

No. _____

In The
Supreme Court of the United States

ADRIANO KRUEL BUDRI,

Petitioner,

v.

DANIEL M. HUMPHREYS,

Respondent.

On Petition for Writ of Certiorari to the
Supreme Court of Texas

APPENDIX

Adriano K. Budri
Petitioner Pro Se
5029 County Road 605
Burleson, TX 76028-1177
Phone (817) 447-3868
Email address: budri@sbcglobal.net

IN THE SUPREME COURT OF TEXAS

Tarrant County, 2nd District

No.18-0894

ADRIANO KRUEL BUDRI

v.

DANIEL M. HUMPHREYS

February 8, 2019

Petitioner's petition for review, filed herein in the above numbered and styled case, having been duly considered, is ordered, and hereby is, denied.

March 29, 2019

Petitioner's motion for rehearing of petition for review, filed herein in the above numbered and styled case, having been duly considered, is ordered, and hereby is, denied.

I, BLAKE A. HAWTHORNE, Clerk of the Supreme Court of Texas, do hereby certify that the above is a true and correct copy of the orders of the Supreme Court of Texas in the case numbered and styled as above, as the same appear of record in the minutes of said Court under the date shown.

It is further ordered that petitioner, ADRIANO KRUEL BUDRI, pay all costs incurred on this petition.

WITNESS my hand and seal of the Supreme
Court of Texas, at the City of Austin, this the 29th
day of March, 2019.

/s/ Blake A. Hawthorne, Clerk
By Monica Zamarripa, Deputy Clerk

**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH
NO. 02-18-00070-CV**

ADRIANO KRUEL BUDRI, APPELLANT

V.

DANIEL M. HUMPHREYS, APPELLEE

**FROM COUNTY COURT AT LAW NO.1 OF
TARRANT COUNTY
TRIAL COURT NO. 2017-007958-1**

MEMORANDUM OPINION¹

I. INTRODUCTION

Pro se appellant Adriano Krue Budri raises twelve issues primarily challenging the trial court's final order dismissing his lawsuit against Appellee Daniel M. Humphreys under the Texas Citizens Participation Act (TCPA) and awarding Humphreys \$6,819.00 in attorney's fees. We will affirm.

**II. FACTUAL AND PROCEDURAL
BACKGROUND**

For twenty-seven days in January 2017, Budri worked as a truck driver for FirstFleet, Inc. Humphreys was his supervisor. On February 17,

¹ See Tex. R. App. P. 47.4.

2017, Humphreys sent an e-mail recommending Budri be dismissed based on multiple customer complaints, safety concerns, and serious company policy violations. FirstFleet terminated Budri's employment; and Budri filed the underlying lawsuit asserting claims against Humphreys for libel and defamation based on Humphreys's February 17 e-mail. Humphreys filed a motion to dismiss pursuant to the TCPA and it was set for a hearing on January 19, 2018.² Humphreys's counsel notified Budri of the scheduled hearing.

On January 12, 2018, Budri filed an amended petition purportedly asserting a new claim for fraud arising out of the same operative facts; and on January 17, 2018, he filed a motion to postpone or continue the January 19 hearing. The motion to postpone was not supported by an affidavit, did not include a certificate of conference, and did not provide any specific reason why Budri could not appear on January 19, 2018, but only requested postponement "for incompatibility of the day and time scheduled to appear at the courtroom as Plaintiff Self-represented Litigant Pro Se."

The trial court held the January 19, 2018 hearing on Humphreys's motion to dismiss. Budri did not appear at the hearing. The trial court first addressed the motion to postpone and stated on the record that it was denied because Budri had not provided any reason for the postponement. Humphreys's counsel confirmed that notice of the hearing had been provided to Budri, briefly argued the motion to dismiss, and presented an affidavit

² Under the TCPA, a motion to dismiss must be set for a hearing no later than sixty days after service of the motion. *See* Tex. Civ. Prac. & Rem. Code Ann. § 27.004(a) (West 2015).

and billing statement as evidence of \$6,819.00 in "reasonable" attorney's fees.

The trial court signed a January 19, 2018 order denying Budri's motion to postpone in part because "it failed to comply with [applicable] state and local rules." The order awarded Humphreys his "reasonable attorneys' fees" incurred in responding to and defending against "the motion to postpone," ordered Humphreys to submit "an amount of reasonable attorneys' fees for which [he sought] reimbursement" within five days, and provided that Budri could challenge the reasonableness of such fees within five days of their submission. The trial court also signed a second order on January 19, 2018, granting Humphreys's TCPA motion to dismiss, dismissing Budri's claims and causes of action against Humphreys with prejudice, and awarding Humphreys \$6,819.00 in attorney's fees.

Budri subsequently filed numerous postjudgment motions. But none of them challenged the reasonableness of the amount of \$6,819.00 for attorney's fees awarded to Humphreys. Two of Budri's postjudgment motions globally assert that the dismissal order should not have awarded "any kind of the defendant's attorney's fees." The trial court conducted a February 20, 2018, hearing on all of Budri's postjudgment motions; the hearing was not recorded or transcribed; and it does not appear from our review of the record that Budri requested a court reporter. The trial court signed an order denying all of Budri's postjudgment motions. Budri perfected this appeal.

While this appeal has been pending, Budri has filed nine motions for judicial notice, which we have denied, and he has filed a motion for sanctions

against Humphreys's counsel, which we have denied.

III. DISPOSITION OF BUDRI'S ISSUES

In his fourth issue, Budri claims that "the trial court erred by failing to continue the trial / Motion to dismiss despite the timely request via 'Motion to Postpone.'" Because Budri's motion to postpone was not verified or supported by an affidavit and because it did not state any reason demonstrating the need for a continuance, the trial court did not abuse its discretion by denying it. *See* Tex. R. Civ. P. 251; see also, e.g., *Hartwell v. Lone Star, PCA*, 528 S.W.3d 750, 758 (Tex. App. Texarkana 2017, pet abated) (recognizing "[a] lack of diligence on the part of a party or its attorney is sufficient grounds for denying a motion for a continuance" and overruling appeal of denial of motion for continuance); *Davis v. Davis*, No. 2-00-436-CV, 2003 WL 1564824, at *5 (Tex. App.-Fort Worth Mar. 27, 2003, no pet.) (mem. op.) (affirming denial of motion for continuance when used solely for delay); *Arvedson v. Luby*, 498 S.W.2d 253, 257 (Tex. Civ. App. Austin 1973, no writ) (holding no abuse of discretion when trial court denied an application for continuance that "was neither verified nor supported by affidavit" as required by rule 251 because "[b]efore the trial court may exercise its discretion there must be a motion presented in conformity with Rule 251"). We overrule Budri's fourth issue.

In his fifth issue, Budri claims that "[t]he trial court erred in granting Defendant's Motion to Dismiss pursuant to the Texas Citizens Participation Act." Budri argues that Humphreys's e-mail is a private e-mail communication between business

associates not involving a matter of public concern and that the TCPA is inapplicable for this reason. The TCPA's right-of-free-speech prong, however, limits its scope to communications involving a public subject, not to communications made in a public form. See *ExxonMobil Pipeline Co. v. Coleman*, 512 S.W.3d 895 (Tex. 2017) (acknowledging previous holding that "when construing the TCPA's 'right of free speech' prong, 'the plain language of the Act merely limits its scope to communications involving a public subject-not communications in a public forum.'"") quoting *Lippincott v. Whisenhunt*, 462 S.W.3d 507, 508 (Tex. 2015)); see also *Cavin v. Abbott*, 545 S.W.3d 47, 62 (Tex. App.-Austin 2017, no pet.) (same). The allegedly defamatory statements in Humphreys's e-mail concerned, in part, incidents in which Budri drove a delivery truck with a flat tire on a public road and refused to wait for a tire repairman called by FirstFleet and in which Budri failed to report a delivery accident when the door of his delivery truck was torn off and continued to drive the damaged truck on public roads. Budri was delivering goods for public consumption during these incidents. Thus, the allegedly defamatory statements were communications related to health or safety; community well-being; and a good, product, or service in the marketplace. See Tex. Civ. Prac. & Rem. Code Ann. § 27.005 (West 2015); *ExxonMobil Pipeline Co.*, 512 S.W.3d at 900 (explaining private statements between employee's supervisor and company investigator that led to employee's termination fell within ambit of TCPA because TCPA "does not require that the statements specifically 'mention' health, safety, environmental, or economic concerns, nor does it require more than

a 'tangential relationship' to the same; rather, TCPA applicability requires only that the defendant's statements are 'in connection with' 'issue[s] related to' health, safety, environmental, economic, and other identified matters of public concern chosen by the Legislature"). We overrule Budri's fifth issue.

Budri's first, second, and third issues assert, in order,

- (1) There is no statute that provides for attorneys' fees in an action for defamation;
- (2) The trial court erred by order of attorney fees unrelated to this cause of action only on the basis on affidavit of attorney without affording response from plaintiff; and
- (3) The trial court erred by issuing two separate conflicting orders of attorney fees on 01/19/2018.

Concerning Budri's first issue contending that no statute provides for attorney's fees for defamation, the TCPA provides for an award of attorney's fees when the trial court orders dismissal of a legal action under the TCPA. *See* Tex. Civ. Prac. & Rem. Code Ann. § 27.009(a)(1) (West 2015). We overrule Budri's first issue.

Concerning Budri's second issue, although Budri filed, by our count, eight postjudgment motions, he did not provide a counteraffidavit or otherwise challenge the reasonableness of the \$6,819.00 attorney's fees award. Thus, to the extent Budri's second issue challenges the reasonableness of the award, such a complaint is not preserved for our review. *See McCulloch v. Brewster Cty.*, 391 S.W.3d 612, 619 (Tex. App.-EI Paso 2012, no pet.) ("Appellants did not object or file any post-judgment

motions to the untimeliness of the attorney's fees affidavit or to the trial court's attorney's fees award; therefore, Appellants have not preserved this complaint for appeal."). Instead, Budri's global assertions challenging the award of attorney's fees appear to be directly connected to the purportedly improper dismissal of his lawsuit. Thus, having held above that the trial court did not err in granting Humphreys's TCPA motion to dismiss, we overrule Budri's second issue. See *Sullivan v. Abraham*, 488 S.W.3d 294, 299 (Tex. 2016) ("[T]he TCPA requires an award of 'reasonable attorney's fees' to the successful movant.").

Concerning Budri's third issue, the record reflects that the two orders the trial court signed on January 19, 2018, are an "Order Denying Plaintiff's Motion to Postpone Hearing" and an "Order Granting Defendant's Motion to Dismiss Pursuant to the Texas Citizens Participation Act." Budri does not explain how these two orders conflict and no conflict is apparent to us. We overrule Budri's third issue.

In his sixth issue, Budri contends that "[t]he trial court erred in NOT finding common-law fraud for the reason there is evidence in the record to support a finding that appellee made representations." Budri's briefing on this issue, however, references defamation per se and not common-law fraud. Moreover, our review of Budri's amended pleading indicates that whatever label he places on his cause of action, he is seeking defamation damages. It is well established that the treatment of claims under Texas law focuses on the true nature of disputes rather than on allowing artful pleading to gain favorable redress under the law. See *Baylor Univ. v. Sonnichsen*, 221 S.W.3d 632, 636 (Tex. 2007); *Ambulatory Infusion Therapy Specialist, Inc. v. N. Am. Adm'rs, Inc.*, 262 S.W.3d

107, 112 (Tex. App.-Houston [1st Dist.] 2008, no pet.). We overrule Budri's sixth issue.

In his seventh issue, Budri argues that "[t]he trial court erred in denying (02) two amendments of Complaint." Although the record reflects that Budri filed an amended petition, he cites no place in the record showing that the trial court struck or refused to consider the amended petition. To the extent Budri's seventh issue relates to a not-ruled-upon motion for leave and a second amended petition he filed on February 12, 2018 - several weeks after the January 19, 2018 final judgment, that petition asserted a new claim for retaliatory discharge. Thus, the trial court would have acted within its discretion by denying that amendment. *See Greenhalgh v. Serv. Lloyds Ins. Co.*, 787 S.W.2d 938, 940 (Tex. 1990) (explaining trial court possesses discretion to deny leave to file postjudgment pleading amendment asserting a new cause of action as prejudicial on its face). We overrule Budri's seventh issue.

In his eighth issue, Budri complains that "[t]he trial court erred in allowing and admitting character evidence of appellant." In support of this issue, Budri argues that "appellee's attorney misinformed the Trial Court about character of Appellant as vexatious litigant and twisted the facts about this litigation and issues." Budri does not point us to, and we have not located, anywhere in the record that evidence concerning Budri's character was admitted or relied on by the trial court. In a civil case, we have no duty, or even the right, to perform an independent review of the record in order to determine whether there was error and fashion a legal argument for an appellant. *See Canton-Carler v. Baylor Coli. of Med.*, 271 S.W.3d 928, 931-32 (Tex. App.-Houston [14th Dist.] 2008, no pet.). We overrule Budri's eighth issue.

In his ninth issue, Budri argues that "[t]he trial court denied due to process of law." Budri broadly claims that he was deprived of due process of law and asserts violations of his Fifth and Seventh Amendment rights, the open courts provision of the Texas Constitution, and the Texas Code of Judicial Conduct. The focus of these allegations-made without record citations-appears to be on the trial court's denial of his motion for postponement of the dismissal hearing. To the extent Budri preserved these arguments, because we have held that the trial court did not abuse its discretion by denying Budri's motion for postponement of the TCPA dismissal hearing, we overrule his ninth issue.

In his tenth issue, Budri asserts that "[t]he trial court erred in denying all the post judgment motions." The crux of Budri's argument under this issue is that "Appellant wanted to show up (02) two forensic document examination reports prepared and notarized by one signature's expert witness and proving the fraud occurred during the on boarding employment process and of which the defendant is accomplice of one workplace scam conspiracy against the plaintiff." Budri does not cite where in the record these "forensic documents" might be located, and we have not located them in our review of the record. Because we have no duty, or even the right, to perform an independent review of the record in order to determine whether there was error to fashion a legal argument for an appellant, we overrule Budri's tenth issue. *Canton-Carter*, 271 S.W.3d at 931-32.

In his eleventh issue, Budri alleges that "[Humphreys] is a felony [sic] convicted by the State of Texas." This is proof, Budri argues, that Humphreys does not have credibility or good character. The trial court dismissed Budri's claim under the TCPA; we cannot discern the relevance at

this point in the litigation of any purported criminal history of any of the litigants, nor does it appear that Budri raised this alleged error in the trial court. We overrule Budri's eleventh issue.

Finally, in his twelfth issue, Budri contends that "Appellant is entitled to a new trial as reporter lost record of 02/20/2018." The record, however, demonstrates that no court reporter took a record for the February 20, 2018 hearing, so there is no lost reporter's record. Thus, Budri is not entitled to a new trial based on a lost reporter's record. See *Haase v. Abraham, Watkins, Nichols, Sorrels, Agosto & Friend, L.L.P.*, 499 S.W.3d 169, 179 (Tex. App.-Houston [14th Dist.] 2016, pet. denied) (explaining appellant not entitled to new trial when "[t]he court reporter indicated that there is no record of the hearing" and appellant "ha[d] not provided any evidence that the court reporter made a record of the hearing and afterward the record was lost or destroyed"). We overrule Budri's twelfth issue.

IV. CONCLUSION

Having overruled each of Budri's twelve issues, we affirm the trial court's judgment.

/s/ Sue Walker
SUE WALKER, JUSTICE

PANEL: WALKER, GABRIEL, and KERR, JJ.
DELIVERED: August 9, 2018

**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-18-00070-CV

ADRIANO KRUEL BUDRI, APPELLANT

v.

DANIEL M. HUMPHREYS, APPELLEE

**FROM COUNTY COURT AT LAW NO.1 OF
TARRANT COUNTY
TRIAL COURT NO. 2017-007958-1**

ORDER

We have considered "Appellant's Amended Motion for En Banc Reconsideration."

It is the opinion of the court that the motion for en banc reconsideration should be and is hereby denied and that the opinion and judgment of August 9, 2018 stand unchanged.

The clerk of this court is directed to transmit a copy of the order to the attorneys of record.

SIGNED August 23, 2018.

/s/ Sue Walker
SUE WALKER
JUSTICE

CASE NO. 2017-007958-1

COUNTY COURT AT LAW

NO. 1

TARRANT COUNTY, TEXAS

ADRIANO K. BUDRI, Plaintiff,

v.

DANIEL M. HUMPHREYS, Defendant.

ORDER GRANTING DEFENDANT'S MOTION TO
DISMISS PURSUANT TO THE TEXAS CITIZENS
PARTICIPATION ACT

On this date, the Court considered Defendant Daniel Humphreys's Motion to Dismiss Pursuant to the Texas Citizens Participation Act ("Motion") and, after considering the Motion and any argument, the Court finds the Motion to be meritorious, and that Defendant Daniel Humphreys's Motion is GRANTED.

IT IS, THEREFORE, ORDERED:

1. All claims and causes of action asserted by Plaintiff Adriano Budri against Defendant Daniel Humphreys in this lawsuit (No. 2017-007958-1) are dismissed with prejudice.

2. Defendant is entitled to reasonable attorneys' fees in the amount of \$6,819.00. Plaintiff is ordered to remit payment of such fees in the total sum of \$6,819.00 by February 28, 2018.

Signed this 19th day of January, 2018

/s/

Presiding Judge

CASE NO. 2017-007958-1

COUNTY COURT AT LAW

NO. 1

TARRANT COUNTY, TEXAS

ADRIANO K. BUDRI, Plaintiff,

v.

DANIEL M. HUMPHREYS, Defendant

ORDER DENYING PLAINTIFF'S MOTION TO
POSTPONE HEARING

Ono this date, the Court considered *Plaintiff's Motion to Postpone Hearing Scheduled on 1/19/2018 at 10:00 AM CDT* ("Motion") and responsive arguments. The Court also finds that Plaintiff failed to comply with state and local rules applicable to his Motion. IT IS, THEREFORE, ORDERED:

1. Plaintiff's motion is DENIED.
2. Defendant is entitled to reasonable attorneys' fees incurred in responding to, and defending against, the Motion. Within five days of this Order, Defendant may submit an amount of reasonable attorneys' fees for which Defendant seeks reimbursement. Within five days of Defendant submitting such fee amount for which Defendant seeks reimbursement, Plaintiff may file a response if Plaintiff seeks to challenge the reasonableness of such fees. The Court will determine the reasonableness of attorneys' fees and award a reasonable amount of attorneys' fees to Defendant.

Signed this 19th day of January, 2018

/s/

PRESIDING JUDGE

RE: Case No. 18-0894

COA #: 02-18-00070-CV

STYLE: BUDRI v. HUMPHREYS

DATE: 2/8/2019

TC#: 2017-007958-1

Today the Supreme Court of Texas denied the petition for review as redrafted in the above-referenced case. The Motion to Take Judicial Notice and the Motion for Clarification are dismissed as moot.

MR. ADRIANO KRUEL BUDRI
* DELIVERED VIA E-MAIL *

17-007958-1

COUNTY COURT AT LAW

#1

TARRANT COUNTY, TEXAS

ADRIANO KRUEL BUDRI

V.

DANIEL MATTHEW HUMPHREYS

**ORDER DENYING PLAINTIFF'S POST-
JUDGMENT MOTIONS**

Came on for consideration Plaintiffs (1) *Motion to Modify Judgment*, (2) *Motion to Clarify The Dismissal Decision*, (3) *Motion to Retain Cause on Docket*, (4) *Motion to Reform The Judgment* and (5) *Motion for Resolution by ADR* in the above-styled and numbered cause. After considering the Motions, the Court finds that such should be Denied.

IT IS THEREFORE ORDERED that Plaintiffs *Motion to Modify Judgment*, *Motion to Clarify The Dismissal Decision*, *Motion to Retain Cause on Docket*, *Motion to Reform The Judgment* and *Motion for Resolution by ADR* are Denied.

SIGNED February 20, 2018.

/s/

Judge Presiding

H.B. No. 2730

AN ACT

relating to civil actions involving the exercise of certain constitutional rights.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 27.001(2), (6), and (7), Civil Practice and Remedies Code, are amended to read as follows:

(2) "Exercise of the right of association" means to [a communication between individuals who] join together to collectively express, promote, pursue, or defend common interests relating to a governmental proceeding or a matter of public concern.

(6) "Legal action" means 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. The term does not include:

(A) a procedural action taken or motion made in an action that does not amend or add a claim for legal, equitable, or declaratory relief;

(B) alternative dispute resolution proceedings;

or

(C) post-judgment enforcement actions.

(7) "Matter of public concern" means a statement or activity regarding:

(A) a public official, public figure, or other person who has drawn substantial public attention due to the person's official acts, fame, notoriety, or celebrity;

(B) a matter of political, social, or other interest to the community; or

(C) a subject of concern to the public
~~{includes an issue related to:~~

~~-(A) health or safety;~~

~~{(B) environmental, economic, or community well-being;~~

~~{(C) the government;~~

~~{(D) a public official or public figure;~~

~~or~~

~~{(E) a good, product, or service in the marketplace}.~~

SECTION 2. Section 27.003, Civil Practice and Remedies Code, is amended by amending Subsections (a) and (b) and adding Subsections (d) and (e) to read as follows:

(a) If a legal action is based on~~[-, relates to,]~~ or is in response to a party's exercise of the right of free speech, right to petition, or right of association or arises from any act of that party in furtherance of the party's communication or conduct described by Section 27.010(b), that party may file a motion to dismiss the legal action. A party under this section does not include a government entity, agency, or an official or employee acting in an official capacity.

(b) A motion to dismiss a legal action under this section must be filed not later than the 60th day after the date of service of the legal action. The parties, upon mutual agreement, may extend the time to file a motion under this section or the court

may extend the time to file a motion under this section on a showing of good cause.

(d) The moving party shall provide written notice of the date and time of the hearing under Section 27.004 not later than 21 days before the date of the hearing unless otherwise provided by agreement of the parties or an order of the court.

(e) A party responding to the motion to dismiss shall file the response, if any, not later than seven days before the date of the hearing on the motion to dismiss unless otherwise provided by an agreement of the parties or an order of the court.

SECTION 3. Sections 27.005(a), (b), and (d), Civil Practice and Remedies Code, are amended to read as follows:

(a) The court must rule on a motion under Section 27.003 not later than the 30th day following the date [of] the hearing on the motion concludes.

(b) Except as provided by Subsection (c), on the motion of a party under Section 27.003, a court shall dismiss a legal action against the moving party if the moving party demonstrates [~~shows by a preponderance of the evidence~~] that the legal action is based on[, relates to,] or is in response to:

- (1) the party's exercise of:
 - (A) ~~{(1)}~~ the right of free speech;
 - (B) ~~{(2)}~~ the right to petition;
 - or
 - (C) ~~{(3)}~~ the right of association; or
- (2) the act of a party described by Section 27.010(b).

(d) Notwithstanding the provisions of Subsection (c), the court shall dismiss a legal action against the moving party if the moving party establishes an affirmative defense or other grounds on which the moving party is entitled to judgment as a matter of law ~~[by a preponderance of the evidence each essential element of a valid defense to the nonmovant's claim]~~.

SECTION 4. The heading to Section 27.006, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 27.006. PROOF ~~[EVIDENCE]~~.

SECTION 5. Section 27.006(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) In determining whether a legal action is subject to or should be dismissed under this chapter, the court shall consider the pleadings, evidence a court could consider under Rule 166a, Texas Rules of Civil Procedure, and supporting and opposing affidavits stating the facts on which the liability or defense is based.

SECTION 6. Section 27.007(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) If the court awards sanctions under Section 27.009(b) ~~[At the request of a party making a motion under Section 27.003]~~, the court shall issue findings regarding whether the legal action was brought to deter or prevent the moving party from exercising constitutional rights and is brought for an improper purpose, including to harass or to cause unnecessary delay or to increase the cost of litigation.

SECTION 7. Chapter 27, Civil Practice and Remedies Code, is amended by adding Section 27.0075 to read as follows:

Sec. 27.0075. EFFECT OF RULING.

Neither the court's ruling on the motion nor the fact that it made such a ruling shall be admissible in evidence at any later stage of the case, and no burden of proof or degree of proof otherwise applicable shall be affected by the ruling.

SECTION 8. Section 27.009, Civil Practice and Remedies Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as provided by Subsection (c), if ~~[If]~~ the court orders dismissal of a legal action under this chapter, the court ~~[shall award to the moving party]:~~

(1) shall award to the moving party court costs and [;] reasonable attorney's fees~~[-, and other expenses]~~ incurred in defending against the legal action ~~[as justice and equity may require]; and~~

(2) may award to the moving party sanctions against the party who brought the legal action as the court determines sufficient to deter the party who brought the legal action from bringing similar actions described in this chapter.

(c) If the court orders dismissal of a compulsory counterclaim under this chapter, the court may award to the moving party reasonable attorney's fees incurred in defending against the counterclaim if the court finds that the counterclaim is frivolous or solely intended for delay.

SECTION 9. Section 27.010, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 27.010. EXEMPTIONS. (a) This chapter does not apply to:

(1) an enforcement action that is brought in the name of this state or a political subdivision of this state by the attorney general, a district attorney, a criminal district attorney, or a county attorney;

(2) [-

~~[(b) This chapter does not apply to]~~ a legal action brought against a person primarily engaged in the business of selling or leasing goods or services, if the statement or conduct arises out of the sale or lease of goods, services, or an insurance product, insurance services, or a commercial transaction in which the intended audience is an actual or potential buyer or customer;

(3) [-

~~[(e) This chapter does not apply to]~~ a legal action seeking recovery for bodily injury, wrongful death, or survival or to statements made regarding that legal action;

(4) [-

~~[(d) This chapter does not apply to]~~ a legal action brought under the Insurance Code or arising out of an insurance contract;

(5) a legal action arising from an officer-director, employee-employer, or independent contractor relationship that:

(A) seeks recovery for misappropriation of trade secrets or corporate opportunities; or

(B) seeks to enforce a non-disparagement agreement or a covenant not to compete;

(6) a legal action filed under Title 1, 2, 4, or 5, Family Code, or an application for a protective order under Chapter 7A, Code of Criminal Procedure;

(7) a legal action brought under Chapter 17, Business & Commerce Code, other than an action governed by Section 17.49(a) of that chapter;

(8) a legal action in which a moving party raises a defense pursuant to Section 160.010, Occupations Code, Section 161.033, Health and Safety Code, or the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11101 et seq.);

(9) an eviction suit brought under Chapter 24, Property Code;

(10) a disciplinary action or disciplinary proceeding brought under Chapter 81, Government Code, or the Texas Rules of Disciplinary Procedure;

(11) a legal action brought under Chapter 554, Government Code; or

(12) a legal action based on a common law fraud claim.

(b) Notwithstanding Subsections (a)(2), (7), and (12), this chapter applies to:

(1) a legal action against a person arising from any act of that person, whether public or private, related to the gathering, receiving, posting, or processing of information for communication to the public, whether or not the information is actually communicated to the public, for the creation, dissemination, exhibition, or

advertisement or other similar promotion of a dramatic, literary, musical, political, journalistic, or otherwise artistic work, including audio-visual work regardless of the means of distribution, a motion picture, a television or radio program, or an article published in a newspaper, website, magazine, or other platform, no matter the method or extent of distribution; and

(2) a legal action against a person related to the communication, gathering, receiving, posting, or processing of consumer opinions or commentary, evaluations of consumer complaints, or reviews or ratings of businesses.

(c) This chapter applies to a legal action against a victim or alleged victim of family violence or dating violence as defined in Chapter 71, Family Code, or an offense under Chapter 20, 20A, 21, or 22, Penal Code, based on or in response to a public or private communication.

SECTION 10. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 11. Chapter 27, Civil Practice and Remedies Code, as amended by this Act, applies only to an action filed on or after the effective date of this Act. An action filed before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

SECTION 12. This Act takes effect September 1, 2019.

President of the Senate

Speaker of the House

I certify that H.B. No. 2730 was passed by the House on April 30, 2019, by the following vote: Yeas 143, Nays 1, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2730 was passed by the Senate on May 17, 2019, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____
Date

Governor

REPORTER'S RECORD
VOLUME 2 OF 3 VOLUMES
TRIAL COURT CAUSE NO. 2017-007958-1

IN THE COUNTY COURT
AT LAW NO. 1

TARRANT COUNTY, TEXAS

ADRIANO KRUEL BUDRI
VS.
DANIEL MATTHEW HUMPHREYS

MOTION TO DISMISS

On the 19th day of January, 2018, the following proceedings came on to be heard in the above-titled and numbered cause before the Honorable Don Pierson, Judge Presiding, held in Fort Worth, Tarrant County, Texas. Proceedings reported by machine shorthand utilizing computer-aided transcription.

Beckee Partin, CSR
Court Reporter
Tarrant County, Texas

****P R O C E E D I N G S ****

THE COURT: We're here on Cause Number 17-7958-1. I see I have a motion to postpone a hearing we have set for today, a hearing on a motion to dismiss under the Texas Citizens Participation Act. When was your motion to dismiss filed?

MR. MCALLISTER: January 3rd.

THE COURT: And a notice was sent to Mr. Budri?

MR. MCALLISTER: Yes, sir.

THE COURT: And apparently he did receive the notice. It was set for today. He filed a very brief motion to postpone hearing, which I did not see him put a reason in there on -- having given no reason, I'm going to deny his motion to postpone.

MR. MCALLISTER: Your Honor, I also have for the notice of hearing, I have an email to Mr. Budri. Would you like that?

THE COURT: If you wish.

MR. MCALLISTER: It's an email to Mr. Budri about the notice of hearing. There's also a letter to Mr. Budri about the notice of hearing.

THE COURT: So you sent this on Friday the 5th of January?

MR. MCALLISTER: Yes, sir.

THE COURT: Put that all together and we will mark it as Exhibit One, please.

MR. MCALLISTER: Your Honor, I have Exhibit One and Two related to the motion to postpone showing that we did provide notice to Mr. Budri, and that notice is also e-filed.

THE COURT: Okay I'll admit One and Two and I'm stapling Two together. Hand those to

Beckee, please. Tell me about your motion to dismiss.

MR. MCALLISTER: Yes, Your Honor, the motion under the Texas Citizens Participation Act or TCPA is on all fours here, Your Honor. That's why we're requesting dismissal of this case, because it does fit squarely in the TCPA. I can move through three issues to show why it should be dismissed and attorneys' fees awarded. The parties -- why the TCPA fits here and third is why attorneys' fees should be awarded.

THE COURT: Yes, sir.

MR. MCALLISTER: First, the parties, the Plaintiff, Mr. Budri worked at First Fleet as a truck driver. He worked there in January of last year in 2017. He was only there a month after numerous accidents, failures to report accidents, customer complaints and other issues he was fired. He has filed multiple lawsuits against First Fleet and other administrative actions. He has filed a lawsuit against Mr. Humphreys. Mr. Humphreys is the Defendant here. Mr. Humphreys is a supervisor at First Fleet and was the supervisor of the Plaintiffs when he worked at First Fleet. The Plaintiff filed this lawsuit asserting defamation by Mr. Humphreys related to an email that Mr. Humphreys sent.

That email is our second issue of why the TCPA fits here. That email fits squarely within the TCPA. The Texas Citizens Partition Act explains that free speech involves a matter of public concern.

A matter of public concern under TCPA 27.001, explains that a matter of public concern, relates to things like health, safety, enviromental or community well being or a good product or service in

the market place. If any of those fit based on that email, then the TCPA fits here.

This case is on all fours with a recent Texas Supreme Court opinion, that's the Exon Mobile Pipeline Company versus Coleman, 512 S.W. 3d 895. That's Texas Supreme Court 2017. In that opinion the Texas Supreme Court held that a supervisor's comments related to an employees' actions at work, did fit squarely within the TCPA.

Here Exhibit 1A and B to the motion to dismiss, includes Mr. Humphreys' affidavit which proves up the attached email that relates to the alleged defamation claim.

That email on the second page makes repeated references to an accident caused Mr. Budri. That's the second page of the email under the third paragraph where there's multiple references to the accident. This clearly ties to health, safety or both.

That alone fits within the TCPA. We could also go through point by point the affidavit and the email which ties to issues like safety, health, economic and community well being, and goods, products and services in the markets place. Anyone of those fits within the TCPA.

Therefore, Your Honor, the TCPA fits here and warrants dismissal. The second step under the TCPA is for the Plaintiff to show he has evidence of a prima facie case, and not just that he has a prima facie case but that he has evidence under 27.006. There is none.

There is no evidence to Plaintiff's prima facie case, much less evidence to support every element of his prima facie case which is the required requirement for Plaintiff to meet his burden in response to the TCPA motion.

That alone right there, Your Honor, warrants dismissal. Even if there was evidence, Plaintiff according to the affidavit here that's submitted with a the motion to dismiss, shows that he has an affirmative defense of truth. That would warrant dismissal.

Another defense is conditional or qualified privilege, because his speech was about Mr. Budri's actions in the work place. Therefore, Your Honor, that's another reason the TCPA warrants dismissal here.

Because dismissal is warranted, the TCPA's attorney fee provision under 27.009 requires that attorneys' fees are awarded for dismissal. It says the court shall award attorneys' fees and costs.

To support our request for attorneys' fees, I have an affidavit for myself, and I have provided with that affidavit redacted billings related fully to this case. I removed references to any other case. I removed references to any other matter and solely related to this lawsuit.

I've redacted certain privileged or confidential portions of those billing entries, to request an attorney fee award of \$6,819.00. Your Honor, I have the affidavit and billing entries for you.

THE COURT: Okay, how about you mark this as Defendant's Three.

MR. MCALLISTER: Therefore, Your Honor, that's why we're requesting dismissal as well as attorneys' fees awarded against Mr. Budri, and I have a proposed order awarding both the motion to dismiss all claims of prejudice and to award attorneys' fees to Defendant.

THE COURT: Yes, sir. Defendant's Three is admitted. How much in attorneys' fees?

MR. MCALLISTER: \$6,819.00.

THE COURT: I don't enter cost. The clerk's do that. Anything in the statute that requires it be paid within a certain amount of days?

MR. MCALLISTER: I don't recall that, Your Honor.

THE COURT: If not, I'll just say by February 28th.

MR. MCALLISTER: Yes, sir. No, no set number of days required by the statute.

THE COURT: Thank you.