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**IN THE SUPREME COURT OF NEVADA**

HOWARD SHAPIRO,

Appellants,

vs.

GLENN WELT, RHODA WELT, LYNN  
WELT, and MICHELLE WELT,

Respondents.

Case No.: 80395

Dist. Ct. No. A-14-706566-C

**APPEAL**

From the Eighth Judicial District Court, Clark County

The Honorable Nancy Alff, District Court Judge



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### **NRAP 26.1 Disclosure**

The undersigned counsel of record certifies that the following are persons and entities, as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the justices of this Court may evaluate possible disqualification or recusal.

1. Parent Corporation: None
2. Publicly held company that owns 10% or more of the party's stock: None.
3. Law firms who have appeared or are expected to appear for Howard Shapiro: Alex Ghibaudo, Esq. and Alex B. Ghibaudo, PC.

DATED this 24<sup>th</sup> day of September, 2020.

*/s/ Alex Ghibaudo*

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### **Attorney's Certificate of Compliance**

1. I certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14 point Times New Roman.
2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains no more than 2086 words.
3. Finally, I certify that I have read this petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the petition regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.
4. I understand that I may be subject to sanctions in the event that the accompanying petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.



### **Routing Statement**

This case should be retained by the Supreme Court in accordance with NRAP 17(13) and NRAP 17(14) because it involves a principal issue of first impression involving the Federal and Nevada Constitution, i.e., Speech, and the construction and interpretation of Nevada's Anti-SLAPP statute.

DATED this 24<sup>th</sup> day of September, 2020.

*/s/ Alex Ghibaudo*

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### Certificate of Service

Persuant to NRAP 25, on September 24<sup>th</sup>, 2020 **APPELLANT’S OPENING BRIEF** was served upon each of the parties to appeal 80395 via electronic service through the Supreme Court of Nevada’s electronic filing system. Specifically, service was effectuated upon:

Michael Lowry, Esq.  
**WILSON ELSER et al.**

Michael.lowry@wilsonelser.com

*//s// Alex Ghibardo*

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An Employee of Alex B. Ghibardo, PC



## **Jurisdictional Statement**

This is an appeal from the district court's order denying Respondent's Special Motion to Dismiss under NRS 41.660 but awarding Respondents' attorney's fees and costs nonetheless. On August 7, 2020 notice of entry of order occurred as to the district court's order denying Respondent's motion to dismiss. On December 26, 2020 notice of entry of order occurred as to the district court's order awarding Respondents' attorney's fees and costs. On January 6, 2020 the Appellant timely filed his notice of appeal from the order granting attorney's fees and costs. This appeal is authorized by NRS 41.670(4).





## **Statement of the Issues Presented for Review**

1. Did the district court abuse its discretion or commit a legal error when it granted Respondent's attorney's fees and costs under Nevada's Anti-SLAPP statute (NRS 41.660) despite the fact that Respondents' anti-SLAPP motion was denied?
2. Did the district court err or abuse its discretion when it awarded attorney's fees and costs under NRS 41.670(1) when the motion to dismiss Jenna Shapiro was made in another pleading, presumably under NRCP 12(b)(5)?



## **I. STATEMENT OF THE CASE**

The genesis of this litigation is a conservatorship petition that was litigated in New Jersey. Walter Shapiro is the father of plaintiff Howard Shapiro. On August 5, 2014 Howard petitioned a New Jersey court to appoint him as Walter's conservator. The Welts are relatives of Walter and opposed Howard's petition. Although not listed in the petition, Glenn Welt is Walter's nephew. Glenn Welt created a website that concerns the New Jersey petition, [www.howardshapirovictims.com](http://www.howardshapirovictims.com).

After the website was created, the Shapiros filed their civil complaint in Nevada on September 4, 2014. On December 15, 2014 the Welts filed their motion to dismiss that the district court granted on January 2, 2015. That order was appealed, and, on February 2, 2020, this Court reversed and remanded the district court's order with special instructions (Docket No. 67363).

That routine was repeated when, on May 26, 2017 the Welts renewed their motion to dismiss under NRS 41.660. That motion was granted on July 19, 2017. Howard appealed that decision and this Court reversed and remanded the decision for further consideration on December 27, 2018 (Docket No. 73943).



Again, the Welts renewed their motion to dismiss under NRS 41.660 on May 2, 2019. This time, on July 17, 2019, the district court denied the Welts' motion. (Appellant's Appendix ("AA") 109-118). However, it later granted the Welts their attorney's fees and costs in the amount of \$32,361.61 against Jenna Shapiro and \$21,540.60 against Howard Shapiro. (AA 259). The Shapiros now appeal that decision.

## **II. STATEMENT OF FACTS**

On May 2, 2019, the Welts renewed their motion to dismiss for the third time in five (5) years. On July 17, 2020 the district court denied their motion. (See AA 109-118). However, at the time of the hearing, prior to the hearing, undersigned counsel indicated to opposing counsel that Jenna Shapiro would be dismissed from the case because she no longer wished to be party to it. During the hearing, the district court enquired if undersigned counsel "concede[d] that some of the causes of action could be dismissed." (AA 129, line 2-3).

Undersigned counsel indicated that all but the defamation per se and civil conspiracy causes of action should remain. (AA 129, lines 13-14). Later, it was asserted, in opposition to the Welts' motion for attorney's fees and costs, that "Mrs. Shapiro was not dismissed on the merits. Rather, after 5 years of litigation, she opted to end any further participation in this case." (AA 241, lines 1-20). Despite that, the district court awarded the Welts a combined \$53,902.21 for every



all work completed since the case was initiated in 2014. In the order, it is stated that “the court entered an order granting, in part, relief per NRS 41.660.

Specifically, it was granted as to Jenna Shapiro because she conceded she cannot meet her burden of proof as to NRS 41.660.” (AA 256, lines 16-18). That statement is simply not true. At no time did either Jenna or undersigned counsel concede to anything. Rather, Jenna simply did not want to pursue the matter anymore. As such, it was requested that her case be dismissed.

### **III. STANDARD OF REVIEW**

In reviewing a district court’s order granting or denying an Anti-SLAPP motion to dismiss, this Court engages in de novo review. *Coker v. Sassone*, 135 Nev. Adv. Op. 2, 432 P.3d 746, 748–49 (2019) (“As amended, the special motion to dismiss again functions like a summary judgment motion procedurally, thus, we conclude de novo review is appropriate.”).

### **IV. LEGAL ARGUMENT**

- a. The district court abused its discretion and/or committed legal error in awarding Respondents’ attorney’s fees and costs because they did not prevail on their anti-SLAPP motion

The district court cannot award attorney’s fees and costs under NRS 41.670(1) unless the party asking for fees and costs actually prevailed on that party’s special motion to dismiss filed under NRS 41.660. *Padda v. Hendrick*, No. 78534, at \*2 (Nev. Apr. 16, 2020); citing *Stubbs v. Strickland*, 129 Nev. 146, 151,



297 P.3d 326, 329 (2013). Here, the Welts’ motion to dismiss was denied on the merits. (AA 109-118). In its order, the district court stated that “[t]his motion is granted in part as to Jenna Shapiro and all causes of action except defamation and civil conspiracy, as previously described.” (AA 118, lines 13-15).

However, that decision was not made on the merits. Instead, prior to the hearing, undersigned counsel indicated that Jenna Shapiro no longer wished to pursue the claim and wished to be dismissed from it. The district court took that to mean she conceded to the Welts’ argument. She did not. Rather, she opted to voluntarily dismiss the matter and that was what undersigned counsel tried to communicate to the court. (See AA 129, lines 2-14).

Simply stated, the Welts did not prevail on their anti-SLAPP claim against Howard. Instead, they prevailed on their motion to dismiss “certain causes of action” which referenced Jenna Shapiro. Therefore, they cannot be awarded attorney’s fees and costs under NRS 41.670(1).

- b. Respondents’ motion to dismiss “certain causes of action”, which referenced Jenna Shapiro, is the motion that was granted, depriving Respondents of the ability to collect fees under NRS 41.670(1)

Furthermore, the Welts’ moved to dismiss “certain causes of action” in conjunction with its special motion to dismiss. (See AA 1-6). Specifically, the Welts requested that the district court dismiss Jenna Shapiro because “[t]he only statement on the Welts’ website concerning Jenna Shapiro was that she is married



to Howard...As the website does not otherwise concern Jenna at all, she has failed to allege any claim for relief. Her causes of action must be dismissed with prejudice.” (AA 005, lines 4-8).

It was that motion that was unopposed because, in fact, Jenna had already decided to voluntarily dismiss the case. However, in its order granting attorney’s fees and costs, the district court indicated that the dismissal was made pursuant to NRS 41.660. (AA 256, lines 16-18). It was not. Indeed, as the Welts indicate in their motion, Jenna made no claims in the nature of defamation. *Id.* Thus, NRS 41.660 was inapplicable and, concomitantly, NRS 41.670(1) could not be utilized to award attorney’s fees and costs for its dismissal.

## **V. CONCLUSION**

The Welts filed their motion to dismiss “certain causes of action” targeting, in part, Jenna Shapiro. (AA 005, lines 4-8). At the hearing on the Welts anti-SLAPP motion, Jenna in fact opted to extinguish her claims. (See AA 129, lines 2-14). However, the district court erroneously concluded that the dismissal was made pursuant to the Welts’ anti-SLAPP motion when the only motion referencing her, to which she was responding (she never asserted defamation or defamation per se), was the Welts’ motion to dismiss “certain causes of action.”

That motion was, essentially, a motion to dismiss under NRCP 12(b)(5). As such, the Welts cannot rely on NRS 41.670(1) in justifying the award of attorney’s



fees and costs. For that reason, this Court should reverse the challenged order because the decision was clearly erroneous and an abuse of discretion as the award was made without statutory authority.

DATED this 24<sup>th</sup> day of September, 2020.

*/s/ Alex Ghibaudo*

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