Opinion issued June 4, 2020

In The

Court of Appeals

For The

First District of Texas

NO. 01-19-00374-CV

BUCKINGHAM SENIOR LIVING COMMUNITY, INC. AND ELIZABETH GEORGE, Appellants

V.

ANGELA HURST WASHINGTON, Appellee

On Appeal from the 125th District Court
Harris County, Texas
Trial Court Case No. 2019-02894

O P I N I O N

This is an appeal of the denial of a motion to dismiss under the Texas Citizens Protection Act, as it existed before the September 2019 amendments.[1]

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[1] *See* TEX. CIV. PRAC. & REM. CODE § 27.001–.011.

Angela Hurst Washington was arrested for theft after jewelry was stolen from a resident's apartment at a senior living facility where Washington worked. The charges were later dismissed, and Washington sued her former employer and the facility's manager (among others) for defamation and malicious prosecution. The employer and manager filed a joint TCPA motion to dismiss, which was overruled by operation of law. Because the nonmovant did not make a prima facie showing as to either cause of action asserted, we reverse and remand.

Background

Angela Hurst Washington worked at Buckingham Senior Living Community. During one of Washington's shifts, someone entered the private apartment of one of the residents and stole her jewelry. When the resident, Mary Emrich, returned to her apartment and noticed her jewelry missing, she contacted the facility manager, Elizabeth George. George encouraged Emrich to contact the police to report the theft. The police interviewed Emrich and spoke with George. George conducted an internal investigation. She analyzed Buckingham's surveillance video and doorway-entry logs memorializing the use of Buckingham-issued key fobs on various doors on the property. She discovered surveillance video of Washington entering Emrich's building on the day of the theft. She also discovered a key-fob log entry indicating that, within a few minutes of Washington entering the building, a key fob that had been issued to Washington was used to

enter Emrich's apartment, though no video showed the entry. According to George, these events occurred shortly before Emrich returned to her apartment and realized her jewelry was missing. George noted that Washington had not been assigned to that building during her shift and she had no legitimate reason for entering the building that day. George provided the information she discovered through her internal investigation to the police.

Washington's position is that George wrongly accused her of theft when she was innocent. She contends George did so in her conversations with the police and when George later spoke with George's friend, Timmi Hoblinski, who is connected with Washington's second employer. George disputes Washington's accusations.

Washington was fired from her position at Buckingham for unauthorized use of a key fob. She also lost her job with her second employer, when Hoblinski wrote to her: "Angela, I am going to have to let you go. Too many missed days, plus the issues that I have been notified about at the Buckingham. I know you needed this job, but I need people that are reliable and that I can trust."

The police investigated the theft, and a grand jury indicted Washington for burglary of a habitation. While driving through her neighborhood one day, 43-year-old Washington was stopped by police, handcuffed, and taken to jail. She spent over two weeks in jail before posting bond. A couple of months later, the charges were dismissed for insufficient evidence. The State's dismissal motion

specifically states that "[p]robable cause exists, but case cannot be proven beyond a reasonable doubt at this time."

Washington brought defamation and malicious prosecution claims against George, Emrich, and Hoblinski. She also sued Buckingham Senior Living Community, Inc. under a theory of vicarious liability for George's actions. George and Buckingham filed a joint TCPA dismissal motion, which was overruled by operation of law. George and Buckingham appealed.[2]

Texas Citizens Participation Act

The TCPA is found in Chapter 27 of the Civil Practice and Remedies Code, which is titled, "Actions Involving the Exercise of Certain Constitutional Rights." *See* TEX. CIV. PRAC. & REM. CODE § 27.001–.011. The TCPA's purpose is to protect "citizens who petition or speak on matters of public concern from retaliatory lawsuits that seek to intimidate or silence them." *In re Lipsky*, 460 S.W.3d 579, 584 (Tex. 2015). It does so by creating a "set of procedural mechanisms through which a litigant may require, by motion, a threshold testing of the merits of legal proceedings or filings that are deemed to implicate the expressive interests protected by the statute, with the remedies of expedited dismissal, cost-shifting, and sanctions for any found wanting." *Serafine v. Blunt*,

[2] The only parties to this appeal are Buckingham and George as appellants and Washington as appellee.

466 S.W.3d 352, 369 (Tex. App.—Austin 2015, no pet.) (Pemberton, J., concurring); *see* TEX. CIV. PRAC. & REM. CODE § 27.003–.005, .009.

A party may appeal from an interlocutory order that denies the party's TCPA motion to dismiss. TEX. CIV. PRAC. & REM. CODE § 51.014(a)(12).

A. TCPA's dismissal provision and relevant statutory definitions

Section 27.003 of the TCPA provides that a party may file a motion to dismiss a legal action that "is based on, relates to, or is in response to [that] party's exercise of" one of three rights: free speech, petition, or association. TEX. CIV. PRAC. & REM. CODE § 27.003(a). The Legislature defined "[l]egal action" as "a lawsuit, cause of action, petition, complaint, cross-claim, or counterclaim or any other judicial pleading or filing that requests legal or equitable relief." *Id.* § 27.001(6). The Legislature also statutorily defined the three sets of rights protected by TCPA summary-dismissal procedures. The pertinent right in this appeal is the right to petition, which includes "a communication in connection with an issue under consideration or review by a legislative, executive, judicial, or other governmental body or in another governmental or official proceeding" and "a communication in or pertaining to . . . an official proceeding, other than a judicial proceeding, to administer the law." *Id.* § 27.001(4).

B. TCPA's shifting burdens and evidence

A TCPA movant has the initial burden to show by a preponderance of the evidence that the nonmovant has asserted a "legal action" that is based on, relates to, or is in response to the movant's exercise of one of the three rights delineated in the TCPA statute. *Id.* § 27.005(b). If the movant meets that burden, the burden shifts to the nonmovant. The nonmovant has the burden to establish by clear and specific evidence a "prima facie case for each essential element of the claim in question." *Id.* § 27.005(c). Dismissal may be required, notwithstanding the nonmovant's evidence proffered to meet its burden, if the movant establishes "by a preponderance of the evidence each essential element of a valid defense to the nonmovant's claim." *Id.* § 27.005(d).

The trial court considers the pleadings and any supporting and opposing affidavits to evaluate whether each party has met its burden. *Id.* § 27.006(a); *In re Lipsky*, 460 S.W.3d at 587. The trial court also "may allow specified and limited discovery relevant to the motion" to dismiss. TEX. CIV. PRAC. & REM. CODE § 27.006(b); *see In re SSCP Mgmt., Inc.*, 573 S.W.3d 464, 472–73 (Tex. App.—Fort Worth 2019, no pet.) (acknowledging that "some merits-based discovery" may be necessary for nonmovant to respond to TCPA dismissal motion). A trial court considers the pleadings and evidence in the light most favorable to the

nonmovant. *Porter-Garcia v. Travis Law Firm, P.C.*, 564 S.W.3d 75, 84 (Tex. App.—Houston [1st Dist.] 2018, pet. denied).

C. Standard of review

We review de novo a trial court's ruling on a TCPA motion to dismiss. *Better Bus. Bureau of Metro. Houston, Inc. v. John Moore Servs., Inc.*, 441 S.W.3d 345, 353 (Tex. App.—Houston [1st Dist.] 2013, pet. denied). To the extent resolution of this appeal turns on construction of the TCPA, we review that de novo as well. *Lippincott v. Whisenhunt*, 462 S.W.3d 507, 509 (Tex. 2015). When construing the TCPA, as with any other statute, our objective is to give effect to the legislative intent, looking first to the statute's plain language. *Id.* If that language is unambiguous, "we interpret the statute according to its plain meaning." *Id.* Additionally, we construe the TCPA "liberally to effectuate its purpose and intent fully." TEX. CIV. PRAC. & REM. CODE § 27.011(b); *see State ex rel. Best v. Harper*, 562 S.W.3d 1, 11 (Tex. 2018).

Step One:
Whether Movants George and Buckingham Met Their Burden

In their TCPA motion, George and Buckingham (collectively, George) argued Washington's suit is based on, related to, or in response to their right to petition.

In her original petition, Washington asserted two causes of action against George—defamation and malicious prosecution. In connection with both claims,

Washington contended that George accused her of theft in George's conversations with the police.[3]

When a person interacts with the police to report perceived wrongdoing, that person is exercising their right to petition, as that right is defined in the TCPA. *Ford v. Bland*, No. 14-15-00828-CV, 2016 WL 7323309, at *1–2 (Tex. App.—Houston [14th Dist.] Dec. 15, 2016, no pet.) (mem. op.); *Murphy USA, Inc. v. Rose*, No. 12–15–00197–CV, 2016 WL 5800263, at *3 (Tex. App.–Tyler Oct. 5, 2016, no. pet.) (mem. op.). As such, Washington's claims are based on, related to, or in response to George's exercise of the right to petition.[4] *Ford*, 2016 WL 7323309, at *1; *Murphy USA*, 2016 WL 5800263, at *3–4; *see* TEX. CIV. PRAC. &

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[3] The movants deny Washington's allegation.

[4] Washington amended her petition after George filed a TCPA motion. The amended petition asserted the same causes of action against the same defendants. Washington now argues the trial court "allowed" the parties to operate under the amended petition and to begin non-TCPA discovery under the new pleading. She argues the trial court did not abuse its discretion in deciding not to rule on the TCPA motion, in effect letting it lapse, because everyone had moved on with the amended pleading controlling. This argument cannot prevail because an amended petition does not moot a pending TCPA motion. *See Gaskamp v. WSP USA, Inc.*, 596 S.W.3d 457, 469 (Tex. App.—Houston [1st Dist.] 2020, pet. filed) (en banc). And the trial court's failure to rule on the pending TCPA motion cannot result in the motion lapsing; instead, the pending motion is overruled by operation of law. TEX. CIV. PRAC. & REM. CODE § 27.005(a) (court "must rule" on motion within 30 days of hearing on motion); § 27.008(a) (if court does not rule within time prescribed, "motion is considered to have been denied by operation of law and the moving party may appeal"). Therefore, there is no basis to conclude, as Washington proposes, that the trial court had discretion to allow the motion to lapse because she had amended her petition. Instead, we must engage in the standard two-step TCPA analysis to determine whether the trial court erred by not granting the motion. *See Gaskamp*, 596 S.W.3d at 469.

REM. CODE § 27.005(b). George, therefore, met the initial TCPA burden, and the burden now shifts to Washington to make her prima facie showing for both claims. TEX. CIV. PRAC. & REM. CODE § 27.005(c).

Step Two:
Whether Nonmovant Washington Met Her Burden

For each of Washington's causes of action, we will review the elements of the claim and determine whether Washington met her burden. First, though, we will review the appropriate standard of "clear and specific evidence" of a "prima facie case."

A. The standard that applies

Washington must establish "by clear and specific evidence a prima facie case for each essential element" of each claim. *Id.* § 27.005(c). A "prima facie" showing generally "requires only the minimum quantum of evidence necessary to support a rational inference that the allegation of fact is true." *In re E.I. DuPont de Nemours & Co.*, 136 S.W.3d 218, 223 (Tex. 2004) (orig. proceeding) (internal quotation marks and citation omitted); *see, e.g.*, *John Moore*, 441 S.W.3d at 354 (explaining that Legislature's use of "prima facie case" in Chapter 27 implies minimal factual burden).

"Prima facie evidence is evidence that, until its effect is overcome by other evidence, will suffice as proof of a fact in issue. In other words, a prima facie case is one that will entitle a party to recover if no evidence to the contrary is offered by

the opposite party." *Rehak Creative Servs., Inc. v. Witt*, 404 S.W.3d 716, 726 (Tex. App.—Houston [14th Dist.] 2013, pet. denied) (citation omitted) (disapproved of on other grounds, *In re Lipsky*, 460 S.W.3d at 587–88). A prima facie case "refers to evidence sufficient as a matter of law to establish a given fact if it is not rebutted or contradicted." *In re Lipsky*, 460 S.W.3d at 590. "It is the 'minimum quantum of evidence necessary to support a rational inference that the allegation of fact is true.'" *Id.*; *cf. Kerlin v. Arias*, 274 S.W.3d 666, 668 (Tex. 2008) (per curiam) (explaining that summary-judgment movant's presentation of prima facie evidence of deed's validity established right to summary judgment unless nonmovants presented evidence raising fact issue related to deed's validity).

We consider evidence favorable to Washington in determining whether she met her burden of establishing a prima facie case under the TCPA. *See D Magazine Partners, L.P. v. Rosenthal*, 529 S.W.3d 429, 440 n.9 (Tex. 2017) (refusing to consider TCPA movant's rebuttal evidence in determining whether nonmovant established prima facie case, stating that although movant "disputes [nonmovant's factual assertion] . . . at this stage of the proceedings we assume its truth"); *Robins v. Clinkenbeard*, No. 01-19-00059-CV, 2020 WL 237943, at *11 (Tex. App.—Houston [1st Dist.] Jan. 16, 2020, no pet.) (mem. op.); *see also West v. Quintanilla*, 573 S.W.3d 237, 243 n.9 (Tex. 2019) ("[Movant] vigorously disputes many of [nonmovant]'s factual allegations, but at this point we must

decide only whether [nonmovant] has established a prima facie case by clear and specific evidence. . . . A finding that [nonmovant] has met his TCPA burden does not establish that his allegations are true." (quotations omitted)).

"Clear and specific" has been described as evidence that is "unaided by presumptions, inferences, or intendments." *Rehak*, 404 S.W.3d at 726; *see John Moore*, 441 S.W.3d at 355 (quoting *Rehak*). Conclusory statements[5] and bare, baseless opinions are not probative and do not meet the requirement of clear and specific evidence of a prima facie case. *In re Lipsky*, 460 S.W.3d at 592–93; *John Moore*, 441 S.W.3d at 355. For example, if a nonmovant attempts to make a prima facie showing based on an allegation that the movant-defendant knew a filing was fraudulent, but the nonmovant submits nothing in support of the allegation, then the allegation is a conclusory statement that is not probative and will not suffice to establish a prima facie case. *See James v. Calkins*, 446 S.W.3d 135, 150 (Tex. App.—Houston [1st Dist.] 2014, pet. denied).

Finally, we note the TCPA has a section titled "Evidence" that instructs: "In determining whether a legal action should be dismissed . . . , the court shall consider the pleadings and supporting and opposing affidavits stating the facts on which the liability or defense is based." *Id.* § 27.006(a).

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[5] "Conclusory" means "[e]xpressing a factual inference without stating the underlying facts on which the inference is based." *Conclusory*, BLACK'S LAW DICTIONARY (10th ed. 2014).

B. Defamation

1. Elements of claim

"Defamation is generally defined as the invasion of a person's interest in her reputation and good name." *Hancock v. Variyam*, 400 S.W.3d 59, 63 (Tex. 2013). The tort includes libel and slander. *Neely v. Wilson*, 418 S.W.3d 52, 60 (Tex. 2013). Defamatory statements are those that tend to "injure a living person's reputation and thereby expose the person to public hatred, contempt or ridicule, or financial injury" as well as those statements that "impeach any person's honesty, integrity, virtue, or reputation." TEX. CIV. PRAC. & REM. CODE § 73.001; *see Mem'l Hermann Health Sys. v. Khalil*, No. 01-16-00512-CV, 2017 WL 3389645, at *6–7 (Tex. App.—Houston [1st Dist.] Aug. 8, 2017, pet. denied) (mem. op. on reh'g); *Double Diamond, Inc. v. Van Tyne*, 109 S.W.3d 848, 854 (Tex. App.—Dallas 2003, no pet.).

The elements of a defamation claim include (1) the publication of a false statement of fact to a third party that was defamatory concerning the plaintiff, (2) the requisite degree of fault, and, (3) in some cases, damages. *In re Lipsky*, 460 S.W.3d at 593.

A statement is considered "published" when it is communicated to a third person who is capable of understanding its defamatory meaning and in such a way that the person did understand its defamatory meaning. *Thomas–Smith v. Mackin*,

238 S.W.3d 503, 507 (Tex. App.—Houston [14th Dist.] 2007, no pet.). The requisite degree of fault that applies is determined based on the status of the individual allegedly defamed (or, in some cases, the context of the statement made).[6] *See Neely*, 418 S.W.3d at 61; *Maewal v. Adventist Health Sys./Sunbelt, Inc.*, 868 S.W.2d 886, 893 (Tex. App.—Fort Worth 1993, writ denied); *Combined Law Enf't Ass'ns of Tex. v. Sheffield*, No. 03–13–00105–CV, 2014 WL 411672, at *6–8 (Tex. App.—Austin Jan. 31, 2014, pet. denied) (mem. op.). A private individual suing for defamation is required to prove negligence in the making of the statement, while a public figure is required to prove actual malice. *Neely*, 418 S.W.3d at 61.

2. Washington did not establish a prima facie case

Washington alleges George, in her capacity as a Buckingham manager, conducted a "rogue investigation and assisted HPD" in having Washington arrested. She concedes the investigation revealed that the key fob Buckingham issued to Washington was used to enter Emrich's apartment at the relevant time. But she challenges George's decision to provide the key fob logs to the police when there was "nothing more" to implicate her.

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[6] Regarding context, the heightened standard of malice is required if, for example, the challenged communication is made by a peer review committee. *See Batra v. Covenant Health Sys.*, 562 S.W.3d 696, 710 (Tex. App.—Amarillo 2018, pet. denied).

Regarding whether there was something more to link her to the theft, Washington concedes that Buckingham has asserted there is surveillance video showing Washington entering Emrich's building minutes before the theft. George discusses the surveillance video in her affidavit. But Washington discounts their assertions because the video has not been produced.

In her declaration, Washington states that she was charged with burglary "as a result of statements made by Elizabeth George" but she does not attempt to specify what George said to the police. She only implies that George's statements contributed to her being a suspect and later arrested and charged.

A defamation plaintiff defending against a TCPA motion should be able to meet the clear and specific standard in a defamation case if her "pleadings and evidence" establish "the facts of when, where, and what was said, the defamatory nature of the statements, and how they damaged the plaintiff." *In re Lipsky*, 460 S.W.3d at 591. It generally suffices if a plaintiff provides "enough detail to show the factual basis for its claim." *Id.* This standard is higher than the notice-pleading standard, *see* Tex. R. Civ. P. 45, 47, but it does not require direct evidence; circumstantial evidence can suffice. *In re Lipsky*, 460 S.W.3d at 591.

John Moore provides an example of when this standard is not met in a defamation case. There, the nonmovant characterized the movant-defendant as having "clearly and improperly implied" something defamatory about the

nonmovant, but the nonmovant did not present evidence of the actual content of the statements to facilitate determination of their defamatory nature—perhaps with a quote of what was said or an affidavit supporting the allegation. *John Moore*, 441 S.W.3d at 357. The court held that the allegation that the movant implied something did not present clear and specific evidence of a false and defamatory statement. *Id.*

We must conclude that Washington's evidence is no more than that provided in *John Moore*. Washington never says what George is alleged to have stated, relying, instead, on a conclusory assertion that George implicated her in the theft. There is no evidence to support the conclusory assertion. The police report is in the record. It states there are "[n]o suspect/no arrests." The police report is void of any indication George named a suspect. Further, providing key fob logs and surveillance video to the police is no evidence of a defamatory statement made by George.

Without any evidence beyond Washington's conclusory allegation, we must conclude that Washington failed to meet the standard of clear and specific evidence that a defamatory statement was made by George. Conclusory allegations will not suffice. *See John Moore*, 441 S.W.3d at 357; *see also Rehak*, 404 S.W.3d at 726 ("Clear and specific" evidence is "unaided by presumptions, inferences, or intendments").

C. Malicious prosecution

1. Elements of claim

To establish a claim for malicious criminal prosecution, Washington needed to show that (1) a criminal prosecution was commenced against her; (2) George initiated or procured that prosecution; (3) the prosecution terminated in her favor; (4) Washington was innocent of the charges; (5) George lacked probable cause to initiate the prosecution; (6) George acted with malice; and (7) Washington suffered damages. *See Kroger Tex. Ltd. P'ship v. Suberu*, 216 S.W.3d 788, 793 n.3 (Tex. 2006); *Richey v. Brookshire Grocery Co.*, 952 S.W.2d 515, 517 (Tex. 1997).

Probable cause is the "existence of such facts and circumstances as would excite belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor [complainant], that the person charged was guilty of the crime for which he was prosecuted." *Richey*, 952 S.W.2d at 517. The probable-cause element inquires "whether a reasonable person would believe that a crime had been committed given the facts as the complainant honestly and reasonably believed them to be before the criminal proceedings were instituted." *Id.* "There is an initial presumption in malicious prosecution actions that the defendant acted reasonably and in good faith and had probable cause to initiate the proceedings." *Id.* The presumption disappears if a plaintiff produces evidence that the motives, grounds, beliefs, and other evidence upon which the defendant acted did not constitute

probable cause. *Id.* The burden then shifts to the defendant to offer proof of probable cause. *Id.*

2. Washington did not establish a prima facie case

Washington points to the eventual dismissal of charges against her as evidence George lacked probable cause when she allegedly accused Washington of theft. But the probable cause element cannot be met by evidence of a subsequent resolution of the criminal charges; instead, the issue focuses on whether, at the time of the accusation, a reasonable person would believe that a crime had been committed. *Richey*, 952 S.W.2d at 517. The dismissal of criminal charges is no evidence that George lacked probable cause at the time she assisted in reporting the offense. *See Suberu*, 216 S.W.3d at 794–95 ("Her acquittal is not evidence, then, that she was unjustifiably subjected to criminal proceedings; it shows only that the government did not prove her guilt beyond a reasonable doubt."). Moreover, when the State dismissed the charges against her, it reaffirmed that probable cause existed for Washington's arrest: "Probable cause exists, but case cannot be proven beyond a reasonable doubt at this time."

The civil law presumes an accuser honestly and reasonably acted on the basis of observations in reporting a suspect to the police. *Suberu*, 215 S.W.3d at 794. The presumption is in place "because it is more important that a private citizen report an apparent subversion of our laws than for the wrongly accused to

attain monetary redress from the accuser." *Id.* In balancing the interests of those subjected unjustifiably to criminal proceedings and those who report perceived crimes, malicious prosecution claims "must sometimes yield to society's greater interest in encouraging citizens to report crimes, real or perceived." *Id.* at 792.

To rebut the probable cause presumption, Washington had to produce prima facie evidence that George initiated her prosecution on the basis of information or motives that do not support a reasonable belief that Washington was guilty of theft. *See id.* She provides no evidence in support of this essential element. Instead, she argues George had a duty to investigate and that George mishandled the matter by not summoning Washington to her office for an explanation. Washington acknowledges, though, that the law does not place a duty on one reporting a crime to investigate the incident; nor does Washington cite any legal authority to suggest that the investigation George did perform imposed a duty to further investigate the matter. *See Marathon Oil Co. v. Salazar*, 682 S.W.2d 624, 627–28 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.) ("A private citizen has no duty to inquire of the suspect whether he has some alibi or explanation before filing charges. Further, once a person fairly discloses the facts in his possession to the prosecuting officer, he has no duty to make further investigation; it is the duty of the officer to investigate further if he thinks necessary." (internal citations omitted)).

Washington makes the conclusory allegation that George relied on nothing more than a "hunch" to implicate Washington and that there may have been a racially discriminatory motive involved. But conclusory allegations are not evidence that will meet the prima facie standard.[7] *See John Moore*, 441 S.W.3d at 357; *see also Rehak*, 404 S.W.3d at 726. And furthermore, Washington did not argue to the trial court any motive to negate the probable cause presumption. She merely argued an inadequate basis for the alleged accusation.

We sustain George and Buckingham's single issue. Because Washington failed to meet her burden to establish a prima facie case for each element of either cause of action, we conclude the trial court erred in not granting George and Buckingham's joint motion to dismiss as to the defamation claim and the malicious prosecution claim. We reverse and remand for additional proceedings consistent

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[7] Moreover, such conclusory allegations are ill-suited to this record. While our review requires that we focus on evidence in support of Washington's prima facie case, we note that George's affidavit addresses probable cause. Her affidavit includes the following assertions: Emrich reported jewelry stolen from her apartment on a particular day while she was away for a couple of hours; the key-fob logs show the key fob issued to Washington was used to enter Emrich's apartment during that time; Washington was working at Buckingham that day; the surveillance video showed Washington entering Emrich's building minutes before the key fob was used; Washington had no assigned duties that would have taken her to that particular building that day; and Washington had been, instead, assigned to work in a "completely different part of the Buckingham campus" that day. To be clear, this evidence is not part of Washington's prima facie evidence, which is our focus, but its presence in this record highlights the conclusory nature of Washington's assertion that George acted only on a "hunch."

with this opinion, including the determination of whether there remain any claims asserted in Washington's petition that survive this TCPA dismissal.[8]

Conclusion

We reverse and remand for additional proceedings.

Sarah Beth Landau
Justice

Panel consists of Justices Keyes, Landau, and Countiss.

[8] Washington's petition purports to assert a claim against Buckingham, based on negligence, related to its supervision, training, and retention of George. The George/Buckingham TCPA motion did not seek dismissal of that claim. Their position is that Washington had not adequately pleaded the claim, and it was not a live claim subject to challenge. In our view, the appropriate resolution of this issue is to include it in the remand to the trial court to resolve whether any claims remain.