

IN THE TWELFTH JUDICIAL DISTRICT OF TENNESSEE
CIRCUIT COURT OF GRUNDY COUNTY

PATSY FOSHEE, RONNIE FOSHEE,
and LORETTA FOSHEE, d/b/a
MAMA PAT'S DAYCARE,

Plaintiffs/Counter-Defendants

v.

TANISHA HANSEN and
SHILO TURNER,

Defendants/Counter-Plaintiffs

No.: 9395

FILED IN MY OFFICE
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Penny L. Jones
CLERK

MEMORANDUM OPINION AND ORDER

This matter came on for hearing on the 18th day of August 2025, before the undersigned Circuit Judge on the Defendant's Motion(s) to Dismiss. Based upon the arguments of counsel, the parties' briefs and the record as a whole, the Court finds that the Defendants Motion(s) should be GRANTED.

FACTUAL HISTORY

The case at bar was initiated by the Plaintiffs, Patsy Foshee, Ronnie Foshee and Loretta Foshee, d/b/a Mama Pat's Daycare against Defendants, Tanisha Hansen (Hansen) and Shilo Turner (Turner), alleging that each had posted false and defamatory allegations of wrongdoing by the Plaintiffs on social media resulting in monetary damages.

Specifically, Defendant Hansen alleged on social media that her daughter had suffered an injury while at the Plaintiffs' daycare. Following the post on social media, Defendant Turner chimed in expressing her opinion of the Plaintiffs and concerns that she had with respect to the Plaintiffs' daycare operation.

Following the filing of the action, the Defendants filed a 12.02(6) Motion to Dismiss as well as a Petition for Dismissal under the Tennessee Public Participation Act (TPPA).

RELEVANT STATUTORY AND CASE LAW

(Citing [*Doe v. Roe*, 638 SW3d 614, 618-619 (Tenn. Ct. App.2021)]) The Defendants' motion was specifically filed pursuant to the authority in Tenn. Code Ann. § 20-17-104(a), which provides that "if a legal action is filed in response to a party's exercise of the right of free speech, right to petition, or right of association, that party may petition the court to dismiss the legal action." Tenn. Code Ann. § 20-17-104(a).

Enacted in 2019, the TPPA is designed 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. As with the typical design of anti-SLAPP statutes, the TPPA works to "discourage and sanction frivolous lawsuits and permits the early disposition of those cases before parties are forced to incur substantial litigation expenses." *Todd Hambridge et al., Speak Up*, 55 *Tenn. B.J.* 14, 15 (2019). Although it has been noted that Tennessee had a limited anti-SLAPP statute before the TPPA, the TPPA "broadens anti-SLAPP protection." *Id.*

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. Tenn. Code Ann. § 20-17-104(a), § 20-17-105. 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." Tenn. Code Ann. § 20-17-105(a)(b). The TPPA also provides definitions as to what constitutes these forms of protected activity. For example, an "exercise of the right of association" is an "exercise of the constitutional right to join together to take collective action on 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(2). An "exercise of the right of free speech" means "a communication made in connection with a matter of public concern or religious expression that falls within the

protection of the United States Constitution or the Tennessee Constitution.” Tenn. Code Ann. § 20-17-103(3). Finally, an “exercise of the right to petition” means “a communication that falls within the protection of the United States Constitution or the Tennessee Constitution and: (A) Is intended to encourage consideration or review of any issue by a federal, state, or local legislative, executive, judicial, or other governmental body; or (B) Is intended to enlist public participation in an effort to effect consideration of an issue by a federal, state, or local legislative, executive, judicial, or other governmental body.” Tenn. Code Ann. § 20-17-103(4).

Notably, the definitions above reveal that both the “exercise of the right of association” and the “exercise of the right of free speech” require that the activity be connected with a “matter of public concern.” Tenn. Code Ann. § 20-17-103(2–3). As defined by the statute, a “matter of public concern” includes issues relating to: “(A) Health or safety; (B) Environmental, economic, or community well-being; (C) The government; (D) A public official or public figure; (E) A good, product, or service in the marketplace; (F) A literary, musical, artistic, political, theatrical, or audiovisual work; or (G) Any other matter deemed by a court to involve a matter of public concern.” Tenn. Code Ann. § 20-17-103(6). As should be evident and as some commentators have already observed matters of public concern are “broadly defined” under the statute. Todd Hambridge et al., *Speak Up*, 55 Tenn. B.J. 14, 15 (2019). Unlike the enumerated categories pertaining to “the exercise of the right of association” and the “exercise of the right of free speech,” the “exercise of the right to petition” contains no statutory qualifier requiring that the activity involve a “matter of public concern.” Again, under the statute, “exercise of the right to petition” simply means a “communication” that is constitutionally protected and is “intended to encourage consideration or review of an issue” by some form of governmental body or is “intended to enlist public participation in an effort to effect consideration of an issue” by a governmental body. Tenn. Code Ann. § 20-17-103(4)(A)(B). *Doe v. Roe*, 638 S.W.3d 614 (Tenn.Ct.App. 2021)

Relevant portions of the Tennessee Public Participation Act are as follows:

T. C. A. § 20-17-103. Chapter definitions.

As used in this chapter:

(1) “Communication” means the making or submitting of a statement or document in any form or medium, including oral, written, audiovisual, or electronic;

(2) “Exercise of the right of association” means exercise of the constitutional right to join together to take collective action on a matter of public concern that falls within the protection of the United States Constitution or the Tennessee Constitution;

(3) "Exercise of the right of free speech" means a communication made in connection with a matter of public concern or religious expression that falls within the protection of the United States Constitution or the Tennessee Constitution;

(4) "Exercise of the right to petition" means a communication that falls within the protection of the United States Constitution or the Tennessee Constitution and:

(A) Is intended to encourage consideration or review of an issue by a federal, state, or local legislative, executive, judicial, or other governmental body; or

(B) Is intended to enlist public participation in an effort to effect consideration of an issue by a federal, state, or local legislative, executive, judicial, or other governmental body;

(5) "Legal action" means a claim, cause of action, petition, cross-claim, or counterclaim or any request for legal or equitable relief initiated against a private party;

(6) "Matter of public concern" includes an issue related to:

(A) Health or safety;

(B) Environmental, economic, or community well-being;

(C) The government;

(D) A public official or public figure;

(E) A good, product, or service in the marketplace;

(F) A literary, musical, artistic, political, theatrical, or audiovisual work; or

(G) Any other matter deemed by a court to involve a matter of public concern; and

(7) "Party" does not include a governmental entity, agency, or employee.

T. C. A. § 20-17-104. Petition to dismiss legal action filed in response to party's exercise of the right of free speech, right to petition, or right of association – Response -- Stay of discovery.

(a) If a legal action is filed in response to a party's exercise of the right of free speech, right to petition, or right of association, that party may petition the court to dismiss the legal action.

(b) Such a petition may be filed within sixty (60) calendar days from the date of service of the legal action or, in the court's discretion, at any later time that the court deems proper.

(c) A response to the petition, including any opposing affidavits, may be served and filed by the opposing party no less than five (5) days before the hearing or, in the court's discretion, at any earlier time that the court deems proper.

(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.

T. C. A. § 20-17-105. Burden of proof. Dismissal of legal action.

(a) The petitioning party has the burden of making a prima facie case that a legal action against the petitioning party is based on, relates to, or is in response to that party's exercise of the right to free speech, right to petition, or right of association.

(b) If the petitioning party meets this burden, the court shall dismiss the legal action unless the responding party establishes a prima facie case for each essential element of the claim in the legal action.

(c) Notwithstanding subsection (b), the court shall dismiss the legal action if the petitioning party establishes a valid defense to the claims in the legal action.

(d) The 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.

(e) If the court dismisses a legal action pursuant to a petition filed under this chapter, the legal action or the challenged claim is dismissed with prejudice.

(f) If the court determines the responding party established a likelihood of prevailing on a claim:

(1) The fact that the court made that determination and the substance of the determination may not be admitted into evidence later in the case; and

(2) The determination does not affect the burden or standard of proof in the proceeding.

APPLICABLE LAW CONSIDERED

As noted in *Pragnell v. Franklin*, 2023 WL 2985261, at *9 to establish a *prima facie* case of defamation in Tennessee, a plaintiff must demonstrate 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). A plaintiff must also demonstrate that the false statement(s) caused actual damages. *Davis v. The Tennessean*, 83 S.W.3d 125, 128 (Tenn. Ct. App. 2001). "In matters concerning defamation

claims asserted by private individuals, Tennessee has previously adopted negligence as the standard." *Charles v. McQueen*, No. M2021-00878-COA-R3-CV, 2022 WL 4490980, at *10 (Tenn. Ct. App. Sept. 28, 2022) (citing *Memphis Publ'g Co. v. Nichols*, 569 S.W.2d 412, 418 (Tenn. 1978)).

The Court of Appeals of Tennessee in *Brown v. Christian Bros. University* stated that "only statements that are false are actionable in a defamation case; truth is, almost universally, a defense" (*Brown v. Christian Bros. University*, 428 S.W.3d 38 (2013)). This establishes that truth is a widely accepted defense against defamation claims.

The damaging words must be factually false. If they are true, or essentially true, they are not actionable, even though the published statement contains other inaccuracies which are not damaging. Thus, the defense of truth applies so long as the "sting" (or injurious part) of the statement is true. "... it is not necessary to prove the literal truth of the accusation in every detail, and that it is sufficient to show that the imputation is substantially true, or, as it is often put, to justify the 'gist,' the 'sting,' or the 'substantial truth' of the defamation." *Stones River Motors, Inc. v. Mid-South Publ'g Co.*, 651 S.W.2d 713, 719-20 (Tenn.Ct.App.1983). To be actionable, the statement at issue must "constitute a serious threat to the plaintiff's reputation." *Id.* at 719.

The qualified common interest privilege applies to communications made in good faith on matters in which the speaker and the recipient share a legitimate interest or duty. This privilege is grounded in public policy, which seeks to encourage open communication in situations where the parties have a shared interest or duty. For example, the privilege extends to communications made in good faith to protect the speaker's own interests, the interests of another, or the public interest (*Simpson Strong-Tie Co., Inc. v. Stewart, Estes & Donnell*, 232 S.W.3d 18 (2007)).

There are two types of privileges that can be raised as a defense in a defamation case, absolute and qualified. See *Jones v. Trice*, 210 Tenn. 535, 360 S.W.2d 48, 51 (Tenn.1962). A privilege is described as absolute when it is not defeated by the defendant's malice, ill-will, or improper purpose in publishing the defamatory communication.² See Dan B. Dobbs, *The Law of Torts* 1153 (2000). Thus, an absolute privilege is, in effect, a complete immunity. *Id.* See also *Restatement (Second) of Torts* 243 (1977) ("the privilege, or immunity, is absolute and the protection that it affords is complete"). *Simpson Strong-Tie Co., Inc. v. Stewart, Estes & Donnell*, 232 S.W.3d 18, 22 (2007)).

By contrast, a qualified or conditional privilege is one that may be defeated if the defamatory publication was made with malice, ill-will, or for an improper purpose. See *Pate v. Serv. Merch. Co.*, 959 S.W.2d 569, 576-77 (Tenn.Ct.App.1996); Dobbs, *supra*, at 1158. A qualified privilege is based upon public policy that recognizes information should be given freely when necessary to protect the actor's own interests, the interests of another, or the interests of the public. See *Restatement (Second) of Torts* at 243. *Simpson Strong-Tie Co., Inc. v. Stewart, Estes & Donnell*, 232 S.W.3d 18, 22 (2007)).

The burden of establishing the elements of the qualified common interest privilege lies with the defendant. Once the privilege is established, the plaintiff must then demonstrate that the privilege is defeated by showing malice or improper purpose. This framework balances the need to protect reputational interests with the public policy goal of encouraging

free communication in certain contexts (*Boyd v. Comdata Network, Inc.*, 88 S.W.3d 203 (2002)).

The Tennessee Supreme Court authorized conditional privileges in *Southern Ice Co. v. Black*, 136 Tenn. 391, 189 S.W. 861 (1916):

Qualified privilege extends to all communications made in good faith upon any subject-matter in which the party communicating has an interest, or in reference to which he has a duty to a person having a corresponding interest or duty; and the privilege embraces cases where the duty is not a legal one, but where it is of a moral or social character of imperfect obligation.... The rule announced is necessary in order that full and unrestricted communication concerning a matter in which the parties have an interest may be had. It is grounded in public policy as well as reason. *Id.* at 401, 189 S.W. 861, 863.

FINDINGS

Based upon the proof presented, the Court finds as follows:

- (1) The Plaintiffs/Counter Defendants Ronnie Foshee, Patsy Foshee and Loretta Foshee own and operate a daycare business known as Mama Pat's Daycare (Mama Pat's).
- (2) The Plaintiffs/Counter Defendants provided daycare services for Defendants Tanisha Hansen (Hansen) and Shilo Turner (Turner). Hansen and Turner each have a daughter that attended Mama Pat's.
- (3) On September 30, 2024, while picking up her daughter from Mama Pat's Day Care, Hansen noticed that the child's eyes were puffy "like she had been crying a lot." Because it was unusual for the child to cry, Hansen inquired of Loretta Foshee if the child had been crying and was told that she had "whined around a little today."
- (4) Hansen's daughter acted out of character and could not stand when Hansen encouraged her to do so. The child could not stand and when Hansen tried to pick the child up, her right leg shook, and she began to cry.

(5) When Hansen inquired of Loretta Foshee as to whether the child had gotten hurt during the day, Ms. Foshee denied that the child had been hurt.

(6) Hansen took the child to a Sewanee ER where the child was diagnosed with a buckle fracture of the right tibia and referred to Children's Hospital at Erlanger. On October 1, 2024, Dr. Merritt E. Adams placed a cast on the child's leg and made it clear to Hansen that the break would not have happened absent some blunt force trauma.

(7) Hansen filed a written complaint against Mama Pat's that resulted in involvement of multiple agencies and an investigation.

(8) Both Loretta Foshee and Patsy Foshee have consistently denied that the Hansen child was injured at Mama Pat's.

(9) The Department of Children's Services substantiated the complaint against Mama Pat's but was unable to determine the perpetrator with an ultimate classification of "Allegation Substantiated Perpetrator Unknown". Ultimately no criminal charges resulted from the incident.

(10) Hansen posted details on social media of her experience with Mama Pat's after being told by DCS there was nothing that they could do - beyond making their finding. Hansen's posts were "to try and protect the health and safety of other children."

(11) Turner removed her daughter from Mama Pat's after observing a bruise on her child's head and rashes. After seeing Hansen's posts on social media about Mama Pat's, Turner "felt vindicated for believing the daycare had abused her daughter and removing her from its care" and shared Hansen's posts as well as her own experiences with Mama Pat's.

CONCLUSIONS OF LAW

Considering all the above, the Court finds as follows:

- (1) Hansen and Turner have established a prima facie case that Plaintiffs filed suit against them in response to their right of free speech which is protected under the Tennessee Public Participation Act.
- (2) Statements (communications) by Hansen and Turner involved: a) matters of public concern as they included issues related to the health and safety of their daughters and other children; b) community well-being; c) the government (critical of various agencies involved with the investigation); and d) a service in the marketplace (childcare).
- (3) Statements by Hansen and Turner were truthful and were made in good faith based on personal experiences that each had with the Foshee's and Mama Pat's, negating two of the essential elements of a defamation claim.
- (4) Statements by Hansen and Turner are protected by the qualified common interest privilege.
- (5) The Plaintiffs have made no showing of malice or improper purpose which would defeat the privilege.

ACCORDINGLY, IT IS ORDERED, ADJUDGED AND DECREED that:

The Defendants' Tennessee Public Participation Act Petition to Dismiss and Rule 12.02(6)

Motion to Dismiss are hereby GRANTED.

ENTER: This 24th day of September, 2025.



John H. Cameron, Jr., Circuit Judge
Twelfth Judicial District, Part 2

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