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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

LUBA SNOW DACE, Plaintiff, v. MELVIN GRIMES, BENJAMIN CHILDS, LAW OFFICE OF BENJAMIN B. CHILDS, ROBERTS STOFFEL FAMILY LAW, Defendants.	Case No.: A-25-922833-C Dept. No.: 29 **PLAINTIFF'S REPLY IN SUPPORT OF TOLLING MOTION FOR RECONSIDERATION OF ORDER GRANTING GRIMES DEFENDANTS' SPECIAL MOTION TO DISMISS UNDER NRS 41.660** HEARING NOT REQUESTED

COMES NOW Plaintiff, LUBA SNOW DACE, in proper person, and hereby submits this Reply in Support of her Tolling Motion for Reconsideration of the Court's Findings of Fact, Conclusions of Law, and Order filed on September 29, 2025 (the "FFCL" or "Order"), which granted the Grimes Defendants' Special Motion to Dismiss under NRS 41.660.

This Reply is limited to issues raised in the Grimes Defendants' Opposition and demonstrates that reconsideration is warranted under NRCP 59(e) and EDCR 2.24(b) because the Order (1) does not accurately reflect what the Court actually decided, (2) misapplies the required two-step

anti-SLAPP analysis, and (3) relies on defenses that cannot, on the present record, support an anti-SLAPP dismissal with prejudice and potential sanctions.

I. LEGAL STANDARD

The Grimes Defendants correctly acknowledge that reconsideration is appropriate where the decision is clearly erroneous or results in manifest injustice. They do not, however, meaningfully address Plaintiff's showing that the FFCL contains findings the Court never announced and resolves legal and factual issues that were never actually adjudicated at the hearing.

NRCP 59(e) permits a motion to alter or amend a judgment where the Court has misapprehended the facts, misapplied controlling law, or entered an order that does not conform to its actual rulings. EDCR 2.24(b) similarly authorizes reconsideration when the Court has overlooked or misapprehended law or fact. Plaintiff's motion squarely fits within these grounds.

This Reply focuses on four core points:

1. The FFCL does not conform to the Court's actual rulings and goes well beyond anything stated on the record.
2. The Grimes Defendants failed to carry their initial burden under anti-SLAPP prong one, particularly in light of the sealed status of the underlying custody case and the alleged ex parte conduct.
3. Even if prong one were satisfied, Plaintiff made a prima facie showing under prong two, and the asserted defenses (limitations, double recovery, issue preclusion, and litigation privilege) cannot be resolved in Defendants' favor on this record.
4. Dismissal with prejudice and the imposition of anti-SLAPP consequences are therefore clear error and manifestly unjust.

II. THE WRITTEN ORDER MUST CONFORM TO THE COURT'S ACTUAL DECISION

Defendants rely heavily on authority stating that written findings, not oral pronouncements, control for purposes of appeal. Plaintiff does not dispute that principle in the abstract. The problem here is different: the FFCL contains "findings" and legal conclusions that the Court never actually made, including:

- Findings that the Grimes declaration "satisfies prong one" of NRS 41.660;
- Findings that Plaintiff's suit was brought "to quell Defendants' speech";
- Determinations that all claims are barred by statutes of limitation, double recovery, and issue preclusion;
- Broad application of litigation privilege to undisputedly off-record communications; and
- A dismissal "with prejudice" and on the merits for purposes of anti-SLAPP, including exposure to fees and statutory sanctions.

None of these determinations were announced at the hearing, and the Court did not walk through the required two-step anti-SLAPP analysis. Orders must reflect the Court's actual rulings, not new determinations first appearing in a proposed order.

Defendants' reliance on Rust and similar cases is misplaced. Those authorities do not authorize a prevailing party to draft an order that expands the ruling beyond what the Court decided, nor do they insulate such an order from reconsideration. To the contrary, where the written order does not accurately reflect the Court's decision, reconsideration is a proper vehicle to correct the record and avoid manifest injustice.

Plaintiff's email correspondence and objections to the proposed FFCL put Defendants on notice that she disputed the inclusion of prong-one/prong-two determinations, merits defenses, and with-prejudice language that were never ruled upon at the hearing. The Court retains full authority under NRCP 59(e) and EDCR 2.24(b) to correct those errors.

III. DEFENDANTS DID NOT SATISFY ANTI-SLAPP PRONG ONE

A. The Claims Target Ex Parte Misuse of Process, Not Routine Court Filings

Under NRS 41.660(3)(a), Defendants bear the burden of showing, by a preponderance of the evidence, that Plaintiff's claims are based on a "good-faith communication" as defined in NRS 41.637.

Plaintiff's motion and Complaint make clear that the gravamen of her claims is not ordinary advocacy in open court, but alleged ex parte messages and off-record communications between defense counsel and the family-court judge, coupled with misrepresentations about the bankruptcy stay and about supposed stipulations. Those alleged ex parte communications:

- Were not docketed or made on the record;
- Were not subject to contemporaneous adversarial testing; and
- Were used, according to Plaintiff's allegations, to obtain orders that circumvented the federal automatic stay and distorted the custody proceedings.

In their Opposition, the Grimes Defendants attempt to recast the challenged conduct as routine ex parte applications filed under EDCR 5.520 and rely on the fact that counsel submitted sworn declarations. But their declaration speaks only to the fact that certain motions were filed; it does not address, let alone negate, Plaintiff's allegations of undisclosed phone calls, messages, and misrepresentations to the Court. An affidavit that does not address the specific wrongful conduct alleged cannot satisfy prong one.

B. Ex Parte Communications and Misrepresentations Are Not "Good-Faith Communications"

NRS 41.637 requires that the communication be true or made without knowledge of falsity. Alleged ex parte contacts and misrepresentations to a judge about jurisdiction, the status of a federal bankruptcy stay, or the existence of stipulations, are quintessential examples of communications that fall outside "good faith." At a minimum, Plaintiff has alleged facts from

which a reasonable fact-finder could conclude that the conduct was not truthful and not undertaken in good faith. That is sufficient to defeat prong one.

C. The Sealed Status of the Underlying Custody Case Undermines Any "Public Concern" Argument

Defendants also invoke "public concern," relying on *Falconi* to argue that custody cases are matters of public interest because family-court proceedings are "presumptively open." That argument ignores the actual posture of this case.

At the time of the alleged communications, the underlying custody action was sealed by order of the family court. Members of the public could not attend the hearings, and the filings were not generally accessible. The court itself determined that the privacy interests of the family and minor child outweighed any presumption of openness.

Defendants cannot have it both ways: they cannot litigate in a sealed case and then retroactively claim their conduct was "speech on an issue of public concern" in a "place open to the public." The sealed status of the proceedings confirms that this was a private family dispute, not a public controversy of the type the anti-SLAPP statute was designed to protect.

Falconi addresses the constitutional right of public access and the standard for closing proceedings. It does not hold that every private custody dispute, and certainly not one that is actually sealed, automatically becomes an "issue of public concern" within the meaning of NRS 41.637. Expanding anti-SLAPP in that manner would effectively convert every statement in every civil case into protected "public-concern" speech, which is not what the statute contemplates.

D. Anti-SLAPP Is Meant to Protect Open Public Participation, Not Secret Use of Sealed Proceedings

Anti-SLAPP protections are strongest when aimed at open, transparent participation in matters of public governance—public criticism of government, testimony in open hearings, consumer

warnings, and similar conduct. By contrast, Plaintiff alleges that the Grimes Defendants used ex parte channels within a sealed proceeding to evade federal protections and manipulate state-court outcomes.

Shielding that type of conduct behind anti-SLAPP would invert the statute's purpose. Where the alleged speech is secret, inaccessible to the public, and used to undermine due process rather than to contribute to public debate, Defendants have not carried their burden under prong one.

IV. PLAINTIFF SATISFIED ANTI-SLAPP PRONG TWO; DEFENSES CANNOT BE RESOLVED AGAINST HER AT THIS STAGE

Even if the Court were to find prong one satisfied (which Plaintiff disputes), the inquiry does not end there. Under NRS 41.660(3)(b), the Court must determine whether Plaintiff made a prima facie showing of a probability of prevailing on her claims.

The Order, as drafted, effectively bypasses this prong and instead disposes of Plaintiff's claims based on statute of limitations, double recovery, issue preclusion, and litigation privilege. On the present record, none of those defenses defeats Plaintiff's prima facie showing as a matter of law.

A. Accrual and the Discovery Rule Present Fact Questions

Plaintiff has alleged that she did not discover the existence and nature of the ex parte communications and related abuses of process until July 2024, when she obtained and reviewed transcripts and testimony revealing off-record contacts and misrepresentations.

Defendants argue that limitations began running in December 2021 or March 2023 based on Plaintiff's attempts to set aside orders and her possession of certain transcripts. That argument presumes facts and inferences in Defendants' favor and ignores Plaintiff's allegations regarding what she knew—and what she reasonably could have known—about undisclosed ex parte contacts and the full scope of the misconduct.

Under Nevada's discovery rule, when a plaintiff knew or reasonably should have known of the facts constituting the wrongful conduct is a fact-intensive inquiry that generally cannot be resolved against the plaintiff as a matter of law at an early, paper-only stage—particularly where the plaintiff has submitted contrary evidence.

At prong two, the Court must credit Plaintiff's evidence and reasonable inferences in her favor. Conflicting inferences about accrual dates and discovery do not warrant anti-SLAPP dismissal.

B. Ongoing Misuse of Process Extends Into the Limitations Period

Defendants' limitations analysis also assumes that only the 2021 ex parte filings are at issue. Plaintiff's allegations, however, describe an ongoing pattern of misuse of the court process extending into 2023 and 2024, including:

- Orchestrating testimony and orders in the custody litigation;
- Misrepresenting the status of the bankruptcy stay; and
- Continuing to exploit off-record communications and sealed proceedings to obtain adverse rulings.

Even if some early conduct were ultimately deemed time-barred, that would not extinguish Plaintiff's claims based on later conduct well within any applicable limitations period. Those later acts independently support her causes of action. Dismissing the entire case with prejudice at the anti-SLAPP stage based on contested limitations arguments is clear error.

C. Double Recovery and Issue Preclusion Are Not Established on This Record

The Opposition contends that Plaintiff was "made whole" in bankruptcy and that doctrines of double recovery and issue preclusion bar her claims. Those arguments mischaracterize both the scope of the bankruptcy proceedings and the claims asserted here.

The bankruptcy court addressed violations of the automatic stay by parties then before it and awarded relief tied to those violations. It did not purport to adjudicate state-law tort claims for

civil conspiracy, abuse of process, or related misconduct stemming from later custody-case proceedings, including alleged ex parte communications in sealed state-court hearings.

Issue preclusion requires, among other things, identity of issues, actual litigation, and necessity to the prior judgment. Defendants have not shown that any court actually decided—and necessarily resolved in their favor—whether the alleged ex parte communications occurred, whether they constituted abuse of process, or whether Plaintiff suffered distinct injuries in the custody litigation as a result. Those questions are fact-intensive and disputed; they cannot be resolved adversely to Plaintiff at the anti-SLAPP stage.

D. Litigation Privilege Does Not Clearly Apply to the Alleged Conduct

Finally, Defendants invoke Nevada's broad litigation privilege. Plaintiff has already acknowledged that the privilege protects legitimate advocacy undertaken "to achieve the objects of the litigation." But there are limits. Conduct that undermines jurisdiction, ignores federal stays, or bypasses adversarial process through secret communications with the judge is not obviously "to achieve the objects of the litigation" in any proper sense.

At a minimum, Plaintiff has alleged facts from which a reasonable fact-finder could conclude that the challenged ex parte communications and misrepresentations were outside the scope of legitimate advocacy. At prong two, Plaintiff need only show that her claims have at least minimal merit. Defendants' invocation of litigation privilege does not, on this record, defeat that showing as a matter of law.

V. DISMISSAL WITH PREJUDICE AND ANTI-SLAPP CONSEQUENCES ARE CLEAR ERROR

Defendants argue that because NRS 41.660 refers to an "adjudication on the merits," any anti-SLAPP dismissal must be with prejudice and operates as a final judgment. But that presupposes that the statutory prerequisites were actually satisfied. Here, they were not.

As set forth above:

- The Court did not conduct a proper two-step anti-SLAPP analysis on the record.
- Defendants did not carry their burden under prong one, especially in light of the sealed status of the case and the nature of the alleged ex parte conduct.
- Plaintiff made a prima facie showing under prong two, and the defenses relied upon in the FFCL cannot be resolved against her as a matter of law at this stage.

Where the threshold anti-SLAPP analysis was misapplied and the written order does not conform to the Court's actual rulings, a dismissal with prejudice, coupled with exposure to anti-SLAPP fees and statutory sanctions, is both legally erroneous and manifestly unjust. Reconsideration is therefore appropriate to correct the error and prevent undue prejudice.

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VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant her Tolling Motion for Reconsideration and:

1. Vacate or amend the September 29, 2025 FFCL to conform strictly to the Court's actual rulings;
2. Conclude that the Grimes Defendants failed to meet their burden under NRS 41.660(3)(a), and deny their Special Motion to Dismiss; or, at minimum,
3. Conduct a proper two-step anti-SLAPP analysis that (a) accounts for the sealed status of the underlying custody case and (b) credits Plaintiff's evidence and allegations at prong two;
4. Strike or withdraw the "with prejudice" language and any anti-SLAPP-based fee or sanction determinations under NRS 41.670; and
5. Grant such other and further relief as the Court deems just and proper.

DATED this 21st day of November 2025.

Respectfully submitted,

LUBA SNOW DACE
Plaintiff in Proper Person
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