

NOAS
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Electronically Filed
Dec 09 2020 08:42 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

*Attorneys for Plaintiffs/Counterdefendants,
Frank Stile, M.D. and Frank Stile M.D., P.C.*

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

FRANK STILE, M.D., an individual; and
FRANK STILE M.D., P.C.; a Nevada
professional corporation,

Case No. A-19-807131-C

Dept. No. XV

Plaintiffs,

NOTICE OF APPEAL

vs.

EVA KORB, an individual; DOE
INDIVIDUALS I-X; and ROE ENTITIES I-X

Defendants.

EVA KORB, an individual,

Counterclaimant.

vs.

FRANK STILE, M.D., an individual; and
FRANK STILE M.D., P.C.; a Nevada
professional corporation,

Counterdefendants.

Notice is hereby given the Plaintiffs/Counterdefendants, Frank Stile, M.D. and Frank Stile
M.D., P.C. (collectively referred to as "Dr. Stile"), by and through their attorneys of Howard & Howard
PLLC, hereby appeals to the Supreme Court of Nevada from the November 3, 2020 Order Granting

1 Defendants/Counterclaimant Eva Korb's Special Anti-SLAPP Motion to Dismiss under NRS 41.670
2 and all ruling and interlocutory orders made appealable by the foregoing.

3 The Notice of Entry of the November 3, 2020 Order Granting the Special Anti-SLAPP Motion
4 to Dismiss under NRS 41.670 was filed on November 4, 2020.

5 DATED this 2nd day of December, 2020.

6 **HOWARD & HOWARD ATTORNEYS PLLC**

7
8 By: /s/ William A. Gonzales
9 Martin A. Little, Esq.
10 William A. Gonzales, Esq.
11 3800 Howard Hughes Parkway, Suite 1000
12 Las Vegas, Nevada 89169

13 *Attorneys for Plaintiffs/Counterdefendants*
14
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CERTIFICATE OF SERVICE

I hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada 89169.

On this day I served the **NOTICE OF APPEAL** on all parties in this action or proceeding electronically with the Clerk of the Court via the Odyssey E-File and Serve system, which will cause this document to be served upon the following counsel of record:

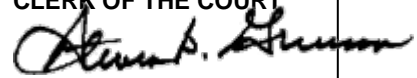
Christopher S. Connell, Esq.
Connell Law
6671 Las Vegas Boulevard, Suite 210
Las Vegas, Nevada 89119

*Attorney for Defendant,
Eva Korb*

I certify under penalty of perjury that the foregoing is true and correct, and that I executed this Certificate of Service on December 2, 2020, at Las Vegas, Nevada.

/s/ Susan A. Owens
An Employee of Howard & Howard Attorneys PLLC

4832-8781-7424, v. 1



ASTA
Martin A. Little, Esq.
Nevada Bar No. 7067
William A. Gonzales, Esq.
Nevada Bar No. 15230
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*Attorneys for Plaintiffs/Counterdefendants,
Frank Stile, M.D. and Frank Stile M.D., P.C.*

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

FRANK STILE, M.D., an individual; and
FRANK STILE M.D., P.C.; a Nevada
professional corporation,

Plaintiffs,

vs.

EVA KORB, an individual; DOE
INDIVIDUALS I-X; and ROE ENTITIES I-X

Defendants.

EVA KORB, an individual,

Counterclaimant.

vs.

FRANK STILE, M.D., an individual; and
FRANK STILE M.D., P.C.; a Nevada
professional corporation,

Counterdefendants.

Case No. A-19-807131-C

Dept. No. XV

CASE APPEAL STATEMENT

Honorable Joe Hardy

INTRODUCTION

Plaintiffs/Counterdefendants, Frank Stile, M.D. and Frank Stile, M.D., P.C. (collectively referred to as "Dr. Stile"), by and through their attorneys of Howard & Howard Attorneys PLLC, hereby submit this Case Appeal Statement as follows:

1 **1. Name of Appellant filing this case appeal statement:**

2 Frank Stile, M.D., an individual and Frank Stile M.D., P.C., a Nevada professional
3 corporation.

4 **2. Name of judge who entered the order or judgment being appealed**

5 District Court Judge Joe Hardy, Department 15.

6 **3. Counsel for Appellants:**

7 Martin A. Little, Esq.
8 Nevada Bar No. 7067
9 Email: mal@h2law.com
10 William A. Gonzales, Esq.
11 Nevada Bar No. 15230
12 Email: wag@h2law.com
13 3800 Howard Hughes Parkway, Suite 1000
14 Las Vegas, Nevada 89169
15 Telephone: (702) 257-1483

12 **4. Respondent and Counsel for Respondent:**

13 Respondent, Eva Korb

14 Christopher S. Connell, Esq.
15 Nevada Bar No. 12720
16 Email: cconnell@connelllaw.com
17 6671 Las Vegas Boulevard, Suite 210
18 Las Vegas, Nevada 89119

18 **5. Is any attorney identified in response to paragraph 3 or 4 not licensed to practice law in Nevada?**

19 All counsel are licensed to practice law in Nevada.

20 **6. Were Appellants represented by appointed or retained counsel in the District Court?**

21 Appellants were represented by retained counsel.

22 **7. Are Appellants represented by appointed or retained counsel on appeal?**

23 Appellants are represented by retained counsel.

24 **8. Were Appellants granted leave to proceed in forma pauperis?**

25 N/A

26 **9. The date the proceedings commenced in the district court:**

27 Plaintiffs/Counterdefendants filed their Complaint on December 17, 2019.
28

10. 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.

Dr. Stile and Respondent, Eva Korb, entered into a surgical agreement where Dr. Stile would perform a certain aesthetic procedure for Respondent on October 11, 2010. Following additional surgeries to correct mistakes of a doctor in Thailand, Respondent posted a false and defamatory Yelp! review of Dr. Stile's medical practice. Dr. Stile responded to the review with a factual recitation of events, disclosing certain information that was covered in a HIPPA Release signed by Respondent.

On December 17, 2019, Dr. Stile filed a Complaint asserting a cause of action for defamation against Respondent. After retaining counsel, and setting aside the default entered against her, Respondent filed an Anti-SLAPP Motion to Dismiss under NRS 41.660, arguing that Respondent's review was protected opinion on a public forum warranting protection under the First Amendment. Dr. Stile opposed the motion arguing that the statement was not protected speech as it contained false and factual implications, and at a minimum, was a mixed statement of fact and opinion.

On October 12, 2020, the Court held a hearing on Respondent's Anti-SLAPP motion and heard oral arguments from both parties. At the hearing, the Court granted Respondent's Anti-SLAPP Motion and ordered parties to provide supplemental briefing for the mandatory attorney fee provision in NRS 41.670. On November 3, 2020 the district court entered an Order Granting Respondent's Anti-SLAPP Motion. In granting Respondent's Anti-SLAPP Motion, the district court held that Respondent's statement was protected opinion under the First Amendment.

11. Has this case previously been the subject of an appeal to or original writ proceedings in the Supreme Court?

No.

12. Does this case involve child custody or visitation?

No.

///

///

///

13. Does this appeal involve the possibility of settlement?

Yes.

DATED this 2nd day of December, 2020.

HOWARD & HOWARD ATTORNEYS PLLC

By: /s/ William A. Gonzales

Martin A. Little, Esq.

William A. Gonzales, Esq.

3800 Howard Hughes Parkway, Suite 1000

Las Vegas, Nevada 89169

Attorneys for Plaintiffs/Counterdefendants

CERTIFICATE OF SERVICE

I hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada 89169.

On this day I served the **CASE APPEAL STATEMENT** on all parties in this action or proceeding electronically with the Clerk of the Court via the Odyssey E-File and Serve system, which will cause this document to be served upon the following counsel of record:

Christopher S. Connell, Esq.
Connell Law
6671 Las Vegas Boulevard, Suite 210
Las Vegas, Nevada 89119

*Attorney for Defendant/Counterclaimant,
Eva Korb*

I certify under penalty of perjury that the foregoing is true and correct, and that I executed this Certificate of Service on December 2, 2020, at Las Vegas, Nevada.

/s/ Susan A. Owens
An Employee of Howard & Howard Attorneys PLLC

4828-7487-5856, v. 1

CASE SUMMARY**CASE NO. A-19-807131-C**

Frank Stile, M.D., Plaintiff(s)
vs.
Eva Korb, Defendant(s)

§
§
§
§
§

Location: **Department 15**
 Judicial Officer: **Hardy, Joe**
 Filed on: **12/17/2019**
 Cross-Reference Case Number: **A807131**

CASE INFORMATIONCase Type: **Intentional Misconduct**

Case
Status: **12/17/2019 Open**

DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number A-19-807131-C
 Court Department 15
 Date Assigned 12/17/2019
 Judicial Officer Hardy, Joe

PARTY INFORMATION**Plaintiff****Frank Stile MD PC***Lead Attorneys*

Little, Martin A.
Retained
 7026997500(W)

Stile, Frank, M.D.

Little, Martin A.
Retained
 7026997500(W)

Defendant**Korb, Eva**

Connell, Christopher S.
Retained
 702-266-6355(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

12/17/2019



Initial Appearance Fee Disclosure

Filed By: Plaintiff Stile, Frank, M.D.; Plaintiff Frank Stile MD PC
Initial Appearance Fee Disclosure (NRS Chapter 19)

12/17/2019



Complaint

Filed By: Plaintiff Stile, Frank, M.D.; Plaintiff Frank Stile MD PC
Complaint

12/17/2019



Disclosure Statement

Party: Plaintiff Stile, Frank, M.D.; Plaintiff Frank Stile MD PC
Plaintiff Frank Stile, M.D., P.C.'s Disclosure Statement Pursuant to NRCP 7.1

12/19/2019



Summons Electronically Issued - Service Pending

Party: Plaintiff Frank Stile MD PC
Summons to Eva Korb

04/15/2020



Application

Filed By: Plaintiff Stile, Frank, M.D.; Plaintiff Frank Stile MD PC

CASE SUMMARY

CASE NO. A-19-807131-C

Application for Order to Serve Defendant Eva Korb by Publication and to Extend Time Period to Serve

05/14/2020



Order for Service by Publication

Filed By: Plaintiff Stile, Frank, M.D.; Plaintiff Frank Stile MD PC

Order Granting Leave to Serve Defendant Eva Korb by Publication and Extending Time Period to Serve

05/14/2020



Order to Enlarge Time for Service

Filed By: Plaintiff Stile, Frank, M.D.; Plaintiff Frank Stile MD PC

Order Granting Leave to Serve Defendant Eva Korb by Publication and Extending Time Period to Serve

05/18/2020



Notice of Entry of Order

Filed By: Plaintiff Stile, Frank, M.D.; Plaintiff Frank Stile MD PC

Notice of Entry of Order Granting Leave to Serve Defendant Eva Korb by Publication and Extending Time Period to Serve

06/15/2020



Affidavit of Publication of Summons

Filed By: Plaintiff Stile, Frank, M.D.; Plaintiff Frank Stile MD PC

Affidavit of Publication of Summons

06/18/2020



Certificate of Service

Filed by: Plaintiff Stile, Frank, M.D.; Plaintiff Frank Stile MD PC

Certificate of Service

06/18/2020



Default

Filed By: Plaintiff Stile, Frank, M.D.; Plaintiff Frank Stile MD PC

(9/2/2020- Set Aside Per Order) Default Against Defendant Eva Korb

07/23/2020



Notice of Entry of Default

Party: Plaintiff Stile, Frank, M.D.; Plaintiff Frank Stile MD PC

Notice of Entry of Default

07/30/2020



Notice of Appearance

Party: Defendant Korb, Eva

Notice of Appearance

07/30/2020



Motion to Set Aside

Filed By: Defendant Korb, Eva

Motion to Set Aside Default

07/31/2020



Clerk's Notice of Hearing

Notice of Hearing

08/13/2020



Opposition to Motion

Filed By: Plaintiff Stile, Frank, M.D.; Plaintiff Frank Stile MD PC

Opposition to Defendant's Motion to Set Aside Default and Request for Attorneys' Fees and Costs

08/18/2020



Reply in Support





Filed By: Defendant Korb, Eva

Reply in Support of the Motion to Set Aside Default

09/02/2020


CASE SUMMARY

CASE NO. A-19-807131-C

	 Order Filed By: Defendant Korb, Eva <i>Order On Motion to Set Aside Default</i>
09/02/2020	 Notice of Entry Filed By: Defendant Korb, Eva <i>Notice of Entry-Order on Motion to Set Aside Default</i>
09/02/2020	 Motion to Dismiss Filed By: Defendant Korb, Eva <i>Anti-Slapp Special Motion to Dismiss Under NRS 41.660 and Counterclaims</i>
09/02/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
09/09/2020	 Stipulation and Order Filed by: Defendant Korb, Eva <i>Stipulation and Order to Continue Hearing on Defendants Anti-Slapp Special Motion to Dismiss Under NRS41.660 and Counterclaims</i>
09/09/2020	 Notice of Entry of Stipulation and Order Filed By: Defendant Korb, Eva <i>Notice of Entry of Stipulation and Order to Continue Hearing on Defendants Anti-Slapp Special Motion to Dismiss Under NRS41.660 and Counterclaims</i>
09/23/2020	 Opposition Filed By: Plaintiff Stile, Frank, M.D.; Plaintiff Frank Stile MD PC <i>Plaintiffs' Opposition to Defendants' Anti-Slapp Special Motion to Dismiss</i>
09/28/2020	 Reply in Support Filed By: Defendant Korb, Eva <i>Reply in Support of Anti-Slapp Special Motion to Dismiss Under NRS41.660</i>
10/19/2020	 Recorders Transcript of Hearing <i>Recorders Transcript of Hearing Re:</i>
10/26/2020	 Motion Filed By: Defendant Korb, Eva <i>Defendant Eva Korb's Motion for Costs, Fees, and Sanctions under NRS 41.670</i>
10/27/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
11/03/2020	 Order Granting Motion Filed By: Defendant Korb, Eva <i>Order Granting Defendant's Special Motion to Dismiss Under NRS 41.660</i>
11/04/2020	 Notice of Entry Filed By: Defendant Korb, Eva <i>Notice of Entry of Order Granting Eva Korb's Special Motion to Dismiss Under NRS 41.660</i>
11/06/2020	 Demand for Jury Trial Filed By: Plaintiff Stile, Frank, M.D.; Plaintiff Frank Stile MD PC <i>Demand for Jury Trial</i>

CASE SUMMARY

CASE NO. A-19-807131-C

11/06/2020	 Motion to Dismiss Filed By: Plaintiff Stile, Frank, M.D.; Plaintiff Frank Stile MD PC <i>Plaintiffs/Counterdefendants' Motion to Dismiss, Or Alternatively, Motion for Summary Judgment</i>
11/06/2020	 Clerk's Notice of Hearing <i>Clerks Notice of Hearing</i>
11/09/2020	 Opposition to Motion Filed By: Plaintiff Stile, Frank, M.D.; Plaintiff Frank Stile MD PC <i>Opposition to Eva Korb's Motion for Costs, Fees and Sanctions Under NRS 41.670</i>
11/20/2020	 Stipulation and Order Filed by: Defendant Korb, Eva <i>Stipulation and Order to Vacate Hearing</i>
11/20/2020	 Opposition to Motion Filed By: Defendant Korb, Eva <i>Opposition to Plaintiff/Counter-Defendants' Motion to Dismiss, or Alternatively, Motion for Summary Judgment</i>
11/20/2020	 Notice of Entry Filed By: Defendant Korb, Eva <i>Notice of Entry-Stipulation and Order to Vacate Hearing</i>
11/24/2020	 Stipulation Filed by: Defendant Korb, Eva <i>Stipulation for Settlement of Attorney's Fees and Costs</i>
12/02/2020	 Reply Filed by: Plaintiff Stile, Frank, M.D.; Plaintiff Frank Stile MD PC <i>Plaintiffs/Counterdefendants' Reply in Support of Motion to Dismiss, or Alternatively, Motion for Summary Judgment</i>
12/02/2020	 Notice of Appeal Filed By: Plaintiff Stile, Frank, M.D.; Plaintiff Frank Stile MD PC <i>Notice of Appeal</i>
12/02/2020	 Case Appeal Statement Filed By: Plaintiff Stile, Frank, M.D.; Plaintiff Frank Stile MD PC <i>Case Appeal Statement</i>
<u>DISPOSITIONS</u>	
11/03/2020	Order of Dismissal With Prejudice (Judicial Officer: Hardy, Joe) Debtors: Frank Stile, MD. (Plaintiff), Frank Stile MD PC (Plaintiff) Creditors: Eva Korb (Defendant) Judgment: 11/03/2020, Docketed: 11/04/2020 Comment: Certain Claims
<u>HEARINGS</u>	
08/31/2020	 Motion to Set Aside Default Judgment (9:00 AM) (Judicial Officer: Hardy, Joe) <i>Defendant's Motion to Set Aside Default</i> Motion Granted; Journal Entry Details:

CASE SUMMARY

CASE NO. A-19-807131-C

All parties present via Blue Jeans. The Court noted that it reviewed the instant Motion, the Opposition, and the Reply. Mr. Connell argued in support of the Motion, stating that Defendant traveled extensively, and was out of the country when the Motion for Publication was effectuated. Additionally, Mr. Connell argued that the Nevada Supreme Court preferred for cases to be heard on their merits. Mr. Gonzales argued in opposition, stating that the process server attempted to serve the Defendant while the Defendant was in Las Vegas, and the Defendant ignored all service attempts, as well as the tags left on the Defendant's front door. Upon Court's inquiry, Mr. Gonzales could not identify a law stating that the Defendant had an affirmative duty to contact the Plaintiff regarding service. **COURT ORDERED** Defendant's Motion to Set Aside Default was hereby **GRANTED** for all of the reasons in the Motion and Reply, **FINDING** and **ORDERING** the following: (1) there was no law, or affirmative duty, stating that a Defendant who found a tag from a process server on their door, was then required to contact the Plaintiff to be served; (2) good cause had been shown to set aside the Default, under Nevada law; (3) the Defendant was not in the United States when service was made by publication; (4) a meritorious defense was not necessary; but, there was the potential for a meritorious defense; (5) Defendant would be prejudiced if the Default was not set aside; (6) Nevada law favors decisions based upon the merits; (7) the Defendant has shown that the Motion to Set Aside was filed soon after the Defendant learned of the Default; (8) the counter-request for attorney's fees and costs, was hereby **DENIED** for the reasons already set forth; and (9) the Defendant would have until September 14, 2020, to file a response to the Complaint. Mr. Connell to prepare the written Order, and forward it to Mr. Gonzales for approval as to form and content.;

10/12/2020

**Motion to Dismiss (9:00 AM) (Judicial Officer: Hardy, Joe)**

Defendant's Anti-Slapp Special Motion to Dismiss Under NRS 41.660 and Counterclaims Motion Granted;
Journal Entry Details:

All parties present via Blue Jeans. The Court noted that it reviewed the instant Motion, the Plaintiffs' Opposition, and the Defendant's Reply. Mr. Connell argued in support of the instant Motion, stating that Defendant Korb's review on Yelp was made on a public form, and was protected free speech. Additionally, Mr. Connell argued that a review was an opinion, and could not be defamatory, because there was no such thing as a false idea. Mr. Little argued in opposition, stating that the Court must accept as true, the evidence favorable to the Plaintiffs, and Plaintiffs were only required to show that their claims had minimal merit, in order to avoid dismissal. Additionally, Mr. Little argued that Defendant waited nine years after Dr. Stile performed her surgery, to post her Yelp review, which went to motive. **COURT ORDERED** Defendant's Anti-Slapp Special Motion to Dismiss Under NRS 41.660 and Counterclaims, was hereby **GRANTED** for all of the reasons set forth in the Motion and Reply, **FINDING** and **ORDERING** the following: (1) the Court considered the relevant statutes in making its ruling: NRS 41.635 through NRS 41.670, as well as Nevada's statutory Anti-Slapp scheme; NRS 41.637(4) defined a good faith communication; (2) there was no dispute, or no genuine dispute, that Yelp qualified as a public forum under NRS 41.637(4)'s definition; (3) Defendant's Yelp review was a communication made in direct connection with an issue of public interest in a place open to the public or in a public forum; (4) the most significant piece of evidence was the actual posted review, which was attached to the instant Motion as exhibit 3; (5) the review contained opinions regarding the Defendant's treatment, and opinions regarding Dr. Stile and his work, and opinions could not be the subject of defamation claims; (6) the Court had to read Defendant Korb's review in its totality, which it did, and take into account the statements set forth in the review, rather than reading on phrase in a vacuum; (6) Plaintiffs focused on certain phrases in Defendant Korb's review, but even those phrases were Defendant Korb's opinions; (7) Plaintiffs rebutted Defendant's Korb's review, by posting a response on Yelp; the response posted by Plaintiffs was proper, and understandable, and that was where the issue should have ended; (8) Defendant Korb's review was a good faith communication, made without knowledge of falsehood; (9) the cases Plaintiffs cited in their briefs were all pre-Anti-SLAPP decisions, and were not persuasive in opposition; (10) Defendant Korb's review contained hyperbolic language, that Plaintiffs disagreed with; however, the review was clearly Defendant Korb's opinion; (11) the defamation complaint was subject to Anti-SLAPP statutes, and the Motion to Dismiss was appropriate, based upon the evidence; (12) the fact that Defendant Korb's review was posted nine years after her procedure, may very well go to motive; however, when dealing with opinions under the Anti-SLAPP statute, the timing was largely irrelevant; (13) the Motion to Dismiss having been granted, the Court shall award reasonable attorney's fees and costs pursuant to NRS 41.670(1)(a); however, as of the instant hearing, the Court lacked evidence regarding the reasonable attorney's fees and costs; and (14) **SUPPLEMENTAL BRIEFING** on the reasonable attorney's fees and costs was hereby **ORDERED**, as follows: (a) Defendant's supplemental brief shall be **DUE BY** October 26, 2020; (b) Plaintiffs' Response shall be **DUE BY** November 9, 2020; and (c) Defendant's Reply shall

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-19-807131-C

	<i>be DUE BY November 16, 2020. COURT ORDERED a hearing regarding the attorney's fees and costs, was hereby SET. Mr. Connell to prepare the written Order for the Motion to Dismiss, incorporating the facts and arguments set forth in the Motion and Reply, and forward to Mr. Little for approval as to form and content. 11/23/20 9:00 AM HEARING: ATTORNEY'S FEES AND COSTS PURSUANT TO NRS 41.670;</i>
11/23/2020	CANCELED Hearing (9:00 AM) (Judicial Officer: Hardy, Joe) <i>Vacated - per Stipulation and Order</i> <i>Hearing: Attorney's Fees and Costs</i>
11/30/2020	CANCELED Motion (9:00 AM) (Judicial Officer: Hardy, Joe) <i>Vacated - On in Error</i> <i>Defendant Eva Korb's Motion for Costs, Fees, and Sanctions under NRS 41.670</i>
12/07/2020	Motion (9:00 AM) (Judicial Officer: Hardy, Joe) <i>Plaintiffs/Counterdefendants' Motion to Dismiss, Or Alternatively, Motion for Summary Judgment</i>

DATE	FINANCIAL INFORMATION																
	<table> <tr> <td>Defendant Korb, Eva</td><td></td></tr> <tr> <td>Total Charges</td><td>223.00</td></tr> <tr> <td>Total Payments and Credits</td><td>223.00</td></tr> <tr> <td>Balance Due as of 12/3/2020</td><td>0.00</td></tr> <tr> <td> Plaintiff Stile, Frank, M.D.</td><td></td></tr> <tr> <td>Total Charges</td><td>324.00</td></tr> <tr> <td>Total Payments and Credits</td><td>324.00</td></tr> <tr> <td>Balance Due as of 12/3/2020</td><td>0.00</td></tr> </table>	Defendant Korb, Eva		Total Charges	223.00	Total Payments and Credits	223.00	Balance Due as of 12/3/2020	0.00	 Plaintiff Stile, Frank, M.D.		Total Charges	324.00	Total Payments and Credits	324.00	Balance Due as of 12/3/2020	0.00
Defendant Korb, Eva																	
Total Charges	223.00																
Total Payments and Credits	223.00																
Balance Due as of 12/3/2020	0.00																
 Plaintiff Stile, Frank, M.D.																	
Total Charges	324.00																
Total Payments and Credits	324.00																
Balance Due as of 12/3/2020	0.00																

DISTRICT COURT CIVIL COVER SHEET

County, Nevada

Case No. _____
(Assigned by Clerk's Office)

CASE NO: A-19-807131-C
Department 15

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): FRANK STILE, M.D., an individual and FRANK STILE, M.D., P.C.; a Nevada Professional Corporation	Defendant(s) (name/address/phone): EVA KORB, an individual
Attorney (name/address/phone): Martin A. Little (#7067) / Ryan T. O Malley (#12461) Howard & Howard Attorneys PLLC 3800 Howard Hughes Pkwy, # 1000, Las Vegas, NV 89169 Tel: (702) 667-4811	Attorney (name/address/phone): _____ _____ _____

II. Nature of Controversy (please select the one most applicable filing type below)

Civil Case Filing Types

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input checked="" type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input checked="" type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

December 17, 2019

Date

/s/ Ryan T. O'Malley

Signature of initiating party or representative

See other side for family-related case filings.

ORD

CONNELL LAW
Christopher S. Connell, Esq.
Nevada Bar No. 12720
6671 Las Vegas Blvd., Suite 210
Las Vegas, NV 89119
(702) 266-6355; Fax: (702) 829-5930
cconnell@connelllaw.com
Attorney for Eva Korb

DISTRICT COURT

CLARK COUNTY, NEVADA

FRANK STILE, M.D., an individual; and
FRANK STILE M.D., P.C.; a Nevada
professional corporation,

Plaintiffs,
vs.

EVA KORB, an individual;, DOE
INDIVIDUALS I-X; and ROE ENTITIES I-X,

Defendants.

Case No.: A-19-807131-C

Dept. No.: XV

**ORDER GRANTING DEFENDANT EVA
KORB'S SPECIAL MOTION TO
DISMISS UNDER NRS 41.660**

This matter, having come before the Court on Defendant Eva Korb's Special Motion to Dismiss Under NRS 41.660, and it appearing, upon argument of counsel and for good cause shown, the motion is granted.

NRS 41.635 et seq., Nevada's Anti-SLAPP statute, creates a procedure for early dismissal of cases targeting speech and conduct protected by the First Amendment when they lack merit. As provided for in *John v. Douglas Cnty. School District.*, 125 Nev. 746 (Nev. 2009), the statute creates a two-step analysis for courts to follow in deciding whether to dismiss a case under its provisions. First, under NRS 41.660(3)(a), the moving defendant has the burden of showing, by a preponderance of the evidence, that the plaintiff's suit is "based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." If the moving defendant meets this burden, the burden of proof then shifts to the plaintiff to establish by prima facie evidence a probability of prevailing on the claim." NRS

1 41.660(3)(b), the Plaintiff must introduce evidence establishing his claims to satisfy this burden.
2 Anti-SLAPP motions have traditionally been treated as a motion for summary judgment, and so
3 the plaintiff can survive a special motion to dismiss by establishing a genuine issue of material
4 fact. If the plaintiff fails to do this, his case must be dismissed.

5 **I. FACTUAL BACKGROUD**

6 In October 2010, Eva Korb retained the services of the Plaintiffs in this action, Dr. Frank
7 Stile and Frank Stile, M.D., P.C. for a certain medical procedure. Based on the procedure, the
8 results of the procedure, and the customer service that Ms. Korb received from Dr. Stile, she wrote
9 a Yelp!® review on or about October 15, 2019. Dr. Stile responded publicly and vindictively to
10 Ms. Korb's review on or about 10/21/2019 (the "Response"). In his Response, which was posted
11 on his public Yelp!® business page, he repeatedly published Ms. Korb's full name, intimate
12 details/dates of her medical procedure, Google Drive links to personal email exchanges between
13 Dr. Stile and Ms. Korb during the time of the procedure, her email address, pages from her medial
14 files including multiple nude photographs of her bare breasts, medical notes, and documents
15 containing extremely personal and private information such as her date of birth, contact
16 information, and social security number. *Id.* Upon information and belief, Dr. Stile's first response
17 was live on Yelp!® for anyone to see for forty-two (42) days before Ms. Korb knew it was there.
18 When Ms. Korb discovered what Dr. Stile had done, she immediately reported it to Yelp!® as it
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20 the response (on or about 12/11/2019). Shortly after Yelp!® removed the first response Dr. Stile
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1 immediate Complaint alleging Defamation based on Ms. Korb's Yelp!® review, which was on
2 the same day that Yelp!® had removed the post for the second time.

3 **II. DISCUSSION**

4 **A. Nevada's Anti-SLAPP Statute**

5 The purpose of Nevada's Anti-SLAPP statute is to ensure that lawsuits are not brought
6 lightly against defendants for exercising their First Amendment rights. To do this, the statute
7 establishes a two-prong analysis in determining whether a Special Motion to Dismiss should be
8 granted. NRS 41.660(3)(a), an Anti-SLAPP movant has the initial burden of establishing, by a
9 preponderance of the evidence, that the plaintiff's claims are "based upon a good faith
10 communication in furtherance of the right to petition or the right to free speech in direct connection
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12 is a "[c]ommunication made in direct connection with an issue of public interest in a place open
13 to the public or in a public forum, which is truthful or is made without knowledge of its falsehood." NRS
14 41.637(4). The 2013 revisions to the Anti-SLAPP statute, particularly the inclusion of NRS
15 41.637(4), were meant to broaden the scope of the statute to include statements in furtherance of
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17 Under NRS 41.660(3)(b), once the Court finds that the Anti-SLAPP movant has met its
18 burden on the first prong, the burden then shifts to the plaintiff to show, by prima facie evidence
19 as defined by California case law, that it has a probability of prevailing of its claims. S.B. 444,
20 2015 Leg., 78th Sess., § 12.5(2) (Nev. 2015).

21 An Anti-SLAPP motion must be brought within 60 days of a defendant being served with
22 the complaint. See NRS 41.660(2). There is no dispute that Defendant's motion was timely filed.
23 Additionally, an order granting a Special Motion to Dismiss acts as an adjudication on the merits.
24 See NRS 41.660(5).

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27 **B. Prong One: Good-faith Communication in Direct Connection with an Issue of** 28 **Public Concern**

1 The Court finds that Defendant has met her burden of proof under the first prong of
2 Nevada's Anti-SLAPP statute. Plaintiff's claims are primarily based on the October 2010 Yelp!®
3 Review. Complaints of non-criminal conduct by a business constitute matters of public concern,
4 particularly concerning reviews on web sites such as Yelp. See *Mt. Hood Polaris, Inc. v. Martino*
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15 *Willbanks v. Wolk*, 121 Cal. App. 4th 883, 899 (2004) (quoting *Paradise Hills Associates*
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17 Defendant's statements are statements by a consumer of Plaintiff's services regarding the
18 quality of Plaintiff's services. The statements contained in Defendant's November 3, 2015 updated
19 review are also statements regarding the quality of Plaintiff's services. The authorities cited by
20 Defendant, such as *Wolk*, 121 Cal. App. 4th at 899, establish that Defendant's statements in both
21 the September 11, 2015 and November 3, 2015 review are statements on matters of public interest.

22 There is no dispute that Yelp is a well-known public forum, and Defendant has provided
23 evidence that her allegedly defamatory statements were not made with knowledge of their falsity.
24 Plaintiff failed to provide evidence tending to show that Defendant knew her statements were false
25 when she made them. Defendant thus made the statements at issue in good faith under NRS
26 41.637(4). Defendant proved by a preponderance of the evidence that her statements were on a
27 matter of public interest, in a public forum, and were made without knowledge of their falsity. She
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1 thus satisfied her burden under prong one of the Anti-SLAPP statute, and the burden shifts to
2 Plaintiff to show a probability of prevailing on the merits of its claims.

3 **C. Prong Two: Probability of Prevailing on the Merits**

4 Plaintiff has failed to meet its burden under NRS 41.660(3) (b). Statements of opinion and
5 rhetorical hyperbole are not actionable, as Supreme Court precedent establishes that "there is no
6 such thing as a false idea. However pernicious an opinion may seem, we depend for its correction
7 not on the conscience of judges and juries but on the competition of other ideas." *Gertz v. Robert*
8 *Welch*, 418 U.S. 323, 339-340 (1974). If a reasonable person would not interpret a statement as an
9 assertion of fact, then the statement is protected under the First Amendment. See *Milkovich v.*
10 *Lorain Journal Co.*, 497 U.S. 1 (1990). To determine whether a statement is actionable, the Court
11 must ask whether a reasonable person would be likely to understand the statement as an expression
12 of the source's opinion or a statement of existing fact. See *Pegasus v. Reno Newspapers, Inc.*, 118
13 Nev. 706 (Nev. 2002). A Nevada federal court, applying Nevada law, established a three-factor
14 test in determining whether an allegedly defamatory statement includes a factual assertion: (1)
15 whether the general tenor of the entire work negates the impression that the defendant was
16 asserting an objective fact; (2) whether the defendant used figurative or hyperbolic language that
17 negates that impression; and (3) whether the statement in question is susceptible to being proved
18 true or false. *Flowers v. Carville*, 112 F. Supp. 2d 1202, 1211 (D. Nev. 2000).

19 Additionally, an "evaluative opinion" cannot be defamatory. See *People for the Ethical*
20 *Treatment of Animals v. Bobby Berosini, Ltd.*, 11 Nev. 615, 624-25 (Nev. 1995) (finding that
21 claiming depictions of violence towards animals shown in video amounted to "abuse" was
22 protected as an opinion) (modified on unrelated grounds in *City of Las Vegas Downtown*
23 *Redevelopment Agency v. Hecht*, 113 Nev. 644, 650 (Nev. 1997)). Such an opinion is one that
24 "involves a value judgment based on true information disclosed to or known by the public.
25 Evaluative opinions convey the publisher's judgment as to the quality of another's behavior, and
26 as such, it is not a statement of fact." *Id.* at 624 (citing *Prosser and Keeton on Torts* 814 (W. Page
27 Keeton, ed.; 5th ed 1984)).
28

1 Context is vitally important in determining whether a reasonable person is likely to view a
2 statement as one of fact, or one of protected opinion or rhetorical hyperbole. The context of
3 Defendant's statements is Yelp, a well-known online forum for consumer reviews. The Internet is
4 the modern equivalent of the soapbox on the sidewalk, and web sites such as Yelp are the type of
5 public forum that is protected under the First Amendment. The public has become accustomed to
6 seeing fiery rhetoric on online fora, and courts recognize that this context makes it less likely that
7 a reader will interpret statements published in such places as actionable statements of fact. See
8 *Summit Bank v. Rogers*, 206 Cal. App. 4th 669, 696-97 (2012) (finding that readers of statements
9 posted in “Rants and Raves” section of Craigslist “should be predisposed to view them with a
10 certain amount of skepticism, and with an understanding that they will likely present one-sided
11 viewpoints rather than assertions of provable facts”); see also *Global Telemedia Internat., Inc. v.*
12 *John Doe 1*, 132 F. Supp. 2d 1261, 1267 (C.D. Cal 2001) (finding that internet postings “are full
13 of hyperbole, invective, short-handed phrases and language not generally found in fact-based
14 documents, such as corporate press releases or SEC filings”); *Krinsky v. Doe 6*, 159 Cal. App. 4th
15 1154, 1163 (2008) (stating that “online discussions may look more like a vehicle for emotional
16 catharsis than a forum for the rapid exchange of information and ideas”).

17 The Plaintiff asserted at oral argument on October 12, 2020 that Defendant Korb’s
18 statements about the Plaintiff, including calling him a “butcher” and a “sociopath” were
19 defamatory. These statements were all protected under the first amendment as rhetorical hyperbole
20 that cannot support a claim for defamation. Applying the three-factor test enumerated in *Flowers*
21 *v. Carville*, 112 F. Supp. 2d 1202, 1211 (D. Nev. 2000), Defendant's statements are protected
22 statements of emotional hyperbolic opinion. The average Yelp user would not read the statement
23 that Dr. Stile is a “butcher” or that he is a “sociopath” and take them at their literal meanings,
24 respectively. The review is much closer to the sort of online “rant” found in cases like *Roger* and
25 *Krinsky*. See *Krinsky*, 159 Cal. App. 4th at 1173, 1178 (finding that in a chat room setting,
26 anonymous post that corporate officers consisted of a “cockroach,” “losers,” “boobs,” and
27 “crooks” were “crude, satirical hyperbole which ... constitute protected opinion”). The words
28 “butcher” and “sociopath” do not exist in a vacuum, and the Court recognizes that the average

1 reader will not interpret them in a vacuum. See *Fortson v. Colangelo*, 434 F. Supp. 2d 1369, 1384-
2 85 (S.D. Fla. 2006) (finding that people do not "read words in a vacuum," and concluding that
3 accusation of basketball player committing "attempted murder" on basketball court was rhetorical
4 hyperbole).

5 No reasonable person would disagree that the statement at issue is a statement of opinion
6 of Defendant, and a trial to determine whether Plaintiff is actually a butcher or a sociopath would
7 not change this conclusion. As explained in *Gertz*, the purpose of forums like Yelp is for some
8 negative reviews and some positive reviews to co-exist; this is how the First Amendment is
9 supposed to work.

10 Plaintiff has failed to provide *prima facie* evidence, as defined in the statute, of a
11 probability of prevailing on its claims. To the extent that a Special Motion to Dismiss under NRS
12 41.660 is treated as a motion for Summary Judgment, there is no genuine dispute as to any material
13 fact that the statements made by Defendant Korb in the Yelp!® review are protected opinions or
14 rhetorical hyperbole.

15 **D. Damages, Costs, and Attorney's Fees**

16 Pursuant to NRS 41.670(1)(a), a defendant that prevails on a Special Motion to Dismiss
17 under NRS 41.660 shall received a mandatory award of costs and reasonable attorney fees. NRS
18 41.670(1)(b) also provides for an award of statutory damages against a plaintiff of up to \$10,000.00
19 in order to deter Plaintiff and other similar plaintiffs from filing SLAPP suits in the future. These
20 costs, fees, and damages shall be determined by this court upon separate Memorandum of Fees,
21 Costs, and Damages which is due before the Court on or before October 26, 2020.

22 **III. CONCLUSION**

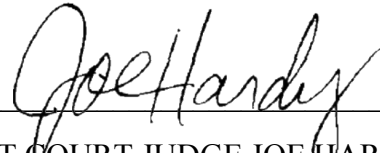
23 Accordingly, IT IS HEREBY ORDERED that Defendant's Motion is GRANTED. It is
24 ORDERED and ADJUDGED that all of Plaintiff's claims against Defendant Eva Korb are hereby
25 DISMISSED with prejudice.

26 It is FURTHER ORDERED that Defendant shall be awarded an amount of Statutory
27 Damages to be determined by this Court upon separate filing of a Memorandum of Fees, Costs,
28 and Damages pursuant to NRS 41.670(1)(b).

1 It is FURTHER ORDERED that Defendant is entitled to recover her costs and reasonable
2 attorney fees, and shall file a separate Memorandum of Fees, Costs, and Damages on or before
3 October 26, 2020 pursuant to NRS 41.670(1)(a).

4 Dated this _____ day of _____, 2020.

5 Dated this 3rd day of November, 2020

6 

7
8 DISTRICT COURT JUDGE JOE HARDY

9 Submitted by:

10 CONNELL LAW

11
12 C7B 75F 9C65 2B0C
13 Joe Hardy
14 District Court Judge

15 /s/ Christopher S. Connell

16 Christopher S. Connell, Esq.
17 Nevada Bar No. 12720
18 6671 Las Vegas Blvd., Suite 210
19 Las Vegas, NV 89119
20 *Attorney for Defendant Eva Korb*

21 Approved as to form and content:

22
23 HOWARD & HOWARD
24 Martin A. Little, Esq.
25 William A. Gonzalez, Esq.
26 3800 Howard Hughes Parkway, Suite 1000
27 Las Vegas, NV 89169
28 *Attorney for Plaintiffs*

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 Frank Stile, M.D., Plaintiff(s) CASE NO: A-19-807131-C
7 vs. DEPT. NO. Department 15
8 Eva Korb, Defendant(s)
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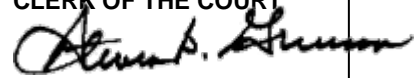
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 11/3/2020

15 Christopher Connell	cconnell@connelllawlv.com
16 Martin Little	mal@h2law.com
17 Alexander Villamar	av@h2law.com
18 Anya Ruiz	ar@h2law.com
19 Jill Berghammer	jmb@h2law.com
20 Susan Owens	sao@h2law.com
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23 Brandy Sanderson	bsanderson@howardandhoward.com

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cconnell@connelllawlv.com
Attorney for Eva Korb

**DISTRICT COURT
CLARK COUNTY, NEVADA**

FRANK STILE, M.D., an individual; and
FRANK STILE M.D., P.C.; a Nevada
professional corporation,

Case No.: A-19-807131-C

Dept. No.: XV

Plaintiffs,

vs.

EVA KORB, an individual;, DOE
INDIVIDUALS I-X; and ROE ENTITIES I-
X,

Defendants.

**NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT EVA KORB'S SPECIAL
MOTION TO DISMISS UNDER NRS 41.660**

PLEASE TAKE NOTICE that an Order Granting Defendant Eva Korb's Special Motion
to Dismiss under NRS41.660 was entered in the above captioned matter on the 3rd day of
November, 2020, a copy of which is attached hereto.

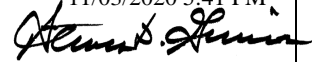
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Page 2 of 2


CLERK OF THE COURT

ORD

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13 Nev. 706 (Nev. 2002). A Nevada federal court, applying Nevada law, established a three-factor
14 test in determining whether an allegedly defamatory statement includes a factual assertion: (1)
15 whether the general tenor of the entire work negates the impression that the defendant was
16 asserting an objective fact; (2) whether the defendant used figurative or hyperbolic language that
17 negates that impression; and (3) whether the statement in question is susceptible to being proved
18 true or false. *Flowers v. Carville*, 112 F. Supp. 2d 1202, 1211 (D. Nev. 2000).

19 Additionally, an "evaluative opinion" cannot be defamatory. See *People for the Ethical*
20 *Treatment of Animals v. Bobby Berosini, Ltd.*, 11 Nev. 615, 624-25 (Nev. 1995) (finding that
21 claiming depictions of violence towards animals shown in video amounted to "abuse" was
22 protected as an opinion) (modified on unrelated grounds in *City of Las Vegas Downtown*
23 *Redevelopment Agency v. Hecht*, 113 Nev. 644, 650 (Nev. 1997)). Such an opinion is one that
24 "involves a value judgment based on true information disclosed to or known by the public.
25 Evaluative opinions convey the publisher's judgment as to the quality of another's behavior, and
26 as such, it is not a statement of fact." *Id.* at 624 (citing *Prosser and Keeton on Torts* 814 (W. Page
27 Keeton, ed.; 5th ed 1984)).
28

1 Context is vitally important in determining whether a reasonable person is likely to view a
2 statement as one of fact, or one of protected opinion or rhetorical hyperbole. The context of
3 Defendant's statements is Yelp, a well-known online forum for consumer reviews. The Internet is
4 the modern equivalent of the soapbox on the sidewalk, and web sites such as Yelp are the type of
5 public forum that is protected under the First Amendment. The public has become accustomed to
6 seeing fiery rhetoric on online fora, and courts recognize that this context makes it less likely that
7 a reader will interpret statements published in such places as actionable statements of fact. See
8 *Summit Bank v. Rogers*, 206 Cal. App. 4th 669, 696-97 (2012) (finding that readers of statements
9 posted in "Rants and Raves" section of Craigslist "should be predisposed to view them with a
10 certain amount of skepticism, and with an understanding that they will likely present one-sided
11 viewpoints rather than assertions of provable facts"); see also *Global Telemedia Internat., Inc. v.*
12 *John Doe 1*, 132 F. Supp. 2d 1261, 1267 (C.D. Cal 2001) (finding that internet postings "are full
13 of hyperbole, invective, short-handed phrases and language not generally found in fact-based
14 documents, such as corporate press releases or SEC filings"); *Krinsky v. Doe 6*, 159 Cal. App. 4th
15 1154, 1163 (2008) (stating that "online discussions may look more like a vehicle for emotional
16 catharsis than a forum for the rapid exchange of information and ideas").

17 The Plaintiff asserted at oral argument on October 12, 2020 that Defendant Korb's
18 statements about the Plaintiff, including calling him a "butcher" and a "sociopath" were
19 defamatory. These statements were all protected under the first amendment as rhetorical hyperbole
20 that cannot support a claim for defamation. Applying the three-factor test enumerated in *Flowers*
21 *v. Carville*, 112 F. Supp. 2d 1202, 1211 (D. Nev. 2000), Defendant's statements are protected
22 statements of emotional hyperbolic opinion. The average Yelp user would not read the statement
23 that Dr. Stile is a "butcher" or that he is a "sociopath" and take them at their literal meanings,
24 respectively. The review is much closer to the sort of online "rant" found in cases like *Roger* and
25 *Krinsky*. See *Krinsky*, 159 Cal. App. 4th at 1173, 1178 (finding that in a chat room setting,
26 anonymous post that corporate officers consisted of a "cockroach," "losers," "boobs," and
27 "crooks" were "crude, satirical hyperbole which ... constitute protected opinion"). The words
28 "butcher" and "sociopath" do not exist in a vacuum, and the Court recognizes that the average

1 reader will not interpret them in a vacuum. See *Fortson v. Colangelo*, 434 F. Supp. 2d 1369, 1384-
2 85 (S.D. Fla. 2006) (finding that people do not "read words in a vacuum," and concluding that
3 accusation of basketball player committing "attempted murder" on basketball court was rhetorical
4 hyperbole).

5 No reasonable person would disagree that the statement at issue is a statement of opinion
6 of Defendant, and a trial to determine whether Plaintiff is actually a butcher or a sociopath would
7 not change this conclusion. As explained in *Gertz*, the purpose of forums like Yelp is for some
8 negative reviews and some positive reviews to co-exist; this is how the First Amendment is
9 supposed to work.

10 Plaintiff has failed to provide *prima facie* evidence, as defined in the statute, of a
11 probability of prevailing on its claims. To the extent that a Special Motion to Dismiss under NRS
12 41.660 is treated as a motion for Summary Judgment, there is no genuine dispute as to any material
13 fact that the statements made by Defendant Korb in the Yelp!® review are protected opinions or
14 rhetorical hyperbole.

15 **D. Damages, Costs, and Attorney's Fees**

16 Pursuant to NRS 41.670(1)(a), a defendant that prevails on a Special Motion to Dismiss
17 under NRS 41.660 shall received a mandatory award of costs and reasonable attorney fees. NRS
18 41.670(1)(b) also provides for an award of statutory damages against a plaintiff of up to \$10,000.00
19 in order to deter Plaintiff and other similar plaintiffs from filing SLAPP suits in the future. These
20 costs, fees, and damages shall be determined by this court upon separate Memorandum of Fees,
21 Costs, and Damages which is due before the Court on or before October 26, 2020.

22 **III. CONCLUSION**

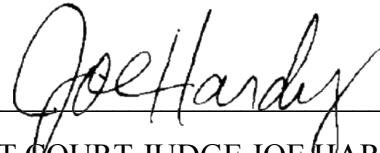
23 Accordingly, IT IS HEREBY ORDERED that Defendant's Motion is GRANTED. It is
24 ORDERED and ADJUDGED that all of Plaintiff's claims against Defendant Eva Korb are hereby
25 DISMISSED with prejudice.

26 It is FURTHER ORDERED that Defendant shall be awarded an amount of Statutory
27 Damages to be determined by this Court upon separate filing of a Memorandum of Fees, Costs,
28 and Damages pursuant to NRS 41.670(1)(b).

1 It is FURTHER ORDERED that Defendant is entitled to recover her costs and reasonable
2 attorney fees, and shall file a separate Memorandum of Fees, Costs, and Damages on or before
3 October 26, 2020 pursuant to NRS 41.670(1)(a).

4 Dated this _____ day of _____, 2020.

5 Dated this 3rd day of November, 2020

6 

7
8 DISTRICT COURT JUDGE JOE HARDY

9 Submitted by:

10 CONNELL LAW

C7B 75F 9C65 2B0C
Joe Hardy
District Court Judge

11
12 /s/ Christopher S. Connell

13 Christopher S. Connell, Esq.
14 Nevada Bar No. 12720
15 6671 Las Vegas Blvd., Suite 210
16 Las Vegas, NV 89119
Attorney for Defendant Eva Korb

17 Approved as to form and content:

18
19 _____
20 HOWARD & HOWARD
21 Martin A. Little, Esq.
22 William A. Gonzalez, Esq.
23 3800 Howard Hughes Parkway, Suite 1000
24 Las Vegas, NV 89169
Attorney for Plaintiffs

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Frank Stile, M.D., Plaintiff(s) CASE NO: A-19-807131-C
7 vs. DEPT. NO. Department 15
8 Eva Korb, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 11/3/2020

15 Christopher Connell	cconnell@connelllawlv.com
16 Martin Little	mal@h2law.com
17 Alexander Villamar	av@h2law.com
18 Anya Ruiz	ar@h2law.com
19 Jill Berghammer	jmb@h2law.com
20 Susan Owens	sao@h2law.com
21 Mary Rodriguez	mary@connelllaw.com
22 William Gonzales	wag@h2law.com
23 Brandy Sanderson	bsanderson@howardandhoward.com

24
25
26
27
28

August 31, 2020

Minutes Date: August 31, 2020

(4) a meritorious defense was not necessary; but, there was the potential for a meritorious defense; (5) Defendant would be prejudiced if the Default was not set aside; (6) Nevada law favors decisions based upon the merits; (7) the Defendant has shown that the Motion to Set Aside was filed soon after the Defendant learned of the Default; (8) the counter-request for attorney's fees and costs, was hereby DENIED for the reasons already set forth; and (9) the Defendant would have until September 14, 2020, to file a response to the Complaint. Mr. Connell to prepare the written Order, and forward it to Mr. Gonzales for approval as to form and content.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Intentional Misconduct**COURT MINUTES****October 12, 2020**

A-19-807131-C Frank Stile, M.D., Plaintiff(s)
 vs.
 Eva Korb, Defendant(s)

October 12, 2020 9:00 AM Motion to Dismiss

HEARD BY: Hardy, Joe **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Kristin Duncan

RECORDER: Matt Yarbrough

REPORTER:

PARTIES

PRESENT: Connell, Christopher S. Attorney
 Little, Martin A. Attorney

JOURNAL ENTRIES

- All parties present via Blue Jeans.

The Court noted that it reviewed the instant Motion, the Plaintiffs' Opposition, and the Defendant's Reply. Mr. Connell argued in support of the instant Motion, stating that Defendant Korb's review on Yelp was made on a public form, and was protected free speech. Additionally, Mr. Connell argued that a review was an opinion, and could not be defamatory, because there was no such thing as a false idea. Mr. Little argued in opposition, stating that the Court must accept as true, the evidence favorable to the Plaintiffs, and Plaintiffs were only required to show that their claims had minimal merit, in order to avoid dismissal. Additionally, Mr. Little argued that Defendant waited nine years after Dr. Stile performed her surgery, to post her Yelp review, which went to motive. COURT ORDERED Defendant's Anti-Slapp Special Motion to Dismiss Under NRS 41.660 and Counterclaims, was hereby GRANTED for all of the reasons set forth in the Motion and Reply, FINDING and ORDERING the following: (1) the Court considered the relevant statutes in making its ruling: NRS 41.635 through NRS 41.670, as well as Nevada's statutory Anti-Slapp scheme; NRS 41.637(4) defined a good faith communication; (2) there was no dispute, or no genuine dispute, that Yelp qualified as a public forum under NRS 41.637(4)'s definition; (3) Defendant's Yelp review was a communication

made in direct connection with an issue of public interest in a place open to the public or in a public forum; (4) the most significant piece of evidence was the actual posted review, which was attached to the instant Motion as exhibit 3; (5) the review contained opinions regarding the Defendant's treatment, and opinions regarding Dr. Stile and his work, and opinions could not be the subject of defamation claims; (6) the Court had to read Defendant Korb's review in its totality, which it did, and take into account the statements set forth in the review, rather than reading on phrase in a vacuum; (6) Plaintiffs focused on certain phrases in Defendant Korb's review, but even those phrases were Defendant Korb's opinions; (7) Plaintiffs rebutted Defendant's Korb's review, by posting a response on Yelp; the response posted by Plaintiffs was proper, and understandable, and that was where the issue should have ended; (8) Defendant Korb's review was a good faith communication, made without knowledge of falsehood; (9) the cases Plaintiffs cited in their briefs were all pre-Anti-SLAPP decisions, and were not persuasive in opposition; (10) Defendant Korb's review contained hyperbolic language, that Plaintiffs disagreed with; however, the review was clearly Defendant Korb's opinion; (11) the defamation complaint was subject to Anti-SLAPP statutes, and the Motion to Dismiss was appropriate, based upon the evidence; (12) the fact that Defendant Korb's review was posted nine years after her procedure, may very well go to motive; however, when dealing with opinions under the Anti-SLAPP statute, the timing was largely irrelevant; (13) the Motion to Dismiss having been granted, the Court shall award reasonable attorney's fees and costs pursuant to NRS 41.670(1)(a); however, as of the instant hearing, the Court lacked evidence regarding the reasonable attorney's fees and costs; and (14) SUPPLEMENTAL BRIEFING on the reasonable attorney's fees and costs was hereby ORDERED, as follows: (a) Defendant's supplemental brief shall be DUE BY October 26, 2020; (b) Plaintiffs' Response shall be DUE BY November 9, 2020; and (c) Defendant's Reply shall be DUE BY November 16, 2020.

COURT ORDERED a hearing regarding the attorney's fees and costs, was hereby SET.

Mr. Connell to prepare the written Order for the Motion to Dismiss, incorporating the facts and arguments set forth in the Motion and Reply, and forward to Mr. Little for approval as to form and content.

11/23/20 9:00 AM HEARING: ATTORNEY'S FEES AND COSTS PURSUANT TO NRS 41.670



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

MARTIN A. LITTLE, ESQ.
3800 HOWARD HUGHES PKWY, STE 1000
LAS VEGAS, NV 89169

DATE: December 3, 2020
CASE: A-19-807131-C

RE CASE: FRANK STILE, M.D.; FRANK STILE, M.D., P.C. vs. EVA KORB

NOTICE OF APPEAL FILED: December 2, 2020

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING DEFENDANT EVA KORB'S SPECIAL MOTION TO DISMISS UNDER NRS 41.660; NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT EVA KORB'S SPECIAL MOTION TO DISMISS UNDER NRS 41.660; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

FRANK STILE, M.D.; FRANK STILE, M.D.,
P.C.,

Plaintiff(s),

vs.

EVA KORB,

Defendant(s),

Case No: A-19-807131-C

Dept No: XV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 3 day of December 2020.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk