



IN THE SUPREME COURT OF THE STATE OF NEVADA

KODA PATIOS, LLC, A NEVADA
LIMITED LIABILITY COMPANY, AND
PATRICK NIXON, JR., AN
INDIVIDUAL,
Appellants,
vs.
CHARLES YENCH, AN INDIVIDUAL,
Respondent.

No. 90928

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying an anti-SLAPP special motion to dismiss a slander claim. Eighth Judicial District Court, Clark County; Hon. Erika D. Ballou, Judge.

Patrick Nixon, Jr., a sales representative from Koda Patios, LLC, oversaw installation of a backyard patio cover for Charles Yench. Yench paid only \$16,500 of the \$28,000 contract price and filed a complaint with the Nevada State Contractors Board (NSCB) over the covering's quality. The NSCB arranged to have an investigator examine the patio cover but ultimately found no issues with the installation.

During the inspection, Nixon claims that Yench's wife informed Nixon and the investigator that Yench suffered from dementia. Yench claims that Nixon then informed the NSCB that Yench had dementia.

After the inspection, Yench failed to pay the balance for the patio cover. A few months later, Koda employees removed the patio cover. Nixon requested the Henderson Police Department's presence during the removal for safety purposes. At that time, Nixon also informed law enforcement that Yench suffered from dementia.

After demolition of the patio cover, Yench sued Koda and Nixon for slander and various breach of contract claims. Koda and Nixon filed an anti-SLAPP special motion to dismiss the slander claim and a motion for limited discovery. The court denied both motions, and this appeal followed.

This court reviews 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). A special motion to dismiss requires a two-prong analysis. *Wynn v. Associated Press*, 140 Nev., Adv. Op. 56, 555 P.3d 272, 276 (2024), *cert. denied*, 145 S. Ct. 1434 (2025). Under the first prong, the court must “determine 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.” *Id.* (quoting NRS 41.660(3)(a)). As part of the first prong, the defendant must also demonstrate that the communication “is truthful or is made without knowledge of its falsehood.” *Stark v. Lackey*, 136 Nev. 38, 40, 458 P.3d 342, 345 (2020) (quoting NRS 41.637). If the defendant meets the burden required under prong one then, under the second prong, the burden shifts to the plaintiff to show “with prima facie evidence a probability of prevailing on the claim.” *Wynn*, 140 Nev., Adv. Op. 56, 555 P.3d at 276 (quoting NRS 41.660(3)(b)).

Here, Nixon’s alleged statements to members of the NSCB and Henderson Police Department fall into a class of protected speech. NRS 41.637(2) protects “communication of information or a complaint to a[n] . . . officer or employee of . . . this state or a political subdivision of this state, regarding a matter reasonably of concern to the respective governmental entity.” The NSCB and Henderson Police Department are considered governmental entities for the purposes of NRS 41.637(2). Further, Yench’s

alleged dementia would fall into a matter “reasonably of concern” to both the NSCB and law enforcement.

Allegations that a homeowner suffers from memory impairment logically bear on the reliability of a homeowner’s complaint concerning whether the contractor properly performed work. If a complaining party lacks the capacity to accurately recall events or understand contractual obligations, that fact is reasonably of concern to the NSCB in determining whether disciplinary action is warranted or whether the dispute reflects a misunderstanding. Similarly, the Henderson Police Department was responding to a request for assistance with the removal of installed materials from a contracting party that refused to tender full payment. In that context, information suggesting Yench may suffer from cognitive impairment would assist officers with assessing the safety of the individuals involved in the incident. Therefore, Nixon’s statements were significant to law enforcement decision-making and are protected speech.

In addition, NRS 41.637(2) does not require the communication to involve a matter of broad public interest or be made in a public forum. The statute expressly protects complaints made to governmental entities about matters reasonably within their concern. Here, Yench concedes that Nixon’s statements were made to obtain assistance from law enforcement and the NSCB.

Next under prong one, we consider whether Nixon’s statement was truthful or made without knowledge of its falsehood. *Stark*, 136 Nev. at 43, 458 P.3d at 346-47 (holding that that “[w]ith respect to the second required showing under prong one of the anti-SLAPP analysis . . . an affidavit stating that the defendant believed the communications to be truthful . . . is sufficient to meet the defendant’s burden absent contradictory evidence in the record”).

Nixon provided an affidavit averring his belief that the communication was truthful, and no evidence in the record indicates otherwise. *See id.* at 38-39, 458 P.3d at 344 (affirming under the first prong of the anti-SLAPP analysis, a defendant's affidavit attesting to the truthfulness of the communication, in the absence of conflicting evidence, is sufficient to meet their statutory burden of proof). Yench provided no evidence to the contrary; he simply argued that the affidavit was self-serving. As a result, both steps of prong one are satisfied. We conclude Nixon's statement qualifies as protected speech under Nevada's anti-SLAPP statute.

The district court also denied Nixon and Koda's motion for limited discovery regarding Yench's probability of prevailing on the claim. Yench counters the court was not required to permit discovery because it had determined Koda did not meet prong one.

Nevada's anti-SLAPP scheme allows limited discovery when needed to address the second prong where the information is in the possession of another party or third party and cannot be reasonably obtained without discovery. NRS 41.660(4). Here, Nixon and Koda sought discovery related to Yench's wife's statements to the NSCB and police, Yench's medical records, and the NSCB investigator's recollection of Yench's wife's statements – all information outside of the control of Nixon and Koda. Given that Koda and Nixon satisfied prong one, the refusal to permit limited discovery was an abuse of discretion and we remand to the district court for limited discovery, in accordance with NRS 41.660(4).

Finally, because Nixon and Koda satisfied prong one, the district court erred by declining to consider whether Koda had demonstrated a probability of prevailing on its claim. We decline to assess Koda's claim in the first instance on appeal because of the factual disputes asserted by the parties.

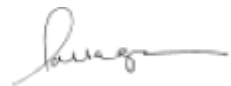
See Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc., 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) ("An appellate court is not particularly well-suited to make factual determinations in the first instance."); *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981) ("[A]n appellate court is not an appropriate forum in which to resolve disputed questions of fact.").

We reverse the denial of the anti-SLAPP motion and remand for the district court to permit limited discovery on the issue of whether Yench can demonstrate a probability of prevailing on his claim and for the district court to make a determination regarding prong two. Accordingly, we

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



Pickering, J.



Parraguirre, J.



Bell, J.

cc: Raich Law PLLC

Royal & Miles, LLP

Erika D. Ballou, District Judge

Persi J. Mishel, Settlement Judge

The Eighth Judicial District Court of the State of Nevada, in and for the
County of Clark, District Court Clerk