

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

vs.

EVA KORB, an individual,

Respondents.

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APPELLANTS' REPLY BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons or entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the Justices of this court may evaluate possible disqualification or recusal.

1. Dr. Frank Stile, M.D., is an individual.
2. Dr. Frank Stile M.D., P.C., is a Nevada professional corporation and has no parent company or publicly held company that owns ten percent or more of its stock.
3. Howard & Howard Attorneys PLLC represented Dr. Frank Stile, M.D. and Dr. Frank Stile M.D., P.C. before the district court.
4. Claggett & Sykes Law Firm represent Dr. Frank Stile, M.D. and Dr. Frank Stile M.D., P.C. before this court.

Dated this 5th day of January 2022.

CLAGGETT & SYKES LAW FIRM

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ARGUMENT

Korb argues that the district court correctly determined that she made her statements in good faith, thus allegedly satisfying her burden under the first prong of the anti-SLAPP special motion to dismiss burden-shifting scheme. RAB 8-13. In so doing, Korb misapprehends the standard of review on an anti-SLAPP special motion to dismiss, as the district court's findings of fact and conclusions of law are immaterial under de novo review. Instead, this court conducts an independent review of the record, which demonstrates that Korb did not make her statements in good faith and failed to meet her burden under the first prong of the anti-SLAPP special motion to dismiss burden-shifting scheme. Korb further confesses error, as she does not meaningfully respond to Dr. Stile's proffered Nevada caselaw regarding what constitutes a good faith statement. *Id.* at 12-13.

Korb also argues that Dr. Stile failed to demonstrate that his defamation claim has minimal merit under the second prong of the anti-SLAPP special motion to dismiss burden shifting scheme. *Id.* at 13-17. In so doing, Korb again misapprehends the standard of review, relying upon the district court's findings of fact and conclusions of law. *Id.*

Additionally, Korb erroneously contends that Nevada defamation caselaw predating NRS 41.660 does not apply and that Korb's statement was a non-actionable evaluative opinion. *Id.* at 13-15. Korb further misapprehends Dr. Stile's discussion of privileges in his opening brief. *Id.* at 15-16. Finally, Korb confesses error regarding Dr. Stile's presumed damages, as she again improperly relies upon the district court's findings rather than presenting caselaw in support of her appellate concerns. *Id.* at 16-17.

Given Korb's improper reliance upon the district court's findings of fact and conclusions of law in contravention of de novo review, and given Korb's failure to rebut Dr. Stile's proffered caselaw in support of his appellate concerns, Dr. Stile respectfully urges this court to reverse the district court's order granting Korb's anti-SLAPP special motion to dismiss and the corresponding order awarding her attorney fees and costs.

I. Korb misunderstands the standard of review on an anti-SLAPP special motion to dismiss

Korb devotes a substantial portion of her answering brief arguing that this court should affirm the district court's grant of her anti-SLAPP special motion to dismiss because substantial evidence supports

the district court's findings. *Id.* at 8-17. However, Korb misunderstands the standard of review on an anti-SLAPP special motion to dismiss. As it recently reminded the bar, this court conducts an independent review of the record when reviewing an anti-SLAPP special motion to dismiss. *Sirtos v. Yemenidjian*, 137 Nev., Adv. Op. 73, ___ P.3d ___, ___ (2021). In so doing, this court considers the pleadings, affidavits, and the evidence. *Coker v. Sassone*, 135 Nev., Adv. Op. 2, 432 P.3d 746, 749 (2019). This court does not weigh such evidence but accepts the “plaintiff’s submissions as true and [only] consider[s] . . . whether any contrary evidence from the defendant establishes [his or her] entitlement to prevail as a matter of law.” *Id.* (internal quotations omitted).

II. The record before this court demonstrates that Korb did not make her statements in good faith

To prevail under the first prong of the anti-SLAPP special motion to dismiss, the defendant must, “by a preponderance of the evidence,” NRS 41.660(3)(a), “that he or she made the protected communication in good faith,” *Rosen v. Tarkanian*, 135 Nev., Adv. Op. 59, 453 P.3d 1220, 1223 (2019). A communication is in good faith when it “is truthful” or the defendant made it “without knowledge of its falsehood.” NRS 41.637. In other words, the defendant must show that

“a preponderance of the evidence demonstrates that the gist of the story, or the portion of the story that carries the sting of the [statement], is true.” *Rosen*, 135 Nev., Adv. Op. 59, 453 P.3d at 1224 (alteration in original) (internal quotations omitted).

Here, the gist or sting of Korb’s Yelp! review was that Dr. Stile “botched a simple breast implant swap,” causing her “YEARS of pain, money, and issues with [her] implants.” 2 JA 172-73 (emphasis in original). In support of her anti-SLAPP special motion to dismiss, Korb provided, among other submissions,¹ a declaration stating that she made the at-issue post “[b]ased on the [2010] procedure, the results of the [2010] procedure, and the customer service” that Dr. Stile provided. 1 JA 117-18.

In opposition to Korb’s anti-SLAPP special motion to dismiss, Dr. Stile proffered the following evidence regarding the circumstances of the at-issue procedure: Korb was initially satisfied with her surgery, *id.* at 147-49; Korb missed her fourth follow-up appointment, *see id.* at 149,

¹Korb also submitted a *Mother Jones* article, the text of NRS 41.660 along with the Legislative Counsel’s Digest explaining the same, the at-issue statement along with Dr. Stile’s response, and a Yelp! page. 1 JA 97-115, 121-22.

151, 161; Korb disregarded Dr. Stile’s medical advice to only engage in “[a]ctivity as tolerated” by embarking on a nearly two-month vacation to Thailand and remote parts of Cambodia, *see id.*; Korb disregarded Dr. Stile’s medical advice while in Thailand and Cambodia, *see id.* at 153- 57; Korb underwent a surgical procedure in Thailand in which the Thai doctor inserted “the wrong implant of both size, shape and shell type,” *id.* at 163; Korb missed her first follow-up visit after Dr. Stile’s corrective procedure due to a trip to California, *id.* at 161; Korb was initially satisfied with Dr. Stile’s corrective procedure, *id.* at 161-63; Korb received assistance from Dr. Stile regarding her prospective cause of action against her Thai doctor, *id.* at 165-66; Dr. Stile provided Korb a free month’s supply of Singulair when she stated that she could not afford the prescription and would discontinue her recommended dosage, *id.* At 163; and that Korb filed a complaint against Dr. Stile with the Nevada State Board of Medical Examiners, which the board rejected, concluding that Dr. Stile “acted and performed appropriately under the circumstances,” *id.* at 170.

In her reply in support of her anti-SLAPP special motion to dismiss, Korb did not dispute Dr. Stile’s proffered facts. *See* 2 JA 178-79.

She also did not proffer any evidence demonstrating otherwise. *See id.* Instead, she flatly argued that she “is not a medical expert and her opinion [was] that of a layperson and [was] presented as such.” *Id.* at 179. In so doing, she suggested that her status as a layperson gave her license to omit crucial details regarding her complained-of damages, creating a greater and unwarranted defamatory sting for Dr. Stile and his business. *See id.* at 178-79. She proffered no caselaw in support of such a contention. *See id.* Accordingly, Korb did not rebut any of Dr. Stile’s proffered evidence.

Accepting Dr. Stile’s proffered evidence as true, as this court must given Korb’s failure to contest or rebut the same, *Coker*, 135 Nev., Adv. Op. 2, 432 P.3d at 749, Korb did not make her statements in good faith.² Korb’s Yelp! review clearly carries a greater defamatory gist or

²Alternatively, Korb relies upon *Abrams v. Sanson*, 136 Nev., Adv. Op. 9, 458 P.3d 1062 (2020), to argue that her Yelp! review constituted her opinion, which she cannot make with knowledge of falsity under the anti-SLAPP good faith analysis. RAB 9-10. Such reliance is misplaced. In *Abrams*, this court concluded that the gist or sting of the at-issue communications was that an attorney believed that another attorney “misbehave[d] in court an employ[ed] tactics that hinder[ed] public access to courts.” 136 Nev., Adv. Op. 9, 458 P.3d at 1069. There, the at-issue statements contained “visual recordings of actual court proceedings,” which allowed “average readers to evaluate the veracity of the statements based on their source.” *Id.* at 1068. Here, the gist or sting of

sting than what occurred. Thus, Korb's Yelp! review was not truthful. *See Rosen*, 135 Nev., Adv. Op. 59, 453 P.3d at 1223; NRS 41.637. Furthermore, Dr. Stile's proffered evidence demonstrates that Korb knew her Yelp! review was not an accurate representation of the circumstances causing her damages. Accordingly, the preponderance of the evidence before this court demonstrates that Korb did not make her Yelp! review in good faith and she therefore failed to meet her burden under the first prong of the anti-SLAPP special motion to dismiss burden-shifting scheme, rendering the district court's order granting the same erroneous.

Korb's Yelp! review was that Dr. Stile "botched a simple breast implant swap," causing her "YEARS of pain, money, and issues with [her] implants." 2 JA 172-73 (emphasis in original). Unlike *Abrams*, Korb did not supply readers with the factual circumstances giving rise to her Yelp! review. *See id.* Rather, she omitted material facts, creating a greater defamatory gist or sting for Dr. Stile than what occurred. Moreover, as this reply brief discusses in further detail, *see infra* Argument § III(A), Korb's Yelp! review constituted a "mixed type" statement, which this court defined as "opinions which gives rise to the inference that the source has based the opinion on underlying, undisclosed defamatory facts." *Nev. Indep. Broad. Corp. v. Allen*, 99 Nev. 404, 411, 664 P.2d 337, 342 (1983). Korb's reliance upon *People for the Ethical Treatment of Animals v. Bobby Berosini, Ltd.*, 111 Nev. 615, 895 P.2d 1269 (1995), *overruled on other grounds by City of Las Vegas Downtown Redevelopment Agency v. Hecht*, 113 Nev. 644, 650, 940 P.2d 134, 138 (1997), is similarly unavailing as her statement cannot be an evaluative opinion because she did not base it on true information that she disclosed to the public or that the public otherwise knew.

III. The record before this court demonstrates that Dr. Stile’s defamation claim has at least minimal merit

If the defendant satisfies his or her burden under the first prong of the anti-SLAPP burden-shifting framework, the plaintiff must “demonstrate with prima facie evidence a probability of prevailing on the claim.” NRS 41.660(3)(b). The plaintiff makes such a showing by demonstrating that his or her “claims have minimal merit.” *Smith v. Zilverberg*, 137 Nev., Adv. Op. 7, 481 P.3d 1222, 1229 (2021). “To prevail on a defamation claim, the plaintiff must show (1) a false and defamatory statement; (2) unprivileged publication to a third person; (3) fault; [and] (4) damages.” This court presumes damages where a “defamatory communication imputes a person’s lack of fitness for trade, business, or profession, or tends to injure the plaintiff in his or her business.” *Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 385, 213 P.3d 496, 503 (2009) (internal quotations omitted).

A. Korb’s Yelp! review was not a pure opinion, an evaluative opinion, or rhetorical hyperbole

Korb argues that Dr. Stile cannot demonstrate that his defamation claim has minimal merit because her Yelp! review was either a non-actionable opinion, an evaluative opinion, or rhetorical hyperbole. RAB 12-15. In so doing, Korb misapprehends the standard of review,

relying upon the district court's findings of fact rather than cogently arguing her appellate concerns to this court under de novo review. *Id.* Regardless, the record before this court and Nevada caselaw demonstrates that Korb's Yelp! review is actionable.

First, Korb's statement was not a pure or unactionable opinion. As the *Restatement (Second) of Torts* § 566, cmt. c (Am. Law. Inst. 1977) aptly recognizes

[a] simple expression of opinion based on disclosed or assumed nondefamatory facts is not itself sufficient for an action of defamation, no matter how unjustified and unreasonable the opinion may be or how derogatory it is. But an expression of opinion that is not based on disclosed or assumed facts and therefore implies that there are undisclosed facts on which the opinion is based, is treated differently. The difference lies in the effect upon the recipient of the communication. In the first case, the communication itself indicates to him that there is no defamatory factual statement. In the second, it does not, and if the recipient draws the reasonable conclusion that the derogatory opinion expressed in the comment must have been based on undisclosed defamatory facts, the defendant is subject to liability.

Thus, "[if] the defendant expresses a derogatory opinion without disclosing the facts on which it is based, he is subject to liability if the comment creates the reasonable inference that the opinion is justified by

the existence of unexpressed defamatory facts.” *Id.* This court has long recognized this distinction. *See Allen*, 99 Nev. at 410, 664 P.2d at 342.

Here, the gist or sting of Korb’s Yelp! review was that Dr. Stile “botched a simple breast implant swap,” causing her “YEARS of pain, money, and issues with [her] implants.” 2 JA 172-73 (emphasis in original). Korb did not disclose any of the material facts relating to the procedure, her failure to follow Dr. Stile’s medical advice, or her superseding procedure in Thailand during which the Thai doctor used the wrong breast implant. Thus, Korb’s Yelp! review creates a reasonable inference that she based her opinion on unexpressed defamatory facts. Given that Dr. Stile proffered evidence, which Korb did not rebut or contradict, demonstrating that the gist or sting of Korb’s Yelp! review was demonstrably false, Korb’s Yelp! review is, therefore, actionable under Nevada law.³ *Allen*, 99 Nev. at 411, 664 P.2d at 342.

³Korb’s averment that *Allen* is inapplicable to the instant matter because it predates NRS 41.660 is meritless. RAB 15. As this court has recognized, the Legislature enacted Nevada’s anti-SLAPP statutory scheme to quickly resolve “unmeritorious claims in an effort to protect citizens from costly retaliatory lawsuits arising from their right to free speech under both the Nevada and Federal Constitutions.” *John v. Douglas Cty. Sch. Dist.*, 125 Nev. 746, 755, 219 P.3d 1276, 1282 (2009), *superseded by statute on other grounds as stated in Shapiro v. Welt*, 133 Nev. 35, 37, 389 P.3d 262, 266 (2017). Thus, Nevada’s anti-SLAPP

Second, Korb's Yelp! review was not an evaluative opinion. As this court held, "[a]n evaluative opinion involves a value judgment based on true information disclosed to or known by the public." *Bobby Berosini, Ltd.*, 111 Nev. at 624, 895 P.2d at 1275, *overruled on other grounds by Hecht*, 113 Nev. at 650, 940 P.2d at 138. Thus, the defendants' opinions regarding animal abuse or cruelty in *Bobby Berosini* were evaluative opinions because all the parties watched the movie capturing the animal abuse or cruelty, which constituted a disclosure of the underlying information giving rise to the opinions. 111 Nev. at 625, 895 P.2d at 1275. Here, Korb did not disclose the underlying facts giving rise to her Yelp! review nor were the facts known by the public. *See* 2 JA 172-73. Accordingly, her Yelp! review was not an evaluative opinion under Nevada law and is actionable.

Third, Korb's Yelp! review was not rhetorical hyperbole. Korb seems to rely upon persuasive authority from federal courts to suggest

statutory scheme does not change or alter existing defamation law. Rather, the anti-SLAPP statutory scheme provides a mechanism through which defendants may assert their existing First Amendment rights before incurring substantial legal costs. That *Allen* predates NRS 41.660 has no impact on its relevance. Indeed, this court cited *Allen* in *Rosen*, which is one of the leading anti-SLAPP cases in Nevada. *See Rosen*, 135 Nev., Adv. Op. 59, 453 P.3d at 1228.

that her Yelp! review was nonactionable rhetorical hyperbole.⁴ RAB 14. The gravamen of Korb’s suggestion relies upon *Flowers v. Carville*, 112 F. Supp. 2d 1202 (D. Nev. 2000), *affirmed in part, reversed in part, vacated in part, and remanded by Flowers v. Carville*, 310 F.3d 1118, 1133 (9th Cir. 2002). There, the United States District Court for the District of Nevada concluded that an author’s statements in a book characterizing an allegation of misconduct against a politician running for reelection as “trash, crap, and garbage” were rhetorical hyperbole. *Flowers*, 112 F. Supp. 2d at 1211 (internal quotations omitted). In so doing, the court weighed three factors: “whether the general tenor of the entire work negates the impression that the defendant was asserting an objective fact; . . . whether the defendant used figurative or hyperbolic language that negates that impression; and . . . whether the statement in questions is susceptible of being proved true or false.” Clearly,

⁴Korb again misapprehends de novo review and relies upon the district court’s conclusions of law rather than cogently arguing this appellate concern to this court. RAB 14. Nonetheless, Dr. Stile addresses the district court’s relied-upon caselaw.

allegations are not actually trash, crap, or garbage. Thus, the court correctly concluded that such statements were rhetorical hyperbole.⁵ *Id.*

Application of the same factors here, however, yields a different result. Korb’s Yelp! review constitutes an assertion of objective fact which Dr. Stile may prove as false—that Dr. Stile “botched a simple breast implant swap,” causing Korb “YEARS of pain, money, and issues with [her] implants.” 2 JA 172-73. Indeed, the district court only noted 2 words that were hyperbolic out of a nearly 450-word Yelp! review. *See* 2 JA 261 (identifying butcher and sociopath as hyperbolic). The remainder of the Yelp! review, minus Korb’s legitimate expressions of

⁵The court additionally considered whether statements accusing the plaintiff of editing tapes to bolster her allegations of misconduct were defamatory. *Flowers*, 112 F. Supp. 2d at 1211-12. The court ultimately concluded such statements were opinions and not assertions of objective fact, rendering them unactionable. *Id.* at 1212. On appeal, the United States Court of Appeals for the Ninth Circuit assigned error to the lower court’s conclusion that statements accusing the plaintiff of editing tapes to bolster her allegations of misconduct were not actionable. *Flowers*, 310 F.3d at 1227-29. Indeed, the court noted that “the truth of the news reports on which defendants claim to have relied is disputed. Defendants’ accusations of tape-doctoring are therefore capable of defamatory meaning.” *Id.* at 1129. If allegations of tape-doctoring are actionable, Dr. Stile submits that allegations of botching a procedure are also actionable.

opinion,⁶ constitute assertions of objective fact that Dr. Stile may prove as false. *See* 2 JA 172-73 (alleging that Dr. Stile “botched a simple breast implant” and advised Korb to massage her scar tissue for over a year to run out the statute of limitations). Accordingly, this court may distinguish *Flowers* from the instant matter.

Alternatively, Korb seems to rely upon persuasive authority from California to suggest that her Yelp! review constituted an online rant, rendering it unactionable.⁷ RAB 14. However, both cases are inapposite to the instant matter. In *Summit Bank v. Rogers*, 142 Cal. Rptr. 3d 40, 59-63 (Ct. App. 2012), the court concluded that the defendant’s comments that he posted on Craigslist’s “Rants and Raves” message board were nonactionable opinions. Specifically, the court concluded that the defendant’s comments that the plaintiff bank was a

⁶Korb’s Yelp! review contains some expressions of pure opinion that are not actionable under Nevada law. However, Dr. Stile is not seeking redress for Korb’s statements of opinion. Rather, Dr. Stile seeks redress for Korb’s demonstrably false assertions of fact, which caused him presumed damages.

⁷Korb again misapprehends de novo review and relies upon the district court’s conclusions of law rather than cogently arguing this appellate concern to this court. RAB 14. Nonetheless, Dr. Stile addresses the district court’s relied-upon caselaw.

“problem bank,” that the CEO treated the bank as a personal bank, and that the bank left customers “high and dry” were rhetorical hyperbole that did not imply provably false factual assertions. *Id.* at 62-63. In *Krinsky v. Doe 6*, 72 Cal. Rptr. 3d 231, 248-50 (Ct. App. 2008), the court concluded that the defendant’s anonymous postings on a Yahoo! message board constituted “crude, satirical hyperbole,” “rude and childish posts,” and “intemperate, insulting, and often disgusting remarks” were nonactionable under Florida defamation law. Specifically, the defendant accused executives of a company of being mega scum bags, cockroaches, idiot longs, boobs, losers, and crooks. *Id.* at 248-49. Reviewing the anonymous posts as whole, the court concluded that “[n]o reasonable reader would have taken this post seriously; it obviously was intended as a means of ridiculing [the executives].” *Id.* at 249.

Here, unlike *Rogers* and *Krinsky*, Korb’s Yelp! review contained specific and defamatory assertions of fact that carry a greater defamatory gist or sting than what transpired regarding Korb’s complained-of damages. *See* 2 JA 172-73 (alleging that Dr. Stile “botched a simple breast implant,” advised Korb to massage her scar tissue for over a year to run out the statute of limitations, and did the same thing

to one of Korb's friends). Indeed, Korb's Yelp! review, unlike *Rogers* and *Krinsky*, contains a detailed description of her damages, contains few grammatical errors, and contains no profanity. *See id.* Also, unlike *Rogers* and *Krinsky*, Korb made her post to dissuade people from using Dr. Stile's medical services. *See id.* at 172. Accordingly, Korb's reliance, if any, upon *Rogers* and *Krinsky* is misplaced.

This court has long recognized that "separating factual statements from opinions . . . in defamation cases . . . is more easily stated than applied." *Allen*, 99 Nev. at 410, 664 P.2d at 342. In Nevada, the determinative question is "whether a reasonable person would be likely to understand the remark as an expression of the source's opinion or as a statement of existing fact." *Id.* "[W]here the statement is ambiguous, the issue must be left to the jury's determination." *Id.* Otherwise, "any statement of fact could be considered simply the opinion of its maker," and thus be unactionable. *Id.* at 411, 664 P.2d at 342. Here, a reasonable person would likely understand Korb's Yelp! review as a statement of existing fact. Indeed, Korb's Yelp! review provides a detailed, albeit distorted, narrative description about her complained-of damages. *See* 2 JA 172-73. Given the nature of her Yelp! review, Korb's

statement constituted a “mixed-type” statement and, under Nevada law, only a jury may determine whether it was defamatory. *Allen*, 99 Nev. at 410, 664 P.2d at 342.

B. Korb’s publication was not privileged, was knowingly false or made in reckless disregard of the truth, and caused Dr. Stile presumed damages

Korb misapprehends Dr. Stile’s argument regarding whether a privilege precludes defamation liability. *Compare* AOB 26-27 *with* RAB 15-16. Dr. Stile does not argue, nor could he, that Korb did not publish her Yelp! review in direct connection with an issue of public interest or concern. *See Abrams*, 136 Nev., Adv. Op. 9, 458 P.3d at 1066 (noting that the public has an interest in consumer reviews). Rather, he argues that Korb did not publish her Yelp! review in good faith such that she failed to meet her burden under the first prong of the anti-SLAPP special motion to dismiss burden-shifting scheme. Instead, Dr. Stile’s argument regarding privilege applied to the second prong of the anti-SLAPP special motion to dismiss burden-shifting scheme. *See Williams v. Lazer*, 137 Nev., Adv. Op. 44, 495 P.3d 93, 98-100 (2021) (applying common-law privileges against defamation to the second prong of the anti-SLAPP burden shifting scheme to determine if the plaintiff’s defamation claim had minimal merit). Given that Korb failed to rebut Dr. Stile’s argument

regarding the application of a privilege during the second prong of the anti-SLAPP special motion to dismiss burden-shifting scheme, Korb confessed error on this ground. *See Bates v. Chronister*, 100 Nev. 675, 682, 691 P.2d 865, 870 (1984) (treating a respondent's failure to address an appellant's argument as a confession of error).

Korb also confesses error regarding Dr. Stile's argument that prima facie evidence demonstrates that Korb made knowingly false statements or made her statements in reckless disregard of the truth. *Compare* AOB 27-28 *with* RAB 16. Korb presented no caselaw to refute Dr. Stile's argument and instead improperly relied upon the district court's factual findings, RAB 16, which are immaterial under de novo review, *see Coker*, 135 Nev., Adv. Op. 2, 432 P.3d at 749. Accordingly, Korb has failed to cogently argue or rebut Dr. Stile's argument and confessed error on this ground. *Bates*, 100 Nev. at 682, 691 P.2d at 870.

Korb also confesses error regarding Dr. Stile's argument that Korb's Yelp! review caused him presumed damages. *Compare* AOB 29 *with* RAB 16-17. Korb provides no caselaw to refute Dr. Stile's argument, nor could she as this court presumes damages where a "defamatory communication imputes a person's lack of fitness for trade, business, or

profession, or tends to injure the plaintiff in his or her business.” *Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 385, 213 P.3d 496, 503 (2009) (internal quotations omitted). Indeed, Korb’s Yelp! review tells prospective clients to not use Dr. Stile’s services and states that he is not competent to perform plastic surgery. 2 JA 172-73. Accordingly, Korb has failed to cogently argue or rebut Dr. Stile’s argument and confessed error on this ground. *Bates*, 100 Nev. at 682, 691 P.2d at 870.

In summation, Dr. Stile presented prima facie evidence that his defamation claim against Korb had at least minimal merit. Korb’s answering brief fails to rebut Dr. Stile’s proffered caselaw or otherwise confesses error on this ground. Accordingly, Dr. Stile met his burden under NRS 41.660(3)(b), rendering the district court order granting Korb’s anti-SLAPP special motion to dismiss erroneous.

IV. The district court’s award of attorney fees and costs was erroneous

Should this court agree with the foregoing analysis, Dr. Stile requests that this court vacate the district court’s award of attorney fees and costs under NRS 41.670. *See Loomis v. Lange Fin. Corp.*, 109 Nev.

1121, 1129, 865 P.2d 1161, 1166 (1993) (reversing an award of attorney fees upon reversing the district court order giving rise to the same).

CONCLUSION

Korb's answering brief demonstrates a profound misunderstanding of the anti-SLAPP special motion to dismiss burden-shifting scheme and the appropriate standard of review for the same. Thus, it fails to rebut Dr. Stile's arguments contained within his opening brief. The record before this court and the weight of authority clearly demonstrate that Korb did not make her statements in good faith. Thus, she failed to meet her burden under NRS 41.660(3)(a). Even if this court were to assume that Korb met her burden, the record before this court and the weight of authority clearly show that Dr. Stile demonstrated, with prima facie evidence, that his defamation claim has at least minimal merit.

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Accordingly, Dr. Stile respectfully requests that this court reverse the district court order granting Korb's anti-SLAPP special motion to dismiss, vacate the district court order awarding Korb attorney fees and costs, and remand the matter to the district court for further proceedings.

Dated this 5th day of January 2022.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Century Schoolbook font.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of brief exempted by NRAP 32(a)(7)(C), it is either:

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Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires a reference to the page and volume number, if any, of the transcript or appendix where this court may find the matter relied upon for every assertion in the brief.

I understand that I may be subject to sanctions if the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 5th day of January 2022.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **APPELLANTS' REPLY BRIEF** with the Supreme Court of Nevada on the 5th day of January 2022. I will electronically serve the foregoing document in accordance with the Master Service List as follows:

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