

1 **ANTHONY P. SGRO, ESQ.**

Nevada State Bar No. 3811

2 **JENNIFER WILLIS ARLEDGE, ESQ.**

3 Nevada Bar No. 8729

SGRO & ROGER

4 720 South 7th Street, Third Floor

Las Vegas, Nevada 89101

5 Telephone No.: (702) 384-9800

6 Facsimile No.: (702) 665-4120

tsgro@sgroandroger.com

7 jarledge@sgroandroger.com

8 *Attorneys for Respondents/Cross-Appellants*

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

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

16
17 Appellants/Cross-Respondents,

18 vs.

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

21
22 Respondents/Cross-Appellants.
23

Case No.: 80957

District Court Case No. A-19-804819

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

24 Pursuant to this Court's December 15, 2020 Order, Respondents/Cross-Appellants'
25 hereby submit the following.

26 **A. RELEVANT PROCEDURAL HISTORY**

27 On November 4, 2019, Respondents/Cross-Appellants, Smith Plastic Surgery, Inc., and
28 Lane Smith, M.D. filed a Complaint in in District Court. On January 10, 2020,

Electronically Filed
Jan 14 2021 05:02 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

1 Appellants/Cross-Respondents filed a special motion to dismiss pursuant to NRS 41.660, or in
2 the alternative, motion to dismiss pursuant to NRCP 12(b)(5) in department twenty (20) of the
3 Eighth Judicial District Court. The hearing for this motion occurred on February 19, 2020, and a
4 decision and order was filed by the Honorable Eric Johnson on March 4, 2020. On March 31,
5 2020 Appellants/Cross-Respondents filed a Notice of Appeal and on April 22, 2020,
6 Respondents/Cross-Appellants' Notice of Cross-Appeal was filed. On December 15, 2020, this
7 Court issued an Order to Show Cause, requesting the parties to show cause why the appeal and
8 cross-appeal should not be dismissed for lack of jurisdiction.

9 **B. DISCUSSION**

10 Respondents/Cross-Appellants' agree that the issue is not ripe for appeal by either party
11 for the reasons discussed herein. However, in an abundance of caution, Respondents/Cross-
12 Appellants filed the instant cross-appeal to preserve their right to appeal.

13 From the outset of this litigation, Appellants/Cross-Respondents have denied that they
14 used the pseudonym "Cecily S." and made any of the defamatory posts. To prove that
15 Appellants/Cross-Respondents acted as "Cecily S." the anonymous persona who posted the
16 false and defamatory reviews, Respondents/Cross-Appellants' compared posts made by
17 "Cecily S." with Dr. Khorsandi's locations at the times of posting and found *remarkable*
18 consistencies. Moreover, the fact that either Catherine Le (Dr. Khorsandi's practice manager
19 and paramour) or Dr. Christopher Khorsandi is the author of the reviews is evident through the
20 common theme that the alleged patient, "Cecily S." had to go to Dr. Khorsandi's practice in
21 Henderson, Nevada, in order to repair the "mistakes" that she claims Dr. Smith allegedly made.

22 Below is a list of Yelp postings from the account of "Cecily S." which are consistent, as
23 evidenced by the date, location, and time stamp, with Dr. Khorsandi's posts from his verified
24 Instagram page "docvegas" to support Respondents/Cross-Appellants' allegations:

"Cecily S."	Dr. Khorsandi
Published a review for a restaurant in Toronto, Canada on September 8, 2018.	Instagram account shows Dr. Khorsandi posted a picture featuring him as a guest speaker for a medical conference in Toronto,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	Canada on September 7, 2018. The photo advertises his appearance for September 8, 2018.
Published a review for a restaurant in New York City on April 28, 2018.	Instagram account shows Dr. Khorsandi posted a picture of himself in New York City on April 30, 2018.
Published a review for a hair salon in New York City on April 30, 2018.	Instagram account shows Dr. Khorsandi posted a picture of himself with the location- The St. Regis New York on May 2, 2018.
Published a review for a restaurant in Dallas, Texas on January 01, 2018.	Instagram account shows Dr. Khorsandi posted a picture at the “ZO Skin Centre Dallas ” on January 12, 2018.
Published a review for The St. Regis New York where she stated “ We travel often bc my husband lectures all over the world ” on June 18, 2017.	Dr. Khorsandi does frequently give lectures all over the world.
Published a review for a restaurant in San Diego, California on April, 29, 2017.	Instagram account shows Dr. Khorsandi posted a group picture with the location- San Diego Convention Center on April 30, 2017.
Published a review on November 06, 2016 for a restaurant in San Francisco, California.	Instagram account shows Dr. Khorsandi posted a picture of a lecture with the location- Union Square, San Francisco on November 05, 2016.
Published a review for a coffee shop in Los Angeles, California on September 24, 2016.	Instagram account shows Dr. Khorsandi posted a picture of himself with another Doctor at the Los Angeles Convention Center on September 27, 2016.
Published a review for the hotel “Fairmont Kea Lani” in Hawaii on March 01, 2016.	Instagram account shows Dr. Khorsandi posted a picture of himself with the location “Fairmont Kea Lani, Maui” (in Hawaii) on February 26, 2016.
Published a review for a restaurant in Paia, Hawaii on March 01, 2016.	
Published a review for a restaurant in Seattle, Washington on November 15, 2015.	Instagram account shows Dr. Khorsandi posted several pictures, including one of himself, at a conference at the Willows Lodge in Washington on November 15, 2015.
Published a review for a restaurant in Miami,	Published a review for a restaurant in Seattle,

1	Florida on April 27, 2015.	Washington on November 15, 2015.
2		
3		
4	Published a review for a hotel located in South Beach, Florida on May, 06, 2015.	
5	Published a review for a Drybar in New York on April 30, 2018 stating "...I've been to so many dry bars across the nation since we travel often. <u>We also own Zo Skinhealth clinic in Dallas</u> and a few doors down is a dry bar..."	<u>Dr. Christopher Khorsandi is listed on the Zo Skin Health website as the Co-owner.</u>
6		
7		
8		
9		

The following posts also support the inference that "Cecily S." is Catherine Le:

10		
11	"Cecily S." Yelp Post	Catherine Le's Life
12	Published a review for a restaurant "Lindo Michoacan" located on 645 Carnegie St. Henderson, Nevada 89052 on March 12, 2015 stating:	Dr. Khorsandi's Plastic Surgery practice, VIP Plastic Surgery, is located less than two (2) miles away from Lindo Michoacan.
13		
14		
15	"We have eaten here many times. We also do take out for staff lunches here as well. The food is always good and they have great service too. Highly recommend this place."	Catherine Le was VIP Plastic Surgery's Practice Manager who oversaw all aspects of business operations.
16		
17		
18	Published a review for "New Beginnings OB-GYN" on June 04, 2014 stating "I am 21 weeks pregnant. I am very pleased with Dr. M so far. She is competent and smart. She really takes her time and her staff is very helpful, esp. Betty. They always make me feel so comfortable and I highly recommend her to anyone!"	The Instagram account " Catherinele13 " posted a picture of a newborn baby with the caption "Our bundle of joy arrived last night" in September 2014 .
19		
20		
21		
22		
23		

In their motion to dismiss filed in the district court, Appellants/Cross-Respondents completely denied making any of the defamatory posts while simultaneously claiming that the reviews were good faith communications in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern and filed a special motion to dismiss. It is the inconsistency in this position that led to the instant appeal.

1 When a plaintiff files a SLAPP suit, Nevada's Anti-SLAPP statute, NRS 41.660, allows
2 a defendant to file a special motion to dismiss in response to the action. *Stubbs v. Strickland*,
3 129 Nev. 146, 150, 297 P.3d 326, 329 (2013). "This special motion to dismiss functions as a
4 motion for summary judgment and allows the district court to evaluate the merits of the alleged
5 SLAPP claim." *Id.*

6 In ruling on Appellants/Cross-Respondents' motion to dismiss, the district court did
7 exactly this, and "...treats Defendant's motion to dismiss as one for summary judgment and
8 provides for additional time under NRCP 56(d) for limited discovery to allow Plaintiff to
9 demonstrate a factual issue for the jury as to defendants making the relevant statements." The
10 district court then set a hearing wherein Respondents/Cross-Appellants' were ordered to
11 present a plan as to expedited discovery on the question of whether Appellants/Cross-
12 Respondents made the statements in question to allow the district court to determine whether
13 summary judgment should be granted on that basis. However, due to the filing of this appeal,
14 Respondents/Cross-Appellants' were never able to provide the discovery plan to the district
15 court and as such, the district court never ruled on the issue of whether or not grant summary
16 judgment.

17 NRS 41.670(4) provides that "if the court denies the special motion to dismiss filed
18 pursuant to NRS 41.660, an interlocutory appeal lies to the Supreme Court." Here, the district
19 court did not deny the motion to dismiss. Instead, it converted the special motion to dismiss
20 into a motion for summary judgment. Since the motion to dismiss was not denied, no appeal
21 from this order lies.

22 In response to Appellants/Cross-Respondents notice of appeal, the Respondents/Cross-
23 Appellants' filed the cross-appeal in an attempt to preserve their rights throughout the appeal
24 as to the district court's ruling. It is Respondents/Cross-Appellants' position that the appeal
25 should be dismissed and the matter remanded to the district court to issue a ruling on the
26 pending motion for summary judgment.

27
28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

As set forth herein, the district court's conversion of the special motion to dismiss into a motion for summary judgment does not constitute a denial and is therefore not an appealable order. Appellants-Cross-Respondent's appeal should be dismissed for lack of jurisdiction.

DATED this 14th day of January, 2021.

SGRO & ROGER

Colleen Savage
 ANTHONY P. SGRO, ESQ.
 Nevada State Bar No. 3811
 JENNIFER WILLIS ARLEDGE, ESQ.
 Nevada Bar No. 8729
 720 South 7th Street, Third Floor
 Las Vegas, Nevada 89101
Attorneys for Plaintiffs/Cross-Appellants

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

James J. Pisanelli, Esq.
Emily A. Buchwald, Esq.
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

An employee of Sgro & Roger