has not provided the required evidence to meet the predicate crime of multiple transactions of fraud and deceit, nor has Ahmad shown that Nigam took, or

attempted to take, any property, directly or by way of extortion. Ahmad responds that Nigam engaged in at least two crimes related to racketeering and that Nigam's website VegasDesi.com, and parties not named in his lawsuit, are criminal enterprises under RICO.

Although not specifically addressed by the parties, a plaintiff asserting a RICO claim must demonstrate that the defendant acted with criminal intent. NRS 207.400; *see also Kvam v. Mineau*, No. 84443-COA, 2022 WL 19692420, at *5 (Nev. Ct. App. Dec. 22, 2022) (Order of Affirmance). If a plaintiff does not proffer evidence to support that the defendant acted with criminal intent, the defendant is entitled to judgment as matter of law on the claim. *Id.*

There is a different criminal intent requirement for each of Ahmad's alleged predicate crimes. First, for a defendant to be found to have engaged in the predicate crime of multiple transactions involving fraud or deceit in the course of an enterprise as detailed in NRS 205.377, the defendant must act "knowingly and with the intent to defraud." NRS 205.377. Second, NRS 205.270 governs the predicate crime of taking property from another under circumstances not amounting to robbery and requires a defendant to have the intent to steal or appropriate the property for their own use. Third, the predicate crime of extortion requires the intent to gain something through direct or indirect threat. NRS 205.320.

In the present case, Ahmad has not proffered evidence that Nigam acted with the requisite criminal intent of any of the alleged predicate crimes under the RICO statute when he published that Ahmad was "disbarred." For example, Ahmad has failed to show that Nigam engaged in multiple transactions involving fraud or deceit in the course of an enterprise because he has not presented evidence that Nigam acted "knowingly and with the intent to defraud" Ahmad. NRS 205.377. Indeed, Nigam presented an affidavit attesting that he believed the statement that

Ahmad was "disbarred" to be the same as "suspended" and did not know that his statement was false, and Ahmad has not provided any evidence to directly refute that affidavit to support that Nigam acted "knowingly and with the intent to defraud" other than his opinion.

Moreover, while Ahmad alleges that Nigam requested donations after posting libelous statements on his website as part of a fraudulent scheme, he has shown no evidence of such intent to defraud. First, the VegasDesi.com donation letter was sent via email more than a year in advance of the article and the language matched that of the permanent donation webpage on the website. Second, the only donation email included in the record that was dated after the article was published was one for sponsorships for SABA's annual retreat. All the emails were sent by a listserv. Ahmad has not provided any evidence to suggest there were emails after the SABA email by Nigam demanding money specifically from Ahmad to remove the article about him from Nigam's website.

Ahmad also fails to support that Nigam intended to steal property or that Nigam acted with the intent to gain something through direct or indirect threat. Nothing in the SABA email suggests that Nigam was extorting or attempting to extort Ahmad. Nor has Ahmad proffered evidence to support that, as a result of the alleged criminal scheme that Nigam intended to steal or appropriate Ahmad's property. Therefore, Ahmad cannot show that Nigam acted with the requisite criminal intent for the alleged crimes of multiple transactions involving fraud or deceit in the course of an enterprise, taking property from another under circumstances not amounting to robbery, or extortion, to succeed on his RICO claim. Consequently, Ahmad failed to present prima facie evidence of a probability of prevailing on the merits of his RICO claim, and therefore the district should have dismissed the RICO claim.

Elder abuse

Nigam argues that Ahmad has not met the elements of an elder abuse claim. He argues that Ahmad has not shown that Nigam acted with willfulness, nor has he proven that he has suffered mental anguish in connection with Nigam's article. Ahmad, without specifically citing any authority, states that he is over 60 years of age and therefore qualifies as an older person under Nevada law. Moreover, Ahmad provides a definition of the term "abuse," which is consistent with the one found in Nevada's civil elder abuse statute.

The civil elder abuse statute, NRS 41.1395, provides, any person who abuses an older person or vulnerable person is liable for "two times the actual damages to the older or vulnerable person." Under NRS 41.1395(4)(a) abuse is defined as the "willful and unjustified . . . [i]nfliction of pain, injury, or mental anguish [on an older person,] or [d]eprivation of food, shelter, clothing or services which are necessary to maintain the physical or the mental health of an older person." Although Nevada's elder abuse statutes do not define "willful" as it applies in the elder abuse context, Nigam interprets the term to mean acting intentionally. Ahmad does not dispute that interpretation, which we therefore follow.

Although abuse for purposes of NRS 41.1395(4)(a) requires that a person both willfully and unjustifiably inflict a harm upon an older person, Ahmad failed to present any evidence to demonstrate that Nigam intentionally harmed Ahmad by stating that he was disbarred, such that Nigam's actions could be characterized as willful. Indeed, Nigam provided an affidavit that he did not know the difference between "suspended" and "disbarred" and therefore did not act intentionally. Ahmad has not provided evidence to demonstrate that Nigam acted willfully or intentionally to cause Ahmad pain, injury or mental anguish as required under the elder abuse statute. Given that Ahmad has not met the willfulness element necessary

for a claim of elder abuse, he failed to demonstrate the probability of prevailing on the merits of the claim, and therefore, the district court erred by failing to grant Nigam's anti-SLAPP special motion to dismiss Ahmad's elder abuse claim.

Based on the foregoing, we conclude that the district court properly denied Nigam's anti-SLAPP special motion to dismiss as it relates to Ahmad's libel per se claim but erred in denying the motion with respect to Ahmad's remaining claims. Accordingly, we affirm the order as it relates to Ahmad's libel per se claim and remand this matter for further proceedings.[7] However, we reverse the district court's order with respect to Ahmad's remaining claims and remand with directions for the district court to enter an order dismissing those claims in accordance with Nevada's anti-SLAPP statute.

It is so ORDERED.[8]

_____, C.J.
Gibbons

_____, J.
Bulla

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[7]Insofar as Ahmad purported to assert a separate cause of action in his complaint for an injunction, injunctive relief is a remedy, not a separate cause of action. *State Farm Mut. Auto. Ins. Co. v. Jafbros Inc.*, 109 Nev. 926, 928, 860 P.2d 176, 178 (1993). As we are affirming the district court's denial of Nigam's anti-SLAPP motion insofar as it relates to Ahmad's libel per se claim so that the claim may proceed to trial, the district court may need to evaluate whether an injunction is warranted depending on how the libel per se claim is resolved.

[8]Insofar as the parties have raised arguments that are not specifically addressed in this order, we have considered the same and conclude that they present no further basis for relief.

cc: Hon. Danielle K. Pieper, District Judge
Paul Padda Law, PLLC
Kern Law, Ltd.
Law Office of Malik W. Ahmad
Eighth District Court Clerk