

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
July 9, 2024 Session

**FILED**  
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Appellate Courts

**JOSEPH R. BLYTHE v. TRISTA TIDWELL FORSYTHE**

**Appeal from the Circuit Court for Davidson County  
No. 23C532 Joseph P. Binkley, Jr., Judge**

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**No. M2023-01463-COA-R3-CV**

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Following an incident in an operating room allegedly involving aggressive actions by a doctor toward a scrub tech, the scrub tech made oral and written statements about the incident to her employer, the police, and a state administrative body. In response, the doctor filed suit for defamation and intentional interference with a business relationship. The scrub tech filed a Tennessee Public Participation Act (TPPA) petition to dismiss, which the trial court granted after it found that the statements were within the ambit of the TPPA and that the doctor could not establish a prima facie case for all of the essential elements of his claims. The doctor appeals. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

JEFFREY USMAN, J., delivered the opinion of the Court, in which FRANK G. CLEMENT, JR., P.J., M.S., and JOHN W. MCCLARTY, J., joined.

Jason D. Holleman, Nashville, Tennessee, for the appellant, Joseph R. Blythe.

C. Eric Stevens and Sarah V. Belchic, Nashville, Tennessee, for the appellee, Trista Tidwell Forsythe.

**OPINION**

**I.**

Appellant Joseph Blythe is an orthopedic surgeon who performed surgeries at Ascension St. Thomas Hospital Midtown (St. Thomas). Appellee Trista Forsythe is a scrub tech at St. Thomas. Her job involves cleaning and preparing operating rooms for surgery. She also assists surgeons during surgical procedures. This case revolves around an incident involving the two that occurred on November 22, 2022, during a surgery performed by Dr.

Blythe with Ms. Forsythe as an assistant.

Before the procedure, issues arose involving the sterilization of a tray of tools, causing some delays. Frustrations already existed before the surgery began. Then, during the surgery, Dr. Blythe requested that Ms. Forsythe hand him a tool in a specific manner, which Ms. Forsythe described as “upside down and backward” from the standard handling method. She felt it was unsafe due to the medical tool being extremely sharp. According to Ms. Forsythe, a dispute arose over the handling of the tool, and at one point, Dr. Blythe grabbed her wrist and twisted her arm backward because he believed she did not know what she was doing. At a later point in the same procedure, another tool tray was determined to be contaminated, causing further frustrations. Ms. Forsythe claimed that Dr. Blythe demanded she be removed from the operating room. According to Ms. Forsythe, Dr. Blythe then physically knocked her off a stool, put his hands on her in an aggressive manner, and yelled and cursed at her.

After leaving the operating room, Ms. Forsythe was asked by St. Thomas management to provide a statement about the incident. She gave her account, both orally and via email. She also learned then that there had been another incident between Dr. Blythe and a registered nurse at the hospital earlier that same day. Ms. Forsythe later learned that her statement to St. Thomas would only be used internally, so she filed a police report with the Metro Nashville Police Department and filed a complaint with the Tennessee Office of Investigation for Health Related Boards. She was interviewed as part of the agency’s investigation. During that investigation, she provided the same information she had during St. Thomas’s internal investigation.

In response, in March 2023, Dr. Blythe filed a verified complaint against Ms. Forsythe in the Circuit Court for Davidson County. He brought claims for slander, libel, and intentional interference with a business relationship, citing Ms. Forsythe’s oral and written statements. In response, Ms. Forsythe filed a petition to dismiss under the Tennessee Public Participation Act (TPPA). She argued that Dr. Blythe had brought the lawsuit in retaliation for her exercise of constitutionally protected free speech and her right to petition. In support, she attached her own declaration, outlining the facts above in detail. Dr. Blythe responded, arguing that the speech was not protected because it was false and attaching an affidavit of Sean Burks, a medical device representative who was present in the room during the relevant incident. In his affidavit, Mr. Burks claimed that Dr. Blythe did not touch Ms. Forsythe or act aggressively toward her.

After a hearing on the petition, the circuit court entered a final order dismissing Dr. Blythe’s complaint under the TPPA. In reaching this conclusion, the circuit court analyzed whether Ms. Forsythe had met her burden of showing that the case filed against her was in response to her “exercise of the right to free speech, right to petition, or right of association.” *See* Tenn. Code Ann. § 20-17-105(a). The circuit court determined that the statement to her employer, the police report, and the Health Related Boards complaint were

all about a “matter of public concern” because they were directly related to the health and safety of Ms. Forsythe, Dr. Blythe, other staff, and the patient who was under anesthesia at the time. *See* Tenn. Code Ann. § 20-17-103(6)(A). The circuit court also determined that the Metro Nashville Police report and the Health Related Boards complaint constituted an exercise of Ms. Forsythe’s “right to petition” because they were “intended to encourage consideration or review” by a “state” or “other governmental body.” *See* Tenn. Code Ann. § 20-17-103(4)(A). Because Dr. Blythe’s complaint was in direct response to these communications, the circuit court held that Ms. Forsythe had made a prima facie case that Dr. Blythe’s complaint was filed in response to her exercise of her constitutionally protected right to free speech and to petition.

Having found that Ms. Forsythe met her initial burden under the TPPA, the circuit court moved on to the question of whether Dr. Blythe’s action established a prima facie case for each essential element of the claims he brought. *See* Tenn. Code Ann. § 20-17-105(b). As to his defamation claims, the court indicated that the statements must be pled with some specificity as to the content, time, and place. The circuit court determined that Dr. Blythe had failed to do so. The circuit court elaborated that, although the parties agreed that Ms. Forsythe provided written statements to St. Thomas, Metro Nashville Police, and the Health Related Boards, these statements were not filed as part of the record. The court also stated that Ms. Forsythe’s declaration provided credible proof that she did not make the statements with knowledge that they were false or any reckless disregard as to the truth or falsity of the statements. The trial court ultimately concluded that Dr. Blythe failed to make his prima facie case as to the elements of his defamation claims.

As for the intentional interference claim, the circuit court determined that Dr. Blythe’s claims that Ms. Forsythe intended to cause damage to his business relationship with St. Thomas and that she had an improper motive were merely conclusory allegations. Furthermore, the circuit court indicated that Dr. Blythe provided no specific information regarding any damages in support of his claim. Therefore, the circuit court determined that Dr. Blythe had not met his burden to establish a prima facie case for each element of his claims. *See* Tenn. Code Ann. § 20-17-105(b).

Given these deficiencies as to his claims, the circuit court, pursuant to the TPPA, dismissed Dr. Blythe’s action with prejudice. *See* Tenn. Code Ann. § 20-17-105(b) and (e). The circuit court then awarded reasonable attorney’s fees to Ms. Forsythe under Tennessee Code Annotated section 20-17-107(a)(1) and directed her counsel to provide Dr. Blythe with evidence of the incurred fees, which were to be paid within a specified time.

In response, Dr. Blythe filed a Tennessee Rule of Civil Procedure 59.04 motion to alter or amend arguing that he had made a prima facie case for each claim. Dr. Blythe primarily argued that his verified complaint, Mr. Burks’ affidavit, and Ms. Forsythe’s declaration combined to provide enough evidence of each element. The circuit court

denied the motion and held the attorney's fees issue in abeyance pending any appeal.

On appeal, Dr. Blythe raises two issues. First, he asserts that Ms. Forsythe did not engage in constitutionally protected free speech. Second, he asserts that he established a prima facie case for each element of his claims for libel, slander, and intentional interference with a business relationship. In addition to arguing in support of the circuit court's ruling, Ms. Forsythe raises an additional issue, asserting that Dr. Blythe's appeal is untimely, and thus this court is without jurisdiction, because his Rule 59.04 motion was actually a motion to reconsider and did not toll the time to file an appeal.

## II.

As noted above, Ms. Forsythe argues that Dr. Blythe's Rule 59.04 motion to alter or amend was actually a motion to reconsider and, therefore, that his motion did not toll the 30-day time to appeal. Because Ms. Forsythe's timeliness argument presents a foundational issue, we turn first to considering this matter.

Tennessee courts have noted four basic grounds underlying a Tennessee Rule of Civil Procedure 59.04 motion to alter or amend: (1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in law; and (4) other manifest injustice. *Relliford v. Burks*, No. W2022-00997-COA-R3-CV, 2025 WL 26106, at \*4 (Tenn. Ct. App. Jan. 3, 2025) (citing *Parigin v. Mills*, No. E2016-00640-COA-R3-CV, 2017 WL 1032740, at \*5 (Tenn. Ct. App. Mar. 16, 2017)); see also *Burris v. Burris*, 512 S.W.3d 239, 245 (Tenn. Ct. App. 2016) (quoting *In re M.L.D.*, 182 S.W.3d 890, 895 (Tenn. Ct. App. 2005) ("The [Rule 59.04] motion should be granted when the controlling law changes before the judgment becomes final; when previously unavailable evidence becomes available; or to correct a clear error of law or to prevent injustice.")). Here, Dr. Blythe's motion was premised on the first of these grounds. He argued that the circuit court made a "clear error of law." In his motion, he made arguments similar to those made before this court on appeal in an attempt to, in his view, enable the circuit court to remedy the clear errors of law Dr. Blythe asserted the circuit court had made. Dr. Blythe laid out arguments for why he believed the circuit court's ruling constituted clear legal error in applying the TPPA. In addition to presenting his motion as a 59.04 motion, Dr. Blythe's motion was in line with the purpose of the rule, "to prevent unnecessary appeals by providing the trial courts with an opportunity to correct errors before a judgment becomes final." *U.S. Bank, N.A. v. Tenn. Farmers Mut. Ins. Co.*, 410 S.W.3d 820, 826 (Tenn. Ct. App. 2012) (quoting *Carbone v. Blaeser*, No. W2012-00670-COA-R3-CV, 2012 WL 5503862 (Tenn. Ct. App. Nov. 14, 2012)). Therefore, we are unpersuaded by Ms. Forsythe's argument that Dr. Blythe's motion did not constitute a motion to alter or amend and, accordingly, find his appeal to be timely.

## III.

In considering the merits of this appeal, we review de novo the question of whether a party established a prima facie case for purposes of a TPPA petition. *SmileDirectClub, Inc. v. NBCUniversal Media, LLC*, 708 S.W.3d 556, 570 (Tenn. Ct. App. 2024); see *Charles v. McQueen*, 693 S.W.3d 262, 272-73 (Tenn. 2024); see also *Black v. Baldwin*, No. M2024-00151-COA-R3-CV, 2025 WL 1566392, at \*2 (Tenn. Ct. App. June 3, 2025), *perm. app. denied* (Tenn. Oct. 8, 2025) (stating that “[w]e review a trial court’s decision to grant or deny a TPPA petition under a de novo standard of review”). Similarly, interpretation of the statutory provisions of the TPPA “entails a question of law, which we review de novo upon the record with no presumption of correctness for the determination of the courts below.” *Flade v. City of Shelbyville*, 699 S.W.3d 272, 281 (Tenn. 2024)

The Tennessee Supreme Court has delineated the process that courts are to follow when ruling upon a TPPA petition as follows:

First, the court determines whether the petitioner has made a prima facie case that the challenged lawsuit “is based on, relates to, or is in response to [the petitioner’s] exercise of the right to free speech, right to petition, or right of association.” [Tenn. Code Ann.] § 20-17-105(a). If the petitioner has not made this showing, the court denies the petition. See *id.* § 20-17-105(b). But if the petitioner succeeds at the first step, the court next determines whether the respondent has made a prima facie case for each essential element of his claim. *Id.* If the respondent meets this burden, the court must deny the petition unless “the petitioning party establishes a valid defense to the claims in the legal action.” *Id.* § 20-17-105(b)-(c). Otherwise, the court must grant the petition and dismiss the suit with prejudice. *Id.* § 20-17-105(e).

*Flade*, 699 S.W.3d at 283-84.

The Tennessee Supreme Court has also explained the evidentiary showing that is necessary to make a prima facie case under the TPPA:

Black’s Law Dictionary defines “prima facie case” as “[a] party’s production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party’s favor.” *Prima facie case*, Black’s Law Dictionary 1441 (11th ed. 2019). Consistent with this definition, in at least some contexts, courts have equated a “prima facie case” to the quantum of evidence that is sufficient to survive a motion for summary judgment or a motion for directed verdict. See, e.g., *Don’t Look Media LLC v. Fly Victor Ltd.*, 999 F.3d 1284, 1292 (11th Cir. 2021) (holding that, to satisfy his “burden of establishing a prima facie case of personal jurisdiction,” a plaintiff “must present enough evidence to withstand a motion for a directed verdict”); *Am. Cent. City, Inc. v. Joint Antelope Valley Auth.*, 281 Neb. 742, 807 N.W.2d 170, 183 (2011) (defining prima facie case as “evidence [that] sufficiently establishes

elements of a cause of action and, notwithstanding a motion for a directed verdict in a jury trial or a motion to dismiss in a nonjury trial, allows submission of the case to the fact finder for disposition”); *LaGrant v. Gulf & W. Mfg. Co.*, 748 F.2d 1087, 1090 (6th Cir. 1984) (holding, in an age discrimination case, that “[a] prima facie case is one where there is sufficient evidence to withstand a motion for summary judgment or for a directed verdict”). The Tennessee Court of Appeals, for example, has explained that “avoid[ing] a directed verdict under Tenn. R. Civ. P. 50” requires the non-moving party to present “enough evidence to establish at least a *prima facie* case.” *Brown v. Christian Bros. Univ.*, 428 S.W.3d 38, 50 (Tenn. Ct. App. 2013) (quoting *Richardson v. Miller*, 44 S.W.3d 1, 30 (Tenn. Ct. App. 2000)); see also *Pickard v. Berryman*, 24 Tenn. App. 263, 142 S.W.2d 764, 769 (1939) (explaining that, in the sense in which “the phrase ‘prima facie case’” was used there, it meant “merely that [the] evidence, assuming it to be true, is sufficient to prevent his suit being dismissed, as on a directed verdict, and to require the case to be submitted to the triers of fact”).

To establish a “prima facie” case under the TPPA, a party must present enough evidence to allow the jury to rule in his favor on that issue. This evidence may include “sworn affidavits stating admissible evidence” and “other admissible evidence.” Tenn. Code Ann. § 20-17-105(d). As is the case when a court rules on a motion for summary judgment or motion for directed verdict, the court should view the evidence in the light most favorable to the party seeking to establish the prima facie case and disregard countervailing evidence. See, e.g., *Griffis v. Davidson Cnty. Metro. Gov’t*, 164 S.W.3d 267, 284 (Tenn. 2005) (summary judgment); *Conatser v. Clarksville Coca-Cola Bottling Co.*, 920 S.W.2d 646, 647 (Tenn. 1995) (directed verdict).

*Charles*, 693 S.W.3d at 280-81; see also *Pragnell v. Franklin*, No. E2022-00524-COA-R3-CV, 2023 WL 2985261, at \*10 (Tenn. Ct. App. Apr. 18, 2023). The Tennessee Supreme Court has also indicated that “[i]n determining whether a rational jury could find in the party’s favor on that issue, the court also must keep in mind the applicable standard of proof.” *Charles*, 693 S.W.3d at 281.

#### IV.

As noted above, the first step in ruling on a TPPA petition is for the court to determine “whether the petitioner has made a prima facie case that the challenged lawsuit ‘is based on, relates to, or is in response to [the petitioner’s] exercise of the right to free speech, right to petition, or right of association.’” *Flade*, 699 S.W.3d at 283 (quoting Tenn. Code Ann. § 20-17-105(a)). The circuit court determined that Ms. Forsythe made her prima facie showing, concluding that “Ms. Forsythe’s exercise of her right to speech and

her right to petition are both applicable here.”

In reaching this conclusion, the circuit court reasoned as follows:

[T]he “exercise of the right of free speech” under the TPPA includes “a communication made in connection with a matter of public concern or religious expression that falls within the protection of the United States Constitution or the Tennessee Constitution.” Tenn. Code Ann. § 20-17-103(3). Ms. Forsythe’s statement [about what occurred in the operating room] was a “communication” . . . . The substance of that communication involves a “matter of public concern” — the health and safety of Ms. Forsythe, Dr. Blythe, other staff in the room, and most importantly, the patient who was under anesthesia and completely vulnerable during these events. Tenn. Code Ann. § 20-17-103(6)(A).

Ms. Forsythe’s police report and report to the Tennessee Health Related Boards also constituted the “exercise of free speech” for the same reasons stated above, as well as the “exercise of the right to petition,” defined as “a communication that falls within the protection of the United States Constitution or the Tennessee Constitution and . . . is intended to encourage consideration or review of an issue by a federal, state, or local legislative, executive, judicial, or other governmental body.” Tenn. Code Ann. § 20-17-103(4)(A). The Tennessee Health Related boards qualified as a state body and the police qualify as an “other governmental body.”

The Tennessee Court of Appeals has explained that a “prima facie case is made out when some credible proof . . . is presented on the issues required to be offered in evidence.” *Pragnell v. Franklin*, No. E2022-00524-COA-R3-CV, 2023 WL 2985261[,], at 10 (Tenn. Ct. App. April 18, 2023) (citing *Union Planters Corp. v. Harwell*, 578 S.W.2d 7, 93 (Tenn. Ct. App. 1978)). Ms. Forsythe’s declaration provides “some credible proof” of the exercise of her right to free speech and to petition. Paragraph 11 of Plaintiff’s Verified Complaint reflects the lawsuit was “based on, relates to, or is in response to” Ms. Forsythe’s reports. Tenn. Code Ann. § 20-17-105(a). Ms. Forsythe has met her burden under the TPPA.

(Footnote omitted).

Dr. Blythe’s sole argument on appeal as to why Ms. Forsythe failed to meet her burden under step one of the TPPA process is an assertion that her statements regarding what occurred in the operating room were false. In support of this contention, Dr. Blythe relies upon his denials in his verified complaint and Mr. Burks’ affidavit. His argument on appeal is premised entirely upon the contention that false statements are not generally

afforded constitutional protection and that Ms. Forsythe, accordingly, cannot make her prima facie case under step one of the TPPA.

Dr. Blythe's argument in challenging the circuit court's conclusion as to the first step of the TPPA analysis puts the cart before the horse.<sup>1</sup> Ms. Forsythe does not concede that her accusations against Dr. Blythe are false; quite to the contrary, she asserts that the conduct of which she accused him is precisely what he did. As noted above, the Tennessee Supreme Court has indicated that when considering whether a party has made a prima facie showing for purposes of the TPPA that "the court should view the evidence in the light most favorable to the party seeking to establish the prima facie case and disregard countervailing evidence." *Charles*, 693 S.W.3d at 281. Accordingly, even if we assume *arguendo* that Dr. Blythe's contention regarding false statements being unprotected is correct, his argument that Ms. Forsythe failed to make her prima facie case would remain unavailing. For purposes of considering whether Ms. Forsythe has made her prima facie showing, the evidence is considered in a light most favorable to her. In other words, for purposes of considering whether she has made her prima facie case, her assertions are true, not false. Therefore, Dr. Blythe's contention that he has more convincing evidence that the statements are false than Ms. Forsythe has that they are true is of no consequence regarding resolution of step one of the TPPA analysis.

## V.

We turn next to considering Dr. Blythe's contention that the circuit court erred by concluding that he failed to make his prima facie case as to the elements of his intentional interference with a business relationship claim. As noted above, where the petitioner succeeds at the first step of the TPPA process, "the court next determines whether the respondent has made a prima facie case for each essential element of his claim." *Flade*, 699 S.W.3d at 284.

In concluding that Dr. Blythe failed to make this step-two showing as to his intentional interference with a business relationship claim, the circuit court reasoned as follows:

To establish a claim for intentional interference with a business relationship, a plaintiff must show: (1) an existing business relationship with a specific third party; (2) the defendant's knowledge of that relationship and not a mere awareness of his business dealings with others in general; (3) the

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<sup>1</sup> The idiom of putting the cart before the horse refers to "do[ing] things in the backward or reverse order." Marvin Terban, *Scholastic Dictionary of Idioms* 183 (1996). This idiom was utilized in antiquity in both Ancient Greece and Rome and appears in numerous languages. *Id.* The phrase has been used in the English language since at least the Sixteenth Century, using imagery that "conveys the importance of process and sequence in any endeavor." Jasper Hartwell, *Idioms Origins and Meaning: A Dictionary of Popular Sayings, Phrases and Expressions* (2023).

intent to cause the termination of the business relationship; (4) acting with wrongful means or improper motive; and (5) damages resulting from the interference. *Trau-Med of America, Inc. v. Allstate Ins. Co.*, 71 S.W.3d 691, 701 (Tenn. 2002). Dr. Blythe alleges [in his verified complaint] the existence of “a contractual relationship with [St. Thomas] . . . which permitted Plaintiff to perform surgical procedures at [St. Thomas].” . . . Ms. Forsythe’s Declaration reflects a general understanding of that relationship as well. The Court finds this sufficient to satisfy the first two elements of Dr. Blythe’s *prima facie* case.

Dr. Blythe alleges [in his verified complaint] that “Defendant intended to cause damage to Plaintiff’s contractual business relationship . . . .” and that “Defendant had an improper motive and used improper means in acting against Plaintiff in making false reports about Plaintiff’s conduct.” . . . . These are merely conclusory allegations, which provide no detail as to the how or why of such actions or intent, and are not sufficient, standing alone, to establish the third and fourth elements of Dr. Blythe’s *prima facie* case for purposes of the TPPA.

Similarly, Dr. Blythe alleges [in his verified complaint that] Ms. Forsythe “did cause damage to Plaintiff’s contractual business relationship,” . . . but neither provides any detail in his Verified Complaint, nor did he come forward with any additional support for this element in response to the present Petition. Dr. Blythe has failed to establish the fifth element of his *prima facie* case as well.

On appeal, Dr. Blythe contends that the circuit court erred in its analysis as to the elements for which the circuit court found he had failed to make his *prima facie* case. Dr. Blythe asserts that Ms. Forsythe’s credibility is at issue; thus, the trial court should not have found against him regarding a lack of intent to cause termination of the business relationship. He also argues that he, in fact, did present evidence to show an improper motive. In support of this contention, he points to the following assertion in his verified complaint: “Upon information and belief, Defendant’s actions against Plaintiff were motivated in part by retaliation as to the conflict Plaintiff had with the other staff member earlier on November 22, 2022.” As to the fifth element, he notes that in his verified complaint he alleged that “Defendant’s false report and the oral and written statements contained therein, led to an unwarranted investigation into Defendant that ultimately damaged his reputation and his business relationship with [St. Thomas], causing significant economic hardship and monetary loss.”

In describing the standard of proof for making a *prima facie* case for purposes of the TPPA, the Tennessee Supreme Court described the standard as akin to summary judgment or to surviving a directed verdict. *Charles*, 693 S.W.3d at 280. The Tennessee Supreme

Court indicated that, to make a prima facie case under the TPPA, “a party must present enough evidence to allow the jury to rule in his favor on that issue.” *Id.* at 281.

Dr. Blythe’s showing as to the fifth element is insufficient to make a prima facie case as to his intentional interference with a business relationship claim. Under Tennessee law, “a party cannot create a genuine dispute of a material fact based on a conclusory statement.” *Concrete v. Harmony Hosp., LLC*, No. M2020-00956-COA-R3-CV, 2021 WL 3523248, at \*3 (Tenn. Ct. App. Aug. 11, 2021). Similarly, conclusory statements are insufficient to survive a motion for directed verdict. *Brown v. Christian Bros. Univ.*, 428 S.W.3d 38, 57 (Tenn. Ct. App. 2013). Conclusory statements, that is assertions that are “devoid of facts or details, do ‘not rise to the dignity of evidence.’” *Burkhart v. Burkhardt*, No. M2023-01390-COA-T10B-CV, 2023 WL 6818637, at \*3 n.4 (Tenn. Ct. App. Oct. 17, 2023) (quoting *Judzewitsch v. Judzewitsch*, No. E2022-00475-COA-T10B-CV, 2022 WL 1279790, at \*2 (Tenn. Ct. App. Apr. 29, 2022) (quoting *Four Seasons Heating & Air Conditioning, Inc. v. Beers Skanska, Inc.*, No. M2002-02783-COA-R3-CV, 2003 WL 22999430, at \*5 (Tenn. Ct. App. Dec. 23, 2003))). Facts, not conclusory statements, are what is needed. *See Ferguson Enters., LLC v. Norris Bros. Excavating, LLC*, No. M2024-00459-COA-R3-CV, 2025 WL 1443644, at \*3, 4 (Tenn. Ct. App. May 20, 2025). Tennessee courts are far from alone in such an understanding. *See also, e.g., Schmitz v. Rinke, Noonan, Smoley, Deter, Colombo, Wiant, Von Korff & Hobbs, Ltd.*, 783 N.W.2d 733, 746 (Minn. Ct. App. 2010) (indicating that “[c]onclusory statements are insufficient to establish a prima facie case”); *Bibby v. Bibby*, 634 S.W.3d 401, 410 (Tex. Ct. App. 2021) (addressing conclusory assertions in the context of prima facie cases under the Texas Citizens Participation Act and indicating that “[c]onclusory statements cannot establish a prima facie case under the TCPA”); *M.G. v. Bainbridge Island Sch. Dist. #303*, 566 P.3d 132, 147 (Wash. App. 2025) (quoting *LaMon v. Butler*, 770 P.2d 1027 (1989)) (stating that “[t]he prima facie case must consist of specific, material facts, rather than conclusory statements, that would allow a jury to find that each element of defamation exists”).

Here, Dr. Blythe offered conclusory assertions, not facts or evidence, in support of his contention that he suffered injury to his business relationships. Dr. Blythe failed to provide specific information. Based upon the record, the trial court and this court are left in the dark as to what happened with his relationship with St. Thomas; the picture remains opaque.<sup>2</sup> Dr. Blythe’s vague, general, and conclusory assertions are insufficient for a jury to rule for him on the question of whether he suffered an injury regarding his business relationships. *See Charles*, 693 S.W.3d at 281.

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<sup>2</sup> Dr. Blythe states in his brief on appeal “that his business relationship with St. Thomas ended” and attributes causation thereof to Ms. Forsythe’s comments, but he provides no citation to the record in support of this proposition. Asserting facts in a brief that are not contained in the record does not put those facts before the appellate court; assertions of fact in an appellate brief do not constitute evidence. *See, e.g., Reid v. Reid*, 388 S.W.3d 292, 295 (Tenn. Ct. App. 2012). Facts appearing in an appellate brief, but not in the record, may not, as a general rule, be considered by an appellate court. *See id.*

Dr. Blythe's conclusory assertion that he suffered reputational harm does not fill the gap so as to demonstrate that the trial court erred in concluding that Dr. Blythe failed to make his prima facie case as to the fifth element of his intentional interference with business relationship claim. Tennessee law does recognize that "a plaintiff's reputation is itself within the scope of inquiry under a claim for tortious interference with a business relationship and prospective business relationships." *Stockdale v. Helper*, No. M2022-00846-COA-R3-CV, 2024 WL 2045341, at \*5 (Tenn. Ct. App. May 8, 2024); *see Dorsett Carpet Mills, Inc. v. Whitt Tile & Marble Distrib. Co.*, 734 S.W.2d 322, 324-25 (Tenn. 1987) (citing Restatement (Second) of Torts § 774A for the proposition that damages can include actual harm to reputation); *see also Springfield Invs., LLC v. Glob. Invs., LLC*, No. E2014-01703-COA-R3-CV, 2015 WL 5064090, at \*17 (Tenn. Ct. App. Aug. 27, 2015) (noting that actual harm to reputation may be a basis for awarding damages for a successful claim of intentional interference with business relationships). Insofar as Dr. Blythe seeks to rely upon an injury to reputation, his contention is in the vein of a defamation claim. That is, Dr. Blythe asserts that Ms. Forsythe made knowingly false statements that harmed his reputation.

Abandoning presumed damages in relation to reputational harm, the Tennessee Supreme Court has indicated that "[t]he plaintiff must plead and prove injury from the alleged defamatory words, whether their defamatory meaning be obvious or not." *Memphis Pub. Co. v. Nichols*, 569 S.W.2d 412, 419 (Tenn. 1978); *see Pate v. Serv. Merch. Co.*, 959 S.W.2d 569, 574 (Tenn. Ct. App. 1996). Accordingly, "[d]amages from false or inaccurate statements cannot be presumed; actual damage must be sustained and proved." *Davis v. The Tennessean*, 83 S.W.3d 125, 128 (Tenn. Ct. App. 2001); *see also, e.g., Austin v. Plese*, No. E2024-00586-COA-R3-CV, 2025 WL 763752, at \*4 (Tenn. Ct. App. Mar. 11, 2025), *perm. app. denied* (Tenn. Aug. 7, 2025). In accordance therewith, requiring proof of injury, this court has indicated for reputational harm that a plaintiff must prove that her reputation "has been injured by the alleged defamatory statement and that as a result she suffered real or actual damages due to that loss of standing or reputation." *McLeay v. Huddleston*, No. M2005-02118-COA-R3-CV, 2006 WL 2855164, at \*9 (Tenn. Ct. App. Oct. 6, 2006); *see also Davis*, 83 S.W.3d at 130 (noting the plaintiff "must be able to show that his or her standing in the community and his public reputation for character has been injured by the inaccurate statement and, further, must have suffered real or actual damages due to that loss of standing or reputation").

In the present case, Dr. Blythe offers only a conclusory assertion that his reputation was harmed as a result of Ms. Forsythe's statements about his conduct in the operating room. He does not provide any specifics or details as to the actual damage to his reputation. As with the conclusory assertions as to harm regarding business relationships themselves, Dr. Blythe's vague, general, and conclusory assertions are insufficient for a jury to rule for him on the question of whether he suffered an injury to his reputation. *See Charles*, 693 S.W.3d at 281; *see also, e.g., Brasfield v. Dyer*, No. E2008-01774-COA-R3-CV, 2010 WL 98880, at \*13-15 (Tenn. Ct. App. Jan. 12, 2010); *McLeay*, 2006 WL 2855164, at \*9.

Irrespective of whether Dr. Blythe could have demonstrated damages, he failed to do so beyond vague, general, and conclusory assertions of losses as to his business relationship and reputation. Given the lack of specific facts, details, or factual underpinning in support of his assertions, we conclude that the trial court did not err in concluding that Dr. Blythe failed to make his *prima facie* case in support of his claim for intentional interference with business relationships.

## VI.

The trial court also determined that Dr. Blythe failed to make his *prima facie* case as to the elements of his two defamation claims. The trial court reasoned as follows:

The tort of defamation encompasses both slander (Count I) and libel (Count II) . . . . To establish a *prima facie* case of defamation, a plaintiff must prove that: (1) a party published a statement; (2) with knowledge that the statement was false and defaming to the other; or (3) with reckless disregard for the truth of the statement or with negligence in failing to ascertain the truth of the statement. *Sullivan v. Baptist Memorial Hosp.*, 995 S.W.2d 569, 571 (Tenn. 1990); *Hibdon v. Grabowski*, 195 S.W.3d 48, 58 (Tenn. Ct. App. 2005).

To establish a *prima facie* case for defamation based on slander, the offending statement must be pled with some specificity as to the content, time and place. *Handley v. May*, 588, S.W.2d 772, 775 (Tenn. Ct. App. 1979). Dr. Blythe's Verified Complaint does not do so, and he has not come forward with additional proof to establish these essential elements. For libel, a written communication is required. *Quality Auto Parts Co. Inc. v. Bluff City Buck Co., Inc.*, 876 S.W.2d 818, 820 (Tenn. 1994). As discussed above, the parties agree that Ms. Forsythe provided written statements to [St. Thomas], Metro Nashville Police, and the Tennessee Health Related Boards. However, those written statements were not filed as a part of the record.

Ms. Forsythe's Declaration is sufficient to establish some credible proof that she did not make those statements with knowledge that they were false and defaming or with reckless disregard for their truth. This Court finds that Dr. Blythe failed to establish a *prima facie* case for each essential element of Counts I and II of the Verified Complaint.

(Footnote omitted.)

On appeal before this court, Dr. Blythe takes aim at the circuit court's ruling, arguing that he presented evidence of publication of the statements. In fact, he notes that

the publication of the statements is undisputed. He also asserts that he presented evidence that Ms. Forsythe knew her statements were false or acted with reckless disregard as to the truth or falsity thereof. This evidence is predicated upon his denial of Ms. Forsythe's allegations and Mr. Burks' affidavit. Ms. Forsythe responds by defending the circuit court's ruling. Accordingly, returning to an issue that she raised before the circuit court, Ms. Forsythe also notes that, to establish defamation, Dr. Blythe must also make a prima facie case as to damage, which she contends he failed to do. Specifically, she argues as follows:

Finally, Appellant presented no proof he suffered actual damages *because of Appellee's conduct*. See *Shipley v. Tenn. Farmers Mut. Ins. Co.*, 1991 WL 77540, at \*5 (Tenn. Ct. App. May 15, 1991) (explaining defamation requires proof that “defendant communicated a false and defamatory statement to the person of another, as a result thereof the plaintiff suffered actual damages”). As noted by the Trial Court, Appellant provided absolutely no credible proof of his actual damages, but merely recited a legal conclusion — that Appellee's statements caused him damages.

(Emphasis in original). Ultimately, Ms. Forsythe contends Dr. Blythe “failed to provide sufficient *prima facie* proof to support this essential element of his defamation claim.”

While we are wary of aspects of the circuit court's analysis in assessing whether Dr. Blythe made his prima facie case as to his defamation claims, we conclude that the trial court did not err as to its ultimate conclusion that Dr. Blythe's prima facie case for defamation is deficient. It is well-established in Tennessee law that “appellate courts have the authority to affirm a trial court's decision if it ‘reached the right result for the wrong reason.’” *Innerimages, Inc. v. Newman*, 579 S.W.3d 29, 44 (Tenn. Ct. App. 2019) (quoting *Shutt v. Blount*, 194 Tenn. 1, 249 S.W.2d 904, 907 (1952) (citing *Sheafer v. Mitchell*, 109 Tenn. 181, 71 S.W. 86, 87 (1902); *Brooks v. George H. Friend Paper Co.*, 94 Tenn. 701, 31 S.W. 160, 161 (1895); *Chambers v. Chambers*, 92 Tenn. 707, 23 S.W. 67, 68 (1893); *Little Rock & M. Railway Co. v. Wilson*, 90 Tenn. 271, 16 S.W. 613, 614 (1891); *Southern Ry. Co. v. City of Elizabethton*, 10 Tenn. App. 119, 132 (Tenn. Ct. App. 1929))).

Under Tennessee law, damage is an element of a defamation claim. “[A] plaintiff is required to prove actual damages in all defamation cases.” *Hibdon v. Grabowski*, 195 S.W.3d 48, 68 (Tenn. Ct. App. 2005); *McWhorter v. Barre*, 132 S.W.3d 354, 366 (Tenn. Ct. App. 2003) (quoting *Myers v. Pickering Firm, Inc.*, 959 S.W.2d 152, 164 (Tenn. Ct. App. 1997)); see also, e.g., *Austin*, 2025 WL 763752, at \*8 (noting that “[t]o make out a claim for defamation, a plaintiff must prove that the defamation resulted in injury to the person's character and reputation” and that “a plaintiff must sustain and prove actual damages” (quoting *McGuffey v. Belmont Weekday Sch.*, No. M2019-01413-COA-R3-CV, 2020 WL 2754896, at \*17 (Tenn. Ct. App. May 27, 2020)); *Louis v. Singh*, No. M2024-00385-COA-R3-CV, 2024 WL 4836819, at \*7 (Tenn. Ct. App. Nov. 20, 2024) (observing

that “[t]he plaintiff is also required to prove actual damages in all defamation cases”); *Brown*, 428 S.W.3d at 50 (stating that “to establish any type of defamation claim, whether slander or libel, the claimant must prove that the defamation resulted in injury to the person’s character and reputation”); *Davis*, 83 S.W.3d at 128 (indicating that for defamation claims “actual damage must be sustained and proved” and that “[d]amages from false or inaccurate statements cannot be presumed” and observing that the allegedly defamatory statement must “constitute a serious threat to the plaintiff’s reputation” (quoting first *Memphis Publ’g Co.*, 569 S.W.2d at 416, 419, then *Stones River Motors, Inc. v. Mid-South Publ’g Co.*, 651 S.W.2d 713, 719 (Tenn. Ct. App. 1983)); *Handley v. May*, 588 S.W.2d 772, 776 (Tenn. Ct. App. 1979) (stating that “[t]he plaintiff is now required to prove actual damages in all defamation cases”).

For the reasons discussed above in addressing Dr. Blythe’s assertion of a reputational injury, he has failed to present sufficient evidence to make his prima facie showing. That is, Dr. Blythe offers only a conclusory assertion that his reputation was harmed as a result of Ms. Forsythe’s statements about his conduct in the operating room. He does not provide any specifics or details as to the actual damage to his reputation. As with the conclusory assertions as to harm regarding business relationships themselves, Dr. Blythe’s vague, general, and conclusory assertions are insufficient for a jury to rule for him on the question of whether he suffered an injury to his reputation. *See Charles*, 693 S.W.3d at 281; *see also, e.g., Brasfield*, 2010 WL 98880, at \*13-15; *McLeay*, 2006 WL 2855164, at \*9. Nor is Tennessee alone in this regard. *See, e.g., Murphy v. Cadillac Rubber & Plastics, Inc.*, 946 F. Supp. 1108, 1123 (W.D.N.Y. 1996) (indicating that “[g]eneral conclusory allegations of some impairment to plaintiff’s reputation are insufficient to show actual damages”); *Webster v. Webster*, 689 S.W.3d 133, 137 (Ark. Ct. App. 2024) (indicating that “conclusory language” asserting “purported damage to . . . reputation” presents “only speculation” and not facts to actually support a defamation claim); *Doe v. Kansas State Univ.*, 499 P.3d 1136, 1151-52 (Kan. Ct. App. 2021) (addressing a case under Kansas’ Public Speech Protection Act and concluding that “general” and “conclusory” allegations of suffering of reputational damages are insufficient “to support the damages element of his defamation claim” and, accordingly, that the plaintiff, in the absence of specific facts, had failed to make his required showing under the second-step of the Act); *Kenney v. Wal-Mart Stores, Inc.*, 100 S.W.3d 809, 817 (Mo. 2003) (concluding that “a conclusory statement that [the plaintiff’s] reputation was injured” is insufficient).

We conclude that Dr. Blythe failed to make sufficient prima facie case as to reputational harm in the present case. Accordingly, the circuit court did not err as to its conclusion regarding step two of the TPPA analysis.

## VII.

For the above discussed reasons, we affirm the judgment of the circuit court and remand for any necessary further proceedings consistent with this opinion. Costs of the

appeal are taxed to the appellant, Joseph R. Blythe, for which execution may issue if necessary.

s/ Jeffrey Usman \_\_\_\_\_  
JEFFREY USMAN, JUDGE