Affirmed in Part, Reversed and Rendered in Part, and Memorandum Opinion filed December 9, 2025.

In The

Fourteenth Court of Appeals

NO. 14-24-00828-CV

JOAN DALY, Appellant

V.

PETER LEHLE, Appellee

On Appeal from the 113th District Court
Harris County, Texas
Trial Court Cause No. 2024-35010

M E M O R A N D U M O P I N I O N

This appeal matches pickleball against tennis. Defendant Joan Daly represented team tennis in the parties' local community, while Plaintiff Peter Lehle headed an exploratory committee charged with determining whether and how to incorporate pickleball into the community's existing tennis courts. Tensions flared at a homeowners' association meeting, when Defendant accused Plaintiff of taking photographs of local children for "inappropriate purposes."

Plaintiff sued Defendant for defamation and intentional infliction of emotional distress, and Defendant returned with a motion to dismiss Plaintiff's suit under the Texas Citizens Participation Act that was later denied by operation of law. We affirm the denial of Defendant's motion with respect to Plaintiff's defamation claim, but reverse and render judgment dismissing Plaintiff's claim for intentional infliction of emotional distress.

BACKGROUND

Defendant served as chairwoman of the courts for the Coles Crossing community, looking after the interests of local tennis players and ensuring that the community's tennis courts were well-maintained. Defendant gave monthly reports at the Coles Crossing homeowners' association board meetings.

Coles Crossing residents suggested the community install pickleball courts, so the HOA board set up an exploratory pickleball committee with members representing mixed interests: Plaintiff (team pickleball) was committee head and Defendant (team tennis) was one of several committee members. Things quickly soured, as the parties disagreed about the extent to which the tennis courts should be modified so they could double as pickleball courts.

During this time, Defendant also permitted a local tennis professional to use the courts to teach tennis lessons to children from the community. According to Defendant, she "received calls from at least four parents of clinic participants relaying serious concerns that an anonymous adult man was using his personal cell phone to take pictures of their young children doing drills on the tennis courts." Two HOA board members explained to Defendant that Plaintiff was taking the photographs to document HOA rules violations—namely, allowing a tennis professional to use multiple courts simultaneously. Plaintiff said he also relayed the reason for his photographs to Defendant.

Three months later, Defendant opened her monthly tennis report at the HOA board meeting by lobbing an accusation: she, "as a former teacher," had a "duty to report instances of sexual exploitation of minor children through photographs and videography." Defendant accused Plaintiff "of taking photographs of children for inappropriate purposes" and "implied that [he] was a pervert, pedophile, or sexual predator." Multiple community members complained to the HOA board about Defendant's statements.

The board president and two other board members set a meeting with Defendant to address her "persistent pattern of disruptive conduct" and requested that she apologize to Plaintiff and the board. Defendant acknowledged that she should not have made the derogatory comments about Plaintiff and apologized to the board members in attendance, but she refused to apologize to Plaintiff. Plaintiff sued Defendant for defamation and intentional infliction of emotional distress (IIED). Defendant moved to dismiss under the Texas Citizens Participation Act (TCPA), which was overruled by operation of law. *See* Tex. Civ. Prac. & Rem. Code §§ 27.001-.011. Defendant timely filed this interlocutory appeal. *See id*. § 51.014(a)(12).

ANALYSIS

I. The TCPA applies to Plaintiff's claims.

We approach this case by first deciding whether the TCPA applies to Plaintiff's claims. The TCPA applies to lawsuits based on or in response to a party's exercise of the right of free speech, which includes "communication[s] made in connection with a matter of public concern." Tex. Civ. Prac. & Rem. Code § 27.001(3). A matter of public concern refers to "a matter of political, social, or other interest to the community" or "a subject of concern to the public." *Id*. § 27.001(7)(B), (C). The communication at issue need not specifically mention

the matter of public concern or have more than a "tangential relationship" to such matter. *ExxonMobil Pipeline Co. v. Coleman*, 512 S.W.3d 895, 900 (Tex. 2017) (per curiam). Rather, the TCPA applies so long as the movant's statements are "in connection with" "issue[s] related to" a matter of public concern. *Id*.

Here, the setup for Plaintiff's claims are Defendant's statements during her monthly tennis report at the HOA board meeting about allegedly inappropriate photographs Plaintiff had taken during a children's tennis clinic held at the community courts. These statements were made in connection with "a subject of concern to the public" or a matter of "interest to the community." When communications are based on or in response to a matter of "community well-being," as here, the TCPA standard is satisfied, "even if private matters are also at stake." *Ewers v. Kern*, No. 14-23-00509-CV, 2024 WL 973771, at *4 (Tex. App.—Houston [14th Dist.] Mar. 7, 2024, no pet.).

Indeed, the facts of this case largely match those in *Ewers*, where we held the TCPA applied to claims based on the defendant stating at the community pool that the plaintiff had been taking inappropriate pictures of children. *Id.*; *see also Lyden v. Aldridge*, No. 02-23-00227-CV, 2023 WL 6631528, at *3 (Tex. App.—Fort Worth Oct. 12, 2023, no pet.) (TCPA applied to claims based on the defendant loudly accusing the plaintiff of pedophilia in a busy restaurant). Defendant met her burden to show by a preponderance of the evidence that the TCPA applies to Plaintiff's claims. *See* Tex. Civ. Prac. & Rem. Code § 27.003(a).

II. Plaintiff produced prima facie evidence to support his defamation claim.

The TCPA aims to protect citizens who associate, petition, or speak on matters of public concern from retaliatory lawsuits that seek to intimidate or silence them. *See In re Lipsky*, 460 S.W.3d 579, 584 (Tex. 2015) (orig.

proceeding). That protection comes in the form of a "special motion to dismiss" any suit that "appears to stifle the defendant's exercise of those rights." *Youngkin v. Hines*, 546 S.W.3d 675, 679 (Tex. 2018) (quotation omitted).

The burden in a TCPA motion to dismiss volleys back and forth between the parties. *Castleman v. Internet Money Ltd.*, 546 S.W.3d 684, 691 (Tex. 2018) (per curiam). First, the movant must demonstrate that the TCPA applies and show by a preponderance of the evidence that the legal action is based on or in response to the movant's exercise of the rights to associate, speak freely, or petition. *See* Tex. Civ. Prac. & Rem. Code § 27.005(b). If the movant clears this burden, the burden shifts to the nonmovant to establish by clear and specific evidence a prima facie case for each essential element of its claim. *Id*. § 27.005(c). Finally, if the nonmovant satisfies this requirement, the burden shifts back to the movant to establish as a matter of law any valid affirmative defenses. *Id*. § 27.005(d). Ultimately, a TCPA motion to dismiss is not the forum for deciding the winner; it simply decides whether the nonmovant has enough evidence to move to the next round. *In re Lipsky*, 460 S.W.3d at 591.

We review de novo whether the parties have met their respective TCPA burdens. *See Dallas Morning News, Inc. v. Hall*, 579 S.W.3d 370, 373 (Tex. 2019). In doing so, we view the pleadings and evidence in the light most favorable to Plaintiff, the nonmovant. *See Buzbee v. Clear Channel Outdoor, LLC*, 616 S.W.3d 14, 29 (Tex. App.—Houston [14th Dist.] 2020, no pet.).

Because the TCPA applies to Plaintiff's claims, the ball is in Plaintiff's court to provide prima facie evidence to support his defamation claim. Defamation is a false and injurious impression of a plaintiff published without legal excuse. *Turner v. KTRK Television, Inc.*, 38 S.W.3d 103, 115 (Tex. 2000). Plaintiff must show (1) 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. To block a TCPA motion to dismiss a defamation claim, the pleadings and evidence must show "the facts of when, where, and what was said, the defamatory nature of the statements, and how they damaged the plaintiff." *Id*. at 591.

"Prima facie case" refers to the "'minimum quantum of evidence necessary to support a rational inference that the allegation of fact is true.'" *Id*. at 590 (quoting *In re E.I. DuPont de Nemours & Co.*, 136 S.W.3d 218, 223 (Tex. 2004) (per curiam)). Evidence is "clear and specific" if it provides enough detail to show the factual basis for the claim. *Id*. at 590-91.

A. Publication of a false statement of fact

Plaintiff must first provide clear and specific evidence that the statement was made and was a statement of fact, which depends on its verifiability and the entire context in which it was made. *Nguyen v. Trinh*, No. 14-21-00110-CV, 2022 WL 805820, at *5 (Tex. App.—Houston [14th Dist.] Mar. 17, 2022, no pet.). He must also show publication of the defamatory statements, meaning they are "communicated orally, in writing, or in print to some third person who is 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) (internal quotation omitted).

Plaintiff makes this shot too, at least at the TCPA stage. Plaintiff stated in his declaration that Defendant "accused [him] of taking photographs of children for inappropriate purposes and implied that [he] was a pervert, pedophile or sexual predator." Rather than dealing with these concerns privately, she decided to take them to the court of public opinion: an HOA board meeting that was open to the public and had "a large audience."

Other evidence also gives the advantage to Plaintiff's claims. The declaration from HOA board president Derek Hooper stated that the challenged statements were made at a board meeting attended by approximately 35-40 people. Hooper confirmed that Defendant stated that she, "as a former teacher," had a "duty to report instances of sexual exploitation of minor children through photographs and videography." Hooper said he "understood that [Defendant] was accusing [Plaintiff] of being a pervert, pedophile, or sexual predator because of her previous complaints about [Plaintiff]." The declaration from HOA board secretary Sarah Green also stated that she "understood that [Defendant] was publicly accusing [Plaintiff] of being a pervert, pedophile or sexual predator." Finally, an email sent from a meeting attendee to the HOA board members complained about Defendant's conduct at the meeting and stated that he "believe[s] it is not appropriate to engage in extreme name calling, inflammatory language and using your position as a platform to slander and bash current board members."

Taken in its entire context and viewed in the light most favorable to Plaintiff, this evidence supports the rational inference that Defendant published a statement of fact by stating at the HOA board meeting that Plaintiff was taking inappropriate pictures of children. *See, e.g.*, *Kern*, 2024 WL 973771, at *5-6 (publication element satisfied where affidavits averred that the defendant had stated at the pool that the plaintiff "had been taking inappropriate pictures of girls," "had invited the girls to her home," and was "a pervert"). Plaintiff's defense was that he had been taking the challenged photographs to show rules violations, which provides prima facie evidence of the statements' falsity.

Defendant tries to sideline Plaintiff's affidavits by saying they present nothing more than conclusory statements. A conclusory statement is one that expresses a factual inference without providing underlying facts to support that

conclusion. *Padilla v. Metro. Transit Auth. of Harris Cnty.*, 497 S.W.3d 78, 86 (Tex. App.—Houston [14th Dist.] 2016, no pet.). But here, the statements in the declarations go beyond mere conclusions and provide sufficient underlying facts to show when, where, and what was said as necessary to support Plaintiff's defamation claim.

B. Defamatory statement concerning Plaintiff

Plaintiff must next present evidence showing that Defendant's statements were reasonably capable of defamatory meaning, which we examine from the perspective of an ordinary person in light of the surrounding circumstances. *Hancock v. Variyam*, 400 S.W.3d 59, 66 (Tex. 2013). Defamation per se refers to statements that are so obviously harmful that general damages may be presumed. *In re Lipsky*, 460 S.W.3d at 593. "Accusing someone of a crime, of having a foul or loathsome disease, or of engaging in serious sexual misconduct are examples of defamation per se." *Id*. at 596.

Here, the evidence shows that Defendant said Plaintiff was taking photographs of children for "inappropriate purposes" and implied that he was a "pervert, pedophile or sexual predator." An ordinary person would understand these statements to accuse Plaintiff of serious sexual misconduct; therefore, they constitute defamation per se and general damages may be presumed. *See, e.g.*, *Montano v. Cronan*, No. 09-20-00232-CV, 2021 WL 2963801, at *6 (Tex. App.—Beaumont July 15, 2021, no pet.) (statements accusing the plaintiff of being a "pedophile" and "[t]aking pictures of girls" were "accusations of serious sexual misconduct" that were defamatory per se).

Defendant argues that her comments do not qualify as an actionable false statement of fact or a statement implying any undisclosed facts, but that argument is out of bounds. Courts across Texas have held that similar statements are

verifiable statements of fact that keep a defamation claim in play. *Doe v. Cruz*, 683 S.W.3d 475, 495 (Tex. App.—San Antonio 2023, no pet.) (affirming denial of motion to dismiss defamation claim); *Benson v. Guerrero*, No. 01-23-00596-CV, 2024 WL 3941012, at *8 (Tex. App.—Houston [1st Dist.] Aug. 27, 2024, no pet.) (reversing trial court's dismissal under TCPA). We hold the same.

C. Requisite fault

The degree of fault necessary to maintain a defamation claim depends on the status of the person defamed: private individuals must prove that the defendant was at least negligent in making the challenged statements, whereas public figures must establish actual malice. *See WFAA-TV, Inc. v. McLemore*, 978 S.W.2d 568, 571 (Tex. 1998) Public figures may be classified as either general- or limited-purpose. *Id*. General-purpose public figures "are those individuals who have achieved such pervasive fame or notoriety that they become public figures for all purposes and in all contexts," and limited-purpose public figures "are only public figures for a limited range of issues surrounding a particular public controversy." *Id*.

Defendant asserts that Plaintiff is a limited-purpose public figure, meaning he must serve up evidence of actual malice to maintain his defamation claim. A three-part test determines whether a defamation claimant is a limited-purpose public figure:

1. the controversy at issue must be public both in the sense that people are discussing it and people other than the immediate participants in the controversy are likely to feel the impact of its resolution;
2. the plaintiff must have more than a trivial or tangential role in the controversy; and
3. the alleged defamation must be germane to the plaintiff's participation in the controversy.

Rodriguez v. Gonzalez, 566 S.W.3d 844, 850 (Tex. App.—Houston [14th Dist.]

2018, pet denied).

These requirements are satisfied here. The tennis versus pickleball debate was a matter of public controversy in the Coles Crossing community, the net effect of which would affect community members' ability to play at their local courts. Plaintiff was a major player in the controversy, as head of the exploratory pickleball committee. Finally, the alleged defamatory statements were related to Plaintiff's role in the controversy, *i.e.*, the reason he was taking photographs during a children's tennis clinic. *See also, e.g.*, *Vice v. Kasprzak*, 318 S.W.3d 1, 16 (Tex. App.—Houston [1st Dist.] 2009, pet. denied) (president of property owners' association was a limited-purpose public figure).

Therefore, the deciding point at this stage is whether Plaintiff brought forth prima facie evidence of actual malice—that the defamatory statements were published with either knowledge of their falsity or reckless disregard for their truth. *In re Lipsky*, 460 S.W.3d at 593. To show a reckless disregard for the truth, the plaintiff "must establish that the defendant in fact entertained serious doubts as to the truth of the publication or had a high degree of awareness of the probable falsity of the published information." *Forbes Inc. v. Granada Biosciences, Inc.*, 124 S.W.3d 167, 171 (Tex. 2003) (internal quotation omitted).

Plaintiff made the required showing: Defendant had twice been informed of the legitimate reasons for Plaintiff's photographs, but persisted in accusing Plaintiff of inappropriate purposes. Hooper said he and two other board members scheduled a meeting with Defendant after the board meeting to address "her persistent pattern of disruptive conduct." According to Hooper, Defendant "admitted . . . that she should not have made the derogatory comments about [Plaintiff] and acknowledged that she was wrong about [Plaintiff] being a pervert, pedophile or sexual predator"—further showing that Defendant made the

statements with reckless disregard for their truth. Taken together and viewed in the light most favorable to Plaintiff, this constitutes prima facie evidence that Defendant made the alleged defamatory statements with a high degree of awareness of their probable falsity.

Defendant makes two arguments in response. She first argues that a subsequent apology is not evidence of actual malice. But the Supreme Court of Texas has held that that the actual malice standard was satisfied where defendant—unprompted—"expressed doubt to a friend that there was any basis for the charges he was making." *Bentley v. Bunton*, 94 S.W.3d 561, 602 (Tex. 2002). This is especially true here because of the direct evidence that Defendant had been told of the innocent purpose for the pictures multiple times before the meeting. Defendant's second serve fails too: she argues that Plaintiff's actual motive in taking the pictures is "unverifiable," but all that is required at this stage is "a rational inference that the allegation of fact is true." *Benson*, 2024 WL 3941012, at *5. Plaintiff has met that standard.

In sum, Defendant's TCPA motion was properly denied with respect to Plaintiff's defamation claim because he brought forth sufficient evidence to establish a prima facie case for each element and Defendant has not raised any relevant affirmative defenses. We overrule Defendant's first issue.

III. Plaintiff has failed to establish a prima facie case of IIED under the TCPA.

A plaintiff asserting an IIED claim must prove (1) the defendant acted intentionally or recklessly, (2) the conduct was extreme or outrageous, and (3) the defendant's actions caused the plaintiff severe emotional distress. *Hersh v. Tatum*, 526 S.W.3d 462, 468 (Tex. 2017). IIED is not an ace; it is merely a "'gap-filler' tort, judicially created for the limited purpose of allowing 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." *Hoffmann-La Roche Inc. v. Zeltwanger*, 144 S.W.3d 438, 447 (Tex. 2004). Accordingly, "[w]here the gravamen of a plaintiff's complaint is really another tort, [IIED] should not be available." *Id*.

Here, Plaintiff's IIED claim is premised on the same statements alleged to support his defamation claim. The gravamen of Plaintiff's IIED claim is therefore the same as his defamation claim. Accordingly, because there is no "gap" to fill, Plaintiff failed to establish a prima facie case of IIED under the TCPA. *See Patel v. Patel*, No. 14-18-00771-CV, 2020 WL 2120313, at *10 (Tex. App.—Houston [14th Dist.] May 5, 2020, no pet.) (the plaintiff's IIED claim was properly dismissed under the TCPA because it was premised on the same statements alleged to support his defamation claim); *see also, e.g.*, *McShirley v. Lucas*, No. 02-23-00229-CV, 2024 WL 976512, at *13 (Tex. App.—Fort Worth Mar. 7, 2024, pet. denied) (same); *Doe v. Cruz*, 683 S.W.3d 475, 500 (Tex. App.—San Antonio 2023, no pet.) (same); *Whitelock v. Stewart*, 661 S.W.3d 583, 605 (Tex. App.—El Paso 2023, pet. denied) (same); *Warner Bros. Ent., Inc. v. Jones*, 538 S.W.3d 781, 814-15 (Tex. App.—Austin 2017), *aff'd*, 611 S.W.3d 1 (Tex. 2020) (same).

We sustain Defendant's challenge to the trial court's denial of her TCPA motion with respect to Plaintiff's IIED claim.

CONCLUSION

We affirm the trial court's denial of Defendant's TCPA motion with respect to Plaintiff's defamation claim. We reverse the denial of Defendant's motion with respect to Plaintiff's IIED claim and render judgment dismissing this claim. We remand the case for further proceedings.

/s/ Katy Boatman
Justice

Panel consists of Justices Bridges, Boatman, and Antú.