

1 Case No. 14-CV-00260-DC
2 Dept. II

RECEIVED

SEP 17 2018

Douglas County
District Court Clerk

FILED

2018 SEP 17 AM 8:58

Electronically Filed
Oct 02, 2018 03:52 p.m.
Elizabeth A. Brown,
Clerk of Supreme Court

6 NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF DOUGLAS
8

9 HELMUT KLEMENTI, an individual;

10 Plaintiff,

11 vs.

12 JEFFREY D. SPENCER, an individual
13 & DOES 1-5;

14 Defendants.
15

16 JEFFREY D. SPENCER, an individual,

17 Counterclaimant,

18 vs.

19 HELMUT KLEMENTI, an individual,
20 EGON KLEMENTI, an individual,
21 ELFRIEDE KLEMENTI, an individual,
22 MARY ELLEN KINION, an individual,
23 ROWENA SHAW, an individual,
24 PETER SHAW, an individual, and DOES 1-5,

25 Counterdefendants.
26

NOTICE OF APPEAL

Doyle Law Office

24 Kerry S. Doyle, Esq.
25 8755 Technology Way
Suite I
Reno, Nevada 89521
(775) 525-0889

kerry@rdoylelaw.com

25 Counterclaimant, Jeffrey Spencer, by and through his counsel, DOYLE LAW
26 OFFICE, PLLC, hereby files this appeal from the final judgment in this action and all
27 previous interlocutory orders. *See Consolidated Generator v. Cummins Engine Co.*, 114 Nev. 1304,
28 1312, 971 P.2d 1251, 1256 (1998). Spencer treats as final judgment the order granting

1 summary judgment that resolved the last claims against the last remaining party, which
2 judgment was entered on August 23, 2018 and for which written notice of entry was served
3 on August 30, 2018. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000).
4

5 **DATED** this 17th day of September, 2018.

6 DOYLE LAW OFFICE, PLLC

7
8 By: 

9 KERRY S. DOYLE, ESQ.

10 NEVADA BAR NO. 10866

11 4600 KIETZKE LANE, SUITE I-207

12 RENO, NEVADA 89502

13 (775) 525-0889

14 ATTORNEYS FOR SPENCER
15
16
17
18
19
20
21
22

23 *Doyle Law Office*

24 Kerry S. Doyle, Esq.
25 8755 Technology Way
Suite I
Reno, Nevada 89521
(775) 525-0889

26 kerry@rdoylelaw.com
27
28

1 **CERTIFICATE OF SERVICE**

2
3 Pursuant to NRCP 5(b), I certify that I am an employee of the DOYLE LAW
4 OFFICE, PLLC, and that on the date shown below, I caused service to be completed of a
5 true and correct copy of the foregoing NOTICE OF APPEAL by:

- 6 _____ personally delivering;
7
8 _____ delivery via Reno/Carson Messenger Service;
9
10 _____ sending via Federal Express (or other overnight delivery service);
11 X _____ depositing for mailing in the U.S. mail, with sufficient postage affixed thereto;
12 _____ or,
13 _____ delivery via electronic means (fax, eflex, NEF, etc.) to:

13 Douglas R. Brown
14 Christian L. Moore
15 Lemons, Grundy & Eisenberg
16 6005 Plumas Street, Suite 300
17 Reno NV 89519

17 Michael A Pintar
18 Glogovac & Pintar
19 427 W. Plumb Lane
20 Reno NV 89509

20 Tanika M. Capers
21 American Family Mutual Insurance Company
22 6750 Via Austi Parkway, Ste. 310
23 Las Vegas NV 89119

23 ***Doyle Law Office***

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DATED this 17 September 2018.

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BOBBIE R. WILLIAMS
CLERK

BY ANNA DEPUTY

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7 IN AND FOR THE COUNTY OF DOUGLAS

8
9 HELMUT KLEMENTI, an individual;

10 Plaintiff,

11 vs.

12 JEFFREY D. SPENCER, an individual
13 & DOES 1-5;

14 Defendants.

15
16 JEFFREY D. SPENCER, an individual,

17 Counterclaimant,

18 vs.

19 HELMUT KLEMENTI, an individual,
20 EGON KLEMENTI, an individual,
21 ELFRIEDE KLEMENTI, an individual,
22 MARY ELLEN KINION, an individual,
23 ROWENA SHAW, an individual,
24 PETER SHAW, an individual, and DOES 1-5,

25 Counterdefendants.

CASE APPEAL STATEMENT

26 Counterclaimant, Jeffrey Spencer, by and through his counsel of record, DOYLE
27 LAW OFFICE, PLLC, files this Case Appeal Statement pursuant to Nevada Rule of
28 Appellate Procedure 3(f).

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Kerry S. Doyle, Esq.
8755 Technology Way
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Reno, Nevada 89521
(775) 525-0889

kerry@rdoylelaw.com

- 1 **1. Name of appellant filing this case appeal statement:** Jeffrey D. Spencer.
- 2 **2. Identify the judge issuing the decision, judgment, or order appealed from:**
- 3 Senior Judge Steven Kosach.
- 4 **3. Identify each appellant and the name and address of counsel for each**
- 5 **appellant:** Jeffrey Spencer is represented on appeal by Kerry S. Doyle of the Doyle Law
- 6 Office, PLLC at 4600 Kietzke Lane, Ste. I-207, Reno, Nevada 89502.
- 7 **4. Identify each respondent and the name and address of appellate counsel,**
- 8 **if known, for each respondent (if the name of a respondent's appellate counsel is**
- 9 **unknown, indicate as much and provide the name and address of that respondent's**
- 10 **trial counsel):**
- 11 Listed below are the respondents and their counsel in the trial court proceedings:
- 12 Helmut Klementi
- 13 Represented by:
- 14 Douglas R. Brown
- 15 Christian L. Moore
- 16 Lemons, Grundy & Eisenberg
- 17 6005 Plumas Street, Suite 300
- 18 Reno NV 89519
- 19 Elfriede Klementi, Mary Ellen Kinion, and the Estate of Egon Klementi,
- 20 Represented by
- 21 Michael A Pintar
- 22 Glogovac & Pintar
- 23 427 W. Plumb Lane
- 24 Reno NV 89509
- 25 Rowena Shaw and Peter Shaw
- 26 Represented by:
- 27 Tanika M. Capers
- 28 American Family Mutual Insurance Company
- 6750 Via Austi Parkway, Ste. 310
- Las Vegas NV 89119
- 5. Indicate whether any attorney identified above in response to question 3**
- or 4 is not licensed to practice law in Nevada and, if so, whether the district court**
- granted that attorney permission to appear under SCR 42 (attach a copy of any**
- district court order granting such permission):** All of the listed attorneys listed are
- licensed in Nevada.

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1 6. Indicate whether appellant was represented by appointed or retained
2 counsel in the district court: Jeffrey Spencer was represented by retained counsel in the
3 district court.

4 7. Indicate whether appellant is represented by appointed or retained
5 counsel on appeal: Jeffrey Spencer is represented by retained counsel on appeal.

6 8. Indicate whether appellant was granted leave to proceed in forma
7 pauperis, and the date of entry of the district court order granting such leave: Jeffrey
8 Spencer has not been granted leave to proceed in forma pauperis.

9 9. Indicate the date the proceedings commenced in the district court (e.g.,
10 date complaint, indictment, information, or petition was filed): The proceedings were
11 initiated on December 17, 2014.

12 10. Provide a brief description of the nature of the action and result in the
13 district court, including the type of judgment or order being appealed and the relief
14 granted by the district court: Helmut Klementi initially filed this action, suing Jeffrey
15 Spencer civilly after Spencer was acquitted of criminal charges for an alleged battery. Spencer
16 counterclaimed against Helmut Klementi and the other respondents, asserting defamation,
17 intentional infliction of emotional distress, malicious prosecution, and civil conspiracy. All
18 of the claims arise from an ongoing dispute between neighbors, during which Helmut
19 Klementi trespassed on Spencer's property, Spencer challenged him to identify himself, and,
20 when Klementi failed to do so, Spencer ran into the as yet unidentified man, after which
21 Klementi fell to the ground. Spencer was attempting to prevent what he perceived as a
22 stranger trying to break into his truck. Additionally, the respondents falsely reported to the
23 Douglas County Sheriff and the Kingsbury Grade Improvement District other alleged
24 wrongdoing on the part of Spencer. Respondents pushed for criminal prosecution based on
25 the false claims and admitted that they had been trying to get him fired by his employer and
26 his race team. These actions understandably caused Spencer severe emotional distress.
27 Despite evidence creating genuine issues of material fact as to the claims, the trial court
28 granted summary judgment in favor of each respondent.

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1 During the course of the proceedings, after granting early summary judgment to one
2 third-party defendant, Mary Ellen Kinion, on one of the claims against her, the trial court
3 also granted Kinion's motion for attorneys' fees and costs. Spencer appeals from that order,
4 as an interlocutory order for which appeal may be taken after final judgment, to challenge
5 the award, which was based on the assertion that his counterclaim was brought without
6 reasonable grounds. *See Consolidated Generator v. Cummins Engine Co.*, 114 Nev. 1304, 1312, 971
7 P.2d 1251, 1256 (1998).

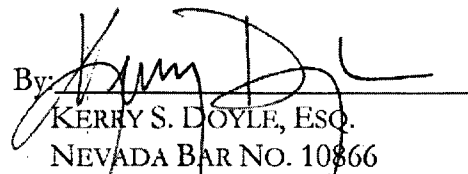
8 **11. Indicate whether the case has previously been the subject of an appeal to**
9 **or original writ proceeding in the Supreme Court and, if so, the caption and Supreme**
10 **Court docket number of the prior proceeding:** This action has not previously resulted in
11 an appeal or an original writ proceeding.

12 **12. Indicate whether this appeal involves child custody or visitation:** This
13 action does not involve child custody or visitation.

14 **13. If this is a civil case, indicate whether this appeal involves the possibility**
15 **of settlement:** The parties have previously discussed settlement and Spencer is willing to
16 continue those discussions.

17 **DATED** this 17th day of September, 2018.

18 DOYLE LAW OFFICE, PLLC

19
20 By: 
21 KERRY S. DOYLE, ESQ.
22 NEVADA BAR NO. 10866
23 4600 KIETZKE LANE, SUITE I-207
24 RENO, NEVADA 89502
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26 ATTORNEYS FOR APPELLANT

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23 *Doyle Law Office*

24 Kerry S. Doyle, Esq.
25 8755 Technology Way
26 Suite 1
27 Reno, Nevada 89521
28 (775) 525-0889

kerry@rdoyleclaw.com

DATED this 17 September 2018.

By 

9TH JUDICIAL DISTRICT COURT
 Bobbie R. Williams
 Clerk of the Court
 Ph 782-9820 Fax 782-9954
 1038 Buckeye Rd.
 P.O. Box 218
 Minden, NV 89423-0000
 (775)-782-9820, TTY for Deaf: (775)-782-9964
 (775) 782-9820

09/26/18

Case Number: 14-CV-00260-DC CV-OTH
 Date Filed: 12/19/14
 Status: Re-Closed
 Judge Assigned: Kosach, Steven

Klementi V Spencer

C A S E H I S T O R Y

INVOLVED PARTIES

Type Num	Name (Last, First, Mid, Title)	Dispo	Entered
TPD 001	Klementi, Egon		05/09/16
	Attorney: 003789 Pintar, Michael		
	50 West Liberty St., Suite 700		
	Reno,, NV 89501		
TPD 002	Klementi, Elfriede		05/09/16
PLT 001	Klementi, Helmut		12/17/14
	Attorney: 003664 Laub, Joe	Removed: 05/09/16	
	003777 Moore, Christian		
	Lemons, Grundy & Eisenberg		
	6005 Plumas Street, Suite 300		
	Reno, NV 89509		
	7620 Brown, Douglas R		
	6005 Plumas St, Suite 300		
	Reno, NV 89509-6000		
OTH 001	Kinion, Mary Ellen	AH JSUM 04/03/ 03/19/15	
	Attorney: 003789 Pintar, Michael		
	50 West Liberty St., Suite 700		
	Reno,, NV 89501		
DEF 001	Spencer, Jeffrey D.		12/17/14
	Attorney: 003567 Pierce, Lynn	Removed: 07/18/18	
	7962 Zaniel, David M		
		Removed: 07/18/18	

1111 Person, Proper
P. O. Box 218
Minden, NV 89423

Type	Num	Name (Last, First, Mid, Title)	Dispo	Entered
DEF	002	Shaw, Rowena		07/10/17
		Attorney: 10867 Capers, Tanika M		
		6775 Edmond Street, Suite 210		
		Las Vegas, NV 89118		
		(702) 733-4989		
DEF	003	Shaw, Peter		07/10/17
		Attorney: 10867 Capers, Tanika M		
		6775 Edmond Street, Suite 210		
		Las Vegas, NV 89118		
		(702) 733-4989		

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Jdg	L Day	Of	Rslt	By	ResultDt	Jdg	T	Notice	Rec
09/08/16	01:00P	001	yes	MOTN	NTY	D	01	/01	VAC	C	08/26/16	TWG		
10/05/16	01:30P	001	yes	MOTN	TWG	D	01	/01	VAC	C	10/04/16	SRK		
12/05/16	09:00A	007	yes	CIJT	NTY	D	01	/01	VAC	C	11/02/16	SRK		
12/07/16	09:00A	007	yes	CIJT	NTY	D	01	/02	VAC	C	11/02/16	SRK		
12/08/16	09:00A	007	yes	CIJT	NTY	D	02	/02	VAC	C	11/02/16			
12/14/16	09:00A	007	yes	CIJT	NTY	D	01	/02	VAC	C	11/02/16	SRK		
12/15/16	01:30P	001	yes	CALL	NTY	D	01	/01	CON	C	12/15/16	NTY P		N
12/16/16	09:00A	001	yes	CIJT	NTY	D	01	/01	VAC	C	11/02/16	SRK		
01/30/17	01:30P	001	yes	CALL	NTY	D	01	/01	CON	C	01/30/17	NTY P		N
07/12/18	10:00A	001	yes	OTSC	NTY	D	01	/01	CON	C	07/12/18	NTY		N
10/08/18	09:00A	001	yes	CIJT	NTY	D	01	/01	VAC	C	07/12/18	SRK		
10/10/18	09:00A	001	yes	CIJT	NTY	D	01	/03	VAC	C	07/12/18	NTY		
10/11/18	09:00A	001	yes	CIJT	NTY	D	02	/03	VAC	C	07/12/18			
10/12/18	09:00A	001	yes	CIJT	NTY	D	03	/03	VAC	C	07/12/18			

Date	Time	Dur	Cer	Evnt	Jdg L	Day	Of	Rslt	By	ResultDt	Jdg T	Notice	Rec
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10/15/18	01:30P	001	yes	CIJT	NTY	D	01	/01	VAC	C	07/12/18	NTY	
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10/17/18	09:00A	001	yes	CIJT	NTY	D	01	/03	VAC	C	07/12/18	NTY	
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10/18/18	09:00A	001	yes	CIJT	NTY	D	02	/03	VAC	C	07/12/18		
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10/19/18	09:00A	001	yes	CIJT	NTY	D	03	/03	VAC	C	07/12/18		
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JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal	RSN
MPG Gibbons, Michael	J	12/17/14	ER	07/01/15
NTY Young, Nathan Tod	J	07/01/15	ER	07/24/15
SRK Kosach, Steven	J	07/24/15		

DOCUMENT TRACKING

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User ID
001000	Complaint	12/17/14		MPG	PLT001			MB MB
002000	Summons Issued	12/17/14		MPG	PLT001			MB MB
003000	Summons Filed	01/28/15		DRG	PLT001			MB MB
004000	Summons Issued	02/03/15		DRG	PLT001			N/A MB
005000	Summons Issued	02/03/15		DRG	PLT001			N/A MB
006000	Answer and Counterclaim	02/03/15		DRG	DEF001			N/A MB
007000	Summons Issued	02/03/15		DRG	PLT001			N/A MB
008000	Summons Issued	02/03/15		DRG	PLT001			N/A MB
009000	Answer to Counterclaim	02/23/15		DRG	PLT001			N/A MB
010000	Summons Filed	02/25/15		DRG	000			N/A MB
011000	Summons Issued	02/25/15		DRG	000			N/A MB
012000	Summons Filed	02/25/15		DRG	000			N/A MB
013000	Answer to Counterclaim	02/26/15		DRG	PLT001			N/A MB

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User ID
014000	Notice of Appearance	03/13/15		DRG	000			N/A MB
015000	Application to Proceed in Informa Pauperis	03/19/15		DRG	OTH001	Ruled	05/09/16	N/A MB
016000	Answer to Counterclaim	03/23/15		DRG	000			N/A MB
017000	Order to Proceed in Forma Pauperis	03/23/15		DRG	OTH001			N/A MB
018000	Certificate of Service	03/30/15		DRG	PLT001			N/A MB
019000	Notice of Association of Counsel	04/13/15		DRG	PLT001			N/A MB
020000	Order	04/14/15		DRG	000			N/A MB
021000	Notice of 16.1 Early Case Conference	05/14/15		TWG	PLT001			DG DG
022000	Demand for Jury Trial	06/03/15		TWG	PLT001			HC HC
023000	Notice of Motion and Motion for Leave to Amend Complaint	06/15/15		TWG	PLT001			HC HC
024000	Order Transferring Case to Dept. I	07/01/15		TWG	000			DG DG
025000	Notice of Peremptory Challenge of Judge	07/16/15		NTY	DEF001			DG DG
026000	Request For Assignment of Judge	07/20/15		NTY	000			DG DG
027000	Memorandum of Temporary Assignment	07/24/15		NTY	000			MB MB
028000	Joint Case Conference Report Filed by DEF001-Spencer, Jeffrey D., OTH001-Kinion, Mary Ellen, PLT001-Klementi, Helmut	08/12/15		TWG	DEF001			DG DG
029000	Order	09/09/15		NTY	000			MB MB
030000	Scheduling Order	10/12/15		NTY	000			MB MB
031000	Order Setting Trial	10/12/15		NTY	000			MB MB
032000	Notice of Appearance	11/25/15		TWG	OTH001			KW KW
033000	Motion For Substitution of Counsel	01/08/16		NTY	DEF001	Ruled	06/01/16	N/A KW
034000	Answer to Counterclaim	02/09/16		TWG	OTH001			MB MB
035000	Notice of Association of Counsel	04/04/16		TWG	PLT001			MB MB
036000	Motion for Leave to Amend Complaint	04/12/16		TWG	PLT001			MB MB
037000		04/13/16		TBA	000			MB MB

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User ID
038000	Third-Party Defendant Mary Kinion's Motion for Summary Judgment	04/22/16		TWG	OTH001			MB MB
039000		04/25/16		TBA	000			MB MB
040000	Demand for Prior Pleadings and Discovery	04/25/16		TWG	OTH001			HC HC
041000		04/26/16		TBA	000			HC HC
042000	Notice of Withdrawal of Counsel Laub & Laub	05/09/16		NTY	PLT001			HC HC
043000	Order	05/09/16		TWG	000			MB MB
044000	Joinder to Third-Party Defendant Mary Kinion's Motion for Summary Judgment	05/09/16		TWG	OTH001			MB MB
045000	Substitution of Attorney	05/09/16		TWG	PLT001			MB MB
046000	Notice of Non-Opposition to Helmut Klementi's Motion for Leave to File Amended Complaint	05/13/16		NTY	PLT001			HC HC
047000	Notice of Appearance	05/18/16		TWG	DEF001			HC HC
048000	Opposition to Motion for Summary Judgment	05/18/16		TWG	DEF001			HC HC
049000	Request for Submission of Motion for Substitution of Counsel	05/20/16		TWG	DEF001			MB MB
050000	Reply in Support of Third-Party Defendant Mary Kinion's Motion for Summary Judgment	05/23/16		TWG	OTH001			DG DG
051000	Order	06/01/16		TWG	000			MB MB
052000	Defendant's Motion to Compel Response to Subpoena Duces Tecum	07/05/16		TWG	DEF001			MB MB
053000		07/06/16		TBA	000			MB MB
054000	Defendant's Designation of Expert Witnesses	07/13/16		TWG	DEF001			KW KW
055000	Douglas County's Opposition to Defendant Motion to Compel Response to Subpoena Duces Tecum and Cross Motion to Quash Subpoena	07/21/16		TWG	000			N/A KW
056000	Defendant's Reply to Motion to Compel Response to Subpoena Duces Tecum	08/01/16		TWG	DEF001			KW KW

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User ID
057000	Request to Submit Motion to Compel Response to Subpoena Duces Tecum	08/05/16		TWG	DEF001			KW KW
058000	Amended Complaint	08/12/16		NTY	PLT001			N/A KW
059000	Order Setting Hearing	08/12/16		NTY	000			KW KW
060000	Second Amended Counterclaim & Third Party Complaint	08/19/16		NTY	DEF001			N/A KW
061000	Renewed Motion to Amend Counterclaim & Third Party Complaint	08/19/16		NTY	DEF001			N/A KW
062000		08/19/16		TBA	000			N/A KW
063000	Notice of Change of Address	08/19/16		NTY	DEF001			N/A KW
064000	Notice of Hearing	08/24/16		NTY	DEF001			N/A KW
065000	Defendant's Non-Opposition to Counterclaimants Motion to Amend Counterclaim and Third Party Complaint	08/24/16		NTY	DEF001			N/A KW
066000	Opposition to Renewed Motion to Amend Counterclaim and Third Party Complaint Filed by TPD001-Klementi, Egon, TPD002-Klementi, Elfriede	08/24/16		NTY	TPD001			N/A KW
067000	Order Setting Hearing	08/26/16		NTY	000			N/A KW
068000	Joinder to Third-Party Defendant Mary Kinion, Egon Klementi, and Elfriede Klementis Opposition to Renewed Motion to Amend Counterclaim and Third Party Complaint	09/06/16		TWG	000			N/A KW
069000	Notice of Appearance	09/06/16		NTY	000			N/A KW
070000	Amended Order Setting Hearing and Vacating Trial Dates Schedule for December 2016	11/02/16		NTY	000			KW KW
071000	Order Setting Hearing and Vacating Trial Dates Scheduled for December 2016	11/02/16		NTY	000			KW KW
072000	Order	12/15/16		SRK	000			DG DG
073000	Order Granting Helmut Klementi's Motion For Leave to Amend a Complaint	12/15/16		SRK	000			DG DG
074000	Supplemental Opposition to Motion for Summary Judgment	01/30/17		NTY	DEF001			DG DG
075000	Transcript of Proceedings (Hearing)	02/01/17		NTY	000			AN AN

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User ID
076000	Amended Notice of Taking Depositions	02/09/17	NTY	PLT001				KW KW
077000	Answer to Amended Complaint & Amended Counterclaim and Third Party Complaint	03/03/17	NTY	DEF001				AN AN
078000	Memorandum of Costs and Disbursements	03/21/17	NTY	OTH001				AN AN
079000	Motion for Attorney's Fees and Costs	03/21/17	NTY	OTH001				AN AN
080000		03/21/17	TBA	000				AN AN
081000	Answer to Amended Counterclaim and Third Party Complaint	03/24/17	TWG	OTH001				AN AN
082000	Answer to Amended Counterclaim and Third Party Complaint Filed by TPD001-Klementi, Egon, TPD002-Klementi, Elfriede	03/24/17	TWG	TPD001				AN AN
083000	Opposition to Motion for Attorney's Fees & Costs & to Memorandum of Costs and Disbursements	03/27/17	TWG	DEF001				AN AN
084000	Order	04/03/17	TWG	000				AN AN
085000	Plaintiff Helmut Klementi's Motion for Preferential Trial Setting	04/03/17	NTY	PLT001				AN AN
086000		04/04/17	TBA	000				AN AN
087000	Reply in Support of Motion for Attorney's Fees and Costs	04/05/17	NTY	OTH001				AN AN
088000	Counterdefendant's Motion to Compel Response to Subpoena Duces Tecum	04/05/17	TWG	OTH001				AN AN
089000		04/06/17	TBA	000				AN AN
090000	Order Granting Helmut Klementi's Motion for Preferential Trial Setting	04/07/17	NTY	000				AN AN
091000	Notice of Entry of Order	04/21/17	NTY	PLT001				AN AN
092000	Plaintiff/Counterdefendant Helmut Klementi's Motion to Bifurcate Trial	04/26/17	SRK	PLT001				AN AN
093000		04/27/17	TBA	000				AN AN
094000	Notice to Set Trial	04/27/17	NTY	PLT001				AN AN
095000	Exparte Motion for Order Shortening Time	04/27/17	NTY	PLT001				AN AN

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User	ID
096000		04/27/17		TBA	000			AN	AN
097000	Defendant Jeff Spencer's Opposition to Counterclaimant's Motion to Bifurcate Trial	05/02/17		NTY	DEF001			AN	AN
098000	Motion to Bifurcate Filed by OTH001-Kinion, Mary Ellen, TPD001-Klementi, Egon, TPD002-Klementi, Elfriede	05/03/17		NTY	OTH001			AN	AN
099000		05/03/17		TBA	000			AN	AN
102000	Counterclaimant's Opposition to Helmut Klementi's Motion to Bifurcate Trial	05/04/17		NTY	DEF001			AN	AN
101000	Order	05/04/17		NTY	000			AN	AN
100000	Plaintiff/Counterdefendant Helmut Klementi's Reply in Support of Motion to Bifurcate Trial	05/04/17		NTY	PLT001			AN	AN
103000	Order	05/08/17		NTY	000			AN	AN
104000	Defendant Jeffrey D. Spencer's Motion to Continue Trial	05/12/17		NTY	DEF001			KW	KW
105000		05/12/17		TBA	000			KW	KW
106000	Defendant Jeffrey D. Spencer's Ex-Parte Motion for an Order Shortening Time	05/12/17		NTY	DEF001			KW	KW
107000		05/12/17		TBA	000			KW	KW
108000	Summons Issued (Peter Shaw)	05/15/17		NTY	DEF001			AN	AN
109000	Summons Issued (Rowena Shaw)	05/15/17		NTY	DEF001			AN	AN
110000	Notice of Entry of Order Filed by TPD001-Klementi, Egon, TPD002-Klementi, Elfriede	05/15/17		NTY	TPD001			AN	AN
111000	Affidavit of Personal Service	05/18/17		NTY	000			AN	AN
113000		05/23/17		TBA	000			AN	AN
114000	Affidavit of Service	06/15/17		NTY	DEF001			AN	AN
115000	Affidavit of Service	06/15/17		NTY	DEF001			AN	AN
116000	Defendant Rowena Shaw and Peter Shaw's Answer to Defendant/Counter-Claimant/Third-Party Plaintiff Jeffrey Spencer's Amended Counterclaim and Third Party Complaint Filed by DEF002-Shaw, Rowena, DEF003-Shaw, Peter	07/10/17		TWG	DEF002			AN	AN

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User ID
117000	Request for Trial Setting	08/01/17	NTY	OTH001				HC HC
118000	Order (Calendar Call)	09/05/17	NTY	000				KW KW
119000	Amended Order (Calendar Call)	09/06/17	NTY	000				KW KW
120000	Stipulation for Dismissal with Prejudice Filed by DEF001-Spencer, Jeffrey D., DEF002-Shaw, Rowena, DEF003-Shaw, Peter, OTH001-Kinion, Mary Ellen, PLT001-Klementi, Helmut, TPD001-Klementi, Egon, TPD002-Klementi, Elfriede	09/12/17	NTY	DEF001				DG DG
121000	Information Questionnaire	09/13/17	NTY	PLT001				DG DG
122000	Information Questionnaire Filed by OTH001-Kinion, Mary Ellen, PLT001-Klementi, Helmut, TPD001-Klementi, Egon, TPD002-Klementi, Elfriede	09/14/17	NTY	OTH001				DG DG
123000	Information Questionnaire	09/14/17	NTY	DEF001				DG DG
124000	Order Setting Trial	09/19/17	NTY	000				DG DG
126000	Scheduling Order	09/19/17	NTY	000				DG DG
125000		09/20/17	TBA	000				DG DG
127000	Information Questionnaire Filed by DEF002-Shaw, Rowena, DEF003-Shaw, Peter	09/20/17	NTY	DEF002				DG DG
128000	Order	10/17/17	NTY	000				DG DG
129000		10/18/17	TBA	000				DG DG
130000	Order	10/19/17	NTY	000				AN AN
131000		10/19/17	TBA	000				AN AN
132000	Notice of Entry of Order Filed by TPD001-Klementi, Egon, TPD002-Klementi, Elfriede	10/26/17	TWG	TPD001				DG DG
133000	Suggestion of Death on the Record	11/16/17	TWG	PLT001				DG DG
134000	Motion for Order to Show Cause	01/12/18	SRK	OTH001		Ruled	02/16/18	DG BH
135000		01/16/18	TBA	000				DG DG
136000	Order	02/26/18	NTY	000				HC HC
138000	Third Party Defendant Rowena Shaw and Peter Shaw's Motion for Summary Judgment Filed by DEF003-Shaw, Peter, DEF002-Shaw, Rowena	02/26/18	TWG	DEF003				MB MB

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User ID
140000	Order	02/26/18		NTY	000			MB MB
137000		02/27/18		TBA	000			HC HC
139000		02/27/18		TBA	000			MB MB
141000	Response To Motion for Order to Show Cause	03/01/18		TWG	DEF001			MB MB
142000	Request for Order to Set Settlement Conferences & to Pend Further Pleading	03/01/18		TWG	DEF001			MB MB
143000	Notice of Association of Counsel	03/07/18		NTY	PLT001			AN AN
144000	Counter-Defendant Helmut Klementi's Answer to Amended Counterclaim and Third-Party Complaint	03/07/18		NTY	PLT001			AN AN
145000	Joinder to Motion for Summary Judgment Filed by TPD002-Klementi, Elfriede, OTH001-Kinion, Mary Ellen	03/12/18		NTY	TPD002			MB MB
146000	Order	03/14/18		SRK	000			AN AN
147000		03/15/18		TBA	000			AN AN
148000	Response To Motion for Summary Judgment Filed by DEF001-Spencer, Jeffrey D., DEF002-Shaw, Rowena, DEF003-Shaw, Peter	03/28/18		TWG	DEF001			MB MB
149000	Reply in Support of Third-Party Defendant Mary Kinion's Motion for Summary Judgment Filed by OTH001-Kinion, Mary Ellen, TPD002-Klementi, Elfriede	04/10/18		TWG	OTH001			MB MB
150000	Counter-Defendant Helmut Klementi's Motion for Summary Judgment on all Counterclaims	04/12/18		NTY	PLT001			MB MB
151000		04/13/18		TBA	000			MB MB
152000	Third-Party Defendant Kinion's Motion for Summary Judgment and Joinder in Helmut Klementi's Motion for Summary Judgment	04/24/18		NTY	OTH001			AN AN
153000		04/24/18		TBA	000			AN AN
154000	Third-Party Defendant Elfride Klementi's Motion for Summary Judgment and Joinder in Helmut Klementi's Motion for Summary Judgment	04/24/18		NTY	TPD002			AN AN
155000		04/24/18		TBA	000			AN AN
156000	Third-Party Defendant's Motion for Sanctions Based on Spoliation of Evidence	04/24/18		NTY	OTH001			AN AN

Filed by OTH001-Kinion, Mary Ellen, TPD002-Klementi, Elfriede

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User ID
157000		04/24/18		TBA	000			AN AN
158000	Request for Submission Filed by DEF003-Shaw, Peter, DEF002-Shaw, Rowena	05/14/18		TWG	DEF003			MB MB
159000	Joinder to Motion for Sanctions	05/18/18		NTY	PLT001			AN AN
160000	Joinder to Third-Party Defendant Mary Kinion's Motion to Strike Plaintiff's Expert Witness Designation	05/25/18		TWG	TPD002			AN AN
161000	Motion to Strike Plaintiff's Expert Witness Designation	05/25/18		SRK	OTH001			AN AN
162000		05/25/18		TBA	000			AN AN
163000	Joinder to Motion to Strike Plaintiff's Expert Witness Designation	06/01/18		NTY	PLT001			AN AN
164000	Video Exhibit in Support of Response to Motions for Summary Judgment & to Motion for Sanctions Based on Spoilation of Evidence	06/05/18		SRK	DEF001			DG DG
165000	Response To Motion for Summary Judgment	06/05/18		SRK	DEF001			DG DG
166000	Responses To Motion for Sanctions Based on Spoilation of Evidence	06/05/18		SRK	DEF001			DG DG
167000	Response To Motion for Summary Judgment	06/05/18		SRK	DEF001			DG DG
168000	Response To Motion for Summary Judgment	06/05/18		SRK	DEF001			DG DG
169000	Amended Certificate of Service	06/05/18		SRK	DEF001			DG DG
170000	Third Party Defendant Rowena Shaw and Peter Shaw's Joinder to Third Party Defendant Mary Ellen Kinion's Motion to Strike Plaintiff's Expert Witness Delegation Filed by DEF002-Shaw, Rowena, DEF003-Shaw, Peter	06/11/18		SRK	DEF002			MB MB
171000	Elfriede Klementi's Reply in Support of Motion for Summary Judgment	06/13/18		SRK	TPD002			AN AN
172000	Reply in Support of Third-Party Defendant's Motion for Sanctions Based on Spoilation of Evidence Filed by OTH001-Kinion, Mary Ellen, TPD002-Klementi, Elfriede	06/13/18		SRK	OTH001			AN AN
173000	Reply in Support of Third-Party Defendant Mary Kinion's Motion for Summary Judgment	06/13/18		SRK	OTH001			AN AN
174000	Order	06/13/18		NTY	000			AN AN

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User ID
176000	Counter-Defendant Helmut Klementi's Reply in Support of His Motion for Summary Judgment on All Counterclaims	06/13/18		NTY	PLT001			AN AN
175000		06/14/18		TBA	000			AN AN
177000	Motion to Dismiss	06/22/18		TWG	TPD002			AN AN
178000		06/25/18		TBA	000			AN AN
179000	Substitution of Counsel	07/18/18		SRK	DEF001			AN AN
180000	Order	08/17/18		SRK	000			AN AN
181000		08/17/18		TBA	000			AN AN
182000	Order Granting Counter-Defendant Helmut Klementi's Motion for Summary Judgment on all Claims	08/23/18		NTY	000			MB MB
183000	Order	08/23/18		TWG	000			MB MB
184000	Order	08/23/18		TWG	000			MB MB
185000	Order	08/23/18		TWG	000			MB MB
186000	Confidential	08/24/18		SRK	000			MB MB
187000	Order	08/29/18		SRK	000			AN AN
188000		08/29/18		TBA	000			AN AN
189000	Order	08/29/18		SRK	000			AN AN
190000		08/29/18		TBA	000			AN AN
191000	Notice of Entry of Order	08/31/18		SRK	OTH001			AN AN
192000	Notice of Entry of Order	08/31/18		SRK	OTH001			AN AN
193000	Notice of Entry of Order	08/31/18		SRK	PLT001			AN AN
194000	Third-Party Defendant Kinion's Motion for Attorney's Fees and Costs	09/07/18		NTY	OTH001			AN AN
196000	Third-Party Defendant Elfriede Klementi's Motion for Attorney's Fees and Costs	09/07/18		NTY	TPD002			AN AN
195000		09/10/18		TBA	000			AN AN
197000		09/10/18		TBA	000			AN AN

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User ID
198000	Counter-Defendant Helmut Klementi's Verified Memorandum of Costs	09/10/18		SRK	PLT001			AN AN
199000	Notice of Appeal	09/17/18		SRK	DEF001			AN AN
200000	Case Appeal Statement	09/17/18		SRK	DEF001			AN AN
201000	Counter-Defendant Helmut Klementi's Motion for Attorney's Fees	09/20/18		NTY	PLT001			AN AN
202000		09/21/18		TBA	000			AN AN

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type
RMON	Run Monthly Reports	OPEN	07/03/15	30	yes	no	DDJT	D

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2017 OCT 19 AM 10:11

BOBBIE R. WILLIAMS
CLERK

BY *msla*

Case No. 14-CV-0260

Dept. No. I

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

v.

JEFFREY D. SPENCER,

Defendant.

ORDER

JEFFREY D. SPENCER,

Counterclaimant,

v.

HELMUT KLEMENTI, an individual,
EGON KLEMENTI, an individual,
ELFRIDE KLEMENTI, an individual,
MARY ELLEN KINION, an individual,
ROWENA SHAW, an individual,
PETER SHAW, an individual,
and DOES 1-5,

Counterdefendant and Third Party
Defendants.

THIS MATTER comes before the Court upon Counter-defendant Mary Ellen Kinion's Motion for Attorney's Fees and Costs. The motion is opposed. Having examined all relevant pleadings and papers on file herein, the Court now enters the following Order, good cause

1 appearing:

2 THAT the motion is partially GRANTED as set forth below.

3 On January 30, 2017, the Court granted Mary Ellen Kinion's motion for summary
4 judgment regarding the claim of malicious prosecution alleged against her by Jeffrey
5 Spencer.¹ The resulting written Order was filed on April 3, 2017. Mary Ellen Kinion now
6 seeks an award of attorney's fees and costs pursuant to NRS Ch. 18, having prevailed with
7 regard to that claim.
8

9 Nevada Revised Statute 18.010(2)(b) provides that "the court may make an allowance
10 of attorney's fees to a prevailing party."

11 Without regard to the recovery sought, when the court finds that the claim,
12 counterclaim, cross-claim or third-party complaint or defense of the opposing party was
13 brought or maintained without reasonable ground or to harass the prevailing party. The court
14 shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in
15 all appropriate situations.

16 The Court finds that Jeffrey Spencer's claim for malicious prosecution was brought
17 and maintained without reasonable ground. Not only did the facts not support such a claim as
18 delineated within the written order granting summary judgment, probable cause to initiate the
19 prior criminal proceeding was *not* wanting, eliminating a necessary element to the malicious
20 prosecution claim.

21 "[T]he elements of a malicious prosecution claim are: '(1) want of probable cause to
22 initiate the prior criminal proceeding; (2) malice; (3) termination of the prior criminal
23 proceedings; and (4) damage.'" *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P. 3d 877, 879
24 (2002). A "malicious prosecution claim requires that the defendant initiated, procured the
25 institution of, or actively participated in the continuation of a criminal proceeding against the
26 plaintiff." *Id.*, 118 Nev. at 30, 38 P.3d at 879-80. "[T]o recover for malicious prosecution,
27

28 Egon Klementi and Elfriede Klementi formally joined in the motion for summary
judgment.

1 plaintiff had to demonstrate that police officers 'commenced the criminal prosecution because
2 of direction, request, or pressure' from defendants." *Lester v. Buchanan*, 112 Nev. 1426,
3 1429 (1996) (summary judgment sustained because record uncontroverted that defendant had
4 a good faith belief that crime committed).

5 "It is only when the facts relating to probable cause are not in dispute that it becomes a
6 question of law. *Bonamy v. Zenoff*, 77 Nev. 250, 362 P.2d 445. When such facts are in
7 dispute, the issue is one of fact to be resolved by the trier of fact." *Miller v. Schnitzer*, 78
8 Nev. 301, 313, 371 P.2d 824, 830 (1962) ("conflicting evidence in malicious prosecution
9 action raised jury question as to whether defendant had given 'housekeeping money' to
10 plaintiff to do with as plaintiff pleased or whether plaintiff had embezzled such money").
11

12 Focusing on the first two elements of the four required to sustain a civil claim for
13 malicious prosecution, malice can be inferred from a want of probable cause. *Id.*, 371 P.2d at
14 831. Regarding want of probable cause however, within his opposition to the motion for
15 summary judgment Jeffrey Spencer attached a copy of the criminal complaint initiating the
16 criminal court case against him. That complaint alleged a misdemeanor violation of NRS
17 200.481 and NRS 193.167, Battery on a Person Over 60 Years of Age, to wit: Jeffrey
18 Spencer "did willfully and unlawfully use force and violence against Helmut Klementi" when
19 he "struck Mr. Klementi in the back and knocked him to the ice covered road of Charles
20 Avenue, all of which occurred in the County of Douglas, State of Nevada" on or about
21 December 18, 2012. See Exhibit 1 to Opposition to Motion For Summary Judgment filed on
22 May 18, 2016.
23

24 Within the Second Amended Complaint and Third Party Complaint, Jeffrey Spencer
25 alleged the following:
26

27 / / /
28

1 67. Evidence presented at trial established that HELMUT KLEMENTI had been knocked
2 down by JEFFERY SPENCER who had run down his stairs and chased the figure he had seen
3 by his truck, but there was no evidence that JEFFERY SPENCER had punched HELMUT
4 KLEMENTI, and there was no credible evidence of intent to cause substantial bodily injury.

5 Second Amended Counterclaim and Third Party Complaint filed on August 19, 2016, p. 9, lines
6 23-26.

7 Thus, by his own admission it is uncontroverted that Jeffrey Spencer knocked down
8 Helmut Klementi, who is known to be a man over sixty years of age. "It is firmly established .
9 .. that the finding of probable cause may be based on slight, even marginal, evidence. *Sheriff v.*
10 *Badillo*, 95 Nev. 593, 600 P.2d 221 (1979); *Perkins v. Sheriff*, 92 Nev. 180, 547 P.2d 312 (1976).
11 The state need only present enough evidence to create a reasonable inference that the accused
12 committed the offense with which he or she is charged. *LaPena v. Sheriff*, 91 Nev. 692, 541 P.2d
13 907 (1975)." *State v. Boueri*, 99 Nev. 790, 795, 672 P.2d 33, 36 (1983).

14 The Court finds it is established that Jeffrey Spencer knocked Helmut Klementi down as
15 alleged within the relevant criminal complaint. The Court concludes that such act in and of itself
16 provides probable cause for the crime originally alleged, noting that a magistrate also previously
17 concluded probable cause was present, thereby allowing the criminal prosecution of Jeffrey
18 Spencer to have moved forward; with probable cause established, the first element of a claim for
19 malicious prosecution, specifically that there be want of probable cause, cannot be satisfied and
20 no reasonable jury could so find.

21 With no basis factually or legally to bring the claim, the Court finds and concludes that
22 Jeffrey Spencer's claim for malicious prosecution was alleged without reasonable basis.
23 Therefore, pursuant to NRS 18.010(2)(b), attorney's fees are hereby awarded to the prevailing
24 party, Mary Ellen Kinion, in the amount of \$14,870.00 with regard to that claim.

25 In determining whether an award of attorneys' fees is reasonable, four factors provided
26 within *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), are to be
27
28

1 considered. Based upon those four factors, the Court hereby determines that attorney's fees of
2 \$14,870.00 are reasonable in accordance with the following findings:

3 1. Professional Qualities: The law firm of Glogovac & Pintar is known to practice
4 regularly and successfully in the State of Nevada, serving clients well during formal litigation of
5 disputes. Based upon the quality of the pleadings contained within the record and the breadth of
6 knowledge required to properly conduct the motion practice and defense conducted thus far in
7 this matter, the Court finds the professional qualities of the primary billing attorney, Michael
8 Pintar, as well as the law firm of Glogovac & Pintar, to be more than satisfactory and reasonable,
9 particularly considering the maximum billing rate of only \$150.00 per hour reflected within the
10 supporting affidavit.
11

12 2. Character Of Work To Be Done: The motion for summary judgment, opposition,
13 reply, and supporting documentation reflect the substance of the underlying and current disputes
14 between the parties, with the nature of the matter being important to both sides. The legal work
15 necessary consisted of conducting and participating in contested litigation, which in turn required
16 legal analysis and research in preparation for, and specific to, this matter as it has progressed
17 through the specific motion practice. Motion practice itself is an acquired skill possessed by the
18 parties' counsel, including the presentation of oral arguments during multiple hearings in this
19 instance. Pursuit of discovery was also necessary.
20

21 3. The Work Actually Performed: Based upon the Court's observations during oral
22 argument and while analyzing the substance of the pleadings during the course of this motion
23 practice, the Court finds the work presented by Glogovac & Pintar to have been eminently
24 satisfactory and reasonable.
25

26 4. The Result Obtained: After pursuit of discovery, submission of written briefs, and
27 presentations in open court, including examination of a testifying witness, summary judgment
28

1 was entered in favor of the counter-defendant with regard to malicious prosecution. Entry of
2 summary judgment is not a result often achieved in litigation practice.

3 "[G]ood judgment would dictate that each of these factors be given consideration by the
4 trier of fact and that no one element should predominate or be given undue weight." *Brunzell*,
5 85 Nev. at 349, 455 P.2d at 33. Considering the subject matter presented during the motion
6 practice at issue, the quality and character of the work, the work actually performed, and the
7 result achieved, the Court finds the amount of attorney fees originally requested to be in
8 accordance with the *Brunzell* factors and reasonable.

9
10 However, the requested fees of \$16,160.00 have been reduced by \$1,290.00 based upon
11 a review of the supporting billing sheets, which reveals several items not pertinent to the
12 summary judgment motion such as entries dated 4/8/16 (re: declaratory relief action), 4/20/16
13 (review of case file regarding procedural irregularities), 5/6/16 (meeting with insured re: legal
14 status), 5/22/16 (substitution of counsel and re: amending complaint), and 8/18/16 (opposition
15 to motion to amend).

16
17 Regarding an award of costs, to the extent discretion is afforded the Court within NRS
18 18.050, costs of \$1,083.75 are hereby awarded to Mary Ellen Kinion, consisting of court
19 reporters' fees of \$262.50 for the deposition of Rowena and Peter Shaw, \$330.00 (appearance
20 fee for hearing), and \$491.25 for transcripts of Marilyn & Jeffery Spencer Trial. All other
21 costs contained within the Memorandum of Costs and Disbursements filed into the Court's
22 record on March 21, 2017, may be pursued further upon the conclusion of this matter.

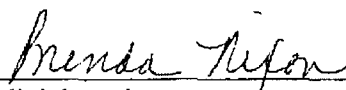
23
24 IT IS SO ORDERED.

25 Dated this 17 day of September, 2017.

26
27 STEVEN R. KOSACH
28 Senior District Judge

Copies served by mail this 19 day of October, 2017, to:

Douglas R. Brown, Esq., Lemons, Grundy & Eisenberg, 6005 Plumas St., 3rd Floor, Reno, NV 89519; William Routsis, Esq., 1070 Monroe St., Reno, NV 89509; David Zaniel, Esq., Ranalli & Zaniel, LLC, 50 W. Liberty St., Ste. 1050, Reno, NV 89509; Michael A. Pintar, Esq., Glogovac & Pintar, 427 West Plumb Lane, Reno, NV 89509; Lynn G. Pierce, Esq., 515 Court Street, Reno, NV 89501; Tanika M. Capers, Esq., 6750 Via Austi Parkway, Ste. 310, Las Vegas, NV 89119.


Judicial Assistant

1 CASE NO.: 14-CV-0260

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2 DEPT. NO.: II

OCT 26 2017

2017 OCT 26 PM 2:36

Douglas County
Clerk

SOBBIE R. WILLIAMS
CLERK
DEPUTY

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF DOUGLAS

8 HELMUT KLEMENTI,

9 Plaintiff,

10 vs.

11 JEFFREY D. SPENCER & DOES 1-5,

12 Defendants.

13
14 JEFFREY D. SPENCER,

15 Counterclaimant,

16 vs.

17 HELMUT KLEMENTI, an individual,
18 EGON KLEMENTI, an individual, MARY
ELLEN KINION, an individual, and
DOES 1-5,

19 Counterdefendants.

NOTICE OF ENTRY OF ORDER

20
21 PLEASE TAKE NOTICE that on the 19th day of October, 2017 the above-
22 entitled court entered its Order awarding attorney's fees and costs to Counter-
23 defendants/Third-party Defendants. A copy of said Order is attached.

24 ///

25 ///

26 ///

27 ///

28 ///

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 25 day of October, 2017.

GLOGOVAC & PINTAR

By:



MICHAEL A. PINTAR, ESQ.

Nevada Bar No. 003789

Attorneys for Third-Party Defendants,
Egon Klementi and Elfriede Klementi

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of
3 Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and I served the foregoing
4 document(s) described as follows:

5 NOTICE OF ENTRY OF ORDER

6 On the party(s) set forth below by:

7
8 X Placing an original or true copy thereof in a sealed envelope placed for
9 collection and mailing in the United States Mail, at Reno, Nevada,
postage prepaid, following ordinary business practices.

10 _____ Personal delivery.

11 _____ Facsimile (FAX).

12 _____ Federal Express or other overnight delivery.

13 addressed as follows:

14
15 William Routsis, Esq.
1070 Monroe Street
16 Reno, NV 89509
Attorneys for Jeffrey Spencer

Lynn G. Pierce, Esq.
515 Court Street, Suite 2f
Reno, NV 89501
Attorneys for Jeffrey Spencer

17
18 Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas St., 3rd Floor
19 Reno, NV 89519
20 **Attorneys for Helmut Klementi**

David Zaniel, Esq.
Ranalli & Zaniel, LLC
50 W. Liberty St., Suite 1050
Reno, NV 89509
Attorneys for Jeffrey Spencer

21 Tanika Capers, Esq.
6750 Via Austi Parkway, Suite 310
22 Las Vegas, NV 89119
23 **Attorneys for Rowena Shaw and Peter
Shaw**

24 Dated this 20th day of October, 2017.

25
26 
27 Employee of Glogovac & Pintar
28

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Case No. 14-CV-0260

OCT 19 2017

2017 OCT 19 AM 10:11

Dept. No. I

Douglas County
District Court Clerk

BOBBIE R. WILLIAMS
CLERK

M. BIAGGINI
BY _____ DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

v.

JEFFREY D. SPENCER,

Defendant.

ORDER

JEFFREY D. SPENCER,

Counterclaimant,

v.

HELMUT KLEMENTI, an individual,
EGON KLEMENTI, an individual,
ELFRIDE KLEMENTI, an individual,
MARY ELLEN KINION, an individual,
ROWENA SHAW, an individual,
PETER SHAW, an individual,
and DOES 1-5,

Counterdefendant and Third Party
Defendants.

THIS MATTER comes before the Court upon Counter-defendant Mary Ellen Kinion's Motion for Attorney's Fees and Costs. The motion is opposed. Having examined all relevant pleadings and papers on file herein, the Court now enters the following Order, good cause

1 plaintiff had to demonstrate that police officers 'commenced the criminal prosecution because
2 of direction, request, or pressure' from defendants." *Lester v. Buchanan*, 112 Nev. 1426,
3 1429 (1996) (summary judgment sustained because record uncontroverted that defendant had
4 a good faith belief that crime committed).

5 "It is only when the facts relating to probable cause are not in dispute that it becomes a
6 question of law. *Bonamy v. Zenoff*, 77 Nev. 250, 362 P.2d 445. When such facts are in
7 dispute, the issue is one of fact to be resolved by the trier of fact." *Miller v. Schnitzer*, 78
8 Nev. 301, 313, 371 P.2d 824, 830 (1962) ("conflicting evidence in malicious prosecution
9 action raised jury question as to whether defendant had given 'housekeeping money' to
10 plaintiff to do with as plaintiff pleased or whether plaintiff had embezzled such money").
11

12 Focusing on the first two elements of the four required to sustain a civil claim for
13 malicious prosecution, malice can be inferred from a want of probable cause. *Id.*, 371 P.2d at
14 831. Regarding want of probable cause however, within his opposition to the motion for
15 summary judgment Jeffrey Spencer attached a copy of the criminal complaint initiating the
16 criminal court case against him. That complaint alleged a misdemeanor violation of NRS
17 200.481 and NRS 193.167, Battery on a Person Over 60 Years of Age, to wit: Jeffrey
18 Spencer "did willfully and unlawfully use force and violence against Helmut Klementi" when
19 he "struck Mr. Klementi in the back and knocked him to the ice covered road of Charles
20 Avenue, all of which occurred in the County of Douglas, State of Nevada" on or about
21 December 18, 2012. *See Exhibit 1 to Opposition to Motion For Summary Judgment* filed on
22 May 18, 2016.
23

24 Within the Second Amended Complaint and Third Party Complaint, Jeffrey Spencer
25 alleged the following:
26

27 / / /
28

1 appearing:

2 THAT the motion is partially GRANTED as set forth below.

3 On January 30, 2017, the Court granted Mary Ellen Kinion's motion for summary
4 judgment regarding the claim of malicious prosecution alleged against her by Jeffrey
5 Spencer.¹ The resulting written Order was filed on April 3, 2017. Mary Ellen Kinion now
6 seeks an award of attorney's fees and costs pursuant to NRS Ch. 18, having prevailed with
7 regard to that claim.
8

9 Nevada Revised Statute 18.010(2)(b) provides that "the court may make an allowance
10 of attorney's fees to a prevailing party:"

11 Without regard to the recovery sought, when the court finds that the claim,
12 counterclaim, cross-claim or third-party complaint or defense of the opposing party was
13 brought or maintained without reasonable ground or to harass the prevailing party. The court
14 shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in
15 all appropriate situations.

16 The Court finds that Jeffrey Spencer's claim for malicious prosecution was brought
17 and maintained without reasonable ground. Not only did the facts not support such a claim as
18 delineated within the written order granting summary judgment, probable cause to initiate the
19 prior criminal proceeding was *not* wanting, eliminating a necessary element to the malicious
20 prosecution claim.

21 "[T]he elements of a malicious prosecution claim are: '(1) want of probable cause to
22 initiate the prior criminal proceeding; (2) malice; (3) termination of the prior criminal
23 proceedings; and (4) damage.'" *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P. 3d 877, 879
24 (2002). A "malicious prosecution claim requires that the defendant initiated, procured the
25 institution of, or actively participated in the continuation of a criminal proceeding against the
26 plaintiff." *Id.*, 118 Nev. at 30, 38 P.3d at 879-80. "[T]o recover for malicious prosecution,
27

28 Egon Klementi and Elfriede Klementi formally joined in the motion for summary
judgment.

1 67. Evidence presented at trial established that HELMUT KLEMENTI had been knocked
2 down by JEFFERY SPENCER who had run down his stairs and chased the figure he had seen
3 by his truck, but there was no evidence that JEFFERY SPENCER had punched HELMUT
4 KLEMENTI, and there was no credible evidence of intent to cause substantial bodily injury.

5 Second Amended Counterclaim and Third Party Complaint filed on August 19, 2016, p. 9, lines
6 23-26.

7 Thus, by his own admission it is uncontroverted that Jeffrey Spencer knocked down
8 Helmut Klementi, who is known to be a man over sixty years of age. "It is firmly established .
9 . . that the finding of probable cause may be based on slight, even marginal, evidence. *Sheriff v.*
10 *Badillo*, 95 Nev. 593, 600 P.2d 221 (1979); *Perkins v. Sheriff*, 92 Nev. 180, 547 P.2d 312 (1976).
11 The state need only present enough evidence to create a reasonable inference that the accused
12 committed the offense with which he or she is charged. *LaPena v. Sheriff*, 91 Nev. 692, 541 P.2d
13 907 (1975)." *State v. Boueri*, 99 Nev. 790, 795, 672 P.2d 33, 36 (1983).

14 The Court finds it is established that Jeffrey Spencer knocked Helmut Klementi down as
15 alleged within the relevant criminal complaint. The Court concludes that such act in and of itself
16 provides probable cause for the crime originally alleged, noting that a magistrate also previously
17 concluded probable cause was present, thereby allowing the criminal prosecution of Jeffrey
18 Spencer to have moved forward; with probable cause established, the first element of a claim for
19 malicious prosecution, specifically that there be want of probable cause, cannot be satisfied and
20 no reasonable jury could so find.

21 With no basis factually or legally to bring the claim, the Court finds and concludes that
22 Jeffrey Spencer's claim for malicious prosecution was alleged without reasonable basis.
23 Therefore, pursuant to NRS 18.010(2)(b), attorney's fees are hereby awarded to the prevailing
24 party, Mary Ellen Kinion, in the amount of \$14,870.00 with regard to that claim.

25 In determining whether an award of attorneys' fees is reasonable, four factors provided
26 within *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), are to be
27
28

1 considered. Based upon those four factors, the Court hereby determines that attorney's fees of
2 \$14,870.00 are reasonable in accordance with the following findings:

3 1. Professional Qualities: The law firm of Glogovac & Pintar is known to practice
4 regularly and successfully in the State of Nevada, serving clients well during formal litigation of
5 disputes. Based upon the quality of the pleadings contained within the record and the breadth of
6 knowledge required to properly conduct the motion practice and defense conducted thus far in
7 this matter, the Court finds the professional qualities of the primary billing attorney, Michael
8 Pintar, as well as the law firm of Glogovac & Pintar, to be more than satisfactory and reasonable,
9 particularly considering the maximum billing rate of only \$150.00 per hour reflected within the
10 supporting affidavit.
11

12 2. Character Of Work To Be Done: The motion for summary judgment, opposition,
13 reply, and supporting documentation reflect the substance of the underlying and current disputes
14 between the parties, with the nature of the matter being important to both sides. The legal work
15 necessary consisted of conducting and participating in contested litigation, which in turn required
16 legal analysis and research in preparation for, and specific to, this matter as it has progressed
17 through the specific motion practice. Motion practice itself is an acquired skill possessed by the
18 parties' counsel, including the presentation of oral arguments during multiple hearings in this
19 instance. Pursuit of discovery was also necessary.
20

21 3. The Work Actually Performed: Based upon the Court's observations during oral
22 argument and while analyzing the substance of the pleadings during the course of this motion
23 practice, the Court finds the work presented by Glogovac & Pintar to have been eminently
24 satisfactory and reasonable.
25

26 4. The Result Obtained: After pursuit of discovery, submission of written briefs, and
27 presentations in open court, including examination of a testifying witness, summary judgment
28

1 was entered in favor of the counter-defendant with regard to malicious prosecution. Entry of
2 summary judgment is not a result often achieved in litigation practice.

3 "[G]ood judgment would dictate that each of these factors be given consideration by the
4 trier of fact and that no one element should predominate or be given undue weight." *Brunzell*,
5 85 Nev. at 349, 455 P.2d at 33. Considering the subject matter presented during the motion
6 practice at issue, the quality and character of the work, the work actually performed, and the
7 result achieved, the Court finds the amount of attorney fees originally requested to be in
8 accordance with the *Brunzell* factors and reasonable.

10 However, the requested fees of \$16,160.00 have been reduced by \$1,290.00 based upon
11 a review of the supporting billing sheets, which reveals several items not pertinent to the
12 summary judgment motion such as entries dated 4/8/16 (re: declaratory relief action), 4/20/16
13 (review of case file regarding procedural irregularities), 5/6/16 (meeting with insured re: legal
14 status), 5/22/16 (substitution of counsel and re: amending complaint), and 8/18/16 (opposition
15 to motion to amend).

17 Regarding an award of costs, to the extent discretion is afforded the Court within NRS
18 18.050, costs of \$1,083.75 are hereby awarded to Mary Ellen Kinion, consisting of court
19 reporters' fees of \$262.50 for the deposition of Rowena and Peter Shaw, \$330.00 (appearance
20 fee for hearing), and \$491.25 for transcripts of Marilyn & Jeffery Spencer Trial. All other
21 costs contained within the Memorandum of Costs and Disbursements filed into the Court's
22 record on March 21, 2017, may be pursued further upon the conclusion of this matter.

24 IT IS SO ORDERED.

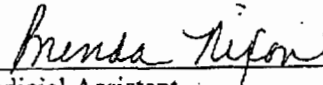
25 Dated this 17 day of September, 2017.

26
27
28

STEVEN R. KOSACH
Senior District Judge

Copies served by mail this 19 day of October, 2017, to:

Douglas R. Brown, Esq., Lemons, Grundy & Eisenberg, 6005 Plumas St., 3rd Floor, Reno, NV 89519; William Routsis, Esq., 1070 Monroe St., Reno, NV 89509; David Zaniel, Esq., Ranalli & Zaniel, LLC, 50 W. Liberty St., Ste. 1050, Reno, NV 89509; Michael A. Pinter, Esq., Glogovac & Pinter, 427 West Plumb Lane, Reno, NV 89509; Lynn G. Pierce, Esq., 515 Court Street, Reno, NV 89501; Tanika M. Capers, Esq., 6750 Via Austi Parkway, Ste. 310, Las Vegas, NV 89119.


Judicial Assistant

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Case No. 14-CV-0260

AUG 23 2018

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District Court Clerk

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ROBERT R. WILLIAMS
CLERK

BY D. S. S. DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER, & DOES 1-5,

Defendant

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON
KLEMENTI, an individual, ELFRIDE
KLEMENTI, an individual, MARY ELLEN
KINION, an individual, ROWENA SHAW, an
individual, PETER SHAW, an individual, and
DOES 1-5,

Counter-defendants & Third-
Party Defendants.

**ORDER GRANTING COUNTER-DEFENDANT
HELMUT KLEMENTI'S MOTION FOR
SUMMARY JUDGMENT ON ALL CLAIMS**

Before this Court is Counterdefendant Helmut Klementi ("Helmut")'s *Motion for Summary Judgment on All Counterclaims*, filed April 12, 2018. After this Court extended the time to respond, Counterclaimant Jeffrey Spencer filed his *Response to Motion for Summary Judgment* on June 1, 2018. Helmut filed his *Reply in Support of Motion for Summary Judgment on all Counterclaims* on June 13, 2016. This Court held oral argument on July 12, 2018 on all outstanding motions, including Helmut's Motion for Summary Judgment, and

1 found that summary judgment was warranted. This Order, setting forth the Court's findings
2 of undisputed material fact and conclusions of law, follows.

3 **STANDARD OF REVIEW**

4 Summary judgment is appropriate under Rule 56 of the Nevada Rules of Civil
5 Procedure when the pleadings, depositions, answers to interrogatories, admissions, and
6 affidavits, if any, that are properly before the court demonstrate that no genuine issue of
7 material fact exists, and the moving party is entitled to judgment as a matter of law. NRCP 56;
8 *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). *Id.* A factual dispute is
9 genuine when the evidence is such that a rational trier of fact could return a verdict for the
10 nonmoving party. *Id.* The substantive law controls which factual disputes are material and will
11 preclude summary judgment; other factual disputes are irrelevant. *Id.* at 731.

12 Although the pleadings and proof must be construed in a light most favorable to the
13 nonmoving party, that party bears the burden to do more than simply show that there is
14 some metaphysical doubt as to the operative facts in order to avoid summary judgment. *Id.* at
15 732. The nonmoving party is not entitled to build a case on the gossamer threads of whimsy,
16 speculation and conjecture. *Id.*

17 Mr. Spencer asserts, both in his Response and during oral argument on Helmut's
18 Motion, that this Court may not enter summary judgment if there remains a "slightest doubt"
19 as to the facts. *Response*, p. 7. The Nevada Supreme Court, however, abrogated the slightest
20 doubt standard in *Wood v. Safeway*, *supra*. This Court rejects Mr. Spencer's invitation to
21 apply the slightest doubt standard and instead applies the correct standard for summary
22 judgment as set forth herein.

23 The manner in which each party satisfies its burden of production for summary
24 judgment "depends on which party will bear the burden of persuasion on the challenged claim
25 at trial." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 602, 172 P.3d 131, 134
26 (2007). If the nonmoving party will bear the burden of persuasion at trial, the moving party
27 "may satisfy the burden of production by either (1) submitting evidence that negates an
28 essential element of the nonmoving party's claim, or (2) 'pointing out ... that there is an

1 absence of evidence to support the nonmoving party's case.'" *Francis v. Wynn Las Vegas, LLC*,
2 127 Nev. Adv. Op. 60, 262 P.3d 705, 714 (2011) (internal citations omitted).

3 Finally, to withstand summary judgment, Mr. Spencer as the nonmoving party cannot
4 rely solely on the general allegations and conclusions set forth in the pleadings, but must
5 instead present specific facts demonstrating the existence of a genuine factual issue
6 supporting its claims. *Ransdell v. Clark County*, 124 Nev. 847, 860, 192 P.3d 756, 765 (2008).
7 With the summary judgment standard set forth, the Court enters its findings of undisputed
8 material fact and conclusions of law.

9 **FINDINGS OF UNDISPUTED MATERIAL FACT**

10 The Court finds the following material facts are undisputed:

11 1. Helmut Klementi is eighty-three years old and lives at 163 Pine Ridge Drive,
12 Stateline, Nevada, in the Kingsbury General Improvement District ("KGID").¹

13 2. Helmut had a twin brother, Egon Klementi ("Egon"), who lived with his wife
14 Elfriede "Elfie" Klementi at 187 Meadow Lane, Stateline, Nevada at the corner of Meadow
15 Lane and Charles Avenue.²

16 3. Counterclaimant Mr. Spencer resides at 321 Charles Avenue, Stateline Nevada,
17 with his wife Marilyn Spencer ("Ms. Spencer").³

18 4. In May 2012, there was a dispute between Mr. Spencer and the other
19 neighbors in the KGID district, including Helmut's brother Egon, regarding a fence that Mr.
20 Spencer had built on his property that May in violation of Douglas County Code.⁴

21 5. Later that year, in December 2012, Mr. Spencer operated a snow plow in the
22 neighborhood streets of KGID, including Charles Avenue, Meadow Lane, and Juniper Drive.⁵

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26 ¹ Motion, Exhibit 1 ¶3; Exhibit 2, pp. 8:2-9, 12:15.

27 ² Motion, Exhibit 1, ¶4; Exhibit 2, p. 94:3—5. Egon Klementi passed away in fall 2017.

28 ³ Motion, Exhibit 3, p. 8:8-15.

⁴ Motion, Exhibit 1, ¶¶5-6; Exhibit 4.

⁵ Motion, Exhibit 3, p. 16:22-25, 17:1-4; 68:12-15.

1 6. During December 2012, residents of the neighborhood, including Egon and
2 Elfie, experienced issues with Mr. Spencer "berming-in" their driveways with snow and debris
3 in the course of his duties as a snow plow operator.⁶

4 7. On December 18, 2012, Helmut attended a meeting of the Board of Trustees
5 for the KGID with Egon and Elfie.⁷

6 8. Although he attended, Helmut did not make a statement or otherwise speak at
7 the December 18, 2012 meeting before the Board of Trustees for the KGID.⁸

8 9. At the December 18, 2012 KGID Board of Trustees meeting, Chairperson
9 Norman gave instructions for the neighbors concerned about the snow berms to take
10 pictures.⁹

11 10. When the December 18, 2012 KGID Board of Trustees meeting concluded,
12 Helmut went to Egon's and Elfie's home for dinner.¹⁰

13 11. After dinner, Helmut left Egon's house to take pictures of the snow berms in
14 front of Egon's property and to then return home.¹¹

15 12. As Helmut was taking pictures of the snow berm, he was knocked to the
16 ground by Mr. Spencer.¹²

17 13. Mr. Spencer admits he knocked Helmut to the ground, that it was not an
18 accident, that he knew it was a Klementi brother, and that he stood screaming over Helmut
19 after Mr. Spencer knocked Helmut to the ground.¹³

20 14. Mr. Spencer admits he pushed Helmut in order to stop Helmut from getting
21 away.¹⁴

23 ⁶ Motion, Exhibit 3, p. 68:12-15; Exhibit 5, pp. 46-50.

24 ⁷ Motion, Exhibit 1, ¶7; Exhibit 2, p. 86:8-11.

25 ⁸ Motion, Exhibit 1, ¶¶8-9; Exhibit 2, p. 92:21-22, p. 93:10-12; Exhibit 6.

26 ⁹ Motion, Exhibit 1, ¶10; Exhibit 2, 107:12-15, Exhibit 6.

27 ¹⁰ Motion, Exhibit 1, ¶11; Exhibit 2, p. 93:16-24.

28 ¹¹ Motion, Exhibit 1, ¶12; Exhibit 2, p. 97:18-25, p. 107:12-15.

¹² Motion, Exhibit 1, ¶13; Exhibit 2, p. 117:1-3; p. 119:19-24, p. 127:11-14; Exhibit 3, pp. 98:1-25—99:1-23, 100:15-19.

¹³ Motion, Exhibit 3, pp. 98:23-25—99:1-23.

¹⁴ Motion, Exhibit 1, ¶17; Exhibit 7.

1 15. It was Helmut's opinion and belief that Mr. Spencer punched him in his side
2 and knocked him to the ground.¹⁵

3 16. Because Helmut sustained injuries as a result of this incident, emergency
4 services were called and Douglas County Sheriff's Deputy Jesse McKone responded and
5 commenced an investigation.¹⁶

6 17. Helmut reported in good faith his belief to Deputy McKone that Mr. Spencer
7 had assaulted him and knocked him to the ground.¹⁷

8 18. After interviewing witnesses and investigating the scene, Deputy McKone
9 concluded that Mr. Spencer's testimony regarding the incident was not credible and he
10 opined that Mr. Spencer used the excuse of someone breaking into his truck as a reason to
11 confront and commit a battery upon Helmut when he saw Helmut taking photographs of the
12 snow berms.¹⁸

13 19. Accordingly, based on his investigation and opinion, Deputy McKone arrested
14 Mr. Spencer for battery/abuse of an elderly person.¹⁹

15 20. The decision to arrest Mr. Spencer was solely Deputy McKone's decision, based
16 on "the inconsistencies with what [he] had seen on scene and Mr. Spencer's rendition."²⁰

17 21. On or about December 26, 2012, Helmut obtained a Temporary
18 Restraining/Protective Order against Mr. Spencer.²¹

19 22. On January 8, 2013, Helmut attended a meeting before the Douglas County
20 Planning Commission and its members.²²

21 23. At that meeting, Helmut read a statement during public comment that stated
22 Mr. Spencer confronted and punched him while he was taking pictures of a snow berm
23

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25 ¹⁵ Motion, Exhibit 1, ¶14; Exhibit 2, pp. 117:1-3, 119:19-24, 130:23-25—131:1-10.

¹⁶ Motion, Exhibit 1, ¶15; Exhibit 8, pp. 13:1-25—23:1-10.

¹⁷ Motion, Exhibit 1, ¶16.

¹⁸ Motion, Exhibit 7; Exhibit 8, p. 36:14-22; p. 62:2-9.

¹⁹ Motion, Exhibit 7; Exhibit 8, p. 62:2-9.

²⁰ Motion, Exhibit 8, p. 62:8-9.

²¹ Motion, Exhibit 1, ¶¶18-19; Exhibit 9.

²² Motion Exhibit 1, ¶¶20-21; Exhibit 10.

1 pushed against his brother Egon's fence and that Helmut had a restraining order against Mr.
2 Spencer.²³

3 24. Ultimately, Mr. Spencer was charged with committing a battery upon Helmut
4 and criminal complaints were filed against him by the Douglas County District Attorney's
5 office.²⁴

6 25. District Attorney Maria Pence testified before this Court on January 30, 2017
7 extensively regarding the charging decisions of the district attorney's office and she testified
8 that "no one is involved in the charging decision except for myself and ... the charging decision
9 is made solely by whichever Deputy District Attorney was assigned that case."²⁵

10 26. D.A. Pence also testified the decision to enhance the gross misdemeanor
11 battery charge against Mr. Spencer to a felony charge stemmed from her receipt of medical
12 records showing that Helmut had sustained substantial bodily harm.²⁶

13 27. The criminal proceedings against Mr. Spencer proceeded to a preliminary
14 hearing and criminal trial, where Helmut testified against Mr. Spencer on behalf of the State
15 of Nevada as a victim of a crime.²⁷

16 28. The Court finds the only statements Helmut made about Mr. Spencer were (1)
17 his statement to Deputy McKone on December 18, 2012, (2) his statement to the Douglas
18 County Planning Commission on January 8, 2013, and (3) his testimony at Mr. Spencer's
19 preliminary hearing and trial.²⁸

20 29. The Court finds that Jeffrey Spencer has failed to identify any other statements
21 that Helmut Klementi made in this case. The Court rejects Mr. Spencer's insinuation that
22 Helmut Klementi is liable for defamation for statements he made to his medical providers
23
24

25 ²³ Motion, Exhibit 1, ¶¶22-23; Exhibit 11.

26 ²⁴ Counterclaimant Jeffrey Spencer's *Amended Counterclaim* on file herein, ¶¶53-57; and
27 *Counterclaimant's Opposition to Motion for Summary Judgment [Mary Ellen Kinion]*, Exhibits 1-2.

28 ²⁵ Motion, Exhibit 12.

²⁶ *Id.*, p. 14:8-24, p. 64:6-9.

²⁷ Motion, Exhibit 1, ¶23.

²⁸ Motion, Exhibit 1, ¶25, Exhibit 2, Exhibit 7, Exhibit 9, Exhibit 10, Exhibit 13

1 when seeking treatment after the December 18, 2012 incident and finds his assertion
2 completely unsupported by any authority. *Response*, p. 6, ¶28.

3 30. The Court finds that the statements of Helmut Klementi, that Jeffrey Spencer
4 punched him and knocked him to the ground, and that Helmut Klementi had a restraining
5 order against Mr. Spencer are true statements that Helmut Klementi made to law
6 enforcement, the Douglas County Planning Commission, and to the Ninth Judicial District
7 Court.

8 31. The Court finds that Helmut Klementi had a good faith belief he was punched
9 by Jeffrey Spencer on the evening of December 18, 2012 and that Helmut Klementi did not act
10 with malice when he reported the same to law enforcement, the Ninth Judicial District Court,
11 and the Douglas County Planning Commission.

12 32. The Court finds that Jeffrey Spencer has failed to produce any evidence in this
13 case that Helmut Klementi was "dishonest in [his] reporting, and/or repeated dishonest
14 reports of others... and/or tampered with evidence." *Response*, p. 12:16-18. Rather, the Court
15 finds that these are mere unsupported allegations.

16 33. The Court finds Jeffrey Spencer has failed to meet his burden on summary
17 judgment to come forward with any admissible evidence, other than allegations and
18 speculation, to raise a genuine issue of material fact for trial on all of his counterclaims against
19 Helmut Klementi.

20 34. The Court finds that the video tape produced and incorporated into Jeffrey
21 Spencer's *Response to Motion for Summary Judgment* does not create a genuine issue of
22 material fact; rather, it supports Helmut's belief that he was assaulted by Mr. Spencer on the
23 evening of December 18, 2012.

24 35. To the extent any of the following conclusions of law constitute findings of fact,
25 they are incorporated herein.

26 **CONCLUSIONS OF LAW**

27 1. To the extent any of the foregoing findings of fact constitute conclusions of
28 law, they are incorporated herein.

1 **Counterclaimant's Claim against Helmut Klementi for Defamation:**

2 2. Liability for defamation may only arise if the plaintiff proves the following: "(a)
3 a false and defamatory statement concerning another; (b) an unprivileged publication to a
4 third party; (c) fault amounting at least to negligence on the part of the publisher; and (d)
5 either actionability of the statement irrespective of special harm, or the existence of special
6 harm caused by the publication." *Lubin v. Kunin*, 117 Nev. 107, 111, 17 P.3d 422, 425 (2001)
7 (emphasis added).

8 3. Whether a statement is defamatory is generally a question of law, unless it is
9 subject to two different interpretations. *Id.*; *K-Mart Corp. v. Washington*, 109 Nev. 1180, 1191,
10 866 P.2d 274, 281 (1993) ("Whether or not a statement is capable of defamatory construction
11 is a question of law for the court.").

12 4. A court reviewing an allegedly defamatory statement reviews "the words in
13 their entirety and in context in order to determine whether they are susceptible of
14 defamatory meaning." *Lubin*, 117 Nev. at 111, 17 P.3d at 426. This Court examines the
15 statements identified in paragraph 28 of its *Finding of Undisputed Material Fact* to determine
16 whether Helmut's statements were defamatory.

17 5. A statement is not defamatory "if it is absolutely true, or substantially true."
18 *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 715, 57 P.3d 82, 88 (2002). A statement is
19 also not defamatory if it is "an exaggeration or generalization" that a reasonable person could
20 interpret as mere rhetorical hyperbole. *Id.* Finally, statements of opinion are protected
21 speech under the First Amendment of the United States Constitution. *Lubin*, 117 Nev. at 112.

22 6. In this case, the Court concludes the statements of Helmut Klementi in this case
23 regarding Jeffrey Spencer and the incident of December 18, 2012 are true. Mr. Spencer
24 admitted in his deposition that he intended to collide with and stop the person in the street
25 who was Helmut Klementi. By Mr. Spencer's own admissions, the Court concludes Helmut's
26 statements were not defamatory, as they are true or substantially true. Notably, Mr. Spencer
27 fails to identify any other particular statement that Helmut made which is defamatory or
28 untrue.

1 7. The Court also concludes that Helmut's statements are protected by qualified
2 privilege. Where a person makes communications to law enforcement officers in good faith
3 before the initiation of criminal proceedings, the Nevada Supreme Court has recognized that
4 person enjoys a qualified privilege. *Pope v. Motel 6*, 121 Nev. 307, 114 P.3d 277 (2005).

5 8. After an individual has reported a crime, a plaintiff must prove, by a
6 preponderance of the evidence, "that the defendant abused the privilege by publishing the
7 defamatory communication [to law enforcement] with actual malice." *Id.* at 317. "Actual
8 malice is a stringent standard that is proven by demonstrating that a statement is published
9 with knowledge that it was false or with reckless disregard for its veracity." *Id.* citing *Pegasus*,
10 118 Nev. at 722, 57 P.3d at 92.

11 9. Whether a statement is conditionally privileged is a question of law for the
12 Court to decide; in fact, it is reversible error for this Court to submit to the jury the issue of
13 conditional, or qualified, privilege. The issue of qualified privilege does not even go to the jury
14 unless there is "sufficient evidence" for the jury to reasonably infer that the defendant made
15 the statement with actual malice. *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 657
16 P.2d 101 (1983).

17 10. In applying the foregoing authority, the Court concludes the qualified privilege
18 applies to Helmut's reporting of the December 18, 2012 incident to law enforcement. The
19 Court also concludes Jeffrey Spencer failed to demonstrate (1) that Helmut did not have a
20 good faith belief regarding the incident, and (2) that Helmut acted with actual malice when he
21 reported the incident to law enforcement.

22 11. This Court also concludes the absolute privilege applies. Where a person
23 makes a statement in the course of a judicial proceeding, Nevada follows the "'long-standing
24 common law rule that communications uttered or published in the course of judicial
25 proceedings are absolutely privileged." *Circus Circus Hotels, Inc.*, 99 Nev. at 60-61, 657 P.2d at
26 104; *Nickovich v. Mollart*, 51 Nev. 306, 274 P. 809, 810 (1929) (a witness who testifies in the
27 course of judicial proceedings is not liable for the answers he makes to questions posed by the
28 court or counsel and all his answers are privileged).

1 12. The absolute privilege also extends to "quasi-judicial proceedings before
2 executive officers, boards, and commissions...." *Circus Circus Hotels, Inc.*, 99 Nev. at 60-61.

3 13. Even where defamatory statements are published with knowledge of their
4 falsity and ill will toward a plaintiff, the absolute privilege precludes liability as a matter of law.
5 *Id.*; *Knox v. Dick*, 99 Nev. 514, 518, 665 P.2d 267, 270 (1983) (holding that the absolute
6 privilege is applicable to quasi-judicial proceedings so "the right of individuals to express their
7 views freely upon the subject under consideration is protected.").

8 14. The scope of absolute privilege in Nevada is "quite broad." *Fink v. Oshins*, 118
9 Nev. 428, 433, 49 P.3d 640, 644 (2002). The defamatory communication "need not be strictly
10 relevant to any issue involved" in the judicial or quasi-judicial proceeding; rather, it needs only
11 to be "in some way pertinent to the subject of controversy." *Id.* citing *Circus Circus Hotels,*
12 *Inc.*, 99 Nev. at 61, 657 P.2d at 104 (defamatory material need only have "some relation" to
13 the proceeding and as long as it has "some bearing" on the subject matter, it is absolutely
14 privileged). Issues of absolute privilege and relevance are questions of law for this Court to
15 decide. *Circus Circus Hotels, Inc.*, 99 Nev. at 62, 657 P.2d at 105.

16 15. The Court concludes it is undisputed the absolute privilege applies to any and
17 all statements Helmut made in court during Jeffrey Spencer's criminal proceedings and liability
18 does not attach as a matter of law.

19 16. The Court concludes Helmut's statements to the Douglas County Planning
20 Commission are also protected by absolute privilege as a matter of law, because the Douglas
21 County Planning Commission is a quasi-judicial body and Helmut's statements to the
22 Commission are relevant to the subject controversy, which is Jeffrey Spencer's construction of
23 a fence that violated county code that resulted in a neighborhood dispute and ultimately
24 culminated in the December 18, 2012 incident.

25 17. The Court concludes summary judgment on the counterclaim for defamation
26 against Helmut is proper in Helmut's favor and against Jeffrey Spencer.

27 ///

28 ///

1 **Counterclaimant's Claim against Helmut Klementi for Malicious Prosecution:**

2 18. To establish a prima facie case of malicious prosecution in Nevada, a plaintiff
3 must prove the following: "(1) want of probable cause to initiate the prior criminal
4 proceeding; (2) malice; (3) termination of the prior criminal proceedings; and (4) damage."
5 *LaMantia v. Redis*, 118 Nev. 27, 30, 38 P.3d 877, 879 (2002) citing *Jordan v. Bailey*, 113 Nev.
6 1038, 1047, 944 P.2d 828, 834 (1997). This claim also requires the plaintiff prove the
7 defendant "initiated, procured the institution of, or actively participated in the continuation of
8 a criminal proceeding against the plaintiff." *Id.*

9 19. "When a private person gives to a prosecuting officer information *that he*
10 *believes to be true*, and the officer in the exercise of his uncontrolled discretion initiates
11 criminal proceedings based upon that information, the informer is not liable under the rule
12 stated in this Section even though the information proves to be false and his belief was one
13 that a reasonable man would not entertain." *Lester v. Buchanan*, 112 Nev. 1426, 929 P.2d 910
14 (1996) citing Restatement (Second) of Torts § 653 (1977).

15 20. The Court concludes that Jeffrey Spencer has failed to come forward with any
16 evidence that Helmut Klementi initiated, procured the institution of, or actively participated in
17 the continuation of criminal proceedings against Mr. Spencer. Mr. Spencer has failed to
18 produce any evidence that Helmut requested or pressured law enforcement or D.A. Pence to
19 commence criminal proceedings against Mr. Spencer.

20 21. Rather, this Court heard testimony from Deputy District Attorney Maria Pence
21 at the January 30, 2017 hearing in this case that she was the only person involved in charging
22 Mr. Spencer in his criminal case. It is also undisputed that Deputy McKone's decision to arrest
23 Mr. Spencer was solely the decision of the Deputy, who based his decision on "the
24 inconsistencies with what [he] had seen on the scene and Mr. Spencer's rendition." *Findings*
25 *of Undisputed Material Fact*, ¶¶18-20. The Court also concludes that probable cause existed
26 for Mr. Spencer's criminal case when the justice court bound Mr. Spencer over for trial on the
27 charges filed by D.A. Pence after the April 24, 2013 hearing preliminary hearing.
28

1 22. The Court concludes that Jeffrey Spencer's "dispute" with the conclusions that
2 Deputy McKone and Deputy District Attorney Maria Pence reached in Mr. Spencer's criminal
3 investigation and trial are insufficient, as a matter of law, to create a genuine issue of material
4 fact for the purpose of defeating summary judgment. *Response*, p. 5, ¶18-21, p. 6, ¶25-26.
5 *Disagreeing with Deputy McKone and D.A. Pence's decisions to arrest and charge Mr. Spencer*
6 does not satisfy Mr. Spencer's burden to come forward with specific evidence in order to
7 preclude entry of summary judgment against him.

8 23. Finally, as set forth above, the Court concludes Helmut's statements are
9 protected by absolute immunity in the context of this malicious prosecution claim. As the
10 Nevada Supreme Court recently confirmed in *Harrison v. Roitman*, 131 Nev. Adv. Op. 92, 362
11 P.3d 1138 (2015), the absolute immunity privilege is not limited to claims of defamation. In
12 applying the three-pronged functional approach set forth in *Harrison*, supra, the Court
13 concludes the following: (1) that, as a witness involved and testifying in a judicial proceeding,
14 Helmut enjoys absolute immunity from liability resulting from his testimony; (2) the likelihood
15 of harassment or intimidation was sufficient to interfere with Helmut's ability to testify as the
16 victim of a crime; and (3) procedural safeguards by way of cross-examination of Helmut were
17 exercised by Mr. Spencer in his criminal trial. Thus, the Court concludes Helmut enjoys
18 absolute immunity from Mr. Spencer's claim for malicious prosecution against him because he
19 was a testifying witness in Spencer's criminal trial.

20 24. The Court concludes summary judgment on the counterclaim for malicious
21 prosecution against Helmut should be granted in Helmut's favor and against Jeffrey Spencer.

22 **Counterclaimant's Claims against Helmut for Civil Conspiracy:**

23 25. An actionable claim for civil conspiracy "consists of a combination of two or
24 more persons who, by some concerted action, intend to accomplish an unlawful objective for
25 the purpose of harming another, and damage results from the act or acts." *Consol. Generator-*
26 *Nevada, Inc. v. Cummins Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998).

27 26. In order to prevail on a claim for civil conspiracy, a plaintiff must show the
28 commission of the underlying tort and an agreement between defendants to commit that

1 tort. *Jordan v. Dept. of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 75, 110 P.3d 30, 51
2 (2005).²⁹

3 27. This Court has already concluded that Jeffrey Spencer failed to demonstrate
4 genuine issues of material fact remain on his claims against Helmut Klementi for defamation
5 and malicious prosecution. In the absence of any specific evidence, Mr. Spencer cannot
6 demonstrate the commission of the underlying tort, which is a necessary predicate to a civil
7 conspiracy. It is well-established that the arguments of counsel are not evidence and
8 do not establish the facts of the case. See Nevada Ass'n Servs., Inc. v. Eighth Jud. Dist. Ct., 130
9 Nev. Adv. Op. 94, 338 P.3d 1250, 1255 (2014). The Court concludes Mr. Spencer has
10 demonstrated no evidence of a conspiracy existing between the counter-defendants.

11 28. Accordingly, the Court concludes summary judgment on the counterclaims for
12 civil conspiracy (defamation) and civil conspiracy (malicious prosecution) against Helmut
13 should be granted in Helmut's favor and against Jeffrey Spencer.

14 **Counterclaimant's Claim against Helmut for Punitive Damages:**

15 29. Punitive damages are not a standalone claim, which Mr. Spencer concedes.
16 *Response*, p. 17:1-3. Rather, the district court has discretion to determine if a party's conduct
17 merits punitive damages as a matter of law. *Winchell v. Schiff*, 124 Nev. 938, 948, 193 P.3d
18 946, 953 (2008); *Bongiovi v. Sullivan*, 122 Nev. 556, 580, 138 P.3d 433, 450 (2006).

19 Punitive damages are governed by statute and may only be awarded when the plaintiff
20 proves, by clear and convincing evidence, that the "defendant has been guilty of oppression,
21 fraud, or malice, express or implied" NRS 42.005(1); *In re Discipline of Drakulich*, 111 Nev.
22 1556, 1566, 908 P.2d 709, 715 (1995) (defining "clear and convincing evidence").

23 30. In this case, Mr. Spencer has failed to come forward with any evidence, let
24 alone clear and convincing evidence, that Helmut's conduct in the underlying criminal case
25 merits an award of punitive damages. Mr. Spencer's complete response in opposition to
26 Helmut's argument on punitive damages is contained in a single line: "Mr. Spencer does not
27

28 ²⁹ Abrogated on other grounds by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008).

1 dispute that this is just a measure of damages, which would be addressed at the time of trial."
2 *Response*, p. 17:2-3. This one line completely fails to satisfy Mr. Spencer's burden on
3 summary judgment to present specific facts and evidence in response to Helmut's Motion.
4 *Ransdell v. Clark County*, 124 Nev. 847, 860, 192 P.3d 756, 765 (2008). The Court concludes
5 Mr. Spencer has failed to meet his burden. The Court further concludes, as a matter of law,
6 that Helmut's conduct in reporting the December 18, 2012 incident does not constitute
7 conduct for which punitive damages are appropriate.

8 31. The Court concludes that summary judgment on the punitive damages claim is
9 appropriate in favor of Helmut and against Jeffrey Spencer.

10 **Counterclaimant's Claim against Helmut for Intentional Infliction of Emotional Distress:**

11 32. In a claim for intentional infliction of emotional distress ("IIED"), a plaintiff must
12 prove the following: "(1) extreme and outrageous conduct with either the intention of, or
13 reckless disregard for, causing emotional distress, (2) the plaintiff's having suffered severe or
14 extreme emotional distress, and (3) actual or proximate causation." *Barmettler v. Reno Air,*
15 *Inc.*, 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998) (concluding summary judgment was
16 proper where plaintiff failed to establish either the first or second elements of this claim)
17 citing *Star v. Rabello*, 97 Nev. 124, 125, 625 P.2d 90, 91-92 (1981) (citation omitted).

18 33. A prima facie claim of intentional infliction of emotional distress requires a
19 plaintiff to prove that the defendant's conduct was "extreme and outrageous." *Maduike v.*
20 *Agency Rent-A-Car*, 114 Nev. 1, 4, 953 P.2d 24, 26 (1998). Extreme and outrageous conduct
21 "is that which is outside all possible bounds of decency and is regarded as utterly intolerable
22 in a civilized community." *Id.* citing California Book of Approved Jury Instruction 12.74
23 (internal citations omitted).

24 34. The Court concludes that Helmut's actions of reporting the December 18, 2012
25 incident, testifying in a criminal proceeding, and, making a statement about that incident do
26 not rise to the level of extreme and outrageous conduct as a matter of law. Mr. Spencer's
27 own authority cited in his *Response* supports the Court's conclusion that Helmut's conduct in
28 this case is not extreme and outrageous. *Branda v. Sanford*, 97 Nev. 643, 645, 637 P.2d 1223,

1 1224 (1981) (jury to consider whether extreme outrage existed where defendant called 15
2 year old plaintiff f—k—g b—ch," "f—k—g c—t" and "no lady."). The Court concludes Mr.
3 Spencer's IIED claim fails as a matter of law on the first element.

4 35. The Court also concludes Mr. Spencer's IIED claim fails on the second element.
5 When a plaintiff claims emotional distress that precipitates physical symptoms, then, in the
6 absence of a physical impact, the plaintiff must prove "serious emotional distress causing
7 physical injury." *Barmettler*, 114 Nev. at 448, 956 P.2d at 1387.

8 36. The stress "must be so severe and of such intensity that no reasonable person
9 could be expected to endure it." *Alam v. Reno Hilton Corp.*, 819 F. Supp. 905, 911 (D. Nev.
10 1993). "Insomnia and general physical or emotional discomfort are insufficient to satisfy the
11 physical impact requirement." *Id.* The physical impact requirement is not met even where a
12 party has "great difficulty in eating, sleeping, and suffers outward manifestations of stress and
13 is generally uncomfortable." *Churchill v. Barach*, 863 F. Supp. 1266, 1275 (D. Nev. 1994); *Alam*,
14 819 F. Supp. at 911 (feelings of inferiority, headaches, irritability and weight loss did not
15 amount to severe emotional distress).

16 37. The Court concludes that Mr. Spencer's claimed "emotional distress" does not,
17 as a matter of law, rise to the level of "severe or extreme emotional distress" required to
18 satisfy the second element of his IIED claim. Mr. Spencer claims the following symptoms:
19 heartburn, stomach aches, depression, lack of concentration, difficulty sleeping. These
20 symptoms, as a matter of law, are insufficient to satisfy the physical impact requirement for
21 purposes of an IIED claim. The Court notes that many of Mr. Spencer's physical issues with
22 depression and heartburn pre-existed this case by ten to fifteen years. *Motion*, Exhibit 15.

23 38. The Court also declines to consider "Exhibit 3" to Mr. Spencer's *Response*,
24 which appears to be a medical record from a Dr. Allison Steinmetz, M.D. Mr. Spencer failed to
25 rebut Helmut's assertion that "Exhibit 3" was never produced in this case. On its face, Exhibit
26 3 is unauthenticated because it fails to include the requisite certification of the custodian of
27 records. Rule 56(e) of the Nevada Rules of Civil Procedure requires this Court to consider
28 only "sworn or certified copies" and the fact Mr. Spencer attached this document to his

1 affidavit does not satisfy the authentication requirement. *Orr v. Bank of Am., NT & SA*, 285
2 F.3d 764, 773 (9th Cir. 2002) (excluding the majority of plaintiff's exhibits that were attached
3 to her counsel's declaration for failure to properly authenticate).

4 39. The Court concludes that summary judgment on the claim for intentional
5 infliction of emotional distress is appropriate in favor of Helmut and against Jeffrey Spencer.

6 **CONCLUSION**

7 It is well-established that "there is no issue for trial unless there is sufficient evidence
8 favoring the nonmoving party for a jury to return a verdict for that party." *Anderson v. Liberty*
9 *Lobby*, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511 (1986) (internal citations omitted). The Court
10 concludes that Mr. Spencer has failed to satisfy his burden to provide sufficient evidence to
11 defeat Helmut Klementi's Motion for Summary Judgment.

12 Accordingly, and good cause appearing therefor,

13 **IT IS HEREBY ORDERED** Counter-defendant Helmut Klementi's *Motion for Summary*
14 *Judgment on All Claims* is granted in its entirety;

15 **IT IS FURTHER ORDERED** summary judgment on all counterclaims alleged in the
16 *Amended Counterclaim* is entered in favor of Counter-defendant Helmut Klementi and against
17 Counterclaimant Jeffrey Spencer.

18 Dated this 21 day of August, 2018.

19
20
21 
22 DISTRICT JUDGE

23 Submitted by:
24 DOUGLAS R. BROWN, ESQ.
25 SARAH M. MOLLECK, ESQ.
26 Lemons, Grundy & Eisenberg
27 6005 Plumas Street, Third Floor
28 Reno, Nevada 89519
T: (775) 786-6868

RECEIVED

AUG 31 2018

Douglas County
District Court Clerk

FILED

2018 AUG 31 PM 4:00

DOBBIE R. WILLIAMS
CLERK

BY Anoma DEPUTY

Case No. 14-CV-0260

Dept. No. 1

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER,

Defendant

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON
KLEMENTI, an individual, MARY ELLEN
KINION, an individual, and DOES 1-5

Counterdefendants.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order Granting Counter-Defendant Helmut Klementi's

Motion for Summary Judgment on All Claims was entered on August 23, 2018.

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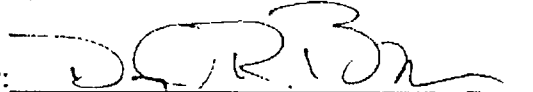
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A copy of said Order is attached hereto as Exhibit 1.

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated: August 30, 2018.

Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, Nevada 89519
(775) 786-6868

By: 
Douglas R. Brown, Esq.
Christian L. Moore, Esq.
Sarah M. Molleck, Esq.
*Attorneys for Counter-Defendant
Helmut Klementi*

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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 August 30, 2018, 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:

Jeffrey D. Spencer
P. O. Box 2326
Stateline, NV 89449
In Pro Per

David M. Zaniel, Esq.
Ranalli & Zaniel, LLC
50 West Liberty Street, Suite 1050
Reno, Nevada 89501
Attorney for Jeffrey Spencer

Michael A. Pintar, Esq.
Glogovac & Pintar
427 West Plumb Lane
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*Attorney for Mary Ellen Kinion,
Egon Klementi and Elfriede Klementi*

Tanika Capers, Esq.
6750 Via Austi Parkway, Suite 310
Las Vegas, Nevada 89119
Attorneys for Rowena Shaw and Peter Shaw



Susan G. Davis

INDEX OF EXHIBITS

<i>Exhibit No.</i>	<i>Description</i>	<i>Length of Exhibit</i>
1	Order Granting Counter-Defendant Helmut Klementi's Motion for Summary Judgment on All Claims	16 pages

EXHIBIT 1

EXHIBIT 1

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Case No. 14-CV-0260

AUG 23 2018

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Dept. No. 1

Douglas County
District Court Clerk

EDDIE R. WILLIAMS
CLERK
DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER, & DOES 1-5,

Defendant

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON
KLEMENTI, an individual, ELFRIDE
KLEMENTI, an individual, MARY ELLEN
KINION, an individual, ROWENA SHAW, an
individual, PETER SHAW, an individual, and
DOES 1-5,

Counter-defendants & Third-
Party Defendants.

ORDER GRANTING COUNTER-DEFENDANT
HELMUT KLEMENTI'S MOTION FOR
SUMMARY JUDGMENT ON ALL CLAIMS

Before this Court is Counterdefendant Helmut Klementi ("Helmut")'s *Motion for Summary Judgment on All Counterclaims*, filed April 12, 2018. After this Court extended the time to respond, Counterclaimant Jeffrey Spencer filed his *Response to Motion for Summary Judgment* on June 1, 2018. Helmut filed his *Reply in Support of Motion for Summary Judgment on all Counterclaims* on June 13, 2016. This Court held oral argument on July 12, 2018 on all outstanding motions, including Helmut's *Motion for Summary Judgment*, and

1 found that summary judgment was warranted. This Order, setting forth the Court's findings
2 of undisputed material fact and conclusions of law, follows.

3 **STANDARD OF REVIEW**

4 Summary judgment is appropriate under Rule 56 of the Nevada Rules of Civil
5 Procedure when the pleadings, depositions, answers to interrogatories, admissions, and
6 affidavits, if any, that are properly before the court demonstrate that no genuine issue of
7 material fact exists, and the moving party is entitled to judgment as a matter of law. NRCP 56;
8 *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). *Id.* A factual dispute is
9 genuine when the evidence is such that a rational trier of fact could return a verdict for the
10 nonmoving party. *Id.* The substantive law controls which factual disputes are material and will
11 preclude summary judgment; other factual disputes are irrelevant. *Id.* at 731.

12 Although the pleadings and proof must be construed in a light most favorable to the
13 nonmoving party, that party bears the burden to do more than simply show that there is
14 some metaphysical doubt as to the operative facts in order to avoid summary judgment. *Id.* at
15 732. The nonmoving party is not entitled to build a case on the gossamer threads of whimsy,
16 speculation and conjecture. *Id.*

17 Mr. Spencer asserts, both in his Response and during oral argument on Helmut's
18 Motion, that this Court may not enter summary judgment if there remains a "slightest doubt"
19 as to the facts. *Response*, p. 7. The Nevada Supreme Court, however, abrogated the slightest
20 doubt standard in *Wood v. Safeway*, *supra*. This Court rejects Mr. Spencer's invitation to
21 apply the slightest doubt standard and instead applies the correct standard for summary
22 judgment as set forth herein.

23 The manner in which each party satisfies its burden of production for summary
24 judgment "depends on which party will bear the burden of persuasion on the challenged claim
25 at trial." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 602, 172 P.3d 131, 134
26 (2007). If the nonmoving party will bear the burden of persuasion at trial, the moving party
27 "may satisfy the burden of production by either (1) submitting evidence that negates an
28 essential element of the nonmoving party's claim, or (2) 'pointing out ... that there is an

1 absence of evidence to support the nonmoving party's case."¹ *Francis v. Wynn Las Vegas, LLC*,
2 127 Nev. Adv. Op. 60, 262 P.3d 705, 714 (2011) (internal citations omitted).

3 Finally, to withstand summary judgment, Mr. Spencer as the nonmoving party cannot
4 rely solely on the general allegations and conclusions set forth in the pleadings, but must
5 instead present specific facts demonstrating the existence of a genuine factual issue
6 supporting its claims. *Ransdell v. Clark County*, 124 Nev. 847, 860, 192 P.3d 756, 765 (2008).
7 With the summary judgment standard set forth, the Court enters its findings of undisputed
8 material fact and conclusions of law.

9 **FINDINGS OF UNDISPUTED MATERIAL FACT**

10 The Court finds the following material facts are undisputed:

11 1. Helmut Klementi is eighty-three years old and lives at 163 Pine Ridge Drive,
12 Stateline, Nevada, in the Kingsbury General Improvement District ("KGID").¹

13 2. Helmut had a twin brother, Egon Klementi ("Egon"), who lived with his wife
14 Elfriede "Elfie" Klementi at 187 Meadow Lane, Stateline, Nevada at the corner of Meadow
15 Lane and Charles Avenue.²

16 3. Counterclaimant Mr. Spencer resides at 321 Charles Avenue, Stateline Nevada,
17 with his wife Marilyn Spencer ("Ms. Spencer").³

18 4. In May 2012, there was a dispute between Mr. Spencer and the other
19 neighbors in the KGID district, including Helmut's brother Egon, regarding a fence that Mr.
20 Spencer had built on his property that May in violation of Douglas County Code.⁴

21 5. Later that year, in December 2012, Mr. Spencer operated a snow plow in the
22 neighborhood streets of KGID, including Charles Avenue, Meadow Lane, and Juniper Drive.⁵

23
24
25
26 ¹ Motion, Exhibit 1 ¶3; Exhibit 2, pp. 8:2-9, 12:15.

27 ² Motion, Exhibit 1, ¶4; Exhibit 2, p. 94:3-5. Egon Klementi passed away in fall 2017.

28 ³ Motion, Exhibit 3, p. 8:8-15.

⁴ Motion, Exhibit 1, ¶¶5-6; Exhibit 4.

⁵ Motion, Exhibit 3, p. 16:22-25, 17:1-4; 68:12-15.

1 6. During December 2012, residents of the neighborhood, including Egon and
2 Elfie, experienced issues with Mr. Spencer "berming-in" their driveways with snow and debris
3 in the course of his duties as a snow plow operator.⁶

4 7. On December 18, 2012, Helmut attended a meeting of the Board of Trustees
5 for the KGID with Egon and Elfie.⁷

6 8. Although he attended, Helmut did not make a statement or otherwise speak at
7 the December 18, 2012 meeting before the Board of Trustees for the KGID.⁸

8 9. At the December 18, 2012 KGID Board of Trustees meeting, Chairperson
9 Norman gave instructions for the neighbors concerned about the snow berms to take
10 pictures.⁹

11 10. When the December 18, 2012 KGID Board of Trustees meeting concluded,
12 Helmut went to Egon's and Elfie's home for dinner.¹⁰

13 11. After dinner, Helmut left Egon's house to take pictures of the snow berms in
14 front of Egon's property and to then return home.¹¹

15 12. As Helmut was taking pictures of the snow berm, he was knocked to the
16 ground by Mr. Spencer.¹²

17 13. Mr. Spencer admits he knocked Helmut to the ground, that it was not an
18 accident, that he knew it was a Klementi brother, and that he stood screaming over Helmut
19 after Mr. Spencer knocked Helmut to the ground.¹³

20 14. Mr. Spencer admits he pushed Helmut in order to stop Helmut from getting
21 away.¹⁴

22
23 ⁶ Motion, Exhibit 3, p. 68:12-15; Exhibit 5, pp. 46-50.

24 ⁷ Motion, Exhibit 1, ¶7; Exhibit 2, p. 86:8-11.

25 ⁸ Motion, Exhibit 1, ¶¶8-9; Exhibit 2, p. 92:21-22, p. 93:10-12; Exhibit 6.

26 ⁹ Motion, Exhibit 1, ¶10; Exhibit 2, 107:12-15, Exhibit 6.

27 ¹⁰ Motion, Exhibit 1, ¶11; Exhibit 2, p. 93:16-24.

28 ¹¹ Motion, Exhibit 1, ¶12; Exhibit 2, p. 97:18-25, p. 107:12-15.

¹² Motion, Exhibit 1, ¶13; Exhibit 2, p. 117:1-3; p. 119:19-24, p. 127:11-14; Exhibit 3, pp. 98:1-25—99:1-23, 100:15-19.

¹³ Motion, Exhibit 3, pp. 98:23-25—99:1-23.

¹⁴ Motion, Exhibit 1, ¶17; Exhibit 7.

1 15. It was Helmut's opinion and belief that Mr. Spencer punched him in his side
2 and knocked him to the ground.¹⁵

3 16. Because Helmut sustained injuries as a result of this incident, emergency
4 services were called and Douglas County Sheriff's Deputy Jesse McKone responded and
5 commenced an investigation.¹⁶

6 17. Helmut reported in good faith his belief to Deputy McKone that Mr. Spencer
7 had assaulted him and knocked him to the ground.¹⁷

8 18. After interviewing witnesses and investigating the scene, Deputy McKone
9 concluded that Mr. Spencer's testimony regarding the incident was not credible and he
10 opined that Mr. Spencer used the excuse of someone breaking into his truck as a reason to
11 confront and commit a battery upon Helmut when he saw Helmut taking photographs of the
12 snow berms.¹⁸

13 19. Accordingly, based on his investigation and opinion, Deputy McKone arrested
14 Mr. Spencer for battery/abuse of an elderly person.¹⁹

15 20. The decision to arrest Mr. Spencer was solely Deputy McKone's decision, based
16 on "the inconsistencies with what [he] had seen on scene and Mr. Spencer's rendition."²⁰

17 21. On or about December 26, 2012, Helmut obtained a Temporary
18 Restraining/Protective Order against Mr. Spencer.²¹

19 22. On January 8, 2013, Helmut attended a meeting before the Douglas County
20 Planning Commission and its members.²²

21 23. At that meeting, Helmut read a statement during public comment that stated
22 Mr. Spencer confronted and punched him while he was taking pictures of a snow berm
23

24 ¹⁵ Motion, Exhibit 1, ¶14; Exhibit 2, pp. 117:1-3, 119:19-24, 130:23-25—131:1-10.

25 ¹⁶ Motion, Exhibit 1, ¶15; Exhibit 8, pp. 13:1-25—23:1-10.

26 ¹⁷ Motion, Exhibit 1, ¶16.

27 ¹⁸ Motion, Exhibit 7; Exhibit 8, p. 36:14-22; p. 62:2-9.

28 ¹⁹ Motion, Exhibit 7; Exhibit 8, p. 62:2-9.

²⁰ Motion, Exhibit 8, p. 62:8-9.

²¹ Motion, Exhibit 1, ¶¶18-19; Exhibit 9.

²² Motion Exhibit 1, ¶¶20-21; Exhibit 10.

1 pushed against his brother Egon's fence and that Helmut had a restraining order against Mr.
2 Spencer.²³

3 24. Ultimately, Mr. Spencer was charged with committing a battery upon Helmut
4 and criminal complaints were filed against him by the Douglas County District Attorney's
5 office.²⁴

6 25. District Attorney Maria Pence testified before this Court on January 30, 2017
7 extensively regarding the charging decisions of the district attorney's office and she testified
8 that "no one is involved in the charging decision except for myself and ... the charging decision
9 is made solely by whichever Deputy District Attorney was assigned that case."²⁵

10 26. D.A. Pence also testified the decision to enhance the gross misdemeanor
11 battery charge against Mr. Spencer to a felony charge stemmed from her receipt of medical
12 records showing that Helmut had sustained substantial bodily harm.²⁶

13 27. The criminal proceedings against Mr. Spencer proceeded to a preliminary
14 hearing and criminal trial, where Helmut testified against Mr. Spencer on behalf of the State
15 of Nevada as a victim of a crime.²⁷

16 28. The Court finds the only statements Helmut made about Mr. Spencer were (1)
17 his statement to Deputy McKone on December 18, 2012, (2) his statement to the Douglas
18 County Planning Commission on January 8, 2013, and (3) his testimony at Mr. Spencer's
19 preliminary hearing and trial.²⁸

20 29. The Court finds that Jeffrey Spencer has failed to identify any other statements
21 that Helmut Klementi made in this case. The Court rejects Mr. Spencer's insinuation that
22 Helmut Klementi is liable for defamation for statements he made to his medical providers
23
24

25 ²³ Motion, Exhibit 1, ¶¶22-23; Exhibit 11.

26 ²⁴ Counterclaimant Jeffrey Spencer's *Amended Counterclaim* on file herein, ¶¶53-57; and
27 *Counterclaimant's Opposition to Motion for Summary Judgment (Mary Ellen Kinion)*, Exhibits 1-2.

28 ²⁵ Motion, Exhibit 12.

²⁶ *Id.*, p. 14:8-24, p. 64:6-9.

²⁷ Motion, Exhibit 1, ¶23.

²⁸ Motion, Exhibit 1, ¶25, Exhibit 2, Exhibit 7, Exhibit 9, Exhibit 10, Exhibit 13

1 when seeking treatment after the December 18, 2012 incident and finds his assertion
2 completely unsupported by any authority. *Response*, p. 6, ¶28.

3 30. The Court finds that the statements of Helmut Klementi, that Jeffrey Spencer
4 punched him and knocked him to the ground, and that Helmut Klementi had a restraining
5 order against Mr. Spencer are true statements that Helmut Klementi made to law
6 enforcement, the Douglas County Planning Commission, and to the Ninth Judicial District
7 Court.

8 31. The Court finds that Helmut Klementi had a good faith belief he was punched
9 by Jeffrey Spencer on the evening of December 18, 2012 and that Helmut Klementi did not act
10 with malice when he reported the same to law enforcement, the Ninth Judicial District Court,
11 and the Douglas County Planning Commission.

12 32. The Court finds that Jeffrey Spencer has failed to produce any evidence in this
13 case that Helmut Klementi was "dishonest in [his] reporting, and/or repeated dishonest
14 reports of others... and/or tampered with evidence." *Response*, p. 12:16-18. Rather, the Court
15 finds that these are mere unsupported allegations.

16 33. The Court finds Jeffrey Spencer has failed to meet his burden on summary
17 judgment to come forward with any admissible evidence, other than allegations and
18 speculation, to raise a genuine issue of material fact for trial on all of his counterclaims against
19 Helmut Klementi.

20 34. The Court finds that the video tape produced and incorporated into Jeffrey
21 Spencer's *Response to Motion for Summary Judgment* does not create a genuine issue of
22 material fact; rather, it supports Helmut's belief that he was assaulted by Mr. Spencer on the
23 evening of December 18, 2012.

24 35. To the extent any of the following conclusions of law constitute findings of fact,
25 they are incorporated herein.

26 **CONCLUSIONS OF LAW**

27 1. To the extent any of the foregoing findings of fact constitute conclusions of
28 law, they are incorporated herein.

1 Counterclaimant's Claim against Helmut Klementi for Defamation:

2 2. Liability for defamation may only arise if the plaintiff proves the following: "(a)
3 a false and defamatory statement concerning another; (b) an unprivileged publication to a
4 third party; (c) fault amounting at least to negligence on the part of the publisher; and (d)
5 either actionability of the statement irrespective of special harm, or the existence of special
6 harm caused by the publication." *Lubin v. Kunin*, 117 Nev. 107, 111, 17 P.3d 422, 425 (2001)
7 (emphasis added).

8 3. Whether a statement is defamatory is generally a question of law, unless it is
9 subject to two different interpretations. *Id.*; *K-Mart Corp. v. Washington*, 109 Nev. 1180, 1191,
10 866 P.2d 274, 281 (1993) ("Whether or not a statement is capable of defamatory construction
11 is a question of law for the court.").

12 4. A court reviewing an allegedly defamatory statement reviews "the words in
13 their entirety and in context in order to determine whether they are susceptible of
14 defamatory meaning." *Lubin*, 117 Nev. at 111, 17 P.3d at 426. This Court examines the
15 statements identified in paragraph 28 of its *Finding of Undisputed Material Fact* to determine
16 whether Helmut's statements were defamatory.

17 5. A statement is not defamatory "if it is absolutely true, or substantially true."
18 *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 715, 57 P.3d 82, 88 (2002). A statement is
19 also not defamatory if it is "an exaggeration or generalization" that a reasonable person could
20 interpret as mere rhetorical hyperbole. *Id.* Finally, statements of opinion are protected
21 speech under the First Amendment of the United States Constitution. *Lubin*, 117 Nev. at 112.

22 6. In this case, the Court concludes the statements of Helmut Klementi in this case
23 regarding Jeffrey Spencer and the incident of December 18, 2012 are true. Mr. Spencer
24 admitted in his deposition that he intended to collide with and stop the person in the street
25 who was Helmut Klementi. By Mr. Spencer's own admissions, the Court concludes Helmut's
26 statements were not defamatory, as they are true or substantially true. Notably, Mr. Spencer
27 fails to identify any other particular statement that Helmut made which is defamatory or
28 untrue.

1 7. The Court also concludes that Helmut's statements are protected by qualified
2 privilege. Where a person makes communications to law enforcement officers in good faith
3 before the initiation of criminal proceedings, the Nevada Supreme Court has recognized that
4 person enjoys a qualified privilege. *Pope v. Motel 6*, 121 Nev. 307, 114 P.3d 277 (2005).

5 8. After an individual has reported a crime, a plaintiff must prove, by a
6 preponderance of the evidence, "that the defendant abused the privilege by publishing the
7 defamatory communication [to law enforcement] with actual malice." *Id.* at 317. "Actual
8 malice is a stringent standard that is proven by demonstrating that a statement is published
9 with knowledge that it was false or with reckless disregard for its veracity." *Id.* citing *Pegasus*,
10 118 Nev. at 722, 57 P.3d at 92.

11 9. Whether a statement is conditionally privileged is a question of law for the
12 Court to decide; in fact, it is reversible error for this Court to submit to the jury the issue of
13 conditional, or qualified, privilege. The issue of qualified privilege does not even go to the jury
14 unless there is "sufficient evidence" for the jury to reasonably infer that the defendant made
15 the statement with actual malice. *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 657
16 P.2d 101 (1983).

17 10. In applying the foregoing authority, the Court concludes the qualified privilege
18 applies to Helmut's reporting of the December 18, 2012 incident to law enforcement. The
19 Court also concludes Jeffrey Spencer failed to demonstrate (1) that Helmut did not have a
20 good faith belief regarding the incident, and (2) that Helmut acted with actual malice when he
21 reported the incident to law enforcement.

22 11. This Court also concludes the absolute privilege applies. Where a person
23 makes a statement in the course of a judicial proceeding, Nevada follows the "'long-standing
24 common law rule that communications uttered or published in the course of judicial
25 proceedings are absolutely privileged." *Circus Circus Hotels, Inc.*, 99 Nev. at 60-61, 657 P.2d at
26 104; *Nickovich v. Mollart*, 51 Nev. 306, 274 P. 809, 810 (1929) (a witness who testifies in the
27 course of judicial proceedings is not liable for the answers he makes to questions posed by the
28 court or counsel and all his answers are privileged).

1 12. The absolute privilege also extends to "quasi-judicial proceedings before
2 executive officers, boards, and commissions...." *Circus Circus Hotels, Inc.*, 99 Nev. at 60-61.

3 13. Even where defamatory statements are published with knowledge of their
4 falsity and ill will toward a plaintiff, the absolute privilege precludes liability as a matter of law.
5 *Id.*; *Knox v. Dick*, 99 Nev. 514, 518, 665 P.2d 267, 270 (1983) (holding that the absolute
6 privilege is applicable to quasi-judicial proceedings so "the right of individuals to express their
7 views freely upon the subject under consideration is protected.").

8 14. The scope of absolute privilege in Nevada is "quite broad." *Fink v. Oshins*, 118
9 Nev. 428, 433, 49 P.3d 640, 644 (2002). The defamatory communication "need not be strictly
10 relevant to any issue involved" in the judicial or quasi-judicial proceeding; rather, it needs only
11 to be "in some way pertinent to the subject of controversy." *Id.* citing *Circus Circus Hotels,*
12 *Inc.*, 99 Nev. at 61, 657 P.2d at 104 (defamatory material need only have "some relation" to
13 the proceeding and as long as it has "some bearing" on the subject matter, it is absolutely
14 privileged). Issues of absolute privilege and relevance are questions of law for this Court to
15 decide. *Circus Circus Hotels, Inc.*, 99 Nev. at 62, 657 P.2d at 105.

16 15. The Court concludes it is undisputed the absolute privilege applies to any and
17 all statements Helmut made in court during Jeffrey Spencer's criminal proceedings and liability
18 does not attach as a matter of law.

19 16. The Court concludes Helmut's statements to the Douglas County Planning
20 Commission are also protected by absolute privilege as a matter of law, because the Douglas
21 County Planning Commission is a quasi-judicial body and Helmut's statements to the
22 Commission are relevant to the subject controversy, which is Jeffrey Spencer's construction of
23 a fence that violated county code that resulted in a neighborhood dispute and ultimately
24 culminated in the December 18, 2012 incident.

25 17. The Court concludes summary judgment on the counterclaim for defamation
26 against Helmut is proper in Helmut's favor and against Jeffrey Spencer.

27 ///

28 ///

1 Counterclaimant's Claim against Helmut Klementi for Malicious Prosecution:

2 18. To establish a prima facie case of malicious prosecution in Nevada, a plaintiff
3 must prove the following: "(1) want of probable cause to initiate the prior criminal
4 proceeding; (2) malice; (3) termination of the prior criminal proceedings; and (4) damage."
5 *LaMontia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 879 (2002) citing *Jordan v. Bailey*, 113 Nev.
6 1038, 1047, 944 P.2d 828, 834 (1997). This claim also requires the plaintiff prove the
7 defendant "initiated, procured the institution of, or actively participated in the continuation of
8 a criminal proceeding against the plaintiff." *Id.*

9 19. "When a private person gives to a prosecuting officer information that he
10 believes to be true, and the officer in the exercise of his uncontrolled discretion initiates
11 criminal proceedings based upon that information, the informer is not liable under the rule
12 stated in this Section even though the information proves to be false and his belief was one
13 that a reasonable man would not entertain." *Lester v. Buchanan*, 112 Nev. 1426, 929 P.2d 910
14 (1996) citing Restatement (Second) of Torts § 653 (1977).

15 20. The Court concludes that Jeffrey Spencer has failed to come forward with any
16 evidence that Helmut Klementi initiated, procured the institution of, or actively participated in
17 the continuation of criminal proceedings against Mr. Spencer. Mr. Spencer has failed to
18 produce any evidence that Helmut requested or pressured law enforcement or D.A. Pence to
19 commence criminal proceedings against Mr. Spencer.

20 21. Rather, this Court heard testimony from Deputy District Attorney Maria Pence
21 at the January 30, 2017 hearing in this case that she was the only person involved in charging
22 Mr. Spencer in his criminal case. It is also undisputed that Deputy McKone's decision to arrest
23 Mr. Spencer was solely the decision of the Deputy, who based his decision on "the
24 inconsistencies with what [he] had seen on the scene and Mr. Spencer's rendition." *Findings*
25 *of Undisputed Material Fact*, ¶¶18-20. The Court also concludes that probable cause existed
26 for Mr. Spencer's criminal case when the justice court bound Mr. Spencer over for trial on the
27 charges filed by D.A. Pence after the April 24, 2013 hearing preliminary hearing.

28

1 22. The Court concludes that Jeffrey Spencer's "dispute" with the conclusions that
2 Deputy McKone and Deputy District Attorney Maria Pence reached in Mr. Spencer's criminal
3 investigation and trial are insufficient, as a matter of law, to create a genuine issue of material
4 fact for the purpose of defeating summary judgment. *Response*, p. 5, ¶18-21, p. 6, ¶25-26.
5 *Disagreeing with Deputy McKone and D.A. Pence's decisions to arrest and charge Mr. Spencer*
6 does not satisfy Mr. Spencer's burden to come forward with specific evidence in order to
7 preclude entry of summary judgment against him.

8 23. Finally, as set forth above, the Court concludes Helmut's statements are
9 protected by absolute immunity in the context of this malicious prosecution claim. As the
10 Nevada Supreme Court recently confirmed in *Harrison v. Roitman*, 131 Nev. Adv. Op. 92, 362
11 P.3d 1138 (2015), the absolute immunity privilege is not limited to claims of defamation. In
12 applying the three-pronged functional approach set forth in *Harrison*, *supra*, the Court
13 concludes the following: (1) that, as a witness involved and testifying in a judicial proceeding,
14 Helmut enjoys absolute immunity from liability resulting from his testimony; (2) the likelihood
15 of harassment or intimidation was sufficient to interfere with Helmut's ability to testify as the
16 victim of a crime; and (3) procedural safeguards by way of cross-examination of Helmut were
17 exercised by Mr. Spencer in his criminal trial. Thus, the Court concludes Helmut enjoys
18 absolute immunity from Mr. Spencer's claim for malicious prosecution against him because he
19 was a testifying witness in Spencer's criminal trial.

20 24. The Court concludes summary judgment on the counterclaim for malicious
21 prosecution against Helmut should be granted in Helmut's favor and against Jeffrey Spencer.

22 Counterclaimant's Claims against Helmut for Civil Conspiracy:

23 25. An actionable claim for civil conspiracy "consists of a combination of two or
24 more persons who, by some concerted action, intend to accomplish an unlawful objective for
25 the purpose of harming another, and damage results from the act or acts." *Consol. Generator-*
26 *Nevada, Inc. v. Cummins Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998).

27 26. In order to prevail on a claim for civil conspiracy, a plaintiff must show the
28 commission of the underlying tort and an agreement between defendants to commit that

1 tort. *Jordan v. Dept. of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 75, 110 P.3d 30, 51
2 (2005).²⁹

3 27. This Court has already concluded that Jeffrey Spencer failed to demonstrate
4 genuine issues of material fact remain on his claims against Helmut Klementi for defamation
5 and malicious prosecution. In the absence of any specific evidence, Mr. Spencer cannot
6 demonstrate the commission of the underlying tort, which is a necessary predicate to a civil
7 conspiracy. It is well-established that the arguments of counsel are not evidence and
8 do not establish the facts of the case. *See Nevada Ass'n Servs., Inc. v. Eighth Jud. Dist. Ct.*, 130
9 Nev. Adv. Op. 94, 338 P.3d 1250, 1255 (2014). The Court concludes Mr. Spencer has
10 demonstrated no evidence of a conspiracy existing between the counter-defendants.

11 28. Accordingly, the Court concludes summary judgment on the counterclaims for
12 civil conspiracy (defamation) and civil conspiracy (malicious prosecution) against Helmut
13 should be granted in Helmut's favor and against Jeffrey Spencer.

14 **Counterclaimant's Claim against Helmut for Punitive Damages:**

15 29. Punitive damages are not a standalone claim, which Mr. Spencer concedes.
16 *Response*, p. 17:1-3. Rather, the district court has discretion to determine if a party's conduct
17 merits punitive damages as a matter of law. *Winchell v. Schiff*, 124 Nev. 938, 948, 193 P.3d
18 946, 953 (2008); *Bongiovi v. Sullivan*, 122 Nev. 556, 580, 138 P.3d 433, 450 (2006).

19 Punitive damages are governed by statute and may only be awarded when the plaintiff
20 proves, by clear and convincing evidence, that the "defendant has been guilty of oppression,
21 fraud, or malice, express or implied" NRS 42.005(1); *In re Discipline of Drakulich*, 111 Nev.
22 1556, 1566, 908 P.2d 709, 715 (1995) (defining "clear and convincing evidence").

23 30. In this case, Mr. Spencer has failed to come forward with any evidence, let
24 alone clear and convincing evidence, that Helmut's conduct in the underlying criminal case
25 merits an award of punitive damages. Mr. Spencer's complete response in opposition to
26 Helmut's argument on punitive damages is contained in a single line: "Mr. Spencer does not
27

28 ²⁹ Abrogated on other grounds by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008).

1 dispute that this is just a measure of damages, which would be addressed at the time of trial."
2 *Response*, p. 17:2-3. This one line completely fails to satisfy Mr. Spencer's burden on
3 summary judgment to present specific facts and evidence in response to Helmut's Motion.
4 *Ransdell v. Clark County*, 124 Nev. 847, 860, 192 P.3d 756, 765 (2008). The Court concludes
5 Mr. Spencer has failed to meet his burden. The Court further concludes, as a matter of law,
6 that Helmut's conduct in reporting the December 18, 2012 incident does not constitute
7 conduct for which punitive damages are appropriate.

8 31. The Court concludes that summary judgment on the punitive damages claim is
9 appropriate in favor of Helmut and against Jeffrey Spencer.

10 **Counterclaimant's Claim against Helmut for Intentional Infliction of Emotional Distress:**

11 32. In a claim for intentional infliction of emotional distress ("IIED"), a plaintiff must
12 prove the following: "(1) extreme and outrageous conduct with either the intention of, or
13 reckless disregard for, causing emotional distress, (2) the plaintiff's having suffered severe or
14 extreme emotional distress, and (3) actual or proximate causation." *Barmettler v. Reno Air,*
15 *Inc.*, 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998) (concluding summary judgment was
16 proper where plaintiff failed to establish either the first or second elements of this claim)
17 citing *Star v. Rabello*, 97 Nev. 124, 125, 625 P.2d 90, 91-92 (1981) (citation omitted).

18 33. A prima facie claim of intentional infliction of emotional distress requires a
19 plaintiff to prove that the defendant's conduct was "extreme and outrageous." *Maduike v.*
20 *Agency Rent-A-Car*, 114 Nev. 1, 4, 953 P.2d 24, 26 (1998). Extreme and outrageous conduct
21 "is that which is outside all possible bounds of decency and is regarded as utterly intolerable
22 in a civilized community." *Id.* citing California Book of Approved Jury Instruction 12.74
23 (internal citations omitted).

24 34. The Court concludes that Helmut's actions of reporting the December 18, 2012
25 incident, testifying in a criminal proceeding, and, making a statement about that incident do
26 not rise to the level of extreme and outrageous conduct as a matter of law. Mr. Spencer's
27 own authority cited in his *Response* supports the Court's conclusion that Helmut's conduct in
28 this case is not extreme and outrageous. *Branda v. Sanford*, 97 Nev. 643, 645, 637 P.2d 1223,

1 1224 (1981) (jury to consider whether extreme outrage existed where defendant called 15
2 year old plaintiff f—k—g b—ch," "f—k—g c—t" and "no lady."). The Court concludes Mr.
3 Spencer's IIED claim fails as a matter of law on the first element.

4 35. The Court also concludes Mr. Spencer's IIED claim fails on the second element.
5 When a plaintiff claims emotional distress that precipitates physical symptoms, then, in the
6 absence of a physical impact, the plaintiff must prove "serious emotional distress causing
7 physical injury." *Barmettler*, 114 Nev. at 448, 956 P.2d at 1387.

8 36. The stress "must be so severe and of such intensity that no reasonable person
9 could be expected to endure it." *Alam v. Reno Hilton Corp.*, 819 F. Supp. 905, 911 (D. Nev.
10 1993). "Insomnia and general physical or emotional discomfort are insufficient to satisfy the
11 physical impact requirement." *Id.* The physical impact requirement is not met even where a
12 party has "great difficulty in eating, sleeping, and suffers outward manifestations of stress and
13 is generally uncomfortable." *Churchill v. Barach*, 863 F. Supp. 1266, 1275 (D. Nev. 1994); *Alam*,
14 819 F. Supp. at 911 (feelings of inferiority, headaches, irritability and weight loss did not
15 amount to severe emotional distress).

16 37. The Court concludes that Mr. Spencer's claimed "emotional distress" does not,
17 as a matter of law, rise to the level of "severe or extreme emotional distress" required to
18 satisfy the second element of his IIED claim. Mr. Spencer claims the following symptoms:
19 heartburn, stomach aches, depression, lack of concentration, difficulty sleeping. These
20 symptoms, as a matter of law, are insufficient to satisfy the physical impact requirement for
21 purposes of an IIED claim. The Court notes that many of Mr. Spencer's physical issues with
22 depression and heartburn pre-existed this case by ten to fifteen years. *Motion*, Exhibit 15.

23 38. The Court also declines to consider "Exhibit 3" to Mr. Spencer's *Response*,
24 which appears to be a medical record from a Dr. Allison Steinmetz, M.D. Mr. Spencer failed to
25 rebut Helmut's assertion that "Exhibit 3" was never produced in this case. On its face, Exhibit
26 3 is unauthenticated because it fails to include the requisite certification of the custodian of
27 records. Rule 56(e) of the Nevada Rules of Civil Procedure requires this Court to consider
28 only "sworn or certified copies" and the fact Mr. Spencer attached this document to his

1 affidavit does not satisfy the authentication requirement. *Orr v. Bank of Am.*, NT & SA, 285
2 F.3d 764, 773 (9th Cir. 2002) (excluding the majority of plaintiff's exhibits that were attached
3 to her counsel's declaration for failure to properly authenticate).

4 39. The Court concludes that summary judgment on the claim for intentional
5 infliction of emotional distress is appropriate in favor of Helmut and against Jeffrey Spencer.

6 **CONCLUSION**

7 It is well-established that "there is no issue for trial unless there is sufficient evidence
8 favoring the nonmoving party for a jury to return a verdict for that party." *Anderson v. Liberty*
9 *Lobby*, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511 (1986) (internal citations omitted). The Court
10 concludes that Mr. Spencer has failed to satisfy his burden to provide sufficient evidence to
11 defeat Helmut Klementi's Motion for Summary Judgment.

12 Accordingly, and good cause appearing therefor,

13 **IT IS HEREBY ORDERED** Counter-defendant Helmut Klementi's *Motion for Summary*
14 *Judgment on All Claims* is granted in its entirety;

15 **IT IS FURTHER ORDERED** summary judgment on all counterclaims alleged in the
16 *Amended Counterclaim* is entered in favor of Counter-defendant Helmut Klementi and against
17 Counterclaimant Jeffrey Spencer.

18 Dated this 21 day of August, 2018.

19
20
21
22 
DISTRICT JUDGE

23 Submitted by:
24 DOUGLAS R. BROWN, ESQ.
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1 CASE NO.: 14-CV-0260

2 DEPT. NO.: II

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Douglas County
District Court Clerk

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DOBBIE R. WILLIAMS
CLERK

BY *[Signature]* DEPUTY

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF DOUGLAS

8 HELMUT KLEMENTI,

9 Plaintiff,

10 vs.

11 JEFFREY D. SPENCER & DOES 1-5,

12 Defendants.

13
14 JEFFREY D. SPENCER,

15 Counterclaimant,

16 vs.

17 HELMUT KLEMENTI, an individual,
18 EGON KLEMENTI, an individual,
19 ELFRIDE KLEMENTI, an individual,
20 MARY ELLEN KINION, an individual,
21 ROWENA SHAW, an individual, PETER
22 SHAW, an individual, and DOES 1-5,

23 Counterdefendants & Third Party
24 Defendants.

ORDER

25 On April 24, 2018, Third-Party Defendant, Mary Kinion ("Kinion"), by and
26 through her counsel, Glogovac & Pintar, filed a Motion for Summary Judgment. On
27 June 5, 2018, Defendant/Counterclaimant, Jeffrey Spencer ("Spencer") filed an
28 Opposition. Kinion replied on June 13, 2018. On July 12, 2018, a hearing and oral
argument was held, where the Court granted summary judgment in favor of Kinion on

1 all remaining claims. This order setting forth the Court's findings of fact and
2 conclusions of law follows.

3 **I. Background**

4 This action arises out of a dispute between neighbors that live in the Kingsbury
5 Grade General Improvement District ("KGID"). In 2013, Spencer was criminally
6 prosecuted by the Douglas County District Attorney's office for the alleged assault of
7 an elderly neighbor, Helmut Klementi. Spencer was acquitted of those criminal
8 charges. Helmut Klementi then filed a civil action against Spencer seeking recovery for
9 personal injuries arising from the alleged assault. In turn, Spencer asserted a counter-
10 claim against Helmut Klementi as well third-party claims against Kinion, Egon and
11 Elfriede Klementi, and Rowena and Peter Shaw.

12 On January 30, 2017, Kinion was granted summary judgment on Spencer's
13 third-party claim against her for malicious prosecution. By way of the motion before the
14 court, Kinion seeks summary judgment as to Spencer's remaining third-party claims
15 against her, i.e. defamation, civil conspiracy (defamation), civil conspiracy (malicious
16 prosecution), punitive damages, and infliction of emotional distress.

17 **II. Summary Judgment Standard**

18 Summary judgment is appropriate when the record demonstrates that no
19 genuine issue of material fact exists and the moving party is entitled to judgment as a
20 matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).
21 The pleadings and the record are construed in the light most favorable to the
22 nonmoving party. *Id.* However, the nonmoving party must do more than simply show
23 that there is some metaphysical doubt as to the material facts. *Id.* at 732 See also
24 *Torrealba v. Kesmetis*, 124 Nev. 95, 100, 178 P.3d 716, 720 (2008) (explaining the
25 burden on the moving party is to set forth facts demonstrating the existence of a
26 genuine issue in order to withstand a disfavorable summary judgment.")

27 The Supreme Court of Nevada follows the federal approach outlined in *Celotex*
28 *Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) with respect to

1 burdens of proof and persuasion in the summary judgment context. See *Cuzze v.*
2 *Univ. & Commty. College Sys. Of Nevada*, 123 Nev. 598, 601, 172 P.3d 131, 134
3 (2007). The party moving for summary judgment bears the initial burden of production
4 to show the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323, 106
5 S.Ct. 2548. If such a showing is made, then the party opposing summary judgment
6 assumes a burden of production to show the existence of a genuine issue of material
7 fact. *Wood*. 121 Nev. At 732, 121 P.3d at 1031. The manner in which a party may
8 satisfy its burden of production depends on which party is moving for summary
9 judgment. A party may satisfy the burden of production by either (1) submitting
10 evidence that negates an essential element of the nonmoving party's claim, or (2)
11 "pointing out ... that there is an absence of evidence to support the nonmoving party's
12 case." *Cuzze*, 123 Nev. At 302-03, 172 P.3d at 134.

13 Kinion filed a properly supported motion for summary judgment that showed
14 why, both factually and legally, she should prevail. Although Spencer opposed the
15 motion, he did so mainly on procedural grounds, arguing the old "slightest doubt"
16 standard in *Posadas v. City of Reno*, 109 Nev. 448, 452 (1993). In reply, Kinion
17 demonstrated that under *Wood v. Safeway, Inc.*, 121 Nev. at 730-31, the "slightest
18 doubt" standard no longer applies. While Spencer challenged Kinion's position,
19 Spencer did not offer or identify competent evidence to contradict or cast doubt on the
20 facts Kinion identified as being undisputed. On this record, summary judgment in favor
21 of Kinion is appropriate.

22 III. Discussion

23 A. Defamation

24 Liability for defamation may only arise if the plaintiff proves the following: "(a) a
25 false and defamatory statement concerning another; (b) an unprivileged publication to
26 a third party; (c) fault amounting at least to negligence on the part of the publisher; and
27 (d) either actionability of the statement irrespective of special harm, or the existence of
28

1 special harm caused by the publication." *Lubin v. Kunin*, 117 Nev. 107, 111, 17 P.3d
2 422, 425 (2001).

3 Whether a statement is defamatory is generally a question of law, unless it is
4 subject to two different interpretations. *Id.*; *K-Mart Corp. v. Washington*, 109 Nev.
5 1180, 1191, 866 P.2d 274, 281 (1993) ("Whether or not a statement is capable of
6 defamatory construction is a question of law for the court."). A court reviewing an
7 allegedly defamatory statement reviews "the words in their entirety and in context in
8 order to determine whether they are susceptible of defamatory meaning." *Lubin*, 117
9 Nev. At 111, 17 P.3d at 426.

10 In this case, Spencer asserts that Kinion made defaming statements to the
11 Douglas County Sheriff Department, the Douglas County District Attorney, KGID, the
12 Douglas County Planning Commission and/or the South Lake Tahoe Justice of the
13 Peace. Both the qualified privilege and the absolute privilege are defenses to
14 Spencer's defamation claim and Kinion has asserted these privileges in her affirmative
15 defenses to Spencer's Second Amended Counterclaim and Third-Party Complaint.

16 In *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 657 P.2d 101 (1983),
17 the Nevada Supreme Court explained that a qualified or conditional privilege exists
18 where an allegedly defamatory statement is made in good faith "on any subject matter
19 in which the person communicating has an interest, or in reference to which he has a
20 right or a duty, if it is made to a person with a corresponding interest or duty." Whether
21 a statement is conditionally privileged is a question of law for this Court. *Id.* The
22 burden then shifts to the plaintiff to prove that the defendant abused the privilege by
23 making the defamatory statement with malice in fact. *Id.*, This issue does not go to the
24 jury unless there is sufficient evidence for the jury to reasonably infer that the
25 defendant made the statement with actual malice. *Id.*

26 Spencer asserts that statements made by Kinion during his criminal
27 proceedings are defamatory statements. Notably, however, Spencer fails to identify
28 any particular statement that Kinion made which is defamatory or untrue, other than a

1 statement she made to police concerning witnessing Spencer driving a snowplow and
2 propelling snow and other road debris onto Egon Klementi.

3 The Nevada Supreme Court has held that, where a person makes
4 communications to police before initiation of criminal proceedings, that person enjoys
5 a qualified privilege if the statement are made in good faith. In *Pope v. Motel 6*, 121
6 Nev. 307, 114 P.3d 277 (2005), the court clarified its holding in *K-Mart Corp v.*
7 *Washington*, by finding that a qualified privilege satisfied the balance between
8 safeguarding reputations and encouraging full disclosure by citizens "in order to
9 discharge public duties and protect individual rights." *Id.* at 316-317. This privilege
10 exists so that citizens, like Kinion, can report what they perceive in good faith as th
11 commission of a crime and not be subject to "frivolous lawsuits." *Id.* at 317.

12 Importantly, the *Pope* court held that after an individual has reported a crime, a
13 plaintiff must prove, by a preponderance of the evidence, "that the defendant abused
14 the privilege by publishing the defamatory communication [to law enforcement] with
15 actual malice." *Id.* "Actual malice is a stringent standard that is proven by
16 demonstrating that a statement is published with knowledge that it was false or with
17 reckless disregard for its veracity." *Id.* citing *Pegasus v. Reno Newspapers, Inc.*, 118
18 Nev. 706, 722, 57 P.3d 92, 92 (2002).

19 Spencer also cites to a letter that Kinion wrote on February 22, 2013, to Maria
20 Pence, the Deputy District attorney who prosecuted Spencer. Spencer claims that this
21 letter from Kinion became the basis for the amended criminal charges. However, that
22 assertion was specifically rejected by Ms. Pence at the hearing on January 30, 2017.
23 In addition, any statements made by Kinion to the district attorney or in any criminal
24 proceeding are absolutely privileged. Nevada recognizes and follows the "long-
25 standing common law rule that communications uttered or published in the course of
26 judicial proceedings are absolutely privileged." *Circus Circus Hotels, Inc.*, 99 Nev. at
27 60-61, 657 P.2d at 104; *Nickovich v. Mollart*, 51 Nev. 306, 274 P. 809, 810 (1929).

1 The absolute privilege also applies to "quasi-judicial proceedings before
2 executive officers, boards, and commissions..." *Id.* The absolute privilege precludes
3 liability as a matter of law even where the defamatory statements are "published with
4 knowledge of their falsity and personal ill will toward the plaintiff." *Id.* The policy behind
5 this privilege is that, "in certain situations, the public interest in having people speak
6 freely outweighs the risk that individuals will occasionally abuse the privilege" by
7 making defamatory statements. *Id.*; *Knox v. Dick*, 99 Nev. 514, 518, 665 P.2d 267, 270
8 (1983).

9 The Court finds that the KGID and the Douglas County Planning Commission
10 are quasi-judicial bodies to which the absolute privilege extends. *Circus Circus Hotels*,
11 99 Nev. at 60-61. The Court concludes the absolute privilege extends to any
12 statements Kinion made to the KGID and/or Douglas County Planning Commission.

13 For these reasons, summary judgment on the claim for defamation is
14 GRANTED.

15 **B. Conspiracy**

16 Spencer's Third and Fourth Claims for Relief assert claims for civil conspiracy
17 based on defamation and malicious prosecution. An actionable claim for civil
18 conspiracy "consists of a combination of two or more person who, by some concerted
19 action, intend to accomplish an unlawful objective for the purpose of harming another,
20 and damage results from the act or acts. *Consol. Generator-Nevada, Inc. v. Cummins*
21 *Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (finding summary
22 judgment was appropriate on civil conspiracy claim where there was no evidence
23 defendants agreed and intended to harm plaintiff); *Sharda v. Sunrise Hosp. & Med.*
24 *Ctr., LLC*, 2017 WL 2870086, at *10 (D. Nev. July 3, 2017) (plaintiff's claim for civil
25 conspiracy failed where he did not plead plausible underlying agreement).

26 In order to prevail on a claim for civil conspiracy, a plaintiff must show the
27 commission of the underlying tort and an agreement between defendants to commit
28 that tort. *Jordan v. Dept. of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 75 110 P.3d

1 30, 51 (2005), (the underlying tort is a "necessary predicate" to a cause of action for
2 conspiracy); *Sharda*, 2017 WL 2870086 at *10.

3 Because Spencer's claims for defamation and malicious prosecution fail as a matter of
4 law, his claims for civil conspiracy likewise must fail because he is unable to prove the
5 commission of the underlying tort. Moreover, the Court concludes that Spencer failed
6 to produce any evidence of a conspiracy between the co-defendants.

7 For these reasons, the Court concludes summary judgment should be entered
8 in favor of Kinion and against Spencer on Spencer's third and fourth claims for relief.

9 C. IIED

10 Spencer's Sixth Claim for Relief asserts that Kinion acted intentionally or with
11 reckless disregard for the likelihood of causing emotional distress when she testified at
12 Spencer's criminal proceedings. In a claim for intentional infliction of emotional
13 distress, a plaintiff must prove the following: "(1) extreme and outrageous conduct with
14 either the intention of, or reckless disregard for, causing emotional distress, (2) the
15 plaintiff's having suffered severe or extreme emotional distress, and (3) actual or
16 proximate causation." *Barnettler v. Reno Air, Inc.*, 114 Nev. 441, 447, 956 P.2d 1382,
17 1386 (1998) (concluding summary judgment was proper where plaintiff failed to
18 establish either the first or second elements of this claim)

19 A prima facie claim of intentional infliction of emotional distress requires a
20 plaintiff to prove that the defendant's conduct was "extreme and outrageous." *Maduike*
21 *v. Agency Rent-A-Car*, 114 Nev. 1, 4, 953 P.2d 24, 26 (1998). Extreme and
22 outrageous conduct "is that which is outside all possible bounds of decency and is
23 regarded as utterly intolerable in a civilized community." *Id.*, citing *California Book of*
24 *Approved Jury Instruction 12.74* (internal citations omitted). In *Maduike*, the Nevada
25 Supreme Court upheld the trial court's decision that the first element of the tort was not
26 met when a car rental agency's employees were rude and refused to provide a family
27 with a new rental car after the brakes on the car they rented failed and caused a
28 collision. *Id.* at 4-5. The court agreed with the rental agency's argument that its

1 employee's conduct was, at most, unkind or inconsiderate behavior but that it did not
2 rise to the level of being "atrocious, intolerable, or outside all possible bounds of
3 decency." *Id.*, at 5.

4 Speaking to the police, the district attorney, or testifying in a criminal proceeding
5 is not extreme and outrageous conduct. Subjecting a person to damages when they
6 exercise their civil obligation to report a crime and testify in judicial proceedings is
7 simply against public policy and would set dangerous precedent. Victims and
8 witnesses report crimes and testify multiple times a day and the Court concludes this
9 conduct is simply not "extreme and outrageous" as a matter of law. See, e.g., *Churchill*
10 *v. Barach*, 863 F. Supp. 1266, 1275 (D. Nev. 1994) (customer's conduct was not
11 extreme and outrageous as a matter of law when he wrote letter to airline complaining
12 about employee because this type of conduct occurs "thousands of times each day").

13 Moreover, Spencer cannot demonstrate that Kinion intended to cause Spencer
14 emotional distress or acted with reckless disregard in causing Spencer severe
15 emotional distress. Therefore, Spencer's Sixth Claim for Relief for infliction of
16 emotional distress fails as a matter of law on the first element and summary judgment
17 must be granted in Kinion's favor.

18 **IV. Conclusion**

19 The Court has considered the pleadings, the exhibits attached thereto, and the
20 record in its entirety and concludes no genuine issue of material fact remains for trial.
21 Accordingly, and good cause appearing,

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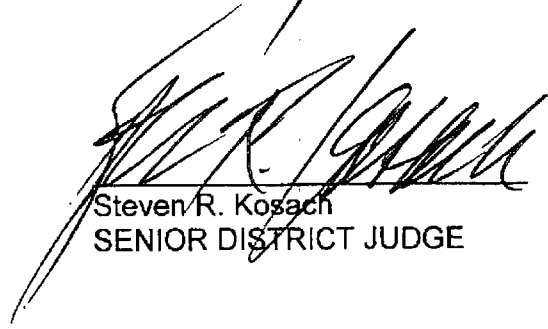
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IT IS HEREBY ORDERED the Motion for Summary Judgment filed by Mary
Ellen Kinion is granted in its entirety.

DATED this 21 day of August, 2018.



Steven R. Kosach
SENIOR DISTRICT JUDGE

1 CASE NO.: 14-CV-0260

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2 DEPT. NO.: II

AUG 31 2018

**Douglas County
District Court Clerk**

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6 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF DOUGLAS**
8

9 **HELMUT KLEMENTI,**

10 **Plaintiff,**

11 **vs.**

12 **JEFFREY D. SPENCER & DOES 1-5,**

13 **Defendants.**

14 _____ /
15 **JEFFREY D. SPENCER,**

16 **Counterclaimant,**

17 **vs.**

18 **HELMUT KLEMENTI, an individual,**
19 **EGON KLEMENTI, an individual,**
20 **ELFRIDE KLEMENTI, an individual,**
21 **MARY ELLEN KINION, an individual,**
22 **ROWENA SHAW, an individual, PETER**
23 **SHAW, an individual, and DOES 1-5,**

24 **Counterdefendants & Third Party**
25 **Defendants.**

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PLEASE TAKE NOTICE that on the 29th day of August, 2018, the above-entitled court entered its Order granting summary judgment on behalf of Mary Ellen Kinion. A copy of said Order is attached.

///

///

///

NOTICE OF ENTRY OF ORDER

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 7th day of August, 2018.

GLOGOVAC & PINTAR

By:



MICHAEL A. PINTAR, ESQ.

Nevada Bar No. 003789

Attorneys for Counterdefendant,
Mary Ellen Kinion

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that I served the foregoing document(s) described as follows:

NOTICE OF ENTRY OF ORDER


On the party(s) set forth below by:

- X Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.
- Personal delivery.
- Facsimile (FAX).
- Federal Express or other overnight delivery.

addressed as follows:

Douglas R. Brown, Esq.	Jeffrey Spencer
Sarah M. Molleck, Esq.	PO Box 2326
Lemons, Grundy & Eisenberg	Stateline, Nevada 89449
6005 Plumas St., 3rd Floor	<i>In Pro Per</i>
Reno, NV 89519	
<i>Attorneys for Helmut Klementi</i>	
Tanika Capers, Esq.	
6750 Via Austi Parkway, Suite 310	
Las Vegas, NV 89119	
<i>Attorneys for Rowena Shaw and Peter Shaw</i>	

Dated this 30 day of August, 2018.



Employee of Glogovac & Pintar

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AUG 29 2018

Douglas County
District Court Clerk

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2018 AUG 29 PM 1:48

BOBBIE R. WILLIAMS
CLERK

A. NEWTON
BY DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants.

ORDER

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual,
EGON KLEMENTI, an individual,
ELFRIDE KLEMENTI, an individual,
MARY ELLEN KINION, an individual,
ROWENA SHAW, an individual, PETER
SHAW, an individual, and DOES 1-5,

Counterdefendants & Third Party
Defendants.

On April 24, 2018, Third-Party Defendant, Mary Kinion ("Kinion"), by and through her counsel, Glogovac & Pinter, filed a Motion for Summary Judgment. On June 5, 2018, Defendant/Counterclaimant, Jeffrey Spencer ("Spencer") filed an Opposition. Kinion replied on June 13, 2018. On July 12, 2018, a hearing and oral argument was held, where the Court granted summary judgment in favor of Kinion on

1 all remaining claims. This order setting forth the Court's findings of fact and
2 conclusions of law follows.

3 **I. Background**

4 This action arises out of a dispute between neighbors that live in the Kingsbury
5 Grade General Improvement District ("KGID"). In 2013, Spencer was criminally
6 prosecuted by the Douglas County District Attorney's office for the alleged assault of
7 an elderly neighbor, Helmut Klementi. Spencer was acquitted of those criminal
8 charges. Helmut Klementi then filed a civil action against Spencer seeking recovery for
9 personal injuries arising from the alleged assault. In turn, Spencer asserted a counter-
10 claim against Helmut Klementi as well third-party claims against Kinion, Egon and
11 Elfriede Klementi, and Rowena and Peter Shaw.

12 On January 30, 2017, Kinion was granted summary judgment on Spencer's
13 third-party claim against her for malicious prosecution. By way of the motion before the
14 court, Kinion seeks summary judgment as to Spencer's remaining third-party claims
15 against her, i.e. defamation, civil conspiracy (defamation), civil conspiracy (malicious
16 prosecution), punitive damages, and infliction of emotional distress.

17 **II. Summary Judgment Standard**

18 Summary judgment is appropriate when the record demonstrates that no
19 genuine issue of material fact exists and the moving party is entitled to judgment as a
20 matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).
21 The pleadings and the record are construed in the light most favorable to the
22 nonmoving party. *Id.* However, the nonmoving party must do more than simply show
23 that there is some metaphysical doubt as to the material facts. *Id.* at 732 See also
24 *Torrealba v. Kesmetis*, 124 Nev. 95, 100, 178 P.3d 716, 720 (2008) (explaining the
25 burden on the moving party is to set forth facts demonstrating the existence of a
26 genuine issue in order to withstand a disfavorable summary judgment.")

27 The Supreme Court of Nevada follows the federal approach outlined in *Celotex*
28 *Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) with respect to

1 burdens of proof and persuasion in the summary judgment context. See *Cuzze v.*
2 *Univ. & Commty. College Sys. Of Nevada*, 123 Nev. 598, 601, 172 P.3d 131, 134
3 (2007). The party moving for summary judgment bears the initial burden of production
4 to show the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323, 106
5 S.Ct. 2548. If such a showing is made, then the party opposing summary judgment
6 assumes a burden of production to show the existence of a genuine issue of material
7 fact. *Wood*. 121 Nev. At 732, 121 P.3d at 1031. The manner in which a party may
8 satisfy its burden of production depends on which party is moving for summary
9 judgment. A party may satisfy the burden of production by either (1) submitting
10 evidence that negates an essential element of the nonmoving party's claim, or (2)
11 "pointing out ... that there is an absence of evidence to support the nonmoving party's
12 case." *Cuzze*, 123 Nev. At 302-03, 172 P.3d at 134.

13 Kinion filed a properly supported motion for summary judgment that showed
14 why, both factually and legally, she should prevail. Although Spencer opposed the
15 motion, he did so mainly on procedural grounds, arguing the old "slightest doubt"
16 standard in *Posadas v. City of Reno*, 109 Nev. 448, 452 (1993). In reply, Kinion
17 demonstrated that under *Wood v. Safeway, Inc.*, 121 Nev. at 730-31, the "slightest
18 doubt" standard no longer applies. While Spencer challenged Kinion's position,
19 Spencer did not offer or identify competent evidence to contradict or cast doubt on the
20 facts Kinion identified as being undisputed. On this record, summary judgment in favor
21 of Kinion is appropriate.

22 III. Discussion

23 A. Defamation

24 Liability for defamation may only arise if the plaintiff proves the following: "(a) a
25 false and defamatory statement concerning another; (b) an unprivileged publication to
26 a third party; (c) fault amounting at least to negligence on the part of the publisher; and
27 (d) either actionability of the statement irrespective of special harm, or the existence of
28

1 special harm caused by the publication." *Lubin v. Kunin*, 117 Nev. 107, 111, 17 P.3d
2 422, 425 (2001).

3 Whether a statement is defamatory is generally a question of law, unless it is
4 subject to two different interpretations. *Id.*; *K-Mart Corp. v. Washington*, 109 Nev.
5 1180, 1191, 866 P.2d 274, 281 (1993) ("Whether or not a statement is capable of
6 defamatory construction is a question of law for the court."). A court reviewing an
7 allegedly defamatory statement reviews "the words in their entirety and in context in
8 order to determine whether they are susceptible of defamatory meaning." *Lubin*, 117
9 Nev. At 111, 17 P.3d at 426.

10 In this case, Spencer asserts that Kinion made defaming statements to the
11 Douglas County Sheriff Department, the Douglas County District Attorney, KGID, the
12 Douglas County Planning Commission and/or the South Lake Tahoe Justice of the
13 Peace. Both the qualified privilege and the absolute privilege are defenses to
14 Spencer's defamation claim and Kinion has asserted these privileges in her affirmative
15 defenses to Spencer's Second Amended Counterclaim and Third-Party Complaint.

16 In *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 657 P.2d 101 (1983),
17 the Nevada Supreme Court explained that a qualified or conditional privilege exists
18 where an allegedly defamatory statement is made in good faith "on any subject matter
19 in which the person communicating has an interest, or in reference to which he has a
20 right or a duty, if it is made to a person with a corresponding interest or duty." Whether
21 a statement is conditionally privileged is a question of law for this Court. *Id.* The
22 burden then shifts to the plaintiff to prove that the defendant abused the privilege by
23 making the defamatory statement with malice in fact. *Id.*, This issue does not go to the
24 jury unless there is sufficient evidence for the jury to reasonably infer that the
25 defendant made the statement with actual malice. *Id.*

26 Spencer asserts that statements made by Kinion during his criminal
27 proceedings are defamatory statements. Notably, however, Spencer fails to identify
28 any particular statement that Kinion made which is defamatory or untrue, other than a

1 statement she made to police concerning witnessing Spencer driving a snowplow and
2 propelling snow and other road debris onto Egon Klementi.

3 The Nevada Supreme Court has held that, where a person makes
4 communications to police before initiation of criminal proceedings, that person enjoys
5 a qualified privilege if the statement are made in good faith. In *Pope v. Motel 6*, 121
6 Nev. 307, 114 P.3d 277 (2005), the court clarified its holding in *K-Mart Corp v.*
7 *Washington*, by finding that a qualified privilege satisfied the balance between
8 safeguarding reputations and encouraging full disclosure by citizens "in order to
9 discharge public duties and protect individual rights." *Id.* at 316-317. This privilege
10 exists so that citizens, like Kinion, can report what they perceive in good faith as th
11 commission of a crime and not be subject to "frivolous lawsuits." *Id.* at 317.

12 Importantly, the *Pope* court held that after an individual has reported a crime, a
13 plaintiff must prove, by a preponderance of the evidence, "that the defendant abused
14 the privilege by publishing the defamatory communication [to law enforcement] with
15 actual malice." *Id.* "Actual malice is a stringent standard that is proven by
16 demonstrating that a statement is published with knowledge that it was false or with
17 reckless disregard for its veracity." *Id.* citing *Pegasus v. Reno Newspapers, Inc.*, 118
18 Nev. 706, 722, 57 P.3d 92, 92 (2002).

19 Spencer also cites to a letter that Kinion wrote on February 22, 2013, to Maria
20 Pence, the Deputy District attorney who prosecuted Spencer. Spencer claims that this
21 letter from Kinion became the basis for the amended criminal charges. However, that
22 assertion was specifically rejected by Ms. Pence at the hearing on January 30, 2017.
23 In addition, any statements made by Kinion to the district attorney or in any criminal
24 proceeding are absolutely privileged. Nevada recognizes and follows the "long-
25 standing common law rule that communications uttered or published in the course of
26 judicial proceedings are absolutely privileged." *Circus Circus Hotels, Inc.*, 99 Nev. at
27 60-61, 657 P.2d at 104; *Nickovich v. Mollart*, 51 Nev. 306, 274 P. 809, 810 (1929).

1 The absolute privilege also applies to "quasi-judicial proceedings before
2 executive officers, boards, and commissions..." *Id.* The absolute privilege precludes
3 liability as a matter of law even where the defamatory statements are "published with
4 knowledge of their falsity and personal ill will toward the plaintiff." *Id.* The policy behind
5 this privilege is that, "in certain situations, the public interest in having people speak
6 freely outweighs the risk that individuals will occasionally abuse the privilege" by
7 making defamatory statements. *Id.*; *Knox v. Dick*, 99 Nev. 514, 518, 665 P.2d 267, 270
8 (1983).

9 The Court finds that the KGID and the Douglas County Planning Commission
10 are quasi-judicial bodies to which the absolute privilege extends. *Circus Circus Hotels*,
11 99 Nev. at 60-61. The Court concludes the absolute privilege extends to any
12 statements Kinion made to the KGID and/or Douglas County Planning Commission.

13 For these reasons, summary judgment on the claim for defamation is
14 GRANTED.

15 **B. Conspiracy**

16 Spencer's Third and Fourth Claims for Relief assert claims for civil conspiracy
17 based on defamation and malicious prosecution. An actionable claim for civil
18 conspiracy "consists of a combination of two or more person who, by some concerted
19 action, intend to accomplish an unlawful objective for the purpose of harming another,
20 and damage results from the act or acts. *Consol. Generator-Nevada, Inc. v. Cummins*
21 *Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (finding summary
22 judgment was appropriate on civil conspiracy claim where there was no evidence
23 defendants agreed and intended to harm plaintiff); *Sharda v. Sunrise Hosp. & Med.*
24 *Ctr., LLC*, 2017 WL 2870086, at *10 (D. Nev. July 3, 2017) (plaintiff's claim for civil
25 conspiracy failed where he did not plead plausible underlying agreement).

26 In order to prevail on a claim for civil conspiracy, a plaintiff must show the
27 commission of the underlying tort and an agreement between defendants to commit
28 that tort. *Jordan v. Dept. of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 75 110 P.3d

1 30, 51 (2005), (the underlying tort is a "necessary predicate" to a cause of action for
2 conspiracy); *Sharda*, 2017 WL 2870086 at *10.

3 Because Spencer's claims for defamation and malicious prosecution fail as a matter of
4 law, his claims for civil conspiracy likewise must fail because he is unable to prove the
5 commission of the underlying tort. Moreover, the Court concludes that Spencer failed
6 to produce any evidence of a conspiracy between the co-defendants.

7 For these reasons, the Court concludes summary judgment should be entered
8 in favor of Kinion and against Spencer on Spencer's third and fourth claims for relief.

9 C. IIED

10 Spencer's Sixth Claim for Relief asserts that Kinion acted intentionally or with
11 reckless disregard for the likelihood of causing emotional distress when she testified at
12 Spencer's criminal proceedings. In a claim for intentional infliction of emotional
13 distress, a plaintiff must prove the following: "(1) extreme and outrageous conduct with
14 either the intention of, or reckless disregard for, causing emotional distress, (2) the
15 plaintiff's having suffered severe or extreme emotional distress, and (3) actual or
16 proximate causation." *Barnettler v. Reno Air, Inc.*, 114 Nev. 441, 447, 956 P.2d 1382,
17 1386 (1998) (concluding summary judgment was proper where plaintiff failed to
18 establish either the first or second elements of this claim)

19 A prima facie claim of intentional infliction of emotional distress requires a
20 plaintiff to prove that the defendant's conduct was "extreme and outrageous." *Maduike*
21 *v. Agency Rent-A-Car*, 114 Nev. 1, 4, 953 P.2d 24, 26 (1998). Extreme and
22 outrageous conduct "is that which is outside all possible bounds of decency and is
23 regarded as utterly intolerable in a civilized community." *Id.*, citing *California Book of*
24 *Approved Jury Instruction 12.74* (internal citations omitted). In *Maduike*, the Nevada
25 Supreme Court upheld the trial court's decision that the first element of the tort was not
26 met when a car rental agency's employees were rude and refused to provide a family
27 with a new rental car after the brakes on the car they rented failed and caused a
28 collision. *Id.* at 4-5. The court agreed with the rental agency's argument that its

1 employee's conduct was, at most, unkind or inconsiderate behavior but that it did not
2 rise to the level of being "atrocious, intolerable, or outside all possible bounds of
3 decency." *Id.*, at 5.

4 Speaking to the police, the district attorney, or testifying in a criminal proceeding
5 is not extreme and outrageous conduct. Subjecting a person to damages when they
6 exercise their civil obligation to report a crime and testify in judicial proceedings is
7 simply against public policy and would set dangerous precedent. Victims and
8 witnesses report crimes and testify multiple times a day and the Court concludes this
9 conduct is simply not "extreme and outrageous" as a matter of law. *See, e.g., Churchill*
10 *v. Barach*, 863 F. Supp. 1266, 1275 (D. Nev. 1994) (customer's conduct was not
11 extreme and outrageous as a matter of law when he wrote letter to airline complaining
12 about employee because this type of conduct occurs "thousands of times each day").

13 Moreover, Spencer cannot demonstrate that Kinion intended to cause Spencer
14 emotional distress or acted with reckless disregard in causing Spencer severe
15 emotional distress. Therefore, Spencer's Sixth Claim for Relief for infliction of
16 emotional distress fails as a matter of law on the first element and summary judgment
17 must be granted in Kinion's favor.

18 **IV. Conclusion**

19 The Court has considered the pleadings, the exhibits attached thereto, and the
20 record in its entirety and concludes no genuine issue of material fact remains for trial.
21 Accordingly, and good cause appearing,

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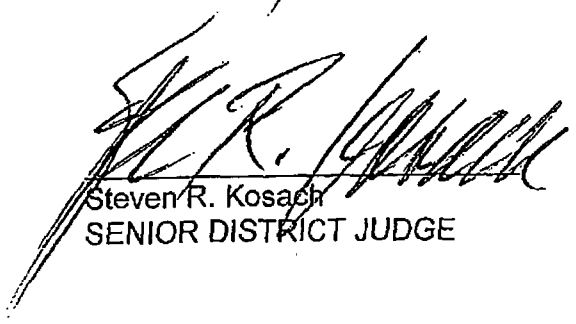
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IT IS HEREBY ORDERED the Motion for Summary Judgment filed by Mary
Ellen Kinion is granted in its entirety.

DATED this 28 day of August, 2018.


Steven R. Kosach
SENIOR DISTRICT JUDGE

1 CASE NO.: 14-CV-0260

2 DEPT. NO.: II

RECEIVED

AUG 31 2018

**Douglas County
District Court Clerk**

FILED

2018 AUG 31 PM 4:01

**ROBERT P. WILLIAMS
CLERK**

BY ANAME DEPUTY

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5
6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF DOUGLAS

8 HELMUT KLEMENTI,

9 Plaintiff,

10 vs.

11 JEFFREY D. SPENCER & DOES 1-5,

12 Defendants.

13
14 JEFFREY D. SPENCER,

15 Counterclaimant,

16 vs.

17 HELMUT KLEMENTI, an individual,
18 EGON KLEMENTI, an individual,
19 ELFRIEDE KLEMENTI, an individual,
20 MARY ELLEN KINION, an individual,
21 ROWENA SHAW, an individual, PETER
22 SHAW, an individual, and DOES 1-5,

23 Counterdefendants & Third Party
24 Defendants.

NOTICE OF ENTRY OF ORDER

25 PLEASE TAKE NOTICE that on the 29th day of August, 2018 the above-entitled
26 court entered its Order granting summary judgment on behalf of Elfriede Klementi. A
27 copy of said Order is attached.

28 ///

///

///

///

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 30 day of August, 2018.

GLOGOVAC & PINTAR

By: 

MICHAEL A. PINTAR, ESQ.
Nevada Bar No. 003789
Attorneys for Third-Party Defendant,
Elfriede Klementi

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of
3 Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that on the ____ day
4 of September, 2016, I served the foregoing document(s) described as follows:

5 NOTICE OF ENTRY OF ORDER

6 On the party(s) set forth below by:

7 X Placing an original or true copy thereof in a sealed envelope placed for
8 collection and mailing in the United States Mail, at Reno, Nevada,
9 postage prepaid, following ordinary business practices.

10 _____ Personal delivery.

11 _____ Facsimile (FAX).

12 _____ Federal Express or other overnight delivery.

13 addressed as follows:

14
15 Tanika Capers, Esq.
16 6750 Via Austi Parkway, Suite 310
17 Las Vegas, NV 89119
18 **Attorneys for Rowena Shaw and Peter**
19 **Shaw**

Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas St., 3rd Floor
Reno, NV 89519
Attorneys for Helmut Klementi

18 Jeffrey Spencer
19 PO Box 2326
20 Stateline, Nevada 89449
21 **In Pro Per**

22 Dated this 30 day of August, 2018.

23 
24 _____
25 Employee of Glogovac & Pintar
26
27
28

RECEIVED

AUG 29 2018

Douglas County
District Court Clerk

FILED

2018 AUG 29 PM 1:48

BOBBIE S. WILLIAMS
A. NEWTON
CLERK

BY _____ DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants.

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual,
EGON KLEMENTI, an individual,
ELFRIEDE KLEMENTI, an individual,
MARY ELLEN KINION, an individual,
ROWENA SHAW, an individual, PETER
SHAW, an individual, and DOES 1-5,

Counterdefendants & Third Party
Defendants.

ORDER

On April 24, 2018, Third-Party Defendants, Egon and Elfriede Klementi ("Klementi"), by and through their counsel, Glogovac & Pintar, filed a Motion for Summary Judgment.¹ On June 5, 2018, Defendant/Counterclaimant, Jeffrey Spencer ("Spencer") filed an Opposition. Klementi replied on June 13, 2018. On July 12, 2018, a hearing and oral argument was held, where the Court granted summary judgment in

¹ Egon Klementi passed away while this lawsuit was pending.

1 favor of Klementi on all remaining claims. This order setting forth the Court's findings
2 of fact and conclusions of law follows.

3 **I. Background**

4 This action arises out of a dispute between neighbors that live in the Kingsbury
5 Grade General Improvement District ("KGID"). In 2013, Spencer was criminally
6 prosecuted by the Douglas County District Attorney's office for the alleged assault of
7 an elderly neighbor, Helmut Klementi. Spencer was acquitted of those criminal
8 charges. Helmut Klementi then filed a civil action against Spencer seeking recovery for
9 personal injuries arising from the alleged assault. In turn, Spencer asserted a counter-
10 claim against Helmut Klementi as well as third-party claims against Egon and Elfriede
11 Klementi, Mary Ellen Kinion and Rowena and Peter Shaw.

12 By way of the motion before the court, Klementi seeks summary judgment as to
13 Spencer's third-party claims against her, i.e. defamation, malicious prosecution, civil
14 conspiracy (defamation), civil conspiracy (malicious prosecution), punitive damages,
15 and infliction of emotional distress.

16 **II. Summary Judgment Standard**

17 Summary judgment is appropriate when the record demonstrates that no
18 genuine issue of material fact exists and the moving party is entitled to judgment as a
19 matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).
20 The pleadings and the record are construed in the light most favorable to the
21 nonmoving party. *Id.* However, the nonmoving party must do more than simply show
22 that there is some metaphysical doubt as to the material facts. *Id.* at 732 See also
23 *Torrealba v. Kesmetis*, 124 Nev. 95, 100, 178 P.3d 716, 720 (2008) (explaining the
24 burden on the moving party is to set forth facts demonstrating the existence of a
25 genuine issue in order to withstand a disfavorable summary judgment.")

26 The Supreme Court of Nevada follows the federal approach outlined in *Celotex*
27 *Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) with respect to
28 burdens of proof and persuasion in the summary judgment context. See *Cuzze v.*

1 *Univ. & Commty. College Sys. Of Nevada*, 123 Nev. 598, 601, 172 P.3d 131, 134
2 (2007). The party moving for summary judgment bears the initial burden of production
3 to show the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323, 106
4 S.Ct. 2548. If such a showing is made, then the party opposing summary judgment
5 assumes a burden of production to show the existence of a genuine issue of material
6 fact. *Wood*. 121 Nev. At 732, 121 P.3d at 1031. The manner in which a party may
7 satisfy its burden of production depends on which party is moving for summary
8 judgment. A party may satisfy the burden of production by either (1) submitting
9 evidence that negates an essential element of the nonmoving party's claim, or (2)
10 "pointing out ... that there is an absence of evidence to support the nonmoving party's
11 case." *Cuzze*, 123 Nev. At 302-03, 172 P.3d at 134.

12 Klementi filed a properly supported motion for summary judgment that showed
13 why, both factually and legally, she should prevail. Although Spencer opposed the
14 motion, he did so mainly on procedural grounds, arguing the old "slightest doubt"
15 standard in *Posadas v. City of Reno*, 109 Nev. 448, 452 (1993). In reply, Kinion
16 demonstrated that under *Wood v. Safeway, Inc.*, 121 Nev. at 730-31, the "slightest
17 doubt" standard no longer applies. While Spencer challenged Klementi's position,
18 Spencer did not offer or identify competent evidence to contradict or cast doubt on the
19 facts Klementi identified as being undisputed. On this record, summary judgment in
20 favor of Klementi is appropriate.

21 **III. Discussion**

22 **A. Defamation**

23 Liability for defamation may only arise if the plaintiff proves the following: "(a) a
24 false and defamatory statement concerning another; (b) an unprivileged publication to
25 a third party; (c) fault amounting at least to negligence on the part of the publisher; and
26 (d) either actionability of the statement irrespective of special harm, or the existence of
27 special harm caused by the publication." *Lubin v. Kunin*, 117 Nev. 107, 111, 17 P.3d
28 422, 425 (2001).

1 Whether a statement is defamatory is generally a question of law, unless it is
2 subject to two different interpretations. *Id.*; *K-Mart Corp. v. Washington*, 109 Nev.
3 1180, 1191, 866 P.2d 274, 281 (1993) ("Whether or not a statement is capable of
4 defamatory construction is a question of law for the court."). A court reviewing an
5 allegedly defamatory statement reviews "the words in their entirety and in context in
6 order to determine whether they are susceptible of defamatory meaning." *Lubin*, 117
7 Nev. At 111, 17 P.3d at 426.

8 In this case, Spencer asserts that Klementi made defaming statements to the
9 Douglas County Sheriff Department, the Douglas County District Attorney, KGID, the
10 Douglas County Planning Commission and/or the South Lake Tahoe Justice of the
11 Peace. Both the qualified privilege and the absolute privilege are defenses to
12 Spencer's defamation claim and Klementi has asserted these privileges in her
13 affirmative defenses to Spencer's Second Amended Counterclaim and Third-Party
14 Complaint.

15 In *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 657 P.2d 101 (1983),
16 the Nevada Supreme Court explained that a qualified or conditional privilege exists
17 where an allegedly defamatory statement is made in good faith "on any subject matter
18 in which the person communicating has an interest, or in reference to which he has a
19 right or a duty, if it is made to a person with a corresponding interest or duty." Whether
20 a statement is conditionally privileged is a question of law for this Court. *Id.* The
21 burden then shifts to the plaintiff to prove that the defendant abused the privilege by
22 making the defamatory statement with malice in fact. *Id.*, This issue does not go to the
23 jury unless there is sufficient evidence for the jury to reasonably infer that the
24 defendant made the statement with actual malice. *Id.*

25 Spencer asserts that statements made by Klementi during his criminal
26 proceedings are defamatory statements. Notably, however, Spencer fails to identify
27 any particular statement that Klementi made which is defamatory or untrue. Nevada
28 recognizes and follows the "long-standing common law rule that communications

1 uttered or published in the course of judicial proceedings are absolutely privileged."
2 *Circus Circus Hotels, Inc.*, 99 Nev. at 60-61, 657 P.2d at 104; *Nickovich v. Mollart*, 51
3 Nev. 306, 274 P. 809, 810 (1929).

4 In addition, Spencer cites to letters read by Klementi at the December 18, 2012
5 and January 15, 2014 KGID Board Meetings. The Court concludes that the statements
6 read by Klementi are true. Moreover, the absolute privilege also applies to "quasi-
7 judicial proceedings before executive officers, boards, and commissions..." *Id.* The
8 absolute privilege precludes liability, as a matter of law, even where the defamatory
9 statements are "published with knowledge of their falsity and personal ill will toward
10 the plaintiff." *Id.* The policy behind this privilege is that, "in certain situations, the public
11 interest in having people speak freely outweighs the risk that individuals will
12 occasionally abuse the privilege" by making defamatory statements. *Id.*; *Knox v. Dick*,
13 99 Nev. 514, 518, 665 P.2d 267, 270 (1983).

14 The Court finds that the KGID and the Douglas County Planning Commission
15 are quasi-judicial bodies to which the absolute privilege extends. *Circus Circus hotels*,
16 99 Nev. at 60-61. This Court concludes the absolute privilege extends to any
17 statements Klementi made to KGID and/or the Douglas County Planning Commission.

18 In this case there is simply no question that any statement Klementi made is
19 protected by privilege for which liability cannot attach. For these reasons, summary
20 judgment on the claim for defamation is GRANTED.

21 **B. Malicious Prosecution**

22 To establish a prima facie case of malicious prosecution in Nevada, a plaintiff
23 must prove the following: "(1) want of probable cause to initiate the prior criminal
24 proceeding; (2) malice; (3) termination of the prior criminal proceedings; and (4)
25 damage." *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 879 (2002) citing *Jordan*
26 *v. Bailey*, 113 Nev. 1038, 1047, 944 P.2d 828, 834 (1997). This claim also requires
27 the plaintiff prove the defendant "initiated, procured the institution of, or actively
28 participated in the continuation of a criminal proceeding against the plaintiff." *Id.*

1 "When a private person gives to a prosecuting officer information *that she*
2 *believes to be true*, and the officer in the exercise of his uncontrolled discretion
3 initiates criminal proceedings based upon that information, the informer is not liable
4 under the rule stated in this section even though the information proves to be false and
5 his belief was one that a reasonable man would not entertain." *Lester v. Buchanan*,
6 112 Nev. 1426, 929 P.2d 910 (1996) citing Restatement (Second) of Torts § 653
7 (1977).

8 The Court concludes that Spencer has failed to come forward with any
9 evidence that Klementi initiated, procured the institution of, or actively participated in
10 the continuation of criminal proceedings against Spencer. Spencer has failed to
11 produce any evidence that Klementi requested or pressured law enforcement to
12 commence criminal proceedings against Spencer. Rather, this Court heard testimony
13 from Deputy District Attorney, Maria Pence, at the January 30, 2017 hearing that she
14 was the only person involved in charging Mr. Spencer. It is also undisputed that
15 Deputy McKone's decision to arrest Spencer was solely the decision of the Deputy,
16 who based on his decision on "the inconsistencies with what [he] had seen on the
17 scene and Spencer's rendition." The Court also concludes that probable cause existed
18 for Spencer's criminal case when the justice court bound Spencer over for trial on the
19 charges filed by Deputy District Attorney Pence after the April 24, 2013 preliminary
20 hearing.

21 The Court further concludes Klementi's statements are protected by absolute
22 immunity in the context of this malicious prosecution claim. As the Nevada Supreme
23 Court stated in *Harrison v. Roitman*, 131 Nev. Adv. Op. 92, 362 P.3d 1138 (2015), the
24 absolute immunity privilege is not limited to claims of defamation. In applying the
25 three-pronged functional approach set forth in *Harrison*, *supra*, the Court concludes
26 the following: (1) that, as a witness involved and testifying in a judicial proceeding,
27 Klementi enjoys absolute immunity from liability resulting from her testimony; (2) the
28 likelihood of harassment or intimidation was sufficient to interfere with Klementi's

1 ability to testify as a witness; and (3) procedural safeguards by way of cross-
2 examination of Klementi that were exercised by Spencer in his criminal trial.

3 The Court concludes summary judgment on the counterclaim for malicious
4 prosecution against Klementi should be granted in Klementi's favor and against
5 Spencer.

6 **B. Conspiracy**

7 Spencer's Third and Fourth Claims for Relief assert claims for civil conspiracy
8 based on defamation and malicious prosecution. An actionable claim for civil
9 conspiracy "consists of a combination of two or more person who, by some concerted
10 action, intend to accomplish an unlawful objective for the purpose of harming another,
11 and damage results from the act or acts. *Consol. Generator-Nevada, Inc. v. Cummins*
12 *Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (finding summary
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14 defendants agreed and intended to harm plaintiff); *Sharda v. Sunrise Hosp. & Med.*
15 *Ctr., LLC*, 2017 WL 2870086, at *10 (D. Nev. July 3, 2017) (plaintiff's claim for civil
16 conspiracy failed where he did not plead plausible underlying agreement).

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18 commission of the underlying tort and an agreement between defendants to commit
19 that tort. *Jordan v. Dept. of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 75 110 P.3d
20 30, 51 (2005), (the underlying tort is a "necessary predicate" to a cause of action for
21 conspiracy); *Sharda*, 2017 WL 2870086 at *10.

22 Because Spencer's claims for defamation and malicious prosecution fail, as a
23 matter of law, his claims for civil conspiracy likewise must fail because he is unable to
24 prove the commission of the underlying tort. Moreover, the Court concludes that
25 Spencer failed to produce any evidence of a conspiracy between the co-defendants.

26 For these reasons, the Court concludes summary judgment should be entered
27 in favor of Klementi and against Spencer on Spencer's third and fourth claims of relief.

28 ///

1 C. IIED

2 Spencer's Sixth Claim for Relief asserts that Ms. Klementi acted intentionally or
3 with reckless disregard for the likelihood of causing emotional distress when she
4 testified at Spencer's criminal proceedings. In a claim for intentional infliction of
5 emotional distress, a plaintiff must prove the following: "(1) extreme and outrageous
6 conduct with either the intention of, or reckless disregard for, causing emotional
7 distress, (2) the plaintiff's having suffered severe or extreme emotional distress, and
8 (3) actual or proximate causation." *Barnettler v. Reno Air, Inc.*, 114 Nev. 441, 447,
9 956 P.2d 1382, 1386 (1998) (concluding summary judgment was proper where plaintiff
10 failed to establish either the first or second elements of this claim)

11 A prima facie claim of intentional infliction of emotional distress requires a
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21 employee's conduct was, at most, unkind or inconsiderate behavior but that it did not
22 rise to the level of being "atrocious, intolerable, or outside all possible bounds of
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24 Speaking to the police, the district attorney, or testifying in a criminal proceeding
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28 witnesses report crimes and testify multiple times a day and the Court concludes this

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2 *v. Barach*, 863 F. Supp. 1266, 1275 (D. Nev. 1994) (customer's conduct was not
3 extreme and outrageous as a matter of law when he wrote letter to airline complaining
4 about employee because this type of conduct occurs "thousands of times each day").

5 Moreover, Spencer cannot demonstrate that Klementi intended to cause
6 Spencer emotional distress or acted with reckless disregard in causing Spencer
7 severe emotional distress. Therefore, Spencer's Sixth Claim for Relief for infliction of
8 emotional distress fails as a matter of law on the first element and summary judgment
9 must be granted in Klementi's favor.

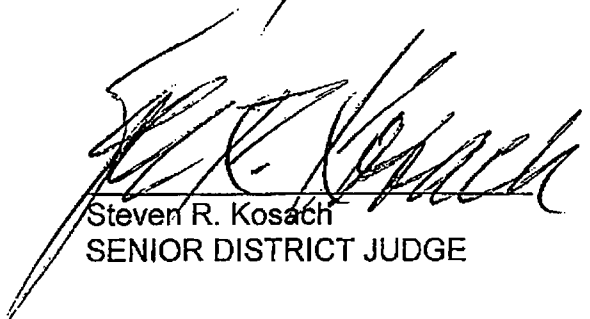
10 **IV. Conclusion**

11 The Court has considered the pleadings, the exhibits attached thereto, and the
12 record in its entirety and concludes no genuine issue of material fact remains for trial.

13 Accordingly, and good cause appearing,

14
15 IT IS HEREBY ORDERED the Motion for Summary Judgment filed by Elfriede
16 Klementi is granted in its entirety.

17 DATED this 20 day of August, 2018.

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22 Steven R. Kosach
23 SENIOR DISTRICT JUDGE
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CASE NO.: 14-CV-0260

DEPT. NO.: II

RECEIVED

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Douglas County
District Court Clerk

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CLERK

[Signature]

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants.

ORDER

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual,
EGON KLEMENTI, an individual, MARY
ELLEN KINION, an individual, and DOES
1-5,

Counterdefendants.

On April 22, 2016, Third-Party Defendant, Mary Kinion ("Kinion"), by and through her counsel, Glogovac & Pintar, filed a Motion for Summary Judgment. On May 13, 2016, Defendant/Counterclaimant, Jeffrey Spencer ("Spencer") filed an Opposition. Kinion replied on May 23, 2016. On January 30, 2017, a hearing and oral argument was held.

This action arises out of a dispute between neighbors that live in the Kingsbury Grade General Improvement District ("KGID") on the south shore of Lake Tahoe. In 2013, Spencer was criminally prosecuted by the Douglas County District Attorney's office for the alleged

1 assault of an elderly neighbor, Helmut Klementi. Spencer was acquitted of the criminal
2 charges. Helmut Klementi then filed a civil action against Spencer seeking recovery for
3 personal injuries arising from the alleged assault. In turn, Spencer asserted a counterclaim
4 against Kinion and others consisting of claims for malicious prosecution and civil conspiracy.

5 Kinion now moves this Court for an Order granting summary judgment. Kinion avers
6 that, as a matter of law, Spencer cannot prevail on his claim for malicious prosecution against
7 her.

8 **Summary Judgment Standard**

9 Summary judgment is appropriate when the record demonstrates that no genuine issue
10 of material fact exists and the moving party is entitled to judgment as a matter of law. Wood v.
11 Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). The pleadings and the record are
12 construed in the light most favorable to the nonmoving party. Id. However, the nonmoving
13 party must do more than simply show that there is some metaphysical doubt as to the material
14 facts. Id. at 732 See also Torrealba v. Kesmetis, 124 Nev. 95, 100, 178 P.3d 716, 720 (2008)
15 (explaining the burden on the moving party is to set forth facts demonstrating the existence of a
16 genuine issue in order to withstand a disfavorable summary judgment.”)

17 The Supreme Court of Nevada follows the federal approach outlined in Celotex Corp. v.
18 Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) with respect to burdens of proof
19 and persuasion in the summary judgment context. See Cuzze v. Univ. & Comty. College Sys.
20 Of Nevada, 123 Nev. 598, 601, 172 P.3d 131, 134 (2007). The party moving for summary
21 judgment bears the initial burden of production to show the absence of a genuine issue of
22 material fact. Celotex, 477 U.S. at 323, 106 S.Ct. 2548. If such a showing is made, then the
23 party opposing summary judgment assumes a burden of production to show the existence of a
24 genuine issue of material fact. Wood, 121 Nev. At 732, 121 P.3d at 1031. The manner in which
25 a party may satisfy its burden of production depends on which party moving for summary
26 judgment may satisfy the burden of production by either (1) submitting evidence that negates
27 an essential element of the nonmoving party’s claim. Or (2) “pointing out ... that there is an
28 absence of evidence to support the nonmoving party’s case.” Cuzze, 123 Nev. At 302-03, 172

1 P.3d at 134. In such cases, in order to defeat summary judgment, the nonmoving party must
2 transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts
3 that show a genuine issue of material fact. Wood, 121 Nev. At 732, 121 P.3d at 1031.

4 **Discussion**

5 On February 3, 2015, Spencer filed a document entitled Answer and Counterclaims. In
6 the Counterclaim, Spencer alleges the following:

7 14. On December 18, 2012, Kinion attended a KGID board meeting and stated that she
8 witnessed Spencer use his snow plow to intentionally batter E. Klementi with snow, ice
9 and debris.

10 21. That the statements of Counterdefendants E. Klementi, El. Klementi and Kinion
11 concerning Spencer's use of the snow plow to (i) berm in the Klementi's driveway and
12 (ii) intentionally cause E. Klementi to be battered with snow, ice and/or debris from the
13 road were false.

14 24. The above-mentioned false statements were made by the Counterdefendants for the
15 purpose of persuading and inducing the State to prosecute Spencer for Exploitation of
16 an Elderly Person pursuant to NRS 200.0592 and NRS 200.0599.

17 26. The false statements outlined above actually caused the State to institute criminal
18 proceedings and charge Spencer with three counts of Exploitation of an Elderly Person
19 pursuant to NRS 200.0592 and NRS 200.0599 predicted entirely upon the false and
20 malicious statements of the Counterdefendants.

21 The Counterclaim alleges claims for Malicious Prosecution (First Claim for Relief) and
22 Civil Conspiracy (Second Claim for Relief). The elements for a claim of malicious prosecution
23 are: "(1) want of probable cause to initiate the prior criminal proceeding; (2) malice; (3)
24 termination of the prior criminal proceedings; and (4) damages." LaMantia v. Redisi, 118 Nev.
25 27, 38 P.3d 877, 879-80 (2002). The Nevada Supreme Court has explained that "[a] malicious
26 prosecution claim requires that the defendant initiated, procured the institution of, or actively
27 participated in the continuation of a criminal proceeding against the plaintiff." Id.

28 In this case, the undisputed facts show that on December 18, 2012, the incident between
Helmut Klementi and Spencer occurred. It is alleged that Spencer assaulted Helmut Klementi
while he was in the street taking pictures of the snow berm in front of his brother's house. The
Douglas County Sheriff's Office responded and conducted an investigation of the incident. As

1 part of that investigation, Douglas County Deputies interviewed Helmut Klementi, Egon
2 Klementi, Elfie Klementi, Janet Wells, Spencer and Marilyn Spencer. According to the
3 Douglas County Sheriff's Report Spencer informed the sheriff deputies that he attacked Helmut
4 because he believed Helmut was breaking into his truck. Spencer also claimed that he thought
5 Helmut was a teenager in a hoodie. Ultimately, the sheriff deputies did not find Spencer's
6 account to be credible and, as a result, Spencer was arrested for battery and abuse of an elder.

7 Following Spencer's arrest, the Douglas County Deputy District Attorney's office
8 pursued criminal charges. At the hearing on January 30, 2017, Maria Pence, the Douglas
9 County Deputy District Attorney who prosecuted the criminal matter against Spencer testified.
10 Ms. Pence testified that no one was involved in the charging decision other than herself. She
11 further testified that the original charges filed against Spencer were for Battery, a misdemeanor,
12 Intimidation of a Witness to Influence Testimony, a Category D Felony, and Exploitation of an
13 Elderly Person, a gross misdemeanor. Later, the gross misdemeanor charge was enhanced to a
14 felony by Ms. Pence based on the medical records that showed that Helmut Klementi had
15 received substantial body injuries.

16 The undisputed facts show that Kinion had no involvement in the Douglas County
17 Deputy Sheriff's decision to arrest Spencer on December 18, 2012. The facts also show that
18 while Kinion met with Ms. Pence at the Tahoe Justice Court, nothing that Kinion did or said
19 resulted in the charges against Spencer being enhanced. Kinion was simply told by Ms. Pence
20 that, "if you have any information you think that would be relevant or helpful, please write it
21 down and send it to the District Attorney's Office." Transcript p. 22: 16-23. Kinion did that and
22 sent a letter to the District Attorney's Office that was received in that office on February 22,
23 2013. Exhibit 1.

24 Based on the foregoing, Spencer has failed to provide any evidence that would support
25 a claim for malicious prosecution against Kinion. For these reasons, summary judgment on the
26 claim for malicious prosecution is GRANTED.

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IT IS SO ORDERED

day of March, 2017.

[Signature]
DISTRICT JUDGE

CASE NO. 14-CV-0260

DEPT NO. I

HELMUT KLEMENTI,

Plaintiff,

PLAINTIFF'S COUNSEL:

Douglas R. Brown, ESQ.

v.

JEFFREY D. SPENCER,

Defendant,

DEFENDANT'S COUNSEL:

William Routsis, II, ESQ.

DATE: 12-15-2016

Lynn G. Pierce, ESQ.

David Zaniel, ESQ.

JUDGE: STEVEN R. KOSACH

CLERK: Delores Goelz

COURT REPORTER: Lesley Clarkson

LAW CLERK: John Seddon

BAILIFFS: David Nishikida

OTHERS: Scott Glogavac, ESQ. - counsel for Egon & Elfriede Klementi and
Mary Ellen Kinion
Tanika M. Capers, ESQ. - counsel for Rowena & Peter Shaw

The above-entitled matter was before the Court this being the time set by the Court for a hearing on PRE-TRIAL PENDING MOTIONS. The plaintiffs were present in Court and represented by counsel. The defendant was present in Court and represented by counsel.

EXHIBITS MARKED:

1

Mr. Zaniel informed the Court that Defendant's Motion to Compel Response to Subpoena Duces Tecum will be withdrawn with prejudice. Prior to the hearing, Mr. Zaniel met with Deputy District Attorney, Zach Wadle and an agreement was reached where the District Attorney's Office will produce all documents requested.

Mr. Zaniel requested that the hard drive containing footage from Mr. Spencer's camera be produced.

Counsel agrees to give the hard drive to Mr. Brown today.

The Court will view the hard drive in camera for relevance.

The Court signed an Order Granting Helmut Klementi's Motion for Leave to Amend Complaint.

The Court directed the parties to refrain from filing any answers until the Court has ruled on other pending motions.

The Court withhold a ruling on the Motion for Summary Judgment and the Motion to Amend Counterclaim & Third Party Complaint.

The Court set a Review for Monday, January 30th, 2017 at 1:30 p.m.

CASE NO. 14-CV-0260

DEPT NO. I

HELMUT KLEMENTI,

Plaintiff,

PLAINTIFF'S COUNSEL:

Douglas R. Brown, Esq.

v.

JEFFREY D. SPENCER,

Defendant,

DEFENDANT'S COUNSEL:

William Routsis, II, Esq.

DATE: 1-30-17

Lynn G. Pierce, Esq.

David Zaniel, Esq.

JUDGE: STEVEN R. KOSACH

CLERK: Delores Goelz

COURT REPORTER: Not Reported

LAW CLERK: John Seddon

BAILIFFS: Eric Lindsay

OTHERS: Michaael Pinter, Esq. - counsel for Egon & Elfriede Klementi and
Mary Ellen Kinion
Tanika M. Capers, Esq. - counsel for Rowena & Peter Shaw

The above-entitled matter was before the Court this being the time set by the Court for a hearing on CONTINUED PRE-TRIAL PENDING MOTIONS. The plaintiffs were present in Court and represented by counsel. The defendant was present in Court and represented by counsel.

EXHIBITS MARKED:

1, 2, 3, 4, 5

EXHIBITS MARKED AND ADMITTED:

1, 3, 4, 5

WITNESSES SWORN AND TESTIFIED:

MARIA PENCE

The Court had withheld ruling on pending motions and set the matter for a hearing today, so that the Court and counsel could hear from, Maria Pence, the District Attorney who prosecuted the criminal case against Jeffrey Spencer.

Ms. Caper presented argument.

Ms. Pierce presented argument.

Mr. Moore presented argument.

Mr. Routsis presented argument.

Mr. Pintar presented argument.

The Court granted Ms. Kinion's Motion for Summary Judgment as to Spencer's Claim for Malicious Prosecution.

The Court previously granted Mr. Klementi's Motion to Amend Complaint.

The Court granted Mr. Spencer's Motion to Amend Counterclaim & Third Party Complaint.

The Court instructed counsel to file answers within 30 days.

The parties discussed possible trial dates and were unable to find a date to accommodate all parties. The Court instructed counsel to confer with each other and contact the Court to set a trial date.

Mr. Pintar will prepare the order.

CASE NO. 14-CV-0260

DEPT NO. I

HELMUT KLEMENTI,

Plaintiff,

v.

JEFFREY D. SPENCER,

Defendant,

PLAINTIFF'S COUNSEL:

Douglas R. Brown

Sarah Molleck

DEFENDANT'S COUNSEL:

William Routsis, II

Lynn G. Pierce

DATE: 07/12/2018

JUDGE: STEVEN R. KOSACH

CLERK: Delores Goelz

COURT REPORTER: Lesley Clarkson

LAW CLERK: John Seddon

BAILIFFS: Les Vido

OTHERS: Michaael Pintar - counsel for Egon & Elfriede Klementi and Mary Ellen Kinion
Tanika M. Capers - counsel for Rowena & Peter Shaw

The above-entitled matter was before the Court this being the time set by the Court for a hearing on ORDER TO SHOW CAUSE AND ALL PENDING MOTIONS. The plaintiffs were present in Court and represented by counsel. The defendants were present in Court and represented by counsel.

Motion for Summary Judgment as to Rowena and Peter Shaw:

Ms. Capers presented argument.

Ms. Pierce presented argument.

The Court GRANTED.

Motion for Summary Judgment as to Helmut Klementi:

Mr. Brown presented argument.

Ms. Pierce presented argument.

The Court GRANTED.

Motion for Summary Judgment as to Elfriede Klementi:

Mr. Pintar presented argument.

Ms. Pierce presented argument.

The Court GRANTED.

Motion for Summary Judgment as to Mary Ellen Kinion:

Mr. Pintar presented argument.

Ms. Pierce presented argument.

The Court GRANTED.

Motion for Sanctions Based on Spoilage of Evidence:

Mr. Pintar presented argument.

Ms. Pierce presented argument.

The Court DENIED.

Motion to Strike Plaintiff's Expert Witness Designation:

The Court GRANTED.

Motion to Dismiss as to Egon Klementi:

The Court GRANTED.

Mr. Routsis orally motioned the Court to reconsider it's previous ruling on Mary Ellen Kinion's Motion for Summary Judgment as to the claim for malicious prosecution.

The Court DENIED.

The Court instructed counsel to prepare the order granting summary judgment as to their perspective clients along with attorney's fees and cost.

The Court ordered the trial dates be vacated.

EXHIBIT LIST

CASE NAME: KLEMENTI V SPENCER

CASE NUMBER: 14-CV-0260

DATE OF HEARING: 12/15/2016

JUDGE: STEVEN R. KOSACH

DEPT NO: I

ATTORNEYS: DOUGLAS BROWN/WILLIAM ROUTSIS/LYNN
PIERCE/DAVID ZANIEL/SCOTT GLOGAVAC/TANIKA M.
CAPERS

PURPOSE OF HEARING: CONTINUED HEARING ON PENDING MOTIONS

Exhibit #	Description	Marked for ID	Admitted
1	PACKET OF DOCUMENT RELATED TO CRIMINAL CASE 13-CR-0036	X	

EXHIBIT LIST

CASE NAME: KLEMENTI V SPENCER
CASE NUMBER: 14-CV-0260
DATE OF HEARING: 01-31-17
JUDGE: NATHAN TOD YOUNG
DEPT NO: I
ATTORNEYS: DOUGLAS BROWN/WILLIAM ROUTSIS/LYNN
PIERCE/DAVID ZANIEL/MICHAEL PINTAR/TANIKA
CAPERS


PURPOSE OF HEARING: CONTINUED HEARING ON PENDING MOTIONS

Exhibit #	Description	Marked for ID	Admitted
1	LETTER FROM MARY ELLEN KINION	X	X
2	FIRST PAGE OF CRIMINAL COMPLAINT IN CASE 13-CR-0068	X	
3	AMENDED INFORMATION IN CASE 13-CR-0036	X	X
4	PAGE 266 OF TRANSCRIPT	X	X
5	DCSO INCIDENT REPORT 12SO17219	X	X

1 STATE OF NEVADA)
)
2 COUNTY OF DOUGLAS) ss

3
4 I, BOBBIE WILLIAMS, Clerk of the Ninth Judicial
5 District Court, State of Nevada, in and for the County of
6 Douglas; said Court being a Court of Record, having common law
7 jurisdiction, and a Clerk and a Seal, do hereby certify that
8 the foregoing are true copies of the following originals in
9 Case No. 14-CV-0260 (KLEMENTI VS. SPENCER); Notice of Appeal,
10 Case Appeal Statement, Case History, Order(s) appealed from,
11 Notice of Entry of Order(s) appealed from and District Court
12 Minutes and Exhibit list(s).

13
14 IN TESTIMONY WHEREOF, I have
15 hereunto set my hand and affixed
16 my Official Seal at Minden, in
17 said County and State this 28th
18 day of September, 2018

19
20 
CLERK OF THE COURT

21 By: Mary Dragon
22 Deputy Court Clerk
23
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BOBBIE R. WILLIAMS
CLERK OF COURT
COURT ADMINISTRATOR
JURY COMMISSIONER

District Court Clerk's Office
(775) 782-9820
Tahoe Justice Court
(775) 586-7200
East Fork Justice Court
(775) 782-9955

Transmittal to the Supreme Court

To: Nevada Supreme Court
210 South Carson Street
Carson City, Nevada 89710

Date: September 28, 2018

Re: District Court Case #: 14-CV-0260

District Court Case Name: KLEMENTI VS. SPENCER

The following documents are transmitted to the Supreme Court pursuant to the July 22, 1996 revisions to the Nevada Rules of Appellate Procedure. Checked items are NOT included in this appeal:

- ☐ Notice of Appeal
- ☐ Case Appeal Statement
- ☒ Second Notice of Posting of Appeal Bond
- ☐ District Court Docket entries
- ☒ Request for Transcript
- ☐ Judgment(s) or order(s) appealed from
- ☒ Order (NRAP FORM 4)
- ☐ Notice of entry of the judgment(s) or order(s) appealed from
- ☒ Certification order directing entry of judgment pursuant to NRCP 54(b)
- ☐ District Court Minutes
- ☐ Exhibit List
- ☐ Supreme Court filing fee (\$250.00) under separate cover.

Respectfully,
BOBBIE WILLIAMS
CLERK OF THE COURT

By: Mary Bragdon
Deputy Court Clerk