IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

MICHAEL E. MANN, PH.D., **Plaintiff,** **v.** **NATIONAL REVIEW, INC., *et al.*,** **Defendants.**	**2012 CA 008263 B** **Judge Alfred S. Irving, Jr.**

ORDER DENYING PLAINTIFF'S MOTION FOR ATTORNEY FEES UNDER THE ANTI-SLAPP ACT AGAINST DEFENDANT MARK STEYN

Before the Court is *Plaintiff's Motion for Attorney Fees Under the Anti-SLAPP Act Against Defendant Mark Steyn*, filed on March 11, 2024. On April 10, 2024, Defendant Mark Steyn filed an *Opposition*, and Plaintiff Michael E. Mann, Ph.D., filed a *Reply* on April 25, 2024.

For the reasons set forth below, the Court will deny Dr. Mann's *Motion* in its entirety.

I. BACKGROUND

On October 22, 2012, Dr. Mann filed a *Complaint* in which he alleged, as relevant here, two counts of libel *per se* and one count of intentional infliction of emotional distress against Mr. Steyn. *See* Compl. ¶¶ 34-46, 59-70 (libel *per se*); *id.* ¶¶ 95-101 (IIED). Subsequently, on July 10, 2013, Dr. Mann filed an *Amended Complaint* that added a third count of libel *per se* against Mr. Steyn. *See* Am. Compl. ¶¶ 102-13. Mr. Steyn unsuccessfully sought dismissal of the *Amended Complaint* before ultimately filing an *Amended Answer and Counterclaims to Amended Complaint*, dated March 12, 2014. In his *Amended Answer*, Mr. Steyn alleged three counterclaims: (1) a claim based on Dr. Mann's violation of the District of Columbia's Anti-Strategic Lawsuits Against Public Participation (Anti-SLAPP) Act, as codified at D.C. Code §§ 16-5501 *et seq.*, *see* Def. Steyn's Am. Answer & Countercls. ¶¶ 128-39; (2) a claim based on Dr. Mann's "use of the courts as an instrument of the government" to violate Mr. Steyn's First

Amendment rights, *see id.* ¶¶ 140-42; and (3) a claim based on Dr. Mann's "abusive litigation akin to malicious prosecution, abuse of process, litigation designed to suppress competition, and so on, for which redress in the courts under the common law is appropriate," *id.* ¶¶ 143-47.

On March 17, 2014, Dr. Mann filed a *Motion to Dismiss Counterclaims of Counter-Plaintiff Mark Steyn Pursuant to the D.C. Anti-SLAPP Act and Pursuant to Rule 12(b)(6)*. On April 1, 2014, Mr. Steyn filed his opposition.

After a delay caused by a stay pending resolution of an interlocutory appeal, on August 29, 2019, the Hon. Jennifer M. Anderson granted Dr. Mann's *Motion to Dismiss Counterclaims* and dismissed all three of Mr. Steyn's counterclaims with prejudice for failure to state a claim under Rule 12(b)(6) of the Superior Court Rules of Civil Procedure.
Judge Anderson then granted a consent motion, that Dr. Mann and Mr. Steyn jointly filed, to defer the filing of any motion for attorneys' fees in connection with Dr. Mann's successful *Motion to Dismiss Counterclaims* until the entry of a final judgment resolving all claims in the case. *See* Order Granting Consent Joint Mot. to Defer Fee Application Under the Anti-SLAPP Act (Sept. 17, 2019).

Thereafter, the Court held the jury trial on all remaining claims across three weeks in January and February 2024 and entered judgment upon a jury verdict by order dated February 9, 2024. The Court set a briefing schedule for all post-trial motions, including motions for attorney's fees under the Anti-SLAPP Act, by separate orders dated February 9 and 22, 2024.

Dr. Mann's instant *Motion for Attorney Fees* followed.

II. LEGAL STANDARD

The District of Columbia follows the "American Rule" in apportioning attorneys' fees, namely, that "every party to a case shoulders its own attorneys' fees and recovers from other

litigants only in the presence of a statutory authority, a contractual arrangement, or certain narrowly-defined common law exceptions." *Dalo v. Kivitz*, 596 A.2d 35, 37 (D.C. 1991) (quoting *Synanon Found. v. Bernstein*, 517 A.2d 28, 35 (D.C. 1986)). A party seeking attorneys' fees must file a motion that, *inter alia*, "specif[ies] the judgment and the statute, rule, or other grounds entitling the [party] to the award" and "state[s] the amount sought or provide a fair estimate of it[.]" Super. Ct. Civ. R. 54(d)(2)(B)(ii), (iii); *see also Lively v. Flexible Packaging Ass'n*, 930 A.2d 984, 993 (D.C. 2007) (explaining that the moving party bears the "burden to prove and establish the reasonableness of each dollar, each hour, above zero"). A "trial court's decision to grant or deny a request for fees and costs is generally reviewed for abuse of discretion," while "the issue of whether a trial court possesses the statutory authority to award particular fees and costs is reviewed *de novo*." *In re Estate of Green*, 896 A.2d 250, 252 (D.C. 2006); *see also Steadman v. Steadman*, 514 A.2d 1196, 1200 (D.C. 1986) (noting disposition of motions for attorneys' fees "is firmly committed to the informed discretion of the trial court").

Under the Anti-SLAPP Act, "a party may file a special motion to dismiss any claim arising from an act in furtherance of the right of advocacy on issues of public interest . . . ." D.C. Code § 16-5502. Should a party prevail "in whole or in part" on their special motion to dismiss, "[t]he court may award [the] party . . . the costs of litigation, including reasonable attorney fees." *Id.* § 16-5504(a); *see also Khan v. Orbis Bus. Intelligence Ltd.*, 292 A.3d 244, 252 (D.C. 2023) (construing D.C. Code § 16-5504(a) "to mean that a successful movant on a special motion to dismiss 'is entitled to reasonable attorney's fees in the ordinary course—*i.e.*, presumptively—unless special circumstances in the case make a fee award unjust'" (quoting *Doe v. Burke*, 133 A.3d 569, 571 (D.C. 2016))).

III. DISCUSSION

Dr. Mann contends that he is entitled to attorneys' fees under the Anti-SLAPP Act for prevailing on his *Motion to Dismiss Counterclaims*. *See generally* Mem. of P. & A. in Supp. of Pl.'s Mot. for Costs Under the Anti-SLAPP Act [hereinafter "Pl.'s Mem."]. Specifically, Dr. Mann first contends that the Anti-SLAPP Act applies to Mr. Steyn's counterclaims. *Id.* at 2-4. Second, Dr. Mann contends that he succeeded "in whole or in part" on a special motion to dismiss, as his *Motion to Dismiss Counterclaims* invoked both the Anti-SLAPP Act and Rule 12(b)(6) and "[t]hat the Court's August 29 Order relies on Rule 12(b)(6) as opposed to citing the Anti-SLAPP Act specifically is a distinction without difference under *American Student Association v. Bronner*, 259 A.3d 728, 740 (D.C. 2021)." Pl.'s Mem. 5; *see also* Pl.'s Reply in Supp. of his Mot. for Att'y Fees Under the Anti-SLAPP Act Against Def. Mark Steyn 1-2 [hereinafter "Pl.'s Reply] (contending that "Defendant Steyn's loss under Rule 12(b)(6) meant he *necessarily* lost under the Anti-SLAPP Act"). Third, Dr. Mann contends that the $6,795.00 in attorneys' fees he requests are reasonable. Pl.'s Mem. 5-6; *see also* Pl.'s Mem., Ex. 1 (billing entries for work from March 5 to 17, 2014).

In opposition, Mr. Steyn emphasizes that Dr. Mann's *Motion to Dismiss Counterclaims* was granted solely on Rule 12(b)(6) grounds, and Judge Anderson's lack of reliance on the Anti-SLAPP Act deprives Dr. Mann of any statutory basis for the award of attorneys' fees. Def. Mark Steyn's Opp'n to Pl.'s Mot. for Att'y Fees 1-3 [hereinafter "Def.'s Opp'n"] (citing *Abbas v. Foreign Policy Grp., LLC*, 783 F.3d 1328, 1337 n.5 (D.C. Cir. 2015), and distinguishing *Bronner*). Mr. Steyn further contends that Dr. Mann's requested fees are not reasonable because Dr. Mann has "bundled tasks that do not relate to [Mr.] Steyn" and included duplicative entries among his block-billed time entries. *Id.* at 3-4.

The Court must deny Dr. Mann's request for attorneys' fees under the Anti-SLAPP Act because Dr. Mann did not "prevail[], in whole or in part, on a motion brought under [D.C. Code] § 16-5502[.]" D.C. Code § 16-5504(a). First, although Dr. Mann's *Motion to Dismiss Counterclaims* did invoke the Anti-SLAPP Act alongside Rule 12(b)(6), *see* Counter-Def. Michael Mann's Mem. of P. & A. in Supp. of his Mot. to Dismiss the Countercls. of Counter-Pl. Mark Steyn 4-7, a plain reading of Judge Anderson's August 29, 2019 Order reveals that Judge Anderson did not consider whether dismissal pursuant to the Anti-SLAPP Act was appropriate. Instead, Judge Anderson expressly and solely relied upon Rule 12(b)(6) in setting forth the applicable legal standard for deciding Dr. Mann's *Motion to Dismiss Counterclaims*, *see* Order Granting Mot. to Dismiss the Countercls. of Counter-Pl. Mark Steyn 2, before assessing whether each of Mr. Steyn's counterclaims stated any cognizable claim under District of Columbia law. Judge Anderson held that Mr. Steyn's first counterclaim failed to state a claim because the Anti-SLAPP Act's provision for a special motion to dismiss did not impliedly create a separate, affirmative cause of action. *Id.* at 2-5. Nor did Mr. Steyn's second counterclaim state a claim, as Dr. Mann's suit against him did not constitute "state action," a necessary element for asserting a cognizable violation of the First Amendment. *Id.* at 5-6. And Mr. Steyn's third counterclaim failed to state any common law tort claim because Mr. Steyn's factual allegations similarly failed to establish necessary elements for the torts of abuse of process and malicious prosecution—or even Mr. Steyn's proposed tort of "abusive litigation," as borrowed from Georgia law. *Id.* at 6-9. In other words, Judge Anderson did not engage in a portion of the analysis specifically required for assessing a special motion to dismiss: she did not determine whether Dr. Mann "ma[de] a prima facie showing that the claim[s] at issue arise[] from an act in furtherance of the right of advocacy on issues of public interest[.]" D.C. Code § 16-5502(b); *see*

also Bronner, 259 A.3d at 750 ("To determine whether the movant has made that showing, the court must examine whether each claim is based on such protected activity.").

As such, the Court cannot conclude that Judge Anderson treated Dr. Mann's *Motion to Dismiss Counterclaims* as a special motion to dismiss. The Court's conclusion is further confirmed by the lack of an "expedited hearing on the special motion to dismiss" as a mandatory prerequisite for deciding a special motion to dismiss. D.C. Code § 16-5502(d); *Competitive Enter. Inst. v. Mann*, 150 A.3d 1213, 1232 (D.C. 2016) ("The court is *required* to hold an 'expedited hearing' on the motion and to issue a ruling 'as soon as practicable after the hearing.'" (emphasis added)); *see also Saudi Am. Pub. Rels. Comm. v. Inst. for Gulf Affs.*, 242 A.3d 602, 607-10 (D.C. 2020) (holding trial court erred in deciding special motion to dismiss without holding hearing and explaining that hearing requirement was not merely opportunity for trial court to consider parties' written submissions, but also for parties to flesh out their arguments, and contrasting District's Anti-SLAPP Act with other states' anti-SLAPP legislation that did not contain hearing requirement). Here, the only hearing during the pendency of Dr. Mann's *Motion to Dismiss Counterclaims* was a June 4, 2019 status hearing before Judge Anderson, during which the Parties discussed the next steps in the case after issuance of the Court of Appeals's mandate and Defendants' filing of petitions for certiorari with the Supreme Court. Counsel for Dr. Mann did flag that the *Motion to Dismiss Counterclaims* remained outstanding; however, no Party presented any arguments at the hearing.

Second, Dr. Mann's reliance on *Bronner* is unavailing. Dr. Mann is correct that, in *Bronner*, the Court of Appeals held that "where the court grants a [Rule] 12(b)(6) motion because no relief can be granted on a claim as a matter of law, the [proponent of the claim] cannot show a likelihood of success on the merits of that claim for the purposes of the anti-

SLAPP motion." *Bronner*, 259 A.3d at 741. *Bronner*, however, did not equate success on a Rule 12(b)(6) motion with automatic success on a special motion to dismiss. Instead, the Court of Appeals explicitly distinguished between the two types of motions by reiterating the analytical step necessary to adjudicate a special motion to dismiss, *see id.* at 750 (explaining that trial court must first examine whether claims are based on protected activities), and construing the two motions as separate and distinct procedural devices to obtain dismissal, *see id.* ("The court should rule on the special motion to dismiss with respect to each claim, even if it grants a [Rule] 12(b)(6) motion to dismiss that claim."). As such, absent a determination that a movant "ma[de] a prima facie showing that the claim at issue arises from an act in furtherance of the right of advocacy on issues of public interest," D.C. Code § 16-5502(b), the movant cannot be said to have prevailed at all on a special motion to dismiss because one of the necessary prerequisites for prevailing was not met.[1] Put another way, had Dr. Mann filed his special motion to dismiss as a standalone motion, and the motion went unaddressed, any order dismissing Mr. Steyn's counterclaims under Rule 12—*i.e.*, not implicating the "arises from" analysis set forth at D.C. Code § 16-5502(b)—plainly would not count as Dr. Mann's "prevail[ing], in whole or in part," on his special motion to dismiss. The Court sees no basis for holding differently where, as here, Dr. Mann consolidated his theories of dismissal into a single filing. To conclude otherwise would run afoul of language in *Bronner* requiring the Court to treat a special motion to dismiss

[1] Thus, D.C. Code § 16-5504(a)'s "prevail . . . in part" language is properly understood as applying to a special motion to dismiss, that results in dismissal—premised on both steps of the analysis set forth in D.C. Code § 16-5502(b) being satisfied—of some, but not all, claims designated in the motion. *Cf. Bronner*, 259 A.3d at 743 (holding the Anti-SLAPP Act requires a claim-by-claim assessment when evaluating a special motion to dismiss); *Jacobson v. Clack*, 309 A.3d 571, 578-81 (D.C. 2024) (construing "prevails, in whole or in part" language as encompassing not only movants who secure court-ordered relief, but also where claims are dismissed after a special motion to dismiss is filed).

separate and apart from a Rule 12(b)(6) motion. *See Bronner*, 259 A.3d at 750; *see also Mann*, 150 A.3d at 1238 ("Our interpretation of the requirements and standard applicable to special motions to dismiss ensures that the Anti-SLAPP Act provision is not redundant relative to the rules of civil procedure."). Furthermore, it would command the absurd result of a movant's "prevailing" being conditioned not on whether a movant has made the statutory showing necessary to prevail in the first place, but rather on whether the special motion to dismiss is consolidated with a motion seeking dismissal on some basis that shows that a claim is not "likely to succeed on the merits[.]" D.C. Code § 16-5502(b); *cf. Abbas*, 783 F.3d at 1337 n.5 ("The [Anti-SLAPP] Act does not purport to make attorney's fees available to parties who obtain dismissal by other means, such as under Federal Rule 12(b)(6)."). And most significantly, it would employ one of the Anti-SLAPP Act's core deterrence and remedial mechanisms without a prerequisite finding that places the claims at issue within the ambit of the Anti-SLAPP Act, thus effectively co-opting the Act's special motion to dismiss into another litigation tool for chilling the exercise of First Amendment rights. *See Khan*, 292 A.3d at 257-58 (discussing purposes underlying Anti-SLAPP Act's fee-shifting provision).

Therefore, Judge Anderson's dismissal of Mr. Steyn's counterclaims based solely upon Rule 12(b)(6) grounds did not, by itself, entitle Dr. Mann to attorneys' fees under the Anti-SLAPP Act and *Bronner*. Dr. Mann's reraising his arguments about the applicability of the Anti-SLAPP Act to Mr. Steyn's counterclaims in the instant *Motion for Attorney Fees* only highlight that Judge Anderson's August 29, 2019 Order, by its terms, could not have dismissed Mr. Steyn's counterclaims under the Anti-SLAPP Act. *Cf.* Def.'s Opp'n 3 ("And [Dr.] Mann never moved [Judge Anderson] to reconsider [her] order and dismiss Steyn's counterclaims under the Anti-SLAPP Act instead of, or in addition to, Rule 12(b)(6)."); *Charlton v. Mond*, 987

A.2d 436, 442 (D.C. 2010) ("Had the judge so seriously misconstrued [the party's] motion, the time to object was then, not now, more than four years later."). As there is no order deeming Dr. Mann to have "prevail[ed], in whole or in part, on a motion brought under [D.C. Code] § 16-5502," D.C. Code § 16-5504(a), the Court lacks the necessary authority to depart from the American Rule and award Dr. Mann attorneys' fees and thus must deny Dr. Mann's *Motion for Attorney Fees*.

ACCORDINGLY, it is this 6th day of January 2025, hereby

ORDERED that *Plaintiff's Motion for Attorney Fees Under the Anti-SLAPP Act Against Defendant Mark Steyn*, filed on March 11, 2024, is **DENIED**.

Judge Alfred S. Irving, Jr.

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