

**AFFIRMED and REMANDED and Opinion Filed March 10, 2025**



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

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**No. 05-24-00095-CV**

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**JENNIFER RUFF, Appellant  
V.  
SUZANN RUFF, Appellee**

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**On Appeal from the 116th Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. DC-17-17273**

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**MEMORANDUM OPINION**

Before Justices Goldstein, Kennedy, and Wright<sup>1</sup>  
Opinion by Justice Wright

In this interlocutory appeal, we must determine whether the trial court erred in denying, in part, a motion to dismiss premised on the Texas Citizens Participation Act (TCPA). *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 27.001–011. Concluding it did not, we affirm.

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<sup>1</sup> The Honorable Carolyn Wright, Justice of the Court of Appeals for the Fifth District of Texas at Dallas, sitting by assignment.

## Background

Appellee Suzann Ruff filed a previous lawsuit in probate court against her son, Michael Ruff.<sup>2</sup> Suzann alleged in that lawsuit that Michael committed torts while he was trustee of the Ruff Management Trust. Those claims went to binding arbitration. Arbitrators issued a final award December 7, 2017. Arbitrators awarded Suzann \$49,000,000 against Michael plus attorney's fees and expenses. The arbitration award imposed a constructive trust in favor of Suzann on Michael's interests in certain entities and provided Suzann with a lien against Michael's ownership interests in them. The arbitration award identified Tavistock Group LLC as an entity to be held in constructive trust. The trial court confirmed the arbitration award and entered final judgment accordingly. This Court affirmed the trial court's judgment. *See Ruff v. Ruff*, No. 05-18-00326-CV, 2020 WL 4592794, at \*2–4 (Tex. App.—Dallas Aug. 11, 2020, pet. denied) (mem. op.).

On December 18, 2017, Suzann filed this lawsuit against Tavistock Group LLC and Jennifer, who is Suzann's daughter-in-law and Michael's wife. The original petition alleged the arbitrators in the previous lawsuit found Michael had

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<sup>2</sup> The parties refer to themselves in their briefs by using their first names, and earlier opinions of this Court refers to them in that manner. *See Ruff v. Ruff*, No. 05-21-00157-CV, 2022 WL 420353, at \*1 n.2 (Tex. App.—Dallas Feb. 11, 2022, pet. denied) (mem. op.). For consistency, we also refer to them by these names.

misappropriated Suzann's assets "and it is believed that he used her money to purchase 5806 Watson Avenue, Dallas, TX 75225, where he currently lives and to which Tavistock Group LLC holds title." Suzann alleged that pursuant to the arbitration award in the previous lawsuit, she is the beneficiary of a constructive trust over the property. Suzann requested "that the Court declare that the title to any interest Mike has in Tavistock Group LLC and any other property he obtained using her funds, including 5806 Watson Avenue, Dallas, TX 75225, vests in [Suzann] and to quiet title." Suzann requested an order requiring Michael to "sign over" to her all shares or other interests he had in Tavistock Group LLC. Jennifer filed an original answer, including affirmative defenses.

On October 30, 2020, Suzann filed a seventh amended petition against Tavistock Group LLC, Michael, and Jennifer.

On August 25, 2023, Suzann filed a supplemental petition against Tavistock Group LLC, Michael, and Jennifer. The supplemental petition alleged Suzann was the sole member of Tavistock. The supplemental petition alleged:

6. On December 19, 2017, Mike resigned as manager of Tavistock. That same day, Jennifer, purporting to act as the sole member of Tavistock, purported to appoint herself as manager. She then, again that same day, signed a deed as manager of Tavistock, purporting to transfer Tavistock's only asset to herself, for no consideration!

7. Suzy did not consent to, agree to, or otherwise approve this transaction. Jennifer simply stole the property.

The supplemental petition alleged Jennifer had no authority as manager of Tavistock to sign the deed to the Watson Street property. The supplemental petition alleged

four claims: (1) “quieting title”; (2) theft of real property; (3) breach of fiduciary duty; and (4) declaratory judgment concerning ownership of the property at issue.

On October 6, 2023, Jennifer filed a TCPA motion to dismiss. *See* CIV. PRAC. & REM. §§ 27.001–011. Jennifer argued the supplemental petition added the four above-described causes of action and new facts. Jennifer’s motion states:

Plaintiff’s claims are based on Jennifer’s communications pertaining to [Suzann’s] judicial proceeding against Mike. [Suzann’s] entire suit is based [on] Jennifer’s “communications” regarding Jennifer’s assets and her separate property after [Suzann] obtained an arbitration award against Mike.

Suzann filed a response to the motion, and Jennifer filed a reply to the response.

The trial judge held a TCPA hearing December 1, 2023. The judge signed an order on the motion to dismiss December 29, 2023. The order recited the motion was granted as to Suzann’s claims for breach of fiduciary duty and theft and was denied as to her claims for declaratory relief and to quiet title. The order awarded Jennifer fees and costs pursuant to § 27.009 of the Texas Civil Practice & Remedies Code to be determined later.

Jennifer filed a notice of appeal from the trial court’s partial denial of the motion to dismiss. This appeal followed.

### **Issues Presented**

Jennifer brings three issues on appeal. She states the first two as follows:

1. Did the trial court err in failing to dismiss the declaratory judgment claims?

2. Did the trial court err in failing to dismiss the quiet title claim?

Applicable Law and Standard of Review

The TCPA protects citizens who petition from retaliatory lawsuits intended to silence them. *See Garcia v. Semler*, 663 S.W.3d 270, 279 (Tex. App.—Dallas 2022, no pet.). That protection comes in the form of a special motion to dismiss legal actions that appear to stifle the defendant’s exercise of those rights. *See id.*

The TCPA applies to a legal action that is “based on or is in response to” a party’s exercise of the right of free speech, right to petition, or right to association. CIV. PRAC. & REM. § 27.003(a). A TCPA motion to dismiss generally requires a three-step analysis. First, the TCPA movant bears the initial burden of demonstrating that the legal action is based on or is in response to the movant’s exercise of the right of association, the right of free speech, the right to petition, or certain other protected conduct. *See id.* § 27.005(b). The supreme court has instructed that the basis of a legal action is determined by the plaintiff’s allegations, and 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) (footnote omitted). Second, if the movant carries its burden, the burden shifts to the nonmovant to establish by clear and specific evidence a prima facie case for each essential element of the claim in question. *See CIV. PRAC. & REM. § 27.005(c)*. If the nonmovant carries this burden, the trial judge may not dismiss the legal action. *See id.* Third, even if the nonmovant carries its step-two burden, the trial judge shall dismiss the legal action if the movant

establishes as a matter of law its entitlement to judgment on an affirmative defense or other ground. *See id.* § 27.005(d).

In this case, Jennifer contends she carried her step-one burden with reference to the right to petition. The TCPA defines “exercise of the right to petition” as including a communication in or pertaining to a judicial proceeding. *Id.* § 27.001(4). The TCPA defines “communication” as including “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).

In determining whether a legal action is subject to or should be dismissed under the TCPA, a court shall consider the pleadings, evidence the court could consider under the summary-judgment rule, and supporting and opposing affidavits stating the facts on which the liability or defense is based. *See id.* § 27.006(a).

We review de novo the trial judge’s determinations that the parties met or failed to meet their respective burdens under the TCPA. *See Garcia*, 663 S.W.3d at 279. In conducting our de novo review, we consider the pleadings and the evidence in the light most favorable to the nonmovant. *See Temple v. Cortez L. Firm, PLLC*, 657 S.W.3d 337, 342 (Tex. App.—Dallas 2022, no pet.).

### Analysis

We first consider whether Jennifer met her step-one burden to demonstrate the TCPA is applicable in this lawsuit. Jennifer argues Suzann’s claims are “based on” or “in response to” Jennifer’s exercise of her right to petition. *See CIV. PRAC. &*

REM. § 27.003(a). Jennifer argues her signing and filing the deed constituted a communication in or pertaining to a judicial proceeding. *See id.* § 27.001(4)(a)(1) (defining “right to petition”).

In the trial court, Jennifer argued the basis of Suzann’s claim as follows:

18. Even in her response, [Suzann] lays bare the fallacy of her argument: “[Suzann’s] claims are *based on* Jennifer’s conduct in trying to steal” her own home via the deed. Response at 8. *The signing of the deed by Jennifer is the communication which is the basis for Plaintiff’s new claims.* This Court need only look to Plaintiffs pleadings, as they are “the best and all-sufficient evidence of the nature of the action.” *Hersh v. Tatum*, 526 S.W.3d 462, 467 (Tex. 2017).

19. Plaintiff sued Jennifer *in response to* Jennifer signing and filing a deed regarding Jennifer’s home pertaining to the “Probate Judgment” judicial proceeding. That is direct assault on Jennifer’s right to petition.

(Emphases added.) Similarly, Jennifer argues in this Court: “[Suzann] contends that it is only ‘conduct’ that she complains about—yet communications are conduct—and here Jennifer’s signing and filing of a deed is a protected communication under the TCPA.”

Jennifer cites *James v. Calkins* in support of her argument that her signing or filing the deed was protected speech under the TCPA. *See* 446 S.W.3d 135 (Tex. App.—Houston [1st Dist.] 2014, pet. denied), *abrogated on other grounds*, 622 S.W.3d 290 (Tex. 2021). However, the court in *James* held that a fraudulent-lien claim was subject to the TCPA because it was based on, related to, or in response to a lis pendens—not to a deed. *See id.* The *James* court explained *the lis pendens gave notice of claims made in a lawsuit*, which the court held was a communication made

in or pertaining to a judicial proceeding. *See id.* at 147–48. Moreover, unlike the notice of lis pendens in *James*, the deed Jennifer signed and filed does not identify a lawsuit or judicial proceeding. Consequently, *James* does not support Jennifer’s assertion that her signing or filing the deed was a protected communication under the TCPA.

Additionally, Jennifer quotes provisions of Suzann’s allegations related to Suzann’s newest claims. Jennifer asserts the allegations “implicate” her communications pertaining to a judicial proceeding: “[Suzann’s] arbitration, the case against [Suzann’s] son Mike in probate court (No. PR-11-02825-1), and the proceeding below.” For example, Jennifer quotes Suzann’s allegation, “Since the AAA award, Mike has continued to use these entities to try to hide his fraud.” However, such references do not demonstrate Jennifer has met her initial burden to prove Suzann’s claims are “based on or [are] in response to” Jennifer’s right to petition or that Jennifer’s signing or filing the deed constituted communication in or pertaining to a judicial proceeding. *See* CIV. PRAC. & REM. § 27.003(a), 001(4); *Abundant Life Therapeutic Servs. Tex., LLC v. Headen*, No. 05-20-00145-CV, 2020 WL 7296801, at \*3 (Tex. App.—Dallas Dec. 11, 2020, pet. denied) (mem. op.) (stating that while the superseded petition and amended petition “reference” a lawsuit, the specific claims at issue rest upon claims for breach of contract, promissory estoppel, and negligent misrepresentation, and concluding, “Rather than communications ‘in or pertaining to’ the Harris County Lawsuit, we conclude the



communications underlying these claims are ‘based on, related to, or are in response to’ Headen’s termination, the event and communications on which the claims are factually predicated.”) (mem. op.) (emphasis in original.) The reasoning in *Abundant Life Therapeutic Services Texas, LLC* applies in this lawsuit. Although Suzann’s newest claims incidentally refer to judicial proceedings, the events on which Suzann’s claims are factually predicated are Jennifer’s signing and filing the deed, which were not communications in or pertaining to a judicial proceeding, as we concluded above. *See id.*

“We cannot ‘blindly accept’ attempts by the movant to characterize the claims as implicating protected expression.” *Damonte v. Hallmark Fin. Servs., Inc.*, No. 05-18-00874-CV, 2019 WL 3059884, at \*5 (Tex. App.—Dallas July 12, 2019, no pet.) (mem. op.). Upon reviewing the pleadings and evidence in light of the above-stated standard of review, we conclude Jennifer’s signing and filing the deed—which Jennifer argues is the basis of Suzann’s newest claims—was not an exercise of Jennifer’s right to petition.<sup>3</sup>

Consequently, the trial court did not err in denying Jennifer’s motion to dismiss Suzann’s suit to quiet title or her request for declaratory relief.

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<sup>3</sup> In this Court, Jennifer refers five times to a declaration of Michael that Jennifer produced in support of her motion to dismiss. The references concern a premarital agreement and a statement that Michael never owned an interest in real property at 5806 Watson Avenue, Dallas, Texas. These declarations are irrelevant to our decision.

We overrule Jennifer's first two issues on appeal.<sup>4</sup>

### **Conclusion**

We affirm the trial court's order and remand the case for proceedings consistent with this opinion.

/Carolyn Wright//

CAROLYN WRIGHT  
JUSTICE, ASSIGNED

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<sup>4</sup> Due to our disposition of Jennifer's first two issues on appeal, we need not, and do not, reach her third issue on appeal.



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

**JUDGMENT**

JENNIFER RUFF, Appellant

No. 05-24-00095-CV      V.

SUZANN RUFF, Appellee

On Appeal from the 116th Judicial  
District Court, Dallas County, Texas  
Trial Court Cause No. DC-17-17273.  
Opinion delivered by Justice Wright.  
Justices Goldstein and Kennedy  
participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED** and the case is **REMANDED**.

It is **ORDERED** that appellee SUZANN RUFF recover her costs of this appeal from appellant JENNIFER RUFF.

Judgment entered this 10<sup>th</sup> day of March, 2025.