

COURT OF APPEALS OF THE NINTH DISTRICT OF TEXAS AT BEAUMONT

Mark Thuesen v. David Robert Scott

No. 09-22-00254-CV (Tex. App.—Beaumont Apr. 6, 2023) · No. No. 09-22-00254-CV · Decided April 6, 2023

SUMMARY

The Ninth Court of Appeals of Texas affirmed the denial of Mark Thuesen’s motion to dismiss under the Texas Citizens’ Participation Act. The court held that a motion for sanctions under Texas Rule of Civil Procedure 13 and Texas Civil Practice and Remedies Code chapter 10 is not a “legal action” under the TCPA. Because the sanctions motion did not fall within the TCPA, the court did not address Thuesen’s remaining issues.

CASE DETAILS

COURT	Court of Appeals of the Ninth District of Texas at Beaumont
WRITING FOR THE COURT	W. Scott Golemon, Chief Justice; W. Scott Golemon, C.J.; Horton, J.; Johnson, J.
JURISDICTION	Texas
DECIDED	April 6, 2023
DOCKET	No. 09-22-00254-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Accelerated interlocutory appeal from an order denying Mark Thuesen's motion to dismiss under the Texas Citizens' Participation Act.
STANDARD OF REVIEW	The denial of a TCPA motion to dismiss is reviewed de novo. Statutory construction is also reviewed de novo.
PRECEDENTIAL VALUE	published Texas intermediate appellate opinion
PARTIES	Mark Thuesen v. David Robert Scott

TOPICS

[motions to dismiss](#)[mootness](#)[statutory interpretation](#)[family law procedure](#)[appellate procedure](#)

PRACTICE AREAS

[civil procedure](#)[appellate procedure](#)[family law](#)[statutory interpretation](#)[constitutional law](#)

QUESTIONS PRESENTED

1. Whether the appeal was moot after Scott omitted or abandoned his motion for sanctions.
2. Whether a motion for sanctions under Texas Rule of Civil Procedure 13 or Texas Civil Practice and Remedies Code chapter 10 is a 'legal action' subject to dismissal under the TCPA.
3. Whether the remaining TCPA issues concerning timeliness, protected activity, prima facie evidence, and affirmative defenses required consideration.

HOLDINGS

1. The appeal was not moot because a TCPA motion to dismiss survives the opposing party's abandonment or dismissal of the challenged motion and may still support dismissal with prejudice, recovery of costs and attorney's fees, and sanctions.
2. A motion for sanctions under Texas Rule of Civil Procedure 13 or Texas Civil Practice and Remedies Code chapter 10 is not a 'legal action' under the TCPA.
3. The court did not reach the issues concerning timeliness, protected activity, prima facie evidence, or affirmative defenses because the sanctions motion was not a TCPA legal action.

KEY QUOTATIONS

“We hold that Scott’s Motion for Sanctions pursuant to Texas Rule of Civil Procedure 13 and Civil Practice and Remedies Code chapter 10 is not a “legal action” pursuant to the TCPA.” (19)

“The court alone holds the right to sanction under Rule 13 or chapter 10; because sanctions do not implicate a legal right a party asserts or enforces, in this context it does not add a claim for relief when a party requests the trial court to sanction the other party under chapter 10 or Rule 13.” (12-13)

FACTUAL BACKGROUND

Thuesen alleged that Scott assisted Breanna Ward in retaining their child during periods when Thuesen was entitled to possession under a possession order. Scott answered with a general denial and sought sanctions, alleging that Thuesen's petition was frivolous, groundless, harassing, and unsupported by law or fact. Thuesen characterized the sanctions motion as a TCPA legal action responsive to his rights of free speech and petition and moved to dismiss it.

PROCEDURAL HISTORY

Thuesen sued Scott for interference with his possessory interest in a child. Scott answered and moved for sanctions under Texas Rule of Civil Procedure 13 and Texas Civil Practice and Remedies Code chapter 10. Thuesen filed a TCPA motion to dismiss Scott's sanctions motion, but the trial court concluded that the sanctions motion was not a TCPA-defined legal action and denied dismissal. Scott later filed an amended answer omitting the sanctions motion, and the court of appeals held that the appeal remained justiciable because Thuesen's TCPA motion could support dismissal with prejudice, fees, and sanctions.

DISPOSITION

affirmed

CASES CITED

- Walker v. Hartman, 516 S.W.3d 71, 79-80 (Tex. App.—Beaumont 2017, pet. denied)
- Adams v. Starside Custom Builders, LLC, 547 S.W.3d 890, 897 (Tex. 2018)
- Rauhauser v. McGibney, 508 S.W.3d 377, 381-82 (Tex. App.—Fort Worth 2014, no pet.)
- James v. State, 997 S.W.2d 898, 901 n.5 (Tex. App.—Beaumont 1999, no writ)
- In re Lipsky, 460 S.W.3d 579, 587, 590 (Tex. 2015) (orig. proceeding)
- Push Start Indus., LLC v. Hous. Gulf Energy Corp., No. 09-19-00290-CV, 2020 WL 7041567, at *3 (Tex. App.—Beaumont Nov. 30, 2020, no pet.) (mem. op.)
- ExxonMobil Pipeline Co. v. Coleman, 512 S.W.3d 895, 898 (Tex. 2017)
- Creative Oil & Gas, LLC v. Lona Hills Ranch, LLC, 591 S.W.3d 127, 131 (Tex. 2019)
- Montelongo v. Abrea, 622 S.W.3d 290, 296, 301 (Tex. 2021)
- Castleman v. Internet Money Ltd., 546 S.W.3d 684, 691 (Tex. 2018)
- In re Panchakarla, 602 S.W.3d 536, 540 (Tex. 2020) (orig. proceeding)
- TGS-NOPEC Geophysical Co. v. Combs, 340 S.W.3d 432, 439 (Tex. 2011)
- State ex rel. Best v. Harper, 562 S.W.3d 1, 11 (Tex. 2018)
- Tex. Dep't of Criminal Justice v. Rangel, 595 S.W.3d 198, 208 (Tex. 2020)
- Landry's, Inc. v. Animal Legal Defense Fund, 631 S.W.3d 40, 46 (Tex. 2021)
- Tex. Medicine Res., LLP v. Molina Healthcare of Tex., Inc., 659 S.W.3d 424, 431 (Tex. 2023)
- Brown v. De La Cruz, 156 S.W.3d 560, 563 (Tex. 2004)
- Brewer v. Lennox Hearth Prods., LLC, 601 S.W.3d 704, 717-18 (Tex. 2020)
- In re Bennett, 960 S.W.2d 35, 40 (Tex. 1997)
- Nath v. Tex. Children's Hosp., 446 S.W.3d 355, 363 (Tex. 2014)
- TransAmerican Natural Gas Corp. v. Powell, 811 S.W.2d 913, 917 (Tex. 1991)
- Low v. Henry, 221 S.W.3d 609, 619-20 (Tex. 2007)
- CTL/Thompson Tex., LLC v. Starwood Homeowner's Ass'n, Inc., 390 S.W.3d 299, 300 (Tex. 2013)
- Aetna Cas. & Sur. Co. v. Specia, 849 S.W.2d 805, 806-07 (Tex. 1993)
- Villafani v. Trejo, 251 S.W.3d 466, 469 (Tex. 2008)
- Mantri v. Bergman, 153 S.W.3d 715, 717-18 (Tex. App.—Dallas 2005, pet. denied)
- Guidry v. Environmental Procedures, Inc., 388 S.W.3d 845, 860 (Tex. App.—Houston [14th Dist.] 2012, pet. denied)
- Michels v. Zeifman, No. 03-08-00287-CV, 2009 WL 349167, at *4 (Tex. App.—Austin Feb. 12, 2009, pet. denied) (mem. op.)
- Lane Bank Equip. Co. v. Smith S. Equip., Inc., 10 S.W.3d 308, 312 (Tex. 2000)
- Deepwell Energy Servs., LLC v. Aveda Transp. & Energy Servs., 574 S.W.3d 925, 929 (Tex. App.—Eastland 2019, pet. denied)

- Roach v. Ingram, 557 S.W.3d 203, 217-18 (Tex. App.—Houston [14th Dist.] 2018, pet. denied)
- Paulsen v. Yarrell, 537 S.W.3d 224, 233 (Tex. App.—Houston [1st Dist.] 2017, pet. denied)
- In re Estate of Check, 438 S.W.3d 829, 836 (Tex. App.—San Antonio 2014, no pet.)
- KB Home Lone Star, Inc. v. Gordon, 629 S.W.3d 649, 656-57 (Tex. App.—San Antonio 2021, no pet.)
- Whataburger Restaurants LLC v. Ferchichi, No. 04-22-00020-CV, 2022 WL 17971316, at *3 (Tex. App.—San Antonio Dec. 28, 2022, no pet.) (mem. op.)
- Hawxhurst v. Austin's Boat Tours, 550 S.W.3d 220, 228-29 (Tex. App.—Austin 2018, no pet.)
- Ross v. St. Luke's Episcopal Hosp., 462 S.W.3d 496, 504 n.1 (Tex. 2015)

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