Affirmed in Part, Reversed and Remanded in Part, and Majority Opinion and Concurring and Dissenting Opinion filed August 17, 2023

In The

Fourteenth Court of Appeals

NO. 14-22-00113-CV

WALGREENS, Appellant

V.

PAMELA MCKENZIE, Appellee

On Appeal from the County Civil Court at Law No. 1
Harris County, Texas
Trial Court Cause No. 1173052

MAJORITY OPINION

Appellee Pamela McKenzie ("McKenzie") sued Walgreens after she was misidentified by a store employee to police for shoplifting. Walgreens filed a motion to dismiss the case under the Texas Citizen's Participation Act ("TCPA"). *See* Tex. Civ. Prac. & Rem. Code Ann. § 27.003. The trial court denied Walgreens's motion to dismiss, and Walgreens filed an interlocutory appeal. *See id*. § 51.014(a)(12) (authorizing interlocutory appeal from denial of a motion to

dismiss filed under § 27.003). In two issues, Walgreens argues that the trial court erred in denying its motion to dismiss. We affirm in part and reverse in part.

I. TCPA PROCEDURE

The TCPA protects citizens from retaliatory lawsuits that seek to silence or intimidate them on matters of public concern. *In re Lipsky*, 460 S.W.3d 579, 586 (Tex. 2015) (orig. proceeding); *see generally* Tex. Civ. Prac. & Rem Code Ann. §§ 27.001–.011. The purpose of the statute is to identify and summarily dispose of legal actions designed only to chill First Amendment rights, not to dismiss meritorious lawsuits. Tex. Civ. Prac. & Rem Code Ann. § 27.002; *In re Lipsky*, 460 S.W.3d at 589; *Saks & Co. v. Li*, 653 S.W.3d 306, 309 (Tex. App.—Houston [14th Dist.] 2002, no pet.).

The TCPA provides a multi-step process to determine whether a lawsuit should be dismissed under the statute. *Montelongo v. Abrea*, 622 S.W.3d 290, 296 (Tex. 2021). Under the first step, the trial court must dismiss the action if the moving party shows by a preponderance of the evidence that the legal action is based on or is in response to the movant's exercise of (1) the right of free speech, (2) the right to petition, or (3) the right of association. Tex. Civ. Prac. & Rem. Code Ann. § 27.003(a), .005(b); *Montelongo*, 622 S.W.3d at 296. Under the second step, the court may not dismiss the lawsuit if the non-movant establishes by clear and convincing evidence a prima facie case for each essential element of the claim in question. Tex. Civ. Prac. & Rem. Code Ann. § 27.005(c). Under the third step, if the non-movant meets that burden, the court must still dismiss if the movant "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. The evidence the trial court considers in determining whether a legal action should be dismissed under the TCPA includes the pleadings and

affidavits filed by the parties. Tex. Civ. Prac. & Rem. Code Ann. § 27.006(a); *see also Hersh v. Tatum*, 526 S.W.3d 462, 467 (Tex. 2017) (noting that the trial court is obligated to consider the plaintiff's pleadings regardless of whether they are offered into evidence).

Whether the TCPA applies to a particular claim is an issue of statutory interpretation that we review de novo. *See Youngkin v. Hines*, 546 S.W.3d 675, 680 (Tex. 2018). We review the pleadings and evidence in the light most favorable to the non-movant. *Sanchez v. Striever*, 614 S.W.3d 233, 239 (Tex. App.—Houston [14th Dist.] 2020, no pet.). We also review issues of statutory construction de novo. *Youngkin*, 546 S.W.3d at 680. When construing a statute, our objective is to determine and give effect to the Legislature's intent. *Id.* We construe the TCPA liberally to effectuate its purpose and intent fully. *See Adams v. Starside Custom Builders, LLC*, 547 S.W.3d 890, 894 (Tex. 2018).

A. Application of the TCPA

In its first and second issues, Walgreens challenges the trial court's denial of its TCPA motion to dismiss, contending that the TCPA applies to McKenzie's claims and that McKenzie failed to establish a prima facie case for each essential element of her claims. As movant, Walgreens has the burden to show by a preponderance of the evidence that McKenzie has asserted claims based on or in response to Walgreens's exercise of one of the three rights delineated in the statute. *See* Tex. Civ. Prac. & Rem. Code Ann. § 27.005(b).

McKenzie sued for intentional infliction of emotional distress, negligence, gross negligence, and respondeat superior for being misidentified to police as a shoplifter. She additionally pleaded claims of Walgreens's direct negligence in hiring, training, and supervising the employee who reported McKenzie to police. Walgreens does not address the applicability of the TCPA to each separate claim,

other than intentional infliction of emotional distress and negligence. Rather, it generally argues that all of McKenzie's claims concern Walgreens's alleged report to the police of a suspected crime. However, dismissal under the TCPA is determined on a claim-by-claim basis. *Union Pac. R.R. Co. v. Dorsey*, 651 S.W.3d 692, 695 (Tex. App.—Houston [14th Dist.] 2022, no pet.).

1. Intentional Infliction of Emotional Distress, Negligence, Gross Negligence, and Respondeat Superior

Under the TCPA, "exercise of the right of free speech" is defined as "a communication made in connection with a matter of public concern." Tex. Civ. Prac. & Rem. Code Ann. § 27.001(3). A matter of public concern includes "commission of crime, prosecutions resulting from it, and judicial proceedings arising from the prosecutions." *Brady v. Klentzman*, 515 S.W.3d 878, 884 (Tex. 2017) (internal quotation marks omitted). Appellate courts have held that reporting a purported crime to police is a matter of public concern falling within the TCPA. *See Buckingham Senior Living Cmty., Inc. v. Washington*, 605 S.W.3d 800, 807 (Tex. App.—Houston [1st Dist.] 2020, no pet.); *see, e.g.*, *Graves v. Evangelista-Ysasaga*, No. 14-22-00137-CV, 2023 WL 370589, at *4 (Tex. App.—Houston [14th Dist.] Jan. 24, 2023, pet. filed) (mem. op.); *Ford v. Bland*, No. 14-15-00828-CV, 2016 WL 7323309, at *1 (Tex. App.—Houston [14th Dist.] Dec. 15, 2016, no pet.) (mem. op.).

McKenzie alleges in her petition that she was shopping in Walgreens on July 28, 2019, when a Walgreen's employee called the police, falsely told them she had committed crimes in the store earlier that day and in the past, and said they needed to arrest her. McKenzie was approached by two police officers, who asked to speak to her in front of other customers. The police told her that she was suspected of previously committing crimes in the store and that there was video security footage

showing she had engaged in crimes in the store in the past. However, when the police reviewed the video security footage, McKenzie looked nothing like the earlier suspect. McKenzie states in her petition that she was not detained further or arrested. Before leaving, she learned that the employee who called the police had been advised before making the call that McKenzie was not the same person as the suspect. The employee nonetheless called police. Pleading intentional infliction of emotional distress, McKenzie claimed: "[t]he malicious actions of Walgreens's agent were the direct cause of Mrs. McKenzie being detained and humiliated in front of the other customers that were not African American. . . . McKenzie has been suffering emotional distress because of this traumatizing experience." As to her claims of negligence and gross negligence, McKenzie pleaded that "Walgreens and its employee were negligent and grossly negligent in handling the investigation that led to Mrs. McKenzie being detained" and that "Walgreens's actions had wrongfully deprived her of her . . . freedom by falsely accusing her of theft." She further pleaded that "Walgreens is liable for the actions of its agent."

McKenzie's claims for intentional infliction of emotional distress, negligence, gross negligence, and respondeat superior, as pleaded, are in direct response to the Walgreens employee notifying police he believed McKenzie was a shoplifter. Thus, these claims are based on or in response to the exercise of the right to free speech. *See Buckingham Senior Living Cmty., Inc.*, 605 S.W.3d at 807; *see also, e.g.*, *Murphy USA, Inc. v. Rose*, No. 12-15-00197-CV, 2016 WL 5800263, at *3–4 (Tex. App.—Tyler Oct. 5, 2016, no pet.) (concluding that the TCPA was applicable to claims of malicious prosecution, defamation, false imprisonment and negligence where gas station manager called police after mistakenly believing a customer was stealing gasoline). "When it is clear from the plaintiff's pleadings that the action is covered by the Act, the defendant need show

no more." *Hersh*, 526 S.W.3d at 467; *see Dorsey*, 651 S.W.3d at 695. We conclude Walgreens made the initial showing that the TCPA applies to McKenzie's claims of intentional infliction of emotional distress, negligence, gross negligence, and respondeat superior. The burden accordingly shifts to McKenzie to establish a prima facie case for each essential elements of these claims.

2. Negligent Hiring, Training and Supervision

McKenzie's pleadings also include claims against Walgreens for direct negligence in hiring, training, and supervising[1] the employee who called police. To fall within the scope of the TCPA, a complained-of activity must constitute "communications." *Graves*, 2023 WL 370589, at *4. "[W]hen a claim does not allege a communication, and is instead based on a defendant's conduct, the TCPA is not implicated." *Allied Orion Grp., LLC v. Pitre*, No. 14-19-00681-CV, 2021 WL 2154065, at *4 (Tex. App.—Houston [14th Dist.] May 27, 2021, no pet.) (mem. op.). Hiring, training, and supervision are conduct, not communications. Additionally, the hiring, training, and supervision of the Walgreens employee occurred before this incident. Thus, we cannot conclude that the claims are entirely based on or are in response to its employee's exercise of his First Amendment rights in calling the police. Further, Walgreens has cited no authority in which the TCPA has been applied to claims for negligent hiring, training, and supervision. Tex. R. App. P. 38.1(i) ("The brief must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record."). When a legal action is in response to both expression protected by the TCPA and unprotected activity, the legal action is subject to dismissal only to the extent of claims based on protected activity, as opposed to being subject to dismissal in its

[1] Such claims against an employer are known as "direct negligence" claims because they are not based on vicarious liability. *See Soon Phat, L.P. v. Alvarado*, 396 S.W.3d 78, 100–01 (Tex. App.—Houston [14th Dist.] 2013, pet. denied).

entirety. *Dorsey*, 651 S.W.3d at 695-96. We conclude that Walgreens has not met its burden in showing that the TCPA applies to these direct negligence claims,[2] and the trial court did not err in declining to dismiss them. *See* Tex. Civ. Prac. & Rem. Code Ann. §§ 27.003(a), .005(b); *Hersh*, 526 S.W.3d at 466.[3]

Because the TCPA applies to some but not all of McKenzie's claims, we sustain in part and overrule in part Walgreen's issue.

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[2] The Texas Supreme Court has not "ruled definitively on the existence, elements, and scope" of negligent hiring, training, and supervision claims. *Waffle House, Inc. v. Williams*, 313 S.W.3d 796, 804 n.27 (Tex. 2010). The dissent states that we are treating "negligent hiring, training, and supervision as independent tort claims that may be viable even if there is no liability for an underlying tort." Assuming, *arguendo*, the dissent is correct about the scope of negligent hiring, training, and supervision, McKenzie nonetheless pleaded tortious conduct on the part of a Walgreens employee. Although McKenzie expressly pleaded intentional infliction of emotional distress and negligence, which we disallow, her pleading and supporting affidavit sufficiently raised other torts, such as defamation and false imprisonment.

Walgreens had the initial burden to identify the claims for which it sought dismissal under the TCPA and to prove by a preponderance that the TCPA was applicable to those claims. *See* Tex. Prac. & Rem. Code Ann. § 27.003(a). Walgreens specifically raised intentional infliction of emotional distress and negligence in its motion to dismiss, but did not address application of the TCPA to false imprisonment, defamation, or negligent hiring, training and supervision. Additionally, a party in a motion to dismiss under the TCPA must show that the plaintiff's claim is based on or in response to *that party's* exercise of the statutorily enumerated right. *See Hayman v. Khan*, No. 14-20-00745-CV, 2023 WL 4873248, at *4, n.4 (Tex. App.—Houston [14th Dist.] Aug. 1, 2023, n. pet. h.) (noting TCPA's plain language when addressing employer's motion to dismiss claims for racially discriminatory statements alleged to have been made by his employees). Because Walgreens did not meet its initial burden, the burden did not shift to McKenzie to provide clear and specific prima facie proof of each essential element of these claims. *See* Tex. Civ. Prac. & Rem. Code Ann. § 27.005(c). We conclude that the trial court properly denied Walgreen's motion to dismiss them.

[3] Walgreens also argues that McKenzie cannot "bring claims for negligent hiring, training, etc., where, as here, there has been no allegation or defense raised by the Defendant that the employee in question was acting outside the course and scope of his employment." [CR 60]. The cases cited by Walgreens for this proposition do not address application of the TCPA. *See, e.g., Patterson v. E. Tex. Motor Freight Lines*, 349 S.W.2d 634, 636 (Tex. Civ. App.—Beaumont 1961, writ ref'd n.r.e.). They also involve employers who have stipulated to vicarious liability for their employee. There is no such stipulation in the record of this appeal.

B. Prima Facie Case

Once the TCPA is shown to be applicable to a claim, the non-movant bears the burden 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 Ann. § 27.005(c). The supreme court has noted that "[c]lear and specific evidence is not a recognized evidentiary standard[,]" and "[a]lthough it sounds similar to clear and convincing evidence, the phrases are not legally synonymous." *In re Lipsky*, 460 S.W.3d at 589. In addition, the supreme court noted that the term "prima facie case" "refers to evidence sufficient as a matter of law to establish a given fact if it is not rebutted or contradicted." *Id.* at 590. Under the TCPA, general allegations that merely recite the elements of a claim will not suffice; rather, "a plaintiff must provide enough detail to show the factual basis for its claim." *Id.* at 590–91. Although the TCPA "initially demands more information about the underlying claim, the Act does not impose an elevated evidentiary standard or categorically reject circumstantial evidence." *Id.* at 591.

1. Intentional Infliction of Emotional Distress

The tort of intentional infliction of emotional distress has four elements: (1) the defendant acted intentionally or recklessly; (2) the conduct was extreme and outrageous; (3) the actions caused the plaintiff emotional distress; and (4) the emotional distress was severe. *Hersh*, 526 S.W.3d at 468. Intentional infliction of emotional distress is a "gap-filler" tort that was judicially created to allow recovery in those rare instances in which a defendant intentionally inflicts severe emotional distress in a manner so unusual that the victim has no other recognized theory of redress. *Hoffman-LaRoche Inc. v. Zeltwanger*, 144 S.W.3d 438, 447 (Tex. 2004). The supreme court has set a high standard for extreme and outrageous conduct, holding that this element is only satisfied if the conduct is "so outrageous in

character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Twyman v. Twyman*, 855 S.W.2d 619, 621 (Tex. 1993). Meritorious claims for intentional infliction of emotional distress are relatively rare because "most human conduct, even that which causes injury to others, cannot be fairly characterized as extreme and outrageous." *Kroger Tex. L.P. v. Suberu*, 216 S.W.3d 788, 796 (Tex. 2006). Rude and insensitive behavior does not constitute extreme and outrageous conduct *GTE Sw., Inc. v. Bruce*, 998 S.W.2d 605, 612 (Tex. 1999). Even harassment must be severe and ongoing to constitute intentional infliction of emotional distress. *See id*. at 616-17 (holding that the severity and regularity of abusive and threatening conduct brought behavior into the realm of extreme and outrageous conduct).

McKenzie's pleadings and declaration state that a Walgreens employee called the police because he suspected she was a shoplifter from earlier in the day. However, when police reviewed video security footage, she looked nothing like the woman depicted in the video and she was immediately allowed to leave. According to McKenzie, other employees told the accusing employee that he had misidentified her. McKenzie avers that the Walgreens employee called the police because of her race and his "cultural blindness."[4] McKenzie felt shock and humiliation from the traumatizing experience. She immediately felt shame, anxiety, discomfort, and embarrassment. Since the incident, she has experienced depression, anxiety, panic, sleepiness, fear, anger, and "an overwhelming feeling of isolation."

Under Texas law, a citizen has the right to report criminal misconduct to

[4] McKenzie asserts that she was the only person of her race in the store. Suspecting a racially-discriminatory motive without more is "not evidence that will meet the prima facie standard" to avoid dismissal under the TCPA. *Buckingham*, 605 S.W.3d at 812.

authorities even when the reporting party mistakenly identifies the wrong person. *Wal-Mart Stores, Inc. v. Rodriguez*, 92 S.W.3d 502, 507 (Tex. 2002). Additionally, the reporting of criminal activity to the police does not constitute "extreme and outrageous behavior." *See Bradford v. Vento*, 48 S.W.3d 749, 758–59 (Tex. 2001); *Atchison v. Memorial Hermann Memorial City Hosp.*, No. 14-17-00307-CV, 2018 WL 5260971, at *4 (Tex. App.—Houston [14th Dist.] Oct. 23, 2018, pet. denied) (mem. op.). Other instances that do not rise to the level of extreme and outrageous conduct include questioning a suspected thief, *Randall's Food Mkts., Inc. v. Johnson*, 891 S.W.2d 640, 644 (Tex. 1995), falsely depicting someone as a thief in the community, *Diamond Shamrock Refin. & Mktg. Co. v. Mendez*, 844 S.W.2d 198, 202 (Tex. 1992), and identifying a suspected accomplice to police for shoplifting without first reviewing video security footage. *Wal-Mart Stores, Inc. v. Sanchez*, No. 04-02-00458-CV, 2003 WL 21338174, at *5 (Tex. App.—San Antonio June 11, 2003, pet. denied). Recognizing that it was embarrassing and humiliating to be misidentified as a shoplifter, we are nonetheless compelled by precedent to conclude that McKenzie has not presented prima facie evidence of extreme and outrageous conduct. *See Kroger Tex. L.P.*, 216 S.W.3d at 796; *Twyman*, 855 S.W.2d at 621. The trial court erred in denying Walgreens's motion to dismiss McKenzie's claim for intentional infliction of emotional distress.

2. Negligence and Gross Negligence

McKenzie pleaded that "Walgreens's actions wrongfully deprived her of her . . . freedom by falsely accusing her of theft." She further pleaded that Walgreens and its employee were negligent and grossly negligent in handling the investigation that led to her detention. Walgreens contends that the gravamen of these claims is false imprisonment or defamation and that McKenzie cannot recast these claims by labeling them negligence or gross negligence.

To establish negligence, a party must establish a duty, a breach of that duty, and damages proximately caused by the breach. *Kroger Co. v. Elwood*, 197 S.W.3d 793, 794 (Tex. 2006). Whether a duty exists is a threshold inquiry and a question of law. *Id.* McKinsey does not cite any case in which a Texas court has found a duty in negligence to refrain from falsely accusing an individual of a crime. Instead, false accusations that one has committed a crime are addressed by defamation claims, *Randall's Food Markets, Inc.*, 891 S.W.2d at 646, or the intentional torts of false imprisonment, *Sears, Roebuck & Co. v. Castillo*, 693 S.W.2d 374, 375 (Tex. 1985) (per curiam), or malicious prosecution. *Richey v. Brookshire Grocery Co.*, 952 S.W.2d 515, 517 (Tex. 1997).

Although the supreme court has not directly addressed the issue, multiple courts of appeals have determined that defamation, false imprisonment, and malicious prosecution claims cannot be recast as negligence claims. "[A] plaintiff cannot circumvent the stringent standards for recovery of the intentional torts of false imprisonment and malicious prosecution by pleading other claims based on the same facts." *Charlie Thomas Chevrolet, Ltd., v. Martinez*, 590 S.W.3d 9, 16 (Tex. App.—Houston [1st Dist.] 2019, no pet.); *accord Murphy USA, Inc*, 2016 WL 5800263, at *7 ("To allow the existence of a duty not subject to the element of maliciousness would convert the tort of malicious prosecution into negligent prosecution."); *Delese v. Albertson's, Inc.*, 83 S.W.3d 827, 830 (Tex. App.—Texarkana 2002, no pet.) ("The substance of the allegations cannot be converted from the tort of malicious prosecution into another cause of action at the convenient labeling of the parties."); *Rodriguez v. Wal-Mart Stores, Inc.*, 52 S.W.3d 814, 821 (Tex. App.—San Antonio 2001), *rev'd on other grounds*, 92 S.W.3d 502 (Tex. 2002) ("We therefore decline to hold that a duty exists outside the torts of malicious prosecution and defamation not to falsely accuse someone of

criminal wrongdoing."); *Smith v. Sneed*, 938 S.W.2d 181, 185 (Tex. App.—Austin 1997, no writ) ("To hold . . . that Sneed's negligence is actionable would in substance convert the tort of malicious prosecution to one of negligent prosecution."); *ITT Consumer Fin. Corp. v. Tovar*, 932 S.W.2d 147, 155–56 (Tex. App.—El Paso 1996, writ denied); *Wal-Mart Stores, Inc. v. Medina*, 814 S.W.2d 71, 73–74 (Tex. App.—Corpus Christi–Edinburg 1991, writ denied) ("Thus, there is no recovery in tort for damage caused by an incorrect, but not malicious prosecution."). Further, this court in different contexts has also disallowed fracturing one cause of action into multiple claims. *Oliphant v. Richards*, 167 S.W.3d 513, 517 (Tex. App.—Houston [14th Dist.] 2005, pet. denied) (disallowing plaintiff from re-labeling his defamation claim as a negligence claim for a false, negative employment reference); *Ross v. Arkwright Mut. Ins.*, 892 S.W.2d 119, 133–34 (Tex. App.—Houston [14th Dist.] 1994, no writ) (disallowing plaintiffs' attempt to "massage" malicious prosecution and defamation claims about a prior legal malpractice suit into a negligence claim).

In disallowing a negligence claim for false accusations of a crime, several of these courts have noted the tension between two important societal interests: to encourage reporting of crimes and to discourage wrongful or unjustifiable prosecution. *Sneed*, 938 S.W.2d at 184; *Murphy USA*, 2016 WL 5800263, at *7; *ITT*, 932 S.W.2d at 156. To allow a negligence claim "would discourage citizen participation in criminal investigations and prosecutions and threaten the balance between protecting against wrongful prosecution and encouraging the reporting of a crime." *Murphy USA*, 2016 WL 5800263, at *7. "Even a small departure from the exact prerequisites for liability may threaten the delicate balance between protecting against wrongful prosecution and encouraging reporting of criminal conduct." *Browning-Ferris Indus., Inc. v. Lieck*, 881 S.W.2d 288, 291 (Tex. 1994)

(reviewing a jury's verdict on malicious prosecution). Consequently, McKenzie cannot avoid the strict requirements of intentional torts or of defamation by labeling her claim as negligence. The trial court erred in denying Walgreens's motion to dismiss McKenzie's negligence claim.

Ordinary negligence is a prerequisite to a finding of gross negligence. *City of Waco v. Kirwan*, 298 S.W.3d 618, 623 (Tex. 2009); *Shell Oil Co. v. Humphrey*, 880 S.W.2d 170, 178 (Tex. App.—Houston [14th Dist.] 1994, writ denied). Because we have concluded that Walgreens did not owe a duty to refrain from negligently misidentifying McKenzie as a suspected shoplifter to police, her gross negligence claim is also precluded.

3. Respondeat Superior

McKenzie also pleaded that Walgreens is vicariously liable under the doctrine of respondeat superior. A motion to dismiss under the TCPA must be directed at a "legal action." Tex. Civ. Prac. & Rem. Code Ann. § 27.003. That term is defined to mean "a lawsuit, cause of action, petition, complaint, cross-claim, or counterclaim or any other judicial pleading or filing that requests legal, declaratory, or equitable relief." *Id.* § 27.001(6). The doctrine of respondeat superior is not an independent tort. It is instead recognition that "liability for one person's fault may be imputed to another who is himself entirely without fault solely because of the relationship between them." *St. Joseph Hosp. v. Wolff*, 94 S.W.3d 513, 540 (Tex. 2002). Thus, it is connected to the underlying tort and survives or fails alongside it. *Cf. Cunningham v. Waymire*, 612 S.W.3d 47, 68 (Tex. App.—Houston [14th Dist.] 2019, no pet.) (addressing derivative theory of civil conspiracy in the context of the TCPA). Because McKenzie's underlying claims for negligence in misidentifying her to the police, gross negligence, and intentional infliction of emotional distress fail, respondeat superior fails as well.

See Dickson v. Afiya Ctr., 636 S.W.3d 247, 264-65 (Tex. App.—Dallas 2021), *rev'd on other grounds*, 2023 WL 2193586 (Tex. Feb. 24, 2023).

Accordingly, we sustain in part and overrule in part Walgreen's second issue.

II. CONCLUSION

We affirm in part the trial court's order denying Walgreen's motion to dismiss as to McKenzie's claims for negligent hiring, training, and supervision. We reverse in part the trial court's order denying Walgreen's motion to dismiss McKenzie's claims for intentional infliction of emotional distress, negligence, and gross negligence. We remand the case back to the trial court for additional proceedings consistent with this opinion.

/s/ Margaret "Meg" Poissant
Justice

Panel consists of Justices Spain, Poissant, and Wilson. (Wilson, J., concurring and dissenting).