

IN THE SUPREME COURT OF THE STATE OF NEVADA

OLYMPIA COMPANIES, LLC, A NEVADA
LIMITED LIABILITY COMPANY; AND GARRY
V. GOETT, A NEVADA RESIDENT,

Appellants,

vs.

MICHAEL KOSOR, JR., A NEVADA RESIDENT

Respondent.

No. 83403 Electronically Filed
Feb 14 2022 05:06 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANTS' MOTION TO VOLUNTARILY DISMISS APPEAL

Appellants Olympia Companies, LLC and Garry V. Goett ("Appellants") submit this Motion to Dismiss their appeal pursuant to NRAP 42(b). NRAP 42(b) provides that "[t]he clerk may dismiss an appeal . . . if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due." NRAP 42(b) further provides that "[a]n appeal may be dismissed on the appellants' motion on terms agreed to by the parties or fixed by the court."

This case is a civil matter involving defamatory statements made by Respondent Michael Kosor ("Respondent"). Appellants filed their Complaint against Respondent on November 29, 2018. On January 29, 2018, Respondent filed a Motion to Dismiss Pursuant to NRS 41.660, which was denied by the District Court

on March 20, 2018. Respondent subsequently filed a Motion for Reconsideration on April 23, 2018, which also denied by the District Court. Respondent appealed the District Court's decision.

The Nevada Supreme Court reversed the District Court's decision but never found the anti-SLAPP motion was affirmatively warranted. Instead, the Nevada Supreme Court requested supplemental briefing on whether Respondent made his statements in good faith. The parties submitted their supplemental briefs on March 31, 2021, and reply briefs on April 23, 2021.

Judge Eric Johnson of the District Court heard this matter on May 5, 2021. Over two months later, on July 19, 2021, Judge Johnson issues a 25-page Order granting Respondent's Motion to Dismiss Pursuant to NRS 41.660. Nowhere in the Order did the District Court determine that this lawsuit was frivolous or not based on reasonable grounds.

Appellants filed their Notice of Appeal on August 18, 2021. Appellants appealed the July 19, 2021 Order and the District Court's award of statutory fees, attorneys' fees, and costs as they believe the District Court made an error of law in finding Respondent made his statements in good faith and by awarding \$195,040.12 in attorneys' fees and costs because, among other things, (1) Respondent's published statements clearly amount to recklessness;¹ (2) Respondent's alleged opinions are

¹ See *Levesque v. Doocy*, 560 F.3d 82, 90 (1st Cir. 2009) ("Recklessness amounting

still actionable as they imply undisclosed defamatory facts;² (3) Appellants sufficiently established a likelihood of success on the merits; and (4) the amount of fees and costs awarded is unreasonable. Despite the merits of this appeal, Appellants seek a dismissal of its appeal in light of various financial and business considerations undertaken by Appellants, including their decision to make the payments for attorneys' fees and costs to Respondent in the full amount of \$195,040.13.

Accordingly, after consultation between Appellant and Appellants' counsel, and a discussion regarding the consequences of this request for a voluntary dismissal, and after Appellants consented to a voluntary dismissal of this appeal, it is hereby requested that this matter be DISMISSED, with each party bearing their own fees and costs.³

to actual malice may be found where a publisher. . . deliberately ignores evidence that calls into question his published statements.”).

² *Terry v. Davis Cmty. Church*, 131 Cal.App. 1534, 1552 (2005); see also *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 57 P.3d 82, 88 (2002) (“expressions of opinion may suggest that the speaker knows certain facts to be true or may imply that facts exist which will be sufficient to render the message defamatory if false.”).

³ Appellant requested that Respondent stipulate to dismiss the pending appeal on January 19, 2022. It was not until February 10, 2022 that Respondent not only refused to stipulate to dismiss this appeal but also demanded an additional \$31,990.00 in attorneys' fees Respondent allegedly incurred in preparing a Motion for Fees and Costs (and for seeking an extension of time to prepare the same) in the underlying matter and to attend the Settlement Conference ordered by this Court. The fees incurred for the Motion were not incurred as a result of this appeal, and fees incurred for the Settlement Conference were neither prejudicial nor frivolous as the parties sought to settle two underlying cases, this one and another one Respondent filed against Southern Highlands Development Corporation. Since an opening brief

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c) I hereby certify that on the 14th day of February, 2022, I served a true and correct copy of the foregoing APPELLANTS' MOTION TO VOLUNTARILY DISMISS APPEAL was made this date by electronic service via the Nevada Supreme Court's eFlex program upon all parties and their respective counsel of record.

/s/Ali Augustine

An Employee of KEMP JONES LLP

has not been filed, Respondent has also not been prejudiced by the Notice of Appeal, which was certainly not "frivolous." Considering the request to stipulate and the non-frivolous nature of the appeal, parties should bear their own fees and costs. *See Breeden v. Eighth Judicial District Court*, 131 Nev. 96, 98, 343 P.3d 1242, 1223-24 (2015).