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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

CHRISTINA BEHLE, Plaintiff and Respondent, v. LISA TANNER, Defendant and Appellant.	B279050 (Los Angeles County Super. Ct. No. BC628977)

APPEAL from a judgment of the Superior Court of Los Angeles County. Michael Johnson, Judge. Affirmed.

Kulik Gottesman Siegel & Ware and Kirk Edward Schenck for Defendant and Appellant.

Rushovich Mehtani, Jana M. Moser and Aanand Ghods-Mehtani for Plaintiff and Respondent.

The complaint that underlies this appeal arose from a series of events related to defendant, Lisa Tanner's, dispute with her estranged husband, Michael Tanner, who was in a postseparation romantic relationship with plaintiff. Defendant made a special motion to strike this complaint pursuant to California's "anti-SLAPP" statute, Code of Civil Procedure section 425.16.[1] The trial court denied the special motion, finding that the case did not involve protected speech. Applying the required *de novo* standard of review, we agree and affirm the judgment.

FACTS

As is common in cases involving special motions to strike complaints pursuant to section 425.16, the facts of this case were established by a series of declarations and exhibits.

1. Declarations

a. *Background*

Defendant is a Deputy Los Angeles County District Attorney who, at all relevant times, was assigned to the Van Nuys Unit of that office's Victim Impact Program (VIP), which focuses on domestic violence, sex crimes, and child endangerment. Defendant was, apparently, a supervisor in that unit. Appellant married Mr. Tanner, a Deputy Los Angeles County Public Defender, on February 16, 2002. Plaintiff, Christina Behle, is also a Deputy Los Angeles County Public Defender who worked in the same branch office as Mr. Tanner. Defendant characterized her relationship with both plaintiff and Mr. Tanner as "cordial" and "professional" prior to the events

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[1] All further section references are to the Code of Civil Procedure.

discussed in this appeal. At that point, defendant was cohabitating with another man.

Plaintiff and Mr. Tanner had "enjoyed" calling and texting each other during the course of their relationship. These calls and texts had, "on occasion," been of a sexual nature. They had assumed that these communications would remain private and Mr. Tanner took steps to make certain of this by setting his personal cellular telephone with both a time-triggered "auto-lock" and numerical security code.

From July to October 2015, several of plaintiff's colleagues informed plaintiff that defendant was asking about her relationship with Mr. Tanner. Plaintiff was uncomfortable with these questions and, to stop them, as well as to maintain their privacy and to keep defendant's and Mr. Tanner's children from learning about the relationship "too soon," she and Mr. Tanner decided to tell everyone, including Mr. Tanner's children, that they were "just friends." This deception infuriated defendant.

b. *October 16 through 18, 2015*

Mr. Tanner's two children, nine-year-old T. and twelve year-old J., split time between Mr. Tanner's residence and defendant's.

There is a significant factual controversy about what happened on October 16, 2015, and who instigated it, resolution of which is also not necessary to the determination of the issues raised by this appeal. For the purposes of this appeal, it is sufficient to say that T. downloaded or copied a personal text message and accompanying photograph that plaintiff had sent to Mr. Tanner on his private cell phone. The next day, October 17, 2015, T. forwarded the photograph and text message to defendant. T. also told defendant that she had seen other text

messages which described various sexual activity in which Mr. Tanner and plaintiff had engaged.

According to her declaration, defendant texted both plaintiff and Mr. Tanner that night to "confront" them about the text message and photograph and to ensure that the situation would not repeat itself. Defendant told Mr. Tanner that she had gotten the material from T.

Mr. Tanner informed defendant that that this was a single "accidental disclosure," which defendant interpreted as reflecting a lack of concern about the incident. Mr. Tanner stated that he did not consider the photograph obscene, which also caused defendant to believe that he "refused to address the issues." Defendant averred that she became concerned that the children might be exposed to other such material. Defendant then sent text messages threatening to "publically display" the photograph and text message, including a threat to post them in a Van Nuys Courthouse public elevator. At no time did defendant ask Mr. Tanner to stop sending these intimate communications to plaintiff.

"On or about October 18, 2015," Mr. Tanner told plaintiff that defendant had "stolen" several of their "private, intimate messages from his phone," forwarding both the photographic images and text messages to her. Mr. Tanner also informed plaintiff that defendant had told Mr. Tanner's children about the relationship, which, in turn, forced them to disclose it.

c. *October 19, 2015*

The following Monday, October 19, 2015, defendant texted plaintiff a copy of one of the photographs that had been taken from Mr. Tanner's telephone. Plaintiff interpreted that as a

threat. Defendant never asked plaintiff to "stop sending intimate messages to [Mr. Tanner]."

Prior to that date, defendant and Ms. Ransom had had "multiple" conversations about the marital problems defendant was and had been having with Mr. Tanner. Defendant had sought Ms. Ransom's "personal advice" about such topics as defendant's belief that Mr. Tanner was not properly supervising their children and defendant's concern that the children "could" be exposed to "inappropriate, indecent adult sexual behavior" "by and between" plaintiff and Mr. Tanner.

Ms. Ransom recalled that on October 19, she was approached by defendant who sought her advice and the advice of other members of the VIP Unit about how to protect the children from exposure to "indecent texts and photographs" and how to "confront" Mr. Tanner and plaintiff about "exposure to inappropriate matters" and leaving the children unsupervised. Ms. Ransom also recalled that defendant showed her and a group of 3-5 "lawyers and staff" from the VIP Unit the photograph in question and that there was an "open, frank, and serious conversation" giving defendant advice as to how to deal with the issue. Defendant told this small group that her daughter, T., had been using her iPad when she discovered the text and photo. T. had given a copy to defendant. Defendant expressed concern that there may be other such photographs and messages and that the children might be exposed to them. According to Ms. Ransom, the other members of the VIP Unit who were present expressed concern for the children's well-being and Ms. Ransom offered her advice. Ms. Ransom did not believe that the purpose of the "conversation" was to "mock, embarrass, demean, punish, or seek professional or personal retribution" against plaintiff or Mr.

Tanner, but was to solicit "personal and legal guidance and advice" about how to avoid future exposures to such materials.

According to Ms. Ransom's declaration, defendant told the other participants in the conversation that she did not wish to make this a "professional matter" and wished to resolve it privately with plaintiff and Mr. Tanner. Defendant did not want to involve law enforcement, child protective services, or the "supervisory divisions" of the District Attorney's or Public Defender's Offices.

The advice from members of the VIP Unit was that defendant should talk to plaintiff and Mr. Tanner, have them "acknowledge the severity of the problem" and agree to stop texting such material to any device to which the children would have access. The consensus of those colleagues was that a continuation of such conduct might constitute a criminal offense.

Lou Holtz, Jr., another Deputy Los Angeles County District Attorney assigned to the Van Nuys VIP Unit, had also had multiple conversations with defendant about issues stemming from her marriage to Mr. Tanner, including defendant's concern that Mr. Tanner was not properly supervising the couple's children and her "concerns" that Mr. Tanner was romantically involved with plaintiff.

On Monday, October 19, 2015, defendant arrived at work and showed Mr. Holtz "a topless photo of [plaintiff] that she told [him] that [plaintiff] had sent to Mr. Tanner." Defendant stated that she believed that her daughter had received this photograph through a "cloud sharing feature" on her cell phone. Mr. Holtz described defendant as being "very upset."

According to Mr. Holtz, defendant engaged in a similar conversation with other coworkers about ten feet from his office.

Defendant reported that there had been other text messages taken from the cell phone that included conversations about Mr. Tanner and plaintiff putting the children to bed and driving to plaintiff's house to have sexual relations in a minivan in the driveway, thus leaving the children home alone unsupervised for "extended periods of time." Defendant expressed concern for the safety of the child and whether their "emotional state" after having seen the photograph. Defendant sought advice from her coworkers as to how to ensure that "this never happened again."

d. *The Fallout*

In an effort to convince J. that Mr. Tanner was a liar, defendant showed him a copy of the suggestive photograph. J. had not seen this before.

Around October 21, 2015, Mr. Tanner informed plaintiff that defendant had threatened to post the intimate picture of her in the elevator at the Van Nuys Courthouse, where plaintiff worked, "if she didn't get what she wanted." Fearful that defendant would follow through on this threat, plaintiff contacted her supervisor and explained the situation to her.

Plaintiff's supervisor arranged for a complaint to be made on plaintiff's behalf with "human resources." Upon learning of the complaint, the District Attorney's Office Internal Affairs Department sought and received permission from the Public Defender's Office to conduct the investigation. At its request, plaintiff provided the District Attorney's Office Internal Affairs Department with a copy of the text thread she had had with defendant. Plaintiff has not provided this material to any other entity or person.

Following the Internal Affairs investigation, defendant was transferred to the Pasadena Branch of the District Attorney's Office and "downgraded" from her earlier supervisory role.

2. Text Messages

The exhibits in the record include an extensive collection of "screen captures" of the text messages among the parties during the period in question. These text messages are replete with indications of defendant's extreme hostility and personal animus toward plaintiff. Some of these text messages contain threats to publically post the intimate photograph in question in the public elevators of the Van Nuys courthouse, where plaintiff worked as an attorney. We do not recount them here.

3. Statements in Appellant's Declaration Explaining Her Intent Regarding the Public Versus Private Nature of the Issue

In addition to her factual averments, appellant's declaration contained a number of other statements, which we set forth below.

In her declaration, appellant stated:

(1) That she has not made a formal complaint or discussed the photograph or the text with the District Attorney's Office, the Public Defender's Office, or any judge or justice;

(2) That she "did not discuss the [t]ext, or the incident generally, with anyone other than a few trusted colleagues with whom I was seeking legal opinions on how to best address the problem";

(3) That she "did not post or otherwise publish the [t]ext on social media, or in any other manner in which [she] could not control its confidentiality";

(4) That she "did not mock, embarrass, demean, punish, or seek professional or personal retribution against [Mr. Tanner] or [plaintiff] in any way at any time";

(5) That "when [she] disclosed the [t]ext to any third party in connection with seeking the advice referenced herein, I made it clear that I did not wish them to discuss the matter with anyone";

(6) That "at no point have I ever taken any act or omission designed to damage, embarrass, harm injure or emotionally distress [plaintiff], or to interfere with her earnings or promotion potential, career prospects, or professional life in any way. Quite to the contrary, at all times since I discovered the [t]ext, I took careful precautions to keep the issue isolated to as few people as possible and I only had discussions with third parties regarding the [t]ext in order to obtain personal and legal advice on how to handle the matter discretely without having to make any broader or official disclosure"; and,

(7) That her "motivation in addressing the issue related to how [her] daughter was exposed to the [t]ext was only to seek the most efficient and productive way to [e]insure it never happened again."

STANDARD OF REVIEW

Anti-SLAPP motions brought pursuant to Code of Civil Procedure section 425.16 are reviewed *de novo* because they implicate the First Amendment right to free speech. (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1067.)

DISCUSSION

Defendant contends that her actions are protected by section 425.16, subdivision (e)(4), as "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." We disagree.

Special motions to strike complaints pursuant to section 425.16 are analyzed in two steps. In the first step, the moving party, generally the defendant in the underlying action, has the burden of establishing that the challenged cause of action is one arising from a "protected activity." (§ 425.16, subd. (b)(1); *Navellier v. Sletten* (2002) 29 Cal.4th 82, 88; *Braun v. Chronicle Publishing Co.* (1997) 52 Cal.App.4th 1036, 1043.) If, *and only if*, the moving party makes this threshold showing, the burden shifts to the plaintiff to demonstrate a "probability" that he or she will prevail on the claim. (§ 425.16, subd. (b)(1); *Navellier,* at p. 88.)

Section 425.16 protects four distinct types of speech: "(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).)

The "public interest" requirement found in subsections (3) and (4) of section 425.16, subdivision (e), was intended to narrow the types of conduct that fall within the ambit of and, by extension, the protection of, section 425.16. (*Weinberg v. Feisel*

(2003) 110 Cal.App.4th 1122, 1132; *Rivero v. American Federation of State, County and Municipal Employees, AFL-CIO* (2003) 105 Cal.App.4th 913, 926.) While section 425.16, subdivision (e), does not provide a precise definition of what is "an issue of public interest," there are many appellate court decisions dealing with this question and a "few guiding principles may be derived" from them. (*Weinberg,* at p. 1132.) Among these are: (1) "public interest" is not the same thing as "mere curiosity"; (2) matters that are allegedly of "public interest" "should be something of concern to a substantial number of people" beyond the speaker and a "relatively small, specific audience"; (3) the challenged statements and the supposed public interest should have "some degree of closeness"; (4) there must be a specific, as opposed to "broad and amorphous," public interest; (5) the "focus of the speaker's conduct" should be on that specific public interest rather than the "gather[ing] of information to advance a private controversy"; and (6) the defendant cannot convert a private matter into one of "public interest" by "communicating it to a large number of people." (*Id.*, at pp. 1132-1133.) The issue raised by this case is whether defendant's conversation with her coworkers and her subsequent actions were protected speech within the meaning of section 425.16.

It is clear that Mr. Tanner and plaintiff's communications were private and would have remained so but for their interception, however that occurred, and dissemination by defendant. Moreover, in no way did these communications involve an issue of public interest and they would have been of no interest to other people other than through "mere curiosity." Plaintiff's statements do not deal with a "specific" public interest because, at best, they deal with how defendant is going to resolve

a dispute with her estranged husband and his girlfriend. Moreover, there is no relationship between this purely private dispute and a larger public interest. Most significantly, all of the witnesses to the October 19 conversations agree that it exclusively involved the "private controversy" of defendant's domestic issues with her estranged husband and not some larger public interest. All of the witnesses agree that the goal was to keep the issue private and limited. Again, *defendant* cannot convert this private matter into a public one by choosing to communicate this material to her coworkers.

We reject defendant's argument that plaintiff "voluntarily" made the statements matters of "public interest" by bringing the issue to the attention of her supervisor, thereby causing the cascade of events that resulted in the wider dissemination of the private communication. Plaintiff, who had attempted to keep these communications private, only took that action to mitigate the damage *after* defendant to threatened post the photograph in the public elevators in the Van Nuys courthouse. Indeed, the chain of events leading to the dissemination of this material began not with plaintiff's report to her supervisor but with that threat to publically humiliate plaintiff in her very public workplace.

Because defendant was personally responsible for anyone other than Mr. Tanner, T., plaintiff, and herself having knowledge of the text and photograph, this case clearly falls within the prohibition on attempts to convert a private matter into a public concern by communicating a private matter to a larger number of people. More importantly, defendant's use of the statements was not to advance a specific public interest but was, by her own repeated admission, done in furtherance of the

private controversy that arose from her domestic dispute with Mr. Tanner.

The cases cited by defendant in her attempt to establish that these conversations are of public interest are inapposite to the case at bench. In *Cross v. Cooper* (2011) 197 Cal.App.4th 357, the defendants, tenants of a house owned by the plaintiffs who were in the process of selling it, attempted to extort concessions from the plaintiffs by, among other things, disclosing or threatening to disclose information from the "Megan's Law" website that a registered sex offender lived in the neighborhood. The defendant spoke to the real estate agent of a potential buyer who had children and informed the agent of the presence of the sex offender. Although the speech was undertaken to advance a private interest, the Court of Appeal ruled that the dissemination of publically available information which had the effect of protecting children from known a sexual predator was of "public interest" and was, therefore, protected by section 425.16, subdivision (e)(4).

In so ruling, the Court of Appeal recognized that "that ' "[t]he fact that 'a broad and amorphous public interest' can be connected to a specific dispute is not sufficient to meet the statutory requirements' of the anti-SLAPP statute." ' (197 Cal.App.4th, at p. 378, citations omitted.) The court went on to hold, however, that the presence of a registered sex offender across the street from a house that was going to be sold to a family with children was not "some broad and amorphous public interest." (*Id.,* at p. 379.)

The facts of this case are clearly distinguishable from those of *Cross*. The case at bench involves the interception, however that occurred, of perfectly legal and relatively benign

communications between two lovers that all parties recognize were intended by those lovers to be private between them. Although this case resembles *Cross* in that there is strong evidence in defendant's text messages that she did, in fact, intend to use the intercepted texts for the private purpose of taunting and humiliating plaintiff and Mr. Tanner (e.g., "I haven't distributed any photos. Just talking about them and the pose is fun enough," Text Message of 10/22/15:9:17:25), its facts cannot be equated to the disclosure of the presence of a registered sexual predator across the street from a house that was going to be purchased by a family with small children.

Defendant argued both in the trial court and on appeal that this case was controlled by *M.G. v. Time Warner* (2001) 89 Cal.App.4th 623 and *Terry v. Davis Community Church* (2005) 131 Cal.App.4th 1534, which are also cited in defendant's opening brief. Neither of these cases involves the issues raised by the case at bench.

In *M.G. v. Time Warner*, *supra*, 89 Cal.App.4th 623, the defendant had used the "fleeting" shot of a photograph of a little league team in a broadcast story about child molestation in youth sports and had used the same photograph in a print story on the same subject. The photograph was of one of several teams featured in the story. The team's adult manager had previously pled guilty to child molestation. The plaintiffs were players and other coaches on that team who sued for invasion of privacy. The Court of Appeal held that the general broadcast and publication of a story on the "serious topic of child molestation," particularly in the context of youth sports, fell within the "public interest" protections of section 425.16, subdivisions (e)(3) and (4).

M.G. has no relevance to the case at bench. *M.G.* involved an invasion as part of a larger discussion of child molestation in youth sports, certainly an issue of public interest. Plaintiff's and Mr. Tanner's private text messages are not an issue of such widespread concern. Indeed, if defendant had actually believed that they were injurious to children, she would not have voluntarily shown them to J. to demonstrate to him that Mr. Tanner was a liar. Moreover, she would not have stated in a sworn declaration that she had no intention of bringing the statements to the attention of law enforcement or professional authorities.

Similarly, in *Terry v. Davis Community Church*, *supra*, 131 Cal.App.4th 1534 (*Terry*), the plaintiffs in the underlying defamation action, a married couple, were the former adult leaders of a church youth group. The plaintiffs had resigned after allegations were made that they had been involved in inappropriate conduct with a member of the youth group. These allegations were substantiated by e-mails sent by the husband, but there was no criminal action, despite a law enforcement investigation. In response to a formal complaint, the church's governing board issued an investigative report that detailed the allegations and evidence and "concluded that both plaintiffs exhibited gross misconduct, negligence, and insubordination, to the detriment of at least one member of the Church's youth group, warranting their resignation and removal from contact with youths." (*Id.*, at p. 1542.) In response to having received "many inquiries" from concerned parents who felt that they had a right to know about the investigation, the church held a number of meetings at which participants were allowed to read, but not keep, copies of the report. About 100 people attended these

meetings and saw the report. (*Id.*, at p. 1543.) The plaintiffs sued for libel, slander, intentional infliction of emotional distress, negligent infliction of emotional distress, and sought temporary and permanent injunctions.

The trial court granted the defendants' anti-SLAPP motion, finding that the matter was one of public interest within the meaning of section 425.16, subdivision (e)(4). The Court of Appeal upheld this ruling, finding that section 425.16, subdivision (e)(4), was legislatively intended to protect speech about public matters even if done in a private setting. (*Terry, supra,* 131 Cal.App.4th at p. 1546.)

The Court of Appeal went on to hold that even though the communications in that case were done in a private setting, they involved matters of public interest because "they involved the societal interest in protecting a substantial number of children from predators." (*Terry, supra,* 131 Cal.App.4th at p. 1547.) The court noted that protection of children in church youth groups was a matter of public interest. (*Id.*, at p. 1548.)

The case at bench is significantly different. There is, simply, no public interest in plaintiff and Mr. Tanner's private messages, regardless of how they were obtained. Again, if defendant had actually believed that they would have a negative impact on children and that children needed to be protected from them, she would not have kept the message on *her* cell phone and voluntarily shown the text and photo to J. to "prove" that Mr. Tanner was lying about his relationship with plaintiff nor would she have kept them from law enforcement and professional authorities.

Hecimovich v. Encinal School Parent Teacher Organization (2012) 203 Cal.App.4th 450 (*Kecimovich*), is the case that, at first

glance, factually comes closest to the case at bench. *Hecimovich* involved a volunteer basketball coach, the plaintiff, who engaged in conduct that led to the conclusion that he was discriminating against one of his young players. This and the plaintiff's reaction to the ensuing discussions led to a series of "escalating" confrontations, including with league officials, which, in turn, led to the plaintiff being told, among other things, that he could not coach the following year. He sued for defamation and related causes of action and the defendants moved to strike the complaint pursuant to section 425.16.

In finding that the case involved a matter of public interest, the Court of Appeal observed that youth sports and problems involving the parents and coaches of young athletes was a matter of great public interest. The Court of Appeal went on to note that the plaintiff's conduct as a coach endangered other children who might play on his teams and was the topic of discussion among many parents. (*Kecimovich, supra,* 203 Cal.App.4th at pp. 467-468.)

That is not the situation in the case at bench. There is no allegation that plaintiff and Mr. Tanner are in any way endangering children. There is no evidence that the conduct complained of, private personal communications, involves children in any way, except for T.'s accidental discovery of the text message on Mr. Tanner's personal cell phone. Indeed, the record clearly establishes that defendant *intentionally* exposed J. to this same material, which raises the question of how potentially damaging she actually considered it to be. Moreover, the parties in *Hecimovich* were engaged in a serious discussion of the risks inherent in the conduct of a person who could potentially continue to coach many other young children.

Defendant, on the other hand, maintains that her colleagues in the District Attorney's Office were the only people with whom she communicated about the material in question. Despite declarations that suggest something else, we are left with defendant's own description of these conversations in her text message to Mr. Tanner, "[j]ust talking about them and the pose is fun enough." This is hardly the type of serious discussion of a situation that endangered the well-being of many children that was involved in *Hecimovich.*

Hecimovich was discussed in *Baughn v. Department of Forestry and Fire Protection* (216) 246 Cal.App.4th 328 (*Baughn*), in which the plaintiff was a former employee of the defendant, which was referred to as "Cal Fire." The plaintiff was terminated for sexually harassing a woman subordinate and it was stipulated in a settlement to his challenge to his termination that all references to the incident would be removed from his personnel file and that he would resign.

The plaintiff later went to work for another fire department that had an agreement with Cal Fire to have its members staff Cal Fire facilities from time-to-time. When the chief of the local Cal Fire facility learned that the plaintiff would be stationed there and have contact with the victim of the earlier harassment, he hand-delivered a letter to the plaintiff's new employer ordering that the plaintiff not be present at any Cal Fire facility. This ultimately caused the plaintiff to be terminated from his new employment and he and his union sued Cal Fire for breaching the settlement agreement.

The Court of Appeal upheld the denial of the anti-SLAPP motion, finding that the matter was purely private and involved no issue of public concern. The court noted that, at most, the

letter involved a few people and did not discuss any matter of public concern. The same is true in the case at bench.

In distinguishing *Hecimovich*, the court in *Baughn* noted that *Hecimovich* involved a "definable portion of the public" and involved an "ongoing controversy where public participation should be encouraged." (*Baughn, supra,* 246 Cal.App.4th, at p. 339.) Similarly, the case at bench does not involve a definable portion of the public. Initially, the events of October 16 through 18 involved at most four people: defendant, plaintiff, Mr. Tanner, and T. *Defendant* expanded its scope beyond that by discussing them with her work colleagues and threatening to post embarrassing private material in a public elevator to embarrass plaintiff. Moreover, it cannot be said that defendant and Mr. Tanner's marital problems are an "ongoing controversy where public participation should be encouraged."

As defendant notes, the Court of Appeal in *Nygard, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027 used expansive language to define "public interest" stating that "an issue of public interest" is any issue in which the public is interested. (*Id*., at p. 1042.) In *Nygard*, the defendant introduced evidence that the subject of the magazine story in question, a wealthy Finnish businessman and celebrity, was a person of considerable public interest. (*Id*., at p. 1042.) Similarly, in *Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798, which was cited in *Nygard*, the plaintiff was a finalist on a popular television reality show and the defendants had "mocked" her participation on the show in a radio broadcast. The Court of Appeal in that case held that the popularity of show and the fact that the plaintiff had voluntarily participated as a contestant on that show, thereby "voluntarily subject[ing] herself to inevitable scrutiny and

potential ridicule by the public and the media," brought the matter within the ambit of section 425.16's protections. (*Id*., at pp. 807-808.)

There is no evidence in the case at bench that there is any public concern about plaintiff and Mr. Tanner's private communications. There is no evidence that either plaintiff or Mr. Tanner is a public figure, even a so-called "limited purpose public figure," or that the actions in this case were taken in a public forum. (See, e.g., *Gilbert v. Sykes* (2007) 147 Cal.App.4th 13.) Moreover, there is no evidence that either of them "voluntarily" placed their private communications in the public realm, as in *Seelig*.

Defendant's attempt to obtain relief by asserting that she was acting in her capacity as a deputy district attorney is similarly misplaced. In *White v. Towers* (1951) 37 Cal.2d 727, our Supreme Court ruled that a fish and game investigator was immune from a malicious prosecution suit stemming from the performance of his official duties in investigating a crime. Similarly, in *Bradbury v. Superior Court (Spencer)* (1996) 49 Cal.App.4th 1108,the District Attorney of Ventura County issued an official report critical of the sheriff of that county in relation to a raid on a suspected marijuana farm that yielded no contraband but resulted in the highly publicized shooting death of the owner of the property. The sheriff sued the District Attorney and several members of his staff. The holding of *Bradbury* is that section 425.16 applies to governmental entities as well as individuals and media outlets. (*Id*., at p. 1116.) The Court of Appeal held that the issues raised by the official report were clearly matters of public interest and reversed the granting of the motion to strike the complaint pursuant to section 425.16.

White v. Towers and *Bradbury v. Superior Court (Spencer)*, have no applicability to the case at bench. By her own admission, appellant was not conducting a criminal investigation and did not intend to instigate such an investigation.

Defendant's final argument on the section 425.16 question is that denying the motion to strike will have a "chilling effect" on the private discussion of issues of public importance. That is not the case. Plaintiff and Mr. Tanner's private communications were not matters of public concern or importance. There is simply nothing in this case that would deter the open discussion of issues that are legitimately of widespread public concern.

After *de novo* review, we find that the record of this case is completely bereft of any evidence that would establish that the defendant's conduct was "protected speech" within the meaning of section 425.16. Therefore, defendant has failed to carry her burden as to the first of the two-step analysis required by the "anti-SLAPP" provisions. Because of this finding, we will not address the second step, plaintiff's chance of success in the underlying civil action, and express no opinion about the merits of that lawsuit.

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DISPOSITION

The order denying defendant's motion to strike the complaint pursuant to section 425.16 is affirmed.

HALL, J.*

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.

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