REVERSE and REMAND; and Opinion Filed March 31, 2017.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-00829-CV

TARSHA HARDY, Appellant
V.
COMMUNICATION WORKERS OF AMERICA LOCAL 6215 AFL-CIO AND BONNIE MATHIAS, Appellees[1]

On Appeal from the 14th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-15-04027

OPINION

Before Justices Lang, Fillmore, and Schenck
Opinion by Justice Fillmore

Tarsha Hardy sued Bonnie Mathias and Mathias's employer, the Communication Workers of America Local 6215 (the CWA), alleging she had been slandered by statements made by Mathias that were reported by a local television station. Mathias and the CWA both moved for summary judgment on the ground there was no evidence Hardy requested a correction, clarification, or retraction of Mathias's statements as required by the Defamation Mitigation Act. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 73.051–.062 (West Supp. 2016) (the DMA). The trial court granted the no-evidence motions for summary judgment and dismissed Hardy's claims with prejudice. On appeal, Hardy asserts the trial court erred by granting the no-evidence motions for summary judgment because (1) Mathias and the CWA failed, within sixty

[1] In her notice of appeal, Hardy also listed as appellees the Communication Workers of America, Inc. and the Communication Workers of America, AFL-CIO. However, Hardy nonsuited her claims against these defendants, and they are not parties to this appeal.

days of being served with citation, to notify Hardy that they intended to use the DMA as a defense to liability; (2) applying the DMA to bar Hardy's claims was inconsistent with the legislative intent underlying the statute; and (3) the DMA does not apply when the publisher of the statement acts with malice.

Pursuant to the DMA, a plaintiff may maintain a cause of action for defamation only if she timely and sufficiently requested a correction, clarification, or retraction of an allegedly defamatory statement or if the defendant has made a correction, clarification, or retraction. *Id.* § 73.055(a). The trial court determined that Hardy's lawsuit could be dismissed through a no-evidence summary judgment based on Hardy's failure to make a request that complied with section 73.055. *See* TEX. R. CIV. P. 166a(i). Construing the DMA in its entirety, giving effect to all of its provisions, and considering the purpose of the statute, we conclude that dismissal of the plaintiff's claim is not the consequence authorized by the DMA for a plaintiff's failure to make the required request. Accordingly, the trial court erred by granting the no-evidence motions for summary judgment and dismissing Hardy's claims. We reverse the trial court's judgment and remand this case for further proceedings.

Background

In 2014, Hardy and five other individuals were candidates in the Democratic Party primary for the office of Dallas County District Clerk. No candidate received over fifty percent of the vote in the primary election on March 4, 2014. Hardy, who received the most votes, and Felicia Pitre, the second-place finisher, faced a run-off election on May 27, 2014.

Although the record is not clear as to when Hardy was first employed by the CWA, her employment was terminated on February 17, 2014. On April 22, 2014, Mathias, the vice president of the CWA, made statements that were published by a local television station about an

incident that occurred while Hardy was employed by the CWA and about Hardy's job responsibilities at the CWA. Pitre won the run-off election by a large margin.

On April 9, 2015, Hardy sued Mathias and the CWA, alleging she was slandered by Mathias's statements and the statements caused her to lose the run-off election. Hardy specifically alleged that, after she read Mathias's comments and "conferr[ed] with her after the interview," neither Mathias nor the CWA "made any attempt to retract those false statements." Mathias and the CWA responded to the petition with a general denial but did not seek to abate the action.

On February 25, 2016, Mathias and the CWA filed amended answers and affirmative defenses. As relevant to this appeal, Mathias and the CWA asserted as an affirmative defense that Hardy had failed to comply with the DMA and "her claims should be dismissed or in the alternative her claims for punitive damages dismissed." Mathias and the CWA subsequently filed motions for summary judgment on grounds there was no evidence (1) Hardy "requested a retraction of the statements made by Defendant Mathias as required by §73.055 of the Civil Practice and Remedies Code. Such request is a condition precedent to bringing this action"; (2) Mathias's statements were untrue at the time they were made; (3) Mathias acted with actual malice in that she either knew the statements were false or acted with reckless disregard of whether they were true; and (4) Mathias's conduct in publishing the statements was a proximate cause of any injury or damage to Hardy. Mathias and the CWA set for hearing only their request for summary judgment based on Hardy's "failure to meet the requirements as set forth in the Civil Practice and Remedies Code §73.055."

Hardy responded to the motions and argued Mathias and the CWA failed to challenge the sufficiency or timeliness of a request for a correction, clarification, or retraction within sixty days of service of citation and, therefore, waived their affirmative defense. *See* TEX. CIV. PRAC. &

REM. CODE ANN. § 73.058(c). As summary judgment evidence, Hardy relied on the proofs of service of citation on Mathias and the CWA and on Mathias's and the CWA's original and amended answers. The trial court granted Mathias's and the CWA's no-evidence motions for summary judgment and ordered that Hardy's claims were dismissed with prejudice.

Standard of Review

We review a trial court's decision to grant summary judgment de novo. *Merriman v. XTO Energy, Inc.*, 407 S.W.3d 244, 248 (Tex. 2013). After an adequate time for discovery, a party may move for summary judgment on the ground there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. TEX. R. CIV. P. 166a(i). To defeat the summary judgment, the nonmovant must produce summary judgment evidence that raises a genuine issue of material fact on each of the challenged elements. TEX. R. CIV. P. 166a(i); *Merriman*, 407 S.W.3d at 248. A movant, however, is not entitled to prevail on a no-evidence motion for summary judgment on a ground that is not an essential element of the nonmovant's claim or on which the nonmovant does not have the burden of proof. *See Villarreal v. Wells Fargo Brokerage Servs., LLC*, 315 S.W.3d 109, 127 (Tex. App.—Houston [1st Dist.] 2010, no pet.) ("Here, the only element identified by the movants as entitling them to summary judgment is not an element of the Chapas' assisting-in-breach-of-fiduciary-duty claim, as pleaded. Accordingly, summary judgment cannot be properly granted on the movants' no-evidence summary judgment motion." (internal footnotes omitted)).[2]

[2] *See also Poledore v. Fraley*, No. 01-07-00583-CV, 2008 WL 2465792, at *2 (Tex. App.—Houston [1st Dist.] June 19, 2008, pet. denied) (mem. op.) (concluding trial court erred by granting no-evidence motion for summary judgment because motion did not attack an essential element of plaintiff's cause of action); *Johnson v. Baylor Univ.*, 188 S.W.3d 296, 307 (Tex. App.—Waco 2006, pet. denied) (concluding trial court erred by granting no evidence motion for summary judgment because malice, or malicious intent, was not element of claim for tortious interference with prospective contract, and plaintiff was not required to present evidence of malice in response to motion for summary judgment); *Miller v. Schwartz*, No. 14-04-00352-CV, 2005 WL 757249, at *2 (Tex. App.—Houston [14th Dist.] Apr. 5, 2005, no pet.) (mem. op.) (concluding trial court erred by granting motion for no-evidence summary judgment asserting lack of evidence on ground that was not an essential element of plaintiff's claim); *Flores v. Robinson Roofing & Constr. Co., Inc.*, 161 S.W.3d 750, 757 (Tex. App.—Fort Worth 2005, pet.

The DMA

The DMA was enacted by the Texas Legislature in 2013 for the purpose of "provid[ing] a method for a person who has been defamed by a publication or broadcast to mitigate any perceived damage or injury." TEX. CIV. PRAC. & REM. CODE ANN. § 73.052. The DMA applies to "a claim for relief, however characterized, for damages arising out of harm to personal reputation caused by the false content of a publication" and to all publications, including writings, broadcasts, oral communications, electronic transmissions, or other forms of transmitting information. *Id.* § 73.054.

Section 73.055(a) of the DMA provides that:

> (a) A person may maintain an action for defamation only if:
>
> > (1) the person has made a timely and sufficient request for a correction, clarification, or retraction from the defendant; or
> >
> > (2) the defendant has made a correction, clarification, or retraction.

Id. § 73.055(a). A defendant in a suit to which the DMA applies who does not receive a written request for correction, clarification, or retraction "may file a plea in abatement not later than the 30th day after the date the person files an original answer in the court in which the suit is pending." *Id.* § 73.062(a). The suit is automatically abated, without a court order, beginning on the eleventh day after the date the plea in abatement is filed, if the plea in abatement:

> (1) is verified and alleges that the person against whom the suit is pending did not receive the written request as required by Section 73.055; and
>
> (2) is not controverted in an affidavit filed by the person bringing the claim before the 11th day after the date on which the plea in abatement is filed.

---

denied) ("We hold, therefore, that proof of value is not an essential element of Appellants' fraudulent transfer claim and cannot serve as the basis of a no-evidence summary judgment in this case.").

Id. § 73.062(b). The abatement continues until the sixtieth day after the date the written request is served or a later date agreed to by the parties. *Id.* § 73.062(c).[3]

A request for correction, clarification, or retraction is timely if it is made during the period of limitations applicable to a claim for defamation. *Id.* § 73.055(b). However, a plaintiff who does not request a correction, clarification, or retraction within ninety days after receiving knowledge of a publication may not recover exemplary damages. *Id.* § 73.055(c); *Neely v. Wilson*, 418 S.W.3d 52, 63 (Tex. 2013). A request for correction, clarification, or retraction is sufficient if it:

> (1) is served on the publisher;
>
> (2) is made in writing, reasonably identifies the person making the request, and is signed by the individual claiming to have been defamed or by the person's authorized attorney or agent;
>
> (3) states with particularity the statement alleged to be false and defamatory and, to the extent known, the time and place of publication;
>
> (4) alleges the defamatory meaning of the statement; and
>
> (5) specifies the circumstances causing a defamatory meaning of the statement if it arises from something other than the express language of the publication.

TEX. CIV. PRAC. & REM. CODE ANN. § 73.055(d). A defendant who intends to challenge the sufficiency or timeliness of a request for a correction, clarification, or retraction must do so in a

---

[3] The DMA is based on the Uniform Correction or Clarification of Defamation Act drafted by the National Conference of Commissioners on Uniform State Laws. *See* House Comm. on Judiciary & Civil Jurisprudence, Bill Analysis, H.B. 1759, 83d Leg., R.S.(2013); *see also* UNIF. CORR. OR CLARIFICATION OF DEFAMATION ACT (Nat'l Conference of Comm'rs on Unif. State Laws, 1993), www.uniformlaws.org/shared/docs/Correction%20or%20Clarification%20of%20Defamation/UCCDA_final_93.pdf (last visited on March 13, 2017). Section 3(d) of the uniform law, which is comparable to section 73.055 of the DMA, provides that, "[i]n the absence of a previous adequate request, service of a [summons and complaint] stating a [claim for relief] for defamation and containing the information required in subsection (c) constitutes an adequate request for correction or clarification." The comment to the uniform law indicates section 3(d), although subject to procedures and time limits of each jurisdiction regarding the filing or amending of complaints, should to be applied "to effectuate the Act's purpose of resolving or limiting defamation disputes prior to litigation." By allowing a plaintiff's petition potentially to serve as a timely and sufficient request for correction, clarification, or retraction, the uniform law provides some protection for a plaintiff who is not aware prior to filing suit of the requirement to request a correction, clarification, or retraction.

The Legislature did not adopt section 3(d) of the uniform act when it enacted the DMA. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 73.055. However, it added section 73.062, pertaining to the abatement of the action, that is not included in the uniform law. This provision not only provides protection under certain circumstances for the plaintiff who is not aware prior to filing suit of the requirement to request a correction, clarification, or retraction, but also sets out a procedure for a defendant who did not receive a request for a correction, clarification, or retraction to avail itself of the benefits of the statute by requesting the suit be abated until the plaintiff has made the required request. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 73.062.

motion to declare the request insufficient or untimely that is served on the plaintiff not later than the sixtieth day after the date of service of the citation. *Id.* § 73.058(c).

Not later than the thirtieth day after receiving a request for correction, clarification, or retraction, the recipient may ask the person making the request for correction, clarification, or retraction to provide reasonably available information regarding the falsity of the allegedly defamatory statement. *Id.* § 73.056(a). Any requested information must be provided no later than the thirtieth day after the date the person receives the request for the information. *Id.* If a correction, clarification, or retraction is not made, a person who, without good cause, fails to disclose the requested information may not recover exemplary damages unless the publication was made with actual malice. *Id.* § 73.056(b).

Any correction, clarification, or retraction is timely if it is made not later than the thirtieth day after a person receives:

(1) the request for the correction, clarification, or retraction; or

(2) the information requested pursuant to section 73.056(a).

Id. § 73.057(a). The correction, clarification, or retraction is sufficient if it is published in the same manner and medium as the original publication or, if that is not possible, with a prominence and in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of and:

> (1) is publication of an acknowledgment that the statement specified as false and defamatory is erroneous;
>
> (2) is an allegation that the defamatory meaning arises from other than the express language of the publication and the publisher disclaims an intent to communicate that meaning or to assert its truth;
>
> (3) is a statement attributed to another person whom the publisher identifies and the publisher disclaims an intent to assert the truth of the statement; or
>
> (4) is publication of the requestor's statement of the facts, as set forth in a request for correction, clarification, or retraction, or a fair summary of the statement,

> exclusive of any portion that is defamatory of another, obscene, or otherwise improper for publication.

Id. § 73.057(b). If the original publication was on the Internet, a correction, clarification, or retraction meets the prominence requirement if "the publisher appends to the original publication the correction, clarification, or retraction." *Id.* § 73.057(e). Otherwise, a correction, clarification, or retraction meets the prominence requirement if:

> (1) it is published in a later issue, edition, or broadcast of the original publication;
>
> (2) publication is in the next practicable issue, edition, or broadcast of the original publication because the publication will not be published within the time limits established for a timely correction, clarification, or retraction, or
>
> (3) the original publication no longer exists and if the correction, clarification, or retraction is published in the newspaper with the largest general circulation in the region in which the original publication was distributed.

Id. § 73.057(d).

If a correction, clarification, or retraction is made in accordance with the DMA, regardless of whether the plaintiff made a request for the correction, clarification, or retraction, the plaintiff may not recover exemplary damages unless the publication was made with actual malice. *Id.* § 73.059. A defendant who intends to rely on a timely and sufficient correction, clarification, or retraction must serve the plaintiff with notice of its intent to do so by the later of the sixtieth day after service of the citation, or the tenth day after the date the correction, clarification, or retraction is made. *Id.* § 73.058(a). The plaintiff may then challenge the timeliness or sufficiency of the correction, clarification, or retraction. *Id.* § 73.058(b).

Analysis

It is undisputed Hardy has produced no evidence she made a timely and sufficient request that Mathias or the CWA correct, clarify, or retract the allegedly defamatory statements and that there has been no correction, clarification, or retraction of Mathias's comments. Therefore, the

issue in this case, which is an issue of first impression for a Texas state appellate court,[4] is whether a plaintiff's lawsuit is subject to dismissal through a no-evidence summary judgment because she failed to make a request that complied with section 73.055.

We review matters of statutory construction de novo. *Levinson Alcoser Assocs., L.P. v. El Pistolón II, Ltd.*, No. 15-0232, 2017 WL 727269, at *4 (Tex. Feb. 24, 2017). Our primary objective is to ascertain and give effect to the Legislature's intent without unduly restricting or expanding the statute's scope. *Janvey v. Golf Channel, Inc.*, 487 S.W.3d 560, 572 (Tex. 2016). In seeking the Legislature's intent, we look "first and foremost" in the statutory text. *Greater Hous. P'ship v. Paxton*, 468 S.W.3d 51, 58 (Tex. 2015). We derive the Legislature's intent from the plain meaning of the text construed in light of the statute as a whole. *Janvey*, 487 S.W.3d at 572. "The terms of a statute bear their ordinary meaning unless (1) the Legislature has supplied a different meaning by definition, (2) a different meaning is apparent from the context, or (3) applying the plain meaning would lead to absurd results." *Id.* To determine a statutory term's common, ordinary meaning, we typically look first to its dictionary definitions and then consider the term's usage in other statutes, court decisions, and similar authorities. *Tex. State Bd. of Examiners of Marriage & Family Therapists v. Tex. Med. Ass'n*, No. 15-0299, 2017 WL 727273, at *5 (Tex. Feb. 24, 2017).

[4] The only case law we have located relevant to our inquiry is *Tubbs v. Nicol*, No. 16-20311, 2017 WL 128551 (5th Cir. Jan. 12, 2017) (per curiam) (non-precedential). In *Tubbs*, the plaintiff alleged a number of causes of action, including defamation. The district court signed an order granting summary judgment on all the plaintiff's claims, *see Tubbs v. Nicol*, No. 15-CV-00002, 2016 WL 7757386, at *3 (S.D. Tex. Apr. 19, 2016) (unpublished order), and the plaintiff appealed. The Fifth Circuit determined that, to establish a defamation claim, the plaintiff must not only show the common law elements of the claim, but also "must comply with the requirements of the [DMA]." *Tubbs*, 2017 WL 128551, at *2. The court noted the plaintiff failed to request that the defendant correct, clarify, or retract his statement and, therefore, her defamation claim "fail[ed] as a matter of law." *Id.*

The Fifth Circuit's unpublished opinion is not binding on us in this case, *see Penrod Drilling Corp. v. Williams*, 868 S.W.2d 294, 296 (Tex. 1993) (per curiam); *Devon Energy Prod. Co., L.P. v. KCS Res., LLC*, 450 S.W.3d 203, 221 (Tex. App.—Houston [14th Dist.] 2014, pet. denied), and has limited precedential value even in the federal courts. *See* 5TH CIR. R. 47.5.4 (An unpublished opinion issued by the Fifth Circuit on or after January 1, 1996, is "not precedent except under the doctrine of res judicata, collateral estoppel or law of the case (or similarly to show double jeopardy, notice, sanctionable conduct, entitlement to attorney's fees, or the like.")). We note, however, that in affirming the grant of summary judgment, the Fifth Circuit failed to construe the DMA in its entirety and did not address whether the abatement procedure set out in section 73.062 of the statute indicated an intent by the Legislature that a plaintiff's defamation claim was not subject to dismissal solely based on a failure to comply with section 73.055(a). Accordingly, we find *Tubbs* to be unpersuasive.

In conducting our analysis, we "presume the Legislature chose statutory language deliberately and purposefully." *Levinson Alcoser Assocs., L.P.*, 2017 WL 727269, at *4 (quoting *Crosstex Energy Servs., L.P. v. Pro Plus, Inc.*, 430 S.W.3d 384, 390 (Tex. 2014)). We endeavor to interpret each word, phrase, and clause in a manner that gives meaning to them all. *Id.* Accordingly, we read statutes as a whole so as to render no part inconsistent, superfluous, or devoid of meaning, *id.*, and consider a provision's "role in the broader statutory scheme," *20801, Inc. v. Parker*, 249 S.W.3d 392, 396 (Tex. 2008). We may also consider other factors to determine the Legislature's intent, including: the object sought to be obtained, the circumstances of the statute's enactment; the legislative history; the common law or former statutory provisions, including laws on the same or similar subjects; the consequences of a particular construction; an administrative construction of the statute; and the title, preamble, and emergency provision. *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 493 (Tex. 2001) (citing TEX. GOV'T CODE ANN. § 311.023 (West 2013)). However, we must not "rewrite the statute under the guise of interpreting it." *In re Ford Motor Co.*, 442 S.W.3d 265, 284 (Tex. 2014) (orig. proceeding).

We first consider whether the Legislature's use of the term "maintain" in section 73.055(a) demonstrates an intent that a plaintiff's defamation claim should be dismissed due to a failure to request a correction, clarification, or retraction. The DMA does not define the term "maintain," but the common, ordinary meaning of the term is "to keep in an existing state (as of repair, efficiency, or validity)," "to sustain against opposition or danger," or "to continue or persevere in." *Maintain*, MERRIAM-WEBSTER, www.merriam-webster.com/dictionary/maintain (last visited on March 13, 2017); *see also Big Three Welding Equip. Co. v. Crutcher, Rolfs, Cummings, Inc.*, 229 S.W.2d 600, 603, 149 Tex. 204, 211 (1950); *Walters v. Livingston*, No. 03-16-00018-CV, 2016 WL 7584308, at *4 (Tex. App.—Austin Dec. 21, 2016, no pet.) (collecting

statutes that use term "maintain" when referring "to the continuation of an action"). A defendant who did not receive a request for correction, clarification, or retraction has the right under section 73.062 of the DMA to move to abate the lawsuit. Applying the common definition of "maintain" to the DMA, it is clear that, unless the defendant makes a correction, clarification, or retraction, a plaintiff who fails to make the required request may not keep her claim "in its existing state," sustain it "against opposition or danger," or continue or persevere in the claim in the face of the defendant's request the lawsuit be abated until the plaintiff has made the required request. This application of the common definition of the term "maintain" is consistent with the right of abatement expressly given to the defendant in the DMA, specifically that the plaintiff may not sustain or pursue her action following abatement unless a request for correction, clarification, or retraction is served. It does not, however, support a determination the Legislature intended to deprive a plaintiff of a defamation claim based solely on the plaintiff's failure to request a correction, clarification, or retraction.[5]

We next consider the statute as a whole to determine if it reflects an intent by the Legislature to subject a plaintiff's defamation claim to dismissal based on the failure to request a correction, clarification, or retraction. Although the trial court construed section 73.055(a), standing alone, as requiring the dismissal of Hardy's claim, the DMA does not expressly state that dismissal of the plaintiff's claim is the consequence for failing to make the required request. Rather, the Legislature expressly set out the consequence for failing to timely make the required request: a plaintiff who fails to request a correction, clarification, or retraction within ninety days

[5] In contrast, the Legislature has demonstrated in other statutes an intent to bar a plaintiff's claim for failure to provide the proper notice or required information. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(b)(2) (West Supp. 2016) (if plaintiff fails to timely file expert report, trial court shall dismiss health care liability claim upon motion of physician or health care provider); TEX. CIV. PRAC. & REM. CODE ANN. § 101.101 (West 2011); TEX. GOV'T CODE ANN. § 311.034 (West 2013) (failure to give governmental entity notice of claim is jurisdictional bar to suit); TEX. CIV. PRAC. & REM. CODE ANN. § 147.046 (West 2011) (if complainant fails to give required sixty-day notice of claim, trial court shall abate action and require claimant to give required notice within thirty-one days and, if claimant fails to do so, shall dismiss action); TEX. LOC. GOV'T CODE ANN. § 89.0041(a), (c) (West 2008) (if person fails to give required notice of suit, court shall dismiss suit on filing of motion to dismiss).

of receiving knowledge of the publication is prohibited from recovering exemplary damages. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 73.055(c); *Neely*, 418 S.W.3d at 63. Similarly, regardless of whether a request is made, if a correction, clarification, or retraction is made in accordance with the DMA, the plaintiff may not recover exemplary damages unless the publication was made with actual malice. TEX. CIV. PRAC. & REM. CODE ANN. § 73.059. Although these provisions impact the damages recoverable by a plaintiff, they do not support a determination that the Legislature intended to deprive a plaintiff of a defamation claim based on a failure to request a correction, clarification, or retraction. Further, the DMA affords a defendant the right to challenge the timeliness, as well as the sufficiency, of a request for a correction, clarification, or retraction. *See id.* § 73.058(c). If a plaintiff's claim were subject to dismissal solely due to her failure to request a correction, clarification, or retraction of the statement, a defendant would have no need to ever challenge whether a request was timely. Rather, the defendant would simply wait until the limitations period on the claim had expired and then move to dismiss the case. *See id.* § 73.055(b) (request is timely if made during the period of limitation for commencement of cause of action for defamation); *see also City of Dallas v. TCI West End, Inc.*, 463 S.W.3d 53, 57 (Tex. 2015) (per curiam) ("As a general principle, we eschew constructions of a statute that render any statutory language meaningless or superfluous.").

We finally look at the purpose of the DMA, which is to provide a method by which a person who has been defamed by a publication or broadcast can mitigate any perceived damage or injury by quickly obtaining a correction, clarification, or retraction of the statement. *Id.* § 73.052. The legislative history further indicates the DMA was intended to "provide for the early resolution of disputes arising from" a defamatory publication. House Comm. on Judiciary & Civil Jurisprudence, Bill Analysis, H.B. 1759, 83d Leg., R.S. (2013). To further these goals, the DMA provides a procedure for a plaintiff to request before suit is filed that the defendant

mitigate any harm from an allegedly defamatory statement. TEX. CIV. PRAC. & REM. CODE ANN. § 73.052. If the plaintiff files suit without making a timely and sufficient request for a correction, clarification, or retraction, the defendant may move to have the suit abated until the request is made. *Id.* § 73.062. The defendant is then provided a sixty-day period after receiving the request to evaluate it and, if necessary, make a correction, clarification, or retraction. *Id.* This procedure allows the defendant an opportunity to quickly mitigate any damages to the plaintiff from an allegedly defamatory statement by making a correction, clarification, or retraction. These statutory provisions, and related legislative history, reveal that the public policy objective of the DMA is to ensure prompt mitigation of injury and damage as well as possible avoidance of lengthy and expensive litigation. There is, however, nothing in these statutory provisions or the legislative history to suggest it is the purpose of the DMA to deprive a plaintiff of a defamation claim based on a failure to request a correction, clarification, or retraction. Indeed, if a defendant who did not receive a request for correction, clarification, or retraction could simply seek dismissal of the action, there would be no need for either the limitation of damages or abatement provisions in the statute, *see City of Dallas*, 463 S.W.3d at 57,[6] and the purpose of the statute would be frustrated.

Conclusion

Reading the DMA in its entirety, giving effect to all its provisions, and considering the purpose of the statute, we conclude a plaintiff who fails to make a timely and sufficient request for correction, clarification, or retraction may not maintain or continue her suit in the face of a timely-filed motion to abate. The plaintiff's claim, however, is not subject to dismissal solely

[6] *See also Levinson Alcoser Assocs. LP*, 2017 WL 727269, at *4 ("We accordingly read statutes as a whole so as to render no part inconsistent, superfluous, or devoid of meaning."); *Crosstex Energy Servs., L.P.*, 430 S.W.3d at 390 ("We must not interpret the statute 'in a manner that renders any part of the statute meaningless or superfluous.'" (quoting *Columbia Med. Ctr. of Las Colinas, Inc. v. Hogue*, 271 S.W.3d 238, 256 (Tex. 2008)); *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 29 (Tex. 2003) (rejecting construction of statute that would render some statutory language unnecessary); *Spence v. Fenchler*, 107 Tex. 443, 457, 180 S.W. 597, 601 (1915) ("It is an elementary rule of construction that, when possible to do so, effect must be given to every sentence, clause, and word of a statute so that no part thereof be rendered superfluous or inoperative.").

based on the plaintiff's failure to timely and sufficiently request a correction, clarification, or retraction.

Mathias and the CWA were not entitled to prevail on a no-evidence motion for summary judgment on a ground that is not an essential element of Hardy's claim. *See* TEX. R. CIV. P. 166a(i); *Villarreal*, 315 S.W.3d at 127. We conclude that, because Hardy's slander claim was not subject to dismissal solely based on her failure to request a correction, clarification, or retraction of Mathias's statements, the trial court erred by granting Mathias's and the CWA's no-evidence motions for summary judgment. Accordingly, we reverse the trial court's judgment and remand this case for further proceedings.

/Robert M. Fillmore/
ROBERT M. FILLMORE
JUSTICE

160829F.P05

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

TARSHA HARDY, Appellant

No. 05-16-00829-CV V.

COMMUNICATION WORKERS OF AMERICA LOCAL 6215 AFL-CIO AND BONNIE MATHIAS, Appellees

On Appeal from the 14th Judicial District Court, Dallas County, Texas,
Trial Court Cause No. DC-15-04027.
Opinion delivered by Justice Fillmore, Justices Lang and Schenck participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **REVERSED** and this cause is **REMANDED** to the trial court for further proceedings consistent with this opinion.

It is **ORDERED** that appellant Tarsha Hardy recover her costs of this appeal from appellees Communication Workers of America Local 6215 and Bonnie Mathias.

Judgment entered this 31st day of March, 2017.