
The Tennessee Court of Appeals, At Nashville, held that the published communication had been made in connection to a matter of public concern, and therefore, fell within the protection of the Tennessee Public Protection Act. Further, to prove a finding of an individual as a limited-purpose public figure, the court held that sufficient authenticated proof should have been established prior to the trial court’s deliberation and in order to have been deemed the basis for any subsequent determination. Finally, the negligence threshold had been met for the defamation claim, however, the actual malice threshold had not been met for the claim of false light. *Bill Charles v. Donna McQueen* No. M2021-00878-COA-R3-CV, 2022 Tenn. App. LEXIS 378 (Tenn. Ct. App. Sept. 28, 2022), and No. M202100878COAR3CV, 2022 WL 4490980 (Tenn. Ct. App. Sept. 28, 2022).

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In the case of *Bill Charles v. Donna McQueen*, the Court of Appeals addressed whether the claims made by Defendant McQueen in an online review were defamatory against Plaintiff Charles and placed him in a false light. To reach their determination, the court addressed whether McQueen’s online comments were protected speech under the Tennessee Public Participation Act (“TPPA”). Next, the court addressed McQueen’s assertion that Charles was a limited-purpose public figure in light of his public actions connected to the subject real estate development. When

considering the evidence in support of Charles as a limited-purpose public figure, the court first addressed whether a sufficient evidentiary foundation had been established to allow the trial court to properly consider the submitted proof. Finally, the court addressed whether Charles had sufficiently met his burden of establishing a prima facie case for each element of his defamation and false light claims. Applying the intent of the TPPA, the court affirmed the trial court's finding that McQueen's communications were made in connection to a matter of public concern which squarely fell within the protection of the TPPA. However, the court reversed the trial court's findings that Charles was a limited-purpose public figure. Instead, the court found the exhibits relied upon by the trial court had not been authenticated, and therefore, were inadmissible and ineligible for consideration to determine Charles' public figure status. Turning to Charles' complaint of defamation, the court affirmed the trial court's findings that the standard of proof was negligence

and not actual malice, and that sufficient proof had been provided to show McQueen acted with negligence when she posted her review. Finally, the court affirmed the trial court's finding that Charles had not proven each of the elements a false light. The court concluded that while a reasonable person would have found McQueen's published statement to be highly offensive, the evidence showed she had not acted with actual malice. The court found McQueen truly believed in the veracity of her statements connecting Charles to the real estate development and the new development decisions being made which she believed were contrary to the original understandings of the community residents.

McQueen, a resident of the Durham Farms community, believed that Charles, a real estate professional and consultant on the Durham Farms real estate development amongst others, had lured home buyers to

purchase in the development only later to deceive them. McQueen specifically objected to the subsequent establishment of a rental housing section within the community which had not been previously disclosed to home buyers. McQueen expressed her dissatisfaction with Charles and the developer in an online review posted in September 2020. In response, Charles filed suit on January 27, 2021, alleging defamation and false light, and requesting compensatory and punitive damages. On March 4, 2021, McQueen filed her response in a motion to dismiss pursuant to the Tennessee Public Protection Act. The trial court heard the matter on May 13, 2021 and entered a Memorandum and Order on July 6, 2021. The trial court held McQueen had met her burden in showing the litigation against her was in response to her exercise of her right of free speech via her published review. The trial court then agreed that her review was a matter of public concern which fell within constitutionally protected speech and the statutory intent of the TPPA. Next, the trial court determined Charles

intentionally and publicly engaged with the media and the community residents with regard to the subject development Durham Farms, and in so finding, classified Charles as a limited-purpose public figure. Further, even though the trial court found McQueen did publish a defamatory statement, they found Charles has had not met his burden to establish a prima facie case of actual malice, and therefore failed to establish defamation. Finally, even though the court found McQueen's statement did place Charles in a false light such that her action would be offensive to any reasonable person, trial court, again, found Charles had not met his burden to establish a prima facie case of actual malice, and therefore, failed to establish false light. The trial court dismissed Charles' action and he filed this appeal to the Tennessee Court of Appeals.

The first issue before the Tennessee Court of Appeals was whether the trial court erred in applying TPPA to the case. The intent of the TPPA was to, “encourage and safeguard the constitutional rights of persons to petition, to speak freely, to associate freely, and to participate in government to the fullest extent permitted by law and, at the same time, protect the rights of persons to file meritorious lawsuits for demonstrable injury.” Tenn. Code Ann. § 20-17-102. TPPA defines what qualifies as meritorious speech as “a communication made in connection with a matter of public concern that falls within the protection of the United States Constitution or the Tennessee Constitution.” Tenn. Code Ann. § 20-17-103(3). Further, TPPA specifically included, in relevant part, matters of “community well-being” and “any other matter deemed by a court to involve a matter of public concern” as protected speech and actions under the statute. Tenn. Code Ann. §§ 20-17-103(6)(B), 20-17-103(6)(G). Rather than making a determination as to whether McQueen’s

statements concerned the “sale of a good in the marketplace” under TPPA as she contended, the court instead found that McQueen’s statements pertained to the “community well-being” under TPPA. Although not expressly defined in Tennessee law, the court found state courts which, under similar circumstances, had recognized neighborhoods and homeowner’s associations to be communities which should be afforded the necessary protections of free speech in support of the public good.

Next, the court addressed whether the trial court erred in considering certain evidence when determining Charles’ status as a limited-purpose public figure, but rather than addressing the trial court’s ultimate decision, the court reviewed the basis upon which the decision had been made. In reviewing the standard, the court addressed their findings in *Nandigam Neurology, PLC*, noting “[w]hen considering a petition

filed under the TPPA, the court may consider ‘supporting and opposing sworn affidavits stating admissible evidence presented by the parties.’” 639 S.W.3d 651, 660 (Tenn. Ct. App. 2021) (quoting Tenn. Code Ann. § 20-17-105(d)). Despite the numerous exhibits presented on behalf of McQueen’s position, this court found no evidence of proper authentication in the record to substantiate reliance on the exhibits by the trial court as required by the Tennessee Rules of Evidence. Accordingly, the court also found the trial court’s approach to the exhibits to be in error and contrary to the requirements of the TPPA that only admissible evidence be considered. Therefore, because the pertinent exhibits were inadmissible, the trial court had no substantiated basis upon which they could have made its determination that Charles was a limited-purpose public figure. Accordingly, the court reversed the trial court’s determination that Charles was a limited-purpose public figure.

The final issue before the court was whether Charles had made a prima facie case in support of his claims of defamation and false light. With the foundational recognition of TPPA’s support of a party’s exercise of free speech, the threshold for establishing a claim such as defamation or false light against protected speech is high. Therefore, in order for such a cause of action to be upheld, the standard requires a “prima facie case for each element of the claim in the legal action.” *Nandigam*, 639 S.W.3d at 659—660. For the claim of defamation, the court affirmed the trial court’s holding that Charles had met his burden of establishing that McQueen had acted in a negligent manner when she posted her review. Specifically, the court concurred that the published statement was “a serious threat to Charles’ reputation,” and was made with a disregard to any actual knowledge of the extent to which Charles and the developer

were associated. Having affirmed a prima facie case for defamation, the court turned to whether the same could be said for Charles' claim of false light. The court concurred that Charles had met his burden of establishing the first two elements, the placement of the communication in a public place and showing that the statement placed him in a false light highly offensive to a reasonable person. The third and final element required Charles to show McQueen acted with actual malice, however, the court affirmed McQueen actually believed her statements connecting Charles to the real estate development and the new decisions being made to build rental units in the community contrary to the residents' expectations. Failing to prove the third element, the court affirmed the trial court's finding that Charles had not established his case for false light.

The Tennessee Court of Appeals affirmed in part, but also reversed in part, the trial court's findings. In completing the later, the court upheld foundational principles of our legal system that require the

Tennessee Rules of Evidence to govern the admissibility or inadmissibility of evidence that comes before the trier of fact for consideration. In this case, the trial court improperly admitted exhibits into the record which had not been sufficiently authenticated. As a result, findings by the trial court on issues of importance to the case were based, in part, on information contained in the inadmissible exhibits. The Tennessee Court of Appeals remedied the trial court's errors by not considering the unauthenticated exhibits, and by doing so, upheld the procedural guidelines that form the basis for all parties to an action and to the trier of fact.

