

Supreme Court of Texas
April 24, 2014

In re Steven Lipsky

No. 13-0928

Case Summary written by Mariah Mauck, Staff Member.

JUSTICE DEVINE delivered the opinion of the Court.

This case followed a suit against Range Resources Corporation and Range Production Company (Range) by Steven and Shyla Lipsky (Lipsky) alleging that Range's fracking operations near their property were negligent, grossly negligent, and a nuisance. The Lipsky's also claimed that Range's operations contaminated their water well, causing the water to become flammable and their home uninhabitable. Range moved to dismiss all claims, as well as filed a counterclaim against the Lipskys and a third-party claim against Rich (the Lipsky's environmental consultant) alleging defamation and business disparagement. The Lipskys and Rich then moved to dismiss Range's counter-attack as an improper attempt to suppress their First Amendment rights guaranteed under the Constitution and protected by the Texas Citizens Participation Act (TCPA).

The trial court granted Range's motion to dismiss and also declined to dismiss Range's claims against the Lipskys and Rich. The court of appeals thereafter determined that the TCPA did not require dismissal of all of Range's claims against Lipsky. The court of appeals granted mandamus relief to Lipsky's wife and consultant, while denying similar relief to Lipsky, prompting both Lipsky and Range to seek mandamus relief in this Court. Lipsky's petition argued that the TCPA required the trial court to dismiss all claims against him also. Range's petition argued that the TCPA did not require the granting of mandamus relief to Lipsky's wife, Rich, and Lipsky himself (in part).

In this case, the Court considered circumstantial evidence and the Act's requirement of clear and specific evidence to dismiss a suit. The TCPA places the burden on the plaintiff to establish by clear and specific evidence a *prima facie* case for each essential

element of the claim in question. The Court disapproves of cases that interpret the TCPA to require direct evidence of each essential element of the underlying claim to prevent dismissal.

The Court held that, in regards to Lipsky's petition to the business disparagement claim, an affidavit from Range's senior vice president was conclusory and therefore insufficient to satisfy the TCPA's requirement of "clear and specific evidence". Furthermore, in regards to his petition to the defamation claim, the Court held that his accusations that Range's fracking operations contaminated the aquifer were harmful to the perception of Range's capabilities as a natural gas producer, and thus were considered defamation per se. Damages to reputation are presumed from defamation per se, and actual damage is not an essential element of the claim to which the TCPA's requirement of clear and specific evidence might apply. In response to Range's petition, the Court held that there was not clear and specific evidence establishing a prima facie case that Shyla Lipsky and Rich published defamatory remarks about Range or conspired with Steven Lipsky "to publicly blame Range for the contamination." Thus, the TCPA required the dismissal of Range's claims against Shyla Lipsky and Rich and Range's conspiracy claim against all parties.