

A-21-837173-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

January 05, 2022

A-21-837173-C Pearadise, LLC, Plaintiff(s)
vs.
Kimberly Haueter, Defendant(s)

January 05, 2022 3:00 AM Minute Order

HEARD BY: Kierny, Carli **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Jill Chambers

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Pearadise LLC v. Haueter, A837173: This matter is before the Court on Defendants' Anti-SLAPP Special Motion to Dismiss Pursuant to NRS 41.660. After reviewing the motions, oppositions, and replies of the parties, as well as listening to oral argument on November 17, 2021, the Court finds as follows:

I. RELEVANT FACTS

Plaintiff is the founder of Pearadise, a relatively popular online forum celebrating big, beautiful women ("BBW"). The statements by Defendants in this case pertained to allegedly abusive behavior that Plaintiff engaged in within the BBW community. Plaintiff billed Pearadise as a safe space for BBW, and an outlet for his own passion for speaking up against bullying and discrimination against big girls. Pearadise is a little over a year old and had between 180,000- 210,000 followers at the time of the drafting of the Motion. Plaintiff was not a passive administrator for Pearadise; rather, he was engaged in almost all aspects of the online community, and even threw parties for members of the community at his home. He was well-known to the members of the Pearadise community, as he created and controlled the community itself.

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Defendants Brown and Javier visited Plaintiff's home between April 8, 2021 and April 19, 2021, and alleged that Plaintiff touched them without consent. Specifically, Defendant Brown alleged Plaintiff touched her waist, touched her shoulders, rubbed her stomach, and spanked her on the buttocks, all without her consent. Each time Brown told Plaintiff to stop. Defendant Javier alleged Plaintiff rubbed her stomach and took a picture of her and other women naked in the pool, both without consent. After leaving Plaintiff's home, Defendants Brown and Javier posted accounts of their experience. Defendant Brown classified Plaintiff's unwanted touchings as "sexual assault." Defendants Haueter and Sandu then put details of Brown and Javier's accounts on their own Tik Tok accounts. Defendant Haueter stated that Pearadise was not a safe space for BBWs, that Plaintiff was a predator, and that Plaintiff "sexually assaulted two women," though she did not name Brown and Javier. Defendant Sandu did not name Plaintiff in her posts, but did classify the unwanted touchings as "sexual assault."

Plaintiff then sued Defendants for these posts, alleged Defamation and Defamation Per Se, False Light Invasion of Privacy, Intentional Interference with Prospective Economic Advantage, Intentional Interference with Contractual Relations, Aiding and Abetting, and Conspiracy. Additionally, Plaintiff sought declaratory judgment and a preliminary injunction as a form of relief. The Court notes that several of these claims arise from Defendants' negative comments about Plaintiff derailing Plaintiff's chance at having a Pearadise reality show made.

II. LEGAL STANDARD

Nevada's anti-SLAPP statutes aim to protect First Amendment rights by providing defendants with a procedural mechanism to dismiss "meritless lawsuit that a party initiates primarily to chill a defendant's exercise of his or her First Amendment free speech rights" before incurring the costs of litigation. *Stubbs v. Strickland*, 297 P.3d 326, 329 (Nev. 2013). NRS 41.635 provides that if an action is brought against a person based upon a good faith communication in furtherance of the right to free speech in direct connection with an issue of public concern, the person against whom the action is brought may file a special motion to dismiss. The Court must evaluate an anti-SLAPP motion to dismiss using a two pronged approach. First, the moving party must establish by a preponderance of the evidence that the claim 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. Second, if the Defendant satisfies the first prong, the Court then must determine whether Plaintiff has demonstrated with prima facie evidence a probability of prevailing on the claims.

III. DEFENDANTS MET THEIR INITIAL BURDEN

The Court finds that Defendants have met their burden of establishing by a preponderance of the evidence that Plaintiff's claim is based on Defendants' good faith communications in furtherance of the right to free speech in direct connection with an issue of public concern.

A) Defendants' communications were directly connected with an issue of public concern
Nevada Courts define an issue of public interest broadly. *Coker v. Sassone*, 432 P.3d 746 (2019). In

Shapiro v. Welt, 389 P.3d 262, 268 (Nev. 2017), the Nevada Supreme Court identified the following guiding principles for determining what constitutes public interest for purposes of NRS 41.637(4): (1) public interest does not equate to mere curiosity, (2) a matter of public interest should be something of concern to a substantial number of people; a matter of concern to a speaker and a relatively small specific audience is not a matter of public interest; (3) there should be some degree of closeness between the challenged statements and the asserted public interest the assertion of a broad and amorphous public interest is not sufficient; (4) the focus of the speaker's conduct should be the public interest rather than a mere effort to gather ammunition for another round of private controversy; and (5) a person cannot turn otherwise private information into public interest simply by communicating it to a large number of people. Furthermore, the matter does not have to be of interest to a national audience, but could be of import to a niche group. See Smith v. Zilverberg, 481 P.3d 1222 (Nev. 2021) (bullying behavior of a well-known member of the "thrifting" community found to be issue of public interest).

The statements by Defendants in this case pertained to allegedly abusive and exploitative behavior that Plaintiff a public figure and therefore a person or entity in the public eye engaged in within the BBW community. The BBW community is a discrete but identifiable portion of the population, and therefore communications about the behavior of one of its most well-known members is of concern to a substantial number of people. The evidence indicates that Defendants' concern was letting other members of the BBW community know that Pearadise was not the safe space it claimed to be, but instead a way for Plaintiff to act out his own prurient interests. This information could affect the entire BBW community as a whole, as it would dispel the notion that Pearadise exists to protect BBWs from bullying and discrimination, and is instead a way for Plaintiff to sexually abuse BBWs. Defendants' communications did not equate with mere curiosity rather, they were warnings about the conduct of one of Pearadise's most prominent members, who was potentially exploiting the BBW community as a whole. This is something that would be of concern to all of the approximately 200,000 Pearadise members, as it questions the entire reason for Pearadise's existence. There is no evidence that any of the communications by any Defendants were made to fuel any personal controversy with Plaintiff; rather, it seems the communications were made entirely to educate the [Pearadise] public. Plaintiff's conduct was not "otherwise private." Overall, Defendants have demonstrated by a preponderance of the evidence that the communications at issue were made in direct connection with an issue of public concern.

B) Defendants' communications were made in a public forum

Nevada's anti-SLAPP statute requires that the communications giving rise to the suit must be made "in a place open to the public or in a public forum." NRS 41.637. Defendants' identified communications were all made on Tik Tok, which is freely accessible to anybody with internet access. These constitute public forums, a fact that isn't disputed by either party. It is clear that Defendants' communications were made in a public forum.

C) Defendants' communications were truthful or made without knowledge of falsity

Nevada's anti-SLAPP statute requires that a good faith communication is "truthful or made without

knowledge of its falsehood." The declarant must be unaware that the communication is false when it is made. Shapiro at 267. The Nevada Supreme Court has recognized that a statement of opinion cannot be made with knowing falsity for purposes of the good faith inquiry. *Abrams v. Sanson*, 458 P.3d 1062, 1068 (Nev. 2020). Statements of opinion cannot be made with knowledge of their falsehood because there is no such thing as a false idea. *Pegasus v. Reno Newspapers, Inc.*, 57 P.3d 82, 87 (Nev. 2002). However pernicious opinions may seem, courts depend on the competition of other ideas, rather than judges and juries, to correct them. *Id.* The Court must therefore ask "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.* at 715.

Defendants presented comprehensive information in the form of admissible evidence as required by EDCR 2.21, with supporting affidavits and exhibits, demonstrating that their communications were made in good faith. The affidavits included the bases for Defendants' beliefs in the veracity of their allegedly defamatory statements. Defendant Brown's affidavit demonstrated that she believed Plaintiff sexually assaulted her by touching her in a sexual manner without her consent, and that Plaintiff was a sexual predator. Defendant Javier's affidavit demonstrated that she believed Plaintiff sexually assaulted her by touching her in a sexual manner without her consent. Defendant Haueter's affidavit indicated she had no reason to doubt Brown and Javier's accounts, and firmly believed what they told her. Defendant Sandu's affidavit likewise indicated she had no reason to doubt Brown and Javier's accounts, and firmly believed what they told her. There is no evidence in the record to show that any of the Defendants made any statements that they knew were false when they made them. The Court also finds that the statements of the Defendants were statements of opinion. Defendants Brown and Javier felt as though they were sexually assaulted as a result of being non-consensually touched in a manner they believed was sexual, and they posted about it. Defendants Haueter and Sandu believed Brown and Javier's accounts, so they shared their own opinions.

Clearly, Plaintiff's conduct does not rise to the level of the crime of "sexual assault," as codified by NRS 200.366, as there was no sexual penetration of either Defendant Brown or Javier. If Plaintiff were charged with sexual assault under NRS 200.366 on this set of facts, the Court would certainly dismiss that complaint. However, that is of no import to this step of the analysis. The term "sexual assault" can be capable of alternate understandings. When the term is broken down, it includes any "assault" that is sexual in nature. Colloquially, an assault is used to describe unwanted contact. Therefore, any unwanted contact that has a sexual basis could be described as a sexual assault, and has been used in popular culture to describe acts that did not necessarily include sexual penetration. Defendants Brown and Javier believed that Plaintiff's actions were a sexual assault; that is, an unwanted touching that was sexual in nature. Therefore, they described their actions that way. The fact that Defendants were not sexually penetrated does not mean that their use of the term "sexual assault" to describe Plaintiff's actions was knowingly false. The Defendants' opinion was that Plaintiff's actions constituted a sexual assault, in the colloquial sense.

Overall, the record before this Court establishes by a preponderance of the evidence that all the statements identified by Plaintiff in his complaint as being false and defamatory were either true

statements of fact, made without knowledge of their falsehood, or were statements of opinion which were incapable of being false. Thus, Defendants have met their burden for this prong.

IV. PLAINTIFF FAILED TO DEMONSTRATE A PROBABILITY OF SUCCESS ON HIS CLAIMS

As Defendants have met their burden, the burden then shifted to Plaintiff to demonstrate with prima facie evidence a probability of prevailing on his claims. NRS 41.660(3)(b). Plaintiff failed to meet this burden, as he cannot show a probability of prevailing on his claims.

A) Defamation

To establish a cause of action for defamation, a plaintiff must allege: (1) a false and defamatory statement by the defendant concerning the plaintiff; (2) an unprivileged publication of this statement to a third person; (3) fault of the Defendant(s), amounting to at least negligence; and (4) actual or presumed damages. Pegasus at 78. Although Plaintiff has contested the veracity of some of Defendants' statements, Plaintiff has not provided prima facie evidence that Defendants knowingly made any false statements about him, or otherwise acted with malice.

First, Plaintiff would have to establish the Defendants made false and defamatory statements about him. Many of the allegedly defamatory statements are not actionable as they are true or statements of opinion, as discussed in the Pegasus case. Even if some statements are not opinion, Plaintiff cannot overcome the actual malice test as laid out by the U.S. Supreme Court in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). Plaintiff did not present evidence showing the Defendants made the statement knowing it was false, or with reckless disregard for the truth (i.e., acted with a high degree of awareness of the probable falsity of the statement or with serious doubts as to the publication's truth). Additionally, the Court notes that the evidence presented shows that Plaintiff and his community of Pearadise are limited purpose public figures. Plaintiff created and controlled Pearadise, a community of 200,000+ members in the BBW community, and held it out to be a safe space for BBW women. Plaintiff is clearly a public figure within his community. Therefore, he must establish fault of Defendants at a higher standard of clear and convincing evidence. He fails. Plaintiff did present proof to show that he did not commit criminal sexual assault under NRS 200.366. He also presented proof that could show that Brown and Javier did not act in the way he believed a victim of sexual assault would have acted, for whatever that is worth. But he presented no proof to show that Brown and Javier did not believe they were sexually assaulted when they were nonconsensually touched in a sexual manner, and certainly no proof that their statements were actually false or made with a reckless disregard for the truth. Additionally, there was no proof that Defendants Haueter and Sandu knew the statements were false, or recklessly disregarded the truth, when they echoed Brown and Javier's statements about Plaintiff. Having failed to meet the high burden necessary to show actual malice, Plaintiff cannot show the requisite likelihood of prevailing on his claim of Defamation.

B) False Light Invasion of Privacy

In Nevada, a false light claim arises where one "gives publicity to a matter concerning another that places the other before the public in a false light if (a) the false light in which the other was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in

reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed." *Franchise Tax Bd. of Cal. v. Hyatt*, 130 Nev. 662, 68 (2014). "The false light privacy action differs from a defamation action in that the injury in privacy actions is mental distress from having been exposed to public view, while the injury in defamation actions is damage to reputation." *Crabb v. Greenspun Media Grp., LLC*, 130 Nev. 1167 (2014) (quoting *Rinsley v. Brandt*, 700 F.2d 1304, 1307 (10th Cir. 1983). Here, Plaintiff has failed to put forth prima facie evidence showing a likelihood of success on this claim, because he has not shown Defendants acted with actual malice, just like in the Defamation claim.

C) Intentional Interference with Prospective Economic Advantage

Liability for the tort of intentional interference with prospective economic advantage requires proof of the following elements: (1) a prospective contractual relationship between the plaintiff and a third party; (2) knowledge by the defendant of the prospective relationship; (3) intent to harm the plaintiff by preventing the relationship; (4) the absence of privilege of justification by the defendant; and (5) actual harm to the plaintiff as a result of the defendant's conduct. *Leavitt v. Leisure Sports, Inc.*, 734 P.2d 1221, 1225 (Nev. 1987). The Court notes that the information presented regarding Plaintiff's potential reality show was highly speculative, and it would be hard to assign any actual harm to plaintiff as a result of the loss of the speculative show. However, the Court's real concern here is the fourth element, "the absence of privilege of justification by the Defendant(s)." The Court has previously found that the Defendants' statements are protected speech. Additionally, Plaintiff has not shown actual malice, as discussed previously, which would defeat this claim.

D) Intentional Interference with Contractual Relations

To prevail on a claim for intentional interference with contractual relations in Nevada, "a plaintiff must establish: (1) a valid and existing contract; (2) the defendant's knowledge of the contract; (3) intentional acts intended or designed to disrupt the contractual relationship; (4) actual disruption of the contract; and (5) resulting damage." *J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 274 (2003). Additionally, "the plaintiff must establish that the defendant had a motive to induce breach of the contract with the third party." *Id.* at 1268. Here, Plaintiff provided no proof that there was an actual disruption of the contract, so this claim has not been proven to the degree necessary to defeat the Motion to Dismiss.

E) Aiding and Abetting and Conspiracy

As the Court has determined there was not adequate information presented to establish any underlying tort, the aiding and abetting claim fails. Similarly, as the Court has determined that Defendants' statements and opinions were protected speech, there is no unlawful act that Defendants could have conspired to participate in. Therefore, these claims cannot be proven either.

V. CONCLUSION

Understandably, Plaintiff would like the case to continue so that he could flesh out his case in discovery. However, avoiding a protracted and costly discovery process is the very point of the anti-SLAPP law. Defendants established that Plaintiff's claim is based on Defendants' good faith

communications in furtherance of the right to free speech in direct connection with an issue of public concern. Plaintiff simply did not carry his burden for prong two, and the Defendants' Anti-SLAPP Special Motion to Dismiss Pursuant to NRS 41.660 is hereby GRANTED. Defendants are instructed to prepare the Order.

As a result, the Defendants are entitled to an award of reasonable costs and attorney's fees. The Court may also award an amount of up to \$10,000 to each Defendant. Defendants are directed to file a separate motion seeking fees, costs, and any statutory award (hereafter referred to as "Fees Motion"). The Court hereby sets the following briefing schedule for the Fees Motion to be filed by Defendants by 1/17/22, with two weeks thereafter for Plaintiff to file an Opposition by 1/31/22, and seven days for Defendants to file a Reply, by 2/7/22. A hearing is set for the Fees Motion on 2/16/22 at 9:30 AM.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Jill Chambers, to all registered parties for Odyssey File & Serve. jmc 1/5/22