FILED
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ELIZABETH A. BROWN
CLERK OF SUPREME COURT

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SHEIDA HUKMAN,
Appellant,
vs.
DR. KAREN LEAH CRUEY,
Respondent.

No. 91068-COA

ORDER OF AFFIRMANCE

Sheida Hukman appeals from a district court order dismissing the complaint in a tort action. Eighth Judicial District Court, Clark County; Hon. Joseph Hardy, Jr., Judge.

Hukman worked as a customer service agent for US Airways. In 2011 and 2012, Hukman filed several complaints with the Federal Aviation Administration concerning alleged violations of administrative regulations as well as complaints with the Equal Employment Opportunity Commission regarding alleged discrimination that occurred during her employment. Anticipating litigation, US Airways required Hukman to submit to a company-paid independent medical examination (IME). We note that the IME was in fact used during subsequent litigation. In January 2013, respondent Dr. Karen Leah Cruey, a psychiatrist, performed the IME and diagnosed Hukman with various psychiatric disorders. Hukman was subsequently removed from employment.

In 2015, Hukman filed a complaint with the United States Department of Labor generally alleging that US Airways took retaliatory actions against her for reporting unsafe conditions and discrimination. In

2021, Cruey testified during a hearing in that matter concerning her examination of Hukman, the materials provided to her by US Airways for her use during the examination, and her 2013 IME report. The administrative law judge ultimately determined that US Airways violated the whistleblower provision of 49 U.S.C § 42121 when it placed Hukman on unpaid medical leave pending evaluation by Cruey, but, as to the other alleged adverse actions, found that US Airways would have taken the same action even absent protected activity.

In 2023, Hukman filed the instant action against Cruey, alleging various torts related to the 2013 IME and Cruey's testimony at the 2021 administrative law hearing. The district court entered an order dismissing Hukman's complaint, resulting in the appeal in *Hukman v. Cruey*, No. 87363-COA, 2025 WL 210345 (Nev. Ct. App. Jan. 15, 2025) (Order Affirming in Part, Reversing in Part, and Remanding). In that appeal, this court affirmed the portion of the district court's order dismissing Hukman's claims against Cruey that sounded in professional negligence but reversed and remanded the dismissal of her claims for defamation and false testimony, which related to the 2013 IME and 2021 administrative law hearing. *Id.* In doing so, we expressly allowed the district court to address Cruey's arguments related to the anti-SLAPP statutes, the absolute litigation privilege, and Hukman's ability to demonstrate damages related to her defamation claims, which were raised for the first time in the prior appeal. *Id.* at *3 n.2.

Following remand, Cruey moved to dismiss Hukman's remaining claims under NRS 41.660. In her motion, Cruey argued that the 2013 IME at issue here is akin to an NRCP 35 examination. Because the 2013 IME was in anticipation of litigation and used at the 2021 administrative law hearing, Cruey argued she was immune from suit for the claimed defamatory

statements at issue under the anti-SLAPP statutes or through the absolute litigation privilege. Likewise, Cruey argued that the testimony she presented at the 2021 administrative law hearing was also covered by the privilege. Cruey also argued that Hukman could not prove damages for her defamation claim. Hukman opposed, arguing that Cruey's statements were made in bad faith and that Nevada's anti-SLAPP statutes do not apply to false testimony. After briefing was completed, the district court held a hearing on the motion.

Following the hearing, the district court entered an order granting Cruey's motion to dismiss under NRS 41.660 and, in the alternative, NRCP 12(b)(5). In that order, the district court found that the absolute litigation privilege applied to the written statements in the 2013 IME as well as Cruey's testimony during the 2021 administrative law hearing before the US Department of Labor. Specifically, the district court found that the absolute litigation privilege extends to communications that are preliminary to a proposed judicial proceeding, such as an NRCP 35 examination, and as to the 2021 hearing, Hukman could not overcome the absolute litigation privilege as Cruey's testimony was provided in court.

Next, the district court analyzed whether Cruey's statements were entitled to immunity under Nevada's anti-SLAPP statutes. The district court concluded that the challenged statements from the 2013 IME and the 2021 testimony constituted "[w]ritten or oral statement[s] made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law" under NRS 41.637(3). The district court also found that Cruey met her burden of proof to demonstrate by a preponderance of the evidence that the communications were made in good faith. In doing so, the court found that Hukman failed to produce any compelling evidence to demonstrate "anything other than good faith" on

Cruey's behalf, and that the documentation Hukman produced generally supports the finding that Cruey acted in good faith. Next, the district court found that Hukman had not demonstrated a possibility of prevailing on the claim as the claim is barred by the absolute litigation privilege.

In the alternative, the district court found that Hukman did not state a claim for relief under NRCP 12(b)(5) based on the absolute litigation privilege, and because Hukman represented during the hearing that she prevailed in the 2021 action against US Airways and therefore could not demonstrate damages as a result of the alleged defamatory statements. Based on these findings, the district court dismissed Hukman's claims with prejudice. Hukman now appeals.

On appeal, Hukman generally argues that the district court erred in granting the anti-SLAPP special motion to dismiss as the challenged statements in the 2013 IME report and 2021 testimony were fraudulent and made in bad faith. She also argues that the district court erred when it determined she could not prove damages related to her defamation claim.

This court reviews the application of anti-SLAPP statutes, and the absolute litigation privilege de novo. *See Williams v. Lazer*, 137 Nev. 437, 439, 495 P.3d 93, 96–97 (2021) (anti-SLAPP); *Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 382, 213 P.3d 496, 502 (2009) (absolute litigation privilege). Reviewing the record and the district court's decision de novo, we conclude that the district court did not err when it determined that Cruey's statements in the 2013 IME and her testimony during the 2021 hearing were subject to protection under our anti-SLAPP statutes and the absolute litigation privilege. The district court must grant an anti-SLAPP special motion to dismiss where (1) the defendant shows, by a preponderance of the evidence, that the claim is based on a "good faith communication in furtherance

of . . . the right to free speech in direct connection with an issue of public concern" and (2) the plaintiff fails to show, with prima facie evidence, a probability of prevailing on the claim. *Williams*, 137 Nev. at 439–40, 495 P.3d at 97; *see also* NRS 41.660(3). "[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.* at 443, 495 P.3d at 99.

Our review of Hukman's complaint reveals that the statements made in the 2013 IME were made in direct connection with anticipated litigation following Hukman's administrative complaints, and qualify as good faith communications under NRS 41.637(3) (defining a good faith communication in direct connection with an issue of public concern as a statement with a 'direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law"). Similarly, the record demonstrates that all challenged statements related to Cruey's 2021 testimony, which was provided in an administrative hearing, also qualify under NRS 41.637(3). Further, as noted by the district court in its order, Cruey met her burden to establish that the statements were either truthful or made without knowledge of falsehood, as all evidence presented below—including the evidence produced by Hukman—was probative of the fact that Cruey's testimony and the 2013 IME were without falsehood. *Stark v. Lackey*, 136 Nev. 38, 40, 458 P.3d 342, 345 (2020). We now turn to the application of the absolute litigation privilege.

"In order for the absolute litigation privilege to apply to statements made in the context of judicial or quasi-judicial proceedings, (1) a judicial proceeding must be contemplated in good faith and under serious consideration, and (2) the communication must be related to the litigation."

See Williams, 137 Nev. at 445, 495 P.3d at 100 (internal quotation marks omitted). We conclude that the absolute litigation privilege applies to the statements contained within the 2013 IME as it appears from the record that the IME was prepared and was related to anticipated litigation following Hukman's administrative complaints. *Id.*; *see also Fink v. Oshins*, 118 Nev. 428, 433, 49 P.3d 640, 644 (2002) ("[T]he privilege applies not only to communications made during actual judicial proceedings, but also to communications preliminary to a proposed judicial proceeding." (internal quotation marks omitted)). We likewise conclude that Cruey's 2021 testimony falls under the scope of the absolute litigation privilege, as the statements were made under oath during proceedings before an administrative law judge at the United States Department of Labor. *See Williams*, 137 Nev. at 445, 495 P.3d at 100. And because the absolute litigation privilege applies, Hukman cannot prove a probability of prevailing on her claim. *Id.* at 443, 495 P.3d at 99. Thus, Hukman fails to demonstrate that the district court erred by dismissing her defamation claim under Nevada's anti-SLAPP statutes.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[1]

Bulla, C.J.

Gibbons, J.

Westbrook, J.

[1]Insofar as Hukman raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. Joseph Hardy Jr., District Judge
John H. Cotton & Associates, Ltd.
Sheida Hukman
Eighth District Court Clerk