

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER KHORSANDI, M.D.;  
CHRISTOPHER KHORSANDI, M.D.,  
PLLC; CATHERINE LE  
KHORSANDI,

Appellants,

v.

SMITH PLASTIC SURGERY, INC.  
and LANE F. SMITH, M.D.,

Respondents.

Case No.: 80957

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Dec 28 2021 04:58 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**NOTICE OF SUPPLEMENTAL  
AUTHORITIES**

Pursuant to NRAP 31(e), Appellants Christopher Khorsandi, M.D., Christopher Khorsandi, M.D., PLLC, and Catherine Le Khorsandi (collectively, the "Khorsandi Parties") hereby submit their Notice of Supplemental Authorities. After the parties completed briefing, on December 2, 2021, the Court issued an opinion in *Spirtos v. Yemenidjian*, 137 Nev. Adv. Op. 73 (Dec. 2, 2021).

In *Spirtos*, this Court clarified the anti-SLAPP analytical framework. It stated that "[b]ased on NRS 41.660(3)(a)'s plain language, ... a moving party's denial that he or she made the alleged statements has *no relevance* at step one of the anti-SLAPP evaluation." *Spirtos*, 137 Nev. Adv. Op. 73 at 15-16 (emphasis added). Instead, a district court must "assume the accuracy of [the plaintiff's] version," (*id.* at 16), and "evaluate the statement forming the basis of the plaintiff's complaint." *Id.* at 8.

And, because the complaint's allegations are central to the step-one analysis, *Spirtos* indicates that courts may consider a defendant's alternative arguments

assuming the defendant made the alleged statement despite an earlier denial. *See id.* at 13-16 (analyzing the defendant’s alternate argument that “his statement, as alleged in [the plaintiff’s] complaint” was nonactionable opinion); *id.* at 16 (“we disagree with Spirtos’ alternative argument that his alleged statement was nonactionable opinion”); *id.* at 6 (describing defendant’s reply where he “contended that *even if* [the plaintiff’s] version of [defendant’s] conversation with [the witness] was accurate, that version would constitute nonactionable opinion”) (emphasis added).

The Court affirmed in *Spirtos*, in part, because the defendant’s anti-SLAPP motion presented no evidence suggesting that the alleged statement about the plaintiff may be true to satisfy step one’s good faith requirement. Rather, the defendant “attached a declaration to his motion wherein he listed several reasons why he believed *the licensing process* had been corrupted,” but the defendant presented no evidence about the truthfulness of the alleged statement about the plaintiff. *Id.* at 5 (emphasis added). Although the Court found that the defendant had not satisfied step one, the Court considered the defendant’s alternative argument that assumed the defendant actually made the statement as alleged in the complaint even though the defendant denied mentioning the plaintiff by name. *Id.* at 13-16.<sup>1</sup> The

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<sup>1</sup> This is the necessary implication of the opinion; otherwise, the remaining analysis once Spirtos failed step one is entirely dicta. *Clark Cty. v. Eliason*, 136 Nev. 429, 433 n.9, 468 P.3d 817, 820 n.9 (2020) (stating *quo warranto*

Court assumed *arguendo* that the defendant made the statement as alleged and still concluded it was not nonactionable opinion. *Id.* at 15.

~~The *Sirtos* decision supports the Khorsandi Parties' arguments located at pages 20-22 of the Opening Brief and pages 10-12 of the Reply Brief. Under *Sirtos*, the Court must presume the accuracy of the statements in Respondents' complaint and the Khorsandi Parties' denial "has no relevance."<sup>2</sup> The Court can consider the Khorsandi Parties' alternative argument that, even if they are presumed to have made the defamatory statement, those statements are likely true and therefore they had a good faith basis to make them (as if they did make the statements as alleged in the complaint). (See Opening Br. at 20-22; Reply Br. at 10-12.) Importantly, unlike the defendant in *Sirtos*, the Khorsandi Parties produced evidence that the alleged statements about the Respondents were likely true. There, *Sirtos* presented no evidence about Yemenidjian. Here, the Khorsandi Parties provided numerous other Yelp reviews which showed that others have raised similar concerns about the quality of Respondents' medical care. (APP087-102.) Thus, if the Court accepts the~~

discussion was dicta because the court "had already concluded that a lack of standing resolved that case.").

<sup>2</sup> ~~Additionally, unlike the defendant in *Sirtos* who did not entirely deny making the specific defamatory statement, the Khorsandi Parties have submitted declarations that they had absolutely no involvement in posting the statements that form the basis for Respondents' complaint.~~



Stricken per order filed 1/25/22.  
~~statement in the complaint as true and assumes the Khorsandi Parties' alternative argument that they made the statement, there is evidence to satisfy NRS 41.660(3)(a)'s "good faith communication" requirement.~~

~~As also explained in their briefing, the Khorsandi Parties demonstrated that the alleged statements related to an issue of public concern to satisfy the second component of step one, and that they had a probability of prevailing on the claim to meet step two. (Opening Br. at 22-38; Reply Br. at 13-18); NRS 41.660(3)(a)-(b). As a result, the Khorsandi Parties respectfully request that the Court reverse the district court.~~

DATED this 28th day of December, 2021.

PISANELLI BICE PLLC

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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 28th day of December, 2021, I caused to be served via the Court's e-filing/e-service system a true and correct copy of the above and foregoing **NOTICE OF SUPPLEMENTAL AUTHORITIES** to the following:

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/s/ Kimberly Peets  
An employee of Pisanelli Bice PLLC