NO. 12-19-00226-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

WILLIAM D. WALLER, JR., APPELLANT	***§***	***APPEAL FROM THE 2ND***
V.	***§***	***JUDICIAL DISTRICT COURT***
SUSAN J. WALLER, DOROTHY REID WALLER AND ALICIA G. TENNISON, APPELLEES	***§***	***CHEROKEE COUNTY, TEXAS***

MEMORANDUM OPINION

William D. Waller, Jr. (Bill), acting pro se, appeals from a summary judgment granted in favor of Susan J. Waller, Dorothy Reid Waller, and Alicia G. Tennison in Bill's suit for defamation, invasion of privacy, intentional infliction of emotional distress, and civil conspiracy. In two issues, Bill contends the trial court erred by sustaining Appellees' special exceptions and granting their motion for summary judgment. We affirm in part and reverse and remand in part.

BACKGROUND

Dorothy Reid Waller owns Waller Media, L.L.C. Susan, Alicia, and Bill are her children. Bill was the IT Manager for Waller Media until his termination in 2016. A few months later, Bill filed his original petition asserting causes of action based on events leading up to his termination. After he filed his fourth amended petition, Alicia filed special exceptions which were joined by Susan and Dorothy. The trial court granted the special exceptions and ordered Bill to replead and to specify what causes of action he is asserting, the facts that support each cause of action, and against whom he is alleging the conduct forming the basis of the cause of action.

In response, Bill filed what he entitled his sixth amended original petition. All defendants filed special exceptions to this petition asking the court to strike numerous specified paragraphs of the petition. Three weeks later, Bill filed almost 200 pages of exhibits purportedly in support of

his petition. After a hearing, the trial court sustained the special exceptions and struck ninety-nine paragraphs in the petition, with prejudice. The order also states that Bill "is not granted leave to replead or amend as to these allegations" because he previously had the opportunity to replead them and failed to do so, and amendment would not cure the defect. Thereafter, all defendants moved for summary judgment alleging that, after their special exceptions were sustained, the remaining paragraphs in Bill's petition do not assert any cause of action or allege any facts that would support any causes of action. The trial court granted the motion for summary judgment and ordered that Bill take nothing by his suit against Susan, Alicia, and Dorothy. This appeal ensued.[1]

SPECIAL EXCEPTIONS

In his first issue, Bill contends the trial court erred by sustaining special exceptions that were based on a fictitious pleading standard derived from a falsified record, affirmative defenses of privilege and immunity, misstatements of the law, misapplications of law, extrinsic evidence, and disputed facts. He asserts that, when the trial court struck ninety-nine paragraphs of his petition, it effectively dismissed all of his causes of action against Appellees. Further, he contends the trial court preemptively denied leave to amend. Bill points out that Appellees' special exceptions complained that he failed to plead sufficient factual detail and in response he provided 200 pages of exhibits. He also complains that Appellees attached twenty pages of external facts as exhibits to support their special exceptions.

Standard of Review

Special exceptions are a means of questioning the legal sufficiency of a plaintiff's petition. TEX. R. CIV. P. 91; ***Ross v. Goldstein***, 203 S.W.3d 508, 512 (Tex. App.−Houston [14th Dist.] 2006, no pet.). Although special exceptions are generally filed to force clarification of vague pleadings, they may also be used to determine whether the plaintiff has stated a cause of action permitted by law. ***Trevino v. Ortega***, 969 S.W.2d 950, 951-52 (Tex. 1998); ***Mowbray v. Avery***, 76 S.W.3d 663, 677 (Tex. App.−Corpus Christi 2002, pet. denied). A trial court has broad discretion in ruling on special exceptions. ***Baylor Univ. v. Sonnichsen***, 221 S.W.3d 632, 635 (Tex. 2007) (per curiam). Thus, we review a trial court's order sustaining special exceptions for abuse of discretion. ***Mowbray***, 76 S.W.3d at 678. If the court acted without reference to guiding rules and principles, or its act was arbitrary and unreasonable, then it abused its discretion. ***Id***.

[1] Bill has another appeal pending before this Court in cause number 12-19-00326-CV.

In reviewing a ruling on special exceptions, an appellate court must look to the rules of civil procedure and the body of case law which provides standards against which the pleadings are to be measured. ***Rodriguez v. Yenawine***, 556 S.W.2d 410, 414 (Tex. Civ. App.−Austin 1977, no writ). Texas follows a "fair notice" standard for pleading. ***Horizon/CMS Healthcare Corp. v. Auld***, 34 S.W.3d 887, 896 (Tex. 2000). Rule 45 of the Texas Rules of Civil Procedure mandates that the petition "consist of a statement in plain and concise language of the plaintiff's cause of action . . . ." TEX. R. CIV. P. 45. Similarly, Rule 47 provides that a petition shall contain "a short statement of the cause of action sufficient to give fair notice of the claim involved." TEX. R. CIV. P. 47.

On appeal, we accept as true all material factual allegations and all factual statements reasonably inferred from the allegations set forth in the excepted-to pleadings. ***Sorokolit v. Rhodes***, 889 S.W.2d 239, 240 (Tex. 1994). The court will look to the pleader's intent, and the pleading will be upheld even if some element of a cause of action has not been specifically alleged. ***Gulf Colo. & Santa Fe Ry Co. v. Bliss***, 368 S.W.2d 594, 599 (Tex. 1963). Every fact will be supplied that can reasonably be inferred from what is specifically stated. ***Id***. We liberally construe pleadings because special exceptions are only a challenge to determine if the fair notice requirements of pleadings have been met. ***Ross***, 203 S.W.3d at 512. If by examining the plaintiff's pleadings alone, we may ascertain with reasonable certainty the elements of a cause of action and the relief sought, the pleading is sufficient. ***Id***.

In determining whether a pleading is adequate, we examine whether an opposing attorney of reasonable competence, on review of the pleadings, can ascertain the nature and the basic issues of the controversy and what evidence might be relevant. ***First United Pentecostal Church of Beaumont v. Parker***, 514 S.W.3d 214, 224 (Tex. 2017). The fair notice standard measures whether the pleadings have provided the opposing party sufficient information to enable that party to prepare a defense or a response. ***Id***. at 224-25. "[T]o force a party to plead his entire case, with exactness, is not concordant with the spirit of the Rules governing pleading." ***Rodriguez***, 556 S.W.2d at 414. Further, a plaintiff is not required to set out in his pleadings the evidence upon which he relies to establish his asserted cause of action. ***Paramount Pipe & Supply Co. v. Muhr***, 749 S.W.2d 491, 494-95 (Tex. 1988).

If the trial court sustains special exceptions, it must allow the pleader an opportunity to amend the pleading, unless the pleading defect is of a type that amendment cannot cure. ***Baylor***

Univ., 221 S.W.3d at 635. However, the right to amend does not extend to the privilege of multiple opportunities to amend in the face of repeated grants of special exceptions. ***Mowbray***, 76 S.W.3d at 678. If there is no reasonable probability that further amendment would disclose facts legally sufficient to sustain a cause of action, the trial court may properly refuse further leave to amend. ***Id***. Once a trial court has sustained special exceptions, if the remainder of a pleading does not state a cause of action, the trial court does not err in rendering a final judgment of dismissal of the entire case. ***Id***. Likewise, a pleading-deficiency summary judgment may be proper if a party has had an opportunity by special exception to amend and fails to do so or she files an additional defective pleading. ***Natividad v. Alexsis, Inc.***, 875 S.W.2d 695, 699 (Tex. 1994).

Analysis

Appellees included their special exceptions in the same document as their answer and motion to dismiss, accompanied by four exhibits that are referenced in the motion to dismiss section. The special exceptions section, rather than being organized by topic, attacks the petition's numbered paragraphs in its numerical order. We will arrange our discussion by theory.

Defamation

The following paragraphs, pertinent to Bill's defamation cause of action, were stricken:

> 12. The defendants circulated slanderous and libelous content against the Plaintiff in Facebook Postings, SMS text messages, private Facebook messages, telephone conversations, and the many meetings between Defendants and prospective buyers of the Waller Media radio stations.
> 13. The defendants coordinated telephone tag teams and mustered quorums of corroborators to instill a common interest of hatred for the Plaintiff. The Defendants aligned their followers against a common enemy, the Plaintiff.
> 14. Susan Waller had more than 1,000 [F]acebook followers, and the Plaintiff was not one of them, so he had to rely on concerned parties who forwarded the posts and photographs to him. To deny the Plaintiff of evidence against her, Susan used the 'hit and run' Facebook tactic of allowing just enough time for her followers to see the postings before deleting them after they had done their damage.
> 15. Among the defamatory statements circulated by the Defendants was that the Plaintiff
>
> a. had stolen millions of dollars from Waller Media, LLC;
> b. had an elaborate mastermind plan to take all his mother's money;
> c. had organized a walkout in an attempted [sic] to force his mother to give him her radio stations;
> d. was volatile, crazy, and would do anything;
> e. had sabotaged the Waller Media towers;
> f. had been kicked out of the Marine Corps for homosexual conduct;
> g. had misappropriated money from Waller Media;
> h. had misappropriated money from Dorothy Waller;
> i. had made death threats against Dorothy Waller and others;
> j. had threatened to kill Susan Waller;

k. was responsible for ten million dollars that were missing;

l. was responsible for many fraudulent charges; and

m. had committed other crimes involving moral turpitude.

16. The Defendants have made many allegations of criminal conduct against the Plaintiff but have not and cannot produce a scintilla of evidence to prove their allegations. Below are just a few examples of the Defendant's allegations which impute crimes involving moral turpitude and cast the Plaintiff as unfit to serve his profession and are therefore defamatory per se.

a. An SMS message from Susan Waller to Rhonda Parsons began, "I guess you heard Bill's been stealing."

b. In JPD-02 [Jacksonville Police Department] at line 90, Susan Waller told a JPD Officer, "He's taken millions out of it." (meaning Waller Media)[2]

c. In JPD-05 at line 29, Alicia Tennison stated, "They have been brainwashed by My Brother. My Brother. I'll tell you this. Here's the deal. There are ten million dollars gone. Ten million dollars . . ."

d. In his response to OSHA [Occupational Safety and Health Administration], Nick Peacock stated, "Dorothy began to discover that Bill was misappropriating money from both her and the company."

e. In JPD-05 at line 62, Alicia stated, "he had signed several things over to him without her signature or her knowledge and she, not knowing that he's taking her for her last dime . . ."

f. In JPD-05 at line 64, Alicia stated, "Ricky Richards said, all those would have been sent to you, you know, you should have seen that and he had all that put back in his name and she never saw one of those so he could buy that building off the courthouse steps you know cheaply . . ."

17. The evidence will show that the defendants made certain criminal allegations against the Plaintiff with enough specificity to imply they had a basis in fact. If the defendants can not or will not provide a factual basis for their allegations, it is reasonable to conclude that their allegations were made falsely and with malicious intent.

a. Susan Waller – In Clarissa Ochoa's incident report dated June 10, 2016, according to Clarissa, Susan stated that she had discovered that the Plaintiff was the cause of many fraudulent charges.

b. Susan Waller – In JPD-02, Susan Waller states many times that the employees threatened to quit in a letter which she and Phil Shinalt both said Ricky Richards had. Phil Shinalt even offered to get the letter from Mr. Richards office. Accordingly, either

1) Susan Waller, Alicia Tennison, and Nick Peacock falsely claimed that there was such a letter with the intent to defraud, or

2) the letter has been concealed to obstruct justice.

c. Dorothy Waller – In Nick Peacock's August 23, 2016 response to OSHA, he stated, "Dorothy began to discover that Bill was misappropriating money from both her and the company."

d. Alicia Tennison – In the video JPD-05, Alicia stated my brother, I'll tell you this, there are ten million dollars missing.

18. In JPD-05, Alicia Tennison claimed, "My brother, I'll tell ya. Here's the deal. There are ten million dollars missing. Ten million dollars and a $400,000 debt." Alicia Tennison knew her statement was untrue because:

a. she offered no proof or basis in fact;

b. Dudley and Dorothy Waller never had ten million dollars net worth;

c. the disposition of Dorothy and Dudley Waller's funds is recorded in banking transactions and therefore not missing;

[2] Bill references transcripts of audio captured by Jacksonville Police Department officers' body cameras during their August 1, 2016 encounter at the Waller Media offices.

d. much of the "so-called" missing money can be attributed to disbursements made for the exclusive benefit of Susan Waller and Alicia Tennison, which Alicia knows or should know about;

e. other disbursements of significant amounts are well known to members of the Waller family;

f. money spent by Susan Waller and Alicia Tennison or for some other known reason couldn't have been stolen by the Plaintiff.

MEDIA EVENT TO ACHIEVE NATIONAL PROMINENCE

19. Susan Waller and Alicia Tennison had been spreading rumors portraying the Plaintiff as a brainwashing cult leader who had stolen millions of dollars from his mother, but there was still skepticism. All they needed was a police raid on Waller media to give the story some real credibility and make a sensational gossip line. . . . Injecting a police raid into the rumor mill would ingrain an indelible image of the Plaintiff as a despicable and loathsome crook in the public eye. The facts in evidence will corroborate every facet of this meticulous plan by the Defendants to orchestrate a media event, including the name they gave the operation, "SHOCK AND AWE" in their Facebook posts.

a. On the morning of August 1, 2016, Susan Waller and Phil Shinalt left a side door open and then circled the Waller Media Offices at a distance, waiting in ambush for the Plaintiff and the employees to enter the building.

b. When Susan Waller and Phil Shinalt saw that some employees had entered the building, Susan went to the Jacksonville Police Department and made a false report. She claimed that the employees had all received letters on Friday afternoon (July 29, 2016) notifying them that their employment was terminated and that they were not to enter the building. She told the officer that the employees had now broken into the building, that they were criminally trespassing, and that they wouldn't leave.

c. After Susan made her report to the officer, the plan seemed to stall, but then:

From JPD-02

20 Officer: I mean, if that's what it takes to keep. I mean if you've got power of attorney and

21 they don't want to abide by it then you may have to hire a security guard.

22 Susan: Okay. [long pause] Guess I'll call a lawyer.

23 Susan: Hey Angela would you tell Ricky that the employees won't leave and that Bill has been

23 served by Rodney, and he's still loitering around down there at the radio station? Okay.

24 Okay. Hey, Ricky, Bill was served this Morning [video ends]

d. Within a few minutes, the plan was back in motion.

e. Four police cruisers were deployed and moved into line formation across the street from the Waller Media Offices.

. . . .

20. On July 27, 2016, the Waller Media employees delivered a letter to Dorothy Waller reporting OSHA violations. From JPD-02 and statements made by Alicia Tennison and Nick Peacock in telephone conversations, it is evident that the defendants altered said letter by adding, "If you don't turn the radio stations over to Bill Waller by Friday at 9:00 AM, we will quit, we will walk out." The Defendants had committed forgery and fraud so that they could allege the Plaintiff had attempted extortion, a violation of the Hobbs Act, against his mother. It was libel per se.

21. In JPD-05, Alicia stated that on July 29, 2016, she presented the letter to Ricky Richards and that upon reading the letter Mr. Richards advised Dorothy

and family, "There is no question in my mind that this is an elaborate mastermind plan by Bill to take all your mother's money." "You have got to get him, out of there." "They are all in." "Fire them all." According to Susan Waller, Mr. Richards drafted the letter terminating the Plaintiff's employment.

22. The Plaintiff found out about the forgery plot after the media event on August 1, 2016, in a phone conversation with Nick Peacock. After Mr. Peacock had quoted the falsified content of the letter, the Plaintiff asked Mr. Peacock if he could read that statement. Mr. Peacock replied, "I have the letter. I read the letter, and those were their exact words." The Plaintiff informed Mr. Peacock that the real letter from the employees contained no such wording and that the letter he had was a forgery.

23. The Defendant's [sic] character assassination plot against the Plaintiff involved felony violations under Title 18 of the U.S. Code and Texas Penal Code.

a. The July 27, 2016 letter from the employees of Waller Media reported OSHA violations and was therefore protected under Section 11(c) of the Osh Act.

b. The alteration of the letter **falsified evidence** in federal jurisdiction.

c. The alteration created a fraudulent pretext for firing the Waller Media employees in **circumvention** of Section 11(c) of the OSH Act.

d. The alteration was intended to create a fraudulent defense to claims of retaliation in a conspiracy to interfere with or **obstruct** a federal investigation.

e. The alteration of the letter was a deception intended to secure the execution of a letter terminating the Plaintiff's employment. Securing execution of documents by deception is a violation of Tex. Penal Code § 32.46.

f. By knowingly concealing felony forgery and fraud by their clients, Mr. Richards and Mr. Peacock aided and abetted and became participants in a criminal conspiracy to destroy the Plaintiff's reputation. See Exceptions to Lawyer-Client Privilege in Tex. R. Evid. 503(d)(1) Furtherance of Crime or Fraud.

24. There is no question that the advice given by Ricky Richards to Dorothy Waller and family proximately caused the termination of the Plaintiff's employment. Susan Waller and Alicia Tennison repeated Mr. Richards advice as they circulated it among the broadcasters they entertained and others. Mr. Richards [sic] advice to Dorothy and family became the Defendants' bona fide proof that Plaintiff was a scoundrel and a thief. Mr. Richards legitimized and gave credibility to the Defendants' false allegations.

25. After meeting with Dorothy, Susan, and Alicia, Dave Garland, a prominent media broker from Houston said to the Plaintiff, "Your days in radio are over." The Plaintiff asked Mr. Garland if people believed all of Susan's stories. Mr. Garland responded, "It doesn't matter. There are plenty of younger men looking for jobs, and nobody wants to take a chance."

. . . .

29. The defamatory statements made and published by Defendants were statements of fact that were false, both in their particular details and in their main point, essence, or gist in the context in which they were made.

30. The defamatory statements made and published by Defendants directly or indirectly referred to the Plaintiff.

31. The defamatory statements made and published by Defendants were libelous per se and slanderous per se because they injured the Plaintiff's reputation and have exposed the Plaintiff to public hatred, contempt, ridicule, and/or financial injury.

32. The defamatory statements made and published by the Defendants were libelous per se and slanderous per se because they impeach the Plaintiff's honesty, integrity, virtue, and/or reputation.

> 33. The defamatory statements made and published by the Defendants were libelous per se and slanderous per se to the extent they falsely charged the Plaintiff with the commission of crimes.
> 34. In the alternative, the defamatory statements made and published by the Defendants were libelous and/or slanderous through innuendo and/or implication.
> 35. Defendants are strictly liable for the damages caused by the libel and slander.
> 36. Alternatively, Defendants knew the defamatory statements were false, or the Defendants were reckless with regard to whether the statements of fact were false.
> 37. Alternatively, Defendants should have known the defamatory statements were false.
> 38. The Plaintiff is entitled to recover nominal damages, general damages, assumed damages, special damages, and/or exemplary damages.

To maintain a defamation cause of action, a plaintiff must prove that the defendant published a statement that was defamatory concerning the plaintiff and, if the plaintiff is a private individual, allege that the defendant did so at least with negligence. *See* ***WFAA-TV, Inc. v. McLemore***, 978 S.W.2d 568, 571 (Tex. 1998). A statement is defamatory when a person of ordinary intelligence would interpret it in a way that tends to injure the subject's reputation and thereby expose the subject to public hatred, contempt, or ridicule, or financial injury, or to impeach the subject's honesty, integrity, virtue, or reputation. TEX. CIV. PRAC. & REM. CODE ANN. § 73.001 (West 2017); ***Turner v. KTRK Television, Inc.***, 38 S.W.3d 103, 114-15 (Tex. 2000). Texas courts have defined negligence in the defamation context as the failure to investigate the truth or falsity of a statement before publication and the failure to act as a reasonably prudent person. ***Fawcett v. Rogers***, 492 S.W.3d 18, 27 (Tex. App.−Houston [1st Dist.] 2016, no pet.) (op. on reh'g). In the petition, "the language complained of must be detailed and construed by its application to the facts and circumstances surrounding their utterance." ***Murray v. Harris***, 112 S.W.2d 1091, 1094 (Tex. Civ. App.−Amarillo 1938, writ dism'd). The petition must set out the particular defamatory words, or at least their substance and meaning. ***Id***.

Sufficiency of Pleading Details

Appellees did not argue that they are unaware that Bill at least attempted to assert a cause of action for defamation. Appellees complained that the petition was not sufficiently detailed in its allegations of defamation against each defendant, specifically attacking Paragraphs 12 through 16a, 25, and 29 through 37 on this basis. They complained that the allegations are not specific enough for them to "adequately prepare for trial." After careful review of the petition, we are at a loss to understand why Appellees cannot adequately prepare for trial.

Paragraph 12 alleges that Appellees circulated defamatory statements on social media and, in Paragraph 15, Bill itemized those statements. Paragraph 14 of the petition names Susan and alleges that she allowed her Facebook followers enough time to see damaging posts and photographs before she deleted them. Paragraph 16a alleges that Susan sent an SMS message saying that Bill had been stealing. In Paragraph 16b, Bill alleges that Susan told a police officer that Bill had "taken millions out of it." Paragraph 16c alleges that Alicia implied, while speaking to police, that Bill stole ten million dollars. In Paragraph 16e, Bill alleges that Alicia stated, while speaking to police, that Bill "signed several things over to" himself without Dorothy's knowledge and accused Bill of taking Dorothy "for her last dime." In Paragraph 17a, Bill alleged that Susan said Bill "was the cause of many fraudulent charges." These paragraphs fairly succinctly allege that Susan and Alicia told numerous people that Bill is a thief.

Furthermore, the petition includes additional informative paragraphs. The petition explains that the location of the slanderous and libelous content is in Facebook postings, SMS text messages, private Facebook messages, telephone conversations, and in-person meetings. The petition identifies specific defamatory statements in Paragraph 15a-m. In Paragraph 20, Bill offers his theory that Appellees altered a letter from Waller Media employees to make it appear that Bill attempted extortion.

The petition alleges that the defamatory statements concerned Bill, were false, injured his reputation, exposed him to public hatred, contempt, ridicule, and financial injury, and impeached his honesty, integrity, virtue, and reputation. The petition alleges that Appellees falsely charged him with the commission of crimes. The petition alleges that Appellees knew the defamatory statements were false, were reckless with regard to whether the statements were false, or should have known they were false.

The petition alleges, at a minimum, that Susan and Alicia accused Bill of stealing from Waller Media and Dorothy, and impugned his character online, by phone, and in person. Although not every statement is set out verbatim, the petition describes their substance and meaning. *See* ***Murray***, 112 S.W.2d at 1094. The law presumes certain categories of statements are defamatory per se, including statements that (1) unambiguously charge a crime, dishonesty, fraud or (2) are falsehoods that injure one in his office, business, profession, or occupation. ***Mohamed v. Ctr. for Sec. Policy***, 554 S.W.3d 767, 777 (Tex. App.—Dallas 2018, pet. denied); *see also* ***Campbell v. Salazar***, 960 S.W.2d 719, 725-26 (Tex. App.—El Paso 1997, pet. denied) (holding that if a written

or oral statement unambiguously and falsely imputes criminal conduct to the plaintiff, it is libelous or slanderous per se).

Appellees complain that Bill did not attach proof of Facebook statements to his petition. A plaintiff is not required to set out in his pleadings the evidence he relies on. *See* ***Muhr***, 749 S.W.2d at 494-95. Further, a merely evidentiary document may not be considered in aid of a pleading. ***White v. Porter***, 78 S.W.2d 287, 292 (Tex. Civ. App.−Texarkana 1934, no writ). Thus, Appellees' assertion that Bill should have attached proof to support his allegations is contrary to established law. *See* TEX. R. CIV. P. 59. We note that Bill made an untimely attempt to provide documentation of his allegations by filing exhibits long after he filed his petition, apparently in response to Appellees' argument.

Appellees assert that the petition contains immaterial allegations that obscure the specific facts they need to understand in order to prepare their defense. For instance, they complain that Paragraph 23 pleads violations of federal and state law that are not relevant to his causes of action. On the contrary, the petition contains explanations of the conflict between Bill and Appellees. This information provided the context of the alleged defamatory statements and demonstrated how Appellees allegedly attempted to destroy Bill's reputation. *See* ***Musser v. Smith Protective Servs., Inc.***, 723 S.W.2d 653, 655 (Tex. 1987) (held that determination of whether statement is defamatory is made by construing the statement as a whole in light of surrounding circumstances based upon how a person of ordinary intelligence would perceive the entire statement). While some of the sentences are evidentiary, they do not obscure the allegations needed for Appellees to prepare their defense. The details would not prevent an opposing attorney of reasonable competence from ascertaining the nature and basic issues of the controversy and the relevant evidence. *See* ***Parker***, 514 S.W.3d at 224.

Appellees also asserted in their special exception to Paragraph 16a that it did not state the date of the purported message, and they are entitled to know if "it is beyond the statute of limitations." Appellees' argument is misplaced. A party may plead himself out of court by affirmatively alleging facts negating his cause of action such as where he establishes his claims are barred by limitations. *See* ***Tex. Dep't of Corrs. v. Herring***, 513 S.W.2d 6, 11 (Tex. 1974). However, the defense of limitations may be addressed by way of special exceptions only if it is clear from the face of the plaintiff's pleadings that limitations has run. ***Chacon v. Andrews Distrib. Co. Ltd.***, 295 S.W.3d 715, 721 (Tex. App.—Corpus Christi 2009, pet. denied); *see also* ***Interfirst***

Bank San Antonio N.A. v. Murry, 740 S.W.2d 550, 551 (Tex. App.—San Antonio 1987, no writ) (held that allegation concerning the expiration of a cause of action is an affirmative defense, not a special exception). Here, Appellees inappropriately asked for a special exception on the basis that Bill had not provided them with a limitations defense. Further, the absence of the date the statement was made does not render the petition lacking in "fair notice." *See* ***Parker***, 514 S.W.3d at 224-25. Moreover, Bill filed his exhibits four days before the hearing on the special exceptions. While ineffectual as to Bill, Appellees were able to read the exhibits and discern if they could rely on a limitations defense. The exhibits complain of events of the summer of 2016. Bill filed his original petition on November 15, 2016. A suit for defamation must be brought within one year of the publication of the statements. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 16.002 (West 2017).

Judicial Privilege

In their special exceptions, Appellees asserted, in part, that Paragraphs 15 through 22 and 24 should be stricken because some of the statements alleged therein are protected by judicial privilege. The basis of their argument is vague and references a discussion earlier in the document containing the special exceptions, in a section requesting dismissal. In that discussion, they assert "it appears that *most* of the alleged defamatory statements relate to statements either made by the lawyers in this case or by the parties in this case in contemplation of, and potentially after . . . initiation of judicial proceedings." They asserted that "the precipitating factors for all of the statements about which [Bill] complains in the Sixth Amended Petition were threatening letters from Waller Media employees and then letters from lawyers." They asserted that statements made by any defendant that repeated something the defendant's lawyer said, or statements made by the lawyer himself, including all of the statements made to the police, relate to initiation of or contemplation of legal proceedings and are subject to absolute judicial privilege. They assert that Paragraphs 17a-d "relate to either OSHA litigation or this litigation and similarly are protected by the judicial privilege."

Certain communications are protected from actions for defamation. The occasion of the communication is that which gives character to it as privileged or not. ***Runge v. Franklin***, 10 S.W. 721, 723 (Tex. 1889). The affirmative defense of judicial privilege applies to bar claims that are based on communications related to a judicial proceeding that seek defamation-type damages. ***Deuell v. Tex. Right to Life Comm., Inc.***, 508 S.W.3d 679, 689 (Tex. App.—Houston [1st Dist.]

2016, pet. denied). Communications made in the course of a judicial proceeding are absolutely privileged and will not serve as the basis of a civil action for libel or slander regardless of the negligence or malice with which they are made. ***Id***. This privilege extends to any statements made by the judges, jurors, counsel, parties, or witnesses and attaches to all aspects of the proceedings, including statements made in open court, pre-trial hearings, depositions, affidavits, and any pleadings or other papers in the case. ***Id***. Judicial privilege also extends to statements made in contemplation of and preliminary to judicial proceedings. ***Id***. To trigger the privilege, there must be a relationship between the correspondence and the proposed or existing judicial proceeding, which decision is made by considering the entire communication in context, resolving all doubts in favor of its relevancy. ***Id***. at 690. The privilege "cannot be enlarged into a license to go about in the community and make false and slanderous charges . . . ." ***De Mankowski v. Ship Channel Dev. Co.***, 300 S.W. 118, 122 (Tex. Civ. App.—Galveston 1927, no writ). It is clear that the defamatory material may be published only if it has some relation to a judicial proceeding. *See* ***Odeneal v. Wofford***, 668 S.W.2d 819, 820 (Tex. App.—Dallas 1984, writ ref'd n.r.e.).

Here, it is not evident from the face of the pleading that the communications alleged are protected by the judicial proceedings privilege. In his petition, Bill referenced comments made in social media and alleged that Appellees were spreading rumors. The petition does not put these allegedly defamatory communications into the context of a judicial proceeding. Further, we consider the fact that the recipients of social media communications, much like the general public, have no direct interest in the litigation, nor have they been shown to possess evidentiary information relevant to it. *See* ***BancPass, Inc. v. Highway Toll Admin. LLC***, 863 F.3d 391, 405 (5th Cir. 2017) (held that application of the privilege to defamatory letters to third parties not appropriate); ***Burzynski v. Aetna Life Ins. Co.***, 967 F.2d 1063, 1068 (5th Cir. 1992) (held that party cannot claim privilege to avoid liability for sending out defamatory material to parties having no cognizable legal interest in pending litigation). Inasmuch as this type of communication is not in the regular course of any judicial proceeding, we are not inclined to extend the judicial privilege to the communications made via social media.

The petition further references a letter written by Waller Media employees, a description of the events of one day when police were called to Waller Media offices, a description of criminal allegations against him, and an explanation that an attorney advised Appellees that all employees should be fired. None of these allegations were alleged to have any relationship to any existing or

proposed judicial proceeding. *See* ***Odeneal***, 668 S.W.2d at 820. The petition also referenced, without details, OSHA violations and a federal investigation. There is not sufficient information in the petition to determine as a matter of law that a federal investigation is under way or that any of the alleged defamatory statements have any relation to said federal investigation. Without adequate context, the court cannot reasonably determine whether the communications relate to a particular judicial proceeding. *See* ***McCrary v. Hightower***, 513 S.W.3d 1, 7 (Tex. App.—Houston [14th Dist.] 2016, no pet.). Although the circumstances may seem ripe for spawning litigation, the petition does not affirmatively put any defamatory communications into the context of any identifiable judicial proceeding, either in progress or under serious consideration. Therefore, special exceptions were not appropriate on the basis of judicial privilege.

Qualified Privilege

Appellees also assert the affirmative defense of qualified privilege. They contend that the statements made to officers of the Jacksonville Police Department accusing Bill of committing criminal acts are presumed to be made in good faith, and Bill did not give fair notice of how and why he contended each Defendant knew the statements were false.

A qualified immunity or privilege attaches to good faith communications on a subject in which the maker has an interest or duty to another person having a corresponding interest or duty. ***Iroh v. Igwe***, 461 S.W.3d 253, 263 (Tex. App.—Dallas 2015, pet. denied). Qualified immunity or privilege is an affirmative defense. ***Id***. at 264. It is not properly raised by special exceptions. *See* ***Neff v. Brady***, 527 S.W.3d 511, 530 (Tex. App.—Houston [1st Dist.] 2017, no pet.). Affirmative defenses are matters of avoidance, and the defendant asserting the qualified privilege has the burden to plead and prove the statement made is privileged. ***Iroh***, 461 S.W.3d at 264; ***Villarreal v. Martinez***, 834 S.W.2d 450, 452 (Tex. App.—Corpus Christi 1992, no writ). Qualified privilege justifies the statements if they are made without malice, and the defendant must prove good faith. ***Roberts v. Davis***, 160 S.W.3d 256, 263 (Tex. App.—Texarkana 2005, pet. denied). Qualified privilege is lost, however, if the defamatory statement is in any degree actuated by malice. ***Marathon Oil Co. v. Salazar***, 682 S.W.2d 624, 630 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.).

In their special exceptions, Appellees asserted that the statements were made in good faith and now argue that Bill must prove malice. Appellees have conflated the concepts of affirmative defense and special exception. Appellees seem to argue that by claiming, in special exceptions,

that they made the statements in good faith, they have proven this element. They then urge that the burden to prove malice is Bill's, which he must do in his petition. Whether the statements were made with malice requires evidence extrinsic to Bill's pleadings. Appellees' affirmative defense of qualified privilege was improperly asserted as a special exception. The trial court erred in granting any special exceptions on the basis of qualified privilege. *See* ***Villareal***, 834 S.W.3d at 452.

Defamation-Conclusion

Bill's sixth amended petition alleged all of the elements of a defamation cause of action against Susan and Alicia. *See* ***WFAA-TV, Inc.***, 978 S.W.2d at 571. Moreover, the pleading provided fair notice of a defamation claim against Susan and Alicia. *See* ***Ross***, 203 S.W.3d at 512. That is, an opposing attorney of reasonable competence can review the pleading and ascertain the nature and the basic issues of controversy and what evidence might be relevant. *See* ***Parker***, 514 S.W.3d at 224. Accordingly, the trial court erred in sustaining special exceptions to Paragraphs 12 through 25, 29 through 34, and 36 through 37 as to Susan and Alicia.

In Paragraph 38 of the petition, Bill alleged entitlement to an array of damages. In their special exception, Appellees stated: "In Paragraph 38, Plaintiff states that Defendants are not media defendants but throughout his lawsuit contends that defendants' media blitz and media business gave them the outlet to proceed. Plaintiff cannot have it both ways." This appears to address Paragraph 28 which is simply the statement that "Defendants are all non-media defendants." Paragraph 28 was not stricken by the trial court. Therefore, Appellees did not specially except to any of the allegations in Paragraph 38, and the trial court erred in striking Paragraph 38.

The trial court properly sustained the special exception to Paragraph 35, which alleged that Appellees are strictly liable for damages caused by the defamatory statements. *See* ***Hancock v. Variyam***, 400 S.W.3d 59, 65 n.7 (Tex. 2013) (held that defamation cause of action between private parties over a matter of private concern requires a showing of fault).

However, Bill's petition does not make any allegations attributing any defamatory statements to Dorothy. It follows that Dorothy did not receive fair notice of Bill's defamation cause of action against her. *See* ***Auld***, 34 S.W.3d at 896. The trial court did not abuse its discretion by sustaining special exceptions to defamation allegations against Dorothy. *See* ***Mowbray***, 76 S.W.3d at 678.

Civil Conspiracy

In Paragraph 8, Bill listed his claims for relief, including civil conspiracy in Paragraph 8(a)(4). In Paragraph 39, Bill alleged that Appellees entered into a conspiracy as follows:

> The Defendants entered into a conspiracy to destroy the Plaintiff's character by slander and libel (defamation) for their enrichment and sadistic pleasure. The Defendants committed forgery and falsification of evidence to frame the Plaintiff in an extortion plot. Susan Waller, Alicia Tennison, Dorothy Waller, Ricky Richards, Nick Peacock, and others known and unknown acted in concert to conceal the crimes, obstruct justice and deprive the Plaintiff of due process of law. There was a meeting of the minds of the Defendants to destroy the Plaintiff's public and professional reputation. The Defendants used unlawful means. The Plaintiff was proximately damaged as a result of the Defendants' conspiracy to destroy his character.
>
> a. Susan Waller – the dominant member and the most outspoken.
> b. Alicia Tennison – Alicia was steadfast in her support of Susan Waller's objectives, attending many meetings both by phone and in person with members of the broadcast community who were the prospective buyers of the Waller Media radio stations. Susan used the meetings as a platform to spread false rumors about the Plaintiff and Alicia's presence, and solidarity gave Susan credibility she otherwise wouldn't have had.
> c. Dorothy Waller – played a significant and crucial role in the conspiracy by funding, empowering, enabling, and supporting the [sic] Susan Waller and Alicia Tennison. Had Dorothy not given Susan control of Waller Media and Waller Broadcasting, Susan wouldn't have had a reason to associate with broadcasters.

In their special exceptions, Appellees assailed the civil conspiracy allegation as follows:

> Civil conspiracy is not a cause of action. It is a mechanism to hold one person liable for the acts of another assuming a conspiracy can be established. It is a derivative tort and requires some other tort to be established. Paragraph 8(4) should be stricken.
>
> . . . .
>
> Paragraph 39 relates to the 'cause of action' of civil conspiracy. Conspiracy is not a cause of action as set forth above. The Court should strike this paragraph.

In their brief, Appellees argue that the trial court properly granted their special exceptions to each of Bill's underlying tort claims, and therefore his allegation of conspiracy to commit these torts is meaningless. Specifically, they argue the pleading does not allege a meeting of the minds inasmuch as it does not show that any two defendants agreed to defame Bill.

Civil conspiracy is a vicarious liability theory that imparts joint-and-several liability to a co-conspirator who may not be liable for the underlying tort. ***Agar Corp., Inc. v. Electro Circuits Int'l, LLC***, 580 S.W.3d 136, 140 (Tex. 2019). Civil conspiracy is a derivative tort, meaning it depends on some underlying tort or other illegal act. ***Id***. at 140-41. A civil conspiracy claim is connected to the underlying tort and survives or fails alongside it. ***Id***. at 141. It is not inconsistent to say civil conspiracy is a vicarious liability theory while also recognizing that it is a kind of cause of action. ***Id***.

As we have explained, the trial court erred in striking Bill's allegations that Susan and Alicia defamed him. The underlying tort of defamation remains. Therefore, the civil conspiracy claim is not meaningless as to Susan and Alicia. Of course, we agree there is no claim for civil conspiracy against Dorothy.

One of the elements of civil conspiracy is a meeting of minds on the object or course of action. ***Id***. For a meeting of the minds to occur, there must be a preconceived plan and unity of design and purpose. *See* ***Schlumberger Well Surveying Corp. v. Nortex Oil & Gas Corp.***, 435 S.W.2d 854, 857 (Tex. 1968). Here, Bill alleged that Susan, Alicia, and an attorney, with the intent to defraud, falsely claimed that a particular letter from Waller Media employees existed, the contents of which allegedly proved wrongdoing by Bill. He alleged that Appellees "coordinated telephone tag teams and mustered quorums of corroborators to instill a common interest of hatred for the Plaintiff. The Defendants aligned their followers against a common enemy, the Plaintiff." Bill alleged that Susan and Alicia spread rumors portraying Bill as a "brainwashing cult leader who had stolen millions of dollars from his mother" and orchestrated a police raid on Waller Media to give their story credibility. Bill also alleged that Appellees committed forgery and falsified evidence to frame him. Taken as a whole, the petition describes how Susan and Alicia had a preconceived plan and unity of design and purpose to "assassinate [Bill's] character" and "destroy his professional reputation." We conclude that the petition provided fair notice of Bill's claim for civil conspiracy against Susan and Alicia. The trial court erred in striking Paragraphs 8(a)(4), 39, and 39(a) through (c) as to Susan and Alicia.

Invasion of Privacy

In his petition, Bill entitled his third cause of action invasion of privacy, public disclosure of private information. His specific contentions are as follows:

> 40. The Plaintiff had every reason to expect that his workstation would remain private and secure at the Waller Media Offices. The Plaintiff's expectation of privacy was based on:
>
> a. The Plaintiff's computer was his personal property.
> b. The Plaintiff's computer was password protected.
> c. The Plaintiff's email accounts were password protected, and the Plaintiff had exclusive control of those passwords.
> d. The Plaintiff had two email accounts which were breached. One was a Waller Media company account, and the other was a gmail account.
> e. The Plaintiff's computer was kept in the engineering office which was locked with an electronic door lock which Plaintiff had provided.
> f. The Plaintiff's computer contained more than ten years of personal and private information including personal identifying information, federal income tax returns, credit information, credit card statements, bank statements, personal health information, medical records, personal correspondence, personal email, and personal journals. Anyone would have known that this was personal and not company information.
> g. The Plaintiff was the IT Manager of Waller Media with complete charge of the company's computer systems, software, and email.
> h. Waller Media was owned by the Plaintiff's parents who had never interfered with the IT Management of the company, the computers, or email accounts.
> i. The Plaintiff had no reason to expect that his computer would be confiscated and that his computer and email would be hacked to breach password security.
>
> 41. On August 1, 2016, Susan Waller confiscated the Plaintiff's computer and breached its password security in violation of Tex. Penal Code § 33.02 Breach of Computer Security. Susan Waller had no legitimate reason to access the Plaintiff's personal and private information, and it was easily recognizable as such. With malice and intent to embarrass, humiliate, and cause harm to the Plaintiff, Susan Waller invited her house guests, including Rob Gregg, who had no connection to Waller Media, to rummage through the Plaintiff's private and personal files for their amusement. The indiscriminate public exposure of the Plaintiff's personal and private information proximately caused injury to the Plaintiff.

In their special exceptions, Appellees asserted that Paragraphs 40 and 41 should be stricken because Bill has no right to or expectation of privacy in any email located on a company computer, data stored on a company server, or a computer located on the company's premises behind the company's locked door.

An individual has the "right to be free from the publicizing of one's private affairs with which the public has no legitimate concern." ***Indus. Found. of the S. v. Tex. Indus. Accident Bd.***, 540 S.W.2d 668, 682 (Tex. 1976). A cause of action for public disclosure of private facts arises when a person gives publicity to matters concerning the plaintiff's personal life that would be highly offensive to a reasonable person of ordinary sensibilities, and the matter publicized is not of legitimate concern to the public. ***Id***. The information must contain highly intimate or

embarrassing facts about a person's private affairs, such that its publication would be highly objectionable to a person of ordinary sensibilities. ***Id***. at 683. The publicity requirement of this tort requires communication to more than a small group of persons; the matter must be communicated to the public at large, such that the matter becomes one of public knowledge. ***Id***. at 863-64.

Bill alleged that personal and private information falling into several categories was stored on his computer. Even assuming that at least some of this information contained highly intimate or embarrassing facts about him, Bill has not alleged facts satisfying the publicity requirement. At most, Bill alleged that Susan and her house guests rummaged through the files. He did not allege that the information was communicated to the public at large. *See* ***id***. Further, Bill did not allege that Alicia or Dorothy publicly disclosed any of his private information. We conclude that the trial court did not err in granting special exceptions to Paragraphs 40, 40a-i, and 41.

Intentional Infliction of Emotional Distress

Bill's allegations regarding his intentional infliction of emotional distress claim are as follows:

> 42. Plaintiff continues to suffer severe emotional distress because of Defendants' extreme and outrageous conduct. Defendants intentionally and/or recklessly made statements that were calculated and intended to harm the Plaintiff. The Defendants meticulously planned and orchestrated their attack on the Plaintiff to have maximum destructive impact on the Plaintiff's reputation, to humiliate and embarrass him, and to blacklist [sic] in his profession. The Plaintiff's emotional distress has been severe. Examples of the Defendants' outrageous allegations and actions include, but are not limited to:
>
> a. The Plaintiff is responsible for ten million dollars that are missing.
> b. The Plaintiff has stolen millions of dollars from Waller Media.
> c. The Plaintiff had an elaborate mastermind plan to take all his mother's money.
> d. The Plaintiff made death threats on his mother and others.
> e. The Plaintiff mismanaged Waller Media and bankrupted it.
> f. The Plaintiff was kicked out of the Marine Corps for homosexual conduct.
> g. Egregiously, the Defendants falsified a July 27, 2016 letter from the employees of Waller Media, LLC reporting OSHA violations to Dorothy Waller to frame the Plaintiff in an extortion plot to force his mother to give him her radio stations.
>
> 43. The Defendants acted intentionally and recklessly. Their conduct was extreme and outrageous. Their actions caused the Plaintiff emotional distress. The Plaintiff's emotional distress was severe. The Defendants' actions proximately caused harm to the Plaintiff.

To recover damages for the common law cause of action of intentional infliction of emotional distress, a plaintiff must establish that the defendant acted intentionally or recklessly, her conduct was extreme and outrageous and caused the plaintiff emotional distress, and the resulting emotional distress was severe. ***Hoffmann-La Roche, Inc. v. Zeltwanger***, 144 S.W.3d 438, 445 (Tex. 2004). This tort is a "gap-filler" tort which was created to allow recovery in 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. ***Id***. at 447. The tort's purpose is to supplement existing forms of recovery by providing a cause of action for egregious conduct that might otherwise go unremedied. ***Id***. It was not intended to replace or duplicate existing statutory or common law remedies. ***Id***. Thus, where the gravamen of a complaint is another tort, intentional infliction of emotional distress is not available as a cause of action. ***Id***. at 447-48.

The facts that form the basis of Bill's claim for intentional infliction of emotional distress are the same as those that form the basis of his defamation claim. Because the face of the pleading shows that Bill cannot prevail on his claim for intentional infliction of emotional distress, the trial court did not err in granting special exceptions to Paragraphs 42, 42a-g, and 43.

Respondeat Superior

In Paragraph 48 Bill alleged that Appellees' attorneys acted as agents for Appellees and, therefore, Appellees are vicariously liable for the attorney's actions. He withdrew this argument in his brief on appeal.

In Paragraph 49, Bill alleged as follows:

> Susan Waller and Alicia Tennison were acting as agents on behalf of Dorothy Waller who had empowered and enabled Susan Waller by power of attorney and who had funded Susan and Alicia and paid their legal fees. Therefore, Dorothy Waller assumes vicarious liability for the actions of Susan Waller and Alicia Tennison to the extent that they were acting as her agents.

Bill did not allege any facts to support an agency relationship between Alicia and Dorothy. He alleged that Susan was Dorothy's agent by virtue of a power of attorney. Bill alleged that Dorothy gave Susan control of Waller Media and Waller Broadcasting, and Dorothy is liable for Susan's actions because Susan acted pursuant to the power of attorney. The authority of an agent acting pursuant to a power of attorney is determined by statute. *See* TEX. EST. CODE ANN. § 751.031(a) (West Supp. 2019). Therefore, Susan was empowered to operate Waller Media and Waller Broadcasting and determine the nature and extent of the business operations transactions of those

entities. *See* ***id***. § 752.107 (West 2014). The statute does not authorize defamation. "The rule of respondeat superior does not apply when it is evident that the servant is not engaged upon any duty for which he is employed, when committing" the complained-of act. *See* ***Nat'l Life & Acc. Ins. Co. v. Ringo***, 137 S.W.2d 828, 830 (Tex. Civ. App.—Dallas 1940, writ ref'd).

Moreover, Bill alleged that the defamation was perpetrated for the Appellees' "enrichment and sadistic pleasure." Also, he alleged that they wanted to deprive Bill of due process and destroy his public and professional reputation. Bill did not allege that the defamatory statements were made within the scope of authority of the agency relationship, in furtherance of Dorothy's business, were closely connected to performance of Susan's agency duties, or that they were made for the accomplishment of the objective of the agency. *See* ***Minyard Food Stores, Inc. v. Goodman***, 80 S.W.3d 573, 577 (Tex. 2002). We conclude that the trial court did not err in striking Paragraphs 48 and 49.

Corporate Disregard

In Paragraphs 50, 51, and 52, Bill alleged that Waller Media, LLC, Waller Broadcasting, Inc., and Waller Properties, Inc. came under the exclusive control of Dorothy Waller through her agent, Susan Waller. He specifically alleged that "[i]f the Court determines that any or all of the entities are liable for damages to the Plaintiff, the Plaintiff requests that the Court disregard the corporate and/or LLC fictions under either the alter ego theory or to prevent the perpetuation of injustice pursuant to" the Texas Business Organizations Code. Because none of the entities referred to are parties to this cause and cannot be held liable in this lawsuit, the trial court did not err in striking Paragraphs 50, 51, and 52.

Joint and Several Liability

In Paragraph 53, Bill sought to recover from Appellees jointly and severally. As discussed above, Bill's cause of action for defamation by Susan and Alicia, and his allegation that they conspired to defame him, survive. Once a civil conspiracy is found, each co-conspirator is responsible for the action of any of the co-conspirators which is in furtherance of the unlawful combination. ***Akin v. Dahl***, 661 S.W.2d 917, 921 (Tex. 1983). The concept of civil conspiracy is used to extend the liability in tort beyond the active wrongdoer to those who have merely planned, assisted, or encouraged her acts. ***Carroll v. Timmers Chevrolet, Inc.***, 592 S.W.2d 922, 925-26 (Tex. 1979). A finding of civil conspiracy imposes joint and several liability on all co-conspirators for any actual damages resulting from the acts in furtherance of the conspiracy. ***Hart v. Moore***,

952 S.W.2d 90, 98 (Tex. App.—Amarillo 1997, writ denied). Bill may yet be able to prove both defamation and civil conspiracy and, therefore, except as to Dorothy, the trial court erred in striking Paragraph 53.

Conclusion

The trial court erred in sustaining Appellees' special exceptions to, and striking, Paragraphs 8(a)(4), 12 through 25, 29 through 34, 36 through 39(c), and 53 as to Susan and Alicia, but not as to Dorothy. The trial court did not err in striking Paragraphs 35, 40 through 43, and 48 through 52. Accordingly, we sustain Bill's first issue in part, and overrule it in part.

SUMMARY JUDGMENT

In his second issue, Bill contends the trial court erred in granting summary judgment in favor of Appellees, who asserted both traditional and no-evidence motions for summary judgment. The trial court's order does not state why it granted the motion.

Appellees' argument in support of their no evidence motion for summary judgment complains that "[a]s there are no claims advanced against Defendants, plaintiff cannot raise a 'genuine issue of material fact' on anything relating to Defendants and they are, therefore, entitled to summary judgment that plaintiff take nothing by his lawsuit against the Defendants."

A trial court cannot grant a summary judgment motion on grounds not presented in the motion. ***Timpte Indus., Inc. v. Gish***, 286 S.W.3d 306, 310 (Tex. 2009). The motion must be specific in challenging the evidentiary support for an element of a claim or defense. ***Id***. Texas Rule of Civil Procedure 166(i), which authorizes no-evidence motions for summary judgment, does not authorize conclusory motions or general no-evidence challenges to an opponent's case. TEX. R. CIV. P. 166(a)(i); ***Gish***, 286 S.W.3d at 310. Appellees' no evidence motion for summary judgment failed the specificity requirements of Rule 166a(i). Accordingly, the trial court erred in granting Appellees' no-evidence motion for summary judgment.

The traditional motion for summary judgment was based on the argument that sustaining the special exceptions left the petition devoid of causes of action and ripe for dismissal. A party moving for traditional summary judgment bears the burden of showing that no genuine issue of material fact exists and that she is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c). Where, as here, summary judgment is based on a party's pleadings, we review the pleadings de novo. ***Natividad***, 875 S.W.2d at 699. The reviewing court takes all allegations, facts, and

inferences in the pleadings as true and views them in a light most favorable to the pleader. ***Id***. The reviewing court will affirm the summary judgment only if the pleadings are legally insufficient. ***Id***.

As explained above, Bill's sixth amended petition did not allege any cause of action against Dorothy. Therefore, the trial court did not err in rendering a take nothing summary judgment against Bill as to Dorothy. However, Bill's sixth amended petition stated a cause of action for defamation, and accompanying claims for conspiracy and joint and several liability, against Susan and Alicia. Accordingly, the summary judgment is reversed as to the claims for defamation, conspiracy, and joint and several liability against Susan and Alicia. We overrule Bill's second issue in part and sustain it in part.

DISPOSITION

The trial court erroneously sustained Appellees' special exceptions to Paragraphs 8(a)(4), 12 through 25, 29 through 34, 36 through 39(c), and 53 as to Susan and Alicia. Therefore, the trial court erred in rendering a take nothing judgment against Bill in favor of Susan and Alicia. We ***reverse*** the summary judgment to the extent it disposes of Bill's causes of action for defamation and conspiracy against Susan Waller and Alicia Tennison, and we ***remand*** this cause to the trial court for further proceedings consistent with this opinion.

We ***affirm*** the summary judgment to the extent it disposes of Bill's causes of action for invasion of privacy and intentional infliction of emotional distress against Susan Waller and Alicia Tennison and all of his causes of action against Dorothy Waller.

JAMES T. WORTHEN
Chief Justice

Opinion delivered June 5, 2020.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

JUNE 5, 2020

NO. 12-19-00226-CV

WILLIAM D. WALLER, JR.,
Appellant
V.
SUSAN J. WALLER, DOROTHY REID WALLER AND ALICIA G. TENNISON,
Appellees

Appeal from the 2nd District Court
of Cherokee County, Texas (Tr.Ct.No. 2016-11-0772)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was error in the judgment of the court below. In accordance with this court's opinion of this date, the judgment of the trial court is **affirmed** in part and **reversed** and **remanded** in part, as follows:

It is therefore ORDERED, ADJUDGED and DECREED that the portion of the judgment ordering that William D. Waller, Jr. take nothing by his suit against Susan J. Waller and Alicia G. Waller Tennison for defamation and civil conspiracy is **reversed** and the cause is **remanded** to the trial court for further proceedings in accordance with this court's opinion.

It is further ORDERED, ADJUDGED and DECREED that the trial court's judgment is, in all other respects, **affirmed**.

It is further ORDERED that all costs of this appeal are hereby assessed against Appellees **SUSAN J. WALLER AND ALICIA G. TENNISON**, for which execution may issue, and that this decision be certified to the court below for observance.

James T. Worthen, Chief Justice.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.