

Case No. 78517

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jan 22 2021 02:44 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

JAMES TAYLOR; NEVADA GAMING CONTROL BOARD AND
AMERICAN GAMING ASSOCIATION,

Appellants,

v.

DR. NICHOLAS G. COLON,

Respondents.

DISTRICT COURT CASE NO. A-18-782057-C

**APPELLANTS JAMES TAYLOR AND NEVADA GAMING
CONTROL BOARD'S OPPOSITION TO RESPONDENT'S
MOTION TO ALLOW SUPPLEMENTAL BRIEFING ON COLON'S
PETITION FOR EN BANC RECONSIDERATION OR
ALTERNATIVELY, MOTION FOR INSTRUCTIONS**

AARON D. FORD
Attorney General
THERESA M. HAAR (Bar No. 12158)
Special Assistant Attorney General
State Of Nevada
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
(702) 486-3792 (phone)
(702) 486-3773 (fax)
thaar@ag.nv.gov
Attorneys for Appellants
James Taylor and Nevada Gaming Control Board

I. Introduction

This Court correctly determined that Chief Taylor's statement at issue constituted a good faith statement made on a matter of public concern and ordered this case to be remanded back to the district court for a determination on the second prong of NRS 41.660, namely whether Colon can make any showing on the merits of his claims.

In an effort to avoid the remand of this case, after having had his petition for reconsideration denied, Colon then sought en banc rehearing to challenge the constitutionality of the entirety of Nevada's Anti-SLAPP Statute. This Court correctly determined that the statute is constitutional, amending the prior order with a supplementation noting that Colon's arguments regarding the constitutionality were considered, but were not persuasive, and consistent with the original order, reversed and remanded this case back to the district court for further findings.

This matter should now be remanded back to the district court, for a determination on the second prong of the statute. No further briefing is necessary at this time before this Court.

II. Legal Argument

Nevada's Anti-SLAPP Statute is a two-prong, burden-shifting statute. See NRS 41.660. The first prong requires the defendant to demonstrate whether they made a good faith statement on a matter of public concern. If the court finds that they did, the second prong evaluates whether the plaintiff can demonstrate his claims have merit.

In the district court below, the court ended its analysis at the first prong, finding that the defendants did not meet their burden. However, on appeal, this Court found that Taylor did in fact make a good faith statement on a matter of public concern. Order date July 30, 2020. Because the district court below made no finding on the second prong, this Court ordered the matter remanded back to the district court for analysis on the merits of plaintiff's claims.

On August 31, 2020 Colon filed a Petition for Rehearing, which was denied on October 1, 2020. On October 29, 2020 Colon filed a Petition for En Banc Rehearing, in which he challenged the constitutionality of the Anti-SLAPP statute as a whole. The Court directed Appellants to respond. After reviewing the briefing, this Court issued a revised order on December 31, 2020, holding that, consistent with its original order,

Taylor's statement was a good faith statement made on a matter of public concern, but included in this modified order an analysis of the constitutionality of the Anti-SLAPP statute, and again ordered the matter remanded back to district court for a determination on the second prong of the Anti-SLAPP statute. No additional briefing is required on this issue, and this matter should be remanded back to the district court consistent with this Court's previous Orders.

Lastly, Colon is correct that there is no procedural mechanism to file supplemental briefing after this Court has already issued its order. Supplementation is simply not appropriate here. This Court has made its determination. Colon has had ample opportunity to raise all necessary and important arguments to this Court in his previous Answering Brief, Petition for Rehearing, and Petition for En Banc Reconsideration. Furthermore, Colon does not specifically articulate exactly what matters of law require additional briefing and consideration by this Court now, and he should not be given additional leave to do so.

This case should be remanded back to the district court for findings on the second prong of the statute, namely whether the plaintiff's claims have merit.

III. Conclusion

Colon's request to allow new, supplemental briefing, on this matter should be denied.

DATED this 22nd day of January, 2021.

AARON D. FORD
Attorney General

By: /s/ Theresa M. Haar
Theresa M. Haar (Bar No. 12158)
Special Assistant Attorney General

CERTIFICATE OF SERVICE

Pursuant to NEV. R. APP. P. 25(5)(c), I hereby certify that I caused to be e-filed and e-served to all parties listed on the Court's Master Service List the foregoing document via the Clerk of the Court by using the electronic filing system on the 22nd day of January, 2021.

Robert A. Nersesian
Thea Marie Sankiewicz
Nersesian & Sankiewicz
528 S. Eighth St.
Las Vegas, NV 89101
Attorneys for Respondent
Dr. Nicholas G. Colon

Jeff Silvestri
Jason Sifers
McDonald Carano LLP
2300 W. Sahara Ave., Ste. 1200
Las Vegas, Nevada 89102
Attorneys for Appellants
American Gaming Association

/s/ Traci Plotnick
Traci Plotnick, an employee of the
Office of the Nevada Attorney General