

SCOTT A. LIBERTY

v.

JEFFREY BENNETT et al.

and

JEFFEREY BENNETT et al.

v.

MICHAEL LIBERTY et al.

Submitted on Briefs January 22, 2009

Decided February 3, 2009

Panel: ALEXANDER, LEVY, SILVER, MEAD, and GORMAN, JJ.

MEMORANDUM OF DECISION

Scott A. Liberty appeals from a judgment of the Superior Court (Cumberland County, *Delahanty, J.*) denying his special motion to dismiss, pursuant to 14 M.R.S. § 556 (2008), counterclaims that Jeffrey Bennett filed against him. In a consolidated case, Jeffrey Bennett appeals from a judgment granting a special motion to dismiss, pursuant to the same statute, claims that Bennett filed in a third-party complaint against Judy Potter. Section 556, which is known as Maine’s anti-SLAPP statute (Strategic Lawsuit Against Public Participation), “is designed to guard against meritless lawsuits brought with the intention of chilling or deterring the free exercise of the defendant’s First Amendment right to petition the government.” *Schelling v. Lindell*, 2008 ME 59, ¶ 6, 942 A.2d 1226, 1229. Finding no errors of law or abuses of discretion in the court’s denial of Scott Liberty’s motion or the granting of Judy Potter’s motion, we affirm both judgments. *See Maietta Constr. Inc. v. Wainwright*, 2004 ME 53, ¶ 8,

847 A.2d 1169, 1173 (“We review the judge’s decision regarding such a special motion to dismiss to determine whether there was an abuse of discretion or error of law.”). By filing a motion without an affidavit, attached copies of or any other factual assertions about his so-called petitions, Liberty failed to meet his initial burden of proving that the anti-SLAPP statute applies. *See Schelling*, 2008 ME 59, ¶ 7, 942 A.2d at 1229 (“To prevail on a special motion to dismiss, the defendant carries the initial burden to show that the suit was based on some activity would qualify as an exercise of the defendant’s First Amendment right to petition the government.”); *see also Maietta Constr. Inc.*, 2004 ME 53, ¶¶ 4, 7, 847 A.2d at 1172-73 (defendants who filed special motion to dismiss with supporting affidavits and exhibits met initial burden of proving anti-SLAPP statute applies). Therefore, the court did not err in denying Liberty’s motion.

In the other case, Potter met her initial burden of proving the statute applies by providing the court with facts about her petitioning activity. The burden then shifted to Bennett who failed to demonstrate that: (1) Potter’s petitioning activity “was devoid of any reasonable factual support or any arguable basis in law”; and (2) he suffered actual injury as a result of Potter’s exercise of her right to petition. 14 M.R.S. § 556; *see also Schelling*, 2008 ME 59, ¶ 17, 942 A.2d at 1231 (requiring evidence in the record proving actual injury to a reasonable certainty). Therefore, the court did not err in granting Potter’s motion.

Lastly, the court did not abuse its discretion in denying attorney fees to Potter in light of Bennett’s appeal. *See Maietta Constr. Inc.*, 2004 ME 53, ¶ 11, 847 A.2d at 1174.

The entry is:

Judgments affirmed.

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