Affirmed in Part, Reversed in Part, and Opinion Filed July 30, 2025

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-24-01272-CV

PAUL CHABOT, Appellant
V.
FREDERICK FRAZIER, Appellee

On Appeal from the 429th Judicial District Court
Collin County, Texas
Trial Court Cause No. 429-04031-2024

MEMORANDUM OPINION

Before Justices Smith, Kennedy, and Lewis
Opinion by Justice Lewis

In this accelerated appeal, appellant Paul Chabot appeals the denial of his motion to dismiss appellee Frederick Frazier's defamation claims under the Texas Citizens Participation Act (TCPA).[1] He also challenges the trial court's conclusion that the TCPA motion was frivolous or solely intended to delay and its granting of Frazier's request for attorney's fees. For the following reasons, we affirm the denial of the TCPA motion and reverse the portion of the order granting Frazier's request for attorney's fees.

[1] TEX. CIV. PRAC. & REM. CODE §§ 27.001–.011.

BACKGROUND

Because the underlying facts are well-known to the parties, we include only those necessary for disposition of this appeal. TEX. R. APP. P. 47.4. Frazier is a former officer with the Dallas Police Department. Chabot is a former law enforcement officer and naval intelligence commander. In 2022, Frazier and Chabot were opponents in the Republican primary race for the Texas House of Representatives seat in the 61st District for Collin County. Chabot lost to Frazier in a runoff election. During the course of that election season, Chabot accused Frazier of removing some of Chabot's campaign signs and posing as a code enforcement officer to force management at three McKinney businesses—a Neighborhood Walmart, the TeaLatte Bar, and a RaceTrac fuel station—to remove the Chabot signs posted near the businesses or on their property. Chabot's accusations led to criminal investigations by the McKinney Police Department and the Texas Rangers, Frazier's arrest for criminal mischief, and indictments against Frazier for impersonating a public servant.

The criminal mischief charge arose from Chabot's complaint to McKinney police on December 10, 2021, accusing Frazier of cutting the zip ties anchoring a Chabot campaign sign to a t-post outside of a McKinney 7-Eleven and throwing the sign on the ground. Frazier was charged with Class C Misdemeanor Criminal Mischief in the City of McKinney Municipal Court. He pleaded guilty to the charge on December 8, 2023, and paid a $279.00 fine.

On June 23, 2023, Frazier was indicted on two counts of third degree felony impersonating a public servant related to charges that he instructed an employee of a McKinney Neighborhood Walmart and the owner of the TeaLatte Bar to remove Chabot's campaign signs from those businesses' property. Following the indictments, the DPD placed Frazier on administrative leave and launched an internal investigation.

On December 5, 2023, Frazier pleaded nolo contendere to the two charges of impersonating a public servant. His plea agreement reduced the charges to the lesser-included offense of attempting to impersonate a public servant. He was sentenced to one year deferred adjudication community supervision and ordered to pay restitution of $78.00 and nearly $8,000 in fines.

Frazier resigned from the DPD effective December 8, 2023, after twenty-eight years with the department. At that time, the DPD's Internal Affairs Division had a pending investigation of Frazier arising from Chabot's accusations. On December 9, 2023, the DPD listed his discharge as "dishonorably discharged" on the legislatively-mandated F-5 Separation of Licensee Form. Dallas Deputy Police Chief Monique Alex informed Chabot that Frazier received a dishonorable discharge because he elected to retire while under investigation. Frazier appealed the dishonorable discharge to the Texas Commission on Law Enforcement.

On April 25, 2024, the trial court released Frazier from probation on the attempted impersonation charges and dismissed those charges. Frazier and the DPD

settled his appeal of the dishonorable discharge and, on May 8, 2024, his discharge from the DPD was officially changed to a general discharge by the Texas Commission on Law Enforcement. Frazier sought reelection in 2024 and faced two challengers for the Republican nomination in the March 2024 primary. Chabot was not one of those challengers. Frazier was defeated in the May 28, 2024 primary runoff election, and his term ended December 31, 2024.

THE UNDERLYING PROCEEDING

The underlying proceeding arose from incidents that occurred in 2023 and 2024. In December 2023, Chabot formed Collin County Citizens for Integrity PAC (the PAC), a political action committee that Chabot told the trial court had "the purpose of defeating Frazier in the [2024] Republican primary." Chabot also launched a website, www.FireFrazier.com,[2] which was paid for by the PAC. According to Chabot, the website was created "in support of Frazier's political opponent," on which he "posted a comprehensive library of official news documents and news articles documenting Frazier's criminal proceedings and related matters" including "facts pertaining to" Frazier's defamation suit.

One of the articles posted on the website was titled "North Texas State Lawmaker to be Dishonorably Discharged from DPD After 'No Contest' Plea" and was originally published by the Dallas Morning News (DMN) on December 4, 2023. A second article, titled "North Texas state representative will be dishonorably

[2] We will refer to FireFrazier.com as the website.

discharged from Dallas Police Department; pleads 'no contest' to misdemeanor charges," was originally published by WFAA TV on its website, WFAA.com, on December 5, 2023. Both articles reported Frazier's "no contest" pleas to two misdemeanor charges of attempting to impersonate a public servant and the punishment of deferred adjudication probation and fines. Both articles also stated Frazier would receive a dishonorable discharge because he chose to retire while under investigation. The December 2023 DMN article also reported that a Texas Commission on Law Enforcement spokesperson confirmed to the newspaper "that a dishonorable discharge is visible to a subsequent agency when making hiring decision[,]" and that "[a] second such discharge could result in more serious consequences for Frazier's law enforcement license." Both articles also referenced Frazier's guilty plea to Class C Misdemeanor criminal mischief and online payment of the fee. In the present suit, Frazier presented evidence in opposition to the TCPA motion showing that Chabot posted those articles on the FireFrazier website on July 8, 2024, and then modified the posts on the website on September 4, 2024.

Frazier also presented evidence that WFAA published an article on May 9, 2024, titled "State Rep. Frederick Frazier discharged from probation, charges of impersonating public official dismissed." On May 16, 2024, WFAA updated the article to clarify that the charges against Frazier for impersonating a public servant were dismissed and his discharge from the DPD had been "re-designated to a general

discharge" following the dismissal of the charges against him. Chabot did not post the 2024 WFAA article on the website.

The website included other posts by Chabot asserting Frazier had been convicted of three offenses. For example, the website includes the following text next to a blurry screenshot of a man purported to be Frazier at a gas station:

> In yet another criminal matter, McKinney PD identified Frazier, seen in the grey shirt, lying to the gas station staff to take down another one of his opponent's campaign signs. This is the third recorded location where Frazier was found on video. In all, he received 3 convictions.

Similarly, Chabot shared an excerpt from the Register of Actions from one of the impersonation cases showing the adjudication of guilt had been deferred. However, Chabot titled the excerpt "Frazier Conviction 3." Chabot titled a similar excerpt "Judge Finds GUILT on Frazier in State/ Texas Ranger Case." The website shows that those excerpts were created on February 14, 2024, and then modified on September 4, 2024.

Chabot admits that during the 2024 runoff election, he printed and placed campaign yard signs around polling places that said: "FIRE FRAZIER," "CONVICTED," "LIED TO VOTERS," and "DISHONORABLY DISCHARGED." Jason Moyer, Frazier's Chief of Staff, testified below that he observed Chabot placing those signs at polling locations "near high-traffic areas" in

McKinney on May 27, 2024.[3] Moyer described the signs as depicting Frazier "in a jail or prison cell and stated that he was 'convicted' and 'dishonorably discharged.'"

On May 9, 2024, Frazier's counsel sent Chabot a cease-and-desist letter. In it, counsel stated that Chabot had published statements indicating that Frazier "has been 'convicted' and is 'dishonorably discharged'." Counsel informed Chabot that those statements were "incorrect and are defamatory" to Frazier, and that "all criminal charges that were pending in Collin County District Court against Rep. Frazier have been dismissed" and Frazier "is not dishonorably discharged and is eligible for rehire as a law enforcement officer." Counsel then demanded that Chabot "immediately retract and remove, as applicable, all emails, mailers, signs, advertisements, and other materials containing these defamatory statements" and "issue a public retraction and correction in the same medium and manner as your defamatory statements were made." Chabot did not take the actions requested, and Frazier filed the underlying defamation suit against Chabot on June 25, 2024. Chabot filed a TCPA motion to dismiss, which the trial court denied by written order dated October 25, 2024 (the October 25 Order). This appeal followed.

THE TCPA AND STANDARD OF REVIEW

The TCPA protects citizens who petition or speak out on matters of public concern from retaliatory lawsuits intended to silence them. *In re Lipsky*, 460 S.W.3d

[3] The primary election was held on March 5, 2024, but the primary runoff election took place on May 28, 2024.

579, 584 (Tex. 2015) (orig. proceeding). That protection comes in the form of a motion to dismiss for a suit that appears to stifle the defendant's exercise of those rights. *Id.*; *Ladiwalla as Tr. of ZAL Tr. v. Bhojani as Tr. Protector of ZAL Tr.*, No. 05-24-01107-CV, 2025 WL 1547744, at *4 (Tex. App.—Dallas May 30, 2025, no pet. h.) ("The primary feature of the TCPA is a burden-shifting dismissal framework that allows defendants at an early stage to seek dismissal of a meritless suit in response to a defendant's exercise of a protected right.").

A TCPA motion to dismiss generally requires a three-step analysis. *Montelongo v. Abrea*, 622 S.W.3d 290, 299 (Tex. 2021). First, the TCPA movant bears the initial burden of demonstrating that the legal action is based on or in response to the movant's exercise of a protected right, such as the right of free speech, the right to petition, or certain other protected conduct. TEX. CIV. PRAC. & REM. CODE § 27.005(b); *see also Brenner v. Centurion Logistics LLC ex rel. Centurion Pecos Terminal LLC*, No. 05-20-00308-CV, 2020 WL 7332847, at *3 (Tex. App.—Dallas Dec. 14, 2020, pet. denied) (mem. op.) (holding amendments to TCPA do not change burden of "preponderance of the evidence" established by *Hersh v. Tatum*, 526 S.W.3d 462, 467 (Tex. 2017)). Second, if the movant carries his burden, then the burden shifts to the nonmovant to establish by clear and specific evidence a prima facie case for each essential element of the claim in question. TEX. CIV. PRAC. & REM. CODE § 27.005(c). Third, even if the nonmovant carries his step-two burden, the court must still dismiss the "legal action" if the defendant

"establishes an affirmative defense or other grounds on which the moving party is entitled to judgment as a matter of law." *Id.* § 27.005(d); *Montelongo*, 622 S.W.3d at 296.

We review de novo the trial court's determinations that the parties met or failed to meet their respective burdens under the TCPA. *Garcia*, 663 S.W.3d at 279 (citing *Vaughn-Riley v. Patterson*, No. 05-20-00236-CV, 2020 WL 7053651, at *2 (Tex. App.—Dallas Dec. 2, 2020, no pet.) (mem. op.)). In conducting this review, we consider, in the light most favorable to the nonmovant, the pleadings and any supporting and opposing affidavits and other evidence stating the facts on which the claim or defense is based. *Temple v. Cortez Law Firm, PLLC*, 657 S.W.3d 337, 342–43 (Tex. App.—Dallas 2022, no pet.); *see also* TEX. CIV. PRAC. & REM. CODE § 27.006(a). However, the plaintiff's pleadings are generally "the best and all-sufficient evidence of the nature of the action." *Hersh*, 526 S.W.3d at 467.

ANALYSIS

On appeal, Chabot challenges the denial of his TCPA motion and the award of fees to Frazier. In his first two issues, Chabot argues the trial court erred by denying the motion because (1) Frazier failed to present a prima facie case of defamation; and (2) Chabot established defenses to the defamation claims, including that Frazier is a libel-proof plaintiff and that he failed to comply with the Defamation Mitigation Act. In his third issue, Chabot maintains the attorney's fees awarded to

Frazier should be reversed because Chabot's TCPA motion was neither frivolous nor solely intended to delay. We address each issue in turn.

I. TCPA Step Two – Prima Facie Case of Defamation

The parties do not dispute Chabot met his initial burden of demonstrating that Frazier's claims are based on or in response to Chabot's exercise of a protected right. We, therefore, begin our analysis at TCPA Step Two.

The elements of defamation include (1) the publication of a false statement of fact to a third party, (2) that was defamatory concerning the plaintiff, (3) with the requisite degree of fault, and (4) damages, in some cases. *In re Lipsky*, 460 S.W.3d at 593–94; *WFAA–TV, Inc. v. McLemore*, 978 S.W.2d 568, 571 (Tex. 1998); *see also Waste Mgmt. of Tex., Inc. v. Tex. Disposal Sys. Landfill, Inc.*, 434 S.W.3d 142, 146 n.7 (Tex. 2014). The status of the person allegedly defamed determines the requisite degree of fault. *In re Lipsky*, 460 S.W.3d at 593. A private individual need only prove negligence, whereas a public figure or official must prove actual malice. *WFAA–TV, Inc.*, 978 S.W.2d at 571. Frazier and Chabot agree that Frazier was required to show Chabot acted with actual malice here. As for damages, a plaintiff must plead and prove damages, unless the defamatory statements are defamatory per se. *Id.* (citing *Waste Mgmt. of Tex.*, 434 S.W.3d at 162 n.7). Frazier contends the defamatory statements were defamatory per se and, therefore, damages are presumed.

Accordingly, to prove a prima facie case of defamation in this case, Frazier was required to show the following: (1) Chabot published a false statement of fact to a third party, (2) the statement was defamatory concerning Frazier, (3) Chabot acted with actual malice, and (4) the defamatory statements are defamatory per se. Under this record, we conclude Frazier met his burden of proof under TCPA Step Two.

A. Chabot published a false statement of fact to a third party.

In his original petition, Frazier pleaded multiple statements he contends were false statements of fact published by Chabot that constitute defamation. Those statements included Chabot's assertions that Frazier was "dishonorably discharged" from the DPD and "convicted" of multiple crimes. The statements pleaded by Frazier were purportedly published between 2022 and 2024, with certain purported publications occurring after Frazier filed the defamation suit in June 2024.

In the trial court and on appeal, Frazier focused his prima facie case analysis on statements made by Chabot beginning in May 2024: (1) that Frazier was dishonorably discharged from the DPD, and (2) that Frazier was found guilty and convicted on charges of attempting to impersonate a public servant. The evidence showed those statements were included on the signs Chabot placed outside polling locations in May 2024, and in the December 2023 DMN and WFAA.com articles posted by Chabot on the website in July 2024 and September 2024.

Chabot contends Frazier "abandoned his pleaded claims in favor of new ones" when he responded to the TCPA motion because Frazier focused on statements made beginning in May 2024. According to Chabot, to avoid dismissal, Frazier was required to present a prima facie case as to each allegedly defamatory statement asserted in his petition. This is incorrect.

The TCPA provides for dismissing a "legal action." TEX. CIV. PRAC. & REM. CODE § 27.005(b). Courts cannot dismiss a fact or facts. Rather, courts dismiss claims, causes of action, cases, and lawsuits. *See, e.g.*, TEX. R. CIV. P. 91a.1, 162, 163. The TCPA enables a claimant to avoid dismissal by establishing "by clear and specific evidence a prima facie case for each essential element of the claim in question." TEX. CIV. PRAC. & REM. CODE § 27.005(c). "While this provision indisputably requires the claimant to submit evidence of facts, the facts themselves are meaningless and cannot prevent dismissal unless they sufficiently establish 'each essential element of the claim.'" *Montelongo*, 622 S.W.3d at 301 (quoting TEX. CIV. PRAC. & REM. CODE § 27.005(c)); *see also* TEX. CIV. PRAC. & REM. CODE § 27.006(c) (in seeking or opposing a TCPA dismissal, the parties must rely on the pleadings and evidence "stating the facts on which the liability or defense is based").

Here, the legal action pleaded by Frazier is defamation. The factual allegations in his pleadings and response to the TCPA Motion and the evidence of those factual allegations are the means by which Frazier seeks to establish each element of the defamation claim. In the trial court, Frazier focused his prima facie

analysis on defamatory statements made beginning in May 2024 and argued those statements alone established a prima facie case of defamation. We, therefore, focus our analysis on those allegations to determine whether he made a prima facie case on each element of the defamation claim.

1. The statements

Frazier argues Chabot made false statements beginning in May 2024 that Frazier was dishonorably discharged from the DPD and was found guilty and convicted on charges of attempting to impersonate a public servant. Those statements included Chabot posting the December 2023 DMN and WFAA.com articles on the website in July 2024 and then modifying the posts in September 2024. Frazier also contends the signs posted by Chabot outside polling locations in May 2024 falsely accused him of being dishonorably discharged and being convicted of attempting to impersonate a public servant.

2. Falsity of the statements

We conclude the evidence was sufficient to constitute a prima facie showing that the statements were false. The 2023 DMN and WFAA.com articles that Chabot posted on the website reported Frazier's "no contest" pleas to two misdemeanor charges of attempting to impersonate a public servant and the punishment of deferred adjudication probation and fines. Both articles also stated Frazier would receive a dishonorable discharge because he chose to retire while under investigation. By the time Chabot posted the articles in July 2024, however, the presumed outcomes in

those original reports had not been realized. In April 2024, the trial court released Frazier from probation on the attempted impersonation charges and dismissed those charges. He was, therefore, never convicted of those charges. And Frazier's discharge was officially designated a general discharge on May 8, 2024.

Chabot also made those false statements on the signs he posted outside polling locations during the May 2024 runoff election. Those signs had the words "FIRE FRAZIER," "CONVICTED," "LIED TO VOTERS," and "DISHONORABLY DISCHARGED" over a picture of Frazier depicting him in a jail or prison cell. The evidence showed, at a minimum, that Chabot posted those signs on May 27, 2024, after the charges were dismissed and the discharge designated as general.

Chabot contends the signs with "CONVICTED" were referencing his Class C misdemeanor conviction and were, therefore, true. Frazier argues that Chabot's publication of false statements on the website related to the disposition of Frazier's charge for the attempted impersonation of a public servant serves as circumstantial evidence that Chabot's statement on his campaign signs also referred to the attempted impersonation of a public servant. We agree with Frazier that the circumstantial evidence raises at least a fact issue and supports the finding that Frazier established a prima facie case of falsity. *See Warner Bros. Entm't, Inc. v. Jones*, 538 S.W.3d 781, 800 (Tex. App.—Austin 2017), *aff'd*, 611 S.W.3d 1 (Tex. 2020) (a plaintiff is permitted to rely on circumstantial evidence to demonstrate a prima facie case of defamation) (citing *In re Lipsky*, 460 S.W.3d at 589).

Reviewing the evidence in the light most favorable to Frazier, we conclude he presented a prima case that the statements were false when published by Chabot.

3. Publication to third parties

Next, we address whether the statements were published to third parties. Defamatory statements are "published" if they are communicated orally, in writing, or in print to some third person capable of understanding their defamatory import and in such a way that the third person did so understand. *Exxon Mobil Corp. v. Rincones*, 520 S.W.3d 572, 579 (Tex. 2017); *Austin v. Inet Techs., Inc.*, 118 S.W.3d 491, 496 (Tex. App.—Dallas 2003, no pet.); *Ramos v. Henry C. Beck Co.*, 711 S.W.2d 331, 335 (Tex. App.—Dallas 1986, no writ).

The statements on signs placed outside of polling locations in an election where Frazier was on the ballot meet that definition. Those statements were published to third parties by virtue of their location. Even the trial judge admitted that he saw the signs while serving as a visiting judge in Collin County and noted that "you couldn't miss the signs" in Collin County "because they are very prevalent."

The same is true of the December 2023 DMN and WFAA.com articles Chabot posted on the website. While the forward-looking assertions in the articles were not necessarily false when written, they were false at the time republished (without update) by Chabot. The fact that Chabot did not author the words of the articles is not a defense in the defamation context. *See Neely v. Wilson*, 418 S.W.3d 52, 61

(Tex. 2013) (first citing *Pittsburgh Press Co. v. Pittsburgh Comm'n on Hum. Rels.*, 413 U.S. 376, 386 (1973) (noting that a "newspaper may not defend a libel suit on the ground that the falsely defamatory statements are not its own"), then citing Restatement (Second) of Torts § 578 (1977) ("[O]ne who repeats or otherwise republishes defamatory material is subject to liability as if he had originally published it.")). Further, the content Chabot posted on the website was intended to be viewed by third parties. Indeed, according to a Facebook post by Chabot on February 5, 2024, his website had been viewed over 100,000 times since its December 2023 launch. Under this record, we conclude that the statements constitute publications for purposes of the TCPA and were published to third parties.

Chabot contends Frazier's claims for defamation relating to Chabot's republication of the December 2023 DMN and WFAA.com articles are barred by section 230 of the Communications Decency Act (the CDA). *See* 47 U.S.C. § 230(c)(1) ("No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."). The statute defines an "'interactive computer service'" as "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet[.]" *Id.* § 230(f)(2). Simply put, the CDA generally bars defamation and libel claims against an entity that merely passively permits the publishing (or, here, the republishing) of another's content.

GoDaddy.com, LLC v. Toups, 429 S.W.3d 752, 755 (Tex. App.—Beaumont 2014, pet. denied). Chabot maintains that the website is a provider of an interactive computer service as defined by the CDA, that the content at issue was provided by another information content provider, and Frazier's allegations improperly seek to treat Chabot as a publisher of the content posted on the website.

Frazier argues that Chabot is not entitled to immunity for his publication of the 2023 WFAA.com article because Chabot did not act neutrally when he republished the article under the headline "Collin County Rep. Fred Frazier Dishonorably Discharged from DPD" after he had been informed of the article's inaccuracies and after WFAA had published an updated and corrected article. Frazier asserts that instead Chabot acted as an information content provider by republishing the article.[4]

Under the limited record here and viewing the evidence in the light most favorable to Frazier, we conclude Chabot did not establish as a matter of law immunity under the CDA.

[4] An "information content provider" is defined by the CDA to mean "any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service." 47 U.S.C. § 230(f)(3). Where a defendant contributes to and shapes the content of the information at issue, there is no immunity under the CDA. *F.T.C. v. Accusearch, Inc.*, No. 06-CV-105-D, 2007 WL 4356786, at *6 (D. Wyo. Sept. 28, 2007), *aff'd*, 570 F.3d 1187 (10th Cir. 2009) (citing *Ben Ezra, Weinstein and Co. v. Am. Online Inc.*, 206 F.3d 980, 985 n. 4, 986 (10th Cir.2000) (noting that defendant who participates in the creation or development of information will not be immune from liability)).

4. Conclusion

For the foregoing reasons, we conclude Frazier established a prima facie case of the first element of defamation (i.e. the publication of false statements of fact to a third party).

B. The statement was defamatory concerning Frazier

Frazier was next required to prove the statements were defamatory. Whether a communication is defamatory is in the first instance a legal question for the court. *Hancock v. Variyam*, 400 S.W.3d 59, 66 (Tex. 2013). A statement is defamatory only if it is reasonably capable of a defamatory meaning. *Id.* (citing *Musser v. Smith Protective Servs., Inc.*, 723 S.W.2d 653, 655 (Tex. 1987); *see also* RESTATEMENT (SECOND) OF TORTS § 614, cmt. b (noting that it is for the court to decide "whether the communication was reasonably capable of conveying the particular meaning, or innuendo, ascribed to it by the plaintiff" and "whether that meaning is defamatory in character"). A defamatory statement is a statement of fact about a person that tends to diminish the plaintiff's reputation. *See Innovative Block of S. Tex., Ltd. v. Valley Builders Supply, Inc.*, 603 S.W.3d 409, 418–19 (Tex. 2020); *Hancock*, 400 S.W.3d at 63 (defining defamation "as the invasion of a person's interest in her reputation and good name"); RESTATEMENT (SECOND) OF TORTS § 559 (a defamatory statement is one that "tends [ ] to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.").

Here, statements that Frazier was "found guilty" and "convicted" of attempted impersonation of a public servant and received a "dishonorable discharge" from the DPD were directly aimed at tarnishing Frazier's reputation and by their very nature are statements that tend to harm a person's reputation. The decision to publish those statements during the primary runoff election and the placement of the signs outside polling locations was intended to deter third persons (i.e., voters) from voting for Frazier and tended to lower his reputation in the community. We conclude this evidence constituted a prima facie case that the statements were defamatory as to Frazier. *See Clark v. Jenkins*, 248 S.W.3d 418, 437 (Tex. App.—Amarillo 2008, pet. denied) (statements that a member of the city council was convicted of a felony were defamatory).

C. Chabot acted with actual malice

"Actual malice" means that the statement was made with knowledge of its falsity or with reckless disregard for its truth. *In re Lipsky*, 460 S.W.3d at 593 (citing *Huckabee v. Time Warner Entm't Co.*, 19 S.W.3d 413, 420 (Tex. 2000)). Here, the evidence showed that the website was dedicated to publishing information about Frazier to discredit him and convince voters to support candidates opposing Frazier's bid for reelection. The news articles, court documents, videos, and investigative reports published on the website nearly all relate to the charges arising from the 2022 election season and Frazier's retirement from the DPD. In the May 9, 2024 cease-and-desist letter, Frazier's counsel notified Chabot that all criminal charges in the

Collin County District Court had been dismissed and he "is not dishonorably discharged and is eligible for rehire as a law enforcement officer." The letter also informed Chabot that any statements published by Chabot that Frazier "has been 'convicted' and is 'dishonorably discharged'" are incorrect and defamatory to Frazier. Despite this information, on May 16, 2024 Chabot posted a link to the website, which Chabot titled "NEW: Frazier admits GUILTY in just released court doc received May 16 2024." The linked document, however, was the December 5, 2023 plea documents in the TeaLatte case, not a new admission or conviction. The trial court could reasonably view the timing of the post and Chabot's misleading title as evidence that Chabot acted with knowledge of its falsity or with reckless disregard for its truth when he posted the document.

The evidence also shows that Chabot posted the signs at polling locations that stated Frazier was convicted and dishonorably discharged after the cease and desist letter. Even after Frazier sued him for defamation on June 25, 2024, Chabot did not remove the documents from the website. Instead, in July 2024, he found the December 2023 DMN and WFAA.com articles online and posted them to the website. The website shows they were then modified in September, which resulted in the documents moving to the top of the website's file links. The timing of these posts—after the cease-and-desist letter and the filing of the lawsuit—alone establishes a prima facie case of actual malice. The same websites on which Chabot found the December 2023 articles and various court documents he posted also had

newer documents and articles confirming Frazier was not convicted on attempting to impersonate a public servant charges and received a general discharge from the DPD. Yet, Chabot chose to publish the older article and documents rather than the May 2024 corrected WFAA.com article and updated court documents. This evidence is sufficient to establish a prima facie of actual malice. *See Bentley v. Bunton*, 94 S.W.3d 561, 591 (Tex. 2002) ("evidence that a failure to investigate was contrary to a speaker's usual practice and motivated by a desire to avoid the truth may demonstrate the reckless disregard required for actual malice").

D. The statements were defamatory per se.

Defamation per se refers to statements that are so obviously harmful that general damages may be presumed. *Hancock*, 400 S.W.3d at 63–64. If the statements are defamatory per se, a plaintiff may recover general damages without proof of any specific loss. *Id.* at 65. "Historically, defamation per se has involved statements that are so obviously hurtful to a plaintiff's reputation that the jury may presume general damages, including for loss of reputation and mental anguish." *Id.* at 63–64 (citations omitted). Statements that injure a person in his office, profession, or occupation constitute defamation per se. *Id.* at 66. A statement that injures a person in his profession is a statement that "ascribes to another conduct, characteristics or a condition that would adversely affect his fitness for the proper conduct of his lawful business, trade or profession, or of his public or private office, whether honorary or for profit." *Id.* at 66–67 (quoting RESTATEMENT (SECOND) OF

TORTS § 573). The defamatory statement must accuse the professional of "lacking a peculiar or unique skill that is necessary for the proper conduct of the profession" to constitute defamation per se. *Id.* at 67.

Statements that Frazier was found guilty and convicted of a crime for which the charges were dismissed are defamatory per se. *See, e.g.*, *Clark*, 248 S.W.3d at 437 (finding that the statement that a city council member was a convicted felon was defamatory per se); *see also Brock v. Tandy*, No. 02-08-00400-CV, 2009 WL 1905130, at *4 (Tex. App.—Fort Worth July 2, 2009, pet. denied) (mem. op. on reh'g) ("[A]s Tandy was a public official at the time, the statements must be of such character that, if they were true, would have subjected her to removal from office, to criminal charges, or to imputation of official dishonesty or corruption."); *Bentley*, 94 S.W.3d at 582 ("Accusing a public official of corruption is ordinarily defamatory per se."); *Brasher v. Carr*, 743 S.W.2d 674, 677 (Tex. App.—Houston [14th Dist.] 1987) ("Statements that are of such a character as, if true, would subject a public official to removal from office or charge him with a crime are libelous per se."), *rev'd on other grounds*, 776 S.W.2d 567 (Tex. 1989)). Statements that Frazier was dishonorably discharged are defamatory per se because they adversely reflect on his fitness to conduct his business, both as a police officer and as an elected official. *See Hancock*, 400 S.W.3d at 66.

Under this record, we conclude Frazier presented sufficient evidence to show a prima facie case of each element of his defamation claim. We overrule Chabot's first issue.

II. TCPA Step Three – Affirmative Defenses

Having concluded Frazier showed a prima facie case of defamation, the burden shifted to Chabot to establish an affirmative defense to the defamation claim as a matter of law. On appeal, Chabot maintains he established two affirmative defenses as a matter of law. We disagree.

A. Libel-proof plaintiff doctrine

Chabot first argues he established that Frazier's claims are barred because he is a libel-proof plaintiff. According to Chabot, Frazier's criminal mischief charge, impersonating a public servant indictments, dishonorable discharge, and placement on the *Brady* list were widely publicized and, therefore, "Frazier's reputation was ruined by his own crimes—not by any statements Chabot published about those crimes or their consequences." That alleged conduct, however, does not support application of the libel-proof plaintiff doctrine.

"A libel-proof plaintiff is one whose reputation on the matter at issue is so diminished that, at the time of an otherwise libelous publication, it could not be damaged further." *Bui Phu Xuan v. Fort Worth Star-Telegram*, No. 02-06-00206-CV, 2007 WL 530078, at *2 (Tex. App.—Fort Worth Feb. 22, 2007, pet. denied) (mem. op.) (first citing *McBride v. New Braunfels Herald-Zeitung*, 894 S.W.2d 6, 9

(Tex. App.—Austin 1994, writ denied); and then citing *Langston v. Eagle Publ'g Co.*, 719 S.W.2d 612, 621 (Tex. App.—Waco 1986, writ ref'd n.r.e.)). Courts have found the doctrine particularly suitable when plaintiffs who are notorious for past criminal behavior assert that they have been libeled by communications charging them with identical or similar behavior. *McBride*, 894 S.W.2d at 9. To justify applying the doctrine, the evidence of record must show not only that the plaintiff engaged in criminal or antisocial behavior in the past, but also that his activities were widely reported to the public. *Id.* at 10.

For example, in *Bui Phu Xuan*, the Second Court of Appeals applied the libel-proof plaintiff doctrine to a plaintiff whose "reputed Asian gang membership was widely reported by the Star-Telegram as early as 1994" and was introduced by the State during his 1998 murder trial. *Bui Phu Xuan*, 2007 WL 530078, at *2. The court held that "Bui's reputation was so diminished that it could not have been injured further as a result of the 2005 Star-Telegram articles that again referred to Bui's reputed gang membership-even if the statements were not true." *Id.* The court affirmed the trial court's order granting the Star-Telegram summary judgment on the ground that Bui was libel-proof. *Id.*

Similarly, in *Finklea v. Jacksonville Daily Progress*, the Twelfth Court of Appeals concluded Finklea was not injured by false statements accusing him of crime where he had at least eight convictions for "burglary, theft, and drug possession spanning the last quarter century." 742 S.W.2d 512, 517–18 (Tex.

App.—Tyler 1987, writ dism'd w.o.j.). In light of his prior involvement with drugs and burglary, the court concluded that "the effect of the statements on Finklea's reputation is utterly inconsequential. It is impossible to envision a Texas jury awarding him any damages." *Id.* The *Finklea* court noted, however, that "the doctrine should have only a limited application" because "[t]here are few so impure that cannot be traduced." *Id.* at 516 (further noting that "most cases invoking the doctrine narrow its application to those instances in which the challenged statement erroneously describes behavior similar or identical to that for which the plaintiff has been conclusively shown to be guilty.").

The *McBride* court reached a different result. In *McBride*, the New Braunfels Herald–Zeitung printed an article reporting that McBride had been arrested and charged with an aggravated robbery that occurred at the Lone Star Ice House. 894 S.W.2d at 7–8. The article included Comal County Sheriff Lieutenant Rubio's statement that McBride "got away with approximately $1,700 in cash and cigarettes . . . . We believe that there was someone else with him." *Id.* at 9. McBride sued the newspaper for libel because he maintained that the district attorney dropped the charge against him and he was released from jail twenty-three days after the arrest. *Id.* at 7–8. In its motion for summary judgment, the newspaper argued that, even if the challenged statement was false, it could not have damaged McBride's reputation because McBride was libel proof as a matter of law. *Id.* at 9. On appeal, McBride argued the evidence was insufficient to support a finding that he was libel-

proof as a matter of law. *Id.* The Third Court of Appeals agreed and held the evidence did not justify applying the libel-proof plaintiff doctrine to McBride. *Id.* at 10–11. Not only was there no evidence concerning any publicity received about McBride's previous convictions for theft, burglary, and delivery of hydromorphone, but the court "could not say that his criminal history is so extreme that no reasonable person could find further damage to his reputation by the false accusation of a new robbery." *Id.* The court reversed the summary judgment "[b]ecause the newspaper failed to establish that, as a matter of law, McBride's reputation could not have suffered from the article's publication[.]" *Id.* at 11.

Unlike the plaintiffs in *Bui Phu Xuan* and *Finklea*,[5] the only evidence that could be construed as past criminal or antisocial behavior by Frazier, separate from the alleged dishonorable discharge and felony indictments, was his conviction of Class C misdemeanor criminal mischief. The record includes no other evidence of past criminal convictions or past criminal or antisocial behavior. A single conviction of a Class C misdemeanor is not the type of notorious past criminal behavior for which the libel-proof plaintiff doctrine applies. We cannot say that his criminal history is so extreme that no reasonable person could find further damage to his

[5] Chabot also cites *Swate v. Schiffers*, 975 S.W.2d 70, 77–78 (Tex. App.—San Antonio 1998, pet. denied) to support his arguments. *Swate*, however, is distinguishable because there, unlike here, the plaintiff's past criminal, quasi-criminal, and antisocial behavior was extensive and highly-publicized. *Id.* at 74, 77 (holding the plaintiff's reputation "was so deplorable" and could not be further damaged by the challenged news article in light of evidence of twenty-four newspaper articles and three disciplinary orders from the Texas and Louisiana boards of medical examiners that described the plaintiff's medical practice, his prior litigation involving that practice, and various instances of misconduct).

reputation by false accusations that he was convicted of two felony charges and dishonorably discharged by the DPD. Under this record, we conclude Chabot failed to establish as a matter of law the applicability of the libel-proof plaintiff doctrine here.

B. Defamation Mitigation Act

Next, Chabot contends Frazier's claims must be dismissed because he did not comply with the Defamation Mitigation Act. *See* TEX. CIV. PRAC. & REM. CODE §§ 73.051–.062. A person may maintain an action for defamation only if the person has made a timely and sufficient request for a correction, clarification, or retraction from the defendant, or the defendant has made a correction, clarification, or retraction. TEX. CIV. PRAC. & REM. CODE § 73.055(a). A request under the Defamation Mitigation Act is timely if it is made during the limitations period. *Id.* § 73.055(b). A request under the Defamation Mitigation Act is sufficient if it is (1) served on the publisher, (2) made in writing, reasonably identifies the person making the request, and is signed by the individual claiming to be defamed or by the person's authorized attorney or agent; (3) states with particularity the statement alleged to be false and defamatory; (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. *Id.* § 73.055(d). The Defamation Mitigation Act is to be liberally construed. *Id.* § 73.051. The purpose of the Defamation Mitigation Act is not to

provide defendants with a way out of lawsuits, but to provide a person who is defamed by a publication an opportunity to mitigate any perceived damage or injury. *Id.* § 73.052.

Here, Frazier's cease and desist letter was sufficient to meet the requirements of the Defamation Mitigation Act. Moreover, dismissal is not the remedy for the failure to comply with the Act. Rather, a defendant's remedy is to seek abatement of the proceeding no later than the 30th day after a defendant files his answer. *Id.* § 73.062(a). Chabot did not request an abatement and, therefore, did not meet the requirements for obtaining an abatement under the Defamation Mitigation Act.

Under this record, we conclude Chabot failed to establish either affirmative defense as a matter of law and, therefore, did not meet his burden under the third step of the TCPA analysis. The trial court, therefore, did not err in denying the motion to dismiss. We overrule Chabot's second issue.

III. Attorney's Fees

In his third and final issue, Chabot challenges the trial court's granting of Frazier's request for attorney's fees under section 27.009(b) of the TCPA. TEX. CIV. PRAC. & REM. CODE § 27.009(b). We review a trial court's decision to award fees under section 27.009 for an abuse of discretion. *Doe v. Cruz*, 683 S.W.3d 475, 502 (Tex. App.—San Antonio 2023, no pet.). "A trial court abuses its discretion when it acts arbitrarily, unreasonably, or without regard to guiding principles." *Id.*

Here, the October 25 Order states that Frazier's request for attorney's fees pursuant to section 27.009(b) is granted. Chabot contends this was error because Frazier conceded below that his claims were subject to the TCPA, and the trial court did not make the required findings that the TCPA was frivolous or solely intended to delay. Frazier insists the trial court did not abuse its discretion by granting the fees request because Chabot asserted "baseless arguments" for why the statements were not defamatory. Frazier also contends the TCPA does not require a trial court to make an affirmative finding that the TCPA motion was frivolous or solely intended to delay.

A court may award court costs and reasonable attorney's fees to the party responding to a TCPA motion to dismiss "if the court finds" that the motion "is frivolous or solely intended to delay[.]" TEX. CIV. PRAC. & REM. CODE § 27.009(b). Those findings are a required prerequisite to an award of fees to the nonmovant. *See Cruz v. Van Sickle*, 452 S.W.3d 503, 525 (Tex. App.—Dallas 2014, pet. denied) ("although an award of reasonable attorney's fees incurred is mandatory for a successful movant, a fee award to a successful respondent is completely discretionary and ***requires a finding the motion was frivolous or solely intended to delay***.") (emphasis added); *see also Weller v. MonoCoque Diversified Ints., LLC*, No. 03-19-00127-CV, 2020 WL 3582885, at *5 (Tex. App.—Austin July 1, 2020, no pet.) (mem. op.) ("an award to a successful respondent is discretionary even if the trial court ***makes the required findings*** that the motion was frivolous or solely

intended to delay.") (emphasis added). Here, the trial court did not give a reason for its decision to grant the request for fees and made no findings in the October 25 Order or elsewhere in the record. Without making the required findings, the trial court abused its discretion by granting Frazier's request for fees.

Moreover, even if we imply the required findings here, we conclude the trial court abused its discretion. "Frivolous" is not defined in the TCPA, but "the word's common understanding contemplates that a claim or motion will be considered frivolous if it has no basis in law or fact and lacks a legal basis or legal merit." *Pinghua Lei v. Nat. Polymer Int'l Corp.*, 578 S.W.3d 706, 717 (Tex. App.—Dallas 2019, no pet.) (quoting *Sullivan v. Tex. Ethics Comm'n*, 551 S.W.3d 848, 857 (Tex. App.—Austin 2018, pet. denied) (internal quotations and citations omitted)). Frazier and Chabot agree that Frazier's defamation claim is subject to the TCPA because it is based on or is in response to Chabot's exercise of the right of free speech. *See* TEX. CIV. PRAC. & REM. CODE § 27.005(b)(1)(A). While we have, for the reasons given above, concluded Frazier presented a prima facie case of defamation and Chabot did not establish an affirmative defense as a matter of law, we do not think it reasonable under these facts to conclude that the motion was frivolous. *See* TEX. CIV. PRAC. & REM. CODE § 27.009(b); *see also Sullivan*, 551 S.W.3d at 857-58 (overturning attorney's fees award because the court could not conclude as a matter

of law that appellant's motion entirely lacked a basis in law or fact or that "delay was the only factor").[6]

We also cannot say the TCPA motion was filed for the purpose of causing delay. Chabot filed his TCPA motion thirty-four days after filing his original answer; a hearing on the motion was set within sixty days of the motion; and the trial court decided the matter within ninety days—all reasonable time periods within statutory deadlines. *See* TEX. CIV. PRAC. & REM. CODE §§ 27.003(b), 27.004(a), 27.005(a). Under those circumstances and without any evidence of Chabot's intent in filing the motion being "solely" for the purpose of delay, a finding of such an intent to delay would be an abuse of discretion. *See Cruz*, 683 S.W.3d at 502 (abuse of discretion where TCPA motion filed in a timely manner, and the hearing was held and the decision issued within the statutory deadlines).

For these reasons, we hold the trial court abused its discretion in granting Frazier's request for attorney's fees. We sustain Chabot's objection to the fees order and reverse that portion of the October 25 Order granting Frazier's request for fees.

CONCLUSION

The trial court did not err by denying Chabot's TCPA motion to dismiss. However, the trial court erred by granting Frazier's request for attorney's fees

[6] Further, we note that by applying the TCPA three-step process to determine whether Chabot's TCPA motion to dismiss should have been granted or denied, we have not resolved any disputed facts. *Cruz*, 683 S.W.3d at 502–03; *Davis*, 2020 WL 5491201, at *12 (reiterating court's TCPA determination "is not a merits determination").

pursuant to section 27.009(b) of the Texas Civil Practice and Remedies Code. Accordingly, we reverse the portion of the October 25, 2024 order granting Frazier's request for attorney's fees, affirm the order in all other respects, and remand this cause to the trial court for further proceedings consistent with this opinion.

/Jessica Lewis/
JESSICA LEWIS
JUSTICE

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

PAUL CHABOT, Appellant	On Appeal from the 429th Judicial District Court, Collin County, Texas
No. 05-24-01272-CV V.	Trial Court Cause No. 429-04031-2024.
FREDERICK FRAZIER, Appellee	Opinion delivered by Justice Lewis. Justices Smith and Kennedy participating.

In accordance with this Court's opinion of this date, the trial court's October 25, 2024 order is **AFFIRMED** in part and **REVERSED** in part. We **REVERSE** that portion of the order granting Frederick Frazier's request for attorney's fees. In all other respects, the trial court's October 25, 2024 order is **AFFIRMED**. We **REMAND** this cause to the trial court for further proceedings consistent with this opinion.

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered this 30th day of July 2025.