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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

SANTIAGO GARCIA GUTIERREZ, Plaintiff and Respondent, v. VERONICA VASQUEZ et al., Defendants and Appellants.	B275500 (Los Angeles County Super. Ct. No. BC612312)

APPEAL from an order of the Superior Court of Los Angeles County. Samantha P. Jessner, Judge. Affirmed.

Robert W. Hirsh & Associates and Robert W. Hirsh for Defendants and Appellants.

No appearance for Plaintiff and Respondent.

* * * * * *

A man sued his ex-wife and her parents for slander because they told nine named individuals and other unnamed people that the man was a "crook," a "thief," a "money launderer," and was someone who associated with and was at risk of being killed by criminals; they also reported him to the Department of Homeland Security. The ex-wife and parents filed a motion to strike the slander lawsuit under the anti-SLAPP[1] statute (Code Civ. Proc., § 425.16).[2] The trial court granted the motion as to the reports allegedly made to the Department of Homeland Security, but otherwise denied the motion. The ex-wife and her parents appeal. We independently conclude there was no error, and affirm.

FACTS AND PROCEDURAL BACKGROUND

Plaintiff Santiago Garcia Gutierrez (Gutierrez) and defendant Veronica Vasquez (Veronica)[3] were married, and had one child together. Following a "very contentious" divorce, the family court awarded Veronica custody of their child in 2010.

On February 17, 2016, Gutierrez filed a motion with the family court to modify its prior child custody order. Both before and after Gutierrez filed his motion, Veronica and her parents, defendants Judy Vasquez and Robert Vasquez (collectively, defendants), told "several" of Gutierrez's "business and personal relations"—including nine named individuals—that he was "a

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1 "SLAPP" is an acronym for "strategic lawsuit against public participation."

2 All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

3 Because some of the litigants share the same last name, we refer to those parties by their first name. We mean no disrespect.

crook, a thief, associated with criminals, was intending to kidnap his son, a money launderer, [and] at risk of being killed by his criminal associates." Defendants also "informed the United States Department of Homeland Security that [Gutierrez] should be deported because he was currently engaged in criminal activity."

In March 2016, Gutierrez sued defendants for slander, alleging that their statements were untrue and that they caused him $1.2 million in compensatory damages and warranted punitive damages.

Defendants filed a motion to strike Gutierrez's complaint under the anti-SLAPP statute. Following full briefing, the trial court issued a written ruling striking the allegation regarding defendants' report of criminal activity to the Department of Homeland Security. However, the court refused to strike the remainder of the complaint, reasoning that defendants' statements about Gutierrez to private individuals were not subject to the anti-SLAPP statute because they were not "made in connection with an issue under consideration" in the pending family law case and that defendants' litigation-minded reasons for making the statements did not create the requisite "connection."

Defendants filed a timely notice of appeal.

DISCUSSION

Defendants argue that the trial court erred in partially denying their anti-SLAPP motion.[4] We independently review a

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4 Gutierrez does not cross-appeal the trial court's partial grant of defendants' anti-SLAPP motion. Although the court expressed some reservation about whether it could strike individual allegations within a single cause of action, that

trial court's ruling on an anti-SLAPP motion. (*Melamed v. Cedars-Sinai Medical Center* (2017) 8 Cal.App.5th 1271, 1276, review granted June 21, 2017, S241146.)

California's anti-SLAPP statute "provides a procedure for weeding out, at an early stage, *meritless* claims arising from . . . activity" "protected" by the statute—that is, "act[s] . . . in furtherance of [a] person's right of petition or free speech under the" federal or California Constitutions "in connection with a public issue." (*Baral*, *supra*, 1 Cal.5th at p. 384; § 425.16, subd. (b)(1).) The statute creates a two-step process for determining whether a claim is subject to early review and dismissal. First, the court must evaluate whether the moving party "has made a threshold showing that the challenged cause of action arises from protected activity" (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1056), and the statute defines and enumerates four categories of such activity (§ 425.16, subd. (e)). Second, and only if the moving party has made this threshold showing, the court must assess whether the nonmoving party has "made a prima facie factual showing sufficient to sustain a favorable judgment." (*Baral*, at pp. 384-385.) In making this assessment, the court considers "the pleadings, and supporting and opposing affidavits." (§ 425.16, subd. (b)(2); *Equilon Enterprises v. Consumer Care, Inc.* (2002) 29 Cal.4th 53, 67 (*Equilon*).) If the nonmoving party makes this showing, the anti-SLAPP motion is denied; otherwise, it must be granted.

The trial court correctly concluded that defendants' allegedly slanderous statements about Gutierrez to private individuals do not constitute activity protected by the anti-

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procedure was subsequently validated by our Supreme Court in *Baral v. Schnitt* (2016) 1 Cal.5th 376, 382, 392-395 (*Baral*).

SLAPP statute. One of the anti-SLAPP statute's categories of protected activity is for claims arising out of "any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body." (§ 425.16, subd. (e)(2).) By its plain terms, this provision reaches communications made in the course of litigation or, for that matter, before an executive body. (See *Maranatha Corrections, LLC v. Department of Corrections & Rehabilitation* (2008) 158 Cal.App.4th 1075, 1085 [statement by executive branch agency regarding why it terminated a contract is "under consideration" by an "executive . . . body"].) However, the provision also reaches communications that are "'preparatory to or in anticipation of the bringing of [a legal] action'" (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1115; accord, *Flatley v. Mauro* (2006) 39 Cal.4th 299, 322, fn. 11), but only if the communication (1) "'relates to the substantive issues in the litigation,'" and (2) "'is directed to persons having some interest in the litigation'" (*City of Costa Mesa v. D'Alessio Investments, LLC* (2013) 214 Cal.App.4th 358, 373).

Although Gutierrez filed a motion with the family court to modify the child custody order, the statements defendants allegedly made were not "in connection with" that judicial proceeding. They were not made *during* the proceeding. Nor were they "preparatory to or in anticipation of" that proceeding because they were not "directed to persons having some interest in th[at] litigation." Although a communication need not be directed to a party to the judicial proceeding (*Summerfield v. Randolph* (2011) 201 Cal.App.4th 127, 136), it must be directed to persons with *some* interest in the proceeding. (E.g., *Contemporary Services Corp. v. Staff Pro Inc.* (2007)

152 Cal.App.4th 1043, 1050, 1054-1055 [e-mail to customers involved in the parties' prior litigation accusing competitor of litigation-related conduct]; *Healy v. Tuscany Hills Landscape & Recreation Corp.* (2006) 137 Cal.App.4th 1, 5-6 [letter sent by homeowners association to nonparty homeowners advising them of cost increases due to one homeowner's refusal to grant access to her property]; *Digerati Holdings, LLC v. Young Money Entertainment, LLC* (2011) 194 Cal.App.4th 873, 887-888 [prelitigation statements made to film exhibitors advising them of a dispute over distribution rights]; *Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809, 821-822 [prelitigation letter to nonparties soliciting contributions for litigation fund], disapproved on other grounds in *Equilon*, *supra*, 29 Cal.4th at p. 68, fn. 5.) Defendants never established that the nine individuals named in the complaint—or any of the "several" other unnamed "business and personal relations" of Gutierrez—had anything to do with the family law proceeding. Because defendants bear the burden of proof on this issue, their failure to carry it dooms their motion.

Defendants raise two arguments in response. First, defendants quote language from Gutierrez's complaint alleging that their statements were designed to prevent him from seeing his son (and thus to influence the child custody proceeding), and in so doing, seem to suggest that their *motivation* for making the allegedly defamatory statements matters. But "'causes of action do not arise from motives; they arise from acts.'" (*People ex rel. Fire Ins. Exchange v. Anapol* (2012) 211 Cal.App.4th 809, 823.) Gutierrez's slander claim arises from defendants' act in making defamatory statements; *why* they did so cannot compensate for the fact that their statements were made to people who, as far as

we know, were wholly unconnected to the custody proceeding and thus outside the ambit of the anti-SLAPP statute.

Second, defendants assert that their conduct constitutes protected activity under subdivision (e)(4) of section 425.16. That provision declares the anti-SLAPP statute applicable to claims arising from "conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (§ 425.16, subd. (e)(4).) Gutierrez's past criminality, defendants assert, is certainly an "issue of public interest." As an initial matter, defendants forfeited this argument by not making it to the trial court. (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2008) 163 Cal.App.4th 550, 564 [""""issues raised for the first time on appeal which were not litigated in the trial court are [forfeited]""""].) Even if we consider the argument, however, it lacks merit for the simple reason that a "private matter among a small group of people involving a family [matter] . . . [does] not involve a public issue or an issue of public interest" (*Greco v. Greco* (2016) 2 Cal.App.5th 810, 824), particularly when it is communicated only to private individuals. (Cf. *M. G. v. Time Warner, Inc.* (2001) 89 Cal.App.4th 623, 629 [airing of photograph on national news program regarding molestation is an issue of public interest]; *Mendoza v. ADP Screening & Selection Services, Inc.* (2010) 182 Cal.App.4th 1644, 1652-1653 [preparation and publication of information found on a sex-offender registry is a "subject of public interest" because purpose of registry is to disseminate such information].)

DISPOSITION

The order is affirmed. Parties to bear their own costs on appeal.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.*
GOODMAN

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* Retired judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.