

COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS

Janelle Alexis Flatt v. Ryann Tornow

Flatt v. Tornow, No. 01-24-00901-CV (Tex. App.—Houston [1st Dist.] June 18, 2026) · No. 01-24-00901-CV ·
Decided June 18, 2026

SUMMARY

The Texas Court of Appeals for the First District affirmed the denial by operation of law of Janelle Alexis Flatt’s motion to dismiss under the Texas Citizens Participation Act. The court held that Ryann Tornow’s claims for public disclosure of private facts, intrusion on seclusion, and unlawful disclosure of intimate visual material were not based on or in response to Flatt’s exercise of the rights to petition or free speech protected by the TCPA. Because the TCPA did not apply at the first step, the court did not reach the issues concerning Tornow’s prima facie case or Flatt’s entitlement to judgment as a matter of law.

CASE DETAILS

COURT	Court of Appeals for the First District of Texas
WRITING FOR THE COURT	Amparo “Amy” Guerra; Chief Justice Adams; Justice Guerra; Justice Morgan
JURISDICTION	Court of Appeals for the First District of Texas
DECIDED	June 18, 2026
DOCKET	01-24-00901-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Interlocutory appeal from the denial by operation of law of Flatt's motion to dismiss under the Texas Citizens Participation Act.
STANDARD OF REVIEW	De novo review applies to a trial court's denial of a TCPA motion to dismiss.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Janelle Alexis Flatt v. Ryann Tornow

TOPICS

- motions to dismiss
- civil procedure
- appellate procedure
- standard of review
- torts

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Tornow's claims were based on or in response to Flatt's exercise of the right to petition under the TCPA.
2. Whether Tornow's claims were based on or in response to Flatt's exercise of the right of free speech under the TCPA.
3. Whether the court needed to reach Flatt's arguments that Tornow failed to establish a prima facie case or that Flatt conclusively negated an essential element of each claim.

HOLDINGS

1. Flatt did not meet her burden to demonstrate that Tornow's claims were based on or in response to Flatt's exercise of the right to petition merely because Tornow filed suit after Flatt issued subpoenas in the divorce proceeding.
2. Flatt did not meet her burden to show that the alleged disclosure of Tornow's nude photographs or the social-media message was a communication made in connection with a matter of public concern protected by the TCPA.
3. The court did not need to reach Flatt's arguments that Tornow failed to establish a prima facie case or that Flatt conclusively negated an essential element of Tornow's claims because Flatt failed at the threshold step of showing that the TCPA applied.

KEY QUOTATIONS

"We respectfully disagree with the holdings of Cavin and Yu that a legal action is in response to the exercise of a protected right simply because the legal action temporally followed the exercise of that right." (at 9)

"Any disclosure by Flatt of Tornow's nude photographs is a 'purely private concern.'" (at 14)

"A party cannot generate interest in a matter after the fact to transform the issue into one of public concern." (at 18)

FACTUAL BACKGROUND

During divorce proceedings between Flatt and her husband, Rhett Kenagy-Balan, Tornow was subpoenaed for a deposition. Tornow alleged that Flatt accessed private communications and disclosed Tornow's intimate visual material and information about her private life to third parties. Tornow sued Flatt before sitting for the deposition, asserting privacy-related tort claims and a claim under the statute governing unlawful disclosure of intimate visual material.

PROCEDURAL HISTORY

Tornow sued Flatt for public disclosure of private facts, intrusion on seclusion, and unlawful disclosure of intimate visual material. Flatt moved to dismiss under the TCPA, but the 80th District Court in Harris County did not rule on the motion, which was denied by operation of law. Flatt timely appealed, and the court affirmed the

denial without reaching her arguments concerning prima facie proof or entitlement to judgment as a matter of law.

DISPOSITION

affirmed

CASES CITED

- McLane Champions, LLC v. Hou. Baseball Partners LLC, 671 S.W.3d 907, 913-14, 917, 919-20 (Tex. 2023)
- Gaskamp v. WSP USA, Inc., 596 S.W.3d 457, 470 (Tex. App.—Houston [1st Dist.] 2020, pet. dismiss'd) (en banc)
- Better Bus. Bureau of Metro. Hou. v. John Moore Servs., Inc., 441 S.W.3d 345, 353 (Tex. App.—Houston [1st Dist.] 2013, pet. denied)
- Wayne Dolcefino & Dolcefino Commc'ns, LLC v. Cypress Creek EMS, 540 S.W.3d 194, 202 (Tex. App.—Houston [1st Dist.] 2017, no pet.)
- Montelongo v. Abrea, 622 S.W.3d 290, 296-98 (Tex. 2021)
- Buckingham Senior Living Cmty., Inc. v. Washington, 605 S.W.3d 800, 807 n.4 (Tex. App.—Houston [1st Dist.] 2020, no pet.)
- James v. Calkins, 446 S.W.3d 135, 147 (Tex. App.—Houston [1st Dist.] 2014, pet. denied)
- Cavin v. Abbott, 545 S.W.3d 47, 68-69 (Tex. App.—Austin 2017, no pet.)
- Yu v. Koo, 633 S.W.3d 712, 726-27 (Tex. App.—El Paso 2021, no pet.)
- Pierce v. Brock, No. 01-18-00954-CV, 2019 WL 3418511, at *5 (Tex. App.—Houston [1st Dist.] July 30, 2019, no pet.)
- DOJO Bayhouse, LLC v. Pickford, No. 14-20-00237-CV, 2021 WL 6050677, at *5 (Tex. App.—Houston [14th Dist.] Dec. 21, 2021, no pet.)
- Cook v. Kyser, No. 05-19-00311-CV, 2019 WL 5884429, at *3-*4 (Tex. App.—Dallas Nov. 12, 2019, pet. denied)
- Beving v. Beadles, 563 S.W.3d 399, 408 (Tex. App.—Fort Worth 2018, pet. denied)
- Browning Fam. Min. P'ship v. Callahan Draw LLC, No. 08-24-00399-CV, 2025 WL 2972414, at *6 (Tex. App.—El Paso Oct. 21, 2025, no pet.)
- Cweren v. Eureka Multifamily Group, L.P., No. 01-21-00470-CV, 2023 WL 2977755, at *16 (Tex. App.—Houston [1st Dist.] Apr. 18, 2023, pet. denied)
- Tiedjop v. Volleyball Sch. LLC, No. 01-22-00097-CV, 2023 WL 2602776, at *4 (Tex. App.—Houston [1st Dist.] Mar. 23, 2023, no pet.)
- Marrujo v. Wisenbaker Builder Servs., Inc., No. 01-19-00056-CV, 2020 WL 7062318, at *9-*10 (Tex. App.—Houston [1st Dist.] Dec. 3, 2020, no pet.)
- Pierce v. Stocks, No. 01-18-00990-CV, 2019 WL 3418513, at *5 (Tex. App.—Houston [1st Dist.] July 30, 2019, no pet.)
- Hersh v. Tatum, 526 S.W.3d 462, 466-68 (Tex. 2017)

- Creative Oil & Gas, LLC v. Lona Hills Ranch, LLC, 591 S.W.3d 127, 134-35 (Tex. 2019)
- Ernst & Young, LLP v. Ryan, LLC, No. 01-21-00603-CV, 2023 WL 4239350, at *5 (Tex. App.—Houston [1st Dist.] June 29, 2023, pet. denied)
- Sloat v. Rathbun, 513 S.W.3d 500, 504 (Tex. App.—Austin 2015, pet. dismissed)
- Merrill v. Curry, No. 05-19-01229-CV, 2020 WL 6498983, at *2-*3, *5-*6 (Tex. App.—Dallas Nov. 5, 2020, no pet.)
- Terrell v. Mazaheri, 676 S.W.3d 116, 126 (Tex. App.—San Antonio 2023, no pet.)
- Hadimani v. Hiremath, No. 14-22-00002-CV, 2023 WL 3596248, at *1-*2, *6 (Tex. App.—Houston [14th Dist.] May 23, 2023, no pet.)

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