

CV14-01227
DC-09900055860-001
BEN KIECKHEFER VS GARY SCHMIDT 3 Pages
District Court 09/12/2014 04:57 PM
Washoe County \$2515
h0c
ASMTTH

1 CODE \$2515
2 CHARLES R. KOZAK, ESQ.
3 KOZAK LAW FIRM
4 Nevada State Bar #11179
5 3100 Mill Street, Suite 115
6 Reno, Nevada 89502
7 (775) 322-1239
8 Fax (755) 800-1767
9 chuck@kozaklawfirm.com
10 ATTORNEY FOR GARY SCHMIDT

FILED

2014 SEP 12 PM 4:57

JOEY ORDUNA RASTHO
CLERK OF THE COURT

Electronically Filed
Sep 18 2014 11:34 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

8 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

9 **IN AND FOR THE COUNTY OF WASHOE**

10 BEN KIECKHEFER;
11 AND DOES 1-100

Case No. CV14-01227

12 Plaintiff/Counterfendants,

Dept. 3

13 vs.

14 GARY SCHMIDT,

15 Defendant/Counterclaimant.
16

17
18 **NOTICE OF APPEAL**

19 Gary Schmidt hereby appeals, to the Supreme Court of Nevada, the Order Granting
20 Temporary Restraining Order entered June 6, 2014 and the Order Denying Special Motion to
21 Dismiss entered September 5, 2014.
22

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AFFIRMATION

The undersigned does hereby affirm, pursuant to NRS 239B.303, that this document and any attachments thereto do not contain personal information as defined in NRS.603A.040 about any person.

Respectfully submitted this 12th day of September 2014.



CHARLES R. KOZAK, ESQ.
State Bar No. 11179
3100 Mill Street, Suite 115
Reno, Nevada 89502
775 322-1239
chuck@kozaklawfirm.com
ATTORNEY FOR GARY SCHMIDT

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CERTIFICATE OF SERVICE

I, NAN ADAMS, certify that I am an employee of Kozak Law Firm whose business location is 3100 Mill Street, Suite 115, Reno, Nevada 89502 and that on the 12th day of September 2014, I caused to be delivered by prepaid postage U.S. Mail a true and correct copy of the within document: **NOTICE OF APPEAL**, Case #CV14-01227, addressed as follows:

MICHAEL A. PAGNI, ESQ.
McDONALD CARANO WILSON
100 W. Liberty, 10th Floor
Reno, Nevada 89505



NAN ADAMS
3100 Mill Street, Suite 115
Reno, Nevada 89502

CV14-01227
DC-09500059588-002
BEN KIECKHEFER VS. GARY SCHMIDT 5 Pages
District Court 09/12/2014 04:59 PM
Washoe County
nnc
1310
SRMTH

1310
1 CODE ~~2610~~
2 CHARLES R. KOZAK, ESQ.
3 KOZAK LAW FIRM
4 Nevada State Bar #11179
5 3100 Mill Street, Suite 115
6 Reno, Nevada 89502
7 (775) 322-1239
8 Fax (755) 800-1767
9 chuck@kozaklawfirm.com
10 ATTORNEY FOR GARY SCHMIDT

FILED

2014 SEP 12 PM 4:59

JOEY ORNDORF HASTINGS
CLERK OF THE COURT
BY *McLwood*
DEPUTY

11 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

12 IN AND FOR THE COUNTY OF WASHOE

13 BEN KIECKHEFER;
14 AND DOES 1-100

Case No. CV14-01227

15 Plaintiff/Counterfendants,

Dept. 3

16 vs.

17 GARY SCHMIDT,

18 Defendant/Counterclaimant.

19 **CASE APPEAL STATEMENT**

- 20 1. The Appellant filing this Case Appeal Statement is Gary Schmidt.
- 21 2. The Honorable Patrick Flanagan and Honorable Jerome Polaha are the Judges
22 whose Order Granting Temporary Restraining Order and Order Denying Special Motion to
23 Dismiss are those from which this Appeal is being made.
- 24 3. The only Appellant involved in this Appeal is Gary Schmidt who is represented by
25 Charles R. Kozak, Esq. of Kozak Law Firm located at 3100 Mill Street, Suite 115, Reno,
26 Nevada 89502.
- 27 4. The only Respondent to this Appeal is Ben Kieckhefer who is currently represented
- 28

1 by Adam Hosmer-Henner and Michael Pagni of the McDonald Carano Wilson law firm
2 located at 100 W. Liberty Street, 10th Floor, Reno, Nevada 89501.

3
4 5. Appellant's counsel and Respondent's current counsel, as identified above, are each
5 licensed to practice in Nevada.

6
7 6. Appellant Schmidt was represented at the District Court by Charles R. Kozak, Esq.
7 of Kozak Law Firm located at 3100 Mill Street, Suite 115, Reno, Nevada 89502.

8
9 7. Appellant Schmidt is represented by retained counsel Charles R. Kozak, Esq. for the
9 purpose of this Appeal.

10
11 8. Currently, Appellant Schmidt has not been granted leave to proceed in forma
12 pauperis.

13
14 9. The initial Complaint was filed by Respondent Kieckhefer on June 6, 2014.
14 Kieckhefer then filed his Ex Parte Motion for Temporary Restraining Order immediately
15 thereafter on June 6, 2014. Appellant Schmidt filed his NRS 41.660 Special Motion to
16 Dismiss on August 4, 2014.

17
18 10. Schmidt was a Republican candidate who ran for Nevada State Senate District 16
19 in the 2014 primary election against incumbent Ben Kieckhefer. On June 4, 2014, Schmidt
20 began airing a television advertisement, a portion of which stated that Kieckhefer "endorsed
21 and supported Harry Reid for Senate in 2010." Schmidt based his ad on an October 31, 2010
22 newspaper article published by the *Las Vegas Sun*.

23
24 At 2:50 p.m. on Friday, June 6, 2014, Kieckhefer filed his Complaint in CV14-
25 01227 with his Ex Parte Motion for Temporary Restraining Order/Preliminary Injunction filed
26 immediately thereafter. The filings came a mere four days before the primary election and
27 were intended to generate negative publicity about Schmidt in an attempt to sway voters
28

1 toward Keickhefer. The Complaint claimed "Defamation" alleging Schmidt's television
2 advertisements aired during the campaign "falsely assert that Senator Kieckhefer 'endorsed and
3 supported Harry Reid in 2010'". The Ex Parte Motion sought a TRO and Preliminary
4 Injunction to "restrain and enjoin Mr. Schmidt and any person or entity acting in concert with
5 Mr. Schmidt from publishing any statement expressing or implying that Senator Kieckhefer
6 has endorsed or supported Harry Reid".
7

8 With little more than an hour's notice by the Court, Schmidt attended the 5 o'clock
9 hearing on Kieckhefer's Motion Friday afternoon June 6, 2014. Although CV14-01227 was
10 assigned to Judge Polaha in Department 3, Kieckhefer's Motion was heard by Judge Flanagan
11 in Department 7. Due to such short notice, Schmidt had no time to prepare or obtain counsel.
12 Kieckhefer on the other hand appeared through counsel McDonald/Carano/Wilson. Declaring
13 that "Kieckhefer is likely to suffer irreparable injury to his career and reputation from
14 Defendant's television advertisement in the absence of injunctive relief," Judge Flanagan
15 granted the TRO sought. The TRO comprised an Unconstitutional Prior Restraint and the
16 Complaint a SLAPP.
17
18

19 On August 4, 2014, Schmidt filed his Special Motion to Dismiss pursuant to NRS
20 41.660. The Motion proceeded to hearing before Judge Polaha on August 13, 2014. Although
21 Judge Polaha found Schmidt provided his burden under NRS 41.660 3(a), he ultimately denied
22 the Motion when determining Kieckhefer had established by clear and convincing evidence a
23 probability of prevailing on his claim in accordance with NRS 41.660 3(b). Pursuant to NRS
24 41.670(4), Schmidt may appeal the Order denying his Special Motion.
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27 11. This case has never been the subject of any other Appeal or Writ proceeding in the
28 Supreme Court of Nevada.

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12. This Appeal does not involve child custody or visitation.

13. There is no possibility of settlement in this civil case.

AFFIRMATION

The undersigned does hereby affirm, pursuant to NRS 239B.303, that this document and any attachments thereto do not contain personal information as defined in NRS.603A.040 about any person.

Respectfully submitted this 12th day of September 2014.




CHARLES R. KOZAK, ESQ.
State Bar No. 11179
3100 Mill Street, Suite 115
Reno, Nevada 89502
775 322-1239
chuck@kozaklawfirm.com
ATTORNEY FOR GARY SCHMIDT

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CERTIFICATE OF SERVICE

I, NAN ADAMS, certify that I am an employee of Kozak Law Firm whose business location is 3100 Mill Street, Suite 115, Reno, Nevada 89502 and that on the 12th day of September 2014, I caused to be delivered by prepaid postage U.S. Mail a true and correct copy of the within document: CASE APPEAL STATEMENT, Case #CV14-01227, addressed as follows:

MICHAEL A. PAGNI, ESQ.
McDONALD CARANO WILSON
100 W. Liberty, 10th Floor
Reno, Nevada 89505


NAN ADAMS
3100 Mill Street, Suite 115
Reno, Nevada 89502

SECOND JUDICIAL DISTRICT COURT

STATE OF NEVADA

COUNTY OF WASHOE

Case History - CV14-01227

Case Description: BEN KIECKHEFER VS GARY SCHMIDT (D3)

Case Number: CV14-01227 Case Type: TORTS-DEFAMATION (LIBEL/SLAND) - Initially Filed On: 6/6/2014

Parties

<u>Party Type & Name</u>	<u>Party Status</u>
JUDG - JEROME M. POLAHA - D3	Active
PLTF - BEN KIECKHEFER - @1259968	Active
DEFT - GARY SCHMIDT - @1259969	Active
ATTY - Adam Hosmer-Henner, Esq. - 12779	Active
ATTY - Michael A. Pagni, Esq. - 6444	Active
ATTY - Charles R. Kozak, Esq. - 11179	Active

Disposed Hearings

- 1 Department: D7 -- Event: HEARING... -- Scheduled Date & Time: 6/6/2014 at 16:45:00
Event Disposition: D425 - 6/6/2014
- 2 Department: D7 -- Event: PRELIMINARY INJUNCTION -- Scheduled Date & Time: 6/18/2014 at 13:30:00
Event Disposition: D844 - 6/11/2014
- 3 Department: D3 -- Event: PRELIMINARY INJUNCTION -- Scheduled Date & Time: 6/18/2014 at 13:30:00
Event Disposition: D845 - 6/16/2014
- 4 Department: D3 -- Event: Request for Submission -- Scheduled Date & Time: 8/7/2014 at 16:46:00
Extra Event Text: GARY SCHMIDT'S NRS 41.660 SPECIAL MOTION TO DISMISS (NO PAPER ORDER PROVIDED)
Event Disposition: S200 - 8/13/2014
- 5 Department: D3 -- Event: Request for Submission -- Scheduled Date & Time: 8/7/2014 at 16:46:00
Extra Event Text: GARY SCHMIDT'S NRS 41.660 SPECIAL MOTION TO DISMISS (NO PAPER ORDER PROVIDED)
Event Disposition: S200 - 8/13/2014
- 6 Department: D3 -- Event: Request for Submission -- Scheduled Date & Time: 8/12/2014 at 15:00:00
Extra Event Text: MOTION TO STRIKE
Event Disposition: S200 - 9/15/2014
- 7 Department: D3 -- Event: HEARING... -- Scheduled Date & Time: 8/13/2014 at 09:00:00
Extra Event Text: ON MOTION TO DISMISS
Event Disposition: D355 - 8/13/2014

Actions

- | <u>Filing Date</u> | <u>-</u> | <u>Docket Code & Description</u> |
|--------------------|----------|--|
| 1 | 6/6/2014 | - COC - Evidence Chain of Custody Form
<i>No additional text exists for this entry.</i> |

Report Does Not Contain Sealed Cases or Confidential Information

- 2 6/6/2014 - COV - **Civil Cover Sheet
No additional text exists for this entry.
- 3 6/6/2014 - PAYRC - **Payment Receipted
Additional Text: A Payment of -\$260.00 was made on receipt DCDC457727.
- 4 6/6/2014 - \$1425 - \$Complaint - Civil
Additional Text: VERIFIED COMPLAINT
- 5 6/6/2014 - 1670 - Ex-Parte Mtn...
Additional Text: EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND REQUEST FOR PRELIMINARY INJUNCTION HEARING EXHIBIT 1 DVD GIVEN TO EVIDENCE CLERK
- 6 6/6/2014 - 4090 - ** Summons Issued
No additional text exists for this entry.
- 7 6/6/2014 - 4170 - Temporary Restraining Order
Additional Text: Transaction 4467101 - Approved By: NOREVIEW : 06-06-2014:18:21:28
- 8 6/6/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4467102 - Approved By: NOREVIEW : 06-06-2014:18:22:17
- 9 6/9/2014 - 2610 - Notice ...
Additional Text: NOTICE OF POSTING CASH BOND
- 10 6/9/2014 - TRO - **TRO Cash Bond
No additional text exists for this entry.
- 11 6/9/2014 - 2520 - Notice of Appearance
Additional Text: CHARLES KOZAK, ESQ. / GARY SCHMIDT - Transaction 4468636 - Approved By: MCHOLICO : 06-10-2014:10:37:26
- 12 6/9/2014 - 1137 - Answer and Counterclaim
Additional Text: Transaction 4469075 - Approved By: MFERNAND : 06-10-2014:10:07:57
- 13 6/9/2014 - \$1560 - \$Def 1st Appearance - CV
Additional Text: GARY SCHMIDT - Transaction 4469075 - Approved By: MFERNAND : 06-10-2014:10:07:57
- 14 6/10/2014 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$213.00 was made on receipt DCDC458026.
- 15 6/10/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4469541 - Approved By: NOREVIEW : 06-10-2014:10:08:56
- 16 6/10/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4469700 - Approved By: NOREVIEW : 06-10-2014:10:38:29
- 17 6/12/2014 - MIN - ***Minutes
Additional Text: HEARING IN RE: TEMPORARY RESTRAINING ORDER - 06-06-14 - Transaction 4475012 - Approved By: NOREVIEW : 06-12-2014:16:23:50
- 18 6/12/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4475016 - Approved By: NOREVIEW : 06-12-2014:16:24:40
- 19 6/18/2014 - 1067 - Affidavit of Service
Additional Text: GARY SCHMIDT SERVED ON 6/9/14 - Transaction 4481510 - Approved By: MCHOLICO : 06-18-2014:10:33:42

- 20 6/18/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4481751 - Approved By: NOREVIEW : 06-18-2014:10:34:43
- 21 7/8/2014 - A120 - Exemption from Arbitration
Additional Text: Transaction 4506712 - Approved By: YLLOYD : 07-08-2014:09:34:38
- 22 7/8/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4506832 - Approved By: NOREVIEW : 07-08-2014:09:37:00
- 23 7/9/2014 - 1137 - Answer and Counterclaim
Additional Text: GARY SCHMIDT'S ANSWER AND FIRST AMENDED COUNTERCLAIM - Transaction 4509142 - Approved By: YLLOYD : 07-09-2014:13:04:21
- 24 7/9/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4509316 - Approved By: NOREVIEW : 07-09-2014:13:05:21
- 25 8/1/2014 - 2315 - Mtn to Dismiss ...
Additional Text: MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT - Transaction 4544475 - Approved By: MFERNAND : 08-04-2014:08:41:04
- 26 8/4/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4544641 - Approved By: NOREVIEW : 08-04-2014:08:43:42
- 27 8/4/2014 - 2490 - Motion ...
Additional Text: NRS 41.660 SPECIAL MOTION TO DISMISS: GARY SCHMIDT - Transaction 4546308 - Approved By: YLLOYD : 08-05-2014:09:38:28
- 28 8/5/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4546761 - Approved By: NOREVIEW : 08-05-2014:09:39:25
- 29 8/6/2014 - 2610 - Notice ...
Additional Text: NOTICE OF ERRATA TO NRS 41.660 SPECIAL MOTION TO DISMISS - Transaction 4551098 - Approved By: MCHOLICO : 08-07-2014:11:45:33
- 30 8/7/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4551821 - Approved By: NOREVIEW : 08-07-2014:11:46:25
- 31 8/7/2014 - 3860 - Request for Submission
Additional Text: GARY SCHMIDT'S NRS 41.660 SPECIAL MOTION TO DISMISS (NO PAPER ORDER PROVIDED) - Transaction 4552260 - Approved By: MCHOLICO : 08-07-2014:16:40:26
PARTY SUBMITTING: CHARLES KOZAK, ESQ.
DATE SUBMITTED: 8/7/14
SUBMITTED BY: MCHOLICO
DATE RECEIVED JUDGE OFFICE:
- 32 8/7/2014 - 2075 - Mtn for Extension of Time
Additional Text: Transaction 4552644 - Approved By: MCHOLICO : 08-08-2014:09:44:48
- 33 8/7/2014 - 2475 - Mtn to Strike...
Additional Text: Transaction 4552650 - Approved By: MCHOLICO : 08-08-2014:09:45:12
- 34 8/7/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4552845 - Approved By: NOREVIEW : 08-07-2014:16:41:25
- 35 8/8/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4553334 - Approved By: NOREVIEW : 08-08-2014:09:45:31

- 36 8/8/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4553337 - Approved By: NOREVIEW : 08-08-2014:09:46:02
- 37 8/8/2014 - 2645 - Opposition to Mtn ...
Additional Text: GARY SCHMIDT'S OPPOSITION TO MOTION TO STRIKE - Transaction 4554757 - Approved By: MCHOLICO : 08-11-2014:10:33:26
- 38 8/11/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4555393 - Approved By: NOREVIEW : 08-11-2014:10:34:29
- 39 8/11/2014 - 2645 - Opposition to Mtn ...
Additional Text: OPPOSITION TO DEFENDANT'S NRS 41.660 SPECIAL MOTION TO DISMISS - Transaction 4555453 - Approved By: YLLOYD : 08-11-2014:13:00:23
- 40 8/11/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4555836 - Approved By: NOREVIEW : 08-11-2014:13:01:24
- 41 8/12/2014 - 3795 - Reply...
Additional Text: REPLY IN SUPPORT OF MOTION TO STRIKE - Transaction 4557679 - Approved By: MFERNAND : 08-12-2014:14:40:15
- 42 8/12/2014 - 3860 - Request for Submission
Additional Text: MOTION TO STRIKE - Transaction 4558181 - Approved By: AZION : 08-12-2014:14:50:57
DOCUMENT TITLE: MOTION TO STRIKE
PARTY SUBMITTING: ADAM HOSMER-HENNER ESQ
DATE SUBMITTED: 08-12-14
SUBMITTED BY: AZION
DATE RECEIVED JUDGE OFFICE:
- 43 8/12/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4558211 - Approved By: NOREVIEW : 08-12-2014:14:41:10
- 44 8/12/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4558277 - Approved By: NOREVIEW : 08-12-2014:14:53:41
- 45 8/12/2014 - 3790 - Reply to/in Opposition
Additional Text: GARY SCHMIDT'S REPLY TO OPPOSITION TO NRS 41.660 SPECIAL MOTION TO DISMISS - Transaction 4558988 - Approved By: AZION : 08-13-2014:08:52:13
- 46 8/13/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4559189 - Approved By: NOREVIEW : 08-13-2014:08:53:16
- 47 8/13/2014 - S200 - Request for Submission Complet
No additional text exists for this entry.
- 48 8/13/2014 - S200 - Request for Submission Complet
No additional text exists for this entry.
- 49 8/19/2014 - 2645 - Opposition to Mtn ...
Additional Text: GARY SCHMIDT'S OPPOSITION TO MOTION FOR EXTENSION - Transaction 4567490 - Approved By: MCHOLICO : 08-19-2014:13:12:04
- 50 8/19/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4567869 - Approved By: NOREVIEW : 08-19-2014:13:12:50
- 51 8/21/2014 - 4185 - Transcript
Additional Text: 8-13-14 HEARING ON MOTION TO DISMISS - Transaction 4571846 - Approved By: NOREVIEW : 08-21-2014:13:42:58

- 52 8/21/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4571850 - Approved By: NOREVIEW : 08-21-2014:13:43:58
- 53 8/27/2014 - 4301 - Withdrawal of Motion
Additional Text: NOTICE OF WITHDRAWAL OF MOTION FOR EXTENSION OF TIME - Transaction 4579277 - Approved By: ADEGAYNE : 08-27-2014:11:26:11
- 54 8/27/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4579977 - Approved By: NOREVIEW : 08-27-2014:11:27:14
- 55 9/5/2014 - 2645 - Opposition to Mtn ...
Additional Text: GARY SCHMIDT'S OPPOSITION TO MOTION TO DISMISS/MOTION FOR SUMMARY JUDGMENT - Transaction 4592197 - Approved By: MFERNAND : 09-05-2014:10:21:10
- 56 9/5/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4592950 - Approved By: NOREVIEW : 09-05-2014:10:22:51
- 57 9/5/2014 - 2840 - Ord Denying ...
Additional Text: SPEICAL MOTION TO DISMISS - Transaction 4593469 - Approved By: NOREVIEW : 09-05-2014:13:02:13
- 58 9/5/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4593471 - Approved By: NOREVIEW : 09-05-2014:13:03:01
- 59 9/12/2014 - \$2515 - \$Notice/Appeal Supreme Court
No additional text exists for this entry.
- 60 9/12/2014 - 1310 - Case Appeal Statement
No additional text exists for this entry.
- 61 9/12/2014 - PAYRC - **Payment Receipted
Additional Text: A Payment of -\$34.00 was made on receipt DCDC470140.
- 62 9/12/2014 - SAB - **Supreme Court Appeal Bond
No additional text exists for this entry.
- 63 9/12/2014 - 4105 - Supplemental ...
Additional Text: SUPPLEMENT TO GARY SCHMIDT'S OPPOSITION TO MOTION TO DISMISS/MOTION FOR SUMMARY JUDGMENT - Transaction 4605394 - Approved By: MCHOLICO : 09-15-2014:09:48:53
- 64 9/12/2014 - 2610 - Notice ...
Additional Text: NOTICE RE: ORDER ENTERED 9/5/14 - Transaction 4605400 - Approved By: MCHOLICO : 09-15-2014:09:57:48
- 65 9/12/2014 - 2610 - Notice ...
Additional Text: NOTICE OF ERRATA TO GARY SCHMIDT'S OPPOSITION TO MOTION TO DISMISS/MOTION FOR SUMMARY JUDGMENT - Transaction 4605401 - Approved By: MCHOLICO : 09-15-2014:09:58:32
- 66 9/15/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4605864 - Approved By: NOREVIEW : 09-15-2014:09:50:03
- 67 9/15/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4605917 - Approved By: NOREVIEW : 09-15-2014:09:58:57
- 68 9/15/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4605919 - Approved By: NOREVIEW : 09-15-2014:09:59:36
- 69 9/15/2014 - S200 - Request for Submission Complet
No additional text exists for this entry.

- 70 9/15/2014 - 2540 - Notice of Entry of Ord
Additional Text: Transaction 4607458 - Approved By: NOREVIEW : 09-15-2014:17:06:40
- 71 9/15/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4607459 - Approved By: NOREVIEW : 09-15-2014:17:07:40
- 72 9/15/2014 - 3795 - Reply...
Additional Text: REPLY MEMORANDUM OF POINTS AND AUTHORITIES - Transaction 4607479 - Approved By: YLLOYD : 09-16-2014:09:39:50
- 73 9/15/2014 - 3860 - Request for Submission
Additional Text: Transaction 4607480 - Approved By: YLLOYD : 09-16-2014:09:40:15
- 74 9/16/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4607947 - Approved By: NOREVIEW : 09-16-2014:09:40:50
- 75 9/16/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4607952 - Approved By: NOREVIEW : 09-16-2014:09:43:17
- 76 9/16/2014 - 1350 - Certificate of Clerk
Additional Text: CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 4608831 - Approved By: NOREVIEW : 09-16-2014:13:54:50

1 **CODE \$4170**
2 MICHAEL PAGNI (#6444)
3 McDonald Carano Wilson LLP
4 100 West Liberty Street. 10th Floor
5 Reno, NV 89501
6 Telephone: (775) 788-2000
7 Facsimile: (775) 788-2020
8 Email: mpagni@mcdonaldcarano.com
9 *Attorney for Plaintiff*

7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**

10 BEN KIECKHEFER, an individual,
11 Plaintiff,

CASE NO.:
DEPT. NO.:

12 vs.

14 GARY SCHMIDT, an individual, and DOES
15 1-10, inclusive,
16 Defendant.

19 **ORDER GRANTING TEMPORARY RESTRAINING ORDER**

20 Plaintiff Ben Kieckhefer's EX PARTE MOTION FOR TEMPORARY
21 RESTRAINING ORDER AND REQUEST FOR PRELIMINARY INJUNCTION
22 HEARING, was filed on Friday, June 6, 2014. The Court, having considered the
23 Motion, and finding that Ben Kieckhefer is likely to suffer irreparable injury to his career
24 and reputation from Defendant's television advertisements in the absence of injunctive
25 relief, and good cause appearing therefore,

26 IT IS HEREBY ORDERED that Plaintiff's Motion for Temporary Restraining
27 Order is GRANTED.

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IT IS FURTHER ORDERED that Defendant Gary Schmidt shall immediately withdraw all advertisements expressing or implying that Ben Kieckhefer has endorsed or supported Harry Reid.

IT IS FURTHER ORDERED Plaintiffs' Motion for Preliminary Injunction shall be set for hearing on June 18th, 2014, at 1:30^{pm}.

IT IS FURTHER ORDERED that this temporary restraining order shall ~~not~~ take effect ~~until such time as~~ immediately Plaintiff must posts security by June 9, 2014, pursuant to N.R.C.P. 65(c), in the amount of \$ 1,000⁻.

IT IS SO ORDERED, this 6th of June, 2014, at 6:12 p.m.

Patrick Flanagan
DISTRICT COURT JUDGE

1 **CODE 2840**
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7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**
9

10 BEN KIECKHEFER, an individual,
11 Plaintiff/Counterdefendant,

CASE NO.: CV14-01227

DEPT. NO.: 3

12 vs.

13
14 GARY SCHMIDT, an individual, and DOES 1-
15 10, inclusive,
16 Defendant/Counterclaimant.

17
18 **~~PROPOSED~~ ORDER DENYING SPECIAL MOTION TO DISMISS**

19 The Court has reviewed and considered Defendant GARY SCHMIDT's ("Schmidt")
20 Special Motion to Dismiss filed in this matter on August 4, 2014. Plaintiff BEN KIECKHEFER
21 ("Sen. Kieckhefer") filed an Opposition on August 8, 2014 and Schmidt filed a Reply on August
22 12, 2014. A hearing was held in Department 3 on August 13, 2014 at 9:00 A.M. where Sen.
23 Kieckhefer and Schmidt were both represented by counsel. Having fully considered the parties'
24 pleadings, points and authorities and all exhibits attached thereto, having heard and carefully
25 considered all proffered evidence and the arguments of counsel, and deeming itself fully advised
26 of the matter and applicable law, the Court hereby enters the following Decision and Order:

27 //

28 //

1 Sen. Kieckhefer and Schmidt were political opponents in the 2014 Republican primary
2 election for Nevada State Senate District 16. Shortly before the primary election, Sen. Kieckhefer
3 and his campaign became aware on June 5, 2014 that Schmidt was airing television campaign
4 advertisements stating that Sen. Kieckhefer “endorsed and supported Harry Reid in 2010.” Sen.
5 Kieckhefer’s campaign notified Schmidt that these statements were false, but Schmidt did not
6 pull the advertisements. Consequently, on June 6, 2014, Sen. Kieckhefer filed a Complaint
7 asserting claims of defamation and defamation per se against Schmidt for making the false
8 statement that Sen. Kieckhefer endorsed and supported Senator Harry Reid.

9 On August 4, 2014, Schmidt filed a Special Motion to Dismiss pursuant to NRS
10 41.660(2). If a special motion to dismiss is filed, the Court must, by statute, conduct a two-part
11 inquiry to determine if dismissal is warranted. First, pursuant to NRS 41.660(3)(a), the Court
12 must determine whether Schmidt has established, by a preponderance of the evidence, that the
13 claims in the Complaint were based upon a good faith communication in furtherance of the right
14 to petition or the right to free speech in direct connection with an issue of public concern. The
15 Court finds Schmidt has shown, by a preponderance of the evidence, the statements in question
16 were made in the course of a political campaign and therefore satisfy the definitions contained
17 within NRS 41.637 and NRS 41.660.

18 Second, under NRS 41.660(3)(b), the Court must determine whether Sen. Kieckhefer can
19 establish by clear and convincing evidence a probability of prevailing on the claims for
20 defamation and defamation per se. The general elements of a defamation claim require a plaintiff
21 to prove “(1) a false and defamatory statement by [a] defendant concerning the plaintiff; (2) an
22 unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4)
23 actual or presumed damages.” *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 718, 57 P.3d 82,
24 90 (2002). If the defamatory communication also imputes a “person’s lack of fitness for trade,
25 business, or profession, or tends to injure the plaintiff in his or her business, it is deemed
26 defamation per se and damages are presumed.” *Clark Cnty. Sch. Dist. v. Virtual Educ. Software,*
27 *Inc.*, 125 Nev. 374, 385, 213 P.3d 496, 503 (2009) (citations omitted).



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Based on the evidence, including Sen. Kieckhefer's sworn denial and contrasting lack of credible evidence from Schmidt, the Court finds there is clear and convincing evidence that Sen. Kieckhefer has a probability of showing the claim that Sen. Kieckhefer "endorsed and supported Harry Reid in 2010" was false.

The Court further notes that the statements by Schmidt were made in the context of a heated political campaign, and an analysis of those statements requires the Court to examine the atmosphere of the political situation as it existed prior to the primary election and from the perspective of a political conservative. The unrefuted evidence in the record indicates that the statement in question could be harmful to the reputation of a Republican politician. Accordingly, the Court finds there is clear and convincing evidence that Sen. Kieckhefer has a probability of showing the statements by Schmidt were defamatory.

Furthermore, the Court notes that these statements may damage Sen. Kieckhefer by way of loss of political capital, harm to political relationships, or loss of electoral support. The evidence also shows the statements affected Sen. Kieckhefer's trade, business, or profession and therefore damages may be presumed under the defamation per se analysis. Thus, the Court finds there is clear and convincing evidence that Sen. Kieckhefer has a probability of establishing damages and/or prevailing on the defamation per se claim. The Court also finds that Schmidt's statements were published to third parties via television stations and that there is no evidence in the record that these statements were privileged.

The Court does find Sen. Kieckhefer to be a public figure and therefore he is required to demonstrate actual malice in order to prevail on a claim for defamation. The evidence showed that Schmidt's only support for the allegation that Sen. Kieckhefer endorsed or supported Senator Harry Reid was an October 31, 2010 newspaper article from the Las Vegas Sun, entitled "Reid endorsement may put Raggio on the outs in GOP," attached as Exhibit 1 to the Special Motion to Dismiss. The Court finds that Schmidt misread the article, which does not support a conclusion that Sen. Kieckhefer endorsed or supported Senator Harry Reid. Therefore, the Court finds that Sen. Kieckhefer has a probability of showing that Schmidt's statements were made with knowledge of or reckless disregard for their falsity.

1 At the hearing on the Special Motion to Dismiss, Schmidt admitted during cross-
2 examination that he gave an interview to the Reno Gazette-Journal and made certain statements
3 concerning his political advertisements about Sen. Kieckhefer and Senator Harry Reid. The
4 evidence shows that Schmidt offered to pull the advertisement linking Sen. Kieckhefer to Senator
5 Harry Reid if “[Sen. Kieckhefer] or [the reporter] comes up with anything where [Sen.
6 Kieckhefer] supported or endorsed or spoke favorably – during the campaign and after the
7 primary – for Sharron Angle I’ll pull that spot.” (Plaintiff’s Motion for Temporary Injunction Ex.
8 5); *see also* (Hearing Tr. 16:9-17:9) (“Q: But you offered to pull that ad if anything turned up? A:
9 Yeah. Well, I would in any event. If anything conflicting came up that would put into question
10 the article, I would naturally discontinue running the ad.”). The Court finds that on the basis of
11 this and other evidence that Schmidt entertained serious doubts as to the truth of his statements
12 and that the advertisements “should have been pulled.” (Hearing Tr. 52:6). Therefore, the Court
13 finds Sen. Kieckhefer has a probability of showing that Schmidt’s statements were made with
14 actual malice.

15 The Court finds, after considering all available evidence and arguments, that Sen.
16 Kieckhefer has established by clear and convincing evidence a probability of prevailing on his
17 claims for defamation and defamation per se. The Court does not find that Sen. Kieckhefer’s
18 lawsuit was meritless, frivolous, or vexatious.

19 Nevertheless, the Court does not have a sufficient basis to find that the Special Motion to
20 Dismiss was brought frivolously or vexatiously and therefore does not award fees or costs to Sen.
21 Kieckhefer under NRS 41.670.

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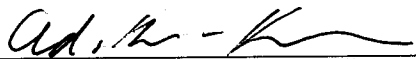
1 Accordingly, for good cause it is hereby ordered that Defendant/Counterclaimant GARY
2 SCHMIDT's Special Motion to Dismiss is DENIED.

3 DATED this 5th day of Sept. August, 2014

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6 _____
7 DISTRICT COURT JUDGE

7 Submitted by:

8 McDONALD CARANO WILSON LLP

9 
10 MICHAEL PAGNI (NSBN #6444)
11 ADAM HOSMER-HENNER (NSBN #12779)
12 McDonald Carano Wilson LLP
13 100 West Liberty Street, 10th Floor
14 Reno, NV 89501
15 Telephone: (775) 788-2000
16 Facsimile: (775) 788-2020
17 Email: mpagni@mcdonaldcarano.com
18 *Attorneys for Plaintiff/Counterdefendant*

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1 **CODE 2540**
2 MICHAEL PAGNI (NSBN #6444)
3 ADAM HOSMER-HENNER (NSBN #12779)
4 McDonald Carano Wilson LLP
5 100 West Liberty Street, 10th Floor
6 Reno, NV 89501
7 Telephone: (775) 788-2000
8 Facsimile: (775) 788-2020
9 Email: mpagni@mcdonaldcarano.com
10 *Attorneys for Plaintiff/Counterdefendant*

11 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
12 **IN AND FOR THE COUNTY OF WASHOE**

13 BEN KIECKHEFER, an individual,
14 Plaintiff/Counterdefendant,

CASE NO.: CV14-01227

DEPT. NO.: 3

15 vs.

16 GARY SCHMIDT, an individual, and DOES 1-
17 10, inclusive,
18 Defendant/Counterclaimant.

19 **NOTICE OF ENTRY OF ORDER DENYING SPECIAL MOTION TO DISMISS**

20 PLEASE TAKE NOTICE that on the 5TH day of September, 2014, the Court entered an
21 Order Denying Defendant's Special Motion to Dismiss, in the above-entitled matter, a true and
22 correct copy of which is attached hereto.

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AFFIRMATION

The undersigned does hereby affirm that this document does not contain the Social Security number of any person.

DATED: September 15, 2014.

McDONALD CARANO WILSON LLP

/s/ Adam Hosmer-Henner
MICHAEL PAGNI (NSBN #6444)
ADAM HOSMER-HENNER (NSBN #12779)
McDonald Carano Wilson LLP
100 West Liberty Street. 10th Floor
Reno, NV 89501
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Attorneys for Plaintiff/Counterdefendant

 **McDONALD-CARANO-WILSON**
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PHONE 775-788-2000 • FAX 775-788-2020

1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(b), I hereby certify that I am an employee of McDONALD
3 CARANO WILSON LLP and that on September 15, 2014, I served the within **NOTICE OF**
4 **ENTRY OF ORDER DENYING PLAINTIFF'S SPECIAL MOTION TO DISMISS** on the
5 parties in said case by filing the document electronically with the above-entitled court, and by
6 causing the documents to be electronically served via the court's electronic filing system to the
7 following attorneys associated with this case:

8 CHARLES R. KOZAK, ESQ.
9 KOZAK LAW FIRM
10 3100 MILL STREET, SUITE 115
11 RENO, NEVADA 89502

12 I declare under penalty of perjury that the foregoing is true and correct.

13 Executed September 15, 2014, at Reno, Nevada.

14 By /s/ Jill Nelson
15 An Employee of McDonald Carano Wilson LLP
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1 **CODE 2840**
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7 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**
9

10 BEN KIECKHEFER, an individual,

CASE NO.: CV14-01227

11 Plaintiff/Counterdefendant,

DEPT. NO.: 3

12 vs.
13

14 GARY SCHMIDT, an individual, and DOES 1-

15 10, inclusive,

16 Defendant/Counterclaimant.
17

18 **~~PROPOSED~~ ORDER DENYING SPECIAL MOTION TO DISMISS**

19 The Court has reviewed and considered Defendant GARY SCHMIDT's ("Schmidt")
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21 ("Sen. Kieckhefer") filed an Opposition on August 8, 2014 and Schmidt filed a Reply on August
22 12, 2014. A hearing was held in Department 3 on August 13, 2014 at 9:00 A.M. where Sen.
23 Kieckhefer and Schmidt were both represented by counsel. Having fully considered the parties'
24 pleadings, points and authorities and all exhibits attached thereto, having heard and carefully
25 considered all proffered evidence and the arguments of counsel, and deeming itself fully advised
26 of the matter and applicable law, the Court hereby enters the following Decision and Order:

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28 //

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2 election for Nevada State Senate District 16. Shortly before the primary election, Sen. Kieckhefer
3 and his campaign became aware on June 5, 2014 that Schmidt was airing television campaign
4 advertisements stating that Sen. Kieckhefer “endorsed and supported Harry Reid in 2010.” Sen.
5 Kieckhefer’s campaign notified Schmidt that these statements were false, but Schmidt did not
6 pull the advertisements. Consequently, on June 6, 2014, Sen. Kieckhefer filed a Complaint
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10 41.660(2). If a special motion to dismiss is filed, the Court must, by statute, conduct a two-part
11 inquiry to determine if dismissal is warranted. First, pursuant to NRS 41.660(3)(a), the Court
12 must determine whether Schmidt has established, by a preponderance of the evidence, that the
13 claims in the Complaint were based upon a good faith communication in furtherance of the right
14 to petition or the right to free speech in direct connection with an issue of public concern. The
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16 were made in the course of a political campaign and therefore satisfy the definitions contained
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20 defamation and defamation per se. The general elements of a defamation claim require a plaintiff
21 to prove “(1) a false and defamatory statement by [a] defendant concerning the plaintiff; (2) an
22 unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4)
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27 *Inc.*, 125 Nev. 374, 385, 213 P.3d 496, 503 (2009) (citations omitted).



1 Based on the evidence, including Sen. Kieckhefer’s sworn denial and contrasting lack of
2 credible evidence from Schmidt, the Court finds there is clear and convincing evidence that Sen.
3 Kieckhefer has a probability of showing the claim that Sen. Kieckhefer “endorsed and supported
4 Harry Reid in 2010” was false.

5 The Court further notes that the statements by Schmidt were made in the context of a
6 heated political campaign, and an analysis of those statements requires the Court to examine the
7 atmosphere of the political situation as it existed prior to the primary election and from the
8 perspective of a political conservative. The unrefuted evidence in the record indicates that the
9 statement in question could be harmful to the reputation of a Republican politician. Accordingly,
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12 Furthermore, the Court notes that these statements may damage Sen. Kieckhefer by way
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15 therefore damages may be presumed under the defamation per se analysis. Thus, the Court finds
16 there is clear and convincing evidence that Sen. Kieckhefer has a probability of establishing
17 damages and/or prevailing on the defamation per se claim. The Court also finds that Schmidt’s
18 statements were published to third parties via television stations and that there is no evidence in
19 the record that these statements were privileged.

20 The Court does find Sen. Kieckhefer to be a public figure and therefore he is required to
21 demonstrate actual malice in order to prevail on a claim for defamation. The evidence showed
22 that Schmidt’s only support for the allegation that Sen. Kieckhefer endorsed or supported Senator
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5 Harry Reid if “[Sen. Kieckhefer] or [the reporter] comes up with anything where [Sen.
6 Kieckhefer] supported or endorsed or spoke favorably – during the campaign and after the
7 primary – for Sharron Angle I’ll pull that spot.” (Plaintiff’s Motion for Temporary Injunction Ex.
8 5); *see also* (Hearing Tr. 16:9-17:9) (“Q: But you offered to pull that ad if anything turned up? A:
9 Yeah. Well, I would in any event. If anything conflicting came up that would put into question
10 the article, I would naturally discontinue running the ad.”). The Court finds that on the basis of
11 this and other evidence that Schmidt entertained serious doubts as to the truth of his statements
12 and that the advertisements “should have been pulled.” (Hearing Tr. 52:6). Therefore, the Court
13 finds Sen. Kieckhefer has a probability of showing that Schmidt’s statements were made with
14 actual malice.

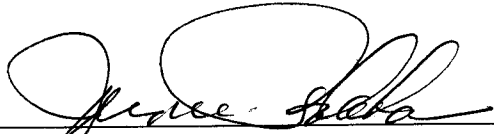
15 The Court finds, after considering all available evidence and arguments, that Sen.
16 Kieckhefer has established by clear and convincing evidence a probability of prevailing on his
17 claims for defamation and defamation per se. The Court does not find that Sen. Kieckhefer’s
18 lawsuit was meritless, frivolous, or vexatious.

19 Nevertheless, the Court does not have a sufficient basis to find that the Special Motion to
20 Dismiss was brought frivolously or vexatiously and therefore does not award fees or costs to Sen.
21 Kieckhefer under NRS 41.670.

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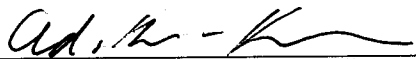
1 Accordingly, for good cause it is hereby ordered that Defendant/Counterclaimant GARY
2 SCHMIDT's Special Motion to Dismiss is DENIED.

3 DATED this 5th day of Sept. August, 2014

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6 _____
7 DISTRICT COURT JUDGE

8 Submitted by:

9 McDONALD CARANO WILSON LLP

10 
11 MICHAEL PAGNI (NSBN #6444)
12 ADAM HOSMER-HENNER (NSBN #12779)
13 McDonald Carano Wilson LLP
14 100 West Liberty Street, 10th Floor
15 Reno, NV 89501
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18 Email: mpagni@mcdonaldcarano.com
19 *Attorneys for Plaintiff/Counterdefendant*

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CASE NO. CV14-01227

BEN KIECKHEFER vs. GARY SCHMIDT

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

06/06/14

HEARING IN RE: TEMPORARY RESTRAINING ORDER

HONORABLE

Michael Pagni, Esq., and Adam Hosmer-Henner, Esq., were present in Court on behalf the Plaintiff, who was not present.

PATRICK

Defendant Gary Schmidt was present in Court, acting In Proper Persona.

FLANGAN

DEPT. NO. 7

K. Oates

4:54 p.m. – Court convened with Court, Plaintiff's counsel and Defendant present.

(Clerk)

S. Koetting

The Court addressed and advised the parties that he was in receipt of, and reviewed the Complaint and Ex Parte Motion for Temporary Restraining Order and Request for Preliminary Injunction Hearing. Counsel Pagni addressed the Court and argued in support of the issuance of a Temporary Restraining Order to include restraining and enjoining Defendant Schmidt, or anyone acting on his behalf, from making statements, expressing or implying, that the Plaintiff, Senator Kieckhefer, has endorsed or supported Senator Harry Reid. Further, counsel argued that the Plaintiff has a reasonable probability of succeeding on the merits, and should the conduct of the Defendant continue, the Plaintiff is likely to suffer irreparable harm. Further, counsel argued that the sworn Affidavit of Senator Kieckhefer clearly states that his client never endorsed or supported Harry Reid and that any such support could potentially be detrimental to Senator Kieckhefer's campaign as a Republican candidate.

(Reporter)

The Court inquired of counsel Pagni, who in turn responded that they are seeking relief to include removing any statements from the television advertisements wherein it is stated that Senator Kieckhefer endorses Senator Reid. Further, counsel advised that the other statements contained in the advertisement are "traditional campaign smear, and his client will accept striking only the Senator Reid statements.

Defendant Schmidt addressed the Court on his own behalf and argued that this is political rhetoric, he could bring his own action with respect to slanderous statements to include his political affiliation and his Reindeer Lodge residence. Further, Defendant Schmidt argued that this lawsuit violates his first amendment rights, is an abuse of process and he is missing two campaign events tonight in order to

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

06/06/14
HONORABLE
PATRICK
FLANGAN
DEPT. NO. 7
K. Oates
(Clerk)
S. Koetting
(Reporter)

HEARING IN RE: TEMPORARY RESTRAINING ORDER
attend this Hearing, and may also be late filing his campaign expense report.
COURT ORDERED: The Court finds that the Plaintiff will suffer irreparable harm if the Temporary Restraining Order is denied and further finds that the Plaintiff has a reasonable probability of succeeding on the merits, and therefore, the Ex Parte Motion for Temporary Restraining Order and Request for Preliminary Injunction Hearing is GRANTED as to the television advertisements wherein it is stated that Senator Kieckhefer endorses Senator Reid. It is further ordered that the Temporary Restraining Order is effective as of 6:02 p.m. tonight and counsel Pagni is ordered to post a bond in the amount of \$1,000.00 on Monday morning, June 9, 2014. Counsel Pagni will prepare the proposed order. It is further ordered that a Preliminary Injunction Hearing is set for June 18, 2014 at 1:30 p.m. 6:07 p.m. – Court stood in recess.

*** After Session ***

Temporary Restraining Order prepared, executed and filed at 6:20 p.m.

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Code 1350

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

**BEN KIECKHEFER;
AND DOES 1-100,**

Plaintiff/Counterdefendants,

Case No. CV14-01227

vs.

Dept. No. 7

**GARY SCHMIDT, an individual,
and DOES 1-10, inclusive,**

Defendant/Counterclaimant.

/

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 16th day of September, 2014, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 16th day of September, 2014

**JOEY ORDUNA HASTINGS
CLERK OF THE COURT**

By /s/ Yvonne Viloría
Yvonne Viloría
Deputy Clerk

CHARLES R KOZAK, ATTORNEY AT LAW

3100 MILL ST. STE 115
RENO, NV 89502

94-169/1212

1186

DATE 9/12/14

PAY TO THE
ORDER OF

Nevada Supreme Ct.

\$ 250.00

Two hundred fifty and ^{no} 100

DOLLARS



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usbank.

All of **us** serving you®

MEMO

Schmidt CV14-01227

Charles R Kozak

MP

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