

Reverse and Remand and Opinion Filed January 15, 2025



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-24-00413-CV

HIGH RISK PREGNANCY DOCTORS, PLLC AND VIOLETTA
LOZOVYY, Appellants

V.

FERUZA AKHMEDJANOVA, Appellee

On Appeal from the 101st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-23-14387

MEMORANDUM OPINION

Before Justices Breedlove, Kennedy, and Lee¹
Opinion by Justice Lee

Appellants High Risk Pregnancy Doctors, PLLC (HRPD) and Violetta Lozovyy appeal from the trial court's denial of their motion to dismiss under the Texas Citizens Participation Act (TCPA).² Because we conclude appellee Feruza Akhmedjanova's claims against HRPD and Lozovyy are based on HRPD's and

¹ The Honorable Justice Mike Lee succeeded the Honorable Justice Ken Molberg, a member of the original panel upon submission of this cause.

² See TEX. CIV. PRAC. & REM. CODE §§ 27.001–.011. This is the second time this case has come before this Court. Previously, we conditionally granted the writ of mandamus directing the trial court to set appellants' TCPA motion for hearing. See *In re Lozovyy*, No. 05-24-00195-CV, 2024 WL 1046362, at *4 (Tex. App.—Dallas Mar. 11, 2024, orig. proceeding) (mem. op.).

Lozovyy’s exercise of the right to petition, and because Akhmedjanova failed to establish a prima facie case for her claims by clear and specific evidence, we reverse and remand for the trial court to dismiss those claims and to consider HRPD’s and Lozovyy’s requests for court costs, attorney’s fees, and sanctions.

I. BACKGROUND

Akhmedjanova was a patient of Lozovyy at Lozovyy’s medical practice, HRPD. When Akhmedjanova allegedly failed to pay HRPD and Lozovyy for medical services she had received, HRPD and Lozovyy sent Akhmedjanova a settlement demand letter through counsel, which went ignored. Akhmedjanova filed a complaint against HRPD and Lozovyy with the Texas Medical Board that was eventually dismissed.

On April 27, 2023, HRPD and Lozovyy—who were represented by Waranch & Nunn, PLLC—sued Akhmedjanova in justice court, seeking compensation for unpaid medical bills and attorney’s fees incurred defending against Akhmedjanova’s Texas Medical Board complaint. Their petition identified HRPD and Lozovyy as “a specialist maternal fetal medicine practice and physician” and stated that Akhmedjanova had been a patient who was seen on four specific occasions in 2021 and 2022. The justice court petition made no other allegations or disclosures relating to Akhmedjanova’s health information.

In August 2023, Akhmedjanova sued Lozovyy, HRPD, and Waranch & Nunn. In her amended petition, Akhmedjanova alleged Lozovyy and HRPD authorized

Waranch & Nunn to include Akhmedjanova's confidential private health information in the justice court petition "to retaliate against the Plaintiff for disputing her medical bill with the Texas Medical Board." Akhmedjanova alleged the petition disclosed that she had fertility issues and a high-risk pregnancy³ "in order to cause humiliation, embarrassment, and harm to the Plaintiff." She alleged the disclosure of this private health information caused her humiliation, mental anguish, and emotional distress, and caused "an invasion of [her] privacy and intentionally inflicted emotional distress on [her]" in retaliation for disputing her bills and questioning Lozovyy and HRPD's insurance billing practices before the Texas Medical Board. Akhmedjanova alleged Lozovyy and HRPD disclosed her private medical information to "force her to repay" her medical debts and their legal expenses.

Akhmedjanova alleged that a December 28 letter sent by Waranch & Nunn "failed to include notice that it was a communication from a debt collector, and that any response would be used in an attempt to collect the debt[.]" as, she argued, was required by the Texas Debt Collection Practices Act (DCPA).⁴ She also asserted that HRPD and Lozovyy's filing of a petition in the justice court was unlawful collections conduct under the DCPA because they intentionally included

³ As noted above, the justice court petition, other than generally describing the nature of HRPD and Lozovyy's practice ("specialist maternal fetal medicine") and noting Akhmedjanova had been a patient, made no allegations about any health issues faced by Akhmedjanova.

⁴ TEX. FIN. CODE §§ 392.001-.404.

confidential and private health information and because they sought compensation for legal fees, which were not “an authorized incidental charge or fee arising from the alleged medical debt.”

Based on these allegations, Akhmedjanova asserted four causes of action against Lozovyy and HRPD⁵: (1) negligent invasion of privacy, (2) DCPA violations, (3) Texas Deceptive Trade Practices Act (DTPA) violations, and (4) intentional infliction of emotional distress. She also asserted a separate claim under the DCPA against Waranch & Nunn, and further alleged that Lozovyy was responsible, through the doctrine of alter ego, for the actions of HRPD and Waranch & Nunn.

On December 15, 2024, Lozovyy and HRPD filed a motion to dismiss under the TCPA, arguing Akhmedjanova’s amended petition should be dismissed because it was based on or in response to their rights to petition, free speech, and association. In pertinent part, HRPD and Lozovyy argued that Akhmedjanova’s claims for negligent invasion of privacy, DCPA violations, DTPA violations, and intentional infliction of emotional distress were based upon their petitioning the justice court to collect the debt Akhmedjanova owed and thus should be dismissed under the TCPA. HRPD and Lozovyy also sought attorney’s fees, court costs, and sanctions.

⁵ Akhmedjanova also asserted these causes against Waranch & Nunn, which is not a party before us in this appeal.

On January 24, 2024, Akhmedjanova responded to the TCPA motion to dismiss. She argued that the motion to dismiss was untimely,⁶ her suit was not aimed at restricting any TCPA-protected rights, and the subject of the suit was not of public concern. She further argued that, to the extent the TCPA applied, she could establish a prima facie case for each essential element of the asserted claims. As to her negligent invasion of privacy claim, Akhmedjanova asserted Lozovyy and HRPD provided her medical information to Waranch & Nunn, which released that information publicly in the justice court petition. As to her claims of DCPA and DTPA violations, Akhmedjanova seemed to argue the merits of the collection claim, asserting that Lozovyy and HRPD had failed to provide any documentation that she owed them any amount. Akhmedjanova did not address her intentional infliction of emotional distress claim.

On March 13, 2024, the trial court conducted a hearing on the TCPA motion to dismiss and signed an order the next day denying the motion. This interlocutory appeal followed.

II. DISCUSSION

The TCPA “protects citizens who petition or speak on matters of public concern from retaliatory lawsuits that seek to intimidate or silence them.” *In re*

⁶ Akhmedjanova does not pursue this argument on appeal. We note that HRPD and Lozovyy were served with process on October 16, 2023. Thus, their TCPA motion, which was filed on December 15, 2023, was timely. *See* TEX. CIV. PRAC. & REM. CODE § 27.003(b) (providing that TCPA motion “must be filed not later than the 60th day after the date of service of the legal action”).

Lipsky, 460 S.W.3d 579, 584 (Tex. 2015) (orig. proceeding) (citing TEX. CIV. PRAC. & REM. CODE § 27.001–.011). Its purpose “is to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury.” TEX. CIV. PRAC. & REM. CODE § 27.002.

To these ends, the Act provides a three-step procedure for the dismissal of suits that appear to stifle the defendant’s exercise of the rights of free speech, association, and petition. *Youngkin v. Hines*, 546 S.W.3d 675, 679 (Tex. 2018). First, the TCPA movant bears the initial burden of showing by a preponderance of the evidence that the legal action is based on or is in response to the movant’s exercise of the right of free speech, the right of association, or the right to petition. TEX. CIV. PRAC. & REM. CODE § 27.005(b). Second, if the moving party meets that burden, the nonmoving party must establish by clear and specific evidence a prima facie case for each essential element of its claim. *Id.* § 27.005(c). Finally, if the nonmoving party satisfies that requirement, the burden shifts back to the moving party to prove an affirmative defense or other grounds on which the moving party is entitled to judgment as a matter of law. *Id.* § 27.005(d).

Under the TCPA, 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.” *Id.* § 27.001(6). Exercise of the right

to petition means, among other things, a communication in or pertaining to a judicial proceeding. *Id.* § 27.001(4). And communication includes “the making or submitting of a statement or document in any form or medium, including oral, visual, written, audiovisual, or electronic.” *Id.* § 27.001(1).

We review de novo the trial court’s ruling on a TCPA motion to dismiss. *Adams v. Starside Custom Builders, LLC*, 547 S.W.3d 890, 894 (Tex. 2018). In conducting our review, we consider the pleadings and any supporting and opposing affidavits stating the facts on which the claim or defense is based. *Dyer v. Medoc Health Servs., LLC*, 573 S.W.3d 418, 424 (Tex. App.—Dallas 2019, pet. denied); *see also* TEX. CIV. PRAC. & REM. CODE § 27.006(a). The plaintiff’s petition is generally “the best and all-sufficient evidence of the nature of the action.” *Hersh v. Tatum*, 526 S.W.3d 462, 467 (Tex. 2017) (internal quotations omitted).

A. Step One: TCPA Applicability

We first consider the threshold question of whether HRPD and Lozovyy met their burden to show by a preponderance of the evidence that the legal action is based on or is in response to the movant’s exercise of the right of free speech, the right of association, or the right to petition. Because we find it dispositive in this case, we only consider in this opinion HRPD and Lozovyy’s exercise of the right to petition.

At the outset, we must determine the scope of the legal action in question. In their motion, Lozovyy and HRPD seem to argue, at times, the legal action of which they seek dismissal is the amended petition, while at other times they seem to seek

dismissal of the specific causes of action asserted against them. As noted above, “legal action” may mean, among other things, either a petition or a cause of action. *See* TEX. CIV. PRAC. & REM. CODE § 27.001(6); *United Dev. Funding, L.P. v. Megatel Homes III, LLC*, No. 05-19-00647-CV, 2020 WL 2781801, at *3 (Tex. App.—Dallas May 29, 2020, pet. denied) (mem. op.) (observing that a legal action can consist of “an entire lawsuit or a subsidiary part”). Because Akhmedjanova’s amended petition also asserted claims against Waranch & Nunn, which did not join appellants’ motion to dismiss and is not before us as a party, we construe Lozovyy and HRPD’s argument to seek dismissal of the specific causes of action asserted against them rather than the amended petition as a whole.

The first cause of action Akhmedjanova asserts against HRPD and Lozovyy is invasion of privacy. Akhmedjanova argued in her amended petition that HRPD and Lozovyy were responsible for invasion of privacy due to “their negligent disclosure of Plaintiff’s protected healthcare information leading to Plaintiff’s privacy being invaded.” In reviewing the rest of the amended petition, it is apparent that the only disclosure alleged by Akhmedjanova is the alleged disclosure in the justice court petition that she was a patient. HRPD and Lozovyy’s petition, and statements made in that petition, are undoubtedly communications in a judicial proceeding. *See* TEX. CIV. PRAC. & REM. CODE § 27.001(1), (4). Therefore, we conclude Akhmedjanova’s claim for invasion of privacy is based on HRPD and Lozovyy’s exercise of the right to petition. *See id.* § 27.005(b).

As to Akhmedjanova's claim for DCPA violations, she alleges violations of Texas Finance Code § 392.303 (unfair or unconscionable means of debt collection), and § 392.304 (fraudulent, deceptive, or misleading representations in debt collection), and her claim for DTPA violations is derivative of the alleged DCPA claim. As detailed above, the factual basis for these claims was the filing of the justice court petition, as Akhmedjanova argued the inclusion of allegedly confidential and private health information and the request for attorney's fees—both in the justice court petition—violated the DCPA. Thus, as with the negligent invasion of privacy claim, we conclude the claims for DCPA and DTPA violations are based upon HRPD and Lozovyy's exercise of the right to petition. *See id.* §§ 27.001(1), (4), 27.005(b).

Finally, we turn to Akhmedjanova's claim for intentional infliction of emotional distress. As described above, the basis for this claim is Akhmedjanova's allegation that HRPD and Lozovyy intentionally disclosed private health information in the justice court petition in retaliation for disputing her bills and filing a complaint with the Texas Medical Board. Thus, as with the other causes of action, we conclude this claim is based upon HRPD and Lozovyy's exercise of the right to petition. *See id.* §§ 27.001(1), (4), 27.005(b).

Because we conclude Lozovyy and HRPD met their burden to show by a preponderance of the evidence that all claims asserted by Akhmedjanova against

them are based on their exercise of the right to petition, we turn to consider step two under the TCPA.

B. Step Two: Prima Facie Case

As HRPD and Lozovyy met their burden in step one, the burden shifted to Akhmedjanova to establish by clear and specific evidence a prima facie case for each essential element of her claims. In determining whether Akhmedjanova met her burden, we will “consider the pleadings and supporting and opposing affidavits stating the facts on which the liability or defense is based,” *see* TEX. CIV. PRAC. & REM. CODE § 27.006, and “pleadings are to be considered as evidence, regardless of whether they are offered as such,” *Breakaway Practice, LLC v. Lowther*, No. 05-18-00229-CV, 2018 WL 6695544, at *2 (Tex. App.—Dallas Dec. 20, 2018, pet. denied) (mem. op.). This “clear and specific evidence” standard neither “impose[s] a higher burden of proof than that required of the plaintiff at trial” nor “require[s] direct evidence of each essential element of the underlying claim to avoid dismissal.” *In re Lipsky*, 460 S.W.3d at 591. “Instead, a plaintiff must provide enough detail to show the factual basis for its claim.” *Id.*

Although there are multiple forms of the tort of invasion of privacy, Akhmedjanova directs us to just one: invasion of privacy by intrusion into the plaintiff’s solitude. The elements of this cause of action are as follows: (1) an intentional intrusion; (2) upon the seclusion, solitude, or private affairs of another; (3) which would be highly offensive to a reasonable person. *Blanche v. First*

Nationwide Mortg. Corp., 74 S.W.3d 444, 455 (Tex. App.—Dallas 2002, no pet.). “The core of this claim is the offense of prying into the private domain of another, not publication of the results of such prying.” *Id.* Here, Akhmedjanova complains of the publication of the existence of a past physician-patient relationship with HRPD and Lozovyy. Akhmedjanova does not complain of—and has brought forth no evidence showing that—HRPD and Lozovyy intruded or pried into her private affairs. *See id.* Given this, we conclude Akhmedjanova has failed to establish by clear and specific evidence a prima facie case for invasion of privacy by intrusion.

With respect to her DCPA claim, Akhmedjanova alleges violations of Texas Finance Code § 392.304(a)(8), which provides in pertinent part that, in debt collection or obtaining information concerning a consumer, a debt collector may not use a fraudulent, deceptive, or misleading representation that employs the practice of misrepresenting the character, extent, or amount of a consumer debt, or misrepresenting the consumer debt’s status in a judicial or governmental proceeding. TEX. FIN. CODE § 392.304(a)(8). In her brief, Akhmedjanova argues that HRPD and Lozovyy failed to bring forth evidence supporting their justice-court claim; however, it is Akhmedjanova who has the step-two burden under the TCPA to bring forth evidence supporting her own claim. Akhmedjanova’s allegations that HRPD and Lozovyy have no evidence to support their justice-court claim is not clear and specific evidence that HRPD and Lozovyy used a fraudulent, deceptive, or misleading representation; misrepresented the character, extent, or amount of a

consumer debt; or misrepresented the consumer debt's status in a judicial or governmental proceeding. We conclude Akhmedjanova has failed to establish by clear and specific evidence a prima facie case for her DCPA violations claim.

Furthermore, because the basis for Akhmedjanova's claim of DTPA violations is based upon the alleged DCPA violations, we similarly must conclude she has failed to establish by clear and specific evidence a prima facie case for her claim of DTPA violations.

Finally, we address intentional infliction of emotional distress. This tort has four elements: (1) the defendant acted intentionally or recklessly; (2) its conduct was extreme and outrageous; (3) its actions caused the plaintiff emotional distress; and (4) the emotional distress was severe. *Hersh*, 526 S.W.3d at 468. Intentional infliction of emotional distress is a "gap-filler" tort that "should not be extended to circumvent the limitations placed on the recovery of mental anguish damages under more established tort doctrines." *Standard Fruit & Vegetable Co., Inc. v. Johnson*, 985 S.W.2d 62, 68 (Tex. 1998). "[A] claim for intentional infliction of emotional distress cannot be maintained when the risk that emotional distress will result is merely incidental to the commission of some other tort." *Id.*

Akhmedjanova has failed to bring forward a prima facie case that HRPD and Lozovyy's conduct was "extreme and outrageous." This element is only satisfied if the conduct is "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly

intolerable in a civilized community.” *Hersh*, 526 S.W.3d at 468. Here, Akhmedjanova alleges that HRPD and Lozovyy sued her in justice court to recover an alleged debt, and in so doing, identified her as a patient. This is not “extreme and outrageous” conduct. Because we consider the failure of proof as to this element dispositive, we do not consider the other elements. Accordingly, we conclude Akhmedjanova has failed to establish by clear and specific evidence a prima facie case for intentional infliction of emotional distress.

Because HRPD and Lozovyy met their step-one burden, and Akhmedjanova failed to establish by clear and specific evidence a prima facie case for each essential element of her claims against HRPD and Lozovyy, we conclude the trial court erred in denying the TCPA motion to dismiss.

C. Attorney’s fees, court costs, and sanctions

Except as provided by § 27.009(c) (addressing attorney’s fees following dismissal of compulsory counterclaims), if the court orders dismissal of a legal action under the TCPA, the court: (1) shall award to the moving party court costs and reasonable attorney’s fees incurred in defending against the legal action; 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. TEX. CIV. PRAC. & REM. CODE § 27.009(a).

HRPD and Lozovyy sought attorney’s fees, court costs, and sanctions in their motion to dismiss. Accordingly, we will remand for the trial court to award court costs and reasonable attorney’s fees incurred in defending against the legal action and to consider their claim for sanctions. *See Tatum v. Hersh*, 559 S.W.3d 581, 586 (Tex. App.—Dallas 2018, no pet.) (op. on remand) (remanding TCPA attorney’s fees claim to trial court for reasonableness determination).

III. CONCLUSION

We reverse the trial court’s denial of HRPD and Lozovyy’s TCPA motion to dismiss. We remand for the trial court to dismiss all of Akhmedjanova’s claims against HRPD and Lozovyy and to consider appellants’ request for court costs, attorney’s fees, and sanctions, in accordance with this opinion.

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/Mike G. Lee/

MIKE LEE

JUSTICE



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

HIGH RISK PREGNANCY
DOCTORS, PLLC AND
VIOLETTA LOZOVYY, Appellants

No. 05-24-00413-CV V.

FERUZA AKHMEDJANOVA,
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On Appeal from the 101st Judicial
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Opinion delivered by Justice Lee.
Justices Breedlove and Kennedy
participating.

In accordance with this Court's opinion of this date, we **REVERSE** the order of the trial court denying appellants' motion to dismiss appellee's claims against them. We **REMAND** to the trial court to dismiss those claims and to consider appellants' requests for court costs, attorney's fees, and sanctions.

It is **ORDERED** that appellants recover their costs of this appeal from appellee.

Judgment entered this 15th day of January, 2025.