

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAWRA KASSEE BULEN, an
individual,

Appellant,

vs.

ROB LAUER, an individual; and
STEVE SANSON, an individual,

Respondents.

Electronically Filed
May 28 2021 05:47 p.m.
Supreme Court Case No. A-18-784807-C
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

District Court Case No. A-18-
784807-C

RESPONDENTS' APPENDIX

(Volume 1 of 1)

(Corrected)

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DATED: May 28, 2021

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Motion, granted

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1 Las Vegas, Nevada, Tuesday, October 6, 2020

2
3 [Case called at 11:13 a.m.]

4 THE COURT RECORDER: 1, A784807, Lawra Bulen versus
5 Rob Lauer. We have Kory Kaplan.

6 And who do we have for the Plaintiff?

7 MR. PHILLIPS: Good morning, Attorney Brandon Phillips, bar
8 number 12264.

9 THE COURT: Good morning, Mr. Phillips.

10 Good morning, Mr. Kaplan.

11 I've reviewed the briefing on this. It's -- well, it's relatively
12 simple, straightforward matter as far as statutory construction.
13 Nevertheless, I do -- will entertain some brief oral argument.

14 It's your motion, Mr. Kaplan. Please address the issue
15 primarily as to the reasonableness of your fees, and the Brunzell factors,
16 and then why I should award an additional up to \$10,000 under NRS
17 41.660 subpart (b) as in boy?

18 MR. KAPLAN: Thank you, Your Honor. You know, before I
19 get to the fees part, I just want to address Plaintiff's one argument that
20 the fees should not be for the entire case. They should just be for the
21 Motion to Dismiss.

22 Plaintiff cites to the Christian Research case, a California case
23 that limited recovery to just the motion to strike. Distinguishable from
24 this case, that case did not dispose of the entire case, which happened
25 here.

1 Actually, the 9th Circuit case of Graham Stultz [phonetic]
2 expressly rejected Plaintiff's same argument because the motion
3 disposed of the entire case. Here, it was the entire case, all nine causes
4 of action.

5 And that the 9th Circuit held there at the outset, the entire
6 action against defendants was subject of the motion [indiscernible] the
7 cause of action against them survives it. Thus, the rule Plaintiff's cites
8 from Christian Research does not control the outcome here.

9 Therefore, all of my fees and costs are recoverable per
10 statute, not just the ones associated with the Anti-SLAAP motion.

11 And there weren't many or much beyond that. There was a
12 Motion to Set Aside the Default that the Court granted when I was, you
13 know, or soon after I was retained.

14 It should be noted that, you know, Plaintiff in opposition to that
15 and with its countermotion sought over \$1.5 million from the Defendant.

16 But the district court in that case awarded \$134,000 in fees
17 and all requested costs. And here, Defendants are merely seeking a
18 little over \$16,000 in attorneys' fees and costs, \$10,000 per Defendant
19 pursuant to NRS 41. [indiscernible].

20 So to move on to my fees, Plaintiff first argues that my rate of
21 \$350 per hour is egregious, the 14.7 hours of Westlaw research is
22 outrageous, and there was duplicative work done by my paralegals and
23 me.

24 As to the \$350 rate, the Plaintiff argues that I should be only
25 entitled to \$200 per hour without any justification or anything at all, just

1 conclusory \$200 an hour.

2 My rate as an associate attorney in my first year of practice
3 was over \$200 an hour when I was at the law firm of Silver. You know,
4 it's been over seven years since that.

5 According to the Laffey Matrix, I should be, you know,
6 somewhere in the \$465 range and above. You know, as to my
7 experience and educational background, I lay all of that out in my
8 declaration.

9 I went to UCLA. I got a law degree from Arizona. I worked for
10 the Honorable Jackie Glass and for Ron Israel. I'm also -- I am and
11 have been for a number of years an executive committee member of the
12 litigation section of the State Bar.

13 The -- also I'm -- you know, in talking to my peers, I'm low,
14 honestly, and especially with the ones with expertise in Anti-SLAAP
15 motion, a very complex area of law as Your Honor is [indiscernible].

16 And you know, the 14.7 hours of research is extremely low on
17 such a substantive -- I think had over a 20-page Anti-SLAAP motion.
18 And the reason the research, you know, only took me 14.7 hours was
19 because of my prior familiarity with the topic.

20 The -- you know, the Plaintiff's contention that no reasonable
21 attorney would spend an outrageous amount of time is without any
22 justification. Anti-SLAAP law is extremely complex. And like I said, that
23 amount of time was very, you know, minimal.

24 You know, I know it wasn't Mr. Phillips, but had Plaintiff's
25 counsel, you know, researched -- prior counsel researched this topic,

1 even a little, then you know, the complaint filing never would have filed.

2 So, you know, in talking to some of my other, you know,
3 peers, especially ones that focus on First Amendment and defamation
4 law, you know, my rate is extremely low. And you know, I imagine Your
5 Honor's going to feel I have higher rates and a lot more than 14.7 hours
6 of research.

7 And then to the final point, Plaintiff points to nothing in my
8 billings that is duplicative of the work done by my paralegals and me. I
9 did all of the research, all of the writing, all of the arguments associated
10 with this case.

11 You know, with that said, Defendants respectfully request fees
12 in the modest amount is \$16,415 and costs in the amount of \$281.84.

13 As for the \$10,000 per Defendant, you know, I understand that
14 that is subjective. You know, and it's not a shall, it's a may. But you
15 know, I would like to, you know, draw the Court's attention that my
16 clients have been unnecessarily dragged into this lawsuit.

17 Specifically, you know, Steve Sanson, as I cited in my Anti-
18 SLAAP motion, was subject to two prior complaints that she was
19 successful on Anti-SLAAP relief.

20 And, you know, this is going to continue to come and harass
21 my clients. You know, they've expended a great deal of effort and time,
22 you know, even representing themselves, you know, during a portion of
23 this case. And they're both political journalists.

24 And so, you know, unless this Court sanctions the Plaintiff,
25 you know, with an amount of \$10,000 per Defendant, and really you

1 know, pursuant to the statute gives notice to Plaintiffs to recognize the
2 privileges associated with this -- with the journalists, you know, this is
3 going to continue to come.

4 So, you know, that is our request. I believe it adds for a total
5 of \$36,696.84. That is not including my time, you know, spent preparing
6 and attending this hearing today and I'm not seeking that. So that
7 should also come in.

8 THE COURT: All right, thank you.

9 Mr. Phillips?

10 MR. PHILLIPS: Good afternoon, Your Honor. In reviewing
11 this and in our opposition to the motion, you spent 14 hours, that's
12 almost two entire days of doing research on a issue of law that he
13 allegedly is very familiar with.

14 I think that's outrageous under any consideration just to do
15 research. That's not including the writing, that's not including anything
16 else. That's just research done on this case.

17 And if you look at -- even if you go back and you look at the
18 other hours that were added prior to drafting the motion, and there are
19 numerous hours spent in this case just devoted to client meetings, client
20 review, Court minutes, reviewing Court minutes, reviewing emails, I
21 mean, hours upon hours of stuff that are completely unrelated to this
22 Motion to Dismiss.

23 Additionally, they also included time for two other attorneys,
24 C.S. and S. S. They included no affidavit for either one those. That was
25 another 4.3 hours of work that was billed for, where there is no affidavit

1 supporting their present motion.

2 So we believe that any amount of work should be reduced by
3 all of those hours. We're asking the Court to reduce by about
4 approximately 20 hours' worth of work that Mr. or that the Plaintiffs are
5 seeking, or sorry, the Defendants are seeking here.

6 In addition, Your Honor, we're looking at the purpose of the
7 statute. The purpose of the statute or the Anti-SLAAP statute is to
8 prevent frivolous filings. This is not a frivolous filing.

9 This Court found that these individuals who run an online
10 website are political journalists. They have no credentials for that. They
11 have essentially a website and somehow they have now become
12 political journalists.

13 Even though that the -- even though they allege that they are
14 political journalists, they filed and wrote about Ms. Bulen. And they
15 wrote false statements about Ms. Bulen.

16 They admitted that those statements were false. There's -- we
17 proved that the statements that they wrote about her were false, many of
18 them, not all of them, but many of them before the case was dismissed.

19 She had the right to file a lawsuit. It was not frivolous. She
20 was being exposed online and things were being said about her that
21 were completely false.

22 This Court found that they had as political journalists, they had
23 the right to err. They had the right to, you know be wrong, but that
24 doesn't mean that she didn't have a right to at least file the complaint
25 and find out where they got their information.

1 We believe that had the Court allowed discovery, the Court
2 would have found that all of this was made up by the Defendants and
3 they never had any of that information. We didn't get that far.

4 However, she was reasonable in filing the complaint. And
5 we've provided proof of why she filed the complaint. And, therefore, I
6 believe the Court should not award the \$10,000 because that's not part
7 of the analysis here.

8 The analysis is to look at the Plaintiffs and see if they're filing
9 frivolous lawsuits. What they're asking you to do here, Your Honor, is
10 punish her for other individuals filing lawsuits against the Defendant.

11 And that's, again, not what happened here. She has her own
12 personal complaint. She had reasonable belief that they were posting
13 false information.

14 It was false. The Court found the information to be false. And
15 therefore, it's not frivolous. So they are not entitled to anything.

16 The other thing that's important here is, Your Honor, there was
17 no dispute that the Defendants were served with this case. They were
18 served and they participated in the litigation.

19 They never -- they were defaulted. They've never participated
20 until almost two years down the road. At any time, they could have tried
21 to set aside the default, but they didn't.

22 At that time, Plaintiff had a reasonable -- had a -- or could
23 have reasonably believed that the Defendants were not disputing her
24 claims.

25 They were noticed properly. They appeared in the case. So

1 they should also be held to some responsibility for the case getting this
2 far down the road.

3 I mean, if you know that Defendant -- the Court has already
4 found and there's case law supporting this is that when a Defendant
5 does not file an opposition, it's deemed admitted.

6 Well, they didn't file an answer until, you know, essentially two
7 years down the road. So Ms. Bulen was proper in moving forward with
8 her case.

9 She had reason to believe that her complaints were valid. It
10 was almost deemed as an admission until the Court later set aside this
11 through setting aside the default.

12 So the idea now that you're looking in retrospect that Ms.
13 Bulen should have never filed it, well, the Defendants never disputed it
14 until the very end of the case until she had already moved for default
15 judgment and everything else.

16 So the Court should take that into account. Ms. Bulen had a
17 proper claim. Ms. Bulen had legitimate claims that were postings of
18 information that was being widely distributed on the Internet that were
19 actually false.

20 And the other part -- and other important part that I think this
21 Court must consider is Plaintiff actually suffered damages because of
22 the false reporting.

23 She did suffer damages. She was interviewed and talked with
24 GALVAR. Her licensing and her ability to be a realtor was called into
25 question publicly throughout the community on various social media

1 websites.

2 She was actually harmed by their false publications. And the
3 Court should consider that in determining whether or not an award of
4 attorneys' fees and the additional award of \$10,000 should be given to
5 each Plaintiff.

6 THE COURT: All right, I'm ready to rule on this. Specifically,
7 I'm going to follow NRS 41.660(a) as pertains to fees and costs. And in
8 that regard, I think that the hourly rate was reasonable. The time spent
9 was reasonable. And I believe that the action encompasses all fees
10 incurred. That was the intention of the statute. The statute is not limited
11 as to actual work on the case.

12 So I'm therefore going to order the amount of fees of \$16,415,
13 that includes the cost of preparing this Motion and Reply. I'm going to
14 award costs of \$281.84.

15 As to the second section, as to what the Court may award up
16 to \$10,000, I am going to deny that part of the motion. I don't believe the
17 action was brought in bad faith or for any ill reason.

18 As to whether it needs to send a message or more suits will
19 come, I don't find that persuasive. I can't predict the future. And if that
20 were to happen, if more suits are filed, then perhaps that may be
21 something that can be addressed in a different case, but it's not
22 happened at this time.

23 I'm going to request that Mr. Kaplan prepare the order in that
24 regard.

25 MR. KAPLAN: Thank you, Your Honor, I'll circulate to it

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counsel.

THE COURT: Thank you.

MR. PHILLIPS: Thank you. Your Honor.

THE COURT: Thank you.

[Proceedings concluded at 11:28 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

a 16

Chris Hwang
Transcriber

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing RESPONDENTS' APPENDIX with the Clerk of the Court for the Nevada Supreme Court by using the EFS system on May 28, 2021.

Participants in the case who are registered EFS users will be served by the EFS system. Person thus served includes: Brandon Phillips, Attorney at Law, NV Bar No. 12264, 1455 E. Tropicana Ave., Las Vegas NV 89119, 702-795-0097, blp@abetterlegalpractice.com.

I further certify that I am not aware of any of the participants in the case that are not registered CM/ECF users.

DATED this 28th day of May, 2021.

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