

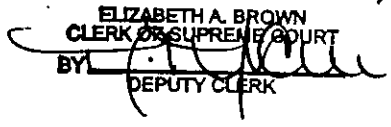
IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; BRIAN
EDGEWORTH AND ANGELA
EDGEWORTH, INDIVIDUALLY AND
AS HUSBAND AND WIFE; AND
AMERICAN GRATING, LLC,
Appellants,
vs.
THE LAW OFFICE OF DANIEL S.
SIMON AND DANIEL S. SIMON,
Respondents.

No. 87649

FILED

AUG 28 2025

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 motion to dismiss. Eighth Judicial District Court, Clark County; Jessica K. Peterson, Judge.

Attorney Daniel Simon and his law firm represented Brian and Angela Edgeworth in a product defect case. At the beginning of the litigation, the Edgeworths and Simon were friends, and did not have a written fee agreement. The Edgeworths paid Simon an hourly rate throughout the litigation, and paid each invoice sent from Simon. Ultimately the manufacturer settled for more than anticipated, and Simon then requested a percentage of the settlement, which created discord between the Edgeworths and Simon. The Edgeworths hired new counsel. Simon placed a lien on the settlement funds. The Edgeworths then sued Simon for conversion, breach of contract, and declaratory relief. Although, that case was ultimately dismissed after Simon released a portion of the settlement to the Edgeworths.

Following the conversion lawsuit, Simon filed a separate suit against the Edgeworths including claims under various theories like defamation per se and business disparagement. The Edgeworths filed an anti-SLAPP motion to dismiss. The district court initially granted the motion with regard to all claims except defamation per se and business disparagement, but on reconsideration, denied the anti-SLAPP motion entirely based on a “question of fact about whether or not there was an agreement between Simon and Edgeworths’ [new] attorney . . . prior to the filing of the January 4, 2018[,] complaint in the lien dispute proceedings.” This appeal followed.

“We review a decision to grant or deny an anti-SLAPP special motion to dismiss de novo.” *Smith v. Zilverberg*, 137 Nev. 65, 67, 481 P.3d 1222, 1226 (2021). Under NRS 41.660(3)(a)-(b), a court applies a two-prong analysis in determining whether to grant an anti-SLAPP special motion to dismiss. *Stark v. Lackey*, 136 Nev. 38, 40, 458 P.3d 342, 345 (2020). First, the court must determine whether the suit is based upon a protected communication. *Id.* This requires the moving party to establish “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.” *Id.* (quoting NRS 41.660(3)(a)). If the moving party meets its burden, the district court advances to step two, and the district court must determine whether the plaintiffs “demonstrated[,] with prima facie evidence[,] a probability of prevailing on the[ir] claim[s].” NRS 41.660(3)(b); *Smith*, 137 Nev. at 67, 481 P.3d at 1226. If, however, the moving party fails to meet its burden under the first prong, “the court need not evaluate step two.” *Spirtos v. Yemenidjian*, 137 Nev. 711, 714, 499 P.3d 611, 616 (2021).

On appeal, the Edgeworths claim SLAPP protection regarding causes of action based on statements the Edgeworths made to three individual, nonparties and based on four communications from the Edgeworths's conversion case against Simon in 2018. The communications from the conversion case are: (1) the Edgeworths' contention that they reached an express fee agreement with Simon "[a]t the outset of the attorney-client relationship;" (2) the Edgeworths' contention that they were due the full amount of the settlement proceeds in the prior product defect litigation; (3) the Edgeworths' claim against Simon for conversion; (4) the Edgeworths' contention that Simon requested a contingency fee.

We conclude the Edgeworths failed to meet their burden under prong one of the anti-SLAPP analysis for the statements the Edgeworths made to the three nonparties, and thus, the district court properly denied the anti-SLAPP motion to dismiss the claims concerning those statements. Nevertheless, we conclude the Edgeworths satisfied prong one as to the claims concerning the four communications regarding the conversion suit, and Simon was unable to meet his burden under prong two because the communications are protected by the litigation privilege. Thus, the district court erred in denying the anti-SLAPP motion to dismiss the counts to the extent they concerned those four communications.

The Edgeworths met their burden under the first prong of the anti-SLAPP analysis only as to the statements from the conversion complaint

To satisfy prong one, the Edgeworths must first demonstrate, by a preponderance of the evidence, that the claims at issue were based upon communications made in good faith concerning an issue of public concern. NRS 41.660(3)(a). Thus, prong one makes two different inquiries. First, the statement must qualify as a "protected communication." *Rosen v. Tarkanian*, 135 Nev. 436, 438, 453 P.3d 1220, 1223 (2019). Second, even if

the statement qualifies as a protected communication, prong one can only be satisfied if the communication was made in good faith. *Id.* at 438-39, 453 P.3d at 1223; *see also Shapiro v. Welt*, 133 Nev. 35, 38, 389 P.3d 262, 267 (2017) (“[T]he term ‘good faith’ does not operate independently within the anti-SLAPP statute.”)

To qualify as a protected communication, the statement must fall under at least one of the following four categories of speech protected by NRS 41.637:

- (1) Communication that is aimed at procuring any governmental or electoral action, result or outcome;
- (2) Communication of information or a complaint to a Legislator, officer or employee of the Federal Government, this state or a political subdivision of this state, regarding a matter reasonably of concern to the respective governmental entity;
- (3) Written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law; or
- (4) Communication made in direct connection with an issue of public interest in a place open to the public or in a public forum.

The Edgeworths were unable to show that the statements made to the three nonparties were protected speech under NRS 41.637. The first two categories cannot apply factually to this situation. And while the Edgeworths’ statements made to the nonparties concerned the Edgeworths’ litigation with Simon, none of the three nonparties had any interest in the litigation. *Patin v. Ton Vinh Lee*, 134 Nev. 722, 726-27, 429 P.3d 1248, 1251-52 (2018) (explaining that NRS 41.637(3) only applies to communications concerning litigation when the statements are made to a person having

some interest in the litigation). Therefore, NRS 41.637(3) cannot apply. Lastly, because none of the Edgeworths' statements to the nonparties were open to the public or occurred in a public forum, the statements cannot qualify as protected speech under NRS 41.637(4). Accordingly, the Edgeworths did not meet their burden under prong one regarding the statements made to the three individual nonparties. Under our de novo review, because the Edgeworths failed to meet their burden in this regard, we necessarily must affirm the district court's denial of the Edgeworth's anti-SLAPP motion to dismiss as it concerns the statements to the three nonparties. *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (explaining that this court will affirm a district court's decision if it reached the correct result, but for another reason).

Nevertheless, the four communications from the conversion case are protected speech under NRS 41.637(3) as they arise from the Edgeworths' filed conversion complaint, which was still pending at the time Simon filed his original defamation action. Further, the Edgeworths demonstrated by a preponderance of the evidence that the statements were made in good faith. Because the Edgeworths met their burden under prong one, we must next analyze these communications under prong two.

Simon cannot meet his burden under prong two regarding the four communications concerning the conversion case

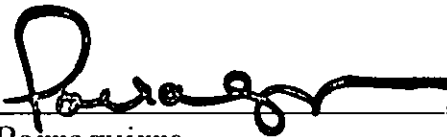
To satisfy prong two, this court must determine whether Simon demonstrated with prima facie evidence a probability of prevailing on his claim for defamation. NRS 41.660(3)(b). In doing so, Simon must show that his claims have "minimal merit." *Smith*, 137 Nev. at 70-71, 481 P.3d at 1229; *Abrams v. Sanson*, 136 Nev. 83, 91, 458 P.3d 1062, 1069 (2020).


“Whether the absolute litigation privilege applies is a question of law reviewed de novo.” *Williams v. Lazer*, 137 Nev. 437, 443, 495 P.3d 93, 99 (2021). Additionally, “[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 his claim if a privilege applies to preclude the defendant’s liability.” *Id.* The litigation privilege applies to statements made during the course of judicial or quasi-judicial proceedings. *Jacobs v. Adelson*, 130 Nev. 408, 412, 325 P.3d 1282, 1285 (2014). The privilege applies only where the judicial proceeding is (1) “contemplated in good faith and under serious consideration” and (2) the communication “[is] related to the litigation.” *Id.* at 413, 325 P.3d at 1285. If applicable, the litigation privilege serves as a “complete bar to defamation claims based on privileged statements.” *Jacobs v. Adelson*, 130 Nev. 408, 413, 325 P.3d 1282, 1285 (2014). Additionally, while Nevada has not applied the privilege beyond the defamation context, California courts recognize that the absolute litigation privilege applies broadly to any tort except malicious prosecution. See *McClintock v. West*, 162 Cal. Rptr. 3d 61, 72 (Ct. App. 2013).

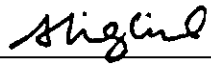
Each of the four communications at issue, which Simon garnered directly from the Edgeworths’ 2018 complaint against him for conversion, as well as the statements relating to blackmail and extortion, mishandling of funds, and feeling threatened or scared are all covered by the litigation privilege. Because the privilege applies, Simon would be unable to demonstrate prima facie evidence of a probability of prevailing on his claims. Accordingly, we reverse the district court’s denial of the anti-SLAPP motion to dismiss Simon’s claims as they relate to these four communications.

As to Simon's complaint regarding the Edgeworths' one-check sign over contention, we cannot consider this issue as it does not stem from the issue mentioned in this matter, but rather the Edgeworths' separate underlying conversion claim. Accordingly, we

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


_____, J.
Parraguirre


_____, J.
Bell


_____, J.
Stiglich

cc: Hon. Jessica K. Peterson, District Judge
McLetchie Law
Tucker Ellis LLP / California
Law Office of James R. Christensen PC
Christiansen Trial Lawyers
Eighth Judicial District Court Clerk