

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON T. SMITH,

Appellant,

vs.

KATY ZILVERBERG; AND
VICTORIA EAGAN,

Respondents.

Case No. 80154

D.C. No.: A-19-79817

Case No. 80348

D.C. No.: A-19-798171-C

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Elizabeth A. Brown
Clerk of Supreme Court

**RESPONDENTS' OPPOSITION TO MOTION TO CONSOLIDATE
APPEALS**

Respondents KATY ZILVERBERG and VICTORIA EAGAN hereby submit this Opposition to the Motion to Consolidate Appeals filed on January 16, 2020 by Appellant JASON T. SMITH. This Opposition is supported by the attached memorandum of points and authorities.

DATED this 23rd day of January, 2020.

/s/ Margaret A. McLetchie

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MEMORANDUM OF POINTS AND AUTHORITIES

On November 26, 2019, Appellant Jason T. Smith filed notice of appeal from the district court's October 31 order in Case No. A-19-798171-C which granted Respondents Katy Zilverberg's and Victoria Eagan's Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (Case No. 80154). On December 30, 2019, Mr. Smith filed notice of appeal from the district court's December 20, 2019 order (the "Fees and Costs Order") which, *inter alia*, granted Ms. Zilverberg's and Ms. Eagan's Motion for Attorney's Fees, Costs and Statutory Awards Pursuant to Nev. Rev. Stat. § 41.670 (Case No. 80348). On January 16, 2020, Mr. Smith moved this Court to consolidate these two appeals. Now, Ms. Zilverberg and Ms. Eagan oppose consolidation of these appeals.

As a threshold matter, these appeals stem from two separate orders and therefore concern different issues. The earlier appeal concerns whether the district court erred by granting the Special anti-SLAPP Motion to Dismiss under Nev. Rev. Stat. § 41.660, while the later appeal concerns whether the district court abused its discretion by awarding Ms. Zilverberg and Ms. Eagan all their requested attorney's fees, costs, and a statutory award under Nev. Rev. Stat. § 41.670. These issues are not appropriate for consolidation. Indeed, consolidation is appropriate when legal issues are identical, not merely similar or somehow related. *Nevada Yellow Cab Corp. v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 132 Nev. 784, 787, 383

P.3d 246, 248 (2016) (“Given the identical legal issues, we consolidate these writ petitions for disposition.”). Further, the Nevada Rules of Appellate Procedure contemplate joinder or consolidation of appeals when multiple parties file notices of appeal from the same order or judgment. *See* Nev. R. App. P. 3(b). Here, by contrast, there is only one party seeking to appeal the district court’s orders—Mr. Smith. And different orders are being appealed. Thus, consolidation is inappropriate.

As Ms. Zilverberg and Ms. Eagan argued before the district court, the public policy underpinning Nevada’s anti-SLAPP statute favors expeditious resolution of suits like Mr. Smith’s. Features of Nevada’s anti-SLAPP law—such as mandatory fee-shifting (Nev. Rev. Stat. § 41.670(1)(a)), mandatory expedited review by the district court (Nev. Rev. Stat. § 41.660(3)(f)), and an interlocutory appeal lying from denial of a special motion to dismiss (Nev. Rev. Stat. § 41.670(4))—are designed to uphold speakers’ First Amendment rights by protecting them from costly litigation intended to silence them, and to deter lawsuits like Mr. Smith’s that improperly target free speech.

Furthermore, Ms. Zilverberg and Ms. Eagan have incurred additional fees and costs in this matter since the Fees and Costs Order was entered, and intend to supplement their application for attorney’s fees and costs shortly, as that order permits.

Therefore, despite the facts that both appeals arise from the same district court case and pertain to identical parties, this Court should deny Mr. Smith's Motion to Consolidate.

DATED this 23rd day of January, 2020.

/s/ Margaret A. McLetchie

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing RESPONDENTS' OPPOSITION TO MOTION TO CONSOLIDATE APPEALS was filed electronically with the Nevada Supreme Court on the 23rd day of January, 2020. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

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