

**REVERSED; RENDERED IN PART; REMANDED and CROSS-APPEAL
DISMISSED and Opinion Filed December 29, 2025**



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

No. 05-24-00325-CV

**ROBERT STEINHAGEN, Appellant/Cross-Appellee
V.
MC TRILOGY TEXAS, LLC, Appellee/Cross-Appellant**

**On Appeal from the 439th Judicial District Court
Rockwall County, Texas
Trial Court Cause No. 1-23-1695**

OPINION

Before Justices Breedlove, Clinton, and Rossini
Opinion by Justice Clinton

Robert Steinhagen, proceeding pro se, appeals the trial court’s denial of his motion to dismiss pursuant to the Texas Citizens Participation Act (“TCPA”). Appellee MC Trilogy Texas, LLC (“MCT”) cross-appeals. We reverse, render judgment dismissing appellee MCT’s claims against Steinhagen, and remand for further proceedings. We dismiss MCT’s cross-appeal.

I. Background

A. Factual Allegations

MCT alleges the following facts in its live petition.

MCT is a real-estate developer. In 2021 it began working on a residential master-planned community called “Trilogy.” MCT engaged in several months of negotiations with the City of McLendon-Chisolm, culminating in a development agreement that the city council approved on October 27, 2021.

Steinhagen hosts a YouTube channel on which he refers to himself as “Bunker Bob.” On September 10, 2021, Steinhagen livestreamed a show in which he said the following:

And they’re going to fund city council members who will do their bidding. How do you think that Keith Short, Lorna Kippett and Trudy Westner got elected?

* * *

. . . And they have members of the City Council who are bought and paid for by developers specifically to do this very thing.

MCT, however, did not discover these statements until much later.

On January 23, 2023, Steinhagen made the following statements:

And that public record, that information somehow disappeared. So it is now up to individuals on the council to lie during deposition. And eventually here’s the thing that I’ve learned a long time ago, three people can keep a secret as long as two of them are dead. When it comes to breaking the law, there’s a lot of people who may go by the wayside because they’re a threat to the Huffines development people . . . And I’m making a prediction that anyone who speaks to the attorneys or speaks to the authorities about this, about the actions that have been taken, if anyone has the courage to do that, you need to watch your back because your life will be in jeopardy.^[1]

¹ In its response to Steinhagen’s TCPA motion to dismiss, MCT alleged more specifically that Steinhagen made the January 23, 2023 statements in another YouTube video.

MCT alleges that Steinhagen's statements harmed MCT's business and caused MCT to incur attorney's fees in a lawsuit with the City of Heath.

B. Procedural History

On November 3, 2023, MCT sued Steinhagen for defamation and business disparagement.

Steinhagen filed an answer in which he pleaded the statute of limitations, asked the court to dismiss MCT's lawsuit pursuant to the TCPA, and counterclaimed against MCT for defamation.

On February 21, 2024, the trial court timely held a hearing on Steinhagen's motion to dismiss. On March 5, 2024, a court employee sent the parties an email advising that the judge had instructed her to inform the parties "of the following rulings." The email went on to say that MCT's allegations of defamatory statements in the September 2021 broadcast were barred by limitations and that Steinhagen's TCPA motion was denied as to defamation in the January 2023 broadcast. The trial judge never signed an order regarding Steinhagen's TCPA motion.

On March 19, 2024, Steinhagen filed a notice of appeal in which he asserted that a denial of his motion to dismiss had been "signed" on March 5, 2024, and that he was appealing that denial. On March 28, MCT filed a notice of cross-appeal from the "March 5, 2024 Order" to the extent the trial judge dismissed MCT's claims based on the statute of limitations.

II. Appellate Jurisdiction

We questioned our jurisdiction over MCT's cross-appeal, and in subsequent briefing MCT took the position that the March 5, 2024 email did not constitute an order that was appealable by either side. Later, MCT clarified its position to be that the email was not an appealable order, that Steinhagen's motion was denied in its entirety by operation of law on March 24, 2024,² and that Steinhagen's appeal was proper but MCT's cross-appeal was moot.

For the following reasons, we dismiss MCT's cross-appeal.

We have interlocutory appellate jurisdiction over an order that denies a motion to dismiss filed under the TCPA. TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(12). Moreover, if a trial court does not rule on a TCPA dismissal motion within thirty days after hearing it, the motion is denied by operation of law, and the moving party may appeal. *Id.* § 27.008(a).

We have held that a TCPA motion is denied by operation of law unless the trial judge signs a written order within thirty days after the hearing. *Eichner v. Ocwen Fin. Corp.*, 719 S.W.3d 400, 404–05 (Tex. App.—Dallas 2025, no pet.). In this case, the trial judge did not sign a written order after hearing Steinhagen's TCPA motion, so the motion was denied by operation of law thirty days after the hearing despite the court employee's sending of the March 5, 2024 email. And Steinhagen's notice

² Steinhagen's TCPA motion was actually denied by operation of law on March 22, 2024—thirty days after the hearing on February 21, 2024. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 27.005(a), 27.008(a).

of appeal, filed before his motion was denied by operation of law, was premature but effective. *See* TEX. R. APP. P. 27.1(a).

As for MCT's cross-appeal, it was premised on the assumption that the trial judge had dismissed part of MCT's claims. MCT has filed a letter brief asking us to dismiss its cross-appeal if we conclude that Steinhagen's motion was denied in its entirety. Accordingly, we dismiss the cross-appeal.

III. Applicable Law and Standard of Review

Now we turn to Steinhagen's appeal and the law governing same.

The TCPA protects citizens who petition or speak out on matters of public concern from retaliatory lawsuits intended to silence them. *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. *Id.*

A TCPA motion to dismiss triggers a multi-step analysis. *See* CIV. PRAC. & REM. § 27.005(b)–(d). At step one, the movant bears the initial burden to demonstrate that the nonmovant's legal action is based on or in response to (1) the movant's exercise of the right of free speech, the right to petition, or the right of association, or (2) conduct by the movant fitting the descriptions found in section 27.010(b). *See id.* § 27.005(b).

If the movant carries its step-one burden as to a claim, the burden shifts to the nonmovant to establish by clear and specific evidence a prima facie case for each

essential element of that claim. *See id.* § 27.005(c). If the nonmovant does not carry its burden, the claim must be dismissed. *See id.* § 27.005(b), (c). And even if the nonmovant carries its step-two burden, the movant can still win dismissal at step three by establishing an affirmative defense or other grounds on which the movant is entitled to judgment as a matter of law. *Id.* § 27.005(d).

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. *Id.* § 27.006(a). We consider these materials in the light most favorable to the nonmovant. *Eichner*, 719 S.W.3d at 403.

We review de novo the trial court's determinations that the parties met or failed to meet their respective burdens under section 27.005. *Garcia*, 663 S.W.3d at 279.

IV. Discussion

A. Introduction

The issue statement in Steinhagen's pro se brief raises ten issues, the first of which asserts generally that the trial court erred by denying his TCPA motion to dismiss. Most of his remaining nine issues give more specific reasons the trial court should have granted Steinhagen's motion. However, the argument section of his brief does not clearly track his statement of the issues. Accordingly, we will address

the substance of his arguments as they relate to his first issue: that the trial court should have granted his motion. *See Hassen v. Demetriou*, No. 05-24-00290-CV, 2024 WL 4763282, at *2 (Tex. App.—Dallas Nov. 13, 2024, pet. denied) (mem. op.) (liberally construing pro se brief and addressing arguments appellant sought to raise).

We also note that Steinhagen attached several documents to his appellant’s brief. We disregard any documents that do not appear in the official appellate record. *See In re Guardianship of Winn*, 372 S.W.3d 291, 297 (Tex. App.—Dallas 2012, no pet.).

B. Step One: Both Broadcasts

As TCPA movant, Steinhagen bore the initial burden to demonstrate that MCT’s legal action was based on or in response to his exercise of the right of association, right of free speech, or right to petition, or an act described by section 27.010(b). *See* CIV. PRAC. & REM. § 27.005(b). He relies on the right of free speech, which the TCPA defines as “a communication made in connection with a matter of public concern.” *Id.* § 27.001(3). The term “matter of public concern” includes matters “of political, social, or other interest to the community.” *Id.* § 27.001(7)(B). 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).

Steinhagen argues that the two broadcasts at issue involved matters of public concern because he was exposing municipal violations of statutory open-government requirements and “an underhanded contractual agreement with [MCT’s] small-lot housing development.” MCT’s live petition characterizes Steinhagen’s statements more colorfully as accusing MCT of bribing city council members, destroying public records, and being willing to murder people who oppose its real-estate development. We conclude that Steinhagen’s statements, given their plain and ordinary meaning, address municipal corruption and governmental misconduct. These are matters of political interest to the community, so both statements involve matters of public concern. *See* CIV. PRAC. & REM. § 27.001(7)(B); *see also Conrad v. Joiner*, No. 01-22-00450-CV, 2023 WL 4356187 at *3–4 (Tex. App.—Houston [1st Dist.] July 6, 2023, no pet.) (mem. op.) (statements accusing a mayor of violating state law involved a matter of public concern).

In sum, we conclude that Steinhagen carried his step-one burden under the TCPA as to both of the statements on which MCT’s claims are based.

C. Step Three: The September 2021 Broadcast

In his opening appellate brief, Steinhagen makes only one argument regarding MCT’s claims based on Steinhagen’s September 2021 broadcast: those claims are barred by the statute of limitations. Accordingly, without deciding whether MCT met its step-two burden, we proceed directly to step three of the TCPA analysis for

MCT's claims based on the September 2021 broadcast. The question is whether Steinhagen established that he was entitled to judgment as a matter of law on his limitations defense. *See* CIV. PRAC. & REM. § 27.005(d).

The statute of limitations is one year for oral defamation and two years for business disparagement. *See id.* § 16.002(a) (one-year statute for libel and slander); *Glassdoor, Inc. v. Andra Grp., LP*, 575 S.W.3d 523, 527 (Tex. 2018) (two-year statute for business disparagement). Both claims generally accrue when the allegedly defamatory or disparaging material is published or circulated. *Glassdoor*, 575 S.W.3d at 528. However, if the discovery rule applies, then accrual is deferred until the plaintiff knew or in the exercise of reasonable diligence should have known of the facts giving rise to the cause of action. *Marcus & Millichap Real Est. Inv. Servs. of Nev., Inc. v. Triex Tex. Holdings, LLC*, 659 S.W.3d 456, 461 (Tex. 2023) (per curiam). MCT alleges in its live petition that Steinhagen published the first statements on September 10, 2021, and MCT filed suit more than two years later, so both claims are barred by limitations unless the discovery rule applies. Steinhagen bore the burden to establish either that the discovery rule did not apply or that the evidence negated its effect. *See id.* at 460; *Moore v. Dallas Morning News, Inc.*, No. 05-22-01286-CV, 2024 WL 3439825, at *3 (Tex. App.—Dallas July 17, 2024, no pet.) (mem. op.).

The discovery rule is a narrow exception to the legal-injury rule that generally governs accrual. *Marcus & Millichap*, 659 S.W.3d at 461. The discovery rule applies

only if the nature of the injury is inherently undiscoverable and the evidence of injury is objectively verifiable. *Via Net v. TIG Ins. Co.*, 211 S.W.3d 310, 313 (Tex. 2006) (per curiam). An injury is inherently undiscoverable if it is, by its nature, unlikely to be discovered within the prescribed limitations period despite due diligence. *Id.* The Supreme Court has limited the discovery rule to exceptional cases in order to avoid defeating the purposes behind the statute of limitations. *Id.*

Whether the discovery rule applies is a legal question, and we decide that question on a categorical rather than a case-specific basis. *Id.* at 314. We focus on whether the type of injury rather than the particular injury was discoverable. *Id.* Although the inquiry is a categorical one, courts define the “category” with some reference to the particular facts of the case. For example, in *Kelly v. Rinkle*, the Texas Supreme Court held that the discovery rule applies to libel claims arising from a defamatory report to a credit agency. 532 S.W.2d 947, 949 (Tex. 1976). And in *Wells Fargo Bank Northwest, N.A. v. RPK Capital XVI, L.L.C.*, we held that the discovery rule applies to “conversion cases in which a lessee lawfully in possession of a lessor’s property secretly sells or transfers the lessor’s property to a third party, but continues to comply with its obligations under the lease.” 360 S.W.3d 691, 702 (Tex. App.—Dallas 2012, no pet.).

We conclude that the discovery rule does not apply to MCT’s claims based on the September 2021 broadcast. The question is whether a reputational injury caused by allegedly defamatory statements broadcast on a public YouTube channel

is, by its nature, unlikely to be discovered within limitations despite due diligence.

See Via Net, 211 S.W.3d at 313. Here, the record shows that

- the September 2021 broadcast was accessible to the public; and
- when Steinhagen made a second broadcast about a year and half later, MCT actually discovered its injury within a year after the second broadcast.

Because the discovery rule is intended to be a “narrow exception” to the general rule, *Marcus & Millichap*, 659 S.W.3d at 461, and the Supreme Court has limited it to “exceptional cases,” *Via Net*, 211 S.W.3d at 313, we conclude that the discovery rule does not apply to MCT’s claims.

Although we find no binding legal authority exactly on point, several persuasive authorities support our conclusion.

First, a four-justice plurality of the Texas Supreme Court has expressed skepticism that the discovery rule should often apply to defamation claims. Those justices said:

Importantly, we have never held that the discovery rule applies to defamation claims except in the narrow circumstance involving a person’s discovery of allegedly libelous information filed with a credit agency. *See Kelley v. Rinkle*, 532 S.W.2d 947, 949 (Tex. 1976). And in fact, we suggested that the discovery rule would rarely extend to other contexts. *Id.* In other words, we have suggested that for defamation suits, accrual generally occurs the date the publication is made.

Hogan v. Zoanni, 627 S.W.3d 163, 172 (Tex. 2021) (plurality op.). This passage reinforces the Court’s general policy that the discovery rule should be limited to exceptional cases. *See Via Net*, 211 S.W.3d at 313. Additionally, the *Kelley* case

says in dicta that the discovery rule would not apply “where the defamation is made a matter of public knowledge through such agencies as newspapers or television broadcasts.” 532 S.W.2d at 949. It is not a great stretch to conclude that today’s public internet platforms like YouTube are akin to the newspapers and television mentioned in the *Kelley* opinion.

Second, our own caselaw supports Steinhagen’s position. In one recent case, Dallas Morning News, Inc. (DMN) published an online article that allegedly defamed Jayson Moore. *Moore*, 2024 WL 3439825, at *1. Moore was in prison at the time, and he sued DMN for defamation more than three years after the publication. *Id.* at *1–2. The trial court dismissed Moore’s claim against DMN under the TCPA, and we affirmed on limitations grounds. *Id.* at *2, *6. We rejected Moore’s contention that the discovery rule should apply, concluding that Moore’s reputational injury was not inherently undiscoverable, in part because “the Article was posted online, i.e., it was disseminated via mass media.” *Id.* at *5. We went on to observe that the online article was readily available to the public and was not hidden or undetectable. *Id.* Because Steinhagen’s posting of his statement online constituted dissemination via mass media and was not hidden or undetectable, *Moore* suggests that Steinhagen’s post should not trigger application of the discovery rule.

Our decision in *Clark v. Dillard’s, Inc.*, 460 S.W.3d 714 (Tex. App.—Dallas 2015, no pet.), also supports Steinhagen’s position. In that case, Clark was a fashion

model. *Id.* at 717. Dillard’s began using photographs of Clark on Dillard’s products in around 2001, began using photographs of Clark that showed his entire face in 2005, and ceased using photographs of Clark in September 2011. *Id.* at 717–18. Clark sued Dillard’s in October 2011 for unjust enrichment, among other claims. *Id.* at 718. Clark won a judgment based on unjust enrichment, but we reversed based on the two-year statute of limitations. We concluded that the discovery rule did not apply because a company’s use of a photograph on products prominently displayed in its stores is not an inherently undiscoverable injury. *Id.* at 723–24. We rejected Clark’s arguments that fashion models produce thousands of photos and cannot realistically know, even when exercising due diligence, when their photographs are actually used, noting that this type of injury “is not by its nature hidden or undetectable but is readily observable and on public display.” *Id.* at 722. Similarly, Steinhagen’s YouTube videos are not by their nature hidden or undetectable but are observable and on public display.

Finally, we note that persuasive authority from the Fourteenth Court of Appeals supports Steinhagen’s position. *See Velocity Databank, Inc. v. Shell Offshore, Inc.*, 456 S.W.3d 605 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). In that case, Shell allegedly defamed Velocity by making comments about Velocity on a “web-based, publicly accessible geophysical database” that was accessible to the public through a federal agency’s website. *Id.* at 607–08 & n.1. More than ten years passed after the publication before Velocity sued Shell for defamation. *Id.* at

608. Shell won summary judgment based on limitations, and the court of appeals affirmed. The court held that a publication “on a website owned and maintained by a federal government agency and accessible to the public without charge or subscription” is not inherently undiscoverable, and therefore the discovery rule did not apply. *Id.* at 611. The court rejected Velocity’s argument that the website was meaningful only to industry insiders and not the general public, concluding that a matter may become public knowledge irrespective of whether it is disseminated to a broad or narrow audience. *Id.* Under the same logic, Steinhagen’s publication of statements on YouTube made those statements public knowledge, even if the statements were of interest only to a relatively narrow segment of the public.

MCT argues that Steinhagen’s limitations argument fails because he adduced no evidence that the September 2021 broadcast was inherently discoverable or a matter of public knowledge. We reject this argument because the essential facts were supplied by the pleadings—Steinhagen published the September 10, 2021 statement on a publicly accessible YouTube channel, and MCT actually discovered a subsequent Steinhagen YouTube broadcast within a year after that broadcast.

MCT also argues that it is bad public policy to hold that every online post is inherently discoverable or a matter of public knowledge, especially if the forum has a small number of followers. Although this argument has some force, we conclude it is inconsistent with the policy of keeping the discovery rule a narrow exception to the general rules governing accrual for limitations purposes.

In sum, we conclude that the discovery rule does not apply to MCT's defamation and business-disparagement claims based on the September 2021 broadcast. Because MCT filed suit more than two years after that broadcast, both claims are time-barred as a matter of law. We sustain Steinhagen's first issue with respect to those claims.

D. Step Two: The January 2023 Broadcast

As to MCT's claims based on Steinhagen's January 2023 broadcast, we discern that Steinhagen challenges MCT's step-two showing in several respects. Again, the question at step two of the TCPA analysis is whether the claimant established by clear and specific evidence a prima facie case for each essential element of its claim. *See* CIV. PRAC. & REM. § 27.005(c).

For convenience, we repeat the part of Steinhagen's January 2023 YouTube broadcast that MCT quotes in its live petition as being actionable:

And that public record, that information somehow disappeared. So it is now up to individuals on the council to lie during deposition. And eventually here's the thing that I've learned a long time ago, three people can keep a secret as long as two of them are dead. When it comes to breaking the law, there's a lot of people who may go by the wayside because they're a threat to the Huffines development people . . . And I'm making a prediction that anyone who speaks to the attorneys or speaks to the authorities about this, about the actions that have been taken, if anyone has the courage to do that, you need to watch your back because your life will be in jeopardy.

Now we turn to the elements of MCT's two legal theories.

1. Defamation

Defamation's elements include (1) the publication of a false statement of fact to a third party, (2) that was defamatory concerning the plaintiff, (3) with the requisite degree of fault, and (4) damages, in some cases. *In re Lipsky*, 460 S.W.3d 579, 593 (Tex. 2015) (orig. proceeding). With regard to the first element, a statement that is not verifiable as false cannot form the basis of a defamation claim, and even a verifiably false statement is not actionable if the entire context discloses that the statement is merely an opinion masquerading as fact. *Dallas Morning News, Inc. v. Tatum*, 554 S.W.3d 614, 639 (Tex. 2018). Additionally, a first-person, informal style tends to show that a communication is a subjective opinion rather than objective fact. *Id.* Whether a statement is an opinion is a question of law. *Id.* As to the second element, the plaintiff must prove that the defamatory statement was specifically directed at him, i.e., it must appear that he is the person with reference to whom the statement is made. *Apple Tree Café Touring, Inc. v. Levatino*, No. 05-16-01380-CV, 2017 WL 3304641, at *4 (Tex. App.—Dallas Aug. 3, 2017, pet. denied) (mem. op.). It is not necessary that the plaintiff be named in the statement if those who know and are acquainted with the plaintiff understand that the statement refers to him. *Id.*

We conclude that Steinhagen's January 2023 broadcast contains two salient parts: a statement that some sort of public record or information "disappeared" and then a prediction or warning that anyone who spoke to the authorities about certain "actions that have been taken" would be risking his or her life. MCT construes the

statements as accusing it of destroying public records and of being willing to murder people who oppose MCT's real-estate development.

As to the first salient part of the statement, Steinhagen argues that he never accused MCT of destroying public records. We agree to the extent that we conclude that MCT has not established by clear and specific evidence that the first salient part of the statement referred to or was about MCT. Steinhagen said that a "public record" or "information somehow disappeared," but he did not identify the person who caused the record or information to disappear. His following statement was, "So it is now up to individuals on the council to lie during deposition," but again he did not identify the person who caused the record or information to disappear. We see nothing in this passage to show that a person familiar with MCT would understand that Steinhagen was accusing MCT of destroying public records or information. MCT filed an affidavit by its managing member, Phillip W. Huffines, but nothing in the affidavit explains why a person familiar with MCT would have understood Steinhagen to be accusing MCT of destroying public records or information. Accordingly, we conclude that MCT failed to establish by clear and specific evidence a prima facie case that the statement concerning the disappearance of a public record or information referred to or was specifically directed at MCT.

As for the second salient part of the broadcast, Steinhagen argues that his "prediction" is a nonactionable opinion rather than a potentially actionable statement of fact. Again, we agree. This part of the broadcast consists of two predictions by

Steinhagen: that people who are a “threat” to “Huffines development people” may “go by the wayside,” and that anyone who goes to the authorities about “the actions that have been taken” should be careful because his or her life “will be in jeopardy.” The vagueness of these averments makes them impossible to verify. Moreover, the first-person, informal style of the entire communication signals that “the format is subjective rather than objective.” *Tatum*, 554 S.W.3d at 639. And finally, the very nature of a prediction is to be an unverifiable assertion about possible future events. Although we find no Texas cases addressing the status of predictions under defamation law, several courts around the country have concluded that predictions of future events are nonactionable opinions. *See, e.g., Harrington v. Hall Cnty. Bd. of Supervisors*, No. 4:15-CV-3052, 2016 WL 1274534, at *9 (D. Nebr. Mar. 31, 2016) (holding that prediction that a proposed strip club would promote sexual violence and prostitution, impose a larger burden on area law enforcement, and would “tear down and destroy families and individuals” was nonactionable opinion); *WCP/Fern Exposition Servs., LLC v. Hall*, No. 3:08-CV-522, 2011 WL 1157699, at *13 (W.D. Ky. Mar. 28, 2011) (holding that prediction that plaintiff might “sabotage” settlement negotiations was nonactionable “as pure opinion”); *Bebo v. Delander*, 632 N.W.2d 732, 740 (Minn. Ct. App. 2001) (holding that prediction that individual was “going to f— you over” was a nonactionable opinion). For all these reasons, we conclude that Steinhagen’s statements in the January 2023 broadcast about people going “by the wayside” or putting their lives in jeopardy are not

statements of verifiable fact. Accordingly, as a matter of law they are not actionable. *See Tatum*, 554 S.W.3d at 639.

We conclude that the trial court erred by failing to dismiss MCT's defamation claim based on the January 2023 broadcast.

2. Business Disparagement

The elements of business disparagement are (1) the defendant published false and disparaging information about the plaintiff, (2) with malice, (3) without privilege, (4) that resulted in special damages to the plaintiff. *In re Lipsky*, 460 S.W.3d at 592. We conclude that MCT's business-disparagement claim based on the January 2023 broadcast fails for the same reasons its defamation claim fails.

The first element of business disparagement is that the defendant published false and disparaging information about the plaintiff. *Id.* As discussed above, MCT did not adduce clear and specific evidence that the first statement in the quoted passage from the January 2023 broadcast, which concerned the disappearance of a public record or information, was about MCT. Thus, that statement constitutes no evidence of MCT's business-disparagement claim.

The remaining statements in the quoted passage from the January 2023 broadcast, which concern people going "by the wayside" and putting their lives in jeopardy, are unverifiable predictions about the future. Accordingly, they do not contain "false and disparaging information," *id.*, as is necessary to support a business-disparagement claim. *See McConnell v. Coventry Health Care Nat'l*

Network, No. 05-13-01365-CV, 2015 WL 4572431, at *9–10 (Tex. App.—Dallas July 30, 2015, pet. denied) (mem. op.) (holding that a statement of opinion rather than objectively verifiable fact would not support a business-disparagement claim); *Cnty. Initiatives, Inc. v. Chase Bank of Tex.*, 153 S.W.3d 270, 284 (Tex. App.—El Paso 2004, no pet.) (“Regarding the first element [of business disparagement], the false and disparaging information must amount to a statement of fact.”).

We conclude that the trial court erred by failing to dismiss MCT’s business-disparagement claim based on the January 2023 broadcast.

E. Appellate Relief

Steinhagen concludes his argument by asking this Court to sanction MCT pursuant to section 27.009(a)(2) of the TCPA. That provision gives the court discretion to assess sanctions against the nonmovant if the court orders dismissal of a legal action. CIV. PRAC. & REM. § 27.009(a)(2). The amount of the sanction should be sufficient to deter the party who brought the legal action from bringing similar actions. *Id.* Although Steinhagen did not mention sanctions in his TCPA motion to dismiss, he orally requested them during the hearing of his motion.

We are unaware of any authority supporting the premise that an appellate court may make an award of section 27.009(a)(2) sanctions. Rather, when appellate courts reverse a denial of a TCPA motion to dismiss, they routinely remand so that the trial court may assess sanctions if it deems them appropriate. *See, e.g., High Risk Pregnancy Drs., PLLC v. Akhmedjanova*, No. 05-24-00413-CV, 2025 WL 99813, at

*5 (Tex. App.—Dallas Jan. 15, 2025, no pet.) (mem. op.). We see no reason to depart from that practice in this case. Accordingly, we reject Steinhagen’s request that we impose sanctions on MCT. We express no opinion as to whether the trial court should impose sanctions after remand.

V. Disposition

We sustain Steinhagen’s first issue on appeal, reverse the denial of Steinhagen’s motion to dismiss, render judgment dismissing with prejudice MCT’s defamation and business-disparagement claims, and remand the case to the trial court for further proceedings consistent with this opinion. We dismiss MCT’s cross-appeal.

/Tina Clinton/
TINA CLINTON
JUSTICE



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

JUDGMENT

ROBERT STEINHAGEN,
Appellant/Cross-Appellee

No. 05-24-00325-CV V.

MC TRILOGY TEXAS, LLC,
Appellee/Cross-Appellant

On Appeal from the 439th Judicial
District Court, Rockwall County,
Texas

Trial Court Cause No. 1-23-1695.
Opinion delivered by Justice Clinton.
Justices Breedlove and Rossini
participating.

In accordance with this Court's opinion of this date, we **REVERSE** the trial court's denial by operation of law of appellant/cross-appellee Robert Steinhagen's motion to dismiss, we **RENDER** judgment that appellee/cross-appellant MC Trilogy Texas, LLC's claims against appellant/cross-appellee Robert Steinhagen for defamation and business disparagement are **DISMISSED WITH PREJUDICE**, and we **REMAND** this case to the trial court for further proceedings consistent with this opinion.

We **DISMISS** appellee/cross-appellant MC Trilogy Texas, LLC's cross-appeal.

It is **ORDERED** that appellant/cross-appellee Robert Steinhagen recover his costs of this appeal from appellee/cross-appellant MC Trilogy Texas, LLC.

Judgment entered this 29th day of December 2025.