

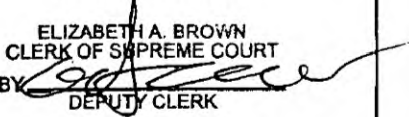
IN THE SUPREME COURT OF THE STATE OF NEVADA

MELISSA SCHUMAN HENSCHTEL;
AND JEROME SCHUMAN,
Appellants,
vs.
NICKOLAS CARTER,
Respondent.

No. 87531

FILED

JAN 28 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

This appeal arises out of a defamation countersuit brought by respondent Nickolas Carter against appellants Melissa and Jerome Schuman (collectively, the Schumans). Over the span of several years, the Schumans made statements about Carter's alleged sexual assault of Melissa and other women. One of the other women, Shannon Ruth, sued Carter for sexual battery, and Carter countersued for defamation and related torts and joined the Schumans as counter-defendants. The Schumans filed an anti-SLAPP special motion to dismiss Carter's claims against them. The district court denied the motion, finding that though the Schumans had met their burden on the first prong of the anti-SLAPP framework, Carter had met his burden on the second prong. The Schumans now appeal that decision.

A district court's decision to grant or deny an anti-SLAPP special motion to dismiss is reviewed de novo. *Smith v. Zilverberg*, 137 Nev. 65, 67, 481 P.3d 1222, 1226 (2021); *see also Wynn v. Associated Press*, 140

Nev., Adv. Op. 56, 555 P.3d 272, 276 (2024).¹ An anti-SLAPP special motion to dismiss is resolved based upon the two-prong framework outlined in NRS 41.660(3). Under the first prong, 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 petition or the right to free speech in direct connection with an issue of public concern.” NRS 41.660(3)(a). After the moving party satisfies this initial step, the burden shifts to the non-moving party under the second prong to show “with prima facie evidence a probability of prevailing on the claim.” NRS 41.660(3)(b). As Carter does not contest the district court’s finding as to the first prong, this appeal turns solely on whether the district court erred with respect to the second prong. We conclude that it did not.

As noted, to meet his burden on the second prong, Carter was required to show “with prima facie evidence a probability of prevailing on the claim.” NRS 41.660(3)(b). “To prevail on a defamation claim, [a public figure] must show (1) a false and defamatory statement; (2) unprivileged publication to a third person; (3) fault; (4) damages, presumed or actual; and . . . (5) actual malice.” *Smith*, 137 Nev. at 71, 481 P.3d at 1229. Actual malice is demonstrated when a statement “is published with knowledge that it was false or with reckless disregard for its veracity.” *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 722, 57 P.3d 82, 92 (2002). This court recently explained in *Wynn v. Associated Press* that “to demonstrate by

¹Although Carter argues that an abuse of discretion standard of review applies, this court has explicitly stated that the denial of an anti-SLAPP special motion is reviewed de novo and “whether the evidence in the record in a defamation case is sufficient to support a finding of actual malice [as part of the second step of the analysis] is a question of law.” *Wynn*, 140 Nev., Adv. Op. 56, 555 P.3d at 279.

prima facie evidence a probability of success on the merits of a public figure defamation claim, the [non-moving party's] evidence must be sufficient for a jury, by clear and convincing evidence, to reasonably infer that the publication was made with actual malice." 140 Nev., Adv. Op. 56, 555 P.3d at 278. *Wynn* further established that the second prong must be analyzed under a summary judgment standard, meaning "the evidence, and any reasonable inferences drawn from it, must be viewed in [the] light most favorable to the nonmoving party." *Id.*, 555 P.3d at 279 (quoting *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005)).

The Schumans argue that the district court's finding that they met their burden under the first prong necessarily means that the court found that their statements were truthful or that they did not have knowledge of falsity. Accordingly, the Schumans posit that it is inconsistent for the district court to conclude that Carter's evidence would be sufficient for a jury to find, by clear and convincing evidence, that they acted with actual malice. The Schumans further claim that Carter's declarations and evidence did not refute aspects of the allegations regarding the assault of Melissa, do not demonstrate that Melissa consented to sexual intercourse or that Jerome did not believe his daughter, and do not prove that the Schumans believed that Ruth's account of being assaulted was untrue.

Viewing the evidence in the light most favorable to him, we conclude Carter presented sufficient evidence that, if believed, would sustain a favorable verdict. Carter claimed that the Schumans fabricated Melissa's sexual assault allegations and that they, alongside Ruth and his brother Aaron Carter, conspired to defame and extort him. He conceded that he had sexual intercourse with Melissa but asserted that the sex was consensual. In support, Carter provided 92 exhibits, affidavits, and

declarations directly contradicting or undermining Melissa's allegations. For example, Carter provided a declaration from a witness present in the room on the night of the alleged rape that stated the witness saw Melissa and Carter flirting and playing with one another and that at no point did he witness Melissa upset or fearful, nor did he witness Carter act inappropriately toward her. Carter also provided ample evidence suggesting Melissa changed her version of the events over the years, with pertinent details changing—such as whether she informed anyone in the days following the encounter or waited years, and whether she stopped working alongside Carter. All of this evidence, when viewed in the light most favorable to Carter arguably demonstrate that the sexual interactions between him and Melissa were consensual, that Melissa knew she was not sexually assaulted, and that the Schumans, Ruth, and Aaron conspired to defame Carter.

The Schumans point to their own declarations in arguing that Carter could not demonstrate actual malice. Melissa provided a declaration detailing the alleged sexual assault, her belief that Ruth was being truthful regarding her own alleged assault by Carter, and that she did not “prey on” Aaron or Ruth or coach them with what to say. Jerome provided a declaration averring that he believed to be true Melissa's recounting of the encounter and Ruth's allegations of assault, and that he did not conspire with Melissa and Ruth to extort Carter. While these declarations demonstrate that there may be genuine disputes of material facts in this case, this court cannot weigh the evidence but rather must consider the evidence in the light most favorable to Carter. Upon doing so, we conclude that Carter provided sufficient evidence that, if believed, shows that the


Schumans published defamatory statements with knowledge that they were false or with reckless disregard for their veracity.

Thus, the district court did not err in denying the anti-SLAPP special motion to dismiss. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Herndon


_____, J.
Lee


_____, J.
Bell

cc: Hon. Nancy L. Alf, District Judge
Greenberg Gross LLP
Hayes Wakayama Juan
The Holtz Firm
Eighth District Court Clerk