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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

MAURICE MEHRBAN, M.D., Plaintiff and Respondent, v. MICHELLE DANESHRAD, et al., Defendants and Appellants.	B229992 (Los Angeles County Super. Ct. No. SC107733)

APPEAL from an order of the Superior Court of Los Angeles County, Linda K. Lefkowitz, Judge. Reversed.

California Anti-SLAPP Project, Mark Goldowitz and Paul Clifford for Appellants Michelle Daneshrad, American Lending and Realty, Inc., U.S.A. Enterprise, Inc., First Mutual Enterprise, Inc. and Completion Law Firm.

No appearance for Respondent.

INTRODUCTION

This is an appeal from the trial court's denial of a special motion to strike pursuant to Code of Civil Procedure section 425.16. We reverse.

FACTUAL AND PROCEDURAL SUMMARY

In April 2010, Maurice Mehrban, M.D., filed a complaint against his ex-wife Michelle Daneshrad (and various businesses of hers), asserting the following causes of action: (1) slander per se, (2) false light, (3) publication of private facts, (4) intrusion upon seclusion, (5) intentional infliction of psychological distress, (6) intentional interference with prospective economic advantage, (7) breach of contract and (8) fraud.[1] According to the allegations of his complaint, Mehrban is a double Board certified cardiologist and internist as well as an attorney admitted to practice in the United States, England and Wales.

At all times "and in particular from April 30, 2009 to present," Mehrban alleged, Daneshrad "made false and unprivileged egregious publications by oral utterance, and also made communications by radio, television, blogs, internet, [T]witter, [F]acebook, Land Mark Forum lectures and speeches, promotional speeches and gathering[s] and other mechanical means in depicting the person and character of . . . Mehrban." According to Mehrban, the publication of falsehood imputed "criminal conduct, serious sexual misconduct and lack of chastity and veracity in his profession, loathsome disease and falsehood inuring serious misconduct in performance of his professional duties in those respects which the office or occupation of such a highly qualified cardiologist requires in peculiarity. [Daneshrad] falsely and maliciously published that [Mehrban] engaged in improper sexual act[s] with his patients in his medical practice, [Mehrban] had sexual relationship[s] with multiple female family members of [Daneshrad] who

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[1] Throughout his complaint, Mehrban includes all of Daneshrad's businesses in his references to "all Defendants" so we include these entities in our references to Daneshrad unless otherwise indicated.

were married at the time, commission of other illicit sexual misconduct[], and that [Mehrban] could have been inflicted [sic] with AIDS due to his promiscuous conduct. Plaintiff [sic, Daneshrad] further published that [she was] fearful of [Mehrban's] actions during divorce causing [her] to spend hundreds of thousands of [d]ollars by hiring aggressive attorneys fighting for five years during the dissolution of marriage of 1994 with [Mehrban. Daneshrad] further published in false [sic] that many women approached [her] to seek class action against [Mehrban] for criminal conduct . . . . In one occasion, . . . Daneshrad published that she w[as] lucky not to have been afflicted with HIV virus during her marriage with [Mehrban]. This was in lieu of the fact that [Mehrban] was a healthy person and was not suffering from any loathsome disease, he was not convicted of felony, neither did he commit any sexual improprieties; and, he was a respectable [d]ouble Board [c]ertified Cardiologist. . . ."

According to Mehrban, Daneshrad "repeatedly used her previous husband as a symbol of a horrific person to create a false implication of criminality and impropriety," and such criminal implications were "more believable when expressed by someone making false advertisement as a collaborative lawyer, a spiritual guide, and leader, in fiduciary position" and were made for the economic gain for Daneshrad's Completion Law Firm. Merhban said publication was made to small groups of close family members, members of Jewish society and leaders of the Iranian Jewish community, Mehrban's adult children and their partners during promotional speeches and advertisements, and on the internet, blogs, [F]acebook, [T]witter, public gatherings, teaching courses of Land Mark Forum, radio and T.V. interviews and presentations, leadership weekend retreats and Jewish Federation gatherings continuous and incessantly, deliberately and in malice." There was no benefit to society, Mehrban alleged, by the publication of private information relating to "Mehrban's divorce that happened over 16 years ago."

Mehrban further alleged the publications came to the attention of Jewish community members and leaders, Mehrban's patients and peers and other doctors and lawyers who referred patients and clients to Mehrban. Patients and clients abandoned Mehrban's practice, and peers and associates stopped referring patients and clients "in

disgust and hatred, and for their professional protection to avoid HIPPA violation and [m]alpractice [l]awsuit." Despite multiple oral and written notices to cease and desist, Daneshrad maintained her false publication.

In his seventh cause of action for breach of contract, Mehrban alleged that "on or about June of 2008," he and Daneshrad entered into a binding agreement that Daneshrad would cease publication of defamatory remarks she had been "maintaining since 1993." In consideration of this discontinuation, Mehrban would relinquish his right to file a complaint against Daneshrad for the causes of action now asserted in his April 2010 complaint. According to the agreement, Mehrban said, his complaint sought "pecuniary damages for 15 years of emotional, non-economical and economical, and punitive damges," but Daneshrad "admitted the wrongdoing for 15 years and agreed to forebear publication of falsehood in any form . . . in consideration of [Mehrban's] relinquishment of the right to file the complaint seeking damages against [Daneshrad] for 15 years of malfeasance." In violation of this mutually agreed accord and satisfaction, Daneshrad breached by republication of falsehood about Mehrban, and he became a "tragic spectacle" for Daneshrad's promotion and false advertising of her "recently established spiritually unique" law firm. This breach, Mehrban alleged, invokes the rights vested in him since 1993, as agreed and relinquished in June 2008. Daneshrad's breach came to Mehran's attention on or about December 15, 2009.

In his eighth cause of action for fraud, Mehrban alleged he served Daneshrad with a notice to withdraw and cease publication of slanderous remarks on or about June of 2008, and he and Daneshrad entered into lengthy communications resulting in the "written memorandum of June of 2008," but Daneshrad only agreed in order to stop Mehrban from filing his complaint and never intended to perform.

Daneshrad answered and filed a special motion to strike pursuant to Code of Civil Procedure section 425.16. (All further statutory references are to the Code of Civil Procedure unless otherwise indicated.) Daneshrad argued Mehrban's claims were covered under subdivision (e)(2) of section 425.16 because they were based on alleged statements made in connection with matters under review in official proceedings; his

claims were covered under subdivision (e)(3) because the alleged statements were said to have been made in public fora in connection with issues of public interest; Mehrban's claims were within the meaning of subdivision (e)(4) of this statute because his claims arise from alleged conduct in furtherance of the exercise of the right of free speech in connection with issues of public interest; and Mehrban could not establish a probability of prevailing on any of his claims.

As supporting exhibits, Daneshrad submitted copies of information printed from the internet relating to Mehrban and his business (British American Legal Council), including a Facebook page for Sir Maurice Mehrban, M.D., Esq., FACC, FACP, FCCP, FACFM (with "likes" and photos from Maurice Mehrban, M.D., Esq. and Ariel Mehrban), referencing and quoting from other business Web sites, including statements such as: "Our Law Offices may be the most unique Law Firms representing and defending Doctors and Nurses in United States and Europe. We are double Board Certified Medical Doctors With Law degree following our passion to pursue legal representation of other Medical Care Providers when legal assistance of Doctors and Nurses is necessary. [¶] We practice Medicine and render medical care as Doctors, and defend Doctors in State and Federal Courts as Trial Lawyers when health professionals need legal representation in Civil, Criminal or Administrative hearings. . . ." "[W]hen your spouse serves you with a summons of dissolution of marriage, when you have a DUI or Domestic Violence charge, or the time your spouse demands more child support and less visitation right—the time is ripe for you or your executive officer to get on the computer and start chatting with our on[-]call legal team."

In addition, Daneshrad submitted articles from the Medical Board of California Web site regarding sexual misconduct (citing Business and Professions Code section 726 and 729 as "prohibit[ing] sexual relations with patients" and "prohibit[ing] sexual exploitation of a patient or client by a physician"), including "Policy Statement: Medical Practitioners and Sexual Misconduct" and "Continuing Concerns About Sexual Misconduct" along with an opinion of the American Medical Association stating that "Sexual contact that occurs concurrent with the patient-physician relationship constitutes

sexual misconduct," and "Sexual or romantic relationships with former patients are unethical if the physician uses or exploits trust, knowledge, emotions, or influence derived from the previous professional relationship."

In her supporting declaration, Daneshrad said she had been raised with very traditional beliefs such that marriage and family were more important than anything else and dating was only for the purpose of marriage. Her relationship with Mehrban was her first relationship with a man, and she married him when she was 21. She was a college student working on her undergraduate degree with the intention to go to medical school. He was 12 years older than her and had just started his medical practice. When she married Mehrban, Daneshrad said, she stopped her education and began managing his medical office and working as his assistant.

During the marriage, Daneshrad said, she was "forced to not associate with my family, my parents and sisters and cousins and aunts, whom I was very close to." She said Mehrban mistreated her and isolated her and she learned he was having "affair(s)," and got "very ill" as a result. She said she was about seven months pregnant with two toddlers at home, very sick, and dealing with the aftershocks of the 1994 earthquake. She decided, "[I]f I was going to live, I needed to get help, knowing that it would result in a divorce." After that, she said, she "went into hiding" in relatives' homes and hired an attorney to pursue a divorce. The divorce proceedings began in 1994, but there was no judgment until 1996. Even after that, she said, court battles continued through 2003. She hired at least five different attorneys at a cost of more than $500,000. She and Mehrban had $500,000 in cash which they both used for fees, plus she used $200,000 from the sale of her house in 2006.

In her declaration, Daneshrad further stated, "I was subjected to continued domestic violence, even though there were restraining orders against [Mehrban]. He was allowed only monitored visitation, because he told my son to kill me. He did this knowing that the court had ordered that his calls with our children be recorded. [Mehrban] attempted to destroy all of our community property assets, so that I would end

up with nothing. Like the Family Court judge said, [Mehrban] was like Samson pulling the walls down on himself."

According to Daneshrad, Merhban kept taking court action knowing the attorney fees and costs would drain her so she decided to go to law school to take control over her family law matter. She graduated in 2001 and represented herself, prevailing several times thereafter. "That is when he stopped taking me to court." On March 24, 2010, Daneshrad said, she applied to the court to collect child support payments Merhban owed her. "He threatened to sue me if I did not withdraw my application. I did not respond and he filed this lawsuit."

In 2004, Daneshrad said, she "started an education in ontology at Landmark Education and had incredible realizations."[2] Through this process, she said, she realized how much she loved people and wanted to live her life making a difference in people's lives—including Mehrban's. She started a new law practice doing business under the name of Completion Law Firm with the vision of providing opportunities for lawyers to practice collaborative law, resolving conflicts peacefully and cost effectively, with dignity and respect.[3] She started writing blogs for the public to learn from her experience about the costs of litigation in terms of time, money and well-being. She said her blogs "provoke a settlement oriented attitude toward conflict resolution. My statements in this regard share my experience so the public can know that hiring aggressive lawyers to fight and win over the other person is not necessarily in their best interest. By being aware of my experience, the public can look at my example and consider their costs before they choose to take an aggressive litigation route. After expending all their resources, the

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[2] According to Merriam-Webster's Collegiate Dictionary, "ontology" is "a branch of metaphysics concerned with the nature and relations of being."

[3] She acknowledged the other named defendants American Realty and Realty, Inc. U.S.A. Enterprise Inc., and First Mutual Enterprise, Inc. as corporations she "own[s] and/or control[s]."

problem persists. I believe that a peaceful, respectful, and collaborative process, in most circumstances, serves the best interest of the client."

Mehrban opposed Daneshrad's motion, arguing she had failed to show that her conduct giving rise to his complaint for slander against her arose from protected activity, and there was no evidence of any pending proceedings. He said Daneshrad's highly personal vitriolic, vituperative remarks to their children, his patients, colleagues, doctors and nurses and others were of no value or interest to the public at large. Moreover, he said, he could demonstrate a probability of prevailing because no reasonable person would believe Daneshrad's vulgar, distasteful, terribly humiliating remarks with no "concomitant inducing official or judicial precursor." He said Daneshrad's statement she had made an application with the court in March 2010 was false.

Furthermore, according to his declaration and supporting exhibits, Merhban said, he had never been charged with any felony, medical malpractice or administrative wrongdoing, but because of Daneshrad's "incessant, malicious and continuous" remarks constituting slander per se, he had lost a considerable number of patients and suffered severe anxiety disorder and depression such that he decided to terminate his practice. He said he made more than $1 million in 1993 as a medical professional but is now entertaining filing bankruptcy.

According to Mehrban's declaration, Daneshrad had told him and other family members, "I will ruin and destroy Maurice's life and profession, I will kill him." She had said, "Who are you now, are you a doctor now or I finished you up[?]" When he gave Daneshrad notice of her breach and said he was going to file a lawsuit, she said, "[Y]ou are going to learn a big lesson that judges are not fair, that is why I am in collaborative law practice." He said Daneshrad personally admitted that her slanderous remarks were false after she completed her landmark training and in her remorse talked to him seeking forgiveness as part of her cleansing process to be forgiven and released. He said her statement in her declaration under penalty of perjury about filing an application with the court in 2010 was "fictitious," and said there is "currently no judicial or official motion or

hearing in progress in court between the parties. The last motion in Family Court was in 2001."

He said all derogatory and disparaging remarks about him, including remarks about his sexual relationships during marriage, with Daneshrad's family members and his patients or having any sexually transmitted disease, were false. He said Daneshrad told him she had contacted patients, family members, friends and other private members of society, contending he had sexual relationship with members of her family out of hate and disgust for him after their divorce, and said she repeated the remarks any time she got angry and hated men because of him. Mehrban said Daneshrad told him she is an attorney and "knows that she can say whatever she wants for freedom of speech and she is not afraid of courts." He said she admitted going to psychologists, a psychiatrist and "landmark forum" to be able to control her anger to stop her conduct, and said he admitted and it was documented she suffers from ADD. He said Daneshrad had used her legal practice and real estate and loan practice as a "slandering mouthpiece."

Mehrban filed a number of declarations from family members and patients. According to Minoo Javdan, a family member, she knew Daneshrad during seven years of her marriage to Mehrban and Daneshrad never complained about her marriage during that time. After Daneshrad filed for divorce, Javdan said, Daneshrad told her Mehrban was unfaithful, had improper sexual relationships with multiple women and lacked chastity, but Javdan believed the statements to be false. According to Ron Javdan, M.D., also a cardiologist and internist for more than 30 years, he "personally heard" Daneshrad "made humiliating and disparaging allegations of many different sexual improprieties" by Mehrban to many people he personally knew, including his wife. "I heard the allegations immediately after she started the dissolution of marriage proceedings."

According to another family member (Elie Mehrban), Daneshrad had said Mehrban was promiscuous, had had sexual relationships with patients, female members of her family and prostitutes and she was lucky because she did not get HIV from him. According to another family member (Rafat Efrim), Daneshrad had personally told him the same things.

According to the declaration of Mehrdad Barandjian, she received medical care from Mehrban "before." She had had a telephonic communication with Daneshrad who said her former husband was promiscuous, unfaithful and not a decent man; she (Daneshrad) said Mehrban had had sexual relationships with many women, including members of her family and patients. She (Daneshrad) said she wished he was dead, but he was "unfortunately still alive."

According to the declaration of Charlotte Banayan, she had been a patient under Mehrban's medical care without any complications. She had received a call from a woman who said she was Mehrban's ex-wife and she was contacting his patients to make sure they did not have any complaints as she believed he could have had improper sexual relationships with many women. The caller said Mehrban had been unfaithful during his marriage, and she wanted to know if Merhban had made any sexual advances toward her (Banayan). Banayan said she told the caller Mehrban was the most professional and compassionate doctor she had ever met. The caller apologized profusely. The caller then wanted to speak with Banayan's mother who lived with her at the time to ask the same questions. Banayan's mother repeated the same sentiment and told the woman not to contact them again.

According to the declaration of Andrew Denson, Daneshrad and her sister personally appeared in Denson's accounting office. Daneshrad said Mehrban was promiscuous and had had sexual relationships with her family members and with patients, and her sister agreed.

Mehrban also submitted a declaration from his 20-year-old son Ariel who stated the following: "[O]n more than one occasion in the last 12 months," Daneshrad told him Mehrban had improper sexual relationships with his patients, engaged in improper sexual acts with her female family members and had improper sexual relationships with multiple women during his marriage. She also told him, "in more than one occasion in the last 12 months," many women had approached her and agreed about his improper sexual conduct with them. Further, he said, "it is my understanding that . . . Daneshrad has

published this information about [Mehrban's] sexual misconduct with his patients and the family member of herself to many other family members and friends."

Ariel said Daneshrad told him Mehrban had improper sexual conduct with Daneshrad's cousin; although he "repeatedly asked her about the name of the cousin," Daneshrad said she did not want to create more problems. According to Ariel's May 2010 declaration, Daneshrad told him a "few months ago" she had an agreement with Mehrban "not to repeat [Mehrban's] improper sexual conduct[] with his patients and with [her] family." He said he was personally present when Mehrban made an agreement with Daneshrad to stop falsely stop telling people about Mehrban's sexual conduct or he was about to file a lawsuit against her and she agreed. "[A]bout two months ago," Ariel stated, Daneshrad told him she believed her life was in danger when she was married to Mehrban and that she would be killed had she not gotten divorced. If she had not gotten a divorce, she said, Merhban would not let her take a medication that was necessary for her and her fetus, causing her and the baby to die. She said Mehrban would have caused physical injury had she not left the home and hidden away for a few months. He said Daneshrad "believes and make[s] people believe" Mehrban is an "eccentric scientist." She told him Mehrban had administered toxic medication to his sister Telaia causing her to become disoriented and lose her coordination.

A declaration from Susan Langdon (who also signed the proofs of service on Mehrban's papers) stated that she knew Daneshrad and was "quite familiar with her voice and speech." In or about 2006, she heard Daneshrad admit on a telephone speaker she had told people Mehrban had sexual relationships outside of their marriage with patients and members of her family. She "admitted that she had done it but she realized now she had misunderstood, she made a mistake, and she was not going to say it anymore." In the spring of 2008, Langdon said, she was present for a Skype conversation between Mehrban and Daneshrad with the computer speakers on. She heard Daneshrad agree she was still making allegations about sexual improprieties when she got angry and said she was "only human." The conclusion of the conversation was that Mehrban would not file suit for the consideration that Daneshrad assured she would not do so anymore. Langdon

said she was personally present in more than one situation where Daneshrad "fabricated the truth an[d] expressed falsehood regarding immediate circumstances to police and other officials portraying false impressions of [Mehrban's] conduct." She said there were "numerous incidents" she had been "personally involved in," and "[she] will testify in court."

Mehrban attached a letter dated June 5, 2008, addressed to Daneshrad (but bearing no signature) stating that Ariel and Aaron had asked him again about his sexual relationships with her family and inappropriate sexual conduct with patients and said defamatory remarks are coming to his patients again. Three days before, he stated, Daneshrad had apologized profusely and asked for another chance to make a binding agreement so he would not file his complaint for her 15 years of publishing false information. According to the letter, "we agreed" "You will stop making defamatory remarks about me" and "stop lying about me to people, public, authorities, hospitals, doctors," and "You stop using my name, name of my medical practice, my professional capacity in any form . . . ."

As attachments, Mehrban submitted a memorandum dated December 29, *2009*, stating it was from Daneshrad to Mehrban regarding his letters dated December 28, 2009 and December 19, 2009, stating Mehrban's letter was a "complete fabrication" of their conversation and Daneshrad had not admitted any defamation as there had been no malfeasance for her to admit to. She said she had spoken in her blog and radio show about her own experiences without ever mentioning his name. However, he was the father of her children and she had called him because she respected his concerns. The only statement she could find that might reflect on him was her statement "I was very afraid of what my husband is going to do." She said her blog was not about him, but she would be happy to clarify for her readers. "As for your sexual misconduct, I agreed not to publish anything. Your letter seems to communicate that you want it all on the surface. Please understand I am not afraid of you bringing lawsuits against me. If that is what we must deal with then we will deal with it. . . ." He also attached a blog entry purportedly from Daneshrad for the Completion Law Firm discussing mistakes

Daneshrad believed she had made in her divorce and why she believed collaborative law was the better course. There was an added entry dated January 7, 2010, stating that her feelings about her experience were not indicative of the character of her former husband. There was also a copy of an e-mail dated July 4, 2010, from someone (Janet Minowiz) *to* "Michelle" at completionlawfirm@yahoo.com, expressing sympathy that "your ex murderer husband is suing you," the "sucker sexholic mother."

In connection with her reply, Daneshrad submitted a supplemental declaration stating that her now 20-year-old son Ariel Merhban came to her in April 2010, "very upset and distraught" and asked her why she had divorced his dad. She said she had had "sole legal custody" of Ariel from the age of four while Mehrban had "monitored visitation orders or very limited visitation orders of several hours a week." Further, court orders provided that Mehrban's conversations with Ariel be recorded. Ariel kept coming to her and telling her stories his dad had told him about Daneshrad and for days kept asking her to tell him the truth. She said she repeatedly responded that she would not tell him anything negative about his dad; she told him to leave the past alone and pursue his life. One night he followed her everywhere she went, saying he had not slept for nights and needed to know. He insisted she tell him what his father had done, and she "finally told Ariel what reasons [she] had to ask for divorce."

Daneshrad also said she had never even seen (and obviously had never signed) the document dated June 5, 2008 which Merhban claimed was the memorandum of their agreement. She said she never intended to enter into any contract with Mehrban about statements she might make about him; during a phone call with him, he had asked her not to say anything about him to their children and she said she did not see any value in saying anything negative about anyone. She made no promise in exchange for Mehrban not filing a lawsuit. She also attached documentation from Child Support Services dated April 5, 2010 confirming receipt of her request to "open/reopen" her child support case with reference to her son Aaron as well as a letter from Mehrban dated April 14, 2010 acknowledging his receipt of her complaint from the Los Angeles County CSSD Program that day for nonpayment of child support. In that letter, Mehrban stated, "you entered

into an accord and satisfaction *less than six months ago* wherein you made an accord to prevent filing a complaint in tort against you." (Italics added.) He said if she did not withdraw her "complaint" by 4:00 p.m. on April 15, 2010. He would file his complaint.

In a detailed 20-page order, the trial court denied Daneshrad's motion, finding Daneshrad had not met her burden to show Mehrban's claim arose under Code of Civil Procedure section 425.16, primarily because Daneshrad had failed to contact the Medical Board or law enforcement, knowing of the seriousness of the allegations of sexual misconduct. However, in the event a reviewing court found the "first prong" of the statute had been met, the trial court explained that Mehrban had not met his burden to demonstrate a probability of prevailing on his claims.[4]

Daneshrad appeals.

DISCUSSION

"'A SLAPP suit—a strategic lawsuit against public participation—seeks to chill or punish a party's exercise of constitutional rights to free speech and to petition the government for redress of grievances. [Citation.] The Legislature enacted … section 425.16—known as the anti-SLAPP statute—to provide a procedural remedy to dispose of lawsuits that are brought to chill the valid exercise of constitutional rights. [Citation.]' (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1055–1056 [39 Cal. Rptr. 3d 516, 128 P.3d 713] (*Rusheen*).)

"To determine whether a lawsuit or cause of action should be disposed of as a SLAPP suit, section 425.16 establishes a two-part test. Under the first part, the party bringing the anti-SLAPP motion has the initial burden of showing that the lawsuit, or a cause of action in the lawsuit, arises from an act in furtherance of the right of free speech or petition—i.e., that it arises from a protected activity.[5] (*Zamos v. Stroud* (2004) 32

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[4] Both parties filed evidentiary objections, but the trial court did not expressly rule on them.

Cal.4th 958, 965 [12 Cal. Rptr. 3d 54, 87 P.3d 802].) Once the defendant has met its burden, the burden shifts to the plaintiff to demonstrate a probability of prevailing on the lawsuit or on the cause of action. (*Ibid*.) Only a cause of action that satisfies both parts of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning and lacks even minimal merit—is a SLAPP, subject to being stricken under the statute. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89 [124 Cal. Rptr. 2d 530, 52 P.3d 703].) On appeal from an order denying an anti-SLAPP motion, the reviewing court independently determines whether both parts of the anti-SLAPP statute are met.[6] (*Rusheen, supra,* 37 Cal.4th at p. 1055; *Thomas v. Quintero* (2005) 126 Cal.App.4th 635, 645 [24 Cal. Rptr. 3d 619].)" (*Tamkin v. CBS Broadcasting, Inc.* (2011) 193 Cal.App.4th 133, 142.)

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[5] "As used in this section, 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other 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).)

[6] We note that, pursuant to section 425.17, section 425.16 does not apply to claims against a defendant primarily engaged in the business of selling or leasing goods or services if plaintiff's cause of action arises from statements or conduct by the defendant consisting of representations of fact about defendant's business operations, goods or service; the defendant's statement or conduct was made for the purpose of promoting or securing sales or leases of its goods or services or in the course of delivering defendant's goods or services; and the intended audience for defendant's statement or conduct was either an actual or potential customer or someone likely to influence an actual or potential customer. (§ 425.17, subd. (c).) However, to the extent Mehrban's claims may fall within this "commercial speech" exception, neither Mehrban nor Daneshrad have addressed it, and it is the plaintiff (Mehrban) who bears the burden of proof to establish the applicability of this exception to section 425.16. (*Simpson Strong-Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 26.)

The focus is on the substance of the lawsuit, and we look to the pleadings as well as the supporting and opposing affidavits. (*Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 23; *World Financial Group, Inc. v. HBW Insurance & Financial Services, Inc*. (2009) 172 Cal.App.4th 1561, 1569.) Moreover, "a plaintiff cannot frustrate the purposes of the SLAPP statute through a pleading tactic of combining allegations of protected and nonprotected activity under the label of one 'cause of action.'" (*Fox Searchlight Pictures, Inc. v. Paladino* (2001) 89 Cal.App.4th 294, 308.) "The 'principal thrust or gravamen' of the claim determines whether section 425.16 applies." (*Dyer v. Childress* (2007) 147 Cal.App.4th 1273, 1279.)

Daneshrad has failed to demonstrate Mehrban's claims arise out of communications "made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law," within the meaning of subdivision (e)(2) of section 425.16. (See *Olaes v. Nationwide Mut. Ins. Co.* (2006) 135 Cal.App.4th 1501, 1506-1507 ["[O]ther official proceeding" means a governmental forum].) "The statements or writings in question must occur in connection with 'an issue under consideration or review' in the proceeding." (*Blackburn v. Brady* (2004) 116 Cal.App.4th 670, 677, citation omitted.) While the statement need not be made before the official body, a nexus is required between the statement and an issue under consideration by the public body. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2011) ¶ 7:719, p. 7(II)-23, citing § 425.16, subd. (e)(2).)

A statement is 'in connection with' litigation under section 425.16, subdivision (e)(2) if it relates to substantive issues in the litigation and is directed to persons having some interest in the litigation. (*Contemporary Services Corp. v. Staff Pro Inc.* (2007) 152 Cal.App.4th 1043, 1055.) Accordingly, although Daneshrad presented evidence Mehrban filed his complaint after she pursued further child support, she has failed to demonstrate that the statements at issue in Merhban's complaint were made in connection with these proceedings. (*Gerbosi v. Gaims, Weil, West & Epstein, LLP* (2011) 193 Cal.App.4th

435, 443 ["A defendant does not establish that a cause of action 'arises from' an act in furtherance of the right of petition or free speech merely by showing that the plaintiff filed his or her lawsuit in retaliation for the defendant's petitioning or speech activities. The defendant must establish that the plaintiff's cause of action is actually *based on* conduct in exercise of those rights."].)

The public interest requirement of section 425.16, subdivision *(e)(3),* however, must be construed broadly to encourage participation by all segments of our society in vigorous public debate related to issues of public interest. (*Gilbert v. Sykes, supra,* 147 Cal.App.4th at p. 23.) Mehrban's claims relating to Daneshrad's statements on the internet, on her blog, on radio programs and similar public fora, expressing her views on the merits of collaborative law (and how her own dissolution would have benefited from such an approach), are the primary basis for his complaint. Those statements concern a matter of public interest within the meaning of subdivision (e)(3) of section 425.16. (*Id.*)

Furthermore, to the extent the trial court concluded Mehrban had failed to demonstrate a probability of prevailing on his claims, we agree. Although Mehrban's own evidence establishes his objections to Daneshrad's statements about him date back more than 15 years to the time of his divorce, other than Ariel Mehrban's declaration with respect to more recent private conversations between his mother and him, Mehrban's evidence either conspicuously omits reference to any dates or affirmatively states that Daneshrad's alleged statements about Mehrban's sexual misconduct were made at the time of the parties' divorce proceedings (16 years ago). In order to demonstrate a probability of success on the merits, a plaintiff must present evidence to overcome any privilege or defense to his claims, and the evidence in this case establishes Mehrban's claims relating to Daneshrad's alleged statements of his sexual misconduct are barred by the statute of limitations. (*Gerbosi v. Gaims, Weil, West & Epstein, LLP, supra,* 193 Cal.App.4th at p. 447 ["the insurmountable obstacle for [plaintiff] is the statute of limitations"].) Moreover, the blog entries to which Mehrban takes offense do

not contain statements about Mehrban's alleged sexual misconduct. In this case, we find the special motion to strike should have been granted.

DISPOSITION

The order is reversed and the trial court is ordered to dismiss the action. Daneshrad is entitled to her fees and costs pursuant to Code of Civil Procedure section 425.16, subdivision (c)(1).

WOODS, Acting P. J.

We concur:

ZELON, J. **JACKSON, J.**