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Clerk of Supreme Court

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8 **IN THE FIRST JUDICIAL DISTRICT COURT**

9 IN AND FOR STOREY, COUNTY, NEVADA

10
11 LANCE GILMAN, an individual,
12 Plaintiff,

13 v.

14
15 SAM TOLL, an individual; DOES I-V,
16 inclusive; and ROE ENTITIES VI-X,
inclusive,

17 Defendants.
18

Case No.: 18-TRT-00001-1e
Dept No.: II

CASE APPEAL STATEMENT

19 COMES NOW the Plaintiff, LANCE GILMAN, by and through his attorneys, GUS W.
20 FLANGAS, ESQ., and JESSICA K. PETERSON, ESQ., of the FLANGAS LAW GROUP, and
21 hereby submits this Case Appeal Statement.

22 1. **Name of Appellant filing this Case Appeal Statement:** Plaintiff, LANCE
23 GILMAN.

24 2. **Identify the Judge issuing the decision, judgment, or order appealed from:** the
25 Honorable District Court Judge, JAMES E. WILSON, JR., in and for the First Judicial District
26 Court, Storey County, Nevada. The following Orders are being appealed:

27 a. The Court's "Order Granting Anti-SLAPP Special Motion to Dismiss in Part,
28 Allowing Limited Discovery, and Staying Further Proceedings," which was
filed on April 9, 2018.

b. The Court's "Order After Remand," filed on March 19, 2020, which found that Defendant's internet Blog constituted a newspaper and which then concluded that Defendant qualified for protection under the news shield statute at the time he published the alleged defamatory remarks about Plaintiff.

c. The Court's "Order Granting Toll's Anti-SLAPP Special Motion to Dismiss," which was filed on June 15, 2020.

3. **Identify each Appellant and the name and address of counsel for each**

Appellant: the Appellant is LANCE GILMAN. The Appellant's attorneys are GUS W. FLANGAS, ESQ., and JESSICA K. PETERSON, ESQ., of the FLANGAS LAW GROUP, 3275 South Jones Boulevard, Suite 105, Las Vegas, Nevada, 89146.

4. **Identify each Respondent and the name and address of Appellate counsel, if known, for each Respondent (if the name of a Respondent's Appellate counsel is unknown, indicate as much and provide the name and address of that Respondent's trial counsel):** the

Respondent is SAM TOLL. The Respondent's attorneys are LUKE BUSBY, ESQ., 316 California Ave., Reno, Nevada, 89509, and JOHN MARSHALL, ESQ., 570 Marsh Avenue, Reno, Nevada, 89509.

5. **Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):** N/A.

6. **Indicate whether Appellant was represented by appointed or retained counsel in the District Court:** Appellant was represented by retained counsel in the District Court.

7. **Indicate whether Appellant is represented by appointed or retained counsel on Appeal:** Appellant is being represented by retained counsel on Appeal.

8. **Indicate whether Appellant was granted leave to proceed in forma pauperis, and the date of entry of the District Court Order granting such leave:** N/A.

9. **Indicate the date the proceedings commenced in the District Court (e.g., date complaint, indictment, information, or petition was filed):** Plaintiffs' Complaint was filed on December 7, 2017.

10. **Provide a brief description of the nature of the action and result in the District Court, including the type of judgment or order being appealed and the relief granted by the**

District Court: Plaintiff filed a Complaint against Defendant alleging one cause of action for Defamation Per Se. The Complaint listed several false and defamatory statements made by Defendant about Plaintiff, including that Plaintiff committed perjury, a felony, by lying about his residency in Storey County when he filled out official paperwork in filing for election to the office of County Commissioner (hereinafter the "Residency Allegation"). Defendant was a blogger who published the false and defamatory and statements online about Plaintiff.

Defendant filed an Anti-Slapp Special Motion to Dismiss. The Court granted the Anti-Slapp Special Motion to Dismiss in Part (hereinafter the "Order"). In the Order, the Court struck several of the individual allegations contained in the Complaint, and only allowed the Residency Allegation to go forward. In the Order, the Court found that Appellant failed to produce prima facie evidence that Defendant made the Residency Allegation with actual malice. However, the Court allowed for limited discovery because "whether Toll knew the resident statements were false or whether he acted with a high degree of awareness of the probable falsity of the statement or had serious doubts as to the publications truth, is necessary for Gilman to meet or oppose the burden under NRS 41.660(3)(b)." The Court then allowed Plaintiff to conduct limited discovery to determine whether Defendant knew the statements were false or acted with a high degree of awareness of the probable falsity of the statements or had serious doubts as the publication's truth, and gave Plaintiff a deadline in which to file a supplemental opposition to Defendant's Anti-SLAPP Motion. Plaintiff is appealing the Order primarily on the grounds that Defendant failed to meet his burden under NRS 41.660(3)(a) and the Court erred in striking the individual allegations.

At his Deposition, Defendant invoked the news shield privilege and refused to answer questions about how he arrived at his so-called knowledge pertaining to the Residency Allegation. Plaintiff subsequently filed a Motion to Compel Defendant's testimony. Defendant in his Opposition alleged that he was a reporter and his blog was a newspaper, and he therefore fell under the protection of the news shield privilege. After briefings by the Parties, the Court issued its "Order on Plaintiff's Motion to Compel, for Sanctions, to Extend Discovery Period, and for Summary

1 Judgment and Order Vacating Hearing” (hereinafter the “Discovery Order”). In the Discovery Order,
2 the Court ruled that because Defendant was a reporter of a press association since August of 2017,
3 he is covered by the news media privilege as to any source of information obtained or procured
4 during or after August, 2017. The Court also concluded that because Defendant doesn’t print his
5 blog, his blog was a newspaper and therefore, “the News Media Privilege is not available to
6 [Defendant] under the ‘reporter of a newspaper provision’ of the media shield statute. The Court
7 also ruled that Defendant became a member of news association in August of 2017, and was
8 therefore entitled to the protection of the news shield privilege after August of 2017. The Court then
9 Ordered that Plaintiff’s Motion to compel was granted as to sources of information procured or
10 obtained by Defendant before August, 2017, and denied as to sources of information procured or
11 obtained by Defendant during and after August, 2017. The Court further ordered that Defendant
12 “will not be allowed to rely on the privileged information as a defense.”

13 Defendant subsequently filed a Petition for Writ of Mandamus with the Nevada Supreme
14 Court (hereinafter the “Supreme Court”) seeking to have the Supreme Court reverse the Court’s
15 Order compelling Defendant to reveal his confidential news sources, and require the Court to either
16 dismiss this action or rule on Defendant’s Anti-SLAPP Motion. In addition, Defendant sought to
17 have the Supreme Court reverse the Court’s ruling allowing for limited discovery by Plaintiff, and
18 also reverse the Court’s ruling that Defendant will not be allowed to rely on the privileged
19 information as a defense.

20 The Supreme Court ruled that Defendant was a reporter; however, the Supreme Court
21 disagreed with the Court’s reasoning that because Defendant’s blog is not physically printed, it
22 cannot be considered a newspaper, and sent it back down for the Court to determine whether
23 Defendant’s blog is afforded protection under Nevada’s news shield statute. The Supreme Court
24 ignored Defendant’s argument that it should either order the Court to dismiss this action or the
25 Supreme Court should itself rule on Defendant’s Anti-SLAPP Motion, and further ignored
26 Defendant’s argument that it should reverse the Court’s ruling that Defendant “will not be allowed
27 to rely on the privileged information as a defense. In other words, the Supreme Court let the Court’s
28 ruling stand that Defendant would not be allowed to rely on the privileged information as a defense.

1 After receiving additional briefing on the Motion to Compel, the Court its order, "Order after
2 Remand" (hereinafter the "Remand Order"), ruled that Defendant qualified for protection under the
3 news shield statute. In the Remand Order, the Court held that "[t]here is no question Toll targeted
4 Gilman for criticism, accusations, and satire." The Court then held that because Toll is reporter, he
5 regularly and consistently published current-event-articles, the articles Toll published on his blog
6 provided information regarding current-event-news, Toll obtained, gathered, received, procured, and
7 processed information, including the information from unnamed sources, in his professional capacity
8 as a reporter, wrote articles for communication to the public by publishing them on his blog, and he
9 did communicate the articles to the public by publishing on his blog, Toll was the functional
10 equivalent of a traditional printed newspaper and therefore is a newspaper. The Court then
11 concluded that Defendant was entitled to the protection of the news shield privilege at the time he
12 published the "allegedly libelous articles," and denied the Motion to Compel. Plaintiff is appealing
13 this Order on the grounds that at the time Defendant published the false and defamatory statements
14 about Plaintiff, Defendant's blog was not a newspaper for purposes of asserting the news shield
15 privilege. Under the Court's ruling, virtually any and every blogger could assert false and
16 defamatory statements about anyone and then hide behind the news shield privilege to avoid liability.

17 After receiving additional briefs on Defendant's Anti-Slapp Special Motion to Dismiss, the
18 Court granted the Motion in its "Order Granting Toll's Anti-SLAPP Special Motion to Dismiss"
19 (hereinafter the "Dismissal Order"), and dismissed Plaintiff's Complaint. In the Dismissal Order,
20 the Court found that there was no credible evidence that Defendant published the Residency
21 Allegations with actual malice, and concluded that Plaintiff failed to show his defamation claim
22 against Defendant had minimal merit. The Court further found there was no credible evidence that
23 Defendant's communications were not in good faith and in furtherance of the right to petition or the
24 right to free speech in direct connection with an issue public concern.

25 The Court made its finding and conclusions even though Plaintiff set forth 13 pages with 38
26 sections of evidentiary facts in his brief showing that Defendant acted with actual malice. Plaintiff
27 is appealing the Dismissal Order primarily on the grounds that (1) Defendant failed to meet his
28 burden under NRS 41.660(3)(a) and (2) Plaintiff met his burden of establishing that his claim had

1 minimal merit, especially given the amount of factual evidence Plaintiff provided to the Court.
2 Plaintiff is also appealing the Dismissal Order primarily on the grounds that the Court allowed
3 Defendant to use information in his defense, that he obtained from his confidential sources.

4 11. Indicate whether the case has previously been the subject of an Appeal to or
5 original Writ proceeding in the Supreme Court and, if so, the caption and Supreme Court
6 docket number of the prior proceeding: Defendant filed a "Petition for Writ of Prohibition or
7 Mandamus," to the Nevada Supreme Court, entitled *SAM TOLL, Petitioner vs. THE FIRST*
8 *JUDICIAL COURT FOR THE STATE OF NEVADA, IN AND FOR STOREY*
9 *COUNTY, AND THE HONORABLE JUDGE WILSON, JR., DISTRICT COURT*
10 *JUDGE, Respondents, and LANCE GILMAN, Real Party in Interest,* Supreme Court
11 Docket Number: 78333.

12 12. Indicate whether this Appeal involves child custody or visitation: This Appeal
13 does not involve child custody or visitation.

14 13. If this is a civil case, indicate whether this Appeal involves the possibility of
15 settlement: Appellant is not opposed to settlement discussions.

16 Dated this 4TH day of August, 2020.

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1 CERTIFICATE OF SERVICE

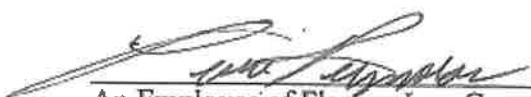
2 I hereby certify that I am an employee of the FLANGAS LAW GROUP, and that on this 4th
3 day of August, 2020 served a true and correct copy of CASE APPEAL STATEMENT as indicated
4 below:

5 X By depositing the same in the United States mail, first-class, postage prepaid,
6 in a sealed envelope, at Las Vegas, Nevada pursuant to N.R.C.P. 5(b)
7 addressed as follows

8 X By electronic mail.

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An Employee of Flangas Law Group