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FILED

2014 DEC 17 P 1:36

Electronically Filed
Dec 23 2014 09:39 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

10 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
11
12 IN AND FOR THE COUNTY OF NYE
13

14 RAYMOND DELUCCHI and
15 TOMMY HOLLIS,

Case No. CV35969
Dept. No. I

16 Plaintiffs,

17 v.

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

AMENDED NOTICE OF APPEAL

20 Defendants.
21 _____/

22 Plaintiffs Raymond Delucchi and Tommy Hollis hereby amend their Notice of Appeal of the
23 Findings of Fact, Conclusions of Law and Order Granting Erickson, Thorpe and Swainston's Special
24 Motion to Dismiss entered in this action on September 17, 2014 to include Order Granting Defendant

25 ///

///

///

///

///

Pat Songer's Special Motion to Dismiss Pursuant to NRS§ 41.650 entered in this action on November 19, 2014. (Exhibit "2" attached hereto).

DATED this 17th day of December, 2014.

LAW OFFICE OF DANIEL MARKS


DANIEL MARKS, ESQ.

Nevada State Bar No. 002003

ADAM LEVINE, ESQ.

Nevada State Bar No. 004673

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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 16th day of December, 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 AMENDED 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

EXHIBIT “2”

LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.
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Las Vegas, Nevada 89144
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2 JOSEPH P. GARIN, ESQ.
3 NEVADA BAR No. 6653
4 SIRIA L. GUTIERREZ, ESQ.
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12 sgutierrez@lipsonneilson.com

13 *Attorneys for Defendant,*
14 PAT SONGER

15 IN THE FIFTH JUDICIAL DISTRICT COURT

16 NYE COUNTY, NEVADA

17 RAYMOND DELUCCHI and TOMMY
18 HOLLIS,

19 Plaintiffs,

20 v.

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

23 Defendants.

CASE NO: CV35969
DEPT NO: 1

NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANT PAT
SONGER'S SPECIAL MOTION TO
DISMISS PURSUANT TO NRS § 41.660

24 Please take notice that Defendant Pat Songer's Special Motion to Dismiss Pursuant
25 to NRS §41.660, was entered on November 19, 2014. A copy of said Order is attached
26 hereto and made part hereof.

27 DATED this 3rd day of December, 2014.

28 LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

By: 

JOSEPH P. GARIN, ESQ.
NEVADA BAR No. 6653
SIRIA L. GUTIERREZ, ESQ.
NEVADA BAR No. 11981
9900 Covington Cross Drive, Suite 120
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(702) 382-1500

Attorneys for Defendant,
PAT SONGER

2014 DEC -4 A 10:19

NYE COUNTY CLERK
BY DEPUTY Sarah Westfall

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of December, 2014, service of the foregoing
NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT PAT SONGER'S SPECIAL
MOTION TO DISMISS PURSUANT TO NRS § 41.660 was made by depositing a true and
correct copy of the same in the United States mail, with postage fully prepaid, addressed to:

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

Attorneys for Plaintiffs

Todd R. Alexander, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street, 3rd Flr.
Reno, NV 89519

*Attorneys for Defendant,
Erickson, Thorpe & Swainston, Ltd.*



An Employee of
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

1 **ORDR**
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13 *Attorneys for Defendant,*
14 **PAT SONGER**

15 **IN THE FIFTH JUDICIAL DISTRICT COURT**
16 **NYE COUNTY, NEVADA**

17 **RAYMOND DELUCCHI and TOMMY**
18 **HOLLIS,**

19 **Plaintiffs,**

20 **v.**

21 **PAT SONGER and ERICKSON, THORPE**
22 **& SWAINSTON, LTD.,**

23 **Defendants.**

24 **CASE NO: CV35969**
25 **DEPT NO: 1**

26 **ORDER GRANTING**
27 **DEFENDANT PAT SONGER'S**
28 **SPECIAL MOTION TO DISMISS**
PURSUANT TO NRS § 41.660

Defendant PAT SONGER's Special Motion to Dismiss Pursuant to NRS §41.660 having come before the Court on August 27, 2014, at 1:30 p.m., with Siria L. Gutierrez, Esq., appearing on behalf of Defendant Pat Songer, and Adam Levine, Esq., appearing on behalf of Plaintiffs Raymond Delucchi and Tommy Hollis, who were also present, and Todd Alexander, Esq., appearing on behalf of Defendant Erickson, Thorpe & Swainston, LTD., with Thomas Beko and Rebecca Bruch present; the Court having read the pleadings and papers on file, the motion, opposition, and supplemental briefing having heard argument thereon, and with good cause appearing therefore, find as follows:

CONCLUSIONS OF LAW

1. It is well settled in Nevada that "[w]here a former statute is amended, or a doubtful interpretation of a former statute rendered certain by subsequent legislation, it has been held that such amendment is persuasive evidence of

1 what the Legislature intended by the first statute." See *In re Estate of*
2 *Thomas*, 116 Nev. 492, 495 (2000) (citing *Sheriff v. Smith*, 91 Nev. 729, 734,
3 (1975).

- 4 2. When a statute's doubtful interpretation is made clear through subsequent
5 legislation, we may consider the subsequent legislation persuasive evidence of
6 what the Legislature originally intended. *Pub. Emps. Benefits Program v. Las*
7 *Vegas Metro. Police Dep't*, 124 Nev. 138, 157 (2008).
- 8 3. The 2013 Amendments to NRS § 41.635 – 41.670 clarified the former statute
9 in order to give meaning to the legislative intent.
- 10 4. The legislature intended a broad application of Nevada's anti-SLAPP laws.
- 11 5. Thus, the 2013 statute applies to this case and under NRS § 41.660 the
12 moving party must establish by a preponderance of the evidence, that the
13 claim is based upon a good faith communication in furtherance of the right to
14 petition or the right to free speech in direct connection with an issue of public
15 concern.
- 16 6. Once the court determines that the moving party has met the burden, the
17 plaintiff must established by clear and convincing evidence a probability of
18 prevailing on the claim.
- 19 7. If plaintiff is unable to meet that burden, the case must be dismissed and the
20 moving party is entitled to fees and costs.
- 21 8. A good faith communication in furtherance of the right to petition or the right
22 to free speech in direct connection with an issue of public concern means
23 any: (2) communication of information or a complaint to a Legislator, officer
24 or employee of the Federal Government, this state or a political subdivision
25 of this state, regarding a matter reasonably of concern to the respective
26 governmental entity; (3) Written or oral statement made in direct connection
27 with an issue under consideration by a legislative, executive or judicial body,
28 or any other official proceeding authorized by law. NRS § 41.637(2) and (3).

FINDINGS OF FACT

9. Raymond Delucchi and Tommy Hollis were paramedics employed with the Town of Pahrump.
10. On May 25, 2012, Messrs. Delucchi and Hollis were involved on in an incident on Highway 160 with James and Brittne Choyce.
11. The Choyce family alerted Lieutenant Steve Moody and Fire Chief Scott Lewis of the incident.
12. Lieutenant Steve Moody and Fire Chief Scott Lewis began an internal investigation, and eventually the Town of Pahrump hired Erickson, Thorpe & Swainston ("ETS") to conduct a third-party investigation.
13. ETS eventually retained Pat Songer, the Director of Emergency Services at Humboldt General Hospital in Winnemucca, Nevada, to conduct an investigation.
14. Mr. Songer has over 22 years of experience in emergency services.
15. Mr. Songer conducted his investigation and collected all relevant information that was reasonably available to him. However, he did not interview the Choyces.
16. Mr. Songer has shown by a preponderance of the evidence that his report is a good faith communication in furtherance of the right to free speech on an issue of public concern as defined by Nevada law.
17. Mr. Songer's investigation report is a good faith communication in furtherance of the right to free speech on an issue of public concern because it is a communication of information to the Town of Pahrump ("Town"), regarding a matter reasonably of concern to the Town based on the incident on Highway 160.
18. Mr. Songer's investigation report is a good faith communication in furtherance of the right to free speech on an issue of public concern because the report is a written statement made in direct connection with an issue

1 under consideration by the Town authorized by law in the disciplinary actions
2 against Messrs. Delucchi and Hollis.

3 19. Mr. Songer's overall investigation was in good faith and there is no evidence
4 of bad faith.

5 20. Plaintiffs failed to establish by clear and convincing evidence a likelihood of
6 prevailing on their claims of defamation and intentional infliction of emotional
7 distress.

8 21. Plaintiffs failed to establish by clear and convincing evidence that there was
9 a genuine issue of material fact.

10 IT IS HEREBY ORDERED that Defendant Pat Songer's Special Motion to Dismiss
11 Pursuant to NRS §41.660 is GRANTED and the case will be dismissed with prejudice
12 once the Court has awarded fees and costs. The Court will hold a hearing on Defendant
13 Pat Songer's Motion for Fees and Costs on December 2, 2014, at 1:30 p.m.

14 DATED this 18th day of November, 2014.

15
16 
DISTRICT COURT JUDGE

17 Submitted by:

18 LIPSON, NEILSON, COLE, SELTZER
19 & GARIN, P.C.

20 By: 

JOSEPH P. GARIN, ESQ.

NEVADA BAR NO. 6653

21 SIRIA L. GUTIERREZ, ESQ.

NEVADA BAR NO. 11981

22 9900 Covington Cross Drive, Suite 120

23 Las Vegas, Nevada 89144

(702) 382-1500

24 Attorneys for Defendant,
25 PAT SONGER
26
27
28

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)	Attorney(s)
SONGER, PAT	GARIN, JOSEPH P
Defendant(s)	Attorney(s)
ERICKSON, THORPE & SWAINSTON	ALEXANDER, TODD R.
Plaintiff(s)	Attorney(s)
DELUCCHI, RAYMOND	MARKS, DANIEL
Plaintiff(s)	Attorney(s)
HOLLIS, TOMMY	MARKS, DANIEL


Disp/Judgment: MTDS Date: 11/19/14

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, THORPE & 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, THORPE & 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	
11/12/14	P	PLAINTIFF'S REPLY TO DEFENDANT ETS' OPPOSITION TO MOTION TO RE-TAX COSTS AND LIMITED OPPOSITION TO MOTION TO STAY AWARD OF COSTS AND ATTORNEYS FEE	
11/17/14	S	RECEIPT FOR DOCUMENTS	
11/19/14	S	RECEIPT FOR DOCUMENTS	
11/19/14	C	ORDER GRANTING DEFENDANT PAT SONGER'S SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660	
12/04/14	D	NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT PAT SONGER'S SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660	
12/17/14	P	AMENDED NOTICE OF APPEAL	

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 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 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

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

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 ///

28 ///

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 17th, 2014.

8
9 By: 
10 DISTRICT COURT JUDGE
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28

1 **ORDR**
2 JOSEPH P. GARIN, ESQ.
3 NEVADA BAR No. 6653
4 SIRIA L. GUTIERREZ, ESQ.
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12 sgutierrez@lipsonneilson.com

13 *Attorneys for Defendant,*
14 PAT SONGER

FILED
FIFTH JUDICIAL DISTRICT COURT

NOV 19 2014

NYE COUNTY DEPUTY CLERK
DEPUTY *Amber Davis*

15 **IN THE FIFTH JUDICIAL DISTRICT COURT**

16 **NYE COUNTY, NEVADA**

17 RAYMOND DELUCCHI and TOMMY
18 HOLLIS,

19 Plaintiffs,

20 v.

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

23 Defendants.

CASE NO: CV35969
DEPT NO: 1

**ORDER GRANTING
DEFENDANT PAT SONGER'S
SPECIAL MOTION TO DISMISS
PURSUANT TO NRS § 41.660**

24 Defendant PAT SONGER's Special Motion to Dismiss Pursuant to NRS §41.660
25 having come before the Court on August 27, 2014, at 1:30 p.m., with Siria L. Gutiérrez,
26 Esq., appearing on behalf of Defendant Pat Songer, and Adam Levine, Esq., appearing on
27 behalf of Plaintiffs Raymond Delucchi and Tommy Hollis, who were also present, and
28 Todd Alexander, Esq., appearing on behalf of Defendant Erickson, Thorpe & Swainston,
LTD., with Thomas Beko and Rebecca Bruch present; the Court having read the pleadings
and papers on file, the motion, opposition, and supplemental briefing having heard
argument thereon, and with good cause appearing therefore, find as follows:

CONCLUSIONS OF LAW

1. It is well settled in Nevada that "[w]here a former statute is amended, or a doubtful interpretation of a former statute rendered certain by subsequent legislation, it has been held that such amendment is persuasive evidence of

1 what the Legislature intended by the first statute." See *In re Estate of*
2 *Thomas*, 116 Nev. 492, 495 (2000) (citing *Sheriff v. Smith*, 91 Nev. 729, 734,
3 (1975).

4 2. When a statute's doubtful interpretation is made clear through subsequent
5 legislation, we may consider the subsequent legislation persuasive evidence of
6 what the Legislature originally intended. *Pub. Emps. Benefits Program v. Las*
7 *Vegas Metro. Police Dep't*, 124 Nev. 138, 157 (2008).

8 3. The 2013 Amendments to NRS § 41.635 – 41.670 clarified the former statute
9 in order to give meaning to the legislative intent.

10 4. The legislature intended a broad application of Nevada's anti-SLAPP laws.

11 5. Thus, the 2013 statute applies to this case and under NRS § 41.660 the
12 moving party must establish by a preponderance of the evidence, that the
13 claim is based upon a good faith communication in furtherance of the right to
14 petition or the right to free speech in direct connection with an issue of public
15 concern.

16 6. Once the court determines that the moving party has met the burden, the
17 plaintiff must established by clear and convincing evidence a probability of
18 prevailing on the claim.

19 7. If plaintiff is unable to meet that burden, the case must be dismissed and the
20 moving party is entitled to fees and costs.

21 8. A good faith communication in furtherance of the right to petition or the right
22 to free speech in direct connection with an issue of public concern means
23 any: (2) communication of information or a complaint to a Legislator, officer
24 or employee of the Federal Government, this state or a political subdivision
25 of this state, regarding a matter reasonably of concern to the respective
26 governmental entity; (3) Written or oral statement made in direct connection
27 with an issue under consideration by a legislative, executive or judicial body,
28 or any other official proceeding authorized by law. NRS § 41.637(2) and (3).

FINDINGS OF FACT

9. Raymond Delucchi and Tommy Hollis were paramedics employed with the Town of Pahrump.
10. On May 25, 2012, Messrs. Delucchi and Hollis were involved on in an incident on Highway 160 with James and Brittnie Choyce.
11. The Choyce family alerted Lieutenant Steve Moody and Fire Chief Scott Lewis of the incident.
12. Lieutenant Steve Moody and Fire Chief Scott Lewis began an internal investigation, and eventually the Town of Pahrump hired Erickson, Thorpe & Swainston ("ETS") to conduct a third-party investigation.
13. ETS eventually retained Pat Songer, the Director of Emergency Services at Humboldt General Hospital in Winnemucca, Nevada, to conduct an investigation.
14. Mr. Songer has over 22 years of experience in emergency services.
15. Mr. Songer conducted his investigation and collected all relevant information that was reasonably available to him. However, he did not interview the Choyces.
16. Mr. Songer has shown by a preponderance of the evidence that his report is a good faith communication in furtherance of the right to free speech on an issue of public concern as defined by Nevada law.
17. Mr. Songer's investigation report is a good faith communication in furtherance of the right to free speech on an issue of public concern because it is a communication of information to the Town of Pahrump ("Town"), regarding a matter reasonably of concern to the Town based on the incident on Highway 160.
18. Mr. Songer's investigation report is a good faith communication in furtherance of the right to free speech on an issue of public concern because the report is a written statement made in direct connection with an issue

under consideration by the Town authorized by law in the disciplinary actions against Messrs. Delucchi and Hollis.

19. Mr. Songer's overall investigation was in good faith and there is no evidence of bad faith.

20. Plaintiffs failed to establish by clear and convincing evidence a likelihood of prevailing on their claims of defamation and intentional infliction of emotional distress.

21. Plaintiffs failed to establish by clear and convincing evidence that there was a genuine issue of material fact.

IT IS HEREBY ORDERED that Defendant Pat Songer's Special Motion to Dismiss Pursuant to NRS §41.660 is GRANTED and the case will be dismissed with prejudice once the Court has awarded fees and costs. The Court will hold a hearing on Defendant Pat Songer's Motion for Fees and Costs on December 2, 2014, at 1:30 p.m.

DATED this 18th day of November, 2014.


DISTRICT COURT JUDGE

Submitted by:

LIPSON, NEILSON, COLE, SELTZER
& GARIN, P.C.

By:


JOSEPH P. GARIN, ESQ.

NEVADA BAR NO. 6653

SIRIA L. GUTIERREZ, ESQ.

NEVADA BAR NO. 11981

9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89144

(702) 382-1500

Attorneys for Defendant,
PAT SONGER

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 11:34 AM
J. R. Alexander

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 By: _____

22 
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

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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

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

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

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

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 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 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

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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

1 NEOJ

2 JOSEPH P. GARIN, ESQ.

3 NEVADA BAR NO. 6653

4 SIRIA L. GUTIERREZ, ESQ.

5 NEVADA BAR NO. 11981

6 LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.

7 9900 Covington Cross Drive, Suite 120

8 Las Vegas, Nevada 89144

9 Phone: (702) 382-1500

10 Fax: (702) 382-1512

11 jgarin@lipsonneilson.com

12 sgutierrez@lipsonneilson.com

13 *Attorneys for Defendant,*
14 PAT SONGER

15 IN THE FIFTH JUDICIAL DISTRICT COURT

16 NYE COUNTY, NEVADA

17 RAYMOND DELUCCHI and TOMMY
18 HOLLIS,

19 Plaintiffs,

20 v.

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

23 Defendants.

CASE NO: CV35969

DEPT NO: 1

NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANT PAT
SONGER'S SPECIAL MOTION TO
DISMISS PURSUANT TO NRS § 41.660

24 Please take notice that Defendant Pat Songer's Special Motion to Dismiss Pursuant
25 to NRS §41.660, was entered on November 19, 2014. A copy of said Order is attached
26 hereto and made part hereof.

27 DATED this 3rd day of December, 2014.

28 LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

By: 

JOSEPH P. GARIN, ESQ.

NEVADA BAR NO. 6653

SIRIA L. GUTIERREZ, ESQ.

NEVADA BAR NO. 11981

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PAT SONGER

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9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of December, 2014, service of the foregoing
**NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT PAT SONGER'S SPECIAL
MOTION TO DISMISS PURSUANT TO NRS § 41.660** was made by depositing a true and
correct copy of the same in the United States mail, with postage fully prepaid, addressed to:

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

Attorneys for Plaintiffs

Todd R. Alexander, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street, 3rd Flr.
Reno, NV 89519

*Attorneys for Defendant,
Erickson, Thorpe & Swainston, Ltd.*



An Employee of
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

1 **ORDR**
2 JOSEPH P. GARIN, ESQ.
3 NEVADA BAR NO. 6653
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5 NEVADA BAR NO. 11981
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11 jgarin@lipsonneilson.com
12 sgutierrez@lipsonneilson.com

13 *Attorneys for Defendant,*
14 PAT SONGER

15 **IN THE FIFTH JUDICIAL DISTRICT COURT**
16 **NYE COUNTY, NEVADA**

17 RAYMOND DELUCCHI and TOMMY
18 HOLLIS,

19 Plaintiffs,

20 v.

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

23 Defendants.

CASE NO: CV35969
DEPT NO: 1

**ORDER GRANTING
DEFENDANT PAT SONGER'S
SPECIAL MOTION TO DISMISS
PURSUANT TO NRS § 41.660**

24 Defendant PAT SONGER's Special Motion to Dismiss Pursuant to NRS §41.660
25 having come before the Court on August 27, 2014, at 1:30 p.m., with Siria L. Gutiérrez,
26 Esq., appearing on behalf of Defendant Pat Songer, and Adam Levine, Esq., appearing on
27 behalf of Plaintiffs Raymond Delucchi and Tommy Hollis, who were also present, and
28 Todd Alexander, Esq., appearing on behalf of Defendant Erickson, Thorpe & Swainston,
LTD., with Thomas Beko and Rebecca Bruch present; the Court having read the pleadings
and papers on file, the motion, opposition, and supplemental briefing having heard
argument thereon, and with good cause appearing therefore, find as follows:

CONCLUSIONS OF LAW

1. It is well settled in Nevada that "[w]here a former statute is amended, or a doubtful interpretation of a former statute rendered certain by subsequent legislation, it has been held that such amendment is persuasive evidence of

1 what the Legislature intended by the first statute." See *In re Estate of*
2 *Thomas*, 116 Nev. 492, 495 (2000) (citing *Sheriff v. Smith*, 91 Nev. 729, 734,
3 (1975).

- 4 2. When a statute's doubtful interpretation is made clear through subsequent
5 legislation, we may consider the subsequent legislation persuasive evidence of
6 what the Legislature originally intended. *Pub. Emps. Benefits Program v. Las*
7 *Vegas Metro. Police Dep't*, 124 Nev. 138, 157 (2008).
- 8 3. The 2013 Amendments to NRS § 41.635 – 41.670 clarified the former statute
9 in order to give meaning to the legislative intent.
- 10 4. The legislature intended a broad application of Nevada's anti-SLAPP laws.
- 11 5. Thus, the 2013 statute applies to this case and under NRS § 41.660 the
12 moving party must establish by a preponderance of the evidence, that the
13 claim is based upon a good faith communication in furtherance of the right to
14 petition or the right to free speech in direct connection with an issue of public
15 concern.
- 16 6. Once the court determines that the moving party has met the burden, the
17 plaintiff must established by clear and convincing evidence a probability of
18 prevailing on the claim.
- 19 7. If plaintiff is unable to meet that burden, the case must be dismissed and the
20 moving party is entitled to fees and costs.
- 21 8. A good faith communication in furtherance of the right to petition or the right
22 to free speech in direct connection with an issue of public concern means
23 any: (2) communication of information or a complaint to a Legislator, officer
24 or employee of the Federal Government, this state or a political subdivision
25 of this state, regarding a matter reasonably of concern to the respective
26 governmental entity; (3) Written or oral statement made in direct connection
27 with an issue under consideration by a legislative, executive or judicial body,
28 or any other official proceeding authorized by law. NRS § 41.637(2) and (3).

FINDINGS OF FACT

9. Raymond Delucchi and Tommy Hollis were paramedics employed with the Town of Pahrump.
10. On May 25, 2012, Messrs. Delucchi and Hollis were involved on in an incident on Highway 160 with James and Brittnie Choyce.
11. The Choyce family alerted Lieutenant Steve Moody and Fire Chief Scott Lewis of the incident.
12. Lieutenant Steve Moody and Fire Chief Scott Lewis began an internal investigation, and eventually the Town of Pahrump hired Erickson, Thorpe & Swainston ("ETS") to conduct a third-party investigation.
13. ETS eventually retained Pat Songer, the Director of Emergency Services at Humboldt General Hospital in Winnemucca, Nevada, to conduct an investigation.
14. Mr. Songer has over 22 years of experience in emergency services.
15. Mr. Songer conducted his investigation and collected all relevant information that was reasonably available to him. However, he did not interview the Choyces.
16. Mr. Songer has shown by a preponderance of the evidence that his report is a good faith communication in furtherance of the right to free speech on an issue of public concern as defined by Nevada law.
17. Mr. Songer's investigation report is a good faith communication in furtherance of the right to free speech on an issue of public concern because it is a communication of information to the Town of Pahrump ("Town"), regarding a matter reasonably of concern to the Town based on the incident on Highway 160.
18. Mr. Songer's investigation report is a good faith communication in furtherance of the right to free speech on an issue of public concern because the report is a written statement made in direct connection with an issue

1 under consideration by the Town authorized by law in the disciplinary actions
2 against Messrs. Delucchi and Hollis.

3 19. Mr. Songer's overall investigation was in good faith and there is no evidence
4 of bad faith.

5 20. Plaintiffs failed to establish by clear and convincing evidence a likelihood of
6 prevailing on their claims of defamation and intentional infliction of emotional
7 distress.

8 21. Plaintiffs failed to establish by clear and convincing evidence that there was
9 a genuine issue of material fact.

10 IT IS HEREBY ORDERED that Defendant Pat Songer's Special Motion to Dismiss
11 Pursuant to NRS §41.660 is GRANTED and the case will be dismissed with prejudice
12 once the Court has awarded fees and costs. The Court will hold a hearing on Defendant
13 Pat Songer's Motion for Fees and Costs on December 2, 2014, at 1:30 p.m.

14 DATED this 18th day of November, 2014.

15
16 
DISTRICT COURT JUDGE

17 Submitted by:

18 LIPSON, NEILSON, COLE, SELTZER
19 & GARIN, P.C.

20 By:


JOSEPH P. GARIN, ESQ.

NEVADA BAR NO. 6653

21 SIRIA L. GUTIERREZ, ESQ.

NEVADA BAR NO. 11981

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23 Las Vegas, Nevada 89144

(702) 382-1500

24 *Attorneys for Defendant,*

25 PAT SONGER
26
27
28

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)	Attorney(s)
SONGER, PAT	GARIN, JOSEPH P

Defendant(s)	Attorney(s)
ERICKSON, THORPE & SWAINSTON	ALEXANDER, TODD R.

Plaintiff(s)	Attorney(s)
DELUCCHI, RAYMOND	MARKS, DANIEL

Plaintiff(s)	Attorney(s)
HOLLIS, TOMMY	MARKS, DANIEL

Disp/Judgment: MTDS Date: 11/19/14

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 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

JUDGE: KIMBERLY A. WANKER

CLERK: TANNER DAVIS

BAILIFF: JAMES BURKE

APP: ADAM LEVINE IS PRESENT FOR RAYMOND DELUCCHI AND TOMMY HOLLIS. SIRIA GUTIERREZ IS PRESENT FOR PAT SONGER. TODD ALEXANDER IS PRESENT FOR ERICKSON, THORPE & SWAINSTON.

COURT CALLS THE MATTER. MR. ALEXANDER OUTLINES AN ERROR IN THE PAPER PLEADINGS REGARDING THE CLIENT'S DEDUCTIBLE. COURT REVIEWS THE CASE FILE AND OUTLINES THE FEES/COSTS. COURT NOTES THERE IS NOT AN OPPOSITION TO MS. GUTIERREZ'S COSTS. MS. GUTIERREZ STATES AT THE TIME OF FILING THE MEMORANDUM AND COSTS IN THIS CASE WAS A PROJECTED AMOUNT SINCE THE CLIENT IS BILLED QUARTERLY, AND THE PROJECTED AMOUNT HAS NOT BEEN OFFICIALLY BILLED. COURT NOTES THAT SHE HAS NOT FOUND CASE LAW THAT AWARDED TRAVEL COSTS WHEN AWARDED FEES AND COSTS IN SPECIAL MOTIONS TO DISMISS. MS. GUTIERREZ STATES HER CLIENT WAS BILLED FOR A TOTAL OF \$21767.50. COURT OUTLINES THE HOURLY RATE MS. GUTIERREZ AND MR. ALEXANDER SUBMITTED AND HOW IT IS ALMOST IDENTICAL AND BELIEVES BOTH TO BE REASONABLE. COURT STATES SHE IS INCLINED TO GRANT THE TOTAL AMOUNT THE CLIENTS WERE BILLED. MR. LEVINE ARGUES THAT THE STATUTES REFLECT REASONABLE FEES AND COSTS SHOULD BE AWARDED, NOT ALL FEES THAT ARE

ACCRUED BY THE CLIENTS. MR. LEVINE FURTHER ARGUES THAT SOME OF THE ATTORNEY'S FEE DESCRIPTIONS ARE REDACTED OUT OF THE MEMORANDUM OF FEES AND COSTS SO HE IS NOT EVEN SURE WHAT HIS CLIENT WILL BE PAYING FOR. COURT BELIEVES REASONABLE ATTORNEY'S FEES FALLS RIGHT IN LINE WITH WHAT THE CLIENTS WERE BILLED FOR. COURT AWARDS ATTORNEY'S FEES IN THE AMOUNT OF \$22,907.50 TO E.T.S. AND \$21,767.50 TO PAT SONGER. COURT AWARDS COSTS IN THE AMOUNT OF \$709.38 TO E.T.S. AND \$702 TO PAT SONGER. COURT DENIES THE ADDITIONAL \$10,000 BOTH DEFENDANTS ARE REQUESTING. MR. LEVINE REQUESTS THE COURT NOT TO REQUIRE A BOND IN THIS MATTER BECAUSE THE BONDSMAN REQUIRE 10-15% THAT WILL BE GONE AS SOON AS IT IS PAID. MR. ALEXANDER STATES EVERYONE WOULD BE COMFORTABLE WITH A BOND IN PLACE. MS. GUTIERREZ CONCURS. COURT ORDERS THAT A BOND IS NOT REQUIRED AS LONG AS MR. DELUCCHI AND MR. HOLLIS ARE EMPLOYED BY PAHRUMP VALLEY FIRE DEPARTMENT; BUT IF THEY LEAVE THEIR CURRENT JOB OR GET FIRED, THEY BOTH MUST POST A \$50,000 BOND.

12/02/14 1:30 DEFENDANTS MOTION FOR ATTORNEYS FEES, COSTS..

*****SEE MINUTES ABOVE*****

12/02/14 1:30 PLAINTIFFS' MOTION TO RETAX COSTS

*****SEE MINUTES ABOVE*****

CERTIFICATION OF COPY

STATE OF NEVADA
COUNTY OF NYE

I, **SANDRA L. MERLINO**, the duly elected, qualifying and acting Clerk of Nye County, in the State of Nevada, and Ex-Officio Clerk of the District Court, do hereby certify that the foregoing is a true, full and correct copy of the original:

Documents filed and of record in CV35969: Amended Notice of Appeal filed 12/17/14; District Court Docket entries; Findings of Fact, Conclusions of Law and Order Granting Defendant Erickson, Thorpe & Swainston's Special Motion to Dismiss filed 09/17/14; Order Granting Defendant Pat Songer's Special Motion to Dismiss Pursuant to NRS § 41.660 filed 11/19/14; Notice of Entry of Order filed 10/07/14; Notice of Entry of Order Granting Defendant Pay Songer's Special Motion to Dismiss Pursuant to NRS § 41.660 filed 12/04/14; District Court minutes;

**RAYMOND DELUCCHI and,
TOMMY HOLLIS,** Plaintiff(s),

VS

**PAT SONGER and ERICKSON,
THORPE & SWAINSTON, LTD.,
Defendant(s).**

))))))))))

DC Case # CV35969

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
set my hand and affixed The Seal of the Court
at my office, Pahrump, Nevada, this 18th day of
December, 2014 A.D.

SANDRA L. MERLINO, CLERK

By: Sarah Westfall
Sarah Westfall, Deputy

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

Tonopah Office
Nye County Courthouse
P.O. Box 1031
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

December 18, 2014

NOTICE OF DEFICIENCY: No filing fees collected. No Case Appeal Statement submitted.

VIA E-FILE

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

Re: CV35969
RAYMOND DELUCCHI and TOMMY HOLLIS, Plaintiffs, vs. PAT
SONGER and ERICKSON, THORPE & SWAINSTON, LTD., Defendants.

Dear Ms. Lindeman:

I am submitting an Amended Notice of Appeal received and filed December 17, 2014 in the above-referenced matter. Also being submitted are additional documents required to submit this appeal.

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

Sincerely,

SANDRA L. MERLINO
NYE COUNTY CLERK

By: 
SARAH WESTFALL, Deputy

cc: Daniel Marks, Esq. (Attorney for Plaintiffs)
Joseph Garin, Esq. (Attorney for Defendant Pat Songer)
Todd Alexander, Esq. (Attorney for Defendant Erickson, Thorpe &
Swainston, Ltd.)
The Honorable Kimberly A. Wanker