



NUMBER 13-16-00613-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

**COLUMBIA VALLEY HEALTHCARE SYSTEM, L.P.
D/B/A VALLEY REGIONAL MEDICAL CENTER
AND LUIS GAITAN,**

Appellants,

v.

MADHAVAN PISHARODI,

Appellee.

**On appeal from the 444th District Court
of Cameron County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Rodriguez and Hinojosa
Memorandum Opinion by Chief Justice Valdez**

Appellants, Columbia Valley Healthcare System, L.P. d/b/a Valley Regional Medical Center and Luis Gaitan, appeal from the trial court's denial of their motion to dismiss the suit filed by appellee Madhaven Pisharodi.¹ By one issue, appellants contend that the trial

¹ We refer to Madhaven Pisharodi as Dr. Pisharodi throughout.

court should have dismissed Dr. Pisharodi's suit against them under the Texas Citizens Participation Act (TCPA). We reverse and remand.

I. BACKGROUND

Dr. Pisharodi is a neurosurgeon who has medical privileges with Valley Regional. In his original petition, Dr. Pisharodi claimed that Valley Regional's chief of staff asked him to write a complaint "regarding a fellow physician's treatment of and communications with two patients." Dr. Pisharodi asserted that after he made his complaint, Valley Regional "failed to meaningfully investigate his allegations and instead, started a campaign against [him] in conjunction with [Dr. Gaitan] . . . to not only discredit him in Cameron County, but also to the Texas Medical Board [(TMB)] and the National Databank [(ND)]." Dr. Pisharodi claimed that Valley Regional "initiated a series of peer reviews in violation of the bylaws" and that Valley Regional "cut [his] access to the patient medical records" necessary for the peer reviews. According to Dr. Pisharodi, appellants "altered patient medical records . . . to justify" suspending his privileges for thirty days, and then Valley Regional "used the altered medical records in its sham peer review proceedings [and] also made two reports to the [TMB] and transmitted altered medical records to them with the intent that they take enforcement action against [him]."

Dr. Pisharodi sued Valley Regional for breach of contract alleging it breached the contract by violating the bylaws. Dr. Pisharodi sued appellants for negligence because they "breached their duty to [him] by making false statements." Dr. Pisharodi also sued appellants for business disparagement, defamation, and conspiracy.

Appellants filed a motion to dismiss Dr. Pisharodi's claims under the TCPA. The trial court dismissed Dr. Pisharodi's claims for business disparagement, defamation, and

conspiracy. Appellants filed this appeal of the trial court's denial of their motion to dismiss Dr. Pisharodi's claims of breach of contract and negligence.

II. APPLICABLE LAW AND STANDARD OF REVIEW

The TCPA ("Strategic Lawsuits Against Public Participation") law requires the dismissal of a claim if it "is based on, relates to, or is in response to [the defendant's] exercise of the right of free speech, right to petition, or right of association. . . ." TEX. CIV. PRAC. & REM. CODE ANN. § 27.003(a) (West, Westlaw through 2017 R.S.). TCPA defines "the exercise of the right of free speech" as "a communication made in connection with a matter of public concern." *Id.* § 27.001(3) (West, Westlaw through 2017 R.S.). As relevant to this case, a matter of public concern includes issues relating to health or safety and to service in the marketplace. *Id.* § 27.001(7)(A), (E).

"To effectuate the statute's purpose, the Legislature has provided a two-step procedure to expedite the dismissal of claims brought to intimidate or to silence a defendant's exercise of [the defendant's] First Amendment rights." *ExxonMobil Pipeline Co. v. Coleman*, 512 S.W.3d 895, 899 (Tex. 2016) (per curiam). First, the movant bears the burden to show by a preponderance of the evidence that the legal action is based on, relates to, or is in response to the exercise of the right of free speech, right to petition, or right of association. *Id.* at 898. If the movant satisfies this burden, the trial court must dismiss the action unless the non-movant "establishes by clear and specific evidence a prima facie case for each essential element of the claim in question." TEX. CIV. PRAC. & REM. CODE ANN. § 27.005(b), (c) (West, Westlaw through 2017 R.S.). When determining whether the plaintiff's claims should be dismissed, the trial court considers the pleadings and any supporting affidavits. *Id.* § 27.006(a). We conduct a de novo review of whether

the respective requirements under the TCPA have been satisfied. *Serafine v. Blunt*, 466 S.W.3d 352, 357 (Tex. App.—Austin 2015, no pet.) (op. on reh’g).

III. INITIAL BURDEN IS ON APPELLANTS

The first issue before this Court is whether Dr. Pisharodi’s claims for breach of contract and negligence “[are] based on, relate to, or [are] in response to [appellants’] exercise of the right of free speech, right to petition, or right of association. . . .” See TEX. CIV. PRAC. & REM. CODE ANN. § 27.003(a). And, if appellants made that initial showing, the burden shifted to Dr. Pisharodi to prove his prima facie case. See *id.*

Appellants argue that they showed by a preponderance of evidence that Dr. Pisharodi’s breach of contract and negligence claims implicate all protected rights under the TCPA. Dr. Pisharodi responds that his breach of contract claim is not based on any of appellants’ statements or communications about him. Instead, Dr. Pisharodi argues that his claims are based on appellants’ failure to follow Valley Regional’s bylaws during the peer review process. According to Dr. Pisharodi, he also claimed that Valley Regional denied him access to his patient’s medical records during the peer review process, which Dr. Pisharodi claims violates the bylaws and constitutes a breach of contract.

In his live pleading, Dr. Pisharodi stated that because appellants violated the bylaws they breached the contract by falsely reporting him to the TMB two times and reporting him to the ND once. He further alleged that appellants violated the bylaws and breached the contract by performing a “sham” peer review of his actions.²

² In his breach of contract section of his live pleading, Dr. Pisharodi made no claim that Valley Regional breached the bylaws by denying him access to his patient’s medical records.

Appellants argue that statements made to the TMB, ND, and during the peer review process are a matter of public concern because Dr. Pisharodi's ability to practice medicine relates to "health and safety." We agree with appellants that any statements made to the TMB or the ND and any statements made during the peer review process constitute protected free speech. Moreover, "the provision of medical services by a health care professional constitutes a matter of public concern." *Lippincott v. Whisenhunt*, 462 S.W.3d 507, 510 (Tex. 2015). Accordingly, we conclude that appellants met their initial burden to show by a preponderance of the evidence that Dr. Pisharodi's breach of contract action is based on, relates to, or is in response to the exercise of the right of free speech. TEX. CIV. PRAC. & REM. CODE ANN. §§ 27.003(a), 27.005(b); *Coleman*, 512 S.W.3d at 898.

Dr. Pisharodi's live pleading states that he sued appellants for negligence because they "breached their duty to [him] by making false statements." The plain language of Dr. Pisharodi's pleading relates to appellants' exercise of their right to free speech—that is that they made false statements about him. And, those statements related to a matter of public concern because the statements concerned the provision of medical services by a health care professional. See *Lippincott*, 462 S.W.3d at 510. Thus, appellants met their initial burden to show by a preponderance of the evidence that Dr. Pisharodi's negligence action is based on, relates to, or is in response to the exercise of the right of free speech. TEX. CIV. PRAC. & REM. CODE §§ 27.003(a), 27.005(b); *Coleman*, 512 S.W.3d at 898.

IV. CLEAR AND SPECIFIC EVIDENCE

Next, appellants argue that Dr. Pisharodi failed to present a prima facie case by clear and specific evidence of his breach of contract and negligence claims. Dr. Pisharodi

does not address this prong, relying instead on his pleading argument that the TCPA does not apply to these facts on his causes of action for breach of contract and negligence.

A. Breach of Contract

Appellants state that Dr. Pisharodi provided no evidence of a valid contract with appellants and no information to validate the existence of a legally binding contract. Appellants also point out that Dr. Pisharodi's pleadings and testimony are convoluted and "failed to provide 'clear and specific evidence' of contractual performance obligations."

Dr. Pisharodi's petition does not provide citation to or explanation of the evidence that supports each element of his breach of contract claim as required under the TCPA, and his affidavit does not address the elements of his claim for breach of contract. In a response to appellants' motion to dismiss, Dr. Pisharodi stated that he provided evidence that a contract existed because he and Valley Regional "have a contractual relationship governed by the [medical staff] bylaws." However, Dr. Pisharodi did not attach a copy of the bylaws to his response, and he neither cited nor pointed to any section of the bylaws that we can construe as a contract. Moreover, generally "rights created by medical staff bylaws are not necessarily binding on a hospital." *Marlin v. Robertson*, 307 S.W.3d 418, 433 (Tex. App.—San Antonio 2009, no pet.); *Stephan v. Baylor Med. Ctr.*, 20 S.W.3d 880, 887 (Tex. App.—Dallas 2000, no pet.) (explaining that medical staff bylaws are not necessarily binding on a hospital); see *Park v. Mem'l Health Sys. of E. Tex.*, 397 S.W.3d 283, 293 (Tex. App.—Tyler 2013, pet. denied) ("Medical staff bylaws that do not define or limit the power of a hospital as it acts through its governing board do not create contractual obligations for the hospital."). Therefore, we cannot conclude that Dr. Pisharodi

established by clear and specific evidence a prima facie case for each essential element of his breach of contract claim. TEX. CIV. PRAC. & REM. CODE ANN. § 27.005(b), (c).

B. Negligence

Appellants state that Dr. Pisharodi's claim for negligence also fails because there is no clear and specific evidence of each element as required. We agree with appellants. Dr. Pisharodi presented no evidence in his petition or affidavit of the elements of negligence, which are (1) duty, (2) breach of that duty, and (3) damages proximately caused by the breach. *Kroger Co. v. Elwood*, 197 S.W.3d 793, 794 (Tex. 2006).

V. CONCLUSION

Having concluded that Dr. Pisharodi's claims are based on, relate to, or are in response to the exercise of the right of free speech and that Dr. Pisharodi failed to establish by clear and specific evidence a prima facie case for each essential element of his claims, we sustain appellants' sole issue. We reverse the trial court's order denying appellants' motion to dismiss Dr. Pisharodi's claims, and we remand the case to the trial court for further proceedings as required by the statute and to order dismissal of the suit. See TEX. CIV. PRAC. & REM. CODE ANN. § 27.009 (West, Westlaw through 2017 R.S.).

/s/ Rogelio Valdez
ROGELIO VALDEZ
Chief Justice

Delivered and filed the
5th day of October, 2017.