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ELIZABETH A. BROWN
CLERK OF SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL KOSOR, JR., AN INDIVIDUAL, Appellant, vs. SOUTHERN HIGHLANDS COMMUNITY ASSOCIATION, A NEVADA NON-PROFIT CORPORATION; Respondent.	No. 89439

ORDER OF AFFIRMANCE

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

FACTS AND PROCEDURAL HISTORY

Appellant Michael Kosor, Jr. sued his homeowners' association, Southern Highlands Community Association (SHCA), in November 2020, seeking to enjoin its December 2020 Board election. The following December, Kosor ran for and was elected to a term on the SHCA Board. Kosor voluntarily dismissed his lawsuit in 2022 and was ordered to pay SHCA and the Southern Highlands Development Corporation attorney fees and costs.

When the Nevada Real Estate Division threatened disciplinary action against SHCA in early 2023 over concerns that Kosor's service violated NRS 116.31034, SHCA removed Kosor from the Board. That

October, Kosor applied to run for his Board seat in the next SHCA election. In his candidate materials, Kosor marked as "true" that he did not stand to gain profit or compensation from any matter before SHCA. The candidate nomination form also required candidates to "disclose any financial, business, professional or personal relationship or interest that would result or would appear to a reasonable person to result in a potential conflict of interest if you were to be elected to serve as a member of the executive board." Kosor left this portion blank but attached a statement setting out his platform, criticizing the Board, and mentioning—in small print at the bottom of the page—his ongoing litigation and directing readers to his campaign website for more information. In November 2023, Kosor filed a motion for relief from judgments, seeking to reopen the case he had earlier dismissed. The district court denied that motion in December 2023, and Kosor unsuccessfully appealed from that judgment in *Kosor v. Southern Highlands Community Association*, 141 Nev., Adv. Op. 34, 570 P.3d 160, 168 (2025).

Shortly after filing his motion for relief from judgments, Kosor filed a new complaint against SHCA, seeking reinstatement onto the Board, attorney fees and costs, and other relief. SHCA notified Kosor the next month that it had deemed him ineligible to serve on the SHCA Board and that it would not place his name on the ballot. SHCA also filed an answer and six counterclaims to Kosor's complaint. Two were dismissed, leaving SHCA's counterclaims for (1) breach of NRS 116.31034(9) for failure to disclose potential conflicts of interest; (2) breach of NRS 116.31034(10)(a)(2) through standing to gain profit or compensation; (3) breach of NRS 116.31034(13) and NRS 116.3113(1) by being uninsurable; and (4) declaratory relief that Kosor is ineligible to run for or to serve on the Board

under NRS 116.31034 and NRS 116.3113 until issues with his candidacy have been resolved. SHCA seeks punitive damages through its first three counterclaims and attorney fees.

Kosor filed an anti-SLAPP special motion to dismiss the first three counterclaims, which the district court denied. He appeals from that order.

DISCUSSION

Nevada's anti-SLAPP framework provides that a "party may file a special motion to dismiss if an action is filed in retaliation to the exercise of free speech." *Coker v. Sassone*, 135 Nev. 8, 11-12, 432 P.3d 746, 749 (2019); NRS 41.660(1)(a). The decision to deny an anti-SLAPP special motion to dismiss is subject to de novo review. *Smith v. Zilverberg*, 137 Nev. 65, 67, 481 P.3d 1222, 1226 (2021).

"A person who engages in 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 is immune from any civil action for claims based upon the communication." NRS 41.650. To determine whether this immunity applies, "[a] district court considering a special motion to dismiss must undertake a two-prong analysis." *Coker*, 135 Nev. at 12, 432 P.3d at 749. First, it 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). If the moving party has met its burden at the first prong, the court must then "determine whether the plaintiff has demonstrated with prima facie evidence a probability of prevailing on the claim." NRS 41.660(3)(b).

Anti-SLAPP protections were enacted to counteract "meritless lawsuit[s] that a party initiates primarily to chill a defendant's exercise of his or her First Amendment free speech rights." *Stubbs v. Strickland*, 129 Nev. 146, 150, 297 P.3d 326, 329 (2013). However, "a moving party seeking protection under NRS 41.660 need only demonstrate that his or her conduct falls within one of four statutorily defined categories of speech, rather than address difficult questions of First Amendment law." *Coker*, 135 Nev. at 12, 432 P.3d at 749. Where Nevada's and California's statutory language overlaps, California courts can offer Nevada courts guidance in the anti-SLAPP realm. *Id.* at 11, 432 P.3d at 749; *see also* Justin A. Shiroff, *Evolving Protection: Nevada's Anti-SLAPP Law Post-*Adelson *and* Shapiro, 26 NEV. LAW. 8, 8 (2018) (noting California's wealth of anti-SLAPP jurisprudence and that "Nevada's statute was modeled, at least in part, on California's"). At the first prong of the anti-SLAPP analysis, the moving party bears the burden of demonstrating that the nonmoving party'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). As relevant here:

> "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" means any:
>
> 1. Communication that is aimed at procuring any governmental or electoral action, result or outcome . . .
>
> which is truthful or is made without knowledge of its falsehood.

NRS 41.637.

"Conducting the anti-SLAPP analysis requires first understanding which communications are at issue." *Carter v. Repp*, No.

89386, 2026 WL 859903, at *4 (Nev. March 27, 2026) (Order of Affirmance). Each communication must be analyzed independently, and the moving party must identify which communications each challenged claim rests upon. *Rosenbrook v. Lloyd*, 142 Nev., Adv. Op. 36, 588 P.3d 1281, 1287 (2026). Kosor argues that a court can look to either the information on his candidate nomination form and statements on his campaign website as individual written communications or to his act of submitting his candidate materials as a communication of his intent to run for the Board. We address both theories, beginning with whether Kosor met his first-prong burden of demonstrating by a preponderance of the evidence that any of SHCA's counterclaims are based upon any specific information on his candidate nomination form or website.

Kosor failed to meet his first-prong burden of demonstrating that any of SHCA's counterclaims are based upon any specific information on his candidate nomination form or website

For reference, SHCA's counterclaims assert Kosor (1) breached NRS 116.31034(9) by failing to disclose potential conflicts of interest; (2) breached NRS 116.31034(10)(a)(2) by attempting to serve on the Board despite standing to gain profit or compensation; and (3) breached NRS 116.3113(1)(d) by attempting to serve on the Board even though SHCA cannot provide him with insurance.

Kosor's alleged breach of NRS 116.31034(9) is one of omission—failing to disclose conflicts of interest. An omission can qualify as a protected communication under some circumstances. *See generally Ratcliff v. Roman Cath. Archbishop of L.A.*, 294 Cal. Rptr. 3d 875, 896-97 (Ct. App. 2022) (discussing when failure to speak may qualify as a protected communication). However, Kosor does not clearly identify why his omission was communicative in this case and therefore the proper basis for an anti-

SLAPP special motion to dismiss. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (declining to consider claims appellant fails to cogently argue and present relevant authority in support of).

Next, as to Kosor's alleged breach of NRS 116.31034(10)(a)(2) through standing to gain profit or compensation, Kosor has not identified any specific information on his candidate materials or website forming the basis for SHCA's claim. Although SHCA's claim for relief does allege that Kosor "falsely represented that he does not stand to gain profit or compensation of any kind[]" by marking "T" for "true" next to that statement on the candidate nomination form, this is most accurately characterized as a background fact and not the basis for the cause of action. *See Baral v. Schnitt*, 376 P.3d 604, 615 (Cal. 2016) ("Allegations of protected activity that merely provide context, without supporting a claim for recovery, cannot be stricken under the anti-SLAPP statute."). In other words, SHCA would have had a claim even had Kosor stated the opposite.

Finally, as to Kosor's alleged breach of NRS 116.3113(1)(d) and NRS 116.31034(13) by being uninsurable, Kosor has not identified any specific information on his candidate materials or website which serve as the basis for SHCA's claim. He simply argues that SHCA's claim is frivolous because insurability is not a candidate eligibility requirement, and the insurance statute imposes no duty on Kosor. Even if Kosor were correct on those points, that does not mean that this claim is the proper subject of an anti-SLAPP motion.

Kosor has demonstrated by a preponderance of the evidence that SHCA's counterclaims are based upon his communication of intent to run for the Board

However, Kosor alternatively argues that his act of submitting his candidate materials was a communication of his intent to run for the SHCA Board. "[T]he [anti-SLAPP] statute's definitional focus is . . . the defendant's *activity* that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning." *Panik v. TMM, Inc.*, 139 Nev. 526, 529, 538 P.3d 1149, 1153 (2023) (internal quotation marks omitted). It has also been established that communications incapable of being proven truthful or false, such as opinions, may nevertheless qualify as protected under the first prong analysis as being "made without knowledge of their falsehood." *Abrams v. Sanson*, 136 Nev. 83, 89, 458 P.3d 1062, 1068 (2020). Thus, Kosor's act of submitting his candidate materials may indeed be considered a "communication" under Nevada's anti-SLAPP statutes. The fact that he sent his candidate materials to SHCA and signed a statement on his candidate nomination form asking that SHCA "[p]lease place my name on the ballot" is sufficient evidence that he truly did intend to run for and to serve on the Board "absent contradictory evidence in the record." *Stark v. Lackey*, 136 Nev. 38, 43, 458 P.3d 342, 347 (2020); *cf. Jensen v. City of Boulder City*, Nos. 57116, 57635, 57667, 2014 WL 495265, at *1-3 (Nev. Jan. 24, 2014) (Order of Reversal and Remand) (holding that Boulder City's challenge to a petition's ballot eligibility targeted a protected communication).

Kosor has also demonstrated by a preponderance of the evidence that SHCA's counterclaims are collectively "based upon" his submission of candidate materials. NRS 41.660(3)(a). He maintains that the fact that SHCA has sought attorney fees, costs, and punitive damages shows that it is motivated in part by a desire to punish Kosor for turning to

the courts. *See 477 Harrison Ave., LLC v. JACE Bos., LLC*, 134 N.E.3d 91, 106 (Mass. 2019) ("[A] counterclaimant asserting damages caused by the conduct of the same proceeding, e.g., attorney's fees and costs, cannot establish that its counterclaim is not a SLAPP suit . . . . Viewed objectively, the primary motivation of such a claim is to burden the opposing party's petitioning rights."). This case is unlike those in which the plaintiff specifically disclaims any intention to challenge the defendant's act of disseminating materials and only challenges statements accompanying that dissemination. For example, in *Coker*, the plaintiff painter sued the defendant salesperson for falsely representing that copies of the plaintiff's work were originals. 135 Nev. at 9, 432 P.3d at 748. In support of his first prong burden to demonstrate that his communications were truthful or made without knowledge of their falsehood, the defendant relied on a declaration swearing that he bought the copies from a bulk art supplier and never created any copies himself. *Id.* at 12-13, 432 P.3d at 750. The court held that the defendant's evidence was a mismatch, as the plaintiff was not suing the defendant for his act of disseminating the copies and conceded that there would be no basis for the suit but for the false statements that the copies were originals. *Id.* In the instant case, on the other hand, SHCA does not merely challenge statements contained within Kosor's candidate materials, and two of SHCA's counterclaims expressly target Kosor's attempt to serve on the Association's Board.

Framing SHCA's counterclaims as broadly targeting Kosor's submission of candidate materials, however, means that SHCA may meet its second-prong burden as to this communication by demonstrating a probability of prevailing on any of its theories for why Kosor's act was improper; in effect, this framing collapses SHCA's different counterclaims

into a single claim challenging Kosor's ballot eligibility. *See Mission Springs Water Dist. v. Verjil*, 160 Cal. Rptr. 3d 524, 529 (Ct. App. 2013) (affirming denial of anti-SLAPP motion to dismiss challenge to ballot eligibility when at least one theory of ineligibility was meritorious); *Nader v. Me. Democratic Party*, 66 A.3d 571, 575-76 (Me. 2013) (holding that five discrete grounds for challenging ballot eligibility were part of a single request for relief at first prong of anti-SLAPP analysis); *Baral*, 376 P.3d at 613 (discussing how the parties' framing of the issues affects the anti-SLAPP analysis, and a broad first-prong theory will fall more easily at the second prong). Although Nevada law compels a claim-by-claim anti-SLAPP analysis, *Abrams*, 136 Nev. at 91, 458 P.3d at 1069, its application "cannot reasonably turn on how the challenged pleading is organized." *Baral*, 376 P.3d at 614. SHCA could have instead organized its complaint into a single claim for relief broadly alleging that Kosor improperly sought to run for the Board while asserting its three theories, and it would only need to succeed on one theory in order for it to prevail on that single claim for relief. The grant or denial of an anti-SLAPP special motion to dismiss does not turn on such arbitrary pleading decisions.

SHCA has shown a reasonable probability that Kosor failed to make a good faith effort to disclose a potential conflict of interest

A review of the evidence demonstrates that SHCA has met its second-prong burden on this issue. At the second prong of the anti-SLAPP analysis, the nonmoving party merely must show that its claims have "minimal merit." *Wynn v. Assocd. Press*, 140 Nev., Adv. Op. 56, 555 P.3d 272, 278 (2024); *see also* NRS 41.665(2) (equating the burdens imposed under Nevada and California anti-SLAPP law for demonstrating a probability of prevailing on the claim). "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*, Nev., Adv. Op. 56, 555 P.3d at 278, *quoting Wilson v. Parker, Covert & Chidester*, 50 P.3d 733, 739 (Cal. 2002).

NRS 116.31034(9) provides:

> Each person who is nominated as a candidate for membership on the executive board pursuant to subsection 4 must:
>
> (a) Make a good faith effort to disclose any financial, business, professional or personal relationship or interest that would result or would appear to a reasonable person to result in a potential conflict of interest for the candidate if the candidate were to be elected to serve as a member of the executive board . . . .

SHCA's December 2023 letter notified Kosor that it would not place his name on the ballot in part because Kosor had sought relief from the 2020 case's judgments against him, and he had filed a new lawsuit against SHCA in November 2023. On his candidate materials, Kosor referenced the suit he filed in 2020 and signaled that he may take additional legal action in the future, directing readers to his campaign website for more information. As SHCA's letter noted, he did not disclose the result of that prior suit, including that the district court awarded SHCA a substantial sum of attorney fees. Nor did he clearly disclose that this case was ongoing, as SHCA had filed a motion for supplemental fees and costs. And less than two weeks after submitting his candidate materials, Kosor filed a motion for relief from judgments attempting to reopen his 2020 case against SHCA. He further initiated another lawsuit against SHCA just a few days later. These new lawsuits following so closely behind Kosor's submission of his candidate materials is additional, circumstantial evidence that he was not acting in good faith in disclosing his potential conflicts of interest.

Under these facts, SHCA has met its second-prong burden of demonstrating with prima facie evidence that Kosor did not "[m]ake a good faith effort to disclose" a "*potential* conflict of interest" as required to run for a position on the Board. NRS 116.31034(9)(a) (emphasis added). Kosor notes that his candidate materials contained a link to his campaign website which had additional disclosures, including that he had been ordered to pay SHCA attorney fees. But NRS 116.31034(9) requires candidates to make all required disclosures "in writing to the association with his or her candidacy information," and so it is significant that Kosor did not disclose that additional information on the face of his candidate materials. Had Kosor been elected to the Board, he could have been in a position to influence the outcome in or settlement of the cases he had pending against the Board—something these facts suggest he may have tried to obscure rather than disclose to the voters per NRS 116.31034(9). At the second prong of the anti-SLAPP analysis, SHCA merely must demonstrate that its claims have "minimal merit." *Wynn*, 140 Nev., Adv. Op. 56, 555 P.3d at 278. It need not establish that it will ultimately prevail. On balance here, SHCA has demonstrated a reasonable probability of succeeding on its NRS 116.31034(9)(a) claim.

Kosor nevertheless asserts that SHCA cannot provide prima facie evidence showing a probability of prevailing on any of its claims because it has not pleaded actual damages as needed to establish a claim under NRS 116.4117.[1] This argument also fails. NRS 116.4117(1), which

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[1]SHCA argues that under the law-of-the-case doctrine, Kosor has improperly raised, both below and again on appeal, this issue and others that the district court decided against him prior to his anti-SLAPP motion. Irrespective of the district court's ability to reconsider its prior rulings,

SCHA cited in its counterclaims, allows any person "suffering actual damages from the failure to comply" with Chapter 116 to sue "for damages or other appropriate relief." Although SHCA's counterclaims are inartfully drafted, it did cite a portion of Nevada's Declaratory Relief Act in each of its counterclaims, asserting an "actual controversy" was "ripe for adjudication concerning the interpretation" of NRS 116.31034's and NRS 116.3113(1)(d)'s application to Kosor and that the district court had power to declare rights under Nevada law pursuant to NRS 30.010. Nevada's declaratory relief statute, NRS 30.030, and NRS 116.4117 "both are independently available to a party seeking declaratory relief" in alleging violations of NRS Chapter 116, "albeit one requires proof of damages, and the other does not." *Piazza v. Spring Mountain Ranch Master Ass'n*, No. 88493-COA, 2025 WL 2180681, at *5 n.6 (Nev. Ct. App. July 31, 2025) (Order of Affirmance) (Bulla, C.J., concurring in part and dissenting in part). Regardless of whether SHCA has pleaded or can show actual damages under NRS 116.4117, SHCA appears to be seeking declaratory relief through its counterclaims and is entitled to do so under NRS 30.030. Kosor's NRS 116.4117(1) argument goes to SHCA's potential recovery as opposed to its ability to prevail at all.[2]

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appellate review of the appealable district court order remains unaffected. *See* NRAP 3A advisory committee's note to 2024 amendment ("Under the merger doctrine, the notice of appeal encompasses all orders—such as interlocutory or temporary orders—that, for purposes of appeal, merge into the designated judgment or appealable order.").

[2]Kosor additionally argues his actions constitute good faith communications under NRS 41.637(4), which protects communications "made in a public forum in direct connection with an issue of public interest." But because he improperly raises this argument for the first time on appeal, and he conceded below that his argument was based only on NRS

The district court therefore did not err in denying Kosor's motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Herndon, C.J.

Pickering, J.

Parraguirre, J.

cc: Hon. Joanna Kishner, District Judge
Persi J. Mishel, Settlement Judge
Hutchison & Steffen, LLC/Las Vegas
Clarkson Law Group, P.C.
Eighth District Court Clerk

41.637(1), this new argument will not be considered. *See Powers v. Powers*, 105 Nev. 514, 516, 779 P.2d 91, 92 (1989) ("A party may not raise a new theory for the first time on appeal, which is inconsistent with or different from the one raised below.").