

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

Jason Murray Davis and Davis & Santos, P.C. v. Graham Weston;
Carowest Land Ltd.; Graham Weston as Trustee of Countyline Land
Trust; and Kuehler Road, LLC f/k/a Kuehler Road, Ltd.

Davis v. Weston · No. No. 03-22-00378-CV · Decided April 30, 2026

SUMMARY

On rehearing, the Texas Court of Appeals, Third District, withdrew its prior opinion and substituted this memorandum opinion. The court affirmed the denial of attorney Jason Murray Davis’s motion to dismiss under the Texas Citizens Participation Act in claims alleging breach of fiduciary duty and fraud by nondisclosure arising from his representation of Elizabeth Weston while previously representing Graham Weston and related entities. The court concluded that the claims were based on alleged conflicts of interest, failures to disclose, and misuse of confidential information, rather than communications protected by the TCPA right to petition.

CASE DETAILS

COURT	Texas Court of Appeals, Third District, at Austin
WRITING FOR THE COURT	Darlene Byrne; Darlene Byrne, Chief Justice; Justice Triana; Justice Crump
JURISDICTION	Texas Court of Appeals, Third District, at Austin
DECIDED	April 30, 2026
DOCKET	No. 03-22-00378-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Interlocutory appeal from the 207th District Court of Comal County's denial of appellants' motion to dismiss under the Texas Citizens Participation Act.
STANDARD OF REVIEW	De novo review applies to whether the parties met their respective TCPA burdens. The court considers the pleadings, evidence permissible under Texas Rule of Civil Procedure 166a, and supporting and opposing affidavits, viewing the pleadings and evidence in the light most favorable to the nonmovant.
PRECEDENTIAL VALUE	Published memorandum opinion; no reporter citation appears in the supplied text.

PARTIES

Jason Murray Davis, Davis & Santos, P.C. v. Graham Weston, Carowest Land Ltd., Graham Weston as Trustee of Countyline Land Trust, Kuehler Road, LLC f/k/a Kuehler Road, Ltd.

TOPICS

motions to dismiss

appellate procedure

civil procedure

commercial litigation

PRACTICE AREAS

civil procedure

appellate procedure

commercial litigation

QUESTIONS PRESENTED

1. Whether the Graham Parties' breach-of-fiduciary-duty and fraud-by-nondisclosure claims were based on or in response to Davis's exercise of the right to petition under the TCPA.
2. Whether the Graham Parties' claims were based on or in response to Davis's exercise of the right of free speech under the TCPA.
3. Whether the trial court properly denied the TCPA motion without reaching the claimants' prima facie showing or Davis's attorney-immunity defense.

HOLDINGS

1. The Graham Parties' claims were not based on or in response to Davis's exercise of the right to petition because the claims were based on Davis's alleged conduct in representing Elizabeth adversely to Graham and his alleged failure to disclose the conflict or obtain consent, rather than on communications made in an actual, existing judicial proceeding.
2. The claims were not based on or in response to Davis's exercise of the right of free speech because the Graham Parties complained of Davis's acts, omissions, and failures to act in representing Elizabeth while representing or owing duties to Graham, not of Davis's communications concerning alleged abuse or the divorce petition.
3. Because Davis failed to carry the initial burden to show that the TCPA applied, the burden never shifted to the Graham Parties to establish a prima facie case, and the court did not need to address the attorney-immunity defense.

KEY QUOTATIONS

“Simply alleging conduct that has a communication embedded within it does not create the relationship between the claim and the communication necessary to invoke the TCPA.” (14)

“Because we conclude that Davis did not successfully invoke the TCPA, the trial court did not err in denying Davis’s motion to dismiss.” (18)

FACTUAL BACKGROUND

Davis represented Graham Weston, Elizabeth Weston, and several Weston family entities in various matters beginning around 2009. During the Westons' divorce proceedings, Davis represented Elizabeth and allegedly investigated, developed, and pursued claims against Graham while failing to disclose the adverse representation or obtain Graham's consent, despite prior representation and access to confidential information. The Graham Parties sued Davis and his law firm for breach of fiduciary duty and fraud by nondisclosure, seeking attorney's fees and disgorgement. Davis sought dismissal under the TCPA, arguing that the claims were based on his protected petitioning and speech activities.

PROCEDURAL HISTORY

The Graham Parties sued Davis and his law firm for breach of fiduciary duty and fraud by nondisclosure, alleging that Davis represented Elizabeth Weston adversely to Graham while simultaneously representing Graham and related entities and using confidential information. Davis moved to dismiss under the TCPA. After allowing limited discovery, the trial court denied the motion in a broad-form order. Davis brought an interlocutory appeal. On rehearing, the court withdrew its prior opinion and judgment, dismissed the rehearing and en banc reconsideration motions as moot, and affirmed the denial of the TCPA motion.

DISPOSITION

affirmed

CASES CITED

- O'Rourke v. Warren, 673 S.W.3d 671, 679–80 (Tex. App.—Austin 2023, pet. denied)
- City of New Braunfels v. Carowest Land, Ltd., 432 S.W.3d 501 (Tex. App.—Austin 2014, no pet.)
- City of New Braunfels v. Carowest Land, Ltd., 549 S.W.3d 163 (Tex. App.—Austin 2017), order withdrawn (June 19, 2020), review granted, judgment vacated, 615 S.W.3d 156 (Tex. 2020)
- In re Weston, No. 03-21-00121-CV, 2021 WL 3026963 (Tex. App.—Austin July 16, 2021, orig. proceeding)
- Weston v. Weston, No. 03-23-00039-CV, 2024 WL 3995391, at *1 (Tex. App.—Austin Aug. 30, 2024, pet. denied) (mem. op.)
- In re Lipsky, 460 S.W.3d 579, 584 (Tex. 2015) (orig. proceeding)
- Lilith Fund for Reprod. Equity v. Dickson, 662 S.W.3d 355, 363 (Tex. 2023)
- Montelongo v. Abrea, 622 S.W.3d 290, 296 (Tex. 2021)
- Grant v. Pivot Tech. Sols., Ltd., 556 S.W.3d 865, 879 (Tex. App.—Austin 2018, pet. denied)
- Levatino v. Apple Tree Cafe Touring, Inc., 486 S.W.3d 724, 728 (Tex. App.—Dallas 2016, pet. denied)
- Welsh v. River Hollow Ass'n, 654 S.W.3d 505, 510 (Tex. App.—Houston [14th Dist.] 2022, pet. denied)
- ML Dev, LP v. Ross Dress for Less, Inc., 649 S.W.3d 623, 628–29 (Tex. App.—Houston [1st Dist.] 2022, pet. denied)
- Krasnicki v. Tactical Ent., LLC, 583 S.W.3d 279, 284 (Tex. App.—Dallas 2019, pet. denied)
- Rivas v. Lake Shore Harbour Cmty. Ass'n, No. 01-22-00121-CV, 2023 WL 3063409, at *8 (Tex. App.—Houston [1st Dist.] Apr. 25, 2023, pet. denied) (mem. op.)
- Aiken v. Hancock, 115 S.W.3d 26, 28 (Tex. App.—San Antonio 2003, pet. denied)

- Cweren v. Eureka Multifamily Grp., L.P., No. 01-21-00470-CV, 2023 WL 2977755, at *5–8 (Tex. App.—Houston [1st Dist.] Apr. 18, 2023, pet. denied) (mem. op.)
- Dernick v. Foley & Lardner LLP, No. 01-22-00251-CV, 2024 WL 3941011, at *8 (Tex. App.—Houston [1st Dist.] Aug. 27, 2024, no pet.) (mem. op.)
- Brenner v. Centurion Logistics LLC on Behalf of Centurion Pecos Terminal LLC, No. 05-20-00308-CV, 2020 WL 7332847, at *7 (Tex. App.—Dallas Dec. 14, 2020, pet. denied) (mem. op.)
- Kawcak v. Antero Res. Corp., 582 S.W.3d 566, 587 (Tex. App.—Fort Worth 2019, pet. denied)
- Youngkin v. Hines, 546 S.W.3d 675, 679–81 (Tex. 2018)
- Creative Oil & Gas, LLC v. Lona Hills Ranch, LLC, 591 S.W.3d 127, 136 (Tex. 2019)

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