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IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
December 7, 2022 Session

JAMES MARK LEE v. TONYA MITCHELL ET AL.

Appeal from the Circuit Court for Overton County
No. 2020-CV-50 Jonathan L. Young, Judge

No. M2022-00088-COA-R3-CV

This is an action for defamation, false light invasion of privacy, and damages under the Tennessee Educator's Protection Act. The plaintiff alleged that the defendants falsely accused him of being a "sexual predator" and "pedophile" who sexually harassed his female high school students. The defendants responded to the complaint by filing petitions to dismiss the action under the Tennessee Public Participation Act. The trial court held that the plaintiff failed to establish a prima facie case for each of his claims and dismissed the action. This appeal followed. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

FRANK G. CLEMENT JR., P.J., M.S., delivered the opinion of the court, in which W. NEAL MCBRAYER and JEFFREY USMAN, JJ., joined.

Larry L. Crain, Brentwood, Tennessee, for the appellant, James Mark Lee.

Randall A. York, Cookeville, Tennessee, for the appellees, Tonya Mitchell and Tosha Danielle Dishman.

Dana R. Looper, Cookeville, Tennessee, for the appellee, Erica Paulene Troupe-Harris.

Michael R. Giaimo, Cookeville, Tennessee, for the appellee, Michael Kinnaird.

Richard M. Brooks, Carthage, Tennessee, for the appellees, Ronnie Rudd and Carol Ann Bilbrey Rudd.

OPINION

FACTS AND PROCEDURAL HISTORY

James Mark Lee ("Plaintiff") commenced this civil action in August 2021 by filing an unverified complaint against Tonya Mitchell, Erica Troupe-Harris, Tosha Danielle

Dishman, Michael Kinnaird, Ronnie Rudd, and Carol Ann Bilbrey Rudd (collectively, "Defendants").[1] The complaint sought compensatory and punitive damages for Defendants' "intentional, malicious, tortious, false and defamatory statements impugning the Plaintiff's character and reputation and published to the world on social media" and "their tortious false light invasion of privacy." Plaintiff later added a claim against the Rudds and Mr. Kinnaird under the Tennessee Educators Protection Act ("TEPA"), Tenn. Code Ann. §§ 49-1-1201 to -1208, for knowingly and intentionally making false accusations of criminal activity.[2]

Defendants responded by filing petitions to dismiss the action under the Tennessee Public Participation Act ("TPPA"), Tenn. Code Ann. § 20-17-101 to -110. As we have explained before,

> The TPPA provides relief for parties who partake in protected activity constituting either the exercise of the right of association, the exercise of the right of free speech, or the exercise of the right to petition. Specifically, if the petitioning party makes a prima facie case that they have participated in protected activity under the TPPA, the court may then dismiss the action against them, "unless the responding party establishes a prima facie case for each essential element of the claim in the legal action."

Doe v. Roe, 638 S.W.3d 614, 618 (Tenn. Ct. App. 2021) (citations omitted) (quoting Tenn. Code Ann. § 20-17-105(a) and (b)). Moreover, even if the responding party establishes a prima facie case, "the court shall dismiss the legal action if the petitioning party establishes a valid defense to the claims." Tenn. Code Ann. § 20-17-105(c).

In support of their petitions, Defendants filed many exhibits, including affidavits from former students, copies of news articles about Plaintiff, and screenshots of social media posts by other community members. Defendants contended, *inter alia*, that these exhibits proved that their statements were true and that Plaintiff was libel-proof.

It was undisputed that Plaintiff's claims related to Defendants' exercise of the right of free speech, thereby shifting the burden to Plaintiff to "establish[] a prima facie case for each essential element of [his] claim[s]." *See* Tenn. Code Ann. § 20-17-105(b). It was also

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[1] The claims against Tosha Dishman were voluntarily dismissed from the action in June 2021.

[2] Plaintiff also asserted a claim against the Rudds under Tennessee's parental-liability statute, Tenn. Code Ann. § 37-10-101, but Plaintiff has not raised any issue related to that claim on appeal.

undisputed that Plaintiff was a public figure[3] and, thus, Plaintiff had to prove that Defendants made their statements with actual malice.

The only evidence presented by Plaintiff in response to Defendants' TPPA petitions was his own affidavit, which stated in relevant part as follows:

1. I am an adult citizen and resident of Overton County, Tennessee, and do make this affidavit based on my own personal knowledge.

2. I am a teacher in the Overton County School System.

3. I was a teacher at Livingston Academy from August 1997 until March of 2020.

4. I have devoted my entire teaching career at Livingston Academy.

5. Throughout my career I have taught biology (a state tested EOC class), physical science, environmental science, ecology, geology, diversified technology, and American government.

6. I spent three years as an Assistant Principal and Athletic Director, where I was primarily in charge of discipline.

7. I was also an Assistant Coach for Livingston Middle School for approximately five or six years.

8. I volunteered for the Quarterback Club, various fundraisers and working at various athletic events.

9. I have chaperoned approximately fifteen senior trips to Disneyworld.

10. I have co-sponsored the Outdoor Club, where students participated in hiking, bike riding, and camping trips.

. . . .

[3] In the parties' briefing, the terms "public official" and "public figure" appear to be used interchangeably. Though public figures and public officials are not identical categories of classification, for practical purposes the distinction is immaterial in the present case as it is agreed by all parties that the actual malice standard is applicable. We use the term "public figure" because it is predominant in the parties' briefing, and this status was expressly conceded by the Plaintiff.

14. In March of 2020, my twenty-three year long teaching career was halted when I was placed on suspension for three days due to accusations of inappropriate communications with a female student.

15. In March of 2020, I was called to Principal Richard Melton's office and told that a male student had asked the Principal whether his daughter had complained the way I looked at a female student. I was never provided with the identity of this female student or the specifics of any alleged inappropriate behavior.

16. I have since learned that the female student to which Principal Melton. made reference was E.R.

. . . .

19. It is my understanding that after he spoke with this male student, Principal Melton called in E.R. and two other students to interview. It is my understanding that each of these students each gave conflicting reports concerning their classroom observations of my conduct.

20. Principal Melton then called in E.R.'s parents, Ronnie and Carol Ann Rudd to meet with him. During this meeting, Mr. Rudd falsely reportedly told Principal Melton that he had heard I was on probation for something in the past. Mr. Rudd also asked Principal Melton to relay a threatening message to me that if I was around his daughter he would find me somewhere away from school.

21. When I was placed on a 3-day suspension, I contacted the Tennessee Educators Association and obtained legal counsel to appeal this suspension due to these false and uncorroborated allegations.

22. After completing my three day suspension, I went back to work the following Monday and worked for five days. Then, I was called into Principal Melton's office again and advised this time that I was being suspended indefinitely.

23. Following this suspension, I retrieved a copy of my personal file from Livingston Academy and the Central Office. In the file was nothing but my evaluations and record of the three-day suspension. There was no information in my personnel file regarding any complaints or allegations of inappropriate communications with students.

24. I was also investigated by both the Tennessee Bureau of Investigation and the Department of Child Services.

25. Neither agency found any basis for criminal prosecution or referral for further proceedings.

26. Since the Defendants began publishing their false and malicious statements about me on social media falsely accusing me of being a sexual predator, I have been the target of personal attacks in social media and my reputation as a teacher has been destroyed.

27. Various news media have re-published the malicious, false statements and innunendos [sic] made by the Defendants about me.

28. On social media I have been called a "sexual predator", someone who "sexually harasses students", "child molester", "pervert", "creepy" and "disgusting", as well as other vicious names.

29. E.R., with the help of her parents, Ronnie Rudd and Carol Ann Rudd, published a video on Facebook falsely alleging that I was said and did inappropriate things to her.

30. E.R.'s statements in her public Facebook video disseminated by the Rudds differ significantly from her accounts to Principal Melton, the Department of Child Services and the TBI.

31. Defendant Tonya Mitchell posted the following false statement on her social media: "[w]as your child sexually harassed by a teacher at LA? Mine was repeatedly by Mark Lee". This statement was made with maliciously with knowledge of its falsity or with reckless disregard for its truth.

32. Defendants Tosha Dishman and Tonya Mitchell have re-published on their respective social media, a false statement by Defandant Erica Pauline Troupe Harris maliciously referring to me as a "sexual predator."

33. On or about July 29, 2020, I noticed a second on-line post by Defendant Erica Pauline Troupe Harris in which she again referred to me as a "sexual predator." This statement was made maliciously with knowledge of its falsity or with reckless disregard for its truth.

34. Also, in July of 2020, the Defendant Carol Ann Bilbrey Rudd shared a post by her husband, Ronnie Rudd, in which he maliciously and falsely defamed me referring to me as a "predator" and as one who had "sexually harassed a school-age girl."

. . . .

37. I have never been provided any documentation corroborating these false and malicious accusations against me.

38. Prior to the public accusations by the Defendants in this case I had a good reputation as a teacher in the community. I had been entrusted by parents with the care of their children to chaperon them on approximately fifteen senior trips to Disneyworld.

(Errors in original).

Plaintiff contended that this affidavit alone established a prima facie case for each of his claims. Nevertheless, Plaintiff asked for permission to depose each defendant and the Rudd's daughter, E.R.[4] Plaintiff explained that these depositions were necessary for him to exercise his "Constitutional right to confront his accusers" and to determine what each defendant knew and when they knew it.

Plaintiff's motion for discovery was set to be heard on the same day as the TPPA petitions. After hearing argument from counsel, the court announced it was granting Plaintiff's request for discovery but only as to the named defendants. The court denied Plaintiff's request to depose E.R. As a consequence, the court reserved ruling on the TPPA petitions pending the depositions and further arguments.

The depositions took place on July 28, 2021. After that, the trial court allowed the parties to make additional arguments, which they declined. The court then took the matter under advisement.

In its order entered on December 10, 2021, the trial court held that Plaintiff "failed to establish a prima facie case for each essential element of his claim[,] foremost of these being Actual Malice." Thus, the court dismissed the complaint; awarded Defendants their attorney's fees, costs, and expenses; and ordered Plaintiff to pay a $10,000 monetary sanction "to deter repetition of this conduct by [Plaintiff] and other similarly situated who may file similar actions to try to embarrass and silence young women and their families who are alleged victims of sexual harassment by a school teacher."

This appeal followed.

ISSUES

Plaintiff raises four issues on appeal:

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[4] Pursuant to Tenn. Code Ann. § 20-17-104(d), all discovery was automatically stayed pending adjudication of the TPPA petitions.

1. Whether the trial court erred in refusing Plaintiff's request pursuant to Tennessee Code Annotated § 20-17-104 to conduct limited discovery of E.R.

2. Whether the court erred in granting Defendants' petitions to dismiss under the Tennessee Public Participation Act, Tennessee Code Annotated § 20-17-101.

3. Whether the trial court erred in dismissing Plaintiff's claims under the Tennessee Educators Protection Act, Tennessee Code Annotated § 49-1-1206.

4. Whether the trial court erred in its admission of hearsay evidence and in relying on such evidence in its final ruling.

Defendants have not raised any other issues, but Ms. Mitchell, Ms. Dishman, Ms. Troupe-Harris, and the Rudd Defendants have requested awards of their appellate attorneys' fees pursuant to the TPPA.

STANDARD OF REVIEW

We review a trial court's decision to grant or deny a TPPA petition under a de novo standard of review. *See Doe v. Roe*, 638 S.W.3d 614, 617 (Tenn. Ct. App. 2021); *Nandigam Neurology, PLC v. Beavers*, 639 S.W.3d 651, 657 (Tenn. Ct. App. 2021); *Pragnell v. Franklin*, No. E2022-00524-COA-R3-CV, 2023 WL 2985261, at *6 (Tenn. Ct. App. Apr. 18, 2023); *Reiss v. Rock Creek Constr., Inc.*, No. E2021-01513-COA-R3-CV, 2022 WL 16559447, at *3 (Tenn. Ct. App. Nov. 1, 2022); *accord* Thomas R. Burke, *Anti-SLAPP Litigation* § 2:89 (Sept. 2022 Update) ("The appellate court reviews de novo a trial court's ruling on an anti-SLAPP motion." (citations omitted)); *ACLU v. Zeh*, 864 S.E.2d 422 (Ga. 2021) ("We generally review a trial court's ruling on an anti-SLAPP motion to strike de novo . . . ." (citations omitted)).

ANALYSIS

I. DISCOVERY REQUEST

Plaintiff asked for permission to depose each defendant and the Rudd's daughter, E.R. After hearing argument from counsel, the court granted Plaintiff's request for discovery but only as to the named defendants. The court denied Plaintiff's request to depose E.R. Plaintiff contends the trial court erred by denying his request to depose E.R. because he "made a showing of good cause."

This issue concerns the trial court's ruling on a discovery dispute. Trial court decisions on pretrial discovery disputes are reviewed using an abuse of discretion standard. *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010). "A court abuses its

discretion when it causes an injustice to the party challenging the decision by (1) applying an incorrect legal standard, (2) reaching an illogical or unreasonable decision, or (3) basing its decision on a clearly erroneous assessment of the evidence." *Funk v. Scripps Media, Inc.*, 570 S.W.3d 205, 210 (Tenn. 2019)[5] (quoting *Lee Med., Inc.*, 312 S.W.3d at 524).

The TPPA, specifically Tennessee Code Annotated § 20-17-104(d), provides as follows:

> (d) All discovery in the legal action is stayed upon the filing of a petition under this section. The stay of discovery remains in effect until the entry of an order ruling on the petition. The court may allow specified and limited discovery relevant to the petition upon a showing of good cause.

We begin our analysis of the trial court's discretionary decision by recognizing the General Assembly's directive that discovery is stayed upon the filing of the TPPA petition and remains in effect *unless and until* the trial court allows specified and limited discovery *upon a showing of good cause*.[6] *Id*. (emphasis added).

At the hearing before the trial court, Plaintiff's counsel urged the court to allow for a limited deposition of E.R. As "good cause" for this request, the Plaintiff presented the following points to the trial court, which points he primarily relies on in his appellant's brief:

> Most of the claims and defenses in this case are centered around the statements of two people, a Ms. E.R. and a [C.N.], a former student back in 2017. Mr. Lee should be allowed the opportunity to confront these witnesses and to test whether or not their statements exhibit the truth about these accusations. What are the differences in their accounts? What are—you know, with regard to their parents, what did they know, and when did they know it?
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> . . . .

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[5] The issue in *Funk v. Scripps Media, Inc.*, 570 S.W.3d 205 (Tenn. 2019), a defamation action, concerned "what role, if any, malice plays in the fair report privilege, whether the fair report privilege is a defense based upon a source of information that triggers the exception to Tennessee's news media shield law, and if it is, the extent of the discovery to which the plaintiff is entitled." *Id*. at 210–11.

[6] "Discovery is not prohibited if needed for a purpose relevant to the proceedings under the statutory scheme." *Charles v. McQueen*, No. M2021-00878-COA-R3-CV, 2022 WL 4490980, at *8 n.7 (Tenn. Ct. App. Sept. 28, 2022), (noting that although discovery is generally stayed, "[t]he court may allow specified and limited discovery relevant to the petition upon a showing of good cause" (citing Tenn. Code Ann. § 20-17-104(d)), *appeal granted*, No. M2021-00878-SC-R11-CV, 2023 WL 2470285 (Tenn. Mar. 9, 2023).

> In the case of E.R., the accounts she provided to the school administration do differ materially from the statements she provided later to the TBI and from the statements she provided to the Department of Children's Services and from those published in her video. The issue of whether Defendants' published statements were malicious or not or in reckless disregard of the truth hinge on what they knew and when they knew it. The Plaintiff should be allowed to test the credibility of these self-serving affidavits.
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> For the Court to rule specifically on the affidavits themselves, which are, as I said earlier, replete with hearsay, would effectively deprive Mr. Lee of his Constitutional right to confront his adversaries. Since either side, as I said, has an automatic right of appeal, we should at least give Your Honor the benefit of a full record and create a record for appeal.

In his appellate brief, Plaintiff also sets forth the following argument:

> The genesis of this case lies in a series of self-contradictory statements by E.R., who is now 18 years of age, that the Plaintiff interacted inappropriately toward her in class. E.R. furnished an affidavit in support of the Rudds' Petition to Dismiss. (T.R. Vol. I, at 104). Pursuant to Tenn. Code Ann. § 20-17-104, the Plaintiff specifically sought permission to take E.R.'s deposition, and the trial court refused this request. (T.R. Vol. VI, Transcript of Proceedings Before Hon. Jonathan Young at 56:9-17 and 68: 7-10). E.R. is the only witness identified in this case who has personal knowledge of Mr. Lee's actions toward her. Her contradictory remarks to Principal Melton, the TBI and in her viral video posted on social media about the Plaintiff lie at the very core of this litigation, and to deny the Plaintiff limited access to discovery from this witness contravenes the legislative intent of Tenn. Code Ann. § 20-17-104.

Although Plaintiff cites to the record where we can find E.R.'s "affidavit in support of the Rudds' Petition to Dismiss. (T.R. Vol. I, at 104)," his brief fails to cite to the record where we might find statements she provided later to the TBI or statements she provided to the Department of Children's Services.

While we have reviewed the affidavit cited above, as well as her video, we find no contradictory statements or retractions, only inconsequential inconsistencies. Moreover, Plaintiff fails to explain what "contradictory remarks" E.R. allegedly made, and he provides no citation to the record other than to his own affidavit, in which he stated, "It is my understanding that each of these students each gave conflicting reports concerning their classroom observations of my conduct." Further, Plaintiff's own affidavit attributes the source of the remarks that are at issue to "these students," indicating that there were multiple sources other than E.R. Thus, the public comments made by Defendants that are at issue, which were allegedly based on statements made by numerous students to

numerous defendants, are not restricted to Plaintiff's alleged communications or interactions with E.R. or E.R.'s statements to others.

We also find that Plaintiff's appellate argument does not sufficiently comply with Tennessee Rule of Appellate Procedure 27, which requires parties to include "[a]n argument . . . setting forth . . . the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record . . . relied on." Tenn. R. App. P. 27(a)(7). As our Supreme Court recently explained, "the judicial role is not . . . 'to research or construct a litigant's case or arguments for him or her,' but rather to serve as 'arbiters of legal questions presented and argued by the parties before them.'" *State v. Bristol*, 654 S.W.3d 917, 924 (Tenn. 2022) (citations omitted).

For these reasons, we concur with the trial court's finding that Plaintiff failed to show good cause why E.R.'s deposition should be permitted.

Considering this finding and realizing that Plaintiff was granted leave to depose all named defendants, we find no abuse of discretion in the trial court's decision to deny Plaintiff's request to depose E.R.

Accordingly, we affirm the trial court on this issue.

II. TPPA PRIMA FACIE CASE REQUIREMENT

As his second issue, Plaintiff contends that the trial court erred by finding that he failed to establish a prima facie case of his claims.

Defendants supported their TPPA petition with affidavits that were sufficient to make a prima facie case that the statements they made about Plaintiff constituted the exercise of the right of free speech. Thus, the court was authorized to dismiss Plaintiff's complaint against Defendants unless Plaintiff established a prima facie case for each essential element of each claim he asserted against them. *See Doe v. Roe*, 638 S.W.3d 614, 618 (Tenn. Ct. App. 2021); *see also* Tenn. Code Ann. § 20-17-105(a) and (b)).

The "prima facie" standard is "well-recognized . . . in the common law." *Pragnell*, 2023 WL 2985261, at *10. "[A] prima facie case is made out when some credible proof . . . is presented on the issues required to be offered in evidence by a plaintiff for a plaintiff's recovery." *Union Planters Corp. v. Harwell*, 578 S.W.2d 87, 93 (Tenn. Ct. App. 1978). Prima facie case "means merely that [the plaintiff's] evidence, assuming it to be true, is sufficient to prevent his suit being dismissed." *Pickard v. Berryman*, 142 S.W.2d 764, 769 (Tenn. Ct. App. 1939); *cf. Anderson v. State*, 55 Tenn. 13, 14 (1873) ("Prima facie evidence is that evidence which is sufficient to establish a fact unless rebutted."); *Macon Cnty. v. Dixon*, 100 S.W.2d 5, 9 (Tenn. Ct. App. 1936) ("Prima facie evidence is that which, standing alone, unexplained or uncontradicted, is sufficient to maintain the proposition

affirmed. It is such as, in judgment of law, is sufficient to establish the fact; and, if not rebutted, remains sufficient for that purpose.").

Plaintiff asserted claims for defamation, false light invasion of privacy, and malicious prosecution of an educator under the TEPA.[7]

"To establish a prima facie case of defamation in Tennessee, the plaintiff must establish that: 1) a party published a statement; 2) with knowledge that the statement is false and defaming to the other; or 3) with reckless disregard for the truth of the statement or with negligence in failing to ascertain the truth of the statement." *Sullivan v. Baptist Mem'l Hosp.*, 995 S.W.2d 569, 571 (Tenn. 1999). Because Plaintiff was a public figure, he had to prove that each statement was made with "'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not." *Eisenstein v. WTVF-TV, News Channel 5 Network, LLC*, 389 S.W.3d 313, 317 (Tenn. Ct. App. 2012).

To establish a prima facie case of false light, a plaintiff must show that (1) the defendant gave publicity to a matter concerning the plaintiff that placed the plaintiff before the public in a false light; (2) the false light in which the plaintiff was placed would be highly offensive to a reasonable person; and (3) the defendant had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the plaintiff would be placed. *See West v. Media Gen. Convergence, Inc.*, 53 S.W.3d 640, 643 (Tenn. 2001). Moreover, as is the case with defamation, "actual malice is the appropriate standard for false light claims when the plaintiff is a public official or public figure." *Id.* at 647.[8]

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[7] Tennessee Code Annotated § 49-1-1206 states in relevant part:

> (a) An employee may file a civil action for damages against any person eighteen (18) years of age or older who acts with the specific intent to cause harm by making an accusation of criminal activity the person knows or should know is false against that employee to law enforcement authorities, school district officials, or school district personnel.
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> (b) An employee may file a civil action for damages against the parent, guardian, or legal custodian of a student of the employee, if the student, who is under eighteen (18) years of age, acts with specific intent to cause harm to another by making an accusation of criminal activity the person knows or should know is false against that employee to law enforcement authorities, school district officials, or school district personnel.

[8] "[W]hen false light invasion of privacy claims are asserted by a private plaintiff regarding a matter of private concern, the plaintiff need only prove that the defendant publisher was negligent in placing the plaintiff in a false light." *West*, 53 S.W.3d at 648.

And to establish a prima facie case of malicious prosecution under the TEPA, a plaintiff must show (1) that the defendant or their child, with the intent to cause harm, falsely accused the plaintiff of criminal activity "to law enforcement authorities, school district officials, or school district personnel"; and (2) that the defendant or their child knew or should have known that the accusation was false when reported. Tenn. Code Ann. § 49-1-1206(a) and (b).

Thus, to establish a prima facie case of each of his three claims, Plaintiff was required to present "some credible proof," *see Union Planters Corp.*, 578 S.W.2d at 93, that supports a finding that Defendants made each statement "with knowledge that it was false or with reckless disregard of whether it was false or not," *Eisenstein*, 389 S.W.3d at 317; *accord West*, 53 S.W.3d at 643; Tenn. Code Ann. § 49-1-1206(a) and (b).

As noted above, Plaintiff's only evidence was his affidavit, much of which we quoted earlier, and Plaintiff cites no evidence in his appellate brief—not even to his affidavit—to establish the essential elements for his claims.[9] Moreover, Plaintiff's appellate brief fails to develop a complete legal argument on this issue. For example, Plaintiff contends that he "made a prima facie showing regarding *each* of his claims against *each* of the defendants for defamation" (emphasis added)—but Plaintiff's brief does not directly address *any* of his claims against *any* defendant. Stated another way, Plaintiff does not cite to any evidence on which we may rely to conclude that any defendant knew the statements they made were false or that they acted in reckless disregard for the truth. Moreover, his affidavit is not credible proof that Defendants actions were driven by "actual malice" or "willful intent to harm." Accordingly, we affirm the trial court's finding that Plaintiff failed to establish a prima facie case of defamation, false light or false reporting under the TEPA.

III. HEARSAY EVIDENCE

As his final issue, Plaintiff contends that the trial court erred by "relying on hearsay evidence in violation of Tenn. Code Ann. § 20-17-105(d)," which provides that "[t]he court may base its decision on supporting and opposing sworn affidavits stating admissible evidence upon which the liability or defense is based and on other admissible evidence presented by the parties."

We note, however, that Plaintiff's brief includes only a skeletal legal argument on this issue because the only legal authority Plaintiff cites in support of his hearsay objections and argument pertain to the TBI Report and the newspaper articles. *See Sneed v. Bd. of*

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[9] Plaintiff includes an incomplete cite for the proposition that he "vehemently denies ever saying anything sexually inappropriate to his students, and his 25-year record as a teacher is devoid of any complaints of such conduct." We note that Plaintiff did not provide the trial court with a copy of his teaching record.

Pro. Resp. of Supreme Ct., 301 S.W.3d 603, 615 (Tenn. 2010) ("It is not the role of the courts, trial or appellate, to research or construct a litigant's case or arguments for him or her, and where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived."). Thus, with the exception of his argument regarding the TBI Reports and the newspaper articles, we find the issue is waived.

As for the TBI Reports and the newspaper articles, it appears that these items were offered for the truth of the matters asserted therein. *See* Tenn. R. Evid. 801(c). That is, the purpose of the TBI Reports and newspaper articles at this stage was not to demonstrate that the events in them were accurately reported or truthful, but to address what effect these reports had on Defendants' mindset in terms of actual malice in connection with their statements. Thus, the trial court's consideration of the TBI Reports and the newspaper articles would not have been error. Nevertheless, because the trial court based its decision on Plaintiff's failure to establish a prima facie case for his claims, an absence of evidence, we conclude that any error in considering Defendants' challenged evidence would constitute harmless error because it would not affect the judgment.

"A final judgment from which relief is available and otherwise appropriate shall not be set aside unless, considering the whole record, error involving a substantial right more probably than not affected the judgment or would result in prejudice to the judicial process." Tenn. R. App. P. 36(b); *see also Thurston Hensley v. CSX Transp., Inc.*, 310 S.W.3d 824, 830 (Tenn. Ct. App. 2009) (explaining that our harmless error rule looks at whether or not the error "more probably than not affected the judgment.").

Defendants submitted the challenged evidence in support of their affirmative defenses, specifically that Plaintiff was libel-proof and that their statements about him were true. But the dispositive issue in this appeal is whether Plaintiff established a prima facie case for each of his three claims. The trial court's consideration of Defendants' evidence has little bearing on this issue because, even if we were to strike all of the challenged evidence, the record clearly supports the court's finding that Plaintiff failed to present "some credible proof," *see Union Planters Corp.*, 578 S.W.2d at 93, that Defendants knew or should have known that their statements were false or that Defendants recklessly disregarded the truth in making the statements. Accordingly, the consideration of the challenged evidence, if error, was harmless.

IV. APPELLATE ATTORNEY FEES

When a trial court dismisses a legal action under the TPPA, it must award the petitioning party "[c]ourt costs, reasonable attorney's fees, discretionary costs, and other expenses incurred in filing and prevailing upon the petition." Tenn. Code Ann. § 20-17-107(a)(1). This applies to appellate and trial attorneys' fees, "provided that the court dismisses a legal action pursuant to a petition filed under this chapter and that such fees are properly requested in an appellate pleading." *Nandigam Neurology, PLC v. Beavers*, 639

S.W.3d 651, 670 (Tenn. Ct. App. 2021) (citing Tenn. Code Ann. § 20-17-107; *Killingsworth v. Ted Russell Ford, Inc.*, 205 S.W.3d 406, 409 (Tenn. 2006)).

The trial court dismissed the action pursuant to Defendants' TPPA petitions, and Ms. Mitchell, Ms. Dishman, Ms. Troupe-Harris, and the Rudds properly requested awards of their appellate attorneys' fees in their appellate pleadings.[10] We find these requests are well-taken, and we remand the matter for the trial court to determine the proper amount of reasonable fees incurred by these defendants on appeal.

IN CONCLUSION

For all these reasons, the judgment of the trial court is affirmed and this matter is remanded for further proceedings consistent with this opinion. Costs of appeal are assessed against the appellant, James Mark Lee.

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FRANK G. CLEMENT JR., P.J., M.S.

[10] The claims against Tosha Danielle Dishman were dismissed in the trial court. Nevertheless, she filed a joint brief along with Tonya Mitchell for the sole purpose of preserving her claim for attorney's fees. As stated in her brief, "Tosha Dishman is included in this appeal to maintain her request for an award of attorney's fees." We assume she was referring to the attorney's fees she incurred in the trial court. Nevertheless, on remand, we leave it to the discretion of the trial court to determine whether Ms. Dishman is entitled to recover attorney's fees and expenses and, if so, in what amount.