



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TYRA BELL-HOLLAND,
Appellant,
vs.
ANTONIO NUNEZ,
Respondent.

No. 90293-COA

ORDER OF AFFIRMANCE

Tyra Bell-Holland appeals from a district court order denying an anti-SLAPP special motion to dismiss pursuant to NRS 41.660. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Respondent Antonio Nunez, Bell-Holland, and several others were involved in a joint business venture The Stove, LLC, (Stove) which operated an eatery in Henderson, Nevada. Nunez and Bell-Holland had also collaborated on another restaurant, The Kitchen Table. After a falling out among the business participants, Nunez opened a new restaurant. On Facebook, Bell-Holland then shared a 2024 article from *Eater Las Vegas* titled “A Sixth New Restaurant Is Going Into That Cursed Corner Lot On Carson Avenue,” which described Nunez’s new venture. In that same Facebook post, Bell-Holland made the following comment:

Cursed is beyond accurate for many reasons (besides the location) and the least of the new investors['] worries. For legal reasons, I have been unable to address the slander.

For the record, said person was NEVER an owner of Kitchen Table, continues to claim it is closing (8+ years later) since being removed from that project, yet it’s his “claim to fame” then repeats the same rhetoric of The Stove, unless needed to parlay or

tout success to another investor. Broken record.
The truth prevails . . . wait for it.

My reputation and character speaks for itself.
Goodness always wins!

Cheers to my amazing partners at The Stove NV-
we have worked so hard in rebuilding everything
and everyone who was careless with our brand and
reputation. Removing liability is key in
sustainability for any business.

Thereafter, Nunez filed a complaint seeking an accounting of Stove and declaratory relief as to the rights, statuses, and relationships of the parties involved in Stove. He further claimed Bell-Holland and other defendants: breached a fiduciary duty to Stove and Nunez; breached the contract with Nunez; breached the contractual covenant of good faith and fair dealing; and tortiously breached the covenant of good faith and fair dealing. Lastly, he claimed that Bell-Holland defamed him in her Facebook post.

Bell-Holland subsequently filed an anti-SLAPP special motion to dismiss pursuant to NRS 41.660. Bell-Holland argued that Nunez's defamation claim constituted a SLAPP suit that aimed to chill the exercise of her First Amendment rights on matters of public concern. She insisted that the complained-of statements were not assertions of fact, but instead her opinion based on her time working with Nunez as a publicist. To the extent her statements could be construed as factual, Bell-Holland maintained that they were true. Bell-Holland further contended that Nunez could not show she acted with actual malice. Nunez opposed the motion.

The district court thereafter denied the special motion to dismiss. It noted that Bell-Holland's statements insinuated that investors in Nunez's business should be worried, that Nunez had nothing to do with

developing Kitchen Table, and that Nunez was a liability at Stove. It determined Bell-Holland's post, taken in the context of the prior business relationship and ownership dispute between Nunez and Bell-Holland, did not constitute communication on an issue of public interest. The district court did not make any findings regarding whether Nunez demonstrated a probability of prevailing on the defamation claim. *See* NRS 41.660(3)(b). This appeal followed.

On appeal, Bell-Holland challenges the denial of her anti-SLAPP special motion to dismiss. Bell-Holland argues that the district court erred in concluding that the challenged statements were not covered under the anti-SLAPP legislation's broad protection for matters of public concern. Citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 57 P.3d 82 (2002), and Upton Sinclair's *The Jungle*, she contends that speech about the food service industry necessarily implicates matters of concern to the public at large. Further, Bell-Holland argues the fact that the news article features Nunez and describes his current and previous endeavors satisfies several public interest factors. *See Shapiro v. Welt*, 133 Nev. 35, 39, 389 P.3d 262, 268 (2017). Additionally, she contends that her comments were business criticism which is protected speech under Nevada law.

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) (holding that "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"); *see* NRS 41.660(1)(a). This court reviews a district court order denying an anti-SLAPP motion to dismiss *de novo*. *Smith v. Zilverberg*, 137 Nev. 65, 67, 481 P.3d 1222, 1227 (2021).

A district court may grant an anti-SLAPP motion to dismiss only when both prongs of NRS 41.660 are satisfied. 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 petition or the right to free speech in direct connection with an issue of public concern.” *Stark v. Lackey*, 136 Nev. 38, 40, 458 P.3d 342, 345 (2020) (quoting NRS 41.660(3)(a)). 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. “If successful [at meeting the first prong], the district court advances to the second prong, whereby the burden shifts to the plaintiff to show with prima facie evidence a probability of prevailing on the claim.” *Coker*, 135 Nev. at 12, 432 P.3d at 749 (internal quotation marks omitted). “Otherwise, the inquiry ends at the first prong, and the case advances to discovery.” *Id.*

In this case, Bell-Holland contends that the relevant category of speech under NRS 41.637(4) 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, which is truthful or is 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 principles set forth in *Shapiro*, 133 Nev. at 39, 389 P.3d at 268. *See Coker*, 135 Nev. at 13, 432 P.3d at 750. 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. 133 Nev. at 39, 389 P.3d at 268.

Here, Bell-Holland failed to establish by a preponderance of the evidence that the comments in her Facebook post constituted communication on an issue of public interest. See NRS 41.660(3)(a); NRS 41.637(4). Bell-Holland relies on *Pegasus* and invokes Upton Sinclair’s *The Jungle*, to support her position that, because her comments related to a restaurant, they were comments on a matter of public concern. This argument is not persuasive. *Pegasus* held that restaurants could be considered limited public figures for the purposes of food reviews because restaurants hold themselves out to the public in order to attract customers. 118 Nev. at 720-21, 57 P.3d at 91-92. *The Jungle* famously described dangerous conditions and practices in the meat packing industry in the early twentieth century. *Animal Legal Def. Fund v. Wasden*, 878 F.3d 1184, 1189 (9th Cir. 2018).

In contrast, Bell-Holland’s post did not address Nunez’s conduct in the public facing aspect of his business. She did not discuss the quality of the food served in Nunez’s new establishment or allege that there were safety concerns with the food served to the public. See *Shapiro*, 136 Nev. at 39, 389 P.3d at 268 (requiring matter of public interest to be of concern to a substantial number of people). Instead, her comments referred to grievances based on the deterioration of Nunez’s prior business

relationships and potential impact on investors in his new venture, and Bell-Holland did not demonstrate those grievances applied to more than “a relatively small specific audience.” *Id.* Moreover, Bell-Holland was unable to transform an otherwise private matter into a matter of public interest by sharing it with her followers. *See id.* Applying the *Shapiro* factors, Bell-Holland did not demonstrate sufficient closeness between the public concerns involved in the food service industry she identifies on appeal and the private controversy she described in the post.

Thus, we determine that Bell-Holland did not meet the first of the required prongs of NRS 41.660 that was necessary for a successful anti-SLAPP special motion to dismiss, *see id.*, and the district court thus correctly ended its inquiry and denied Bell-Holland’s motion without consideration of the second prong of NRS 41.660, *see Coker*, 135 Nev. at 12, 432 P.3d at 749. Accordingly, we conclude that the district court did not err in denying the special motion to dismiss and we

ORDER the judgment of the district court AFFIRMED.¹



Bulla, C.J.



Gibbons, J.



Westbrook, J.

¹Insofar as Bell-Holland raises arguments that are not specifically addressed in this order, we have considered them and conclude that they either do not present a basis for relief or need not be reached given our disposition of this appeal.

cc: Hon. Mark R. Denton, District Judge
Israel Kunin, Settlement Judge
Holland & Hart LLP/Las Vegas
Antonio Nunez
Eighth District Court Clerk