

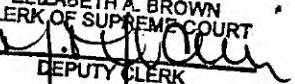
IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN LEE, INDIVIDUALLY; AND
RYANN JUDEN, INDIVIDUALLY,
Appellants,
vs.
QIONG LIU, AN INDIVIDUAL,
Respondent.

No. 84442

FILED

FEB 06 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER REVERSING AND REMANDING

This is an appeal from a district court order denying an anti-SLAPP special motion to dismiss. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.¹

Respondent Qiong Liu was the North Las Vegas City Manager. After the City Council terminated Liu's employment, Liu filed the underlying complaint against appellants, former North Las Vegas Mayor John Lee and Assistant City Manager Ryann Juden. Liu's complaint asserts claims for (1) tortious interference with employment relationship and economic advantage, (2) concert of action, and (3) civil conspiracy. The claims are based on allegations that Lee and Juden engaged in a campaign to force Liu out of her position as City Manager for their own benefit, including so that Juden could take over Liu's position, and that they accused Liu of wrongdoing and exaggerated the seriousness of Liu's mistakes or misunderstandings, thus triggering others to wrongfully believe Liu engaged in intentional misconduct, which was then used as grounds to terminate her employment without the benefit of a previously negotiated

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

agreement for her resignation. The district court denied Lee and Juden's anti-SLAPP motion to dismiss, finding that their alleged communications outside of City Council meetings were not subject to anti-SLAPP protection because they were not made in a public forum, and finding that they failed to meet their burden of showing that their statements were made in good faith. Lee and Juden appeal.

We review a district court's grant or denial of an anti-SLAPP motion to dismiss de novo. *Coker v. Sassone*, 135 Nev. 8, 11, 432 P.3d 746, 749 (2019). Evaluation of an anti-SLAPP motion to dismiss involves a two-step analysis. See NRS 41.660(3)(a)-(b). Only the first step of that analysis is at issue in this case. At step one, the court must "[d]etermine whether the moving party has established, by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of . . . the right to free speech in direct connection with an issue of public concern." NRS 41.660(3)(a). NRS 41.637 lists four types of communications that satisfy step one.

Lee and Juden argue the district court erred in applying NRS 41.637(1)-(4) when it denied their special motion to dismiss. We agree. First, the district court considered only the fourth type of communication listed in NRS 41.637, communications made in a public forum, without considering whether NRS 41.637(1)-(3) applied, as Lee and Juden argued in moving for dismissal under NRS 41.660. In this respect, we note that private conversations about an issue of public concern may be protected by the anti-SLAPP statutes. See *Averill v. Superior Court*, 50 Cal. Rptr. 2d 62, 64-65 (Ct. App. 1996) (considering question of whether "private conversations, regarding a public issue [are] protected under the [anti-SLAPP] statute" and concluding that allegedly slanderous private

conversations arose in the context of a public issue (location of a homeless shelter), such that they should be protected by the anti-SLAPP statute).² Second, the district court's order limits the good-faith inquiry to the allegations in the complaint. It thus appears the district court did not consider whether the evidence provided by Lee and Juden established that their communications were made in good faith. Attached to Lee's motion was evidence, including his sworn declaration stating that his communications with Liu in December 2017 and the following months were truthful and made to the best of his knowledge regarding her performance, proposed severance, misconduct, and termination. *See Stark v. Lackey*, 136 Nev. 38, 43, 458 P.3d 342, 347 (2020) (“[A]n affidavit stating that the defendant believed the communications to be truthful or made them without knowledge of their falsehood is sufficient to meet the defendant's burden absent contradictory evidence in the record.”). Attached to Juden's motion was evidence, including his declaration, that he never conspired with Lee to oust Liu as City Manager and that he only shared his concerns with Liu regarding her job performance during their meeting. *See Williams v. Lazer*, 137 Nev., Adv. Op. 44, 495 P.3d 93, 100 (2021) (holding that opinion statements are incapable of being false as there is no such thing as a false idea). From its findings, it does not appear that the district court properly considered this aspect of the evidence in evaluating whether Lee and Juden met the good faith element of NRS 41.637.³ *See Rosen v.*

²We look to California cases for guidance because of the similarities between California's and Nevada's anti-SLAPP statutes. *Coker v. Sassone*, 135 Nev. 8, 11, 432 P.3d 746, 749 (2019).

³We are not persuaded by Lee and Juden's argument that the district court applied an incorrect standard in analyzing the special motion to

Tarkanian, 135 Nev. 436, 439, 453 P.3d 1220, 1223 (observing that “[a] determination of good faith requires consideration of all of the evidence submitted by the defendant in support of his or her anti-SLAPP motion,” and such evidence may include a sworn statement asserting that the communications at issue were made in good faith).

In sum, because the district court’s analysis of whether Lee and Juden met their step-one burden is incomplete, we cannot affirm its decision and must remand for further analysis. On remand, the district court must determine whether Lee and Juden met their burden to show that the communications that are the focus of Liu’s complaint fall within the other three categories enumerated in NRS 41.637. If so, the district court must consider the totality of the parties’ submitted evidence when determining whether Lee and Juden met their preponderance burden to show that the challenged communications were truthful or made without knowledge of their falsehood (i.e., were in good faith).⁴ If the court concludes

dismiss. While the district court cited to NRCP 12(b)(5) in its conclusions of law, which does not apply here, and its analysis was incomplete, it recognized the appropriate preponderance of the evidence standard under NRS 41.660.

⁴Although NRS 41.660 requires the communication be made in “good faith,” that language does not exclude any particular claim for relief from its scope because its focus is on the defendants’ *activity*, not the form of the plaintiff’s claims for relief. *Cf. Navellier v. Sletten*, 52 P.3d 703, 711 (Cal. 2002) (discussing California anti-SLAPP statute that applies to an action “arising from” the defendant’s protected activity and observing that “[n]othing in the statute itself categorically excludes any particular type of action from its operation, and no court has ‘the power to rewrite the statute so as to make it conform to a presumed intention which is not expressed’”). Thus, even with the statute’s “good faith” requirement, the definitional focus remains on Lee’s and Juden’s activities, not the form of Liu’s claims

Lee and Juden met their burden, then it must move on to the second step under NRS 41.660(3)(b).

Accordingly, we

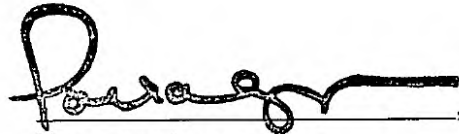
ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.



_____, J.
Herndon



_____, J.
Lee



_____, J.
Parraguirre

cc: Hon. Susan Johnson, District Judge
Stephen E. Haberfeld, Settlement Judge
Paola M. Armeni
McDonald Carano LLP/Las Vegas
Clark Hill PLLC
Jones Lovelock
Gilbert & England Law Office
Eighth District Court Clerk

(here, tortious interference with employment relationship and economic advantage, concert of action, and civil conspiracy).