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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0825**

Middle-Snake-Tamarac Rivers Watershed District,
Respondent,

vs.

James Stengrim,
Appellant.

**Filed February 17, 2009
Reversed and remanded
Peterson, Judge**

Marshall County District Court
File No. 45-CV-07-428

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Considered and decided by Peterson, Presiding Judge; Larkin, Judge; and Stauber,
Judge.

UNPUBLISHED OPINION

PETERSON, Judge

Appellant challenges the denial of a summary-judgment motion brought under Minnesota's anti-SLAPP (Strategic Lawsuits Against Public Participation) statute, Minn. Stat. §§ 554.01-.05 (2008), arguing that the district court's refusal to apply the statute was error. We reverse and remand.

FACTS

Respondent Middle-Snake-Tamarac Rivers Watershed District (the District) is a political subdivision of this state whose purposes include "control[ing] or alleviat[ing] damage from flood waters." Minn. Stat. § 103D.201, subd. 2(1) (2008). In 2002, the District ordered the establishment of a flood-control project that required it to take private property. A number of the affected landowners, including appellant James Stengrim, objected to the compensation offered for their property and appealed the District's order to the district court.

Following protracted litigation, the parties entered into a settlement agreement in mid-2006, resolving the landowners' claims against the District. Under the terms of the settlement agreement, the landowners and the District agreed "that they will endeavor to establish a positive and collaborative relationship" with each other. In exchange for a lump-sum payment of \$1.7 million, the landowners agreed to release the District from any and all claims that were or could have been raised in the litigation. The agreement further provided:

Landowners agree that, by accepting this settlement, their challenges to the establishment of the Project are being dismissed with prejudice and that Landowners will address no further challenges in litigation or otherwise against the establishment of the Project, which Landowners now understand will be going forward. Nothing in this Paragraph prohibits Landowners from meaningfully attending meetings or participating in Project team meetings regarding the Project and any modifications of the Project. Landowners acknowledge that the operation of the Project will be governed by an approved plan.

Approximately one year later, the District brought this action against Stengrim, alleging that he violated the settlement agreement by (1) attempting to interfere with the project's funding; (2) making statements with the intent of harming the project; (3) continuing to file data-practices requests designed to burden the District's staff and keep them from fulfilling their ordinary duties; (4) using the Data Practices Act as a weapon in order to stop the project and regain his land; (5) engaging in activities designed to delay or defeat the project, including making complaints; and (6) engaging in activities designed to make the District's business more acrimonious.

Both parties moved for summary judgment. Stengrim sought dismissal, arguing that the conduct underlying the District's claims was outside the scope of the settlement agreement and that his conduct was immune from liability under the anti-SLAPP statute. The District argued that undisputed facts showed that Stengrim had breached the settlement agreement. The district court denied Stengrim's motion, concluding that the anti-SLAPP statute did not apply to actions to enforce settlement agreements. It also denied the District's motion because the District failed to present sufficient evidence that

Stengrim had breached the settlement agreement and there were issues of fact requiring trial. This appeal followed.¹

DECISION

Stengrim challenges the district court’s ruling that the anti-SLAPP statute does not apply to breach-of-settlement-agreement actions. The applicability of a statute presents a question of law, which we review de novo. *Kelly v. Campaign Fin. & Pub. Disclosure Bd.*, 679 N.W.2d 178, 180 (Minn. App. 2004), *review denied* (Minn. July 20, 2004). When interpreting a statute, our primary objective is to ascertain and effectuate the legislature’s intent. *Scott v. Minneapolis Police Relief Ass’n*, 615 N.W.2d 66, 71 (Minn. 2000). In doing so, we first examine the statute’s language to determine whether its meaning is plain. *Kellogg v. Woods*, 720 N.W.2d 845, 850 (Minn. App. 2006). If it is, further construction is neither necessary nor proper, and we apply the statute as written. *Id.*

Minnesota’s anti-SLAPP statute creates a statutory immunity designed to “protect citizens and organizations from lawsuits that would chill their right to publicly participate in government.” *Marchant Inv. & Mgmt. Co. v. St. Anthony W. Neighborhood Org.*, 694 N.W.2d 92, 94 (Minn. App. 2005) (*Marchant*); *see also* Minn. Stat. § 554.03 (providing immunity for lawful conduct or speech aimed at procuring favorable government action).

¹ Although an order denying summary judgment is not typically appealable, *Anderson v. Anoka Hennepin Indep. Sch. Dist. 11*, 678 N.W.2d 651, 655 (Minn. 2004), a motion brought under the anti-SLAPP statute necessarily raises the movant’s immunity from suit, Minn. Stat. §§ 554.02-.03. Such orders are immediately appealable because an immunity “is effectively lost if a case is erroneously permitted to go to trial.” *Anderson v. City of Hopkins*, 393 N.W.2d 363, 364 (Minn. 1986).

To effectuate this purpose, the statute permits a party to bring a dispositive motion on the ground that the plaintiff's "claim materially relates to an act of the moving party that involves public participation." Minn. Stat. § 554.02, subd. 1. The district court must grant the motion unless the plaintiff demonstrates by clear and convincing evidence that the moving party's act is not immune from liability under Minn. Stat. § 554.03. Minn. Stat. § 554.02, subd. 2(2)-(3).

The district court analyzed neither whether Stengrim's actions involved "public participation" nor whether the District's claim "materially relates" to those actions. Rather, it simply ruled that the anti-SLAPP statute does not apply because it was unclear "whether or not the legislature intended to apply the anti-SLAPP statute to suits to enforce settlement agreements" and found it inappropriate for the statute "to be extended to such suits in this case." The district court's failure to apply the anti-SLAPP statute disregarded the statute's plain meaning, which is inappropriate except for "rare cases where the plain meaning utterly confounds a clear legislative purpose." *Weston v. McWilliams & Assocs.*, 716 N.W.2d 634, 639 (Minn. 2006) (quotations omitted). This is not one of those rare cases.

The anti-SLAPP statute "applies to any motion in a judicial proceeding to dispose of a judicial claim on the grounds that the claim materially relates to an act of the moving party that involves public participation." Minn. Stat. § 554.02, subd. 1. A "judicial claim" is broadly defined to include "any civil lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing seeking damages for an alleged injury." Minn. Stat. § 554.01, subd. 3. The statute focuses on whether the motion

seeking to dispose of a judicial claim is brought on the grounds that the judicial “claim materially relates to an act of the moving party that involves public participation.” Minn. Stat. § 554.02, subd. 1.

The District’s breach-of-settlement-agreement claim is a “judicial claim” for damages. *Cf. Voicestream Minneapolis, Inc. v. RPC Props., Inc.*, 743 N.W.2d 267, 271 (Minn. 2008) (stating that settlement agreements are “contractual in nature” and can therefore “be enforced by an ordinary action for breach of contract” (quotation omitted)). Stengrim moved for dismissal on the ground that the District’s claim materially related to his acts involving public participation. Thus, the broad, plain language of the anti-SLAPP statute applies to Stengrim’s motion. Further construction was neither required nor appropriate. *Kellogg*, 720 N.W.2d at 850. Therefore, the district court erred by not applying Minn. Stat. § 554.02 as written.

The District’s argument that Minn. Stat. § 554.05 “plainly trumps” the rest of chapter 554 is without merit. Section 554.05 provides “Nothing in [chapter 554] limits or precludes any rights the moving party or responding party may have under any other constitutional, statutory, case, or common law, or rule.” The District interprets this to mean that “the first inquiry presented, before any other inquiry, is whether the responding party asserts rights ‘under any other constitutional, statutory, case, or common law, or rule’”; if the claim at issue is a good-faith attempt to enforce such a right, the inquiry is at an end. Essentially, the District argues that first applying Minn. Stat. § 554.02, which automatically stays discovery pending resolution of a motion, effectively denies plaintiffs the right to present their case and permits defendants to use the anti-SLAPP statute as a

weapon to defeat good-faith efforts to enforce otherwise valid contract rights. Although the District’s concerns are valid, they are addressed by other provisions of the anti-SLAPP statute. As the District correctly observes, an anti-SLAPP motion suspends discovery pending final disposition of the motion. Minn. Stat. § 554.02, subd. 2(1). But the district court may order “specified and limited discovery” for good cause shown after a motion and hearing. *Id.* The District, therefore, had an opportunity to seek limited anti-SLAPP discovery on whether Stengrim’s conduct was in fact “[I]awful conduct or speech that is genuinely aimed in whole or in part at procuring favorable government action” under Minn. Stat. § 554.03.²

Stengrim further argues that the District failed to meet its burden to prove that his conduct is not immune under the anti-SLAPP statute. Because the anti-SLAPP statute places on the District the burden of proving that Stengrim’s conduct is not immune, if the District failed to prove by clear and convincing evidence that the conduct is not immune, the district court was required to grant Stengrim’s motion to dismiss. Minn. Stat.

² The District’s reliance on the *Noerr-Pennington* doctrine is misplaced because the anti-SLAPP statute creates an immunity—not a weapon but a shield—designed to allow people to participate in government without fear of being sued, irrespective of the plaintiff’s good faith in bringing the suit. *See Marchant*, 694 N.W.2d at 94-95 (stating purpose of anti-SLAPP statute); *cf. Simmons v. Fabian*, 743 N.W.2d 281, 287 (Minn. App. 2007) (noting that official immunity represents policy decision that harm to plaintiff in leaving claim unaddressed is outweighed by harm to public in having officials’ decision-making impaired by fear of liability for decisions). Although the moving party may also seek damages, the moving party must first succeed on the motion itself. Minn. Stat. § 554.04, subd. 2. The *Noerr-Pennington* doctrine, which generally immunizes the act of filing a lawsuit from tort or antitrust liability, has no bearing on whether a party can bring a defensive motion to dispose of a lawsuit already filed. *See generally Prof’l Real Estate Investors, Inc. v. Columbia Pictures Indus.*, 508 U.S. 49, 57-58, 113 S. Ct. 1920, 1926-27 (1993) (explaining *Noerr-Pennington* doctrine).

§ 554.02, subd. 2(2)-(3). Stengrim argues that by concluding that there were genuine issues of material fact,³ the district court, effectively found that the District failed to meet its burden of proving that his conduct is not immune. But when the district court determined that there were genuine issues of material fact, it was applying the summary-judgment standard, which is a different legal standard than applies to an anti-SLAPP motion. Normally, a district court is prohibited from weighing evidence on a motion for summary judgment. *Wagner v. Schwegmann's S. Town Liquor, Inc.*, 485 N.W.2d 730, 733 (Minn. App. 1992), *review denied* (Minn. July 16, 1992). This is because a summary-judgment proceeding is not designed to resolve questions of fact but rather to determine whether fact questions exist. *Schmidt v. Smith*, 299 Minn. 103, 107, 216 N.W.2d 669, 671 (1974). An anti-SLAPP motion, by contrast, explicitly requires the district court to weigh the evidence that the moving party is not immune to determine whether it is “clear and convincing.” Minn. Stat. § 554.02, subd. 2(3). In doing so, the district court must resolve a critical fact issue: whether the moving party’s conduct was “genuinely aimed in whole or in part at procuring favorable government action.” Minn. Stat. § 554.03. Although the nonmoving party bears the risks of nonproduction and nonpersuasion, Minn. Stat. § 554.02, subd. 2(2), the district court must still evaluate the

³ Stengrim also repeatedly emphasizes that the district court found that the District failed to produce evidence that Stengrim breached the settlement agreement. This mischaracterizes the district court’s decision in two respects. First, the district court stated this in context of denying the District’s summary-judgment motion. Second, the district court qualified its statement with “at this time.” In other words, the district court merely found that the evidence that the District presented was insufficient to establish breach-of-contract liability when summary judgment was decided. Unless Stengrim’s actions are immune, the District is free to present further evidence of breach at trial.

credibility of any conflicting evidence relating to the purpose and genuineness of the moving party's conduct.⁴

The district court failed to address whether the District met its statutory burden to prove by clear and convincing evidence that Stengrim's conduct is not immune. We will not address this issue for the first time on appeal. *Cf. Rebne v. Rebne*, 216 Minn. 379, 382, 13 N.W.2d 18, 20 (1944) ("As a court of review. . . , it is not for us to weigh the evidence. That responsibility rests upon the trier of fact."). Instead, remand is necessary for the district court to weigh the evidence and apply the correct statutory criteria.

Reversed and remanded.

⁴ Thus, Stengrim's assertion that the District's only possible argument that his actions are not immune "is that Stengrim waived his right to participate in the public process when he signed the Settlement Agreement" is incorrect. Stengrim's actions are not immune if the District proves by clear and convincing evidence that they were not "genuinely aimed in whole or in part at procuring favorable government action." Minn. Stat. §§ 554.02, subd. 2(2)-(3), .03.