

COURT OF APPEALS FOR THE SEVENTH DISTRICT OF TEXAS AT
AMARILLO

Jonathan Wheeler and Brooke Wheeler v. J. M. Martin Custom
Homes, Inc. and Justin Martin, Individually and D/B/A J. M. Martin
Custom Homes

No. 07-24-00316-CV (Tex. App.—Amarillo Dec. 11, 2025) (Yarbrough, J., dissenting) · No. No. 07-24-00316-
CV · Decided December 11, 2025

SUMMARY

This document is a dissenting opinion in an interlocutory appeal concerning the denial of a motion to dismiss under the Texas Citizens Participation Act. The dissent argues that Texas Civil Practice and Remedies Code section 27.010(b)(2) does not apply to private criticisms communicated by homeowners to a contractor's vendors and subcontractors, and that the majority's interpretation improperly expands the TCPA. It relies on statutory text, surrounding context, the statutory framework, and legislative history concerning the 2019 TCPA amendments.

CASE DETAILS

COURT	Court of Appeals for the Seventh District of Texas at Amarillo
WRITING FOR THE COURT	Alex Yarbrough, Justice; Brian Quinn, Chief Justice; Lawrence Doss, Justice
JURISDICTION	Court of Appeals for the Seventh District of Texas at Amarillo
DECIDED	December 11, 2025
DOCKET	No. 07-24-00316-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Wheelers appealed the denial of their motion to dismiss Martin's business-disparagement claim under the Texas Citizens Participation Act.
STANDARD OF REVIEW	Statutory construction is reviewed as a question of law. The dissent states that the court must determine the statute's meaning from its plain language and, if the language is clear and unambiguous, apply its common meaning without resort to extrinsic aids.
PRECEDENTIAL VALUE	Published dissenting opinion; the dissent's reasoning is nonbinding.

PARTIES

Jonathan Wheeler, Brooke Wheeler v. J. M. Martin Custom Homes, Inc., Justin Martin, Individually and D/B/A J. M. Martin Custom Homes

TOPICS

motions to dismiss

statutory interpretation

legislative intent

commercial litigation

appellate procedure

PRACTICE AREAS

civil procedure

appellate procedure

statutory interpretation

construction law

commercial litigation

torts

QUESTIONS PRESENTED

1. Whether Martin's business-disparagement claim was subject to dismissal under Texas Civil Practice and Remedies Code section 27.010(b)(2), concerning the communication, gathering, receiving, posting, or processing of consumer opinions or commentary, evaluations of consumer complaints, or reviews or ratings of businesses.
2. Whether the Wheelers' private communications to Martin's vendors and subcontractors implicated the TCPA's rights of free speech or association.
3. Whether the trial court properly denied the Wheelers' TCPA motion to dismiss.

HOLDINGS

1. The dissent would hold that the Wheelers' private criticisms of Martin's business were not business reviews or consumer opinions within the meaning of section 27.010(b)(2), and therefore were not acts of a party described by section 27.010(b).
2. The dissent would hold that the Wheelers' alleged private communications to Martin's vendors and subcontractors did not, as a matter of law, concern a matter of public concern and did not implicate the TCPA rights of free speech or association.

KEY QUOTATIONS

"It is clear the Legislature's intent was to narrow the application of the TCPA and curtail its application to purely private matters, such as the dispute here." (at 1)

"I would hold the Wheelers' private criticisms of Martin's business are not "business reviews" or "consumer opinions" within the meaning of section 27.010(b)(2), and the alleged communications of the Wheelers were not "act[s] by a party described by [s]ection 27.010(b)."" (at 16)

"For the foregoing reasons, Martin's business disparagement claim was not subject to dismissal under the TCPA, and the trial court properly denied the Wheelers' motion to dismiss." (at 17)

FACTUAL BACKGROUND

The Wheelers allegedly made private criticisms of Martin's business in communications to Martin's vendors and subcontractors. Martin brought a business-disparagement claim based on those communications. Martin did not present evidence of the claim in his response to the TCPA motion or at the hearing, so the dissent treated the dispositive question as whether the claim was subject to the TCPA at all.

PROCEDURAL HISTORY

Martin asserted a business-disparagement claim based on alleged private communications by the Wheelers to Martin's vendors and subcontractors. The Wheelers moved to dismiss under the TCPA, arguing that the claim was based on or in response to their exercise of free speech, their exercise of the right of association, or communications involving consumer opinions and business reviews under Texas Civil Practice and Remedies Code section 27.010(b)(2). The trial court denied the motion. In this dissenting opinion, Justice Yarbrough would affirm that ruling, disagreeing with the majority's broader interpretation of section 27.010(b)(2).

DISPOSITION

affirmed

CASES CITED

- Tex. Health Presbyterian Hosp. of Denton v. D.A., 569 S.W.3d 126, 136 (Tex. 2018)
- Castleman v. Internet Money Ltd., 546 S.W.3d 684, 688 (Tex. 2018)
- Abercrombie v. Angela Hightower Enters., No. 07-20-00139-CV, 2021 Tex. App. LEXIS 2920, at *1, *3, *3–7 (Tex. App.—Amarillo Apr. 19, 2021) (mem. op.)
- Mesquite Servs., LLC v. Standard E&S, LLC, 610 S.W.3d 548, 554–56 (Tex. App.—Amarillo 2020, pet. denied)
- Energen Res. Corp. v. Wallace, 642 S.W.3d 502, 509 (Tex. 2022)
- Lippincott v. Whisenhunt, 462 S.W.3d 507, 509 (Tex. 2015)
- El Paso Educ. Initiative, Inc. v. Amex Props., LLC, 602 S.W.3d 521, 531–32 (Tex. 2020)
- In re Ford Motor Co., 442 S.W.3d 265, 271 (Tex. 2014)
- TGS-NOPEC Geophysical Co. v. Combs, 340 S.W.3d 432, 439 (Tex. 2011)
- John M. O'Quinn, PC v. Wood, No. 12-08-00011-CV, 2009 Tex. App. LEXIS 10081, at *13–14 (Tex. App.—Tyler June 10, 2009) (mem. op.)
- Walker, LLP v. Kinsel, No. 07-13-00130-CV, 2014 Tex. App. LEXIS 2061, at *9 (Tex. App.—Amarillo Feb. 14, 2014) (mem. op.)
- Greystar Dev. & Constr. LP v. Williams, No. 05-23-01168-CV, 2024 Tex. App. LEXIS 2495, at *10–15 (Tex. App.—Dallas Apr. 10, 2024) (mem. op.)
- VSMSQ Structural Eng'rs, LLC v. Structural Consultants Assocs., 679 S.W.3d 767, 773–78 (Tex. App.—Houston [1st Dist.] 2023)
- Gulf Coast Pros, LLC v. Sweeney, No. 09-23-00320-CV, 2024 Tex. App. LEXIS 4290, at *27–29 (Tex. App.—Beaumont June 20, 2024) (mem. op.)
- Zorrilla v. Aypco Constr. II, LLC, 469 S.W.3d 143, 153 (Tex. 2015)

- In re Dallas County, 697 S.W.3d 142, 159 (Tex. 2024)
- Hebner v. Reddy, 498 S.W.3d 37, 41 (Tex. 2016)
- Citizens Bank of Bryan v. First State Bank, 580 S.W.2d 344, 348 (Tex. 1979)
- Ferchichi v. Whataburger Rests. LLC, 713 S.W.3d 330, 336–41 (Tex. 2025)
- Walgreens v. McKenzie, 713 S.W.3d 394, 400 (Tex. 2025)
- Garza v. Perez, No. 07-23-00271-CV, 2024 Tex. App. LEXIS 2804, at *6 n.8 (Tex. App.—Amarillo Apr. 23, 2024)
- Vaughn-Riley v. Patterson, No. 05-20-00236-CV, 2020 Tex. App. LEXIS 9371, at *6–8 (Tex. App.—Dallas Dec. 2, 2020) (mem. op.)
- Brogan v. United States

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