

**IN THE EIGHTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE**

MICHELLE FOREMAN,

Plaintiff,

v.

DAVE ROSENBERG,

Defendant.

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Case No. 23C891

ORDER

This matter came before the Court for hearing on June 30, 2023, upon the Defendant’s Motion to Dismiss and Tenn. Code Ann. § 20-17-104(a) Petition to Dismiss the Plaintiff’s Amended Complaint Pursuant to the Tennessee Public Participation Act. Upon consideration of the Defendant’s Tennessee Public Participation Act (“TPPA”) Petition (Doc. 30), the Defendant’s Memorandum of Law and accompanying exhibits in support of his TPPA Petition (Docs. 31–42), the Plaintiff’s Response in opposition thereto (Doc. 43), the Defendant’s Reply (Doc. 44), the arguments of counsel, the position expressed by the Tennessee Attorney General during the hearing of this matter, and the entire record, the Court **FINDS** and **ORDERS** as follows:

1. The Plaintiff filed an Amended Complaint in this action on May 31, 2023. The Plaintiff’s Amended Complaint was complete in itself; it is a “Legal action” within the meaning of Tenn. Code Ann. § 20-17-103(5); and the controlling law in Tennessee cited by the Defendant provides that the Plaintiff’s Amended Complaint superseded the initial complaint as a pleading. Accordingly, the Defendant’s TPPA Petition having been filed

on June 12, 2023, the Court finds that the Defendant's TPPA Petition was timely filed under Tenn. Code Ann. § 20-17-104(b).

2. The Defendant has demonstrated that this is a lawsuit concerning communications made about a public figure. Thus, for the reasons set forth in the Defendant's Memorandum of Law in Support of his TPPA Petition, the Court finds that the Defendant has met his initial burden under Tenn. Code Ann. § 20-17-105(a) of making a prima facie case that the Plaintiff's legal action is based on the Defendant's exercise of the right of free speech within the meaning of Tenn. Code Ann. § 20-17-103(3) and (6)(D).

3. The Defendant-Petitioner having met his initial burden under Tenn. Code Ann. § 20-17-105(a), the Court moves to Tenn. Code Ann. § 20-17-105(b), which shifts the burden to the Plaintiff-Respondent to establish a prima facie case for each essential element of the claim in the legal action. The Court finds that, in her response in opposition to the Defendant's TPPA Petition, the Plaintiff failed to establish each essential element of her claim for defamation by failing to respond to the merits of the Defendant's TPPA Petition. Relying on *Nandigam Neurology, PLC v. Beavers*, 639 S.W.3d 651, 668 (Tenn. Ct. App. 2021) and Tenn. Code Ann. § 20-17-105(b), the Court finds that dismissal of the Plaintiff's legal action is mandatory under these circumstances. Accordingly, the Court **ORDERS** that the Defendant's Tenn. Code Ann. § 20-17-104(a) Petition to Dismiss is **GRANTED**, and that the Plaintiff's Amended Complaint is **DISMISSED WITH PREJUDICE** pursuant to Tenn. Code Ann. § 20-17-105(e).

4. Regarding the Plaintiff's constitutional claims, the Court relies on the Tennessee Supreme Court's holding in *Sneed v. Bd. of Pro. Resp. of Supreme Ct.*, 301 S.W.3d 603, 615 (Tenn. 2010), for the proposition that: "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.” Here, the Plaintiff having failed to develop her constitutional arguments or merely constructed skeletal arguments regarding them, the Court finds that the Plaintiff’s constitutional claims are **DENIED AS WAIVED**.

5. The Court further finds that the Plaintiff has not requested an extension of time to file any response and that she did, in fact, file a response to the Defendant’s TPPA Petition. For that reason, because of the Court’s ruling regarding the Plaintiff’s constitutional claims, and for the reasons expressed by the Attorney General, the Court will not stay a ruling on the Defendant’s TPPA Petition.

6. The Court finds that an award of reasonable attorney’s fees is mandatory under Tenn. Code Ann. § 20-17-107(a)(1) and that attorney’s fees and expenses will be awarded to the Defendant. The Court will defer a ruling on the amount of attorney’s fees and expenses to be awarded pending further briefing on a motion for attorney’s fees. The Plaintiff shall be afforded an opportunity to respond to any such motion.

7. The Court is not addressing the Defendant’s claim for sanctions at this time. The Defendant may file a motion for sanctions at the same time or after the Defendant files his motion for attorney’s fees. The Plaintiff will be afforded an opportunity to respond to any motion for sanctions filed by the Defendant.

IT IS SO ORDERED.

ENTERED this the ____ day of _____, 2023.

Judge Lynne T. Ingram¹
Circuit Court Judge

¹ The Judge's signature may be appended to this order upon entry via the Court's e-filing system.

APPROVED FOR ENTRY:

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of July, 2023, a copy of the foregoing was served via the Court's e-filing system upon:

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Case Title: FOREMAN V ROSENBERG

Case Number: 23C891

Type: ORDER- GENERAL

The foregoing is hereby ORDERED, ADJUDGED
AND DECREED:

Judge Lynne T. Ingram, Eighth Circuit