NOT FOR PUBLICATION

FILED

APR 12 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HERBERT MOREIRA-BROWN, Plaintiff-Appellant, v. LAS VEGAS REVIEW JOURNAL INC.; CARRI GEER THEVENOT, Defendants-Appellees, and APRIL ADEMILUYI, Defendant.	No. 23-15143 D.C. No. 2:16-cv-02002-JAD-VCF MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Jennifer A. Dorsey, District Judge, Presiding

Submitted April 10, 2024**
Pasadena, California

Before: SILER,*** GOULD, and BEA, Circuit Judges.

---

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Eugene E. Siler, United States Circuit Judge for the U.S.

We consider here two lawsuits and a newspaper article. First came April Ademiluyi's lawsuit accusing Plaintiff Herbert Moreira-Brown and another man of raping her. Defendant Carri Greer Thevenot wrote an article about this lawsuit, which Defendant the Las Vegas Review-Journal published. Then Moreira-Brown filed suit, claiming that Defendants defamed him in the article. After the district court first dismissed Moreira-Brown's complaint in 2017, we remanded for reconsideration under Nevada's recently decided *Patin v. Lee* opinion, 429 P.3d 1248, 1251–52 (Nev. 2018). On remand, the district court again dismissed Moreira-Brown's complaint. He again appeals.

Moreira-Brown asks us to determine whether the district court properly granted Defendants' anti-SLAPP motion. It did. We have jurisdiction under 28 U.S.C. § 1291. We review the district court's dismissal de novo. *Herring Networks, Inc. v. Maddow*, 8 F.4th 1148, 1155 (9th Cir. 2021). Because the parties are familiar with the facts, we recite them only where necessary.

1. A strategic lawsuit against public participation—better known as a SLAPP lawsuit—is a meritless lawsuit that a plaintiff launches to chill a defendant's First Amendment freedom of speech. Nev. Rev. Stat. § 41.637. Nevada's anti-SLAPP law allows a defendant to file a special motion to dismiss a SLAPP lawsuit if she can show the plaintiff's claim targets a "good faith communication in

---

Court of Appeals for the Sixth Circuit, sitting by designation.

furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." Nev. Rev. Stat. § 41.660(1).

This anti-SLAPP motion is evaluated in two steps. In the first step, the defendant must show, by a preponderance of the evidence, that she made the protected communication in good faith. Nev. Rev. Stat. § 41.660(3)(a). To be made in good faith, the communication must fall into one of four listed categories—including, as relevant here, a communication regarding an issue of public interest, which is made in a public forum, and that is true or made without knowledge of falsity. Nev. Rev. Stat. § 41.637(4).

If the defendant meets this burden, the burden shifts to the plaintiff in step two. The plaintiff must show, with prima facie evidence, a probability of prevailing on his claim. Nev. Rev. Stat. § 41.660(3)(b).

We agree with the Nevada Supreme Court that the public generally has an interest in judicial proceedings, like the one discussed in Defendants' article. *Veterans in Pol. Int'l, Inc. v. Willick*, 457 P.3d 970, *5 (Nev. 2020). Because their article concerned the allegations in Ademiluyi's lawsuit, it concerned a matter of public interest.

The article was also made in a public forum, as it was authored for and distributed in a newspaper. *See Kosor v. Olympia Companies, LLC*, 478 P.3d 390,

395 (Nev. 2020). And the statements in the article were truthful because they accurately relayed the content of Ademiluyi's legal complaint. [1]

Moreira-Brown cannot bear his burden of showing a probability of success on the claim: because the article accurately reported Ademiluyi's allegations against Moreira-Brown, he cannot show falsity, let alone make a prima facie showing of defamation.

The district court properly granted Defendants' anti-SLAPP motion and dismissed Moreira-Brown's complaint without discovery or granting leave to amend.[2] *See* Nev. Rev. Stat. § 41.660. We therefore need not consider Moreira-Brown's claim regarding the fair reporting privilege.

2. Moreira-Brown argues that the district court erred by not considering emails attached to a complaint in a separate case. He raises this argument for the first time on appeal. Absent exceptional circumstances, we do not consider arguments raised for the first time on appeal. *See AMA Multimedia, LLC v. Walmart*, 970 F.3d 1201, 1214 (9th Cir. 2020) (listing the exceptional circumstances). This is

---

[1] Moreira-Brown also complains that the article "referred to false allegations against [him], although no criminal chargers [sic] had ever been filed against him by a Bronx County Grand Jury [which] had voted No True Bill in 1998." Yet Defendants' article makes clear that "a grand jury . . . declined to indict [Moreira-Brown]."

[2] Moreira-Brown did not seek discovery under Nev. Rev. Stat. § 41.660(4) ("Upon a showing by a party that information necessary to meet or oppose the [plaintiff's] burden . . . the court shall allow limited discovery for the purpose of ascertaining such information.").

not an exceptional circumstance. We therefore decline to consider Moreira-Brown's forfeited argument.

The district court did not err by ordering Defendants to file a renewed motion to dismiss. When we considered Moreira-Brown's first appeal from his dismissal in 2017, we partially remanded the judgment "so the district court [could] consider *Patin* in the first instance." *Moreira-Brown v. Las Vegas Rev. J. Inc.,* 754 F. App'x 655, 656 (9th Cir. 2019) (citing *Patin*, 429 P.3d at 1251-52). The district court complied with our instruction and ordered Defendants "to file a renewed motion to dismiss that addresses the impact, if any, of the *Patin* decision." That was not error, but compliance with our mandate.

AFFIRMED.