

IN THE SUPREME COURT OF THE STATE OF NEVADA

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JENNIFER V. ABRAMS; AND THE
ABRAMS & MAYO LAW FIRM,

Appellant,

STEVE W. SANSON; VETERANS
IN POLITICS INTERNATIONAL,
INC; LOUIS C. SCHNEIDER; AND
LAW OFFICES OF LOUIS C.
SCHNEIDER, LLC,

Respondent.

S.C. NO: 73838/Elizabeth A. Brown
D.C. NO: A-17-70918 Clerk of Supreme Court

RESPONDENT'S ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE STATEMENT

Respondent has been represented by the following attorneys:

- a. Cal Potter, Esq. (Deceased), as attorney of record for Respondent/Defendant.
- b. Joseph W. Houston, II, Esq., as attorney of record for Respondent/Defendant.

There's no corporations, entities, or publicly-held companies that own 10% or more of Defendant's stock or business interests.

DATED this 13 day of FEBRUARY, 2019.

Respectfully Submitted By:


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ROUTING STATEMENT

This case is presumptively assigned to the Court of Appeals per NRAP 17(b)(5). Respondent agrees with the Appellant's request that this be heard by the Nevada Supreme Court instead of the Court of Appeals.

STATEMENT OF THE ISSUES

Whether there was an abuse of discretion by the District Judge in granting the Defendant's motion to dismiss pursuant NRS 41.660 ?

JURISDICTIONAL STATEMENT

As the trial court general jurisdiction, the district court in Clark County had original jurisdiction to hear Appellant's First Amended Complaint for Damages.

This Court is the appellate court for the district courts, and has subject matter jurisdiction to review the final decisions of those courts. Jurisdiction in this Court is pursuant to NRAP 3A(b)(1), under which an appeal may be taken from a final judgment, decree, or order entered in an action or proceedings in a district court.

STATEMENT OF CASE

This is an appeal from two orders granting Sanson's and Schneider's "anti-SLAPP" motions. The *Orders* were filed July 24, 2017, and April 24, 2018, Hon. Michelle Leavitt, District Court Judge, presiding in Dept. XII and Hon. Elizabeth Gonzalez, District Court Judge, presiding in Dept. XI, respectively. The *Orders* originated out of a hearing that took place on June 5, 2017, presided over by Judge Leavitt.

STATEMENT OF FACTS

In the Appellant's Opening Brief, the Statement of Facts basically makes argument to the Court which is scandalous at best but without any reference to the record of the Appendix to justify the statements made.

The facts are that the Plaintiff filed an Amended Complaint (JVA85). The Amended Complaint claimed that the Plaintiff was defamed when the Defendant, Veterans in Politics International LLC (herein after referred to as VIP) published the contents of a hearing which had occurred in Family Court in which the Plaintiff represented one of the parties. As set forth in paragraph 27 of the Amended Complaint, the Plaintiff admits that, the hearing in question was a "closed hearing" pursuant to then existing EDCR 5.02. The then existing EDCR 5.02 stated as follows,

"Rule 5.02 Hearings may be private.

(a) In any contested action for divorce, annulment, separate maintenance, breach of contract or partition based upon a meretricious relationship, custody of children or spousal support, the court must, upon demand of either party, direct that the trial or hearing(s) on any issue(s) of fact joined therein be private and upon such direction, all persons shall be excluded from the court or chambers wherein the action is heard, except officers of the court, the parties, their witnesses while testifying, and counsel. . ."

This rule simply allows the Court to excuse people from the courtroom and that is all. It did not mean that the file or the proceedings were "sealed" and not able to be viewed by the public, who could obtain a copy of the proceedings from

the county clerk on request.

NRS 125.110 allows the Court to seal a transcript of the proceedings, it states,

“all other papers, records, proceedings and evidence, including exhibits and the transcript of the testimony, shall, upon written request of any party to the action, file with the Court Clerk, be sealed. It shall not be opened to inspection except to the parties and their attorneys...” (NRS 125.110 [2])

No written request was filed to seal the court proceedings and the Court did not seal the Court proceedings at the time of the hearing. Therefore, the proceedings were opened to the public and anyone could've requested a copy of the transcript of those proceedings.

Paragraph 30 of the Amended Complaint alleges that the Defendant, Schneider, obtained a copy of the hearing on September 29. Which again any person in the general public could've done.

The Plaintiff alleges in paragraph 33 of the Amended Complaint that the Defendant, VIP, published a copy of the proceedings on October 5th. This was prior to any attempt by Judge Elliott to seal the record.

Paragraph 37 of the Amended Complaint alleges that the “entire one hour and twelve minute video was posted.”

An Order to seal the record was filed the day after the posting on October 6,

2016 (RA1). The Court also issued an Order Prohibiting Dissemination of the Case Material the same day (RA2-3).

In an Order filed March 21, 2017, Judge Elliott issued an order addressing the issues of the publication by VIP of the hearing that had occurred (RA4). Judge Elliott's ruling stated, "the Court FINDS that the Order Prohibiting Dissemination of Case Material to be unconstitutionally overbroad as such, the Court HEREBY ORDERS the Order Prohibiting Dissemination of Case Material shall be struck and vacated." (RA21) The Court further ordered as follows, "the Court FINDS and Orders that without a valid Order Prohibiting Dissemination of Case Material, that Plaintiff's Order to Show Cause cannot stand." (RA23) The Court even stated, "The Court further FINDS that Plaintiff's Motions appear to be more about bolstering Abrams' civil action against Schneider and Sanson, especially since neither party has alleged specific harm." (RA24)

STANDARD OF REVIEW

The Nevada Supreme Court has ruled that the Standard of Review in regards to NRS 41.637 was to review the lower Court's decision to, "for an abuse of discretion." Shapiro v. Shapiro 133 Nev.Adv.Op. 6, 389 P.3d 262 (2017).

SUMMARY OF ARGUMENT

The District Court order dismissing the Plaintiff's amended complaint pursuant to NRS 41.660 was not an abuse of discretion and is supported by the Nevada Supreme Court case of Adelson v. Harris 133 Nev.Adv.Opn. 67, 402 P.3d 665 (2017).

ARGUMENT

The Plaintiff sets forth in her Amended Complaint facts which show the video of the hearing that occurred was obtained and published prior to the time there was any Order sealing the file. Any member of the public could've obtained the same. It had been obtained at least by the publication date of October 5, 2016, as that was the date of the first publication. There's no factual basis for any finding against Louis C. Schneider or The Law Offices of Louis C. Schneider, LLC. that he directed the Defendant, VIP, to publish the same. There's certainly no evidence as alleged in paragraph 32 of the Complaint that, "...Defendant's conspired to affect the outcome of a pending "D" case"

The hearing on September 29, 2016 before Judge Elliott was the subject of the publication by VIP. This was the divorce case of Brandon Saiter v. Tina Saiter, case number D-15-521372-D. In this case Jennifer Abrams the Plaintiff in this

defamation matter was one of the attorneys representing the Plaintiff Brandon Saiter. Judge Elliott was obviously concerned over the actions of the Plaintiff and her office in that case and when she began questioning Jennifer Abrams's conduct and actions and whether or not they were appropriate.

The transcript of this proceeding has been ordered sealed by the Nevada Supreme Court in an order filed December 6, 2018. Therefore the actual wording of what occurred will not be set forth here and instead will only be summarized. The court surely will review the actual transcript.

Judge Elliott was concerned that the Plaintiff's counsel, Ms. Abrams, had met with the defendant without her attorney of record being present; without the knowledge of Mr. Schneider her attorney of record and had entered into a settlement of the case that did not appear appropriate or fair to the defendant.

To say the least there were terse and apparently heated exchanges between the judge and Ms. Abrams. When it appeared that Judge Elliott was not going to rule its way being requested by Ms. Abrams, Ms. Abrams essentially accused the Judge of having a sexual relationship with attorney Schneider.

The Defendant Steve Sanson made a declaration under oath (AA406) with his action in publishing the video of the hearing. He said that he did so as the

president of VIP on a public website which reports in part on judicial proceedings. The declaration set forth that “The video showed what in my opinion was the Plaintiff Jennifer Abrams being disrespectful to Judge Elliott, and Judge Elliott failing to adequately control her courtroom. The article also contains actual transcriptions of the words exchanged by Plaintiff Jennifer Abrams and Judge Elliott.” This publication was on a public website and included available for any viewer the entire actual video of what had occurred.

Not only did Mr. Sanson on behalf of VIP feel that this inappropriate conduct that occurred at the hearing, the Nevada Supreme Court must have likewise felt the same because in its Order dismissing the Appeal in the actual Divorce proceedings (RA26-28). The Nevada Supreme Court referred the matter to the State Bar of Nevada in its footnote of the last page thereof.

NRS 41.650 states:

“ A person who engages in a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern is immune from any civil action for claims based upon the communication.”

NRS 41.660 states:

(3) If a special motion to dismiss is filed pursuant to subsection 2, the court shall: (a) Determine whether the moving party has established, by a preponderance of the evidence, that claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern; (b) If the court determines that the moving party has met the burden pursuant to paragraph (a), determine whether the plaintiff has demonstrated with prima facie evidence a probability of prevailing on the claim.”

The Order granting the Defendant's Motion to Dismiss pursuant to NRS

41.660 was valid both factually and legally (JVA1675).

In *Adelson v. Harris* 133 Nev. Adv. Op. 67 402 P.3d 665 (2017) the Nevada Supreme Court stated,

"...we conclude that as to source material about a judicial proceeding may suffice as a report within the common law fair report privilege." (666) The Nevada Supreme Court also stated, "...Nevada 'has long recognized a special privilege of absolute immunity from defamation given to the new media and the general public to report newsworthy events in judicial proceedings...' [T]he 'fair, accurate, and impartial' reporting of judicial proceedings is privileged and nonactionable...affirming the policy that Nevada citizens have a right to know what transpires in public and official legal proceedings...Although the fair report privilege is most commonly asserted by media defendants, it 'extends to any person who makes a republication of a judicial proceeding from material that is available to the general public.'" (667)

The Nevada Supreme Court continued,

"When a specific attribution makes it apparent to an average reader that a document draws from judicial proceedings, it will be immune from civil liability. (668)

The court finally stated,

"Hyperlinks provide strong attribution because they allow direct access to underlying materials, are intuitively easy to use, and are extremely prevalent online. A reader can click on a hyperlink and immediately determine whether official proceedings are implicated." (667)

The extensive legal argument as to each of the causes of action by the Plaintiff's in the Amended Complaint and simply do not to be repeated here can be found at JVA 205-259.

CONCLUSION

Nevada Revised Statutes and decisions by the Nevada Supreme Court clearly support the rule made by the District Court Judge dismissing the Plaintiff's Amended Complaint.

Ms. Abrams conduct at the time of the divorce hearing was totally inappropriate and the proceedings were certainly of public concern and obviously concerned the Nevada Supreme Court as it referred the matter to the State Bar of Nevada. The ruling of the District Court should be upheld.

DATED this 13 day of FEBRUARY, 2019.

Respectfully Submitted By:



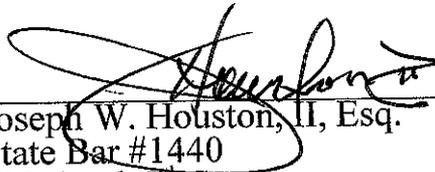
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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Corel WordPerfect Office X7, Standard Edition in font size 14, and the type style of Times New Roman.
2. I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding parts of the brief exempted by NRAP 32(a)(7)(C), as it does not exceed 30 pages.
3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the

requirements of the Nevada Rules of Appellate Procedure.

DATED this 13 day of February, 2019.

A handwritten signature in black ink, appearing to read "Houston", is written over a horizontal line.

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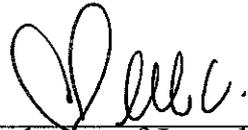
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Joseph W. Houston, II, Esq. and that on this 13 day of February, 2019, documents entitled Respondent's Answering Brief were filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows, to the attorneys listed below at the address, email address, and/or facsimile number indicated below:

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