



In the Supreme Court of the State of Nevada

RAYMOND DELUCCHI and  
TOMMY HOLLIS,

Appellants,

v.

PAT SONGER and ERICKSON  
THORPE & SWAINSTON, LTD.,

Respondents.

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Electronically Filed  
Case No. 66858 Dec 02 2014 09:05 a.m.  
District Court: Travis K. Lindeman  
Clerk of Supreme Court

DOCKETING STATEMENT  
CIVIL APPEALS

**GENERAL INFORMATION**

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for *en banc*, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

**WARNING**

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to attach documents as requested in this statement, completely fill out the statement, or to fail to file it in a timely manner, will constitute grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See *Moron v. Bonneville Square Assocs.*, 117 Nev. 525, 25 P.3d 898 (2001); *KDI Sylvan Pools v. Workman*, 107 Nev. 340, 810 P.2d 1217 (1991). Please use tab dividers to separate any attached documents.

1. **Judicial District:** Fifth      **Department:** II      **County:** Nye  
**Judge:** Kimberly A. Wanker      **District Ct. Docket No.** CV35969

2. **Attorney filing this docket statement:**

Attorney: Adam Levine, Esq.      Telephone: (702) 386-0536  
Firm: Law Office of Daniel Marks  
Address: 610 South Ninth Street  
Las Vegas, Nevada 89101

Clients: Raymond Delucchi and Tommy Hollis

**If this is a joint statement completed on behalf of multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.**

3. **Attorneys representing Respondents:**

Attorney: Joseph P. Garin, Esq.      Telephone: (702) 382-1500  
Siria L. Gutierrez, Esq.  
Firm: LIPSON, NEILSON, COLE, SELTZER GARIN  
Address: 9900 Covington Cross Drive, Suite 120,  
Las Vegas, Nevada 89144

Client: Pat Songer

Attorney: Todd Alexander, Esq.      Telephone: (775) 786-6868  
Firm: LEMONS, GRUNDY & EISENBERG  
Address: 6005 Plumas Street, Suite 300  
Reno, Nevada 89519

Client: Erickson, Thorpe & Swainston, Ltd.

4. **Nature of disposition below (check all that apply):**

- |  |   |
|--|---|
| <input type="checkbox"/> Judgment after bench trial  | <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Grant/Denial of injunction         |
| <input type="checkbox"/> Summary judgment            | <input type="checkbox"/> Grant/Denial of declaratory relief |
| <input type="checkbox"/> Default judgment            | <input type="checkbox"/> Review of agency determination     |

- ☐ Dismissal
- ☐ Lack of jurisdiction
- ☐ Failure to state a claim
- ☐ Failure to prosecute

☐ Other

- ☐ Divorce decree:
- ☐ Original      ☐ Modification
- ☒ Other disposition (specify):  
**Grant of a special motion to dismiss pursuant to NRS 41.660**

5. **Does this appeal raise issues concerning any of the following:**

- ☐ Child custody
- ☐ Venue
- ☐ Termination of parental rights

*No*

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

*None*

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

*None*

8. **Nature of the action.** Briefly describe the nature of the action, including a list of the causes of action pleaded, and the result below:

Appellant's filed suit in the District Court alleging defamation and intentional infliction of emotional distress arising out of an investigatory report authored by the Respondents under a contract of hire by Appellants' employer. False and defamatory statements contained within the report led to Appellants' termination. Appellants were subsequently reinstated with back pay and benefits when a neutral labor arbitrator determined that the report contained intentional misrepresentations.

Respondents filed Special Motions to Dismiss citing to Nevada's Anti-SLAPP statutes, claiming that the report generated under a contract for hire constituted

“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”. The District Court’s Order Granted the Special Motions to Dismiss.

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal:

1. Whether the District Court erred in granting the special motion to dismiss pursuant to NRS 41.660.

2. Whether the protections of NRS 41.635 through NRS 41.670 apply to persons acting under a contract of hire (as opposed to a citizen engaging in the First Amendment right to petition the government or speech on a matter of public concern).

3. What portions, if any, of the 2013 statutory amendments to NRS 41.635 through NRS 41.670 apply retroactively to communications made in 2012?

4. Whether the decision of an arbitrator should be afforded issue preclusion with regard to whether the statements of Respondents were “truthful or [were] made without knowledge of [their] falsehood” for purposes of NRS 41.637.

5. What are the standards for determining whether a statement is “truthful or is made without knowledge of its falsehood” for purposes of NRS 41.637?

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised:

*No*

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain

12. **Other issues.** Does this appeal involve any of the following issues?

- ☐ Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☒ A substantial issue of first-impression
- ☒ An issue of public policy
- ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- ☐ A ballot question

If so, explain:

Nevada's anti-SLAPP statute is intended to protect "well-meaning citizens who petition [the] government and then find themselves hit with retaliatory suits". *Johnson v. Douglas County School District*, 125 Nev. 746, 753, 219 P.3d 1276 (2009). The purpose of the anti-SLAPP is to protect "good-faith communications in furtherance of the right to petition" it also provide immunity from liability for "those who petition all departments of the government for redress". *Id.*

In this case the district court extended the protection of anti-SLAPP to individuals who were hired by the town Pahrump to conduct an internal investigation against two firefighters despite the absence of any First Amendment related conduct (i.e. petitioning the government for redress or speaking out as a citizen on a matter of public concern).

In 2012, when the report at issue in this case was generated, Nevada's anti-SLAPP only applied to a "Good faith communication in furtherance of the right to petition". The October 2013 amendments enacted after the report containing the false statements was generated, but before suit was filed, expanded the protection to include "the right to free speech in direct connection with an issue of public concern". It is an issue of first impression as to whether the expanded protections with regard to "the right to free speech in direct connection with an issue of public concern" should be applied retroactively to a report generated in 2012 which was clearly not in furtherance of "the right to petition".

13. **Trial.** If this action proceeded to trial, how many days did the trial last?

Was it a bench or jury trial? N/A

14. **Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal. If so, which Justice?

No.

#### **TIMELINESS OF NOTICE OF APPEAL**

15. **Date of entry of written judgment or order appealed from** September 17, 2014.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

16. **Date written notice entry of judgment or order was served.** October 3, 2014.

Was service by

☐ Delivery

☒ Mail/electronic/fax

17. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59),**

(a) Specify the type of motion, and the date and method of service of the motion, and date of filing.

☐ NRCP 50(b)                      Date of filing\_\_\_\_\_

☐ NRCP 52(b)                      Date of filing\_\_\_\_\_

☐ NRCP 59                          Date of filing\_\_\_\_\_

**NOTE:** Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration do not toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion

(c) Date written notice of entry of order resolving motion served including proof of service.

Was service by

☐ Delivery

☐ Mail

18. **Date notice of appeal was filed:** October 28, 2014

If more than one party has appealed from the judgment or order, list date each notice of appeal was filed and identify by name the party filing the notice of appeal:

19. **Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other:**

NRAP 4(a)

#### **SUBSTANTIVE APPEALABILITY**

20. **Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

NRAP 3A(b)(1)

Explain how each authority provides a basis for appeal from the judgment or order:

The Order granting the Special Motion Two Dismisses is final judgment on the merits. See NRS 41.660(4).

21. **List all parties involved in the action in the district court:**

(a) Parties:

Raymond Delucchi, Appellant

Tommy Hollis, Appellant

Pat Songer, Respondent

Erickson, Thorpe & Swainston, Ltd., Respondent

- (a) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

- 22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the date of formal disposition of each claim.**

Delucchi and Hollis: Defamation and Intentional Infliction of Emotional Distress – Dismissed on September 17, 2014.

- 23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action below:**

☒ Yes

☐ No

- 24. If you answered "No" to the immediately previous question, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b):

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

**25. If you answered “No” to any part of question 24, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):**

**26. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims and third party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Raymond Delucchi and Tommy Hollis

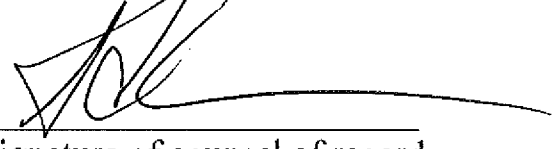
Name of appellant

Adam Levine, Esq.

Name of counsel of record

12-1-14

Date



Signature of counsel of record

Clark County, Nevada

State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 1st day of December, 2014, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es):

☒ By serving it upon him/her via electronic filing as mandated by the Court to the email address as provided to the Court by opposing counsel.

Dated this 1st day of December, 2014



Signature

JUN 04 2014

NYE COUNTY DEPUTY CLERK  
DEPUTY PC

1 COMP  
LAW OFFICE OF DANIEL MARKS  
2 DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
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5 (702) 386-0536: FAX (702) 386-6812  
*Attorneys for Plaintiffs*

6  
7 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA *y*

8 IN AND FOR THE COUNTY OF NYE

9 RAYMOND DELUCCHI and  
TOMMY HOLLIS,

Case No. *C1135969*  
Dept. No. */*

10 Plaintiffs,

11 v.

JURY TRIAL DEMANDED

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

14 Defendants.  
15 \_\_\_\_\_/

16 **COMPLAINT**

17 COMES NOW Plaintiffs Raymond Delucchi and Tommy Hollis by and through undersigned  
18 counsel Adam Levine, Esq. of the Law Office of Daniel Marks and for their causes of action against  
19 the Defendants herein alleges as follows:

- 20 1. At all times material hereto, Plaintiff RAYMOND DELUCCHI, was and is a resident of  
21 Clark County, Nevada.
- 22 2. At all times material hereto, Plaintiff TOMMY HOLLIS, was and is a resident of the  
23 Nye County, Nevada.
- 24 3. At all times material hereto, Defendant PAT SONGER (hereinafter referred to as  
25 "SONGER"), was and is a resident of Humboldt County, Nevada.

1       4.    At all times material hereto, Defendant ERICKSON, THORPE & SWAINSTON, LTD.,  
2           (hereinafter referred to as "ETS") was a Nevada domestic limited-liability company  
3           organized and existing under the laws of the State of Nevada and doing business in Nye  
4           County, Nevada.

5       5.    That Defendants caused events to occur in the State of Nevada, County of Nye out of  
6           which Plaintiffs' claims herein arise. The jurisdictional amount for filing these claims is  
7           satisfied and exceeds \$10,000.

8                               COUNT ONE  
9                               (Defamation)

10       6.    Plaintiff Delucchi is a Firefighter/Paramedic employed by Pahrump Valley Fire &  
11           Rescue Service ("PVFRS"). Plaintiff Hollis is a Firefighter/Emergency Medical  
12           Technician (Intermediate) employed by PVFRS.

13       7.    Defendant ETS is a law firm which contracts with The Nevada Public Agency  
14           Insurance Pool and Public Agency Compensation Trust ("POOL/PACT") to provide  
15           legal services.

16       8.    On or about May 25, 2012 at 1:00 AM Plaintiffs were driving a PVFRS medical unit on  
17           Nevada State Highway 160 when they encountered unknown person(s) operating an  
18           unknown motor vehicle who was acting erratically. After pulling the medical unit off  
19           the side of the highway, Plaintiffs offered to transport either the driver and/or the  
20           passenger of the vehicle to Desert View Hospital in Pahrump, Nevada. The driver of the  
21           vehicle rejected the offer by dropping his vehicle into gear and speeding off leaving  
22           Plaintiffs by the side of Highway 160 (hereafter "the Incident").

23       9.    On or about May 30, 2012 the occupants of the vehicle, later identified as James and  
24           Brittanie Choyce, and/or their relatives, called the Chief of PVFRS regarding the  
25           Incident.

- 1           10.   On or about June 27, 2012 one or more attorneys from ETS hired and/or arranged for  
2           Defendant Songer to review the facts and conduct interviews relating to the Incident.
- 3           11.   Attorney Rebecca Bruch, who was employed by ETS within the course and scope of her  
4           employment, was designated as the person to direct the investigation and to whom  
5           Songer would report.
- 6           12.   On August 2, 2012 Rebecca Bruch e-mailed Songer asking him to call her before  
7           Songer wrote his report.
- 8           13.   Songer and Bruch co-authored a report which was prepared for Plaintiffs' employer  
9           regarding the Incident. Portions written by Songer were edited by Bruch. Other  
10          paragraphs were written directly by Bruch and directed to be incorporated into the  
11          report. Several pages of the "Conclusions" portion of the report stated it was  
12          "confidential attorney work product".
- 13          14.   The report prepared by Songer and Bruch was submitted to Plaintiffs' employer by  
14          Songer and/or Bruch. Following submission of the report Songer and Bruch orally  
15          reiterated the contents in a telephone conversation with the Town Manager of Pahrump.
- 16          15.   The report contained multiple false statements of fact, and/or statements of opinion  
17          which implied facts to be true, with regard to the Incident which were defamatory in  
18          nature. These statements include, but are not necessarily limited to:  
19               a.   That Plaintiffs engaged in conduct unbecoming employees of the Pahrump Valley  
20               Fire & Rescue Service and/or were discourteous to members of the public;  
21               b.   That Plaintiffs falsified reports and/or made material omissions to reports;  
22               c.   That Plaintiffs engaged in actual or threatened physical violence against the  
23               Choyces including "intimidation";  
24               d.   That Plaintiffs violated PVFRS policies for failing to report each other's violations  
25               of rules and protocols;

- e. That Plaintiffs repeatedly violated their chain of command on multiple issues;
  - f. That Plaintiffs disrupted the PVFRS morale;
  - g. That Plaintiffs attempted to suppress, modify or interfere with written communications of PVFRS;
  - h. That Plaintiffs used profane or indecent language and/or terms of endearment such as "Honey, sweetie etc";
  - i. That Plaintiffs failed to maintain a professional attitude as well as appropriate hygiene while on duty.
  - j. That there was patient contact within the meaning of the law and that Plaintiffs neglected their duties in connection therewith;
  - k. That Plaintiffs refused to transport the Choyces to an "appropriate hospital destination" for their own convenience; and
  - l. That Plaintiff Hollis did not properly supervise the activity of the ambulance in violation of national standards of care.
16. ETS is vicariously liable for the actions of its agents Songer and Bruch.
  17. The statements of the Defendants as set forth above constitute libel and/or slander *per se*.
  18. As a direct and proximate result of the libel and/or slander *per se* by the Defendants, Plaintiffs suffered and/or incurred loss of employment, loss of revenue and the use of revenue; attorney fees and litigation costs in seeking to regain their employment; loss of their homes; and emotional distress.
  19. The actions of the Defendants were fraudulent, malicious and/or oppressive so as to warrant the imposition of punitive damages under NRS 42.005.

///

///

**COUNT TWO**  
**(Intentional Infliction Of Emotional Stress)**

20. Plaintiffs restate the allegations of paragraphs 1 through 19 and incorporate them herein by reference.
21. In addition to the defamatory statements contained within the report submitted by Songer and Bruch, the report made other statements which were false, and known to be false by the authors.
22. Defendant Songer interviewed both Plaintiffs and was informed that the Choyces sped off in their vehicle after an offer was made by the Plaintiffs to transport them to Desert View Hospital. Songer further reviewed audio recordings of earlier interviews with the Plaintiffs where PVFRS was informed of this fact.
23. Songer did not interview either James or Brittanie Choyce in connection with his investigation. Instead, he and Bruch authored a report which falsely suggested to any reader that he had in fact interviewed the Choyces and found their version of the incident to be more credible.
24. The report was written in a manner to falsely suggest to the reader that there had been statements by James and Brittanie Choyce recorded by Lieutenant Steven Moody of PVFRS. In fact there were no such recordings.
25. The report was written in a manner to falsely suggest to the reader that Brittanie Choyce met the standards for the definition of a "patient" when in fact she did not meet the definition of a patient within the meaning of the regulations adopted by the State of Nevada governing paramedics and emergency medical technicians.
26. The report stated that a reasonable person would believe that Plaintiffs Delucchi and Hollis were attempting to cover up the Incident when there was no credible evidence to suggest this.

1 27. The report was written in a manner to falsely suggest to the reader that Desert View  
2 Hospital was not an appropriate hospital to handle hypovolemic shock from loss of  
3 blood, and that an appropriate facility, Summerlin Hospital in Las Vegas, was only an  
4 additional two (2) miles further distance from the location of the Incident. The report  
5 concluded without any evidence that Plaintiffs decided not to transport to Summerlin  
6 Hospital for their own personal convenience.

7 28. In fact (1) Desert View Hospital was an appropriate location for Brittanie Choyces  
8 medical condition, (2) in order get to Summerlin Hospital the ambulance would have to  
9 travel approximately two (2) miles in the wrong direction before there was a break in  
10 the divided highway which would allow the medical unit to make a U-turn on Highway  
11 160, and (3) that Desert View Hospital could be reached quicker in any event because  
12 Highway 160 leading into Pahrump is two (2) lanes in each direction whereas it narrows  
13 in many places to one (1) lane as it passes through the mountains to go back to Las  
14 Vegas.

15 29. The report falsley stated that a "probability in actuarial analysis" was conducted which  
16 determined that Plaintiffs Delucchi and Hollis would commit future acts of misconduct  
17 and/or negligence when in fact no such analysis ever took place, and an actuarial  
18 analysis can never predict future conduct in any event.

19 30. The report and recommendations of the Defendants falsely asserted to the Medical  
20 Director for PVFRS that he had authority to revoke the Plaintiffs' licenses to operate as  
21 a paramedics and/or EMT's, and induced him to do so. In fact, a Medical Director does  
22 not have that authority under the law.

23 31. The report and recommendations of the Defendants were to terminate the Plaintiffs  
24 employment and induced Plaintiffs' employer to do so.

25 ///

1 32. The Defendants' creation and submission of a knowingly false report constitutes  
2 extreme and outrageous conduct exceeding all bounds usually tolerated by decent  
3 society, and was done intentionally and/or with reckless disregard for the emotional  
4 distress that it would cause the Plaintiffs.

5 33. As a direct and proximate result of the Defendants intentional infliction of emotional  
6 distress as set forth above, Plaintiffs have suffered an/or incurred loss of employment,  
7 loss of revenue and the use of revenue; attorney fees and litigation costs in seeking to  
8 regain their employment; loss of their homes; and emotional distress.


9 34. The actions of the Defendants were fraudulent, malicious and/or oppressive so as to  
10 warrant the imposition of punitive damages under NRS 42.005.

11 WHEREFORE Plaintiffs pray for judgment against the Defendants as follows:

- 12 1. For general damages in excess of \$10,000;  
13 2. For special damages in excess of \$10,000;  
14 3. For punitive damages in excess of \$10,000;  
15 4. For attorney's fees and litigation costs incurred;  
16 5. For pre-judgment interest;  
17 6. And for such other and further equitable and/or legal relief as the Court deems just  
18 and proper.

19 DATED this 14 day of May, 2014.

20 LAW OFFICE OF DANIEL MARKS

21   
22 DANIEL MARKS, ESQ.

23 Nevada State Bar No. 002003

24 ADAM LEVINE, ESQ.

25 Nevada State Bar No. 004673

610 South Ninth Street

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*Attorneys for Plaintiffs*

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 Brittne Choyce.

3 2. At the time of the Highway 160 incident, Brittne Choyce had given birth to a stillborn  
4 fetus, and she and her husband sought to have Brittne 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 Brittne Choyce in the PVFRS ambulance.  
8

9 4. Shortly after the Highway 160 incident, the Town of Pahrump received a telephone  
10 complaint from Brittne 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 BTS, 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 Brittne 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 Brittne Choyce by  
22 Fire Chief Scott Lewis and Lt. Moody. Mr. Songer was not able to personally interview Mr.  
23 and Mrs. Choyce because Brittne 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 9. After completing his investigation, Mr. Songer prepared a report to the Town of  
28

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 ///

1 IT IS FURTHER ORDERED that ETS shall have 30 days from the date of this  
2 Order to file a motion for costs, attorney's fees and other monetary relief, pursuant to NRS  
3 41.670. Plaintiffs shall then have 30 days, from the date such motion is filed, in which to file  
4 an opposition to said motion. ETS shall then have 10 days in which to file a reply in support  
5 of its motion.  
6

7 Dated: September 17<sup>th</sup>, 2014.

8 By: **KIMBERLY A. WANKER**  
9 \_\_\_\_\_  
10 DISTRICT COURT JUDGE  
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Todd R. Alexander, Esq., NSB #10846  
Lemons, Grundy & Elsenberg  
6005 Plumas Street, Suite 300  
Reno, Nevada 89519  
(775) 786-6868

FILED  
RACHEL ALDANA

2014 OCT -7 P 2:30

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

NOTED  
BY DEPUTY

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

RAYMOND DELUCCHI and TOMMY HOLLIS,

Plaintiffs,

Case No. CV35969

v.

Dept. No. 1

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

Defendants.

NOTICE OF ENTRY OF ORDER

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

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

Dated: October 3, 2014.

By: 

Todd R. Alexander, Esq.  
Attorney for Defendant,  
Erickson, Thorpe & Swainston, Ltd.

LEMONS, GRUNDY  
& EISENBERG  
6005 PLUMAS ST.  
SUITE 300  
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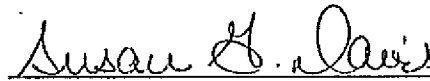
noted  
11-5-14

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*

Sirla L. Gutierrez, Esq.  
Lipson | Nellson  
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

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 Brittne Choyce.

3 2. At the time of the Highway 160 incident, Brittne Choyce had given birth to a stillborn  
4 fetus, and she and her husband sought to have Brittne 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 Brittne Choyce in the PVFRS ambulance.  
8

9 4. Shortly after the Highway 160 incident, the Town of Pahrump received a telephone  
10 complaint from Brittne 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 BTS, 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 Brittne 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 Brittne Choyce by  
22 Fire Chief Scott Lewis and Lt. Moody. Mr. Songer was not able to personally interview Mr.  
23 and Mrs. Choyce because Brittne 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 9. After completing his investigation, Mr. Songer prepared a report to the Town of  
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).  
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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.  
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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).  
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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

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1 IT IS FURTHER ORDERED that ETS shall have 30 days from the date of this  
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7 Dated: September 17<sup>th</sup>, 2014.

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9 DISTRICT COURT JUDGE  
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