Filed 9/29/09 Hartnett v. Duzyk CA4/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

RODGER J. HARTNETT, Plaintiff and Respondent, v. LORA DUZYK et al., Defendants and Appellants.	D053889 (Super. Ct. No. 37-2008-00081583-CU-WT-CTL)

APPEAL from an order of the Superior Court of San Diego County, Steven R. Denton, Judge. Affirmed.

Rodger Hartnett sued his former employer, the San Diego County Office of Education and its superintendent Dr. Randolph Ward (collectively SDCOE), and several SDCOE employees. Two of those employees, Lora Duzyk and Michele Fort-Merrill, moved to strike the claims against them under the anti-SLAPP statute. (Code Civ. Proc., § 425.16.)[1] The court denied the motions, finding the claims did not arise from activity

1 Statutory references are to the Code of Civil Procedure unless otherwise specified.

protected by the anti-SLAPP statute. The court thus did not reach the issue whether Hartnett showed a probability of prevailing on his claims.

Duzyk and Fort-Merrill appeal, contending Hartnett's claims are governed by the anti-SLAPP statute because the claims arose from their actions in connection with SDCOE's disciplinary and termination proceedings. (§ 425.16, subd. (e)(2).) We reject these contentions and affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

Our factual summary is based on the pleadings and evidence presented in the anti-SLAPP proceedings. (See *Navellier v. Sletten* (2002) 29 Cal.4th 82, 89 (*Navellier*).) We state the facts in the light most favorable to Hartnett, the party opposing the anti-SLAPP motion. (See *HMS Capital, Inc. v. Lawyers Title Co.* (2004) 118 Cal.App.4th 204, 212.)

Underlying Factual Allegations

In August 2003, SDCOE hired Hartnett as a claims coordinator in its risk management department.[2] Diane Crosier was Hartnett's direct supervisor. Hartnett thereafter received positive performance reviews. In January 2006, Hartnett advised Crosier that he had an adult learning disability, known as "Visual Processing Impairment," that was impacting his work. He then received unfavorable reviews, and was "stripped" of his supervisory responsibilities.

---

[2] SDCOE's risk management department provides risk management services for school districts in Imperial and San Diego counties.

In August 2006, Hartnett told Crosier that he was concerned with the manner in which SDCOE selects outside counsel to litigate claims brought against the school districts. He claimed the assignment of the majority of cases to attorney Daniel Shinhoff was not financially sound. Hartnett later learned Crosier had a "longstanding friendship" and business relationship with Shinhoff, including that Shinhoff was representing Crosier's son in a personal legal matter.

In December 2006, Hartnett met with Duzyk, SDCOE's assistant superintendent of business services, and reported his concerns about the risk management department's attorney assignments, claiming there were potential conflicts of interest, and the department performed inadequate auditing of legal bills. Duzyk allegedly did not investigate this claim, and did not respond for eight months.

In February 2007, Fort-Merrill, SDCOE's human resources executive director, met with Hartnett and Crosier to assist the parties in reopening lines of communication. During the meeting, the parties agreed Crosier would provide Hartnett with "clear directives on her expectations with regard to [his] performance standards . . . ." One week later, Crosier issued a letter of reprimand to Hartnett. Several months later, Crosier gave Hartnett another written warning, detailing numerous claimed deficiencies in Hartnett's work performance.

On August 8, 2007, Duzyk responded to Hartnett's complaint made eight months earlier concerning conflicts of interest in the attorney selection process. Duzyk said she had researched the issue by speaking with Crosier and other SDCOE business officials, and found the concerns unsupported. At about this same time, Hartnett advised Duzyk

and Fort-Merrill that he intended to file a worker's compensation claim resulting from physical and emotional distress caused by Crosier's treatment of him.

Shortly after, on August 17, Fort-Merrill sent a letter to Hartnett stating that Duzyk had recommended that he be dismissed based on his deficient job performance, violation of rules, and dishonesty, and providing him notice of his right to challenge the action. Under the applicable personnel rules, an employee is entitled to a hearing (known as a "*Skelly* hearing"[3]) before the termination becomes final. Hartnett's *Skelly* hearing was held on September 20. The hearing officer was Claudette Inge, an assistant superintendent of student services. SDCOE was represented by William Merrill, Fort-Merrill's husband.

After the *Skelly* hearing, Inge determined the termination was justified. Several weeks later, on October 5, Hartnett was notified that he was terminated from his position. The San Diego County Personnel Commission ("Personnel Commission") later denied Hartnett's administrative appeal.

Legal Claims

In April 2008, Hartnett filed a complaint against SDCOE and various SDCOE employees. As amended, the first five causes of action named only the SDCOE and Dr. Ward, and alleged wrongful termination in violation of the Fair Employment and Housing Act and the American Disabilities Act (ADA). The sixth, seventh and eighth

3 See *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194.

causes of action alleged wrongful conduct by the individual employees, including Crosier, Fort-Merrill and Duzyk.[4]

In the sixth cause of action ("Civil Conspiracy to Commit Intentional Interference with Prospective Economic Advantage"), Hartnett alleged Crosier and Fort-Merrill were engaged in "improper governmental activity" in violation of Education Code section 44112.[5] These claimed wrongful activities included Crosier's "referral of SDCOE legal business to friends" in exchange for gifts and other gratuities, and Fort-Merrill's referral of legal business to her spouse. Hartnett alleged that Duzyk "became an accessory to some or all of this criminal conduct after plaintiff reported it to [Duzyk] but she failed to timely or adequately investigate or remediate it." Hartnett further alleged that defendants knew of his intention to remain with SDCOE, and nonetheless "conspired and agreed to and did initiate, orchestrate, implement, authorize and ratify the wrongful termination of plaintiff's employment . . . to conceal their criminal conduct and to thwart plaintiff's investigation into it, with the intent to interfere with plaintiff's prospective economic advantage arising from his continued employment . . . ."

---

[4] Because the acts of the other individual defendants are not relevant in this appeal, we do not discuss these other defendants.

[5] Education Code section 44112, subdivision (c) defines "[i]mproper governmental activity" as "activity by a public school agency or by an employee . . . that meets either of the following descriptions: (1) The activity violates a state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty. [¶] (2) The activity is economically wasteful or involves gross misconduct, incompetency, or inefficiency."

In the seventh cause of action ("Civil Conspiracy to Commit Intentional Infliction of Severe Emotional Distress"), Hartnett alleged Crosier, Fort-Merrill, and Duzyk "conspired and agreed to, and did initiate, orchestrate, implement, authorize and ratify the wrongful termination of plaintiff's employment with [SDCOE] to conceal their criminal conduct and to thwart plaintiff's investigation into it . . . with the intent to cause plaintiff to suffer severe emotional distress." Hartnett further alleged that defendants' conduct was "extreme and outrageous in that . . . defendants as part of their employment are charged with the public trust in management and administration of public education funds, and their criminal conduct as discovered and reported by [Hartnett] involves gifts, misuse, and effective embezzlement of public education funds, to the benefit of said defendants themselves and/or to their spouses, friends, and/or family members."

In the eighth cause of action ("Whistleblower Retaliation"), Hartnett alleged that beginning on August 8, 2006, the individual "defendants directly or indirectly used or attempted to use their official authority or influence for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce or command plaintiff for the purpose of interfering with the right of plaintiff to disclose improper governmental activity to the county superintendent of schools . . . .
[¶] . . . [D]efendants, and each of them, intentionally engaged in acts of reprisal,

retaliation, threats, coercion, or similar acts against plaintiff for having made protected disclosures of improper governmental activities . . . ."[6]

Anti-SLAPP Motions

Fort-Merrill and Duzyk (appellants) moved to strike the three causes of action asserted against them under the anti-SLAPP statute. (§ 425.16.) They argued these claims arose from written or oral statements or writings "made in connection with an issue under consideration or review by [an] official proceeding authorized by law." (§ 425.16, subd. (e)(2).) Appellants asserted the "official proceeding" consisted of SDCOE's "employee discipline process," including the *Skelly* and Personnel Commission hearings.

Fort-Merrill and Duzyk each submitted a supporting declaration. In her declaration, Fort-Merrill said she held the "top management position" in the SDCOE human resources department, and her "responsibilities include reviewing a manager's proposal to discipline or terminate a SDCOE classified employee" and "overseeing compliance with each step of the separation process." Fort-Merrill said that in performing these functions, she follows the Merit System Rules and Regulations for the Classified Service of the Personnel Commission ("Merit System Rules"). As human resources director, Fort-Merrill also serves as Secretary to the Personnel Commission.

---

6 In support of this claim Hartnett cited Education Code section 44113, which provides: "An employee may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the right of that person to disclose to an official agent matters within the scope of this article."

Fort-Merrill then described her contacts with Hartnett in 2006 and 2007. She said that beginning in January 2006, she participated in several meetings and discussions with Hartnett and/or his supervisor (Crosier) regarding workplace accommodations for Hartnett's claimed disability and regarding Crosier's reports that Hartnett's work was deficient. These meetings occurred in June 2006, July 2006, August 2006, October 2006, and November 2006. In January 2007, Crosier told Fort-Merrill that Hartnett had violated confidentiality rules by discussing a claim with an SDCOE employee who did not work in the claims unit. Fort-Merrill approved Crosier giving Hartnett a written reprimand for this conduct.

About seven months later, on July 26, Fort-Merrill learned that Hartnett had discussed a confidential claims matter with an outside attorney, and Fort-Merrill counseled Crosier regarding the necessary steps for responding to this conduct. The next day, Hartnett informed Fort-Merrill of his belief that third-party claims against the school districts were "disproportionately" assigned to only two law firms. Fort-Merrill advised Hartnett to discuss his concerns with Duzyk, who supervised the risk management department.

On August 6, Fort-Merrill attended an "investigatory meeting" with Crosier and Hartnett to discuss Hartnett's communications with the outside attorney. During the meeting, Hartnett said he contacted the attorney for "his personal use," and denied using SDCOE materials to contact the attorney. Fort-Merrill informed Hartnett that he was being placed on administrative leave effective that date.

Two weeks later, on August 17, Fort-Merrill sent Hartnett notices of proposed disciplinary action, stating that Duzyk had recommended his termination. These notices are "official documents" required by the Merit System Rules. Fort-Merrill then recommended that Inge be appointed to preside over Hartnett's *Skelly* hearing, and sent a letter to Hartnett scheduling the hearing.

After the *Skelly* hearing, Fort-Merrill sent the final notice of discipline to Hartnett, and also informed him of his right to appeal. On November 26, Fort-Merrill notified Hartnett of his December 19 Personnel Commission appeal hearing, and also sent an amended notice of proposed disciplinary action, adding additional allegations of misconduct pertaining to improper claims handling.

In her declaration, Duzyk focused on her communications with Hartnett concerning his discussions with an outside counsel. Duzyk stated that in July 2007, she met with Hartnett "to address the allegation that he discussed SDCOE confidential business with outside counsel not on SDCOE's panel counsel list" and that she "later learned that Plaintiff was not truthful in [his] representation [about the communication] and that he used SDCOE time or resources when contacting . . . a non-panel counsel attorney." In mid-August 2007, Duzyk informed Fort-Merrill that she had determined Hartnett's conduct in releasing claims materials to third parties was improper and a basis for terminating his employment.

Both Duzyk and Fort-Merrill asserted that all of the communications discussed in their respective declarations described communications made in an "official capacity,"

and that the communications were based on applicable procedures contained in the Merit System Rules, Education Code, ADA, and SDCOE's administrative regulations.

Hartnett's Opposition to Anti-SLAPP Motion

In opposition to the anti-SLAPP motion, Hartnett argued that he was not suing Fort-Merrill and Duzyk because his termination was incorrectly handled or based on any communications in connection with his termination proceedings, and instead that his claims arose because these defendants had discriminated against him and violated public policies against disability discrimination and whistleblower retaliation. In support, Hartnett submitted a lengthy declaration, containing a detailed description of the grounds for his claims that the SDCOE's risk management department was improperly referring legal work to a single law firm and a chronological description of the conduct of Crosier, Fort-Merrill, and Duzyk in responding to his disability claims and to his claims pertaining to improper conduct in attorney assignments of SDCOE cases. These facts are summarized above.

Hartnett also declared that between August 2006 and the time he received the termination notice, he advised Fort-Merrill and Duzyk of his claims, but they took no action to properly accommodate his disability or to investigate the charges of improper conduct, and instead continued to falsely claim that he was not properly performing his job. He additionally summarized the procedures that led to his ultimate termination, including the *Skelly* hearing, termination notices, and notices of his administrative appeal rights.

Hartnett further stated: "I discovered and reported a culture of corruption within my department involving conflicts of interest and interpersonal relationships resulting in referral of our department's legal business and that of the SDCOE to friends and spouses of government employees. In return, I was intimidated, threatened, coerced, and commanded for the purpose of interfering with my right to disclose this culture of corruption all the way up the chain of command to and including Dr. Ward and the Personnel Commission. [¶] . . . Duzyk purported to investigate my whistleblowing concerns by disclosing my identity and those concerns to two of the people I had accused of corruption. . . . Duzyk never made any attempts to perform an investigation of my whistleblowing concerns beyond speaking with the people I had accused of corruption. . . . Duzyk acted in concert with those corrupted individuals by ultimately recommending my termination on pretextual grounds provided to her by my primary accuse[r] [Crosier]. [¶] . . . Fort-Merrill acted in concert with the people I had accused of corruption and . . . Duzyk by orchestrating my termination (twice) on pretextual grounds because I had further discovered, exposed, and reported what I reasonably believed to be conflicts of interest in her husband acting as general counsel for the SDCOE, particularly with respect to my termination proceedings, which . . . Fort-Merrill directly implemented."

Court's Ruling

After considering the parties' submissions and conducting a hearing, the court denied appellants' anti-SLAPP motions. The court found Fort-Merrill and Duzyk did not meet their burden to show the claims asserted against them arose out of protected conduct. The court reasoned that the claims arose from appellants' alleged wrongful

activities and discriminatory treatment of Hartnett, and not the disciplinary proceedings leading to the termination.

DISCUSSION

Section 425.16, subdivision (b)(1) provides: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." To promote participation in matters of public significance, courts must construe this statute "broadly" in favor of the moving party. (§ 425.16, subd. (a).)

In ruling on a defendant's motion to strike under this anti-SLAPP statute, a court engages in a two-step analysis. (*Taus v. Loftus* (2007) 40 Cal.4th 683, 703; *Navellier*, *supra*, 29 Cal.4th at p. 88.) First, the court must determine "whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity." (*Navellier*, *supra*, at p. 88.) Second, if the court finds this showing has been made, it must then dismiss the cause of action unless the plaintiff meets its burden to demonstrate a probability of prevailing on the claim. (*Ibid*.) On appeal, we conduct a de novo review on these issues. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3.) We review the trial court's ruling and not its rationale. (*City of Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43, 80.)

On the first step of the section 425.16 analysis, a cause of action is subject to a defendant's special motion to strike if the claim is one "arising from any act . . . in

furtherance" of the defendant's "right of petition or free speech under the United States or California Constitution in connection with a public issue . . . ." (§ 425.16, subd. (b)(1); see *Gallimore v. State Farm Fire & Casualty Ins. Co.* (2002) 102 Cal.App.4th 1388, 1396.) The anti-SLAPP statute identifies four categories of activities that are "in furtherance of" a defendant's free speech or petition rights. (§ 425.16, subd. (e).) In their motions below, appellants relied on the second category to assert the statute's applicability: "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." (§ 425.16, subd. (e)(2).) The court denied the motion based on its finding that Hartnett's allegations did not come within this category or constitute any other form of constitutionally protected activity.

On appeal, appellants contend the court erred because all of their alleged wrongful actions occurred during, or in connection with, SDCOE's termination procedures, which they say are "official proceedings authorized by law." (§ 425.16, subd. (e)(2).) In response, Hartnett does not dispute that the *Skelly* hearing and the Personnel Commission hearings were "official proceedings" within the meaning of the anti-SLAPP statute. (§ 425.16, subd. (e)(2); see *Kibler v. Northern Inyo County Local Hospital Dist.* (2006) 39 Cal.4th 192, 199.) But he argues his claims against appellants do not "*arise from*" these proceedings. We agree with this argument.

The "'arising from'" statutory requirement means "the defendant's act underlying the plaintiff's cause of action must *itself* have been an act in furtherance of the right of petition or free speech." (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78;

Department of Fair Employment & Housing v. 1105 Alta Loma Road Apartments (2007) 154 Cal.App.4th 1273, 1283-1284 (*DFEH*).) This "requirement is not always easily met." (*Equilon Enterprises v. Consumer Cause* (2002) 29 Cal.4th 53, 66.) "[T]he critical consideration is whether the cause of action is *based on* the defendant's protected free speech or petitioning activity." (*Navellier, supra,* 29 Cal.4th at p. 89.) "The anti-SLAPP statute's definitional focus is not the form of the plaintiff's cause of action but, rather, the defendant's *activity* that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning." (*Id.* at p. 92.) In evaluating an anti-SLAPP motion, a court must examine the gravamen of a plaintiff's complaint to see if it is based on a defendant's protected First Amendment activity. (See *Martinez v. Metabolife Internat. Inc*. (2003) 113 Cal.App.4th 181, 188.) Accordingly, a court must focus on the defendant's activities that are alleged to be wrongful and determine whether *these activities* are protected conduct within the meaning of the statute. (See *DFEH, supra,* 154 Cal.App.4th at pp. 1283-1284; *Gallanis-Politis v. Medina* (2007) 152 Cal.App.4th 600, 610.)

Hartnett's claims arose from appellants' actions that allegedly prevented Hartnett from performing his job, continuing his employment with SDCOE, and disclosing the agency's wrongful acts. According to Hartnett's complaint and the evidence presented in the anti-SLAPP proceedings, Hartnett's claims were based on a lengthy course of conduct by various employees, including Fort-Merrill and Duzyk, during which these individuals failed to adequately respond to his claims of disability discrimination and to his charges of illegal conduct in the SDCOE's risk management department, and appellants' alleged

conduct in acting jointly with the other employees to preclude Hartnett from disclosing alleged wrongful conduct in the risk management department and to secure Hartnett's termination in retaliation for his disability and whistleblowing claims. In these claims, Harnett alleged wrongful treatment that was unrelated to the termination procedures. Hartnett did not seek to hold Fort-Merrill or Duzyk liable for their actions at the official termination proceedings, or communications made in connection with those proceedings. Instead, his claims arose from appellants' alleged conflicts of interest and alleged violations of the Education Code. This conduct is not protected free speech or petitioning activity within the meaning of section 425.16, subdivision (e)(2).

Appellants contend the anti-SLAPP statute applies because their alleged wrongful activities were preliminary to, or occurred in anticipation of, the official proceedings. We agree that anti-SLAPP protection extends to statements made in preparation of a lawsuit or other covered official proceeding. (See *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1115; *Kolar v. Donahue, McIntosh & Hammerton* (2006) 145 Cal.App.4th 1532, 1537.) But this principle is inapplicable here.

The gravamen of Hartnett's claims was not directed at speech or conduct made in connection with, or in preparation for, the termination hearings. Rather, the claims arose from appellants' alleged activities seeking to prevent Hartnett from disclosing the alleged "culture of corruption" among the SDCOE employees, and in wrongfully retaliating against Hartnett when he attempted to reveal and put an end to this claimed wrongful conduct. Efforts by the defendants to stifle Hartnett's efforts are not constitutionally protected, even if the actions eventually lead to a termination hearing.

In a related argument, appellants contend that all of their communications and actions concerning Hartnett's employment were subject to anti-SLAPP protection because appellants acted pursuant to "official" personnel rules. Fort-Merrill notes that she "lodged a sworn declaration attesting that she followed SDCOE procedures in [all of] her actions and communications relative to Hartnett's employment issues." Thus, appellants argue that all of Hartnett's claims of improper conduct necessarily arise from an "official proceeding authorized by law" within the meaning of the anti-SLAPP statute. (§ 425.16, subd. (e)(2).)

This proposed broad construction of the statutory phrase "official proceeding" is unsupported by any legal authority. The fact that various administrative rules prescribe the grounds and procedures under which the SDCOE may discipline an employee does not convert all of these procedures into "official proceedings." If it did, every public employee wrongful termination or related claim would be subject to the anti-SLAPP statute. The employer would simply assert that its employment action is governed by regulations or statutes and thus subject to the protections of section 425.16. Although we are required to construe the statute broadly, section 425.16 cannot be reasonably read as applying to every aspect of an employment dispute merely because "official" rules ("authorized by law") govern the employment relationship.

In this regard, appellants' reliance on *Vergos v. McNeal* (2007) 146 Cal.App.4th 1387 (*Vergos*) is misplaced. In *Vergos*, an employee at the University of California at Davis claimed he was being sexually harassed by his supervisor. (*Id.* at pp. 1390-1391.) The governing rules provided that when an employee filed this type of claim, the claim

would first be assigned to a department head to hear the claim and determine its validity. (*Id.* at pp. 1392-1393.) McNeal was assigned this task, and after an investigation determined the claims were unsubstantiated. (*Id.* at p. 1393.) The employee (Vergos) then brought a civil rights claim against McNeal, accusing her of acting improperly in "hearing, processing, and deciding" Vergos's grievance. (*Id.* at p. 1392.) McNeal moved to strike the claim, arguing her statements and communications in "handling plaintiff's grievances" were protected by the anti-SLAPP statute because they were connected to an issue under review by an official proceeding authorized by law. (*Id.* at pp. 1392, 1394.)

The reviewing court agreed with this argument. (*Vergos*, *supra*, 146 Cal.App.4th at p. 1394.) The court reasoned that McNeal's review of Vergos's grievance occurred "pursuant to [personnel rules] . . . established by the Regents, which is a constitutional entity having quasi-judicial powers . . . [citations] . . . Statutory hearing procedures qualify as official proceedings authorized by law for section 425.16 purposes. [Citations]." (*Id.* at p. 1396.) The court further rejected Vergos's argument that his claim did not "'arise from'" this official proceeding because it arose from McNeil's "participation in aiding and abetting [the supervisor's] harassment of plaintiff." (*Ibid*.) The court found this argument was not factually supported: "Plaintiff fails to point to any allegation of any aiding and abetting conduct by McNeal, other than her hearing, processing and deciding his grievances." (*Ibid.*)

This case is materially different from *Vergos* because the central thrust of Hartnett's allegations pertained to appellants' alleged participation in the underlying wrongful activities, which included alleged disability discrimination and retaliation based

on his complaints about conflicts of interest. Hartnett alleged appellants acted in concert with others to preclude him from disclosing the alleged wrongdoing of various SDCOE employees and to deny him the benefits of his continued employment. Thus, unlike *Vergos*, appellant's allegedly wrongful conduct and speech occurred in the context of the ongoing employment relationship, and not because of appellants' role in the termination hearing procedures. Moreover, in *Vergos*, the defendant had considered and rejected the plaintiff's claim as a hearing officer in a hearing procedure authorized by the applicable rules. (*Vergos, supra*, 146 Cal.App.4th at pp. 1392-1393.) In this case, there was no similar showing that *appellants*' consideration of Hartnett's discrimination and conflict of interest claims took place in a formal or official hearing context.

Dible v. Haight Ashbury Free Clinics (2009) 170 Cal.App.4th 843 (*Dible*), relied upon by appellants, is also distinguishable. In that case, a former medical clinic employee filed for unemployment insurance with a government agency. (*Id.* at p. 846.) In response to the claim, the employer informed the agency that the employee had been negligent in causing the death of a patient. (*Id.* at p. 847.) The employee then sued the employer for defamation *based on the employer's alleged false statement to the government agency*. (*Id.* at pp. 846-847, 849-850.) The employer successfully moved to strike the defamation claim under the anti-SLAPP statute, and the reviewing court affirmed. (*Id.* at p. 846.) The court reasoned that the sole basis of the defamation claim was the employer's statements to the government agency and these statements were part of the "'official proceeding'" pertaining to the plaintiff's eligibility for unemployment benefits. (*Id.* at p. 850.) The plaintiff did not challenge the conclusion that her lawsuit

was based on statements made in an official proceeding, but argued the statements were not protected because the employers' motivation was to silence her rather than to report the true facts to the agency. (*Id.* at p. 851.) The court rejected the argument, noting a defendant's motivations are irrelevant to the determination of a communication's status as protected speech. (*Ibid.*)

Duzyk argues this case is "exactly" the same as *Dible* because Hartnett sued her because she informed Hartnett's employer of the "'cause' for plaintiff's termination." The argument is not factually supported. Although Duzyk engaged in communications relating to the official termination proceeding, Hartnett's lawsuit was not based on these statements or actions. A cause of action does not arise from protected activity merely because it was filed after the defendant engaged in that activity. (*City of Cotati v. Cashman*, *supra*, 29 Cal.4th at p. 78.)

Fort-Merrill also relies on *Dible,* arguing that Hartnett was similarly attempting to rely on appellants' bad motives to show the case falls outside of the anti-SLAPP statute's protection. However, our conclusion that the statute does not apply is based on the nature of appellants' allegedly wrongful actions, and not appellants' motivations for their actions. Additionally, although Fort-Merrill sent written communications to Hartnett pertaining to the hearing procedures, these communications did not trigger anti-SLAPP protection because the lawsuit is not based on these documents.

Finally, appellants devote a substantial portion of their appellate briefs to challenging various statements made by the trial court during the hearing on the anti-SLAPP motion. We do not reach these arguments because we apply a de novo review

standard. (*Dible, supra*, 170 Cal.App.4th at pp. 848-849.) In conducting an independent review, we examine the correctness of the court's ruling, and not its rationale.[7]

In reaching our conclusions, we emphasize that we decide only that the anti-SLAPP procedure does not apply to the causes of action asserted against appellants, and we do not intend to suggest any opinion on the merits of these claims. If appellants believe the allegations are unsupported, they are free to bring a dispositive motion such as a summary judgment motion or a motion for judgment on the pleadings.

DISPOSITION

Order affirmed. Appellants to bear respondent's costs on appeal.

HALLER, J.

WE CONCUR:

NARES, Acting P. J.

O'ROURKE, J.

[7] Appellants express particular concern with the court's suggestion that a determination that a claim is subject to the anti-SLAPP statutory procedure necessarily means the claim will be dismissed. However, viewing the court's comments in context, we are confident the court understood the nature of the statutory procedure as a two-step process and did not deny the motion because it believed it would necessarily result in a dismissal of all wrongful termination claims, including those with potential underlying merit.