SUMMARY
May 30, 2024

2024COA61

No. 23CA0458, VOA Sunset v. D'Angelo — Courts and Court Procedure — Action Involving Exercise of Constitutional Rights — Anti-SLAPP — County Court — Forcible Entry and Detainer; Appeals — Court of Appeals — Jurisdiction

As matters of first impression, a division of the court of appeals resolves several issues arising under the state's statute governing the early dismissal of strategic lawsuits against public participation, commonly known as the anti-SLAPP statute. *See* § 13-20-1101, C.R.S. 2023.

First, the division determines that the anti-SLAPP statute applies to actions in county court. Thus, special motions to dismiss under the statute may be filed in and resolved by county courts.

Second, the division determines that the anti-SLAPP statute applies to forcible entry and detainer actions, as long as the actions

arise from protected speech or petitioning in connection with a public issue.

Third, the division determines that all appeals from rulings on special motions to dismiss — even those coming from county court — are to be filed in the court of appeals.

Fourth, the division determines that the anti-SLAPP statute is not confined to defamation and related tort claims but, rather, applies to any type of claim that arises from protected speech or petitioning in connection with a public issue.

Finally, reaching the merits of the appeal, the division concludes that the county court erred in its assessment of the special motion to dismiss. Accordingly, the division reverses the county court's order denying the motion and remands the case with directions.

COLORADO COURT OF APPEALS **2024COA61**

Court of Appeals No. 23CA0458
City and County of Denver County Court No. 23C53008
Honorable Reneé A. Goble, Judge

VOA Sunset Housing LP,

Plaintiff-Appellee,

v.

Scott D'Angelo,

Defendant-Appellant.

ORDER REVERSED AND CASE REMANDED WITH DIRECTIONS

Division I
Opinion by JUDGE GOMEZ
J. Jones and Harris, JJ., concur

Announced May 30, 2024

Tschetter Sulzer, P.C., Christopher R. Cunningham, Denver, Colorado, for Plaintiff-Appellee

CED Law, Spencer Bailey, Denver, Colorado, for Defendant-Appellant

¶ 1 This case exposes a procedural quandary created by our state statute governing the early dismissal of strategic lawsuits against public participation (SLAPP), commonly known as the anti-SLAPP statute. The statute establishes procedures for resolving special motions to dismiss early in a case, allowing courts to dismiss a "cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States constitution or the state constitution in connection with a public issue" unless the court determines that the plaintiff has established a reasonable likelihood of prevailing on the claim. § 13-20-1101(3)(a), C.R.S. 2023. It also allows for the immediate appeal of orders granting or denying such special motions to dismiss. § 13-20-1101(7).

¶ 2 The anti-SLAPP statute provides that orders granting or denying special motions to dismiss are "appealable to the Colorado court of appeals." § 13-20-1101(7); *see also* § 13-4-102.2, C.R.S. 2023 (conferring on the court of appeals "initial jurisdiction over appeals from motions" brought under the anti-SLAPP statute). That makes sense when the order being appealed comes from a district court. After all, this court regularly reviews rulings issued by

district courts. *See* § 13-4-102(1), C.R.S. 2023 (conferring on the court of appeals initial jurisdiction over, among other things, "appeals from final judgments of . . . the district courts," with limited exceptions).

¶ 3 But this case comes to us from a county court. Ordinarily, rulings issued by county courts never reach this court; instead, they are subject to review by district courts and to certiorari review by the supreme court. *See* § 13-6-310(1), (4), C.R.S. 2023. In fact, we haven't been able to identify any other context in which a county court ruling is even reviewable by this court, outside of a C.R.C.P. 106 proceeding filed in a district court to challenge a county court's action and then appealed to this court. *See, e.g.*, *Gonzales v. Cnty. Ct.*, 2020 COA 104, ¶ 15. But the anti-SLAPP statute doesn't preclude special motions to dismiss from being filed in county courts, and it expressly provides that the route for appealing a ruling on such a motion is to this court.

¶ 4 Why is this a problem? This case demonstrates why.

¶ 5 The underlying proceeding is a forcible entry and detainer (FED) action brought by VOA Sunset Housing LP (the landlord) against Scott D'Angelo (the tenant). The landlord sought to evict

the tenant from his federally subsidized apartment unit for various reasons, some of which implicate potentially protected rights to free speech and to petition — like posting statements on Facebook about alleged drug activities, distressed conditions, and employee misconduct at the property — and some of which don't — like allegedly harassing and threatening others at the property.

¶ 6 The night before the bench trial, the tenant filed a special motion to dismiss. The court denied the motion, reasoning that the anti-SLAPP statute doesn't apply in FED actions and that the landlord's claim is premised on a breach of contract rather than on any free speech or petitioning rights. The tenant immediately filed an appeal in this court and requested a stay of the trial, which the county court also denied. Then, as this appeal was pending, the county court entered judgment for possession in favor of the landlord on grounds unrelated to the Facebook posts; the tenant appealed that judgment to the district court and obtained a stay of the judgment during that appeal; the district court reversed the judgment on the basis that the landlord's pre-filing notice to quit hadn't included any grounds for eviction other than the Facebook posts and, thus, the posts were the only basis that could support

the eviction; and the county court on remand scheduled a new trial, limited to the Facebook posts, which this court stayed.[1]

¶ 7 Thus, this case has spawned multiple proceedings — even multiple appeals — pending at the same time in different courts raising similar issues with respect to the very same claim. How can that be? Usually when an appeal is filed, "jurisdiction over the case is transferred from the trial court to the appellate court for all essential purposes with regard to the substantive issues that are the subject of the appeal." *Molitor v. Anderson*, 795 P.2d 266, 268 (Colo. 1990); *accord Woo v. El Paso Cnty. Sheriff's Off.*, 2022 CO 56, ¶ 2 ("[A]fter an appeal has been perfected, the trial court generally retains jurisdiction only over matters that are not relative to and do not affect the order or judgment on appeal."). This rule prevents two courts from simultaneously considering the same judgment,

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[1] We take judicial notice of the court filings in the related proceedings before the county court and the district court. *See Schnelle v. Cantafio*, 2024 COA 17, ¶ 2 n.1. We don't consider whether the county court erred by proceeding with the trial while this appeal was pending. Because the judgment following that trial was reversed by the district court, and is no longer in effect, that issue is now moot. *See In re Marriage of Tibbetts*, 2018 COA 117, ¶ 8 (an issue is moot when a judgment would have no practical legal effect on an existing controversy).

which could result in "moot opinions," a "waste of judicial resources," and "significant confusion." *In re Parental Responsibilities Concerning W.C.*, 2020 CO 2, ¶ 14.

¶ 8 All of those problems have arisen in this case. After this appeal was filed, the anti-SLAPP issues presented to us were potentially mooted (by the county court's judgment on a different basis) and then unmooted (by the district court's reversal of that judgment). All three courts have wasted resources by considering issues that may not have needed to be resolved or were being addressed by another court. And there has been significant confusion as to what court had jurisdiction over what issues and how the proceedings in one court affected those in the others.

¶ 9 Yet this is apparently what the General Assembly has authorized. We conclude that, as currently drafted, the anti-SLAPP statute allows parties to file special motions to dismiss in county courts and in FED proceedings and confers jurisdiction on this court to review rulings on such motions. Recognizing that "[i]t is for the [l]egislature, not the courts, to define the circumstances in which an anti-SLAPP motion [may] be brought," *1550 Laurel Owner's Ass'n v. App. Div. of Superior Ct.*, 239 Cal. Rptr. 3d 740,

748 (Ct. App. 2018), we urge the General Assembly to consider amending the anti-SLAPP statute to more specifically address its application to county court and FED proceedings and to avoid situations like this one where two different courts exercise appellate jurisdiction over the same proceeding at the same time.

¶ 10 We also conclude that the county court erred in its assessment of the tenant's special motion to dismiss. We therefore reverse the order and remand the case with directions.

I. Standard of Review and Legal Standards

¶ 11 The interpretation of statutes, including the anti-SLAPP statute, presents an issue of law that we review de novo. *See Arvada Vill. Gardens LP v. Garate*, 2023 CO 24, ¶ 9. Our primary goal in interpreting a statute is to ascertain and effectuate the General Assembly's intent. *People in Interest of S.A. v. B.A.*, 2022 CO 27, ¶ 4. We do that by giving the words and phrases their plain and ordinary meanings; reading the statutory scheme as a whole; and giving consistent, harmonious, and sensible effect to all of its parts. *Id.* If the statutory language is unambiguous, we must apply it as written. *Kaiser v. Aurora Urb. Renewal Auth.*, 2024 CO 4, ¶ 37.

¶ 12 We also review de novo the application of the anti-SLAPP statute to the facts alleged in this case. *See Rosenblum v. Budd*, 2023 COA 72, ¶ 26.

II. Jurisdiction Over the Appeal

¶ 13 Before turning to the legal issues presented in this appeal, we must first ascertain our jurisdiction to review those issues. *See Stone Grp. Holdings LLC v. Ellison*, 2024 COA 10, ¶ 15. Thus, we consider (1) whether the anti-SLAPP statute applies in county court proceedings; (2) whether the statute applies in FED proceedings; and (3) whether an appeal from a county court ruling on a special motion to dismiss is properly filed in this court.

A. Whether the Anti-SLAPP Statute Applies in County Court Proceedings

¶ 14 We first conclude that the anti-SLAPP statute applies in county court proceedings.

¶ 15 As relevant here, the General Assembly has conferred on county courts jurisdiction concurrent with district courts in FED and other civil proceedings. § 13-6-104(1)-(2), C.R.S. 2023; *see also* Colo. Const. art. VI, § 17 ("County courts shall have such civil . . . jurisdiction as may be provided by law . . . ."); § 13-40-109,

C.R.S. 2023 (conferring jurisdiction upon district courts and county courts in FED actions). However, this jurisdiction is limited. For instance, county courts have jurisdiction only if the monthly rent or claimed damages in a case don't exceed $25,000; they don't have jurisdiction if the boundaries or titles to real property are in question; and they don't have jurisdiction over certain types of civil matters, like probate and mental health matters. *See* Colo. Const. art. VI, § 17; § 13-6-104(1)-(2); § 13-6-105(1), C.R.S. 2023. But none of the delineated limits relate to the anti-SLAPP statute specifically or to claims involving rights to free speech or to petition generally. Thus, there is no statutory restriction precluding county courts from considering such matters.

¶ 16 Moreover, the anti-SLAPP statute's references to court proceedings are very broad. When describing court proceedings on a special motion to dismiss, the statute repeatedly refers to "the court" without specifying what type of court, suggesting that such a motion could be filed in and resolved by a county court as well as a district court. *See, e.g.*, § 13-20-1101(3)-(4), (6). The statute also broadly provides that "[a] cause of action against a person arising from any act of that person in furtherance of the person's right of

petition or free speech under the United States constitution or the state constitution in connection with a public issue" may be subject to a special motion to dismiss, § 13-20-1101(3)(a); yet such causes of action undoubtedly could be filed in county court. And the statute's legislative findings are so broad as to apply equally to proceedings in county court as any other court. *See* § 13-20-1101(1) (finding it in the public interest to "encourage continued participation in matters of public significance" without allowing "abuse of the judicial process" to chill such participation, and stating a legislative purpose of "encourag[ing] and safeguard[ing] the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law" while still "protect[ing] the rights of persons to file meritorious lawsuits for demonstrable injury"). We therefore can't discern any basis in the language of the statute for excluding county courts from its reach.

¶ 17 Accordingly, we conclude that the anti-SLAPP statute applies to proceedings in county courts. While there may be reasons to consider excluding county courts from the reach of the anti-SLAPP statute, those kinds of policy choices are for the General Assembly

alone to make. *See 1550 Laurel Owner's Ass'n*, 239 Cal. Rptr. 3d at 748; *Ruybalid v. Bd. of Cnty. Comm'rs*, 2017 COA 113, ¶ 18 ("[M]atters of public policy are better addressed by the General Assembly, not us."), *aff'd on other grounds*, 2019 CO 49.[2]

B. Whether the Anti-SLAPP Statute Applies in FED Proceedings

¶ 18 Next, we conclude that the anti-SLAPP statute applies in FED proceedings.

¶ 19 As indicated previously, FED actions may be brought in county court (subject to jurisdictional limits) or in district court. *See* § 13-40-109. Nothing in the FED statutes (or the anti-SLAPP statute) indicates that the anti-SLAPP statute can't apply in such

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[2] Although California's anti-SLAPP statute, Cal. Civ. Proc. Code § 425.16(1) (West 2023), served as a model for ours, *see Rosenblum v. Budd*, 2023 COA 72, ¶ 62, other statutory provisions in that state have led to a different result from the one we reach. At least one California court has held that parties can't file special motions to strike (that state's equivalent of our special motion to dismiss) in limited civil cases (that state's equivalent of our civil county court cases) because another state statute restricts motions to strike in limited civil cases to those arguing that the relief sought isn't supported by the allegations in the complaint. *See 1550 Laurel Owner's Ass'n v. App. Div. of Superior Ct.*, 239 Cal. Rptr. 3d 740, 745-49 (Ct. App. 2018) (citing Cal. Civ. Proc. Code § 92(d) (West 2023)); *see also* Cal. Civ. Proc. Code §§ 85-86 (West 2023).

proceedings, so long as the conduct underlying the FED claim falls within the anti-SLAPP statute's scope.

¶ 20 In concluding otherwise, the county court reasoned that the timelines in FED actions are incompatible with those relating to motions under the anti-SLAPP statute. In an FED action, a court generally must conduct a hearing within ten days after an answer is filed, *see* § 13-40-113(4)(a), C.R.S. 2023, while under the anti-SLAPP statute, a special motion to dismiss generally must be filed within sixty-three days after service of the complaint and must be set for a hearing within twenty-eight days after service of the motion, § 13-20-1101(5). It's certainly possible to comply with both sets of deadlines. Also, in most cases a court can extend an FED trial date if either party demonstrates good cause or the court otherwise finds justification to extend it, § 13-40-113(4)(a), and the court can require a party to file a bond or other security to obtain a delay of more than five days, *see* § 13-40-114, C.R.S. 2023. Thus, the swift timelines in FED actions don't necessarily pose an impediment to applying the anti-SLAPP statute.

¶ 21 We therefore conclude that the anti-SLAPP statute applies in FED proceedings. Again, the policy choice on whether the statute

should apply in such proceedings is one for the General Assembly — not us. *See 1550 Laurel Owner's Ass'n*, 239 Cal. Rptr. 3d at 748; *Ruybalid*, ¶ 18.[3]

C. Whether the Appeal Belongs in this Court

¶ 22 We also conclude that an appeal from a county court ruling on a special motion to dismiss under the anti-SLAPP statute may be filed in this court. Indeed, the statute currently *requires* such an appeal to be filed in this court.

¶ 23 As we've indicated, the anti-SLAPP statute provides that orders granting or denying special motions to dismiss are "appealable to the Colorado court of appeals pursuant to section 13-4-102.2," which confers jurisdiction in the court of appeals over such appeals. § 13-20-1101(7). There is nothing ambiguous about this language. It provides that all appeals of orders on special motions to dismiss are to be filed in this court.

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[3] In California, parties can file special motions to strike in cases brought under California's forcible entry and detainer law — at least if they aren't limited civil cases. *See Olive Props., L.P. v. Coolwaters Enters., Inc.*, 194 Cal. Rptr. 3d 524, 526-30 (Ct. App. 2015); *see also 1550 Laurel Owner's Ass'n*, 239 Cal. Rptr. 3d at 745-49.

¶ 24 We acknowledge that filing all appeals in this court creates difficulties when a case arises out of county court. The tortured path this case has taken demonstrates some of those difficulties. And it could've been worse. If the county court had granted the special motion to dismiss and thereby disposed of all claims as to all parties, rendering the judgment final, the landlord may have been obligated to file two appeals from the same ruling in two different courts: one appeal in this court under the anti-SLAPP statute, *see* § 13-20-1101(7), and another appeal in the district court under the general provisions for appealing a final judgment, *see* § 13-6-310(1) ("Appeals from final judgments . . . of the county court shall be taken to the district court . . . ."); § 13-40-117(1), C.R.S. 2023 (an FED judgment entered by a county court may be appealed to the district court). Then, conceivably, this court and the district court could've reached conflicting decisions, creating confusion as to which decision controlled. Likewise, similar issues could've arisen had we not ordered a stay of the county court trial on remand and had that court (or the district court on appeal from a final county court judgment) entered rulings conflicting with those of this court regarding the same issues.

¶ 25 Despite these difficulties, we can't ignore the plain and unambiguous language in the anti-SLAPP statute. *See Kaiser*, ¶ 37. And once again, the policy choices underlying the decision to allow specific motions and appeals under the statute are for the General Assembly alone. *See 1550 Laurel Owner's Ass'n*, 239 Cal. Rptr. 3d at 748; *Ruybalid*, ¶ 18.[4]

III. The Anti-SLAPP Ruling

¶ 26 Having determined that the issues are properly before us, we now turn to the merits of the special motion to dismiss.

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[4] Again, while California's anti-SLAPP statute is similar to our own, other provisions of state law have led to a different result than the one we reach. Rather than setting forth its own appellate procedures, California's anti-SLAPP statute refers to a general statute regarding appealable judgments and orders. *See* Cal. Civ. Proc. Code § 425.16(i). That statute, in turn, provides that "[a]n appeal, other than in a limited civil case, may be taken from" a variety of orders, including an order granting or denying a special motion to strike. Cal. Civ. Proc. Code § 904.1(a)(13) (West 2023). Another statute governs appeals in limited civil cases but doesn't include orders on special motions to strike among the orders that may be appealed. Cal. Civ. Proc. Code § 904.2 (West 2023). Based on these statutes, at least one California court has concluded that a ruling on a special motion to strike filed in a limited civil case is not appealable. *See Citibank, N.A. v. Tabalon*, 147 Cal. Rptr. 3d 319, 321-22 (App. Dep't Super. Ct. 2012). The court dismissed the appeal without further considering whether a special motion to strike may be filed at all in such a case. *See id.*

¶ 27 We agree with the tenant's argument that the county court erred by not engaging in the two-part analysis contemplated by the anti-SLAPP statute. A court considering a special motion to dismiss must first determine "whether the defendant has made a threshold showing that the conduct underlying the plaintiff's claim falls within the scope of the anti-SLAPP statute — that is, that the claim arises from an act 'in furtherance of the [defendant's] right of petition or free speech . . . in connection with a public issue.'" *L.S.S. v. S.A.P.*, 2022 COA 123, ¶ 21 (alterations in original) (quoting § 13-20-1101(3)(a)). If so, then the court must determine, based on the pleadings and affidavits, "whether the plaintiff has established a 'reasonable likelihood [of] prevail[ing] on the claim.'" *Id.* at ¶ 22 (alterations in original) (quoting § 13-20-1101(3)(a)-(b)).

¶ 28 The county court declined to conduct this analysis because it concluded that the anti-SLAPP statute doesn't apply to this case. We've already addressed and rejected one of the court's bases for this determination — that the statute doesn't apply in FED actions. We also disagree with the other basis — that the statute doesn't apply to claims premised on a breach of contract.

¶ 29 Whether an action falls within the scope of the anti-SLAPP statute doesn't depend on what type of claim is pleaded; rather, it depends on the conduct underlying the claim. While parties far more frequently invoke the anti-SLAPP statute in cases asserting defamation or similar tort claims, the statute also applies to other types of claims, so long as the claims arise from protected speech or petitioning in connection with a public issue. *See* § 13-20-1101(3)(a) (a special motion to dismiss may be filed as to a "cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States constitution or the state constitution in connection with a public issue"); *Navellier v. Sletten*, 52 P.3d 703, 711 (Cal. 2002) ("The [California] anti-SLAPP statute's definitional focus is not the form of the plaintiff's cause of action but, rather, the defendant's activity that gives rise to his or her asserted liability — and whether that activity constitutes protected speech or petitioning."); *Church of Scientology v. Wollersheim*, 49 Cal. Rptr. 2d 620, 634 (Ct. App. 1996) ("Although the 'favored causes of action' in SLAPP suits may be defamation, various business torts, nuisance and intentional infliction of emotional distress, the Legislature did

not limit application of the provision to such actions, recognizing that all kinds of claims could achieve the objective of a SLAPP suit — to interfere with and burden the defendant's exercise of his or her rights.") (citation omitted), *disapproved of on other grounds by Equilon Enters. v. Consumer Cause, Inc.*, 52 P.3d 685 (Cal. 2002); *see also Tender Care Veterinary Ctr., Inc. v. Lind-Barnett*, 2023 COA 114, ¶ 16 (we may look to California law for guidance in applying our anti-SLAPP statute because of the similarity of our statutes).

¶ 30 While we recognize that there was no Colorado case law at the time of the county court's ruling indicating that the anti-SLAPP statute would apply to the FED issues before it, we conclude that the statute does apply. Therefore, the court needed to engage in the two-step anti-SLAPP analysis to determine (1) whether the tenant showed that the landlord's claim arises from an act in furtherance of the tenant's right of petition or free speech in connection with a public issue and (2) whether the landlord established a reasonable likelihood of prevailing on the claim. *See L.S.S.*, ¶¶ 21-22.

¶ 31 Based on the limited record before us, we cannot determine whether the motion fails at either step.

¶ 32 Because the county court prematurely denied the special motion to dismiss, it didn't assess whether the landlord's claim arises from an act in furtherance of the tenant's right of petition or free speech in connection with a public issue. Nor has the landlord addressed that question in this appeal. Given these circumstances, we decline to consider the question in the first instance now. *Cf. Creekside Endodontics, LLC v. Sullivan*, 2022 COA 145, ¶¶ 28-29 (assuming, without deciding, that speech was made in connection with a public issue where the parties didn't dispute that it was); *L.S.S.*, ¶¶ 26-28 (same).

¶ 33 And the limited record before us doesn't include sufficient information to determine whether the landlord has a reasonable likelihood of prevailing on the claim, as now limited to the Facebook posts — that is, whether the landlord is reasonably likely to be able to prove that the tenant's Facebook posts violated the lease in such a manner as to justify termination of the lease. The landlord filed a generic one-page FED complaint with very little detail about its claim; it attached to the complaint the pre-filing notice to quit and other notices it had sent to the tenant, but those, too, provided little detail, particularly as to the Facebook posts; and although it cited

in its pre-filing notices various provisions of the lease that the tenant had supposedly violated, it didn't explain how the tenant had "substantial[ly] violat[ed]" the lease or had engaged in "repeated minor violations" that "interfere[d] with the management of the project" or "ha[d] an adverse financial effect on the project," as was required to justify termination of the lease.

¶ 34 While ordinarily a failure to offer sufficient evidence to support a likelihood of success would require dismissal under the anti-SLAPP statute, we conclude that a remand is warranted in this case because the county court prematurely denied the special motion to dismiss without affording the landlord an opportunity to offer such evidence. The tenant filed the motion the night before the trial, and the court took up the motion the following morning, leaving little time for the landlord to prepare an affidavit. And while the landlord indicated that it could present evidence on the issues, the court denied the motion without taking that evidence.

¶ 35 Accordingly, we reverse the order denying the special motion to dismiss, and we remand the case to the county court with directions to reconsider the motion after allowing the parties an opportunity to present supporting and opposing affidavits, as

contemplated by section 13-20-1101(3)(b). In its reconsideration of the motion, the court should address both parts of the two-part test for assessing a special motion to dismiss.

IV. Appellate Attorney Fees

¶ 36 Finally, we consider — and reject — the landlord's request for appellate attorney fees and costs under the anti-SLAPP statute.

¶ 37 The anti-SLAPP statute entitles a prevailing plaintiff on a special motion to dismiss to recover its attorney fees and costs if a court finds that the motion was "frivolous" or "solely intended to cause unnecessary delay." § 13-20-1101(4)(a). Because the landlord hasn't prevailed on the special motion to dismiss, and because we don't find the motion frivolous or intended solely to cause unnecessary delay, we conclude that an award of such fees isn't warranted.

V. Disposition

¶ 38 The order is reversed, and the case is remanded to the county court with directions to reconsider the special motion to dismiss after allowing the parties an opportunity to present affidavits supporting or opposing the motion.

JUDGE J. JONES and JUDGE HARRIS concur.