IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
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JAMES TAYLOR, NEVADA GAMING CONTROL BOARD, AMERICAN GAMING ASSOCIATION,

Appellants,

vs.

DR. NICHOLAS G. COLON,

Respondent

Case No. 78517

D.C. Case No. A-18-782057-C

APPELLANTS/CROSS-RESPONDENTS' RESPONSE TO RESPONDENT/CROSS-APPELLANT'S ANSWER TO THE ORDER TO SHOW CAUSE

Defendants, James Taylor and Nevada Gaming Control Board, by and through counsel, Aaron D. Ford, Attorney General of the State of Nevada, Theresa M. Haar, Senior Deputy Attorney General and Edward L. Magaw, Deputy Attorney General, submit their response to Respondent/Cross-Appellant's Response to Order to Show Cause.

I. INTRODUCTION

Respondent/Cross-Appellant is claiming to be an aggrieved party, despite fending off a Special Motion to Dismiss pursuant to NRS 41.660.

In the District Court below, in opposition to Defendants' Special Motion to Dismiss, Plaintiff raised the challenge that Nevada's Anti-SLAPP Statute is unconstitutional. Because the District Court below did not deem the statute to be unconstitutional, Respondent/Cross-Appellant is now claiming to be an aggrieved party. That does not meet the definition of an aggrieved party, and Respondent/Cross-Appellant's cross-appeal ought to be dismissed for lack of jurisdiction.

II. LEGAL ARGUMENT

A. This Court only has jurisdiction on appeal over an aggrieved party

Only "[a] party who is aggrieved by an appealable judgment or order" has standing to appeal to this court. NRAP 3A(a); *Estate of Hughes v. First Nat'l Bank of Nev.*, 96 Nev. 178, 180, 605 P.2d 1149, 1150 (1980). In order to be aggrieved, "'either a personal right or right of property [must be] adversely and substantially affected' by a district court's ruling." *Ginsburg*, 110 Nev. at 446, 874 P.2d at 734 (*quoting Estate of Hughes*, 96 Nev. at 180, 605 P.2d at 1150). The grievance must be substantial in that the district court's decision imposes an injustice, or illegal obligation or burden, on the party, or denies the party an equitable or legal right. *Webb v. Clark Cty. Sch. Dist.*, 125 Nev. 611, 617, 218 P.3d

1239, 1244 (2009). Respondent/Cross-Appellant has not demonstrated that he is an aggrieved party, and therefore his cross-appeal should be dismissed.

B. Nevada's Anti-SLAPP statute is constitutional, and this is not a matter of first impression

"Statutes are presumed to be valid… [E]very reasonable construction must be resorted to, in order to save a statue from unconstitutionality." *Shapiro v. Welt*, 133 Nev. _____, 389 P3d 262, 267 (Adv. Op. 6, Feb. 2, 2017) (internal quotations omitted). The District Court correctly noted that this is not a matter of first impression because the Nevada Supreme Court recently upheld the constitutionality of NRS 41.660 et seq. In *Shapiro*, the Nevada Supreme Court used its discretion to review the constitutionality of Nevada's Anti-SLAPP statute. *Id.* Though this Court did not address specifically the right to a trial by jury, this Court did find the statute to be constitutional.

Additionally, this Court recently confirmed that Nevada's Anti-SLAPP Statute is modeled after California's Anti-SLAPP Statute. *Coker v. Sassone*, 135 Nev. ____, 432 P.3d 746 (Adv. Op. 2, Jan. 3, 2019). And California's Anti-SLAPP Statute has withstood repeated challenges to its constitutionality, and has repeatedly been determined to be

constitutional. *See Briggs v. Eden Council for Hope & Opportunity*, 19 Cal. 4th 1106 (1999).

A District Court reaffirming and upholding the constitutionality of a statute, which is presumed to be valid, does not impose an injustice on Respondent/Cross-Appellant, and cannot form the basis of this Court's jurisdiction over his cross-appeal here.

C. This Court has narrow jurisdiction to hear an interlocutory appeal from an Anti-SLAPP Special Motion to Dismiss

This Court has "consistently held that the right to appeal is statutory; where no statutory authority to appeal is granted, no right to appeal exists." *Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990). The underlying basis for Appellants/Cross-Respondents' appeal here is in NRS 41.670 "If the court denies the special motion to dismiss filed pursuant to NRS 41.660, an interlocutory appeal lies to the Supreme Court." There is no statutory provision allowing for a cross-appeal for a prevailing plaintiff who successfully defended against a Special Motion to Dismiss under NRS 41.660.

This Court has recently questioned whether it had jurisdiction over a defendant who partially prevailed on the Special Motion to Dismiss

(granted in part, denied in part) and pursued an interlocutory appeal under NRS 41.670 to challenge the claims that were not dismissed. The Court held that "[t]he Legislature appears to have made the deliberate policy choice to allow interlocutory review of an order denying a special motion to dismiss but not one partially granting such a motion." *Animal Care Clinic, Inc. v. Eighth Jud. Dist. Ct. in & for Cty. of Clark*, No. 76445, 2019 WL 3484154, at *1 (Nev. July 24, 2019).

If this Court is not inclined to exercise jurisdiction over an appeal by a defendant whose Special Motion to Dismiss was denied in part, it is hard to see why this Court should exercise jurisdiction over an Anti-SLAPP interlocutory cross-appeal over a prevailing plaintiff.

III. CONCLUSION

Respondent/Cross-Appellant has not demonstrated that he is an aggrieved party simply because the Anti-SLAPP Statute was not found to be unconstitutional on its face by the District Court. There is no

statutory basis for seeking this cross-appeal. Accordingly, this Court should dismiss the cross-appeal for lack of jurisdiction.

DATED this 9th day of August, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court by using the electronic filing system on the 9th day of August, 2019.

I certify that the following participants in this case are registered electronic filing systems users and will be served electronically:

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