

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF KANDIYOHI

EIGHTH JUDICIAL DISTRICT

Case Type: Civil

Steve Quest,

Case No.

Plaintiff,

34-CV-23-12

v.

**NOTICE AND MOTION
TO STRIKE AND FOR
ATTORNEY'S FEES AND COSTS**Nicholas Rekieta, *et al.*

Defendant.

TO: The Honorable Judge, and the above-named defendants and Defendants' attorneys.**NOTICE OF MOTION**

PLEASE TAKE NOTICE that the undersigned will bring the below Motion to Strike and for Attorney's Fees and Costs on for hearing before the Honorable Stephen Wentzell, at the Kandiyohi County District Court or by Zoom, at a time and date in the manner determined by the Court.

MOTION

Plaintiff, Steve Quest, moves for an order as follows:

1. Striking Defendants' "Notice of Motion and Motion for Expedited Relief to Dismiss Pursuant to Minnesota's Anti-SLAPP Law" pursuant to Minn. Stat. § 554.16 (2); and
2. Awarding Plaintiff his attorney's fees and costs arising from Defendants' anti-SLAPP motion as required by Minn. Stat. § 554.16 (2) in an amount to be established after Defendants' "Anti-SLAPP" motion is adjudicated or stricken; and

3. Determining that Plaintiff is entitled to recover his costs and fees pursuant to Minn. R. Civ. P. 16.06 arising from Defendants' failure to appear at the scheduling conference on June 18, 2025.

MEMORANDUM OF LAW

The Defense has undertaken to delay this case repeatedly. The most recent evidence of delay is that the defense has filed a renewed "Anti-SLAPP" motion ostensibly pursuant to Minnesota's recently enacted "Uniform Public Expression Protection Act," Minn. Stat. 554.07 *et seq.* While filing a motion might ordinarily seem innocuous enough, the facts of this case and the plain language of the statute Defendants purport to rely upon reveal a much more nefarious effort on the part of the Defense to engage in endless delay rather than to vindicate any legal rights. Specifically, Minnesota's new anti-SLAPP law is expressly not retroactive to "a cause of action asserted before May 25, 2024, in a civil action." Minn. Stat. § 554.19. One might therefore wonder why the Defense is raising its motion at all, in this case which was indisputably filed on January 11, 2023 (Index # 2). Indeed, even Plaintiff's Amended Complaint was filed on February 7, 2023 (Index # 23), which is well over a year prior to the effective date of the anti-SLAPP statute. Defendants fail entirely to address the plain statutory language in their anti-SLAPP motion, however, leaving both the Plaintiff and this Court with no understanding of what good faith basis allowed for it to be filed.

The transparent purpose of Defendants' motion is to delay this action and to sling additional mud at Defendant Steve Quest – whom the Defense accuses of everything from pedophilia to involvement in the JonBenet Ramsey murder (Index # 89) – all while shielded by the "absolute" or "litigation" privilege. *Cook v. Trimble*, No. A24-1486, 2025 Minn. App. LEXIS 137, at *9 (Ct.

App. May 5, 2025) (explaining the scope of the privilege, which protects litigants from being sued for defamation even when they make otherwise defamatory statements in pleadings).

And although the Defendants' motion will ultimately be denied on purely legal grounds because they seek the protections of a statute that is expressly not applicable to this Plaintiff's 2023 claim, the Defense will have effectively prevailed in derailing this case from an orderly adjudication anyway, even when their motion is inevitably denied. This is so because pursuant to Minn. Stat. 554.10, the Defendants have achieved an automatic and indefinite stay of these proceedings pending the resolution of their anti-SLAPP motion. The Court's scheduling order entered by consent just over two weeks ago (Index # 76) has now been rendered entirely useless, and no further proceedings or discovery can continue. Discovery which Defendants served on May 13, 2025 (Exhibit A), which would have been due for a response, was automatically stayed on the eve of the deadline because Defendants filed a facially improper motion on June 11, 2025 (Index # 88). This stay may very well extend for another year or more, because Defendants have also created for themselves an appeal as of right – with yet another automatic stay – under Minn. Stat. § 554.10 (c) and §554.15. This despite that Defendants' memoranda does not engage with, let alone make a compelling argument for the inapplicability of, the statute's express language which makes clear that it does not apply retroactively. Minn. Stat. 554.19.

But it gets worse. By consent, this Court ordered the parties to appear for a scheduling conference on June 18, 2025 (Index # 76-78). Naturally, the scheduling conference would have been the appropriate time to set a hearing on the Defendants' specious anti-SLAPP motion, since all other proceedings were indefinitely stayed merely by virtue of the fact that the anti-SLAPP motion had been filed. Indeed, as Defendants themselves pointed out, Minn. Stat. § 554.11 (a) requires this Court to set an expeditious hearing. But the defense did not bother to appear for the

scheduling conference in this matter on June 18, 2025. Plaintiff appeared, but was informed by the Court at that scheduling conference that Plaintiff cannot set a hearing date on a Defense motion without the participation of the Defense. Thus, this case remains indefinitely stayed, as the Defense has taken no efforts to set a hearing on their own motion, which is the only motion this Court has the statutory authority to address.

Against this backdrop, this Court should award the Plaintiff three forms of relief. First, the Court should strike the Defendants' anti-SLAPP Motion, because it is transparently barred by the plain language of Minn. Stat. 554.19. Second, the Court should award Plaintiff his fees and costs, because the anti-SLAPP motion was frivolous and filed for the purposes of delay within the meaning of Minn. Stat. § 554.16 (2). Third, because Defendants failed even to appear at the scheduling conference to set a hearing on their anti-SLAPP motion, Plaintiff should be awarded his fees and costs pursuant to Minn. R. Civ. P. 16.06.

1. The anti-SLAPP Motion Should be Stricken, Because this Claim Pre-Dates the Relevant Statutory Effective Date.

Minnesota's anti-SLAPP statute is clear. It specifically does "not affect a cause of action asserted before May 25, 2024, in a civil action..." Minn. Stat. § 554.19. It is undisputed that this claim was filed in 2023 (Index No. 3). One might naturally wonder how Defendants plan to get around this plain statutory language and apply Minnesota's new anti-SLAPP statute to this 2023 claim. Unfortunately, the Defendants' briefing does not even mention the statutory language, much less analyze it and express a compelling argument in favor of disregarding that language or interpreting it in some unique fashion that might favor Defendants.

Minnesota's old anti-SLAPP statute was declared unconstitutional as applied to tort claims in *Leiendecker v. Asian Women United of Minn.*, 895 N.W.2d 623, 635-36 (Minn. 2017). The recent Minnesota Court of Appeals decision in *Cook v. Trimble*, 2025 Minn. App. LEXIS 137 at *6, n.

3, explains that the old statute was fully repealed when Minnesota's new statute was enacted. *Id.*, citing Minn. Stat. § 554.01-06. And the new statute expressly does not apply to causes of action asserted prior to its passage. Minn. Stat. § 554.19. Thus, neither Minnesota's new anti-SLAPP statute nor its old anti-SLAPP statute apply to this claim. And by virtue of the Minnesota Court of Appeals decision in this case, *Quest v. Rekieta*, No. A23-1337, 2023 Minn. App. LEXIS 369 (Ct. App. Oct. 11, 2023), no other state's anti-SLAPP law applies either, and Minnesota law governs.

In short, Defendants have filed a motion citing to a statute that expressly does not apply to the Plaintiff's claims. Defendants' motion is therefore futile, and should be stricken. *Tappan v. Joslyn*, 180 Minn. 480, 481, 231 N.W. 224, 224 (1930) ("when a pleading is futile on its face as matter of law and therefore frivolous, or when by proper showing it is demonstrated to be false and therefore sham... it should be stricken."). This Court cannot apply the repealed version of Minnesota's anti-SLAPP statute, nor can it apply the current version which expressly does not apply to pre-2024 claims. The anti-SLAPP motion is facially futile as a matter of law.

2. Plaintiff Should be Awarded his Fees and Costs pursuant to Minn. Stat. §554.16 (2), because the anti-SLAPP motion is transparently frivolous and was filed for the purposes of delay.

Notwithstanding that Defendants' have filed an improper anti-SLAPP motion, the anti-SLAPP motion provides the Plaintiff a remedy for the costs he has incurred, as well as the delay to proceedings that Defendants have forced upon him and upon this Court. Specifically, Minn. Stat. 554.16 provides that "the court shall award court costs, reasonable attorney fees, and reasonable litigation expenses related to the motion... to the responding party if the responding party prevails on the motion and the court finds that the motion was frivolous or filed solely with intent to delay the proceeding." Here, the Plaintiff will necessarily be the prevailing party as a matter of law because the anti-SLAPP statute cited by the defense expressly does not apply to Plaintiff's claims.

Moreover, the Defendants' claims are necessarily frivolous because the Defendants have ignored and failed to even address in a cursory fashion the plain language of the statute under which they claim they are entitled to relief. And because the Defendants' motion was filed without any good faith basis and in contravention of the statute, especially in light of the surrounding circumstances illustrated above, it appears highly likely that Defendants' true purpose was to foment delay in this case that is already over two years old and has already been to the Minnesota Court of Appeals and back on one occasion.

This Court should hold that Plaintiff is entitled to his fees and costs, but should not reduce the amount of such fees and costs to an amount certain until the Defendants' motion has been fully adjudicated. In the interim, fees and costs will continue to accrue.

A) Attorney's Fees and Costs are Mandatory, not Discretionary.

The anti-SLAPP statute specifies that the Court "shall" award fees if certain preconditions are met. Minn. Stat. §554.16. The canons of statutory construction indicate that 'shall' is mandatory. ” *Creative Wealth Strategies, Inc. v. Hurd*, No. A15-0271, 2015 Minn. App. Unpub. LEXIS 887, at *10 (Aug. 31, 2015) (applying Minnesota's old anti-SLAPP statute, holding that “the District Court... had no choice but to award attorney's fees...”), citing Minn. Stat. § 645.44, subd. 16.

Under the anti-SLAPP statute the Defendants themselves invoke, attorney's fees and costs are mandatory for a prevailing party. Minn. Stat. § 554.16. If the Court rules in favor of the Plaintiff, therefore, the Plaintiff “shall” be entitled to his costs.

B) The Defense Motion is Frivolous.

The frivolous nature of the Defendants motion is facially apparent insofar as Defendants' entire argument relies upon the retroactive application of a statute which is by its own plain language not retroactive. This is an additional ground for Plaintiff to recoup his fees and costs under Minn. Stat.

§ 554.16 (2). Specifically, that statute entitles Plaintiff to reimbursement of his attorney's fees and costs if "the court finds that the motion was frivolous..." *Id.*

Defendants' "[c]ounsel has an affirmative duty to investigate the factual and legal underpinnings of a pleading and failure to do so results in the mandatory imposition of sanctions..." *Cole v. Star Tribune*, 581 N.W.2d 364, 370 (Minn. Ct. App. 1998), citing *Uselman v. Uselman*, 464 N.W.2d 130, 142 (Minn. 1990). A claim is frivolous if it "is without any reasonable basis in law or equity and could not be supported by a good faith argument" to reverse or modify existing law. *Maddox v. Dep't of Hum. Servs.*, 400 N.W.2d 136, 139 (Minn. App. 1987) (quotation omitted). Claims have expressly been found to be frivolous when attorneys have disregarded plain language to file arbitrable claims in district court, *Nerad v. Chalupa*, 2021 Minn. App. Unpub. LEXIS 394 (Minn. Ct. App. Apr. 26, 2021), and when attorneys disregarded the plain language of the applicable statute of limitations and filed a claim anyway. *Cole v. Star Tribune*, 581 N.W.2d 364, 370 (Minn. Ct. App. 1998).

The Defendants' anti-SLAPP motion is directly analogous to the pleadings at issue in *Cole* and *Nerad*. While the plaintiff's attorneys in *Cole* ignored a statute of limitations that was directly applicable to their claim and filed suit anyway, and the plaintiff's attorneys in *Nerad* ignored language which held that a claim should be adjudicated by way or arbitration rather than litigation, the Defendants in this case have directly ignored a plain statement in the anti-SLAPP statute upon which they rely that precludes its retroactive application. Defendants have filed a motion anyway, without even acknowledging the relevant statutory language, much less addressing it. Presumably, if Defendants were aware of any argument to the effect that the express terms of Minn. Stat. § 554.19, which proclaim that the entire anti-SLAPP act "do[es] not affect a cause of action asserted before May 25, 2024," should not bar the relief Defendants seek, they would have explained the

basis for a curious or novel interpretation of that statutory provision in their anti-SLAPP motion. But Defendants did not. Instead, they brazenly filed a motion which purports to apply to claims raised in 2023, despite the clear statutory language to the contrary.

The Court should hold that the Defendants' anti-SLAPP motion was and is objectively unreasonable and frivolous.

C) The Anti-SLAPP Motion was Filed to Cause Delay.

The Court need not hold that the Defendants' anti-SLAPP motion was filed for purposes of delay, because the language of Minn. Stat. 554.16 (2) uses the word "or" as a disjunctive, explaining that attorney's fees shall be awarded if a motion is frivolous *or* filed for purposes of delay. Courts "normally interpret 'or' as disjunctive, rather than conjunctive." *Broadway Child Care Ctr., Inc. v. Minn. Dep't of Human Servs.*, 955 N.W.2d 626, 634 (Minn. Ct. App. 2021), citing *Goldman v. Greenwood*, 748 N.W.2d 279, 283 (Minn. 2008). Despite that Plaintiff has no obligation to prove that the Defendants' anti-SLAPP motion was filed to cause delay, however, an impressive body of circumstantial evidence supports such a conclusion.

First, consider the timing of the Defendants' motion. After extensive delays while this case was appealed the first time and stayed on that basis while Defendants argued that Colorado law applied to this Minnesota case, discovery in this case reopened only recently. And on May 13, 2025, Plaintiff served his first Requests for Production of Documents on Defendant. Exhibit A. A response would have been due within 30 days – on June 12, 2025 – pursuant to Minn. R. Civ. P. 34.02 (c). But on June 11, 2025, Defendants instead filed an anti-SLAPP motion which resulted in an automatic statutory stay of discovery and all other proceedings. Defendants did so without offering any basis for a belief that their motion was proper, as noted above, due to the express non-retroactive language of Minnesota's anti-SLAPP statute, and then they failed to schedule their

motion for a hearing or even to appear at the scheduling conference which was set for June 18, 2025.

Second, there is the procedural history of this case. As Defendants themselves acknowledge, this is not their first anti-SLAPP rodeo. Instead, Defendants previously argued that this case should be dismissed based on Colorado's anti-SLAPP law, and they took their case to the Minnesota Court of Appeals after losing that previous motion. In *Quest v. Rekieta*, No. A23-1337, 2023 Minn. App. LEXIS 369 (Ct. App. Oct. 11, 2023), the Court of Appeals affirmed. But rather than continue the ordinary course of this litigation, Defendants elected to almost immediately file a successive anti-SLAPP motion upon remand, this time arguing (without any real explanation) that Minnesota's new anti-SLAPP law, which contains express statutory language to the effect that it is not retroactive, somehow is both retroactive and bars the Plaintiff's claims from being adjudicated. And of course, the Defendants took the shelter of yet another stay of these proceedings, during which this case cannot advance in any meaningful way.

Third, as noted more fully below, there is the fact that Defendants took no action to schedule their own anti-SLAPP motion for a hearing. After successfully imposing an automatic statutory stay on these proceedings which prevented this case from advancing in any way other than by an adjudication of the Defendants' anti-SLAPP motion, Defendants simultaneously failed to take any action which would allow the motion itself to be adjudicated, leaving this case in perpetual limbo. This despite that a scheduling hearing was put on the docket with the Defendants consent.

For the reasons set forth above, Plaintiff respectfully submits that Defendants' anti-SLAPP motion was filed for the sole purpose of delay.

3. Plaintiff Should be Awarded his Fees and Costs pursuant to Minn. R. Civ. P. 16.06 because no appearance was made by the defense at the scheduling conference in this matter on June 18, 2025.

By consent, a scheduling conference was set in this matter for the morning of June 18, 2025 (Index # 74-78). Plaintiff appeared; Defendant and his attorneys did not.

Minn. R. Civ. P. 16.06 provides that

“If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference...the court shall require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney fees, unless the court finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.”

Here, it is undisputed that the Defense did not appear at the scheduling conference on June 18, 2025. Exhibit B. Although the Defense offers their apologies, *id.*, the Defense's failure to appear at a conference which was scheduled with their consent and which was the only meaningful opportunity to advance this case due to the automatic statutory stay which the Defense successfully imposed on this case by filing a frivolous anti-SLAPP motion is hardly harmless. Indeed, the scheduling conference has now been re-set for August, 2025, and the case is effectively in limbo until the Defendants bring forward their own anti-SLAPP motion for a hearing.

Rule 16.06 provides a plain remedy: the Defense should pay the Plaintiff “the reasonable expenses incurred” as a result of the Defense's failure to appear at the scheduling conference. As indicated in the attached Declaration of Counsel, Plaintiff's attorney spent approximately 0.8 hours preparing for and attending the June 18, 2025 scheduling conference. That will result in a bill to Mr. Quest of approximately \$240, which Defendants should be ordered to pay.

Conclusion

For the reasons set forth above, the Court should grant the Plaintiff's motion(s) as set forth herein. Specifically, the Court should strike the Defendants anti-SLAPP motion as futile, and order Defendants to pay Plaintiff's reasonable attorney's fees and costs related to the anti-SLAPP motion after that motion is disposed of and such costs are finalized. Additionally, the Court should award Plaintiff \$240 as a result of the Defense's failure to appear at the June 18, 2025 scheduling conference.

Respectfully submitted this the 18th day of June, 2025,

/s/ Matthew Hardin

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