

SUPREME COURT OF NEVADA

Robert Darby Vannah, Esq.; John Buchcanan Greene, Esq.; Robert D. Vannah, Chtd., d/b/a Vannah & Vannah; Edgeworth Family Trust; American Grating, LLC; and Brian Mar Edgeworth and Angela Euzabe Edgeworth, Individually, as Husband and Wife v. The Law Office of Daniel S. Simon, a Professional Corporation; and Daniel S. Simon

Vannah v. Law Office of Daniel S. Simon · No. 82058 · Decided March 31, 2022

SUMMARY

The Nevada Supreme Court reversed and remanded district court orders denying anti-SLAPP special motions to dismiss. The court held that the district court erred by permitting the plaintiffs to amend their complaint after the motions were filed and by relying on the amended complaint in conducting the anti-SLAPP analysis.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	J. Hardesty; J. Stiglich; J. Herndon
JURISDICTION	Nevada
DECIDED	March 31, 2022
DOCKET	82058
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from district court orders denying appellants' anti-SLAPP special motions to dismiss.
STANDARD OF REVIEW	De novo review of the district court's denial of an anti-SLAPP special motion to dismiss.
PRECEDENTIAL VALUE	Published Nevada Supreme Court order; precedential status is not otherwise stated in the opinion text.
PARTIES	Robert Darby Vannah, Esq., John Buchcanan Greene, Esq., Robert D. Vannah, Chtd., d/b/a Vannah & Vannah, Edgeworth Family Trust, American Grating, LLC, Brian Mar Edgeworth, Angela Euzabe

TOPICS

motions to dismiss

pleadings

standard of review

appellate procedure

civil procedure

PRACTICE AREAS

Civil procedure

Appellate procedure

Anti-SLAPP litigation

QUESTIONS PRESENTED

1. Whether the district court erred by permitting respondents to amend their complaint after appellants filed anti-SLAPP special motions to dismiss.
2. Whether the district court erred by relying on the amended complaint rather than the original complaint in ruling on the pending anti-SLAPP motions.

HOLDINGS

1. The district court erred by permitting respondents to file an amended complaint while appellants' anti-SLAPP special motions to dismiss were pending.
2. The district court must conduct its anti-SLAPP analysis based on the original complaint when the amended complaint was filed after the anti-SLAPP special motion to dismiss.

KEY QUOTATIONS

“On remand, the district court should conduct its anti-SLAPP analysis based on respondents' original complaint.” (at 2)

FACTUAL BACKGROUND

Appellants filed anti-SLAPP special motions to dismiss. After those motions were filed, respondents filed an amended complaint, and the district court ruled that the amended complaint governed. The district court then relied on the amended complaint in determining that appellants had not satisfied the first step of the anti-SLAPP analysis.

PROCEDURAL HISTORY

Respondents filed an amended complaint after appellants had filed anti-SLAPP special motions to dismiss. The district court determined that the amended complaint governed and relied on it in denying the motions at the first step of the anti-SLAPP analysis. The Nevada Supreme Court reversed and remanded, directing the district court to conduct the anti-SLAPP analysis using the original complaint.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must conduct its anti-SLAPP analysis based on respondents' original complaint.

CASES CITED

- Williams v. Lazer, 137 Nev., Adv. Op. 44, 495 P.3d 93, 96-97 (2021)
- Dickinson v. Cosby, 225 Cal. Rptr. 3d 430, 450-51 (Ct. App. 2017)
- Salma v. Capon, 74 Cal. Rptr. 3d 873, 888-89 (Ct. App. 2008)
- Coker v. Sassone, 135 Nev. 8, 11, 432 P.3d 746, 749 (2019)

OPINION

Vannah, Esq. v. The Law Office Of Daniel S. Simon

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT DARBY VANNAH, ESQ.; No. 82058

JOHN BUCHCANAN GREENE, ESQ.;

ROBERT D. VANNAH, CHTD., D/B/A

VANNAH & VANNAH; EDGEWORTH FILED

FAMILY TRUST; AMERICAN

GRATING, LLC; AND BRIAN MAR 3 1 2022

EDGEWORTH AND ANGELA EUZABE A. BROWN

EDGEWORTH, INDIVIDUALLY, AS CLERK OF PREME COURT

HUSBAND AND WIFE, CLERK

Appellants, vs. THE LAW OFFICE OF DANIEL S.

SIMON, A PROFESSIONAL

CORPORATION; AND DANIEL S.

SIMON,

Respondents.

ORDER OF REVERSAL AND REMAND

These are appeals from district court orders denying anti-SLAPP special motions to dismiss. Eighth Judicial District Court, Clark County; James Crockett, Judge. Appellants argue that the district court erred by (1) allowing respondents to amend their complaint after they filed anti-SLAPP special motions to dismiss, and (2) relying on the amended complaint to deny their anti-SLAPP special motions to dismiss. We agree. We review de novo the district court's denial of an anti-SLAPP special motion to dismiss. Williams v. Lazer, 137 Nev., Adv. Op. 44, 495 P.3d 93, 96-97 (2021). A two-step analysis guides our review. Id., 495 P.3d at 97. At the first step, the

defendant must show "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 defendant makes this showing, step two of the analysis "determine[s] whether the plaintiff has demonstrated with prima facie evidence a probability of prevailing on the claim." NRS 41.660(3)(b). After appellants filed their anti-SLAPP special motions to dismiss, respondents filed an amended complaint. At a status hearing, the district court determined that respondents amended complaint governed. Later, the district court relied on respondents' amended complaint to conclude appellants did not meet their burden under step one of the anti-SLAPP analysis to show that the complained-of statements were good faith communications which were truthful or made without knowledge of falsity. Thus, the district court denied appellants' anti-SLAPP special motions to dismiss at step one. We conclude that the district court erred when it permitted respondents to file an amended complaint while the appellants' anti-SLAPP special motions to dismiss were pending and then relied on the amended complaint to deny the motions. See *Dickinson v. Cosby*, 225 Cal. Rptr. 3d 430, 450-51 (Ct. App. 2017) (explaining that a plaintiff may file an amended complaint before the defendant files an anti-SLAPP motion to dismiss); *Salma v. Capon*, 74 Cal. Rptr. 3d 873, 888-89 (Ct. App. 2008) (holding that a plaintiff cannot amend a complaint after an anti-SLAPP motion to dismiss has been filed); see also *Coker v. Sassone*, 135 Nev. 8, 11, 432 P.3d 746, 749

(2019) (recognizing that this court routinely looks to California courts for guidance in applying Nevada's anti-SLAPP statutes). Because respondents' amended complaint was not filed before appellants filed their anti-SLAPP 2 special motions to dismiss, the district court erred by relying on respondents amended complaint to deny appellants' anti-SLAPP special motions to dismiss. On remand, the district court should conduct its anti-SLAPP analysis based on respondents' original complaint. Accordingly, we ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.' , J. Hardesty J. Stiglich J. Herndon cc: Chief Judge, Eighth Judicial District Court Eighth Judicial District Court, Department 24 'Although the parties raise additional arguments regarding the district court's anti-SLAPP analysis, we need not reach them because the district court erroneously relied on respondents' amended complaint. Thus, we do not reach the parties' arguments regarding issue preclusion, the litigation privilege, whether respondents had leave of court to amend their complaint, or whether the district court erroneously denied appellant's anti-SLAPP special motions to dismiss at step one.

SUPREME COURT

OF

NEVADA

3 10) I 947A 4014, William C. Turner, Settlement Judge Messner Reeves LLP Patricia A. Marr, Ltd. Morris Law Group Christiansen Trial Lawyers Eighth District Court Clerk

SUPREME COURT

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