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Electronically Filed  
Nov 25 2020 12:16 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

9  
10 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

11 CHRISTOPHER KHORSANDI, M.D., an  
12 individual, CHRISTOPHER KHORSANDI,  
13 M.D., PLLC, a Nevada Professional LLC,  
14 CATHERINE LE KHORSANDI, an individual,  
15 CECILY S., a pseudonym used by CATHERINE  
LE KHORSANDI, Does I – X, and Roe  
Corporations I – X

Case No.: 80957

16 Appellants/Cross-Respondents

17 vs.

18 SMITH PLASTIC SURGERY, INC, a Nevada  
19 Corporation, and LANE F. SMITH, M.D., an  
20 individual

21 Respondents/Cross-Appellants.

22  
23 **RESPONDENTS/CROSS-APPELLANTS SMITH PLASTIC SURGERY, INC. AND**  
24 **LANE F. SMITH, M.D.'S RESPONSE TO ORDER TO SHOW CAUSE**

25 **A. Procedural History**

26 On November 4, 2019, Plaintiffs filed a Complaint in District Court. On January 10,  
27 2020, Appellants/Cross-Respondents filed a Special Motion to Dismiss Pursuant to NRS  
28 41.660, or in the Alternative, Motion to Dismiss Pursuant to NRSCP 12(b)(5) in Department

1 twenty (20) of the Eighth Judicial District Court. The hearing for this motion occurred on  
2 February 19, 2020, and a decision and order was filed by the Honorable Eric Johnson on  
3 March 4, 2020. On March 31, 2020, Appellants/Cross-Respondents filed a Notice of Appeal  
4 and on April 22, 2020 Respondents/Cross-Appellants' Notice of Cross-Appeal was filed. On  
5 October 27, 2020 this Court issued an Order to Show Cause requesting Respondents/Cross-  
6 Appellants to show cause why the appeal should not be dismissed for lack of jurisdiction and  
7 requested Respondents/Cross-Appellants to show cause how they are aggrieved parties.

8 **B. Timeliness of Cross-Appeal**

9 On March 12, 2020, Governor Sisolak declared a state of emergency in response to the  
10 recent outbreak of the Coronavirus Disease. In response to this outbreak, the President and  
11 Center for Disease Control ("CDC") advised against large gatherings of people and  
12 temporarily closed all non-essential businesses. Additionally, on March 13, 2020, Eighth  
13 Judicial District Court Chief Judge Linda Bell entered an Administrative Order suspending all  
14 criminal and civil jury trials and continuing all non-essential hearings. Out of concern for the  
15 safety and wellbeing of all employees, the law firm of Sgro & Roger followed these directives  
16 and made the necessary adjustments to comply including allowing select staff members to  
17 work remotely.

18 At the time the deadline to file the cross-appeal was calendared, the individual  
19 responsible for calendaring, preparing the notice of appeal and ensuring it was timely filed was  
20 working from home. This arrangement resulted in the deadline being miscalendared which was  
21 not discovered until April 22, 2020. As soon as the error was identified the Notice of Cross-  
22 Appeal was filed. Since the cross-appeal directly relates to the same issue being appealed by  
23 Appellant, Respondents submit that there has been no prejudice to Respondent and the  
24 untimeliness is excusable neglect which does not divest this Court of jurisdiction to consider  
25 the cross-appeal. Moreover, given that this matter has now been on appeal for seven (7)  
26 months and Appellant/Cross-Respondent has not filed a Motion to Dismiss the cross-appeal,  
27 Appellant/Cross-Respondent does not appear to believe she will be prejudiced by the  
28

1 furtherance of this matter on appeal. As such, Respondents/Cross-Appellants hereby request  
2 this Court find good cause to maintain jurisdiction over this matter.

3 **C. Respondents/Cross-Appellants are Aggrieved Parties with Standing to Appeal**  
4 **the District Court's Order**

5 When a plaintiff files a SLAPP suit, Nevada's Anti-SLAPP statute, NRS 41.660, allows  
6 a defendant to file a special motion to dismiss in response to the action. *Stubbs v. Strickland*,  
7 129 Nev. 146, 150, 297 P.3d 326, 329 (2013). "This special motion to dismiss functions as a  
8 motion for summary judgment and allows the district court to evaluate the merits of the alleged  
9 SLAPP claim." *Id.* Under the Anti-SLAPP statute, a defendant may file a special motion to  
10 dismiss if the defendant can show "by a preponderance of the evidence, that the claim is based  
11 upon a good faith communication in furtherance of the right to petition or the right to free  
12 speech in direct connection with an issue of public concern." NRS 41.660(3)(a). If a defendant  
13 makes this initial showing, the burden then shifts to the plaintiff to show "with prima facie  
14 evidence a probability of prevailing on the claim." NRS 41.660(3)(b).  
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17 On January 10, 2020, Appellants/Cross-Respondents filed a Special Motion to Dismiss  
18 Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to NRSCP 12(b)(5)  
19 in Department 20 of the Eighth Judicial District Court. In this Motion, Appellants/Cross-  
20 Respondents denied making the contested statements, while simultaneously taking the  
21 inconsistent position that Nevada's Anti-SLAPP statute should apply because the statements  
22 were made in direct connection with an issue of public interest in a public forum.  
23 Respondents/Cross-Appellants filed an Opposition to the Motion and oral arguments took  
24 place on February 19, 2020.  
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1 On March 4, 2020, the Honorable Eric Johnson of Department 20 of the Eighth Judicial  
2 District Court entered a ruling on Appellants/Cross-Respondents' Special Motion to Dismiss  
3 Pursuant to NRS 41.660, finding:

4 The Court HEREBY ORDERS a hearing on March 11, 2020 at 8:30am at which  
5 time Plaintiff shall present a plan as to expedited discovery on the question of  
6 whether Defendants made the statements in question to allow the Court to  
7 determine whether summary judgment should be granted on that basis. The  
8 Court encourages the parties to meet and confer prior to the hearing to attempt  
to reach a joint recommendation as to an expedited discovery plan.

9 With entry of this order, it is Respondents/Cross-Appellants' position that the District Court  
10 improperly moved to subsection (b) of NRS 41.660(3) by setting a hearing to determine  
11 whether plaintiff could prove by prima facie evidence a probability of prevailing on the claim  
12 without first determining whether the defendant showed by a preponderance of the evidence,  
13 that the claim was based upon a good faith communication in furtherance of the right to  
14 petition or the right to free speech in direct connection with an issue of public concern as set  
15 forth in NRS 41.660(3)(a).  
16

17 Since Appellant/Cross-Respondent denied making the statements at issue, the District  
18 Court should not have found, that the claim was based upon a good faith communication in  
19 furtherance of the right to petition or the right to free speech in direct connection with an  
20 issue of public concern. As such, the district court's consideration of the motion should have  
21 never passed step one of the analysis set forth in NRS 41.660(3). Since Appellants/Cross-  
22 Respondents denied making the statements at issue, it is Respondents/Cross-Appellants'  
23 position that the trial court should have denied the motion to dismiss, outright. Instead, the  
24 trial court ordered the parties to conduct discovery which led to the instant appeal which has  
25 delayed the proceedings and Respondents/Cross-Appellants' ability to prosecute their case.  
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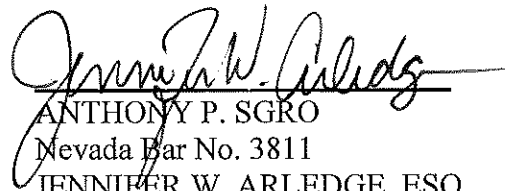
1 Based on the foregoing, Respondents/Cross-Appellants have sufficiently established  
2 they are aggrieved parties and have shown cause sufficient to withstand dismissal of the  
3 cross-appeal.  
4

5 **D. Conclusion**

6 As set forth herein, Respondents/Cross-Appellants' respectfully request that this  
7 Court find that Respondents/Cross-Appellants have shown cause sufficient to withstand  
8 dismissal of the cross-appeal.

9 DATED this 25<sup>th</sup> day of November, 2020.

10 SGRO & ROGER

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19 *Attorneys for Respondents/Cross Appellants*  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the foregoing **RESPONDENTS/CROSS-APPELLANTS**  
3 **SMITH PLASTIC SURGERY, INC. AND LANE F. SMITH, M.D.'S RESPONSE TO**  
4 **ORDER TO SHOW CAUSE** was submitted electronically for filing and/or service with the  
5 Supreme Court of Nevada on the 25<sup>th</sup> day of November, 2020.

6 I further certify that I served a true and correct copy of the foregoing document as  
7 follows:

8  
9 X Pursuant to NRAP 25, electronic service of the foregoing document shall be made in  
accordance with the CM/ECF E-Service List.

10  
11 \_\_\_\_\_ By placing a copy of the original in a sealed envelope, first-class postage fully prepaid  
thereon, and depositing the envelope in the U.S. mail at Las Vegas, Nevada.

12  
13 \_\_\_\_\_ Pursuant to a filed Consent for Service by Facsimile in this matter, by sending the  
document by facsimile transmission.

14  
15 \_\_\_\_\_ Via hand-delivery to the addresses listed below;

16  
17 \_\_\_\_\_ By transmitting via email the document listed above to the email address set forth  
below on this date before 5:00 p.m.

18  
19   
20 \_\_\_\_\_  
An employee of Sgro & Roger