



**NUMBER 13-21-00304-CV**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI – EDINBURG**

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**JOHN DOE,**

**Appellant,**

**v.**

**MELISSA SMITH AND JOSE GARCIA,**

**Appellees.**

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**On appeal from the 206th District Court  
of Hidalgo County, Texas.**

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**MEMORANDUM OPINION ON REHEARING**

**Before Chief Justice Contreras and Justices Benavides and Marion<sup>1</sup>  
Memorandum Opinion on Rehearing by Chief Justice Contreras**

Appellees Melissa Smith and Jose “Pepe” Garcia filed a defamation suit against Dante Flores-Demarchi and appellant John Doe. Flores-Demarchi and Doe separately

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<sup>1</sup> The Honorable Sandee Bryan Marion, Senior Chief Justice (Retired) of the Fourth Court of Appeals, sitting by assignment of the Chief Justice of the Texas Supreme Court. See TEX. GOV'T CODE ANN. §§ 74.003, 75.002, 75.003.

moved to dismiss the suit under the Texas Citizens Participation Act (TCPA). Appellees subsequently withdrew their claims against Doe, and the trial court denied the TCPA motions to dismiss. Both Flores-Demarchi (appellate cause number 13-21-00303-CV) and Doe (appellate cause number 13-21-00304-CV) appealed. On original submission, we held that the trial court erred in denying the motions to dismiss. *Flores-Demarchi v. Smith*, Nos. 13-21-00303-CV & 13-21-00304-CV, 2022 WL 2348056 (Tex. App.—Corpus Christi—Edinburg June 30, 2022, no pet. h.) (mem. op.) (concluding that the claims should have been dismissed pursuant to the TCPA because appellees failed to produce clear and specific evidence of actual malice). With respect to Doe in particular, we remanded to the trial court to determine the proper amount of attorney’s fees and whether to award sanctions. *Id.* at \*12 (citing TEX. CIV. PRAC. & REM. CODE ANN. § 27.009(a)).

The cause is now before this Court on appellees’ and Doe’s “Joint Motion to Remand Due to Settlement,” which we construe as a motion for rehearing. The motion states that appellees and Doe have “settled all claims between them” and requests that we set aside our June 30, 2022 judgment and remand the case to the trial court for: (1) an order severing the claims concerning Doe from the claims concerning Flores-Demarchi; and (2) an order dismissing all claims between appellees and Doe with prejudice, with each party to “bear their own costs and fees.”

Having reviewed the motion and the case file, we conclude that the motion is meritorious and should be granted. Accordingly, we GRANT appellees’ and Doe’s “Joint Motion to Remand Due to Settlement,” which we construe as a motion for rehearing. We hereby withdraw our June 30, 2022 judgment in appellate cause number 13-21-00304-

CV, but not our memorandum opinion issued on that same date.<sup>2</sup> We set aside the trial court's judgment as to Doe without regard to the merits, and the case is remanded to the trial court for rendition of judgment in accordance with appellees' and Doe's settlement agreement. See TEX. R. APP. P. 42.1(a)(2)(B).

DORI CONTRERAS  
Chief Justice

Delivered and filed on the  
11th day of August, 2022.

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<sup>2</sup> Our June 30, 2022 judgment in appellate cause number 13-21-00303-CV remains in full force and effect.