

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-19-00168-CV

Wylie Cavin and Lillian Cavin, Appellants

v.

Kristin Abbott, Appellee

**FROM THE 98TH DISTRICT COURT OF TRAVIS COUNTY
NO. D-1-GN-16-000201, THE HONORABLE AMY CLARK MEACHUM, JUDGE PRESIDING**

OPINION

The Cavins appeal the district court’s denial of their motion to dismiss under the Texas Citizens Participation Act (TCPA). *See* Tex. Civ. Prac. & Rem. Code §§ 27.001-.011.¹ We will affirm the district court’s order.

BACKGROUND

We have recounted much of the background of this controversy in previous opinions. *See Cavin v. Abbott*, No. 03-18-00073-CV, 2018 Tex. App. LEXIS 3026 (Tex. App.—Austin Apr. 30, 2018, pet. denied) (mem. op.) (“*Cavin IP*”); *Cavin v. Abbott*, 545 S.W.3d 47 (Tex. App.—Austin 2017, no pet.) (“*Cavin P*”); *see also Hayes v. Cavin*, No. 03-17-00501-CV,

¹ The TCPA was amended in the 2019 legislative session, but those amendments do not apply to this lawsuit, which was filed before the amendments’ effective date. *See* Act of May 17, 2019, 86th Leg., R.S., ch. 378, §§ 11, 12, 2019 Tex. Gen. Laws 684, 687 (amendments to TCPA apply “only to an action filed on or after” September 1, 2019).

2018 Tex. App. LEXIS 8343 (Tex. App.—Austin Oct. 12, 2018, pet. denied) (mem. op.); *In re Cavin*, No. 03-18-00113-CV, 2018 Tex. App. LEXIS 3019 (Tex. App.—Austin Apr. 30, 2018, orig. proceeding) (mem. op.). This interlocutory appeal is the latest in an ongoing dispute arising from “‘family tumult over an adult daughter’s choice of a husband,’ specifically the marriage of Kristin and Bill Abbott despite the vociferous opposition of Kristin’s parents, Wylie and Lillian Cavin, and what the Abbotts have decried as scorched-earth tactics by the Cavins to harass and isolate them.” *Cavin II*, 2018 Tex. App. LEXIS 3026, at *1-2 (quoting *Cavin I*, 545 S.W.3d at 49). *Cavin I* was an appeal by the Cavins² challenging the denial of their TCPA motion to dismiss claims asserted by the Abbotts against them. *See Cavin I*, 545 S.W.3d at 50. The TCPA “required dismissal of most of the claims that the Abbotts had asserted as of that juncture; the Abbotts’ sole pending claim to survive the motion was the one seeking damages based on the Cavins’ alleged assault of Kristin in February 2014.” *Id.* at 50-51. Following that appeal, Kristin Abbott amended her petition to seek, in addition to damages, a permanent injunction based on the assault claim. In response, the Cavins filed another TCPA motion to dismiss Abbott’s request for injunctive relief, arguing that the injunction seeking to prohibit them from contacting Abbott is a separate “legal action” under the TCPA that infringes on the Cavins’ exercise of the right of free speech. *See Tex. Civ. Prac. & Rem. Code* § 27.001(6) (defining “legal action”). Later, Abbott again amended her petition, asserting assault claims solely against Wylie Cavin for a physical altercation that occurred at Abbott’s home. *See Cavin I*, 545 S.W.3d at 51 n.3 (describing the altercation). In her latest petition, Abbott seeks to enjoin Wylie Cavin, “his attorneys, employees, or agents from directly or indirectly contacting” her through any type

² Eagle Radiology, PLLC, was also an appellant in *Cavin I*, but is not a party to this appeal.

of communication. The district court denied the motion to dismiss. The Cavins appeal, asserting that (1) the TCPA applies to the injunctive relief, (2) Abbott did not make a prima facie case for each essential element of her claim, and (3) the Cavins have established a valid defense to Abbott's claim.

ANALYSIS

“The TCPA’s basic features are well known by now. The Act professes an overarching purpose of ‘safeguard[ing] the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government’ against infringement by meritless lawsuits.” *Cavin I*, 545 S.W.3d at 55 (quoting Tex. Civ. Prac. & Rem. Code § 27.002); *see In re Lipsky*, 460 S.W.3d 579, 584 (Tex. 2015) (orig. proceeding) (“The [TCPA] protects citizens who petition or speak on matters of public concern from retaliatory lawsuits that seek to intimidate or silence them.”). “The TCPA frames its suspect class of legal proceedings in terms of ‘legal actions’ having certain characteristics.” *Cavin I*, 545 S.W.3d at 56. A “legal action” is “a lawsuit, cause of action, petition, complaint, cross-claim, or counterclaim or any other judicial pleading or filing that requests legal or equitable relief.” Tex. Civ. Prac. & Rem. Code § 27.001(6). The TCPA protects these rights by providing for a motion to dismiss a suit that would stifle the movant’s exercise of those rights. *Lipsky*, 460 S.W.3d at 584. In analyzing the TCPA’s applicability, courts first determine whether the party moving for dismissal has shown by a preponderance of the evidence that the TCPA applies to the legal action against it. *Youngkin v. Hines*, 546 S.W.3d 675, 679 (Tex. 2018); *see* Tex. Civ. Prac. & Rem. Code § 27.005(b). If the movant meets that burden, the nonmovant must establish by clear and specific evidence a prima facie case for each essential element of its claim. Tex. Civ. Prac. &

Rem. Code § 27.005(c). “In determining whether a legal action should be dismissed under [the TCPA], 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) (“Evidence”). Collectively, these elements require that the “plaintiff must provide enough detail to show the factual basis for its claim.” *Bedford v. Spassoff*, 520 S.W.3d 901, 904 (Tex. 2017) (per curiam). If the nonmovant satisfies that requirement, the burden shifts back to the movant to prove each essential element of any valid defenses by a preponderance of the evidence. Tex. Civ. Prac. & Rem. Code § 27.005(d). We review de novo whether a party has carried its burden under the statute. *Long Canyon Phase II & III Homeowners Ass’n v. Cashion*, 517 S.W.3d 212, 217 (Tex. App.—Austin 2017, no pet.).

In responding to the Cavins’ arguments on appeal, Abbott asserts that (1) the injunction is a remedy, not a separate legal action from her assault claim, and (2) the Cavins’ motion to dismiss was untimely. Assuming, without deciding, that the Cavins’ motion was timely, we will affirm the district court’s denial of the motion to dismiss because we agree that the injunction sought here is not a separate legal action.

In *Cavin I*, we explained that the legislature “has exempted certain types of ‘legal actions’ from the [TCPA],” including legal actions “seeking recovery for bodily injury.” 545 S.W.3d at 56 (quoting Tex. Civ. Prac. & Rem. Code § 27.010(c)). As a result, we determined that the assault claim against the Cavins was “exempt from the TCPA as a matter of law.” *Id.* at 57. The Cavins argue that the injunctive relief Abbott now seeks is separately subject to dismissal under the TCPA even though the assault claim that forms the basis for that relief is not. In support of that argument, they cite *Elite Auto Body LLC v. Autocraft Bodywerks, Inc.*, in which this Court stated:

There is no question that Autocraft’s lawsuit seeking injunctive and monetary relief, or alternatively each of its component claims for such relief, is a ‘legal action,’ a term that the TCPA defines to include “a lawsuit, cause of action, petition, . . . or any other judicial pleading or filing that requests legal or equitable relief.”

520 S.W.3d 191, 197 (Tex. App.—Austin 2017, pet. dismiss’d). Rather than opining as to whether an injunction might be a legal action in the context of a petition asserting claims for misappropriation of trade secrets, breach of fiduciary duty, and unfair competition, our statement in *Elite Auto* observed that the parties in that case had not raised the question of whether the claims at issue constituted a “legal action.” Instead, the parties in *Elite Auto* focused their arguments on whether the claims related to the rights of association and free speech. This Court has not previously addressed whether an injunction is a separate “legal action,” and we disagree that the TCPA permits a request for injunctive relief to be separately dismissed. The express language of the TCPA contemplates that the relief sought is not a legal action but is merely a component of a legal action: a “legal action” is “a lawsuit, cause of action, petition, complaint, cross-claim, or counterclaim or any other judicial pleading or filing *that requests legal or equitable relief.*” Tex. Civ. Prac. & Rem. Code § 27.001(6) (emphasis added). In other words, the cause of action for assault, pursuant to which Abbott seeks both legal damages and equitable relief in the form of an injunction, is the legal action. We agree with our sister courts that the TCPA does not allow a request for injunctive relief to be separately challenged when it is linked to a cause of action. *See Thang Bui v. Dangelas*, No. 01-18-01146-CV, 2019 Tex. App. LEXIS 9077, at *15 (Tex. App.—Houston [1st Dist.] Oct. 15, 2019, pet. filed) (mem. op.) (stating that injunctive relief was a remedy tied to a defamation claim and “a remedy request is not separately challengeable apart from the cause of action to which it is linked”); *Van Der Linden v. Khan*, 535

S.W.3d 179, 203 (Tex. App.—Fort Worth 2017, pet. denied) (holding that “injunctive relief is a remedy, not a stand-alone cause of action” in suit for tortious interference with a contract, tortious interference with prospective business relations, and defamation); *cf. Ruder v. Jordan*, No. 05-14-01265-CV, 2015 Tex. App. LEXIS 7450, at *15 (Tex. App.—Dallas July 20, 2015, no pet.) (mem. op.) (declining to review separately trial court’s denial of TCPA dismissal of injunctive relief because it was ancillary to defamation claims already reviewed); *Better Bus. Bureau of Metro. Dall., Inc. v. BH DFW, Inc.*, 402 S.W.3d 299, 311-12 (Tex. App.—Dallas 2013, pet. denied) (stating that definition of “legal action” could encompass a request for injunctive relief but holding that the claimant’s right to request a temporary injunction depended on its establishing a prima facie case for its breach of contract claim). “Because when a legal action is dismissed pursuant to the TCPA, all remedies available under that legal theory disappear with the dismissal of the action itself, a chapter 27 challenge to a request for injunctive relief should be directed at the underlying legal action, not at the requested remedy.” *Van Der Linden*, 535 S.W.3d at 203. Accordingly, we hold that the TCPA does not apply to Abbott’s request for an injunction that is dependent upon her claim for the wrongful act of assault. *See Texas Health Care Info. Council v. Seton Health Plan, Inc.*, 94 S.W.3d 841, 853 (Tex. App.—Austin 2002, pet. denied) (“A party requesting injunctive relief must show the existence of a wrongful act, imminent harm, irreparable injury, and the absence of an adequate remedy at law.”).

CONCLUSION

Having concluded that the TCPA does not apply to a request for an injunction based on a claim for assault, we affirm the district court's denial of the Cavins' motion to dismiss.

Gisela D. Triana, Justice

Before Justices Goodwin, Baker, and Triana

Affirmed

Filed: June 26, 2020