

OCT 28 2014

NYE COUNTY DEPUTY CLERK
DEPUTY

Electronically Filed
Nov 13 2014 01:20 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

LAW OFFICE OF DANIEL MARKS
DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
ADAM LEVINE, ESQ.
Nevada State Bar No. 004673
610 South Ninth Street
Las Vegas, Nevada 89101
(702) 386-0536; FAX (702) 386-6812
Attorneys for Plaintiffs

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

RAYMOND DELUCCHI and
TOMMY HOLLIS,

Case No. CV35969
Dept. No. I

Plaintiffs,

v.

PAT SONGER and ERICKSON,
THORPE & SWAINSTON, LTD.,

NOTICE OF APPEAL

Defendants.

Plaintiffs Raymond Delucchi and Tommy Hollis hereby appeal the Findings of Fact,
Conclusions of Law and Order Granting Erickson, Thorpe and Swainston's Special Motion to Dismiss
entered in this action on September 17, 2014. (Exhibit "1" attached hereto).

DATED this 27th day of October, 2014.

LAW OFFICE OF DANIEL MARKS

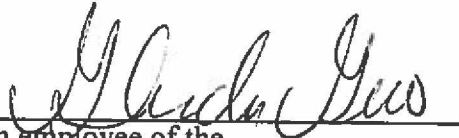
DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
ADAM LEVINE, ESQ.
Nevada State Bar No. 004673
610 South Ninth Street
Las Vegas, Nevada 89101
(702) 386-0536; FAX (702) 386-6812
Attorneys for Plaintiffs

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS, and that on the 27th day of October, 2014, I did deposit in the United States Post Office, at Las Vegas, Nevada, in a sealed envelope with first class postage fully prepaid thereon, a true and correct copy of the foregoing NOTICE OF APPEAL, to the addresses as follows:

Todd Alexander, Esq.
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Suite 300
Reno, Nevada 89519
Attorneys for Defendant ETS

Joseph P. Garin, Esq.
Siria L. Gutierrez, Esq.
LIPSON, NEILSON, COLE, SELTZER GARIN
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Attorneys for Defendant Pat Songer


An employee of the
LAW OFFICE OF DANIEL MARKS

SEP 17 2014

NYE COUNTY DEPUTY CLERK
DEPUTY
Patricia Couture

Case No. CV35969

Dept. No. 1

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

RAYMOND DELUCCI and TOMMY
HOLLIS,

Plaintiff,

v.

PAT SONGER and ERICKSON, THORPE
& SWAINSTON, LTD.,

Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
GRANTING DEFENDANT ERICKSON, THORPE & SWAINSTON'S SPECIAL
MOTION TO DISMISS

Defendant ERICKSON, THORPE & SWAINSTON, LTD. ("ETS"), has filed a Special Motion to Dismiss pursuant to Nevada's anti-SLAPP statute. Plaintiffs have opposed the motion, and ETS has replied in support thereof. Additionally, this Court ordered supplemental briefing on two issues: (1) which version of the statute applies (pre or post 2013 amendments); and (2) whether a deficient investigation can still result in a good faith communication entitled to protection under Nevada's anti-SLAPP statute. Both parties have provided supplemental briefing as ordered. Furthermore, this Court heard oral argument from all involved parties on August 27, 2014. Having carefully considered all parties' briefing and oral argument, this Court finds and concludes as follows:

FINDINGS OF FACT

1. Plaintiffs Delucchi and Hollis, in their capacity as employees of the Pahrump Valley Fire and Rescue Service ("PVFRS"), were involved in an incident on Highway 160 (the

1 "Highway 160 incident"), in which the ambulance they were operating was flagged down by
2 passing motorists, James and Brittnie Choyce.

3 2. At the time of the Highway 160 incident, Brittnie Choyce had given birth to a stillborn
4 fetus, and she and her husband sought to have Brittnie taken by Plaintiffs' PVFRS ambulance
5 to a hospital in Las Vegas, Nevada.
6

7 3. For reasons that remain in dispute between the parties, but are not pertinent to this
8 decision, Plaintiffs did not ultimately transport Brittnie Choyce in the PVFRS ambulance.

9 4. Shortly after the Highway 160 incident, the Town of Pahrump received a telephone
10 complaint from Brittnie Choyce's mother regarding Plaintiffs' conduct during the Highway
11 160 incident.
12

13 5. The Town of Pahrump retained Rebecca Bruch, attorney and partner at BTS, to
14 coordinate an investigation into the Highway 160 incident. In turn, Ms. Bruch retained
15 Defendant Pat Songer as an independent investigator to conduct the investigation into the
16 Highway 160 incident.

17 6. During his investigation, Mr. Songer reviewed a synopsis of the complaint the Town
18 of Pahrump had received via telephone from Brittnie Choyce's mother. The synopsis was
19 drafted by the Town employee who had taken the telephone call.
20

21 7. Mr. Songer also reviewed notes of an interview with James and Brittnie Choyce by
22 Fire Chief Scott Lewis and Lt. Moody. Mr. Songer was not able to personally interview Mr.
23 and Mrs. Choyce because Brittnie had refused to speak with anyone about the Highway 160
24 incident, and James had committed suicide.

25 8. During the course of his investigation, Mr. Songer also interviewed Plaintiffs Delucchi
26 and Hollis.
27

28 9. After completing his investigation, Mr. Songer prepared a report to the Town of

1 concern," as that phrase is defined in NRS 41.637(2) and (3). Specifically, Mr. Songer's
2 investigative report was a communication of information to the Town of Pahrump regarding a
3 matter reasonably of concern to the Town. NRS 41.637(2). Additionally or alternatively, Mr.
4 Songer's report was a written statement made in direct connection with an issue under
5 consideration by the Town of Pahrump. NRS 41.637(3).
6

7 3. ETS has further shown that Mr. Songer's report was made without knowledge of its
8 falsehood. Although Plaintiffs have called into question the sufficiency of Mr. Songer's
9 investigation and the accuracy of the information contained in Mr. Songer's report, this Court
10 concludes that Plaintiffs have not presented evidence showing that said information was
11 knowingly false. Stated differently, this Court concludes that, even if it is established that Mr.
12 Songer's investigation was inadequate and the contents of his report were inaccurate, Mr.
13 Songer's report is still entitled to the protections of Nevada's anti-SLAPP statute, as long as
14 the report was not knowingly false. Thus, this Court concludes that Mr. Songer acted in good
15 faith in submitting his investigative report to the Town of Pahrump.
16

17 4. This preliminary showing having been made, the burden shifted to Plaintiffs to show,
18 by clear and convincing evidence, a probability of prevailing on their claims. NRS
19 41.660(3)(b).
20

21 5. Plaintiffs have not met their burden of showing, by clear and convincing evidence, a
22 probability of prevailing on their claims.

23 ORDER

24 NOW, THEREFORE, IT IS HEREBY ORDERED that Defendant Brickson,
25 Thorpe & Swainston's Special Motion to Dismiss is GRANTED.
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IT IS FURTHER ORDERED that ETS shall have 30 days from the date of this Order to file a motion for costs, attorney's fees and other monetary relief, pursuant to NRS 41.670. Plaintiffs shall then have 30 days, from the date such motion is filed, in which to file an opposition to said motion. ETS shall then have 10 days in which to file a reply in support of its motion.

Dated: September 17th, 2014.

By: KIMBERLY A. WANKER
DISTRICT COURT JUDGE

OCT 28 2014

NYE COUNTY DEPUTY CLERK
DEPUTY

LAW OFFICE OF DANIEL MARKS
DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
ADAM LEVINE, ESQ.
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Las Vegas, Nevada 89101
(702) 386-0536; FAX (702) 386-6812
Attorneys for Plaintiffs

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

RAYMOND DELUCCHI and
TOMMY HOLLIS,

Case No. CV35969
Dept. No. I

Plaintiffs,

v.

PAT SONGER and ERICKSON,
THORPE & SWAINSTON, LTD.,

Defendants.

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

Raymond Delucchi and Tommy Hollis.

2. Identify the judge issuing the decision, judgment or order appealed from:

District Court Judge Kimberly A. Wanker

3. Identify each appellant and the name and address of counsel for each appellant:

Raymond Delucchi and Tommy Hollis, Appellants;

Adam Levine, Esq., Law Office of Daniel Marks, 610 South Ninth Street, Las Vegas,
Nevada 89101.

- 1 4. Identify each respondent and the names and address of appellant counsel, if
2 known, for each respondent (if the names of a respondent's appellant counsel is
3 unknown, indicate as much and provide the name and address of that respondents
4 trial counsel):

5 Pat Songer, Respondent;

6 Jospeh P. Garin, Esq., Siria L. Gutierrez, Esq., Lipson, Neilson, Cole, Seltzer Garin, 9900
7 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144, counsel for Respondent Pat
8 Songer.

9 Erickson Thorpe & Swainston, Respondent;

10 Todd Alexander, Esq., Lemons, Grundy & Eisenberg, 6005 Plumas Street, Suite 300, Reno,
11 Nevada 89519, counsel for Respondent Erickson Thorpe & Swainston.

- 12 5. Indicate whether any attorney identified above in response to question 3 or 4 is not
13 licensed to practice law in Nevada and, if so, whether the district court granted
14 that attorney permission to appear under SCR 42 (attach a copy of any district
15 court order granting such permission):

16 n/a

- 17 6. Indicate whether appellant was represented by appointed or retained counsel in
18 district court:

19 Appellants were represented by retained counsel.

- 20 7. Indicate whether appellant was representing by appointed or retained counsel on
21 appeal:

22 Appellants are being represented by retained counsel.

- 23 8. Indicate whether appellant is granted leave to proceed in forma pauperis, and the date of
24 entry of the district court order granting such leave:

25 n/a

9. Indicate the date the proceedings commenced in the district court:

The Complaint was filed on June 4, 2014.

1 **10. A brief description of the nature of the action and result in the district court:**

2 The appellants filed an action for defamation and intentional infliction of emotional distress
3 resulting from a paid for report which caused the appellants to be terminated. The respondents filed
4 special Motions to Dismiss under Nevada's Anti-SLAPP statutes. The Motions were granted.

5 **11. Indicate whether this case has previously been the subject on appeal:**

6 No.

7 **12. Indicate whether this appeal involves child custody or visitation:**

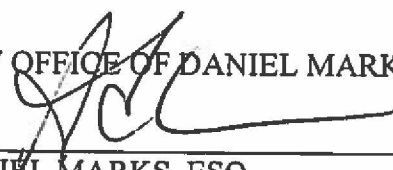
8 No.

9 **13. Indicate whether this appeal involves the possibility of settlement:**

10 Yes.

11 DATED this 27th day of October, 2014.

12 LAW OFFICE OF DANIEL MARKS

13 
14 DANIEL MARKS, ESQ.
15 Nevada State Bar No. 002003
16 ADAM LEVINE, ESQ.
17 Nevada State Bar No. 004673
18 610 South Ninth Street
19 Las Vegas, Nevada 89101
20 (702) 386-0536: FAX (702) 386-6812
21 *Attorneys for Plaintiffs*
22
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Todd Alexander, Esq.
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Suite 300
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Attorneys for Defendant ETS

Joseph P. Garin, Esq.
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Las Vegas, Nevada 89144
Attorneys for Defendant Pat Songer

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Case #: CV-0035969

Judge: WANKER, KIMBERLY A.

Date Filed: 06/05/14 Department: 01

Case Type: SLNDR TORT/MISCON DEFAMATION

Title/Caption: RAYMOND DELUCCHI and
TOMMY HOLLIS
vs
PAT SONGER and
ERICKSON, THORPE & SWAINSTON, LTD.,
Plaintiffs

Comments: FILE IN TONOPAH

Defendant(s)
SONGER, PAT

Attorney(s)
No "Attorney 1" Listed

Defendant(s)
ERICKSON, THORPE & SWAINSTON

Attorney(s)
ALEXANDER, TODD R.

Plaintiff(s)
DELUCCHI, RAYMOND

Attorney(s)
MARKS, DANIEL

Plaintiff(s)
HOLLIS, TOMMY

Attorney(s)
MARKS, DANIEL

Filings:

Date	Pty	Filing	Fees
6/04/14	P	COMPLAINT (2 PLAINTIFFS)	275.00
6/04/14	C	SUMMONS-PAT SONGER (ISSUED)	
6/04/14	C	SUMMONS-ERICKSON, THORPE & SWAINSTON, LTD (ISSUED)	
7/02/14	P	SUMMONS/AFFIDAVIT OF SERVICE (ERICKSON, THORPE... - 6/10/14)	
7/11/14	P	ANSWER AND COMPLAINT	198.00
7/24/14	D	DEFENDANT PAT SONGER'S SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660	198.00
7/24/14	D	INITIAL APPEARANCE FEE DISCLOSURE	
7/25/14	P	SUMMONS RETURN SERVED -PAT SONGER (7/4/14)	
7/29/14	D	RECEIPT OF COPY OF DEFENDANT PAT SONGER'S SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660 ***** END OF FILE # 1 *****	
7/29/14	P	OPPOSITION TO DEFENDANT PAT SONGER'S SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660 ***** END OF FILE # 2 *****	
7/30/14	D	SPECIAL MOTION TO DISMISS UNDER NEVADA'S ANTI-SLAPP STATUTES (NRS 41.635, ET SEQ)	
8/01/14	D	DEFENDANT PAT SONGER'S REPLY IN SUPPORT OF HIS SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660	
8/09/14	D	RECEIPT OF COPY OF DEFENDANT PAT SONGER'S REPLY IN SUPPORT OF SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660	
8/15/14	P	OPPOSITION TO DEFENDANT ERICKSON, THORPE & SWAINSTON'S *****END OF FILE #3***** SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660.	
8/15/14	D	DEFENDANT ERICKSON, THORPE, & SWAINSTON'S SUPPLEMENTAL BRIEF	

8/18/14	D	DEFENDANT PAT SONGER'S SUPPLEMENTAL BRIEF IN SUPPORT OF HIS SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660	
8/18/14	P	SUPPLEMENT AUTHORITIES REGARDING ANTI-SLAPP STATUTES	
8/25/14	D	DEFENDANT ERICKSON, THROPE & SWAINSTON'S REPLY IN SUPPORT OF SPECIAL MOTION TO DISMISS	
9/17/14	C	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING DEFENDANT REICKSON, THORPE & SWAINSTON'S SPECIAL MOTION TO DISMISS	
9/25/14	D	DEFENDANT ERICKSON, THORPE & SWAINSTON'S MOTION FOR COSTS, ATTORNEY'S FEES, AND ADDITIONAL COMPENSATION PURSUANT TO NEVADA'S ANTI-SLAPP STATUTE (NRS 41.670)	
9/25/14	D	MEMORANDUM OF COSTS	
9/26/14	D	DEFENDANT PAT SONGER'S MOTION FOR ATTORNEY'S FEES AND COSTS *****END OF FILE #4*****	
10/01/14	D	DEFENDANT ERICKSON, THROPE & SWAINSTON'S AMENDED MEMORANDUM OF COSTS	
10/01/14	D	ERRATA TO DEFENDANT ERICKSON, THORPE & SWAINSTON'S MOTION FOR COSTS, ATTORNEY'S FEES, AND ADDITIONAL COMPENSATION PURSUANT TO NEVADA'S ANTI-SLAPP STATUTE (NRS 41.670)	
10/01/14	P	PLAINTIFFS' MOTION TO RETAX COSTS	
10/07/14	D	NOTICE OF ENTRY OF ORDER	
10/10/14	D	DEFENDANT ERICKSON, THORPE & SWAINSTON'S OPPOSITION TO PLAINTIFFS' MOTION TO RETAX COSTS	
10/10/14	P	OPPOSITION TO DEFENDANT'S PAT SONGER'S AND ERICKSON, THORPE & SWAINSTON'S MOTION FOR ATTORNEY'S FEES AND COSTS AND ADDITIONAL COMPENSATION; COUNTERMOTION TO STAY	
10/17/14	D	DEFENDANT ERICKSON, THORPE & SWAINSTON'S REPLY IN SUPPORT OF ITS MOTION FOR COSTS, ATTORNEY'S FEES, AND ADDITIONAL COMPENSATION PURSUANT TO NEVADA'S ANTI-SLAPP STATUTE NRS 41.670	
10/17/14	D	REQUEST FOR SUBMISSION	
10/27/14	D	DEFENDANT PAT SONGER'S REPLY IN SUPPORT OF HIS MOTION FOR ATTORNEY'S FEES AND COSTS	
10/28/14	P	NOTICE OF APPEAL	24.00
10/28/14	P	NOTICE OF FILING COST BOND FOR APPEAL	500.00
10/28/14	P	CASE APPEAL STATEMENT	250.00
10/30/14	D	DEFENDANT ERICKSON, THORPE & SWAINSTON'S LIMITED OPPOSITION TO PLAINTIFFS' COUNTERMOTION FOR STAY OF ENFORCEMENT OF AWARD OF COSTS, ATTORNEY'S FEES, AND ADDITIONAL COMPENSATION	

Case #: CV-0035969

Judge: WANKER, KIMBERLY A.

Date Filed: 06/05/14 Department: 01

Case Type: SLNDR TORT/MISCON DEFAMATION

Title/Caption: RAYMOND DELUCCHI and
TOMMY HOLLIS
vs
PAT SONGER and
ERICKSON, THORPE & SWAINSTON, LTD.,
Plaintiffs

Comments: FILE IN TONOPAH

Defendant(s)
SONGER, PAT

Attorney(s)
No "Attorney 1" Listed

Defendant(s)
ERICKSON, THORPE & SWAINSTON

Attorney(s)
ALEXANDER, TODD R.

Plaintiff(s)
DELUCCHI, RAYMOND

Attorney(s)
MARKS, DANIEL

Plaintiff(s)
HOLLIS, TOMMY

Attorney(s)
MARKS, DANIEL

Hearings:

Date	Time	Hearing	Reference
8/04/14	1:30	DEFENDANT PAT SONGER'S MOTION TO DISMISS JUDGE: KIMBERLY A. WANKER CLERK: TANNER DAVIS BAILIFF: JAMES BURKE APP: TODD ALEXANDER IS PRESENT WITH BRENT RYMAN FROM ERICKSON, THORPE & SWAINSON. SIRIA GUTIERREZ IS PRESENT FOR PAT SONGER. ADAM LEVINE IS PRESENT TELEPHONICALLY FOR PLAINTIFFS. COURT CALLS THE MATTER AND NOTES PLAINTIFF'S COUNSEL CLAIMS TO NOT HAVE NOTICE OF TODAY'S HEARING. COURT OUTLINES HER CONCERNS WITH THE INVESTIGATOR AND QUESTIONS WHY HE DID NOT INTERVIEW THE VICTIMS. COURT NOTES MR. LEVINE IS NOW PRESENT TELEPHONICALLY AND OUTLINES THE CASE HISTORY. COURT ADDRESSES THE PARTIES ABOUT WHETHER OR NOT THE INVESTIGATOR IS HELD TO ANY STANDARDS. MR. ALEXANDER SITES CASE LAW IN SUPPORT OF HIS ARGUMENTS. COURT ADDRESSES THE PARTIES ABOUT WANTING TO GIVE THIS CASE THE ATTENTION IT NEEDS AND CONTINUES THIS MATTER UNTIL AUGUST 27TH, 2014 @ 1:15 TO GIVE ALL PARTIES A CHANCE PROPER TIME TO FILE THEIR OPPOSITIONS OR REPLY'S. COURT WANTS ALL DOCUMENTS FILED BY AUGUST 18TH, 2014.	

8/27/14	1:15	DEFENDANT PAT SONGER'S MOT TO DISMISS CONT'D JUDGE: KIMBERLY A. WANKER CLERK: TANNER DAVIS BAILIFF: JAMES BURKE APP: ADAM LEVINE IS PRESENT WITH RAYMOND DELUCCHI AND TOMMY HOLLIS. SIRIA GUTIERREZ IS PRESENT FOR PAT SONGER. TODD ALEXANDER IS PRESENT FOR ERICKSON, THORPE & SWAINSTON, WITH REBECCA BRUSH PRESENT AS AN ASSOCIATE. COURT CALLS THE MATTER AND OUTLINES THE CASE HISTORY. MS. GUTIERREZ BRIEFS	
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THE RECORD REGARDING THE ANTI-SLAPP LAWS AND WHY THE 2013 AMENDMENT TO THE LAW SHOULD APPLY IN THIS PARTICULAR CASE. MS. GUTIERREZ STATES THE BURDEN HAS SHIFTED TO MR. LEVINE TO PROVE HOW HE INTENDS TO PREVAIL ON A DEFAMATION CLAIM. MR. ALEXANDER ADDRESSES THE COURT ABOUT MR. LAVINE FALLING DRASTICALLY SHORT OF PRESENTING CLEAR AND CONVINCING EVIDENCE IN THIS CASE. MR. ALEXANDER OUTLINES CASE LAW REGARDING WHY THE 2013 AMENDMENT SHOULD APPLY AND ARGUES IN SUPPORT OF MS. BRUCH ADVISING MR. SONGER TO COME TO HER BEFORE RELEASING THE REPORT. MR. LEVINE CLARIFIES THE CASE LAW REFERENCED BY MR. ALEXANDER AND MS. GUTIERREZ. MR. LEVINE EXPLAINS TO THE COURT HIS REASONINGS FOR NOT COMING FORWARD WITH EVIDENCE IN THIS MATTER DUE TO THE FACT OF DEFENSE COUNSEL NOT MEETING THE THRESHOLD NEEDED TO REQUIRE EVIDENCE TO BE PRODUCED. MR. LEVINE NOTES THE ANTI-SLAPP STATUTES DO NOT APPLY WHEN A FALSE STATEMENT IS GIVEN AND REFERS TO MULTIPLE FALSE STATEMENTS MADE IN THE REPORT BY MR. SONGER. MR. LEVINE FURTHER ADDRESSES THE CASE LAW CITED BY DEFENSE COUNSEL AND HOW MR. SONGER AND MS. BRUCH WERE NOT EXERCISING THEIR FIRST AMENDMENT RIGHTS. COURT INQUIRES WITH MR. LEVINE REGARDING WORK PRODUCT LAW. MR. LEVINE STATES MR. SONGER WAIVED ALL RIGHTS TO THE CONFIDENTIALITY OF THE REPORT WHEN HE GAVE THE REPORT TO MR. DELUCCHI AND MR. HOLLIS. MS. GUTIERREZ STATES THE THRESHOLD MR. LEVINE ARGUED DEFENSE COUNSEL HAS NOT MET, HAS BEEN MET BASED SOLELY ON THE STATUTES PERTAINING TO THIS CASE. MS. GUTIERREZ FURTHER STATES THE REPORT BY MR. SONGER WAS MADE IN GOOD FAITH EVEN THOUGH IT WAS NOT THE MOST GRAMMATICALLY CORRECT REPORT. MR. ALEXANDER ADDRESSES THE COURT REGARDING MR. SONGER NOT BEING REQUIRED TO BELIEVE THE WITNESSES THAT WERE INTERVIEWED AND THAT HE DID NOT GET TO INTERVIEW EVERYONE IN THIS MATTER. COURT ADDRESSES THE PARTIES STATING IT IS HER UNDERSTANDING THE 2013 AMENDMENTS APPLY IN THIS CASE AND THE LEGISLATURE WANTED THIS TO BE A BROAD AMENDMENT. COURT OUTLINES CASE HISTORY NECESSARY TO THE ANTI-SLAPP STATUTES AND BELIEVES DEFENSE COUNSEL IS CORRECT IN THIS CASE. MR. LEVINE ARGUES THAT MR. SONGER'S REPORT WAS NOT MADE IN GOOD FAITH. COURT ADDRESSES MR. LEVINE'S ARGUMENTS AND STATES THAT SHE BELIEVES MR. SONGER'S REPORT WAS GIVEN IN GOOD FAITH. COURT NOTES IF AN APPEAL TO THE SUPREME COURT IS FORTHCOMING SHE MAY HAVE A STAY ON THE ATTORNEY'S FEES. COURT INSTRUCTS COUNSEL FOR MR. SONGER AND ERICKSON, ET AL, TO PREPARE THEIR OWN ORDERS. COURT SETS THIS MATTER FOR NOVEMBER 19TH, 2014 @ 1:30 PM.

12/02/14	1:30	STATUS CHECK/ATTORNEY'S FEES	11/19/14GERI
12/02/14	1:30	DEFENDANTS MOTION FOR ATTORNEYS FEES, COSTS..	
12/02/14	1:30	PLAINTIFFS' MOTION TO RETAX COSTS	

1 Todd R. Alexander, Esq., NSB #10846
2 Lemons, Grundy & Eisenberg
3 6005 Plumas Street, Suite 300
4 Reno, Nevada 89519
5 (775) 786-6868

6 Attorney for Defendant, Erickson, Thorpe & Swainston, Ltd.

FILED
2014 OCT 17 2:34 PM
[Signature]

7 **IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

8 **IN AND FOR THE COUNTY OF NYE**

9 **RAYMOND DELUCCHI and TOMMY HOLLIS,**

10 **Plaintiffs,**

Case No. CV35969

11 **v.**

Dept. No. 1

12 **PAT SONGER and ERICKSON, THORPE &**
13 **SWAINSTON, LTD.,**

14 **Defendants.**

15 **NOTICE OF ENTRY OF ORDER**

16 **PLEASE TAKE NOTICE** that the Findings of Fact, Conclusions of Law and Order Granting
17 Defendant Erickson, Thorpe & Swainston's Special Motion to Dismiss was entered on
18 September 17, 2014. A copy of said Findings is attached hereto as Exhibit 1.

19 **I affirm this document does not contain the social security number of any person.**

20 **Dated: October 3, 2014.**

21
22 By: *[Signature]*
23 Todd R. Alexander, Esq.
24 Attorney for Defendant,
25 Erickson, Thorpe & Swainston, Ltd.

26 LEMONS, GRUNDY
27 & EISENBERG
28 6005 PLUMAS ST.
SUITE 300
RENO, NV 89519
(775) 786-6868

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on October 3, 2014, I deposited in the United States Mail, with postage fully prepaid, a true and correct copy of the within **NOTICE OF ENTRY OF ORDER**, addressed to the following:

Daniel Marks, Esq.
Adam Levine, Esq.
Law Office of Daniel Marks
610 South Ninth Street
Las Vegas, Nevada 89101
Attorney for Plaintiffs

Siria L. Gutierrez, Esq.
Lipson | Neilson
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144-7052
Attorneys for Pat Songer


Susan G. Davis

EXHIBIT 1

EXHIBIT 1

SEP 17 2014

NYE COUNTY DEPUTY CLERK
DEPUTY
Patricia Couture

Case No. CV35969

Dept. No. 1

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

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HOLLIS,

Plaintiff,

v.

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& SWAINSTON, LTD.,

Defendants.

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GRANTING DEFENDANT ERICKSON, THORPE & SWAINSTON'S SPECIAL
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FINDINGS OF FACT

1. Plaintiffs Delucchi and Hollis, in their capacity as employees of the Pahrump Valley Fire and Rescue Service ("PVFRS"), were involved in an incident on Highway 160 (the

1 "Highway 160 incident"), in which the ambulance they were operating was flagged down by
2 passing motorists, James and Brittnie Choyce.

3 2. At the time of the Highway 160 incident, Brittnie Choyce had given birth to a stillborn
4 fetus, and she and her husband sought to have Brittnie taken by Plaintiffs' PVFRS ambulance
5 to a hospital in Las Vegas, Nevada.
6

7 3. For reasons that remain in dispute between the parties, but are not pertinent to this
8 decision, Plaintiffs did not ultimately transport Brittnie Choyce in the PVFRS ambulance.

9 4. Shortly after the Highway 160 incident, the Town of Pahrump received a telephone
10 complaint from Brittnie Choyce's mother regarding Plaintiffs' conduct during the Highway
11 160 incident.
12

13 5. The Town of Pahrump retained Rebecca Bruch, attorney and partner at ETS, to
14 coordinate an investigation into the Highway 160 incident. In turn, Ms. Bruch retained
15 Defendant Pat Songer as an independent investigator to conduct the investigation into the
16 Highway 160 incident.

17 6. During his investigation, Mr. Songer reviewed a synopsis of the complaint the Town
18 of Pahrump had received via telephone from Brittnie Choyce's mother. The synopsis was
19 drafted by the Town employee who had taken the telephone call.
20

21 7. Mr. Songer also reviewed notes of an interview with James and Brittnie Choyce by
22 Fire Chief Scott Lewis and Lt. Moody. Mr. Songer was not able to personally interview Mr.
23 and Mrs. Choyce because Brittnie had refused to speak with anyone about the Highway 160
24 incident, and James had committed suicide.

25 8. During the course of his investigation, Mr. Songer also interviewed Plaintiffs Delucchi
26 and Hollis.
27

28 9. After completing his investigation, Mr. Songer prepared a report to the Town of

1 concern," as that phrase is defined in NRS 41.637(2) and (3). Specifically, Mr. Songer's
2 investigative report was a communication of information to the Town of Pahrump regarding a
3 matter reasonably of concern to the Town. NRS 41.637(2). Additionally or alternatively, Mr.
4 Songer's report was a written statement made in direct connection with an issue under
5 consideration by the Town of Pahrump. NRS 41.637(3).
6

7 3. ETS has further shown that Mr. Songer's report was made without knowledge of its
8 falschood. Although Plaintiffs have called into question the sufficiency of Mr. Songer's
9 investigation and the accuracy of the information contained in Mr. Songer's report, this Court
10 concludes that Plaintiffs have not presented evidence showing that said information was
11 knowingly false. Stated differently, this Court concludes that, even if it is established that Mr.
12 Songer's investigation was inadequate and the contents of his report were inaccurate, Mr.
13 Songer's report is still entitled to the protections of Nevada's anti-SLAPP statute, as long as
14 the report was not knowingly false. Thus, this Court concludes that Mr. Songer acted in good
15 faith in submitting his investigative report to the Town of Pahrump.
16

17 4. This preliminary showing having been made, the burden shifted to Plaintiffs to show,
18 by clear and convincing evidence, a probability of prevailing on their claims. NRS
19 41.660(3)(b).
20

21 5. Plaintiffs have not met their burden of showing, by clear and convincing evidence, a
22 probability of prevailing on their claims.

23 **ORDER**

24 **NOW, THEREFORE, IT IS HEREBY ORDERED** that Defendant Erickson,
25 Thorpe & Swainston's Special Motion to Dismiss is **GRANTED**.

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IT IS FURTHER ORDERED that ETS shall have 30 days from the date of this Order to file a motion for costs, attorney's fees and other monetary relief, pursuant to NRS 41.670. Plaintiffs shall then have 30 days, from the date such motion is filed, in which to file an opposition to said motion. ETS shall then have 10 days in which to file a reply in support of its motion.

Dated: September 17th, 2014.

By: KIMBERLY A. WANKER
DISTRICT COURT JUDGE

SEP 17 2014

NYE COUNTY DEPUTY CLERK
DEPUTY 

Case No. CV35969

Dept. No. 1

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

RAYMOND DELUCCI and TOMMY
HOLLIS,

Plaintiff,

v.

PAT SONGER and ERICKSON, THORPE
& SWAINSTON, LTD.,

Defendants.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
GRANTING DEFENDANT ERICKSON, THORPE & SWAINSTON'S SPECIAL
MOTION TO DISMISS**

Defendant ERICKSON, THORPE & SWAINSTON, LTD. ("ETS"), has filed a Special Motion to Dismiss pursuant to Nevada's anti-SLAPP statute. Plaintiffs have opposed the motion, and ETS has replied in support thereof. Additionally, this Court ordered supplemental briefing on two issues: (1) which version of the statute applies (pre or post 2013 amendments); and (2) whether a deficient investigation can still result in a good faith communication entitled to protection under Nevada's anti-SLAPP statute. Both parties have provided supplemental briefing as ordered. Furthermore, this Court heard oral argument from all involved parties on August 27, 2014. Having carefully considered all parties' briefing and oral argument, this Court finds and concludes as follows:

FINDINGS OF FACT

1. Plaintiffs Delucchi and Hollis, in their capacity as employees of the Pahrump Valley Fire and Rescue Service ("PVFRS"), were involved in an incident on Highway 160 (the

1 "Highway 160 incident"), in which the ambulance they were operating was flagged down by
2 passing motorists, James and Brittanie Choyce.

3 2. At the time of the Highway 160 incident, Brittanie Choyce had given birth to a stillborn
4 fetus, and she and her husband sought to have Brittanie taken by Plaintiffs' PVFRS ambulance
5 to a hospital in Las Vegas, Nevada.

6 3. For reasons that remain in dispute between the parties, but are not pertinent to this
7 decision, Plaintiffs did not ultimately transport Brittanie Choyce in the PVFRS ambulance.
8

9 4. Shortly after the Highway 160 incident, the Town of Pahrump received a telephone
10 complaint from Brittanie Choyce's mother regarding Plaintiffs' conduct during the Highway
11 160 incident.

12 5. The Town of Pahrump retained Rebecca Bruch, attorney and partner at ETS, to
13 coordinate an investigation into the Highway 160 incident. In turn, Ms. Bruch retained
14 Defendant Pat Songer as an independent investigator to conduct the investigation into the
15 Highway 160 incident.
16

17 6. During his investigation, Mr. Songer reviewed a synopsis of the complaint the Town
18 of Pahrump had received via telephone from Brittanie Choyce's mother. The synopsis was
19 drafted by the Town employee who had taken the telephone call.
20

21 7. Mr. Songer also reviewed notes of an interview with James and Brittanie Choyce by
22 Fire Chief Scott Lewis and Lt. Moody. Mr. Songer was not able to personally interview Mr.
23 and Mrs. Choyce because Brittanie had refused to speak with anyone about the Highway 160
24 incident, and James had committed suicide.

25 8. During the course of his investigation, Mr. Songer also interviewed Plaintiffs Delucchi
26 and Hollis.
27

28 9. After completing his investigation, Mr. Songer prepared a report to the Town of

1 Pahrump, setting forth his findings, conclusion and recommendations.

2 10. In his report, Mr. Songer concluded that Mr. Delucchi and Mr. Hollis were not
3 credible witnesses. Mr. Songer concluded that Mr. Delucchi's and Mr. Hollis' descriptions of
4 the incident were not plausible. He concluded that Mr. Delucchi's and Mr. Hollis' failure to
5 report the incident cast suspicion onto their stories. Ultimately, Mr. Songer concluded that
6 Mr. Delucchi and Mr. Hollis had breached the standard of care applicable to emergency
7 medical services personnel, that their failure to prepare a Patient Care Report or Incident
8 Report could be viewed as an attempt to cover up their wrongdoing, and that their conduct
9 potentially exposed the Town of Pahrump to civil liability.
10

11 11. Attorney Rebecca Bruch reviewed and edited Mr. Songer's report for grammatical,
12 typographical and stylistic changes.

13 12. After Ms. Bruch's edits, Mr. Songer's report was submitted to the Town of Pahrump's
14 Town Manager.
15

16 13. In this lawsuit, Plaintiffs have alleged that Mr. Songer's report was defamatory and
17 that it intentionally caused them severe emotional distress.

18 CONCLUSIONS OF LAW

19 1. Nevada's anti-SLAPP statute (NRS 41.635, *et seq.*), as amended by the Nevada
20 Legislature in 2013, is applicable in this action. Although Mr. Songer's report was submitted
21 to the Town of Pahrump before the 2013 statutory amendments took effect, this Court
22 concludes that the amendments were intended to be clarifying in nature, such that application
23 of the amended statute in this action does not constitute retroactive application.
24

25 2. In accordance with NRS 41.660(3)(a), ETS has established, by a preponderance of the
26 evidence, that Plaintiffs' claims are based on a "good faith communication in furtherance of
27 the right to petition or the right to free speech in direct connection with an issue of public
28

1 concern,” as that phrase is defined in NRS 41.637(2) and (3). Specifically, Mr. Songer’s
2 investigative report was a communication of information to the Town of Pahrump regarding a
3 matter reasonably of concern to the Town. NRS 41.637(2). Additionally or alternatively, Mr.
4 Songer’s report was a written statement made in direct connection with an issue under
5 consideration by the Town of Pahrump. NRS 41.637(3).

6
7 3. ETS has further shown that Mr. Songer’s report was made without knowledge of its
8 falsehood. Although Plaintiffs have called into question the sufficiency of Mr. Songer’s
9 investigation and the accuracy of the information contained in Mr. Songer’s report, this Court
10 concludes that Plaintiffs have not presented evidence showing that said information was
11 knowingly false. Stated differently, this Court concludes that, even if it is established that Mr.
12 Songer’s investigation was inadequate and the contents of his report were inaccurate, Mr.
13 Songer’s report is still entitled to the protections of Nevada’s anti-SLAPP statute, as long as
14 the report was not knowingly false. Thus, this Court concludes that Mr. Songer acted in good
15 faith in submitting his investigative report to the Town of Pahrump.
16

17 4. This preliminary showing having been made, the burden shifted to Plaintiffs to show,
18 by clear and convincing evidence, a probability of prevailing on their claims. NRS
19 41.660(3)(b).
20

21 5. Plaintiffs have not met their burden of showing, by clear and convincing evidence, a
22 probability of prevailing on their claims.

23 **ORDER**

24 **NOW, THEREFORE, IT IS HEREBY ORDERED** that Defendant Erickson,
25 Thorpe & Swainston’s Special Motion to Dismiss is **GRANTED**.

26 ///

27 ///

IT IS FURTHER ORDERED that ETS shall have 30 days from the date of this Order to file a motion for costs, attorney's fees and other monetary relief, pursuant to NRS 41.670. Plaintiffs shall then have 30 days, from the date such motion is filed, in which to file an opposition to said motion. ETS shall then have 10 days in which to file a reply in support of its motion.

Dated: September 17th, 2014.

By: [Signature]
DISTRICT COURT JUDGE

OCT 28 2014

NYE COUNTY DEPUTY CLERK
DEPUTY

LAW OFFICE OF DANIEL MARKS
DANIEL MARKS, ESQ.
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ADAM LEVINE, ESQ.
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Attorneys for Plaintiffs

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

RAYMOND DELUCCHI and
TOMMY HOLLIS,

Case No. CV35969
Dept. No. I

Plaintiffs,

v.

PAT SONGER and ERICKSON,
THORPE & SWAINSTON, LTD.,

Defendants.


NOTICE OF FILING COST BOND FOR APPEAL

TO: ALL PARTIES:

YOU AND EACH OF YOU WILL TAKE NOTICE that a Cost Bond for Appeal in the amount of \$500.00 was filed with the Nye County Court.

DATED this 27th day of October, 2014.

LAW OFFICE OF DANIEL MARKS


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[Signature]
An employee of the
LAW OFFICE OF DANIEL MARKS

**OFFICE OF THE NYE COUNTY CLERK
SANDRA L. MERLINO**

Tonopah Office
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101 Radar Road
Tonopah, Nevada 89049
Phone (775) 482-8127
Fax (775) 482-8133



Pahrump Office
Government Complex
1520 East Basin Avenue
Pahrump, Nevada 89060
Phone (775) 751-7040
Fax (775) 751-7047

November 10, 2014

NOTICE OF
DEFICIENCY:

VIA E-FILE

Ms. Tracie Lindeman
Supreme Court Clerk
201 S. Carson Street, #201
Carson City, NV 89701-4702

Re: CV 35969

RAYMOND DELUCCHI AND TOMMY HOLLIS
VS
PAT SONGER AND ERICKSON, THORPE, & SWAINSTON, LTD.

Dear Ms. Lindeman:

I am enclosing the documentation required to submit the above-referenced matter on appeal.

The \$250.00 filing fee was received at the time of filing and will be forwarded to you via mail. A \$500.00 bond has been received by our office along with a \$24.00 fee.

If I can be of any assistance, please feel free to contact me at our Tonopah office.

Sincerely,

SANDRA L. MERLINO
NYE COUNTY CLERK

By:


AMY DOWERS, Deputy Clerk / Tonopah