IN THE COURT OF APPEALS OF TENNESSEE
MIDDLE DIVISION, AT NASHVILLE

DAVID ALLEN and CHRISTOPHER ALLEN,	§	
Plaintiffs-Cross Appellants,	§	
v.	§	Nos. M2025-01034-COA-R3-CV & M2025-01033-COA-R3-CV
ERIANA PITTS,	§	
Defendant-Appellant,	§	Davidson Cty. Circuit Ct. Case Nos. 24C3077 & 24C1752
v.	§	
CHELSEY A. STEVENSON,	§	
Third-Party Defendant.	§	

PRINCIPAL BRIEF OF APPELLANT

DANIEL A. HORWITZ, BPR #032176
SARAH L. MARTIN, BPR #037707
LAURA E. CANTWELL, BPR #043452
HORWITZ LAW, PLLC
4016 WESTLAWN DR.
NASHVILLE, TN 37209
(615) 739-2888
daniel@horwitz.law
sarah@horwitz.law
laura@horwitz.law

Counsel for Eriana Pitts

Date: December 4, 2025

I. TABLE OF CONTENTS

II. TABLE OF AUTHORITIES

CASES

STATUTES & RULES

OTHER AUTHORITIES

III. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the trial court erred by denying Ms. Pitts's Tennessee Public Participation Act Petition as moot.

2. Whether granting Ms. Pitts's TPPA Petition would afford her effectual relief.

3. Whether the Plaintiffs' failure to raise any prudential jurisdictional defense to adjudicating Ms. Pitts's TPPA Petition waived that claim.

4. Whether Ms. Pitts has a vested right to a ruling on her finally submitted TPPA Petition.

5. Whether this Court should reverse with instructions to grant Ms. Pitts's TPPA Petition.

6. Whether Ms. Pitts is entitled to an award of attorney's fees incurred in the trial court and on appeal.

IV. STANDARDS OF REVIEW

1. "'Determining whether . . . an issue has become moot is a question of law.'" *State ex rel. DeSelm v. Jordan*, 296 S.W.3d 530, 534 (Tenn. Ct. App. 2008) (quoting *State ex rel. Cunningham v. Farr*, No. M2006-00676-COA-R3-CV, 2007 WL 1515144, at *3 (Tenn. Ct. App. May 23, 2007)).

2. A trial court's Tennessee Public Participation Act rulings are reviewed *de novo*. *Goldberger v. Scott*, No. M2022-01772-COA-R3-CV, 2024 WL 3339314, at *3 (Tenn. Ct. App. July 9, 2024).

3. Whether Ms. Pitts may recover attorney's fees on appeal is a mandatory determination that this Court makes in the first instance. *Nandigam Neurology, PLC v. Beavers*, 639 S.W.3d 651, 668 (Tenn. Ct. App. 2021).

V. INTRODUCTION

After Plaintiffs Christopher and David Allen—two criminals who are being prosecuted for victimizing Ms. Pitts—vandalized Ms. Pitts's car, slashed her tires, and cut her brakes, Ms. Pitts petitioned for orders of protection against them. The Plaintiffs then retaliated by suing her.

The Plaintiffs' Amended Complaint against Ms. Pitts failed to state a claim upon which relief could be granted. It also was based explicitly on Ms. Pitts's petitioning activity. Thus, Ms. Pitts moved (under Tennessee Rule of Civil Procedure 12.02(6)) and petitioned (under the Tennessee Public Participation Act) to dismiss the Plaintiffs' claims.

The trial court granted Ms. Pitts's Rule 12 motion, crediting Ms. Pitts's defense that the Plaintiffs failed to state a claim upon which relief could be granted. Because the trial court credited Ms. Pitts's Rule 12.02(6) defense, though, it *denied* her TPPA Petition as moot.

This was error. That Ms. Pitts established a valid defense to the Plaintiffs' claims required the trial court to *grant* her TPPA Petition, not deny it. *See* Tenn. Code Ann. § 20-17-105(c) ("[T]he court shall dismiss the legal action if the petitioning party establishes a valid defense to the claims in the legal action."). Further, because Ms. Pitts will obtain "effectual relief" from having her TPPA Petition granted, her TPPA Petition is not moot. *See Chafin v. Chafin*, 568 U.S. 165, 172 (2013) ("[A] case 'becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party.'" (quoting *Knox v. Serv. Emps.*, 567 U.S. 298, 307 (2012))). Thus, the trial court's order denying Ms. Pitts's TPPA Petition should be reversed with instructions to grant it.

VI. STATEMENT OF THE CASE

The Plaintiffs filed separate Complaints against Ms. Pitts on July 19, 2024, and December 19, 2024.[1] Afterward, Ms. Pitts moved under Rule 12.02(6) and petitioned under the TPPA to dismiss the Plaintiffs' Complaints against her.[2] On March 18, 2025, the trial court consolidated the Plaintiffs' cases.[3]

Extended delays and a host of related shenanigans followed. Following a series of continuances and Plaintiffs' first counsel change, the trial court announced—during a May 14, 2025 status hearing—that it would adjudicate Ms. Pitts's Motions to Dismiss on the papers and hold a hearing on her TPPA Petitions on June 27, 2025.[4] That scheduling order concerned the Plaintiffs' *original* Complaints, though.[5] Shortly after the Parties' May 14, 2025 status hearing—on May 29, 2025—the Plaintiffs also interfered with that contemplated schedule by moving to file an Amended Complaint,[6] thereby mooting Ms. Pitts's pending Rule 12.02(6) motions and TPPA Petitions.

On May 31, 2025, Ms. Pitts filed notice of her consent to the filing

---

[1] R. (Vol. 1, No. M2025-01034-COA-R3-CV) at 1; R. (Vol. 1, No. M2025-01033-COA-R3-CV) at 1.

[2] R. (Vol. 1, No. M2025-01034-COA-R3-CV) at 25–76; R. (Vol. 1, No. M2025-01033-COA-R3-CV) at 20–66.

[3] R. (Vol. 2, No. M2025-01034-COA-R3-CV) at 209–13; R. (Vol. 1, No. M2025-01033-COA-R3-CV) at 197–201. The Court's Order specified that all filings "shall be filed in Case No. 24C1752." R. (Vol. 2, No. M2025-01034-COA-R3-CV) at 210; R. (Vol. 1, No. M2025-01033-COA-R3-CV) at 198.

[4] R. (Vol. 5, No. M2025-01034-COA-R3-CV) at 669–73.

[5] *Id.*

[6] *Id.* (Vol. 4) at 559–61.

of Plaintiffs' Amended Complaint.[7] She also filed a new Rule 12.02(6) Motion and TPPA Petition to dismiss the Plaintiffs' Amended Complaint the same day.[8] Ms. Pitts's TPPA Petition sought an uncapped award of attorney's fees, expenses, and sanctions.[9] Ms. Pitts also sought TPPA sanctions not only against the Plaintiffs, but against their misbehaving counsel as well.[10]

The trial court entered an order permitting the Plaintiffs' Amended Complaint on June 16, 2025.[11] Ms. Pitts's Rule 12.02(6) Motion and her TPPA Petition to Dismiss the Plaintiffs' Amended Complaint then came before the Court for hearing on June 27, 2025.[12]

At the Parties' June 27, 2025 hearing, the trial court ruled that the Plaintiffs failed to state a claim upon which relief could be granted.[13] Thus, the trial court granted Ms. Pitts's Rule 12.02(6) Motion and dismissed the Plaintiffs' malicious prosecution claims against her.[14] Even though neither Plaintiff raised any such claim, the trial court also ruled that Ms. Pitts's TPPA Petition was "effectively render[ed] . . . moot" by the trial court's Rule 12.02(6) dismissal.[15] Thus, the trial court denied Ms. Pitts's TPPA Petition as moot.[16]

---

[7] *Id.* (Vol. 5) at 585–87.
[8] *Id.* at 588–642.
[9] *Id.* at 626–27.
[10] *Id.* at 627.
[11] *Id.* (Vol. 6) at 771–73.
[12] *Id.* at 842–47.
[13] *Id.*
[14] *Id.*
[15] *Id.* at 846.
[16] *Id.*

Ms. Pitts timely appealed as of right the trial court's order denying her TPPA Petition.[17] The trial court then certified its Rule 12.02(6) dismissal order as final.[18] Afterward, the Plaintiffs cross-appealed.[19]

[17] Def. Pitts's Notices of App., Nos. M2025-01034-COA-R3-CV & M2025-01033-COA-R3-CV (July 9, 2025).
[18] R. (Vol. 8, No. M2025-01034-COA-R3-CV) at 1081–87.
[19] Pls.' Notices of App. (Sep. 26, 2025).

VII. STATEMENT OF FACTS

A. MS. PITTS MEETS THE PLAINTIFFS, WHO PROMPTLY VICTIMIZE HER.

In roughly December 2023, Ms. Pitts met the Plaintiffs at Tennessee State University and worked with them at Home Depot.[20] The Plaintiffs often made inappropriate sexual comments to Ms. Pitts, which she initially ignored.[21] But when Ms. Pitts learned that Plaintiff Christopher Allen told others that she was in a sexual relationship with his brother, Plaintiff David Allen (which was untrue), she confronted the Plaintiffs.[22]

On or about March 25, 2024, Ms. Pitts told the Plaintiffs that she did not want to see them anymore, but they did not respect her decision.[23] At one point, David Allen refused to get out of Ms. Pitts's car, and she had to call her sister for help.[24]

The Plaintiffs then began stalking Ms. Pitts and showing up outside of her classes.[25] The Plaintiffs also began making Ms. Pitts uncomfortable at her workplace, including by following her around, making inappropriate comments, and attempting to intimidate her by interrogating her coworkers.[26] Ms. Pitts reported the Plaintiffs' behavior to her manager.[27]

---

[20] R. (Vol. 1, No. M2025-01034-COA-R3-CV) at 72 ¶ 3.
[21] *Id.* at ¶ 4.
[22] *Id.* at ¶ 5.
[23] *Id.* at ¶ 6.
[24] *Id.* at ¶ 7.
[25] *Id.* at ¶ 8.
[26] *Id.* at 72–73 ¶ 9.
[27] *Id.*

The Plaintiffs were familiar with and capable of identifying Ms. Pitts's car—a gold 2009 Chevy Malibu—because they had ridden in it and put air in her tires.[28] On April 14, 2024, at roughly 4:00 a.m., the Plaintiffs vandalized Ms. Pitts's car, slashing her tires, cutting her brake lines, and causing other damage requiring $3,326.75 in repairs.[29] Given the inoperable braking system, Ms. Pitts could have been severely injured or killed as a result of the Plaintiffs' crimes against her.[30]

B. MS. PITTS REPORTS THE PLAINTIFFS' CRIMES AND SEEKS PROTECTION.

Ms. Pitts reported the vandalism to TSU police for investigation.[31] When viewing security footage of her car being vandalized, Ms. Pitts identified the perpetrators as the Plaintiffs based on their distinctive walk and the clothes they were wearing, which matched the clothes they were wearing when she saw them earlier that same day.[32] TSU then provided Ms. Pitts with an escort to and from her classes because she was intimidated by and afraid of the Plaintiffs.[33]

After the Plaintiffs vandalized her car, Ms. Pitts filed truthful petitions for orders of protection against them.[34] The Davidson County night court commissioner found probable cause to issue temporary orders of protection against the Plaintiffs, and it granted Ms. Pitts a temporary

---

[28] *Id.* at 73 ¶ 10.
[29] *Id.* at ¶ 11.
[30] *Id.* at ¶ 12.
[31] *Id.* at ¶ 13.
[32] *Id.* at ¶ 14.
[33] *Id.* at ¶ 15.
[34] *Id.* at ¶ 16.

order of protection against both Plaintiffs.[35] After a final evidentiary hearing, the Davidson County General Sessions Court granted Ms. Pitts's petition for an order of protection against Christopher Allen and issued a full order of protection against him.[36] Christopher Allen then appealed to Circuit Court.[37] Ms. Pitts's petition for an order of protection against David Allen remained pending.[38]

While those proceedings were ongoing, Ms. Pitts withdrew from TSU and moved home because she felt unsafe on campus.[39] She communicated her new address to the court but never received further correspondence.[40] As a result, Ms. Pitts did not know when she was supposed to appear in court.[41] Ms. Pitts later learned that both of her petitions for an order of protection ultimately were dismissed for failure to prosecute due to her inadvertent failure to appear for court dates that she did not know had been scheduled.[42]

C. MS. PITTS'S PETITIONING ACTIVITY.

When Ms. Pitts complained to TSU police about the Plaintiffs, she intended to encourage the police to investigate her complaints and to take appropriate action regarding them in order to protect her own safety and community safety generally.[43] Ms. Pitts made her complaints in good

---

[35] *Id.* at ¶ 17.
[36] *Id.* at 73–74 ¶ 18.
[37] R. (Vol. 1, No. M2025-01033-COA-R3-CV) at 2 ¶ 9.
[38] R. (Vol. 1, No. M2025-01034-COA-R3-CV) at 73 ¶ 17.
[39] *Id.* at 74 ¶ 21.
[40] *Id.* at ¶ 22.
[41] *Id.* at ¶ 22.
[42] *Id.* at ¶ 23.
[43] *Id.* at ¶ 24.

faith and in connection with a matter of health or safety and community well-being "because women like [her] deserve to feel safe at work and at school."[44] Ms. Pitts's complaints were truthful and filed in good faith.[45]

Likewise, Ms. Pitts filed her petitions for orders of protection against the Plaintiffs to encourage a court to act and issue orders of protection against them.[46] Ms. Pitts did so because she wanted the court to protect her and ensure that the Plaintiffs would stop stalking and harassing her and leave her alone.[47]

All of the statements that Ms. Pitts made in her petitions for orders of protection and during and related to the resulting proceedings were made in good faith and in connection with matters of health or safety and community well-being.[48] Ms. Pitts's statements were truthful.[49] She also made her statements based on facts she knew were true.[50]

Ms. Pitts sought protection and reported the Plaintiffs' misconduct in good faith—and in connection with a matter of health or safety and community well-being—"because women like [her] deserve to feel safe at work and at school" and she needed the government to protect her.[51] Ms. Pitts also filed her "petitions for orders of protection against the Allen brothers to encourage a court to issue orders of protection against them

---

[44] *Id.* at ¶ 25.
[45] *Id.* at 75 ¶ 26.
[46] *Id.* at ¶ 27.
[47] *Id.*
[48] *Id.* at ¶ 28.
[49] *Id.* at ¶ 29.
[50] *Id.* at ¶ 30.
[51] *Id.* (Vol. 1) at 75 ¶¶ 27, 28.

so they would stop stalking and harassing [her] and leave [her] alone."[52]

D. THE PLAINTIFFS SUE MS. PITTS FOR PETITIONING THE GOVERNMENT TO PROTECT HER.

After Ms. Pitts's order of protection petitions were dismissed for failure to prosecute, the Plaintiffs sued Ms. Pitts for malicious prosecution.[53] The Plaintiffs' malicious prosecution claims against Ms. Pitts were based explicitly on her having petitioned for orders of protection against them.[54]

The Plaintiffs' Amended Complaint alleged that, "on May 1, 2024, [Ms. Pitts] signed sworn Petitions for an Order of Protection, causing [them] to be filed on May 7, 2025[,] seeking an Order of Protection against Plaintiff, David Allen, and Plaintiff, Christopher Allen[,] . . . alleging that they stalked her, harassed her, and that they vandalized her vehicle."[55] "The Sworn Petitions are separate documents with two different docket numbers."[56] "The Sworn Petition against David Allen was initiated under docket number 24OP1181 in the Davidson County, Tennessee General Sessions Court."[57] "The Sworn Petition against Christopher Allen was initiated under docket number 24OP1180 in Davidson County, Tennessee General Sessions Court."[58]

Ms. Pitts initially was granted a temporary order of protection

---

[52] *Id.* at ¶ 27.
[53] *Id.* at 1–14; R. (Vol. 1, No. M2025-01033-COA-R3-CV) at 1–9.
[54] *See id.*
[55] R. (Vol. 4, No. M2025-01034-COA-R3-CV) at 562–63 ¶ 5.
[56] *Id.* at 563 ¶ 6.
[57] *Id.* at ¶ 7.
[58] *Id.* at ¶ 8.

against David Allen.[59] Afterward, Ms. Pitts's "Petition for an Order of Protection against Plaintiff David Allen was dismissed . . . because [she] failed to appear to prosecute her case."[60] David Allen appended as Exhibit 1 to the Plaintiffs' Amended Complaint an order confirming that Ms. Pitts's petition for an order of protection against him was dismissed because "[Ms. Pitts] did not show up for Court."[61]

In dismissing Ms. Pitts's petition for an order of protection against David Allen, the court did not find that Ms. Pitts "is not a domestic abuse victim, stalking victim, or sexual assault victim" or that she filed a knowingly false petition.[62] Thus, the court ruled that "the costs and litigation tax of this cause are ***not*** taxed to the Petitioner."[63] Even so, as damages, David Allen sought from Ms. Pitts "expenses for attorney's fees in defending him from the Petition for Order of Protection and potential criminal charges for acts alleged in the petition[.]"[64]

As to Ms. Pitts's petition for an order of protection against Christopher Allen, the Davidson County General Sessions Court "granted" Ms. Pitts's petition after a final evidentiary hearing.[65] Afterward, Christopher Allen appealed.[66] His appeal concluded with a November 21, 2024 order dismissing Ms. Pitts's petition "for failure to

---

[59] *Id.* (Vol. 10) at 63–70.
[60] R. (Vol. 4, No. M2025-01034-COA-R3-CV) at 564 ¶ 14.
[61] *Id.* (Vol. 10) at 571.
[62] *Id.*
[63] *Id.* (emphasis added).
[64] *Id.* (Vol. 4) at 564 ¶ 18.
[65] *Id.* at 565 ¶ 21.
[66] *Id.* at ¶ 28.

prosecute[.]"[67]

A copy of the Circuit Court's order dismissing Ms. Pitts's petition for an order of protection against Christopher Allen is appended to the Plaintiffs' Amended Complaint as Exhibit 2.[68] The order states explicitly that Ms. Pitts's petition was dismissed "[f]or failure to appear to prosecute[.]"[69] The order also determined that Ms. Pitts would not be assessed "costs pursuant to T.C.A. §36-3-617(a)."[70] Nevertheless, as damages, Christopher Allen sought "expenses for attorney's fees in the amount of $3,500 to defend himself from the Petition for Order of Protection."[71]

The Plaintiffs' Amended Complaint alleged that their claims against Ms. Pitts arose from her reporting that the Plaintiffs "stalked her, harassed her, and . . . vandalized her vehicle."[72] The Plaintiffs also sued Ms. Pitts because she reported their behavior to TSU.[73] One Plaintiff attributes his "loss of his educational status at Tennessee State University" to her report.[74] Thus, the Plaintiffs' own pleading left no doubt that the Plaintiffs sued Ms. Pitts in response to: (1) her petitions to the judiciary, and (2) the statements that Ms. Pitts made both to TSU

---

[67] *Id.*
[68] *Id.* (Vol. 10) at 570–73.
[69] *Id.* at 572.
[70] *Id.* at 573.
[71] *Id.* (Vol. 4) at 566 ¶ 33.
[72] *Id.* at 562–63 ¶ 5.
[73] *Id.* (Vol. 1) at 73 ¶ 13.
[74] *Id.* (Vol. 4) at 566 ¶ 34.

police and the court during her order of protection proceedings.[75]

E. THE PLAINTIFFS ENGAGE IN FURTHER MISCONDUCT AND ARE CHARGED WITH CRIMES.

After victimizing Ms. Pitts, David Allen engaged in fraud and other dishonesty in an effort to evade consequences for his crimes against Ms. Pitts. For example, after feigning hospitalization and claiming "that the military was not going to cover his medical bills unless a witness stated that he had been at the apartment" when Ms. Pitts's car was vandalized,[76] David Allen "lied and manipulated [his roommate] into making a false statement for him."[77] David Allen then used this "evidence" to attempt to deceive the military.[78] In fact, though, David Allen's roommate had "no personal knowledge as to whether or not David was in [their] apartment around 4:00 a.m. on April 14, 2024."[79]

Several months *after* David Allen sued Ms. Pitts here—and while he was actively represented by his first attorney in this case (third-party Defendant Chelsey A. Stevenson)—David Allen set about attempting to disqualify the lawyers who were most likely to represent Ms. Pitts. He did so by sending unsolicited correspondence to lawyers he thought might

---

[75] *See generally* R. (Vol. 1, No. M2025-01034-COA-R3-CV) at 1–14; R. (Vol. 1, No. M2025-01033-COA-R3-CV) at 1–9.
[76] R. (Vol. 5, No. M2025-01034-COA-R3-CV) at 631 ¶ 4.
[77] *Id.* at ¶ 7.
[78] *Id.* at (Vol. 1) at 87 ¶ 25 (referencing "'testimony of 2nd Lt. Allen's roommate during the Spring semester of the 2023-2024 academic year, Elijah Southerland, confirming that 2nd Lt. Allen was at their shared apartment at all times relevant to the allegations made by Ms. Pitts regarding the alleged vandalism of her vehicle[.]'").
[79] *Id.* (Vol. 5) at 631 ¶ 9.

defend her. One of those lawyers was undersigned attorney Daniel A. Horwitz—an attorney: (1) who David Allen knew handled speech *defense* cases, (2) from whom David Allen never purchased a consultation, and (3) whom David Allen continued to contact, unsolicited, under the false pretense of seeking representation even *after* Mr. Horwitz appeared in this case to represent Ms. Pitts.[80]

Given that David Allen copied his non-lawyer brother on his unsolicited correspondence to Mr. Horwitz,[81] David Allen's unsolicited correspondence to Mr. Horwitz was not privileged even theoretically. In that correspondence, David Allen also expressed concern that, "by sharing surveillance footage with Eriana Pitts," TSU breached his "right to confidentiality."[82] This concern necessarily would make no sense if—as David Allen claimed below[83]—he was not one of the people recorded on the surveillance footage at issue, given that TSU sharing with Ms. Pitts surveillance footage of someone else vandalizing her car could not plausibly implicate *David Allen's* asserted "right to confidentiality." Thus, David Allen's correspondence is fairly characterized as an admission that he appears on the surveillance footage in question.

The Davidson County District Attorney has since initiated criminal charges against the Plaintiffs, too. As of this writing, the Davidson County General Sessions Court has determined that the Plaintiffs' criminal charges for vandalism are supported by probable cause, and it

---

[80] *See generally id.* (Vol. 2) at 244–55.
[81] *Id.* (Vol. 5) at 639–42.
[82] *Id.* at 640.
[83] *See generally id.* (Vol. 4) at 547–52.

has bound them over to a grand jury for indictment.[84]

F. THE PLAINTIFFS SUCCESSFULLY RUN UP MS. PITTS'S LEGAL EXPENSES BUT—DUE TO THE TRIAL COURT'S DENIAL OF MS. PITTS'S TPPA PETITION—ARE ASSESSED ONLY A TINY FRACTION OF THEM.

Despite the facially baseless nature of the Plaintiffs' claims, the trial court proceedings were voluminous, they took many months to resolve, and the Plaintiffs' cases include *hundreds* of docket entries.[85] The reason? The Plaintiffs filed a huge number of bad-faith motions (*e.g.*, for default,[86] to disqualify,[87] for discovery,[88] for sanctions,[89] to withdraw

---

[84] *See David Allen No. GS1066399*, METRO. NASHVILLE & DAVIDSON CTY. CRIM. CT. CLERK https://perma.cc/PKG6-NKUF (last visited Dec. 4, 2025) ("David Allen . . . Case: GS1066399 . . . Defendant Status: PENDING-B/O . . . Vandalism $2,500 or more"); *See Christopher Allen No. GS1066397*, METRO. NASHVILLE & DAVIDSON CTY. CRIM. CT. CLERK, https://perma.cc/D63L-UDB4 (last visited Dec. 4, 2025) ("Christopher Allen . . . Case: GS1066397 . . . Defendant Status: PENDING-B/O . . . Vandalism $2,500 or more"). This Court may take judicial notice of these public court records. *See State v. Nunley*, 22 S.W.3d 282, 288 (Tenn. Crim. App. 1999) ("Court records fall within the general rubric of facts readily and accurately determined."); *Ind. State Dist. Council of Laborers v. Brukardt*, No. M200702271COAR3CV, 2009 WL 426237, at *9 (Tenn. Ct. App. Feb. 19, 2009) ("Tennessee law allows for judicial notice (TRE 201) of public records." (citing COHEN, SHEPARD, AND PAINE, TENN. LAW OF EVID. § 2.01[4][c] (5th ed. 2005))), *app. denied* (Tenn. Aug. 24, 2009).

[85] *See generally* R. No. M2025-01034-COA-R3-CV; R. No. M2025-01033-COA-R3-CV.

[86] R. (Vol. 1, No. M2025-01034-COA-R3-CV) at 19–21; R. (Vol. 1, No. M2025-01033-COA-R3-CV) at 14–15.

[87] R. (Vol. 2, No. M2025-01034-COA-R3-CV) at 214–23.

[88] *Id.* (Vol. 3) at 303–06

[89] *Id.* (Vol. 4) at 465–66.

on the eve of hearing,[90] to stay,[91] etc.); they sought and obtained multiple continuances over Ms. Pitts's objections;[92] they changed counsel repeatedly;[93] they mooted Ms. Pitts's original claims for dismissal and restarted briefing on them by amending;[94] and they generally behaved terribly for as long as the trial court would let them.

Given the extraordinary volume of proceedings below—all of it attributable to the obstructive efforts of the Plaintiffs and their carousel of counsel—Ms. Pitts's representation generated attorney's fees and expenses of $81,152.43 through July 2, 2025.[95] Yet based on: (1) the trial court's ruling that Ms. Pitts's TPPA Petition was moot, and (2) Tennessee Code Annotated section 20-12-119(c)'s $10,000.00 statutory cap, Ms. Pitts can only recover a fraction of those expenses unless her TPPA Petition is granted.

The trial court's ruling also prevents Ms. Pitts from obtaining the sanctions she has sought against the Plaintiffs and their counsel.[96] That is no small matter. TPPA sanctions can be substantial. *See, e.g.*, *Black v. Baldwin*, No. M2024-00151-COA-R3-CV, 2025 WL 1566392, at *6 (Tenn. Ct. App. June 3, 2025) (affirming a $40,000.00 TPPA sanctions

---

[90] *Id.* (Vol. 3) at 414–16; *id.* (Vol. 6) at 753–54.
[91] *Id.* (Vol. 3) at 486–88; *id.* (Vol. 6) at 747–52, 753–54.
[92] *Id.* (Vol. 2) at 182–88; R. (Vol. 2, No. M2025-01033-COA-R3-CV) at 173–79; R. (Vol. 3, No. M2025-01034-COA-R3-CV) at 421–26; *id.* (Vol. 4) at 457–64, 483–85, 489–93, 525–46; *id.* (Vol. 6) at 813–19.
[93] R. (Vol. 3, No. M2025-01034-COA-R3-CV) at 414–16; *id.* (Vol. 6) at 753–54; *id.* (Vol. 8) at 1055–56.
[94] R. (Vol. 4, No. M2025-01034-COA-R3-CV) at 559–68.
[95] *Id.* (Vol. 7) at 867.
[96] *Id.* (Vol. 5) at 627.

award), *app. denied* (Oct. 8, 2025). It also is hard to imagine anyone—other than perhaps the attorneys who are responsible for facilitating the Plaintiffs' abuse of Ms. Pitts—being more worthy of deterrent sanctions than two criminals who victimized a vulnerable young woman, forced her out of college because she felt unsafe, sued her for seeking protection from the judiciary, and then imposed enormous litigation expenses on her through facially baseless, retaliatory litigation that (due to the Plaintiffs' cross-appeal) remains ongoing even now.

VIII. ARGUMENT

A. MS. PITTS'S TPPA PETITION IS NOT MOOT.

"[A] case 'becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party.'" *Chafin*, 568 U.S. at 172 (quoting *Knox*, 567 U.S. at 307). Thus, "as long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Ellis v. Ry. Clerks*, 466 U.S. 435, 442 (1984); *see also Wester v. McDow*, No. M2006-02457-COA-R3-CV, 2009 WL 1034758, at *5 (Tenn. Ct. App. Apr. 16, 2009) (Mootness turns on whether a case "serves as a means to provide some sort of relief to the party who may prevail."). "'Determining whether . . . an issue has become moot is a question of law.'" *State ex rel. DeSelm*, 296 S.W.3d at 534 (quoting *State ex rel. Cunningham*, 2007 WL 1515144, at *3).

Here, Ms. Pitts will obtain effectual relief if her TPPA Petition is granted. Thus, the trial court erred by denying Ms. Pitts's TPPA Petition as moot.

1. Granting Ms. Pitts's TPPA Petition would afford her "effectual relief."

The central question presented here is whether granting Ms. Pitts's TPPA Petition would afford her "effectual relief" that she has a "concrete interest" in receiving. *Chafin*, 568 U.S. at 172; *Ellis*, 466 U.S. at 442. The answer is yes.

If granted, Ms. Pitts's TPPA Petition would afford her a mandatory award of attorney's fees. *See* Tenn. Code Ann. § 20-17-107(a)(1). Unlike the modest fee award that Ms. Pitts is eligible to receive under section 20-12-119(c)(4)—which caps an award at $10,000.00 per case—the award

that Ms. Pitts would receive under the TPPA would be uncapped, *see* § 20-17-107(a)(1). Further, unlike an award under section 20-12-119(c), an award under section 20-17-107(a)(1) would cover the fees that Ms. Pitts incurs successfully defending against the Plaintiffs' cross-appeal. *Compare Thomson v. Genesis Diamonds, LLC*, 661 S.W.3d 121, 132 (Tenn. Ct. App. 2022) ("[T]his Court has held that due to the limited scope of Tenn. Code Ann. § 20-12-119(c), attorney's fees incurred on appeal are not compensable under that statute." (citing *First Cmty. Mortg., Inc. v. Appraisal Servs.*, 644 S.W.3d 354, 367 (Tenn. Ct. App. 2021))), *with Nandigam Neurology, PLC*, 639 S.W.3d at 670 (prevailing TPPA petitioners are entitled to their attorney's fees on appeal). The TPPA also permits Ms. Pitts to recover "expenses" that are not permitted under section 20-12-119(c). *Compare* § 20-17-107(a)(1) (permitting the recovery of "[c]ourt costs, . . . discretionary costs, and other expenses incurred in filing and prevailing upon the petition"), *with* § 20-12-119(c) (permitting recovery of "costs"). Beyond that, having her TPPA Petition granted would afford Ms. Pitts the right to pursue sanctions against the Plaintiffs and their misbehaving counsel as necessary to deter them from repeating their conduct, *see* § 20-17-107(a)(2), which the miscreants responsible for imposing this abusive litigation on Ms. Pitts otherwise will escape.

Ms. Pitts sought all of these TPPA remedies below.[97] She also would benefit from receiving them. To offer a concrete example: Ms. Pitts's attorney's fees and expenses vastly exceed what she is permitted

[97] *Id.* at 626–27.

to recover under section 20-12-119(c).[98] To offer another: Ms. Pitts wants the Plaintiffs and their counsel sanctioned as necessary to deter repetition of their conduct here, which involves two criminals suing their victim for seeking the judiciary's protection.[99] Because the trial court erroneously denied Ms. Pitts's TPPA Petition as moot, though, the trial court has prevented Ms. Pitts from obtaining this relief.

For these reasons, Ms. Pitts stands to obtain "effectual relief" from having her TPPA Petition granted. *See Chafin*, 568 U.S. at 172. She also has a "concrete interest" in receiving it. *See Ellis*, 466 U.S. at 442. Thus, her TPPA Petition is not moot. *Id.*

The fact that Ms. Pitts prevailed on her Rule 12.02(6) claim does not moot her TPPA claims, either. "Mootness is assessed by claim, not by case." *Masters v. Wells Fargo Bank S. Cent.*, N.A., No. A-12-CA-376-SS, 2013 WL 3713492, at *4 (W.D. Tex. July 11, 2013). Further, when a litigant "presents two or more alternative grounds as routes to its hoped-for ultimate victory, a court does not lose jurisdiction over the second claim once it has ruled in the [litigant's] favor on the first claim; victory on the first claim doesn't moot the second." *See Celtronix Telemetry, Inc. v. FCC*, 272 F.3d 585, 587 (D.C. Cir. 2001). That is "settled law[.]" *See WorldCom, Inc. v. FCC*, 246 F.3d 690, 695 (D.C. Cir. 2001) (citing *Air Line Pilots Ass'n v. UAL Corp.*, 897 F.2d 1394, 1397 (7th Cir. 1990)).

True, when a claimant asserts alternative claims that seek "identical" relief, courts often deny such claims as "moot." *See, e.g.*, *Meyer*

[98] *Id.* (Vol. 7) at 867.
[99] *Id.* (Vol. 5) at 627.

v. Christie, No. 07-2230-CM, 2009 WL 3294001, at *3 (D. Kan. Oct. 13, 2009) ("Because that motion seeks identical relief, it is denied as moot."); *Palmer v. City of Saratoga Springs*, 180 F. Supp. 2d 379, 387 (N.D.N.Y. 2001) ("Because the relief Palmer's seeks in his pendent state law claim is identical to the relief granted on his PRB–1 claim, the Court dismisses the Article 78 claim as moot."). But as several jurists have noted, such cases use the term "moot" outside of its "technical sense." *See Muniz v. City of San Antonio*, 476 F. Supp. 3d 545, 562 n.1 (W.D. Tex. 2020); *see also Air Line Pilots Ass'n, Int'l*, 897 F.2d at 1397 ("Although the word 'moot' is sometimes used to refer to an issue that need not be decided in light of the resolution in the same opinion of another issue, . . . it has never been thought that a court that does decide it thereby violates Article III's implied prohibition against deciding moot cases."); *Norfolk S. Ry. v. City of Alexandria*, 608 F.3d 150, 163 (4th Cir. 2010) (Goodwin, C.J., concurring in part and dissenting in part) ("[T]he HMTA and FRSA issues are not 'moot' in the traditional, Article III sense of that word. That is, we continue to possess jurisdiction to review them, but may decline to do so out of prudential concerns."); 13B FED. PRAC. & PROC. JURIS. § 3533 (3d ed.) (noting the "confus[ion]" in such use of mootness terminology while observing that "[o]rdinarily no harm is done" by it). Thus, rather than reflecting mootness in terms of *constitutional standing*, such terminology reflects only a *prudential* decision to refrain from adjudicating alternative claims that would "make little difference" to a case's outcome. *See Air Line Pilots Ass'n, Int'l*, 897 F.2d at 1397.

Of note, **"a case in which attorney's fees are available to the**

plaintiff only under an alternative ground"—precisely the situation here—also has been characterized as an "easy to imagine exception" to prudential practices against adjudicating alternative claims. *Id.* (emphasis added). Certainly, an alternative claim is not moot when it seeks relief that is *different* from an overlapping claim. *See, e.g.*, *Penske Truck Leasing, Inc. v. TCI Ins.*, No. 2006-Ohio-5256, 2006 WL 2837841, at *2 n.1 (Ohio Ct. App. Oct. 5, 2006) ("The damages available for breach of each of these provisions overlap, but they do not all coincide. Thus, judgment on one of these claims does not automatically moot the others."); *cf.* *Chico Serv. Station, Inc. v. Sol P.R. Ltd.*, 633 F.3d 20, 36 (1st Cir. 2011) ("To avoid mootness," a litigant "need not establish that the full relief sought is available; 'even the availability of a 'partial remedy' is 'sufficient to prevent [a] case from being moot.'") (cleaned up).

At any rate, it is clearly established that "[a] case does not become moot for purposes of Article III merely because a court finds that the plaintiff is entitled to relief under one of a number of alternative theories."[100] *See* *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 222 (D.N.H.

[100] The judicial power of Tennessee's courts is not limited by Article III's constraints. *See* *Norma Faye Pyles Lynch Fam. Purpose LLC v. Putnam Cnty.*, 301 S.W.3d 196, 202 (Tenn. 2009) ("[W]hile Article III, Section 2 of the United States Constitution confines the jurisdiction of the federal courts to 'cases' and 'controversies,' the Constitution of Tennessee contains no such direct, express limitation on Tennessee's courts' exercise of their judicial power."); *ASARCO Inc. v. Kadish*, 490 U.S. 605, 617 (1989) ("[T]he constraints of Article III do not apply to state courts, and accordingly the state courts are not bound by the limitations of a case or controversy or other federal rules of justiciability[.]").

2018). This case—"in which attorney's fees are available to [Ms. Pitts] only under an alternative ground"—also presents the "easy to imagine exception" to general prudential practices against adjudicating alternative claims. *Air Line Pilots Ass'n, Int'l*, 897 F.2d at 1397. Thus, the trial court erred by denying Ms. Pitts's TPPA Petition—and the significant relief that she stands to gain from having it granted—as moot.

2. The Plaintiffs' failure to raise any prudential jurisdictional defense waived it.

"Prudential standing, in contrast to constitutional standing, is grounded in self-imposed rules of judicial restraint." *Houghton v. Malibu Boats, LLC*, No. E2023-00324-SC-R11-CV, 2025 WL 2971436, at *13 (Tenn. Oct. 22, 2025). Further, "[u]nlike true jurisdictional rules, prudential limitations on standing can be waived." *See Korte v. Sebelius*, 735 F.3d 654, 668 (7th Cir. 2013); *see also June Med. Servs. v. Russo*, 591 U.S. 299, 317 (2020) (Prudential standing defenses "can be forfeited or waived."). Thus, "[o]rdinarily, issues of non-constitutional standing are . . . waived if not properly preserved." *See City of Memphis v. Hargett*, 414 S.W.3d 88, 98 n.8 (Tenn. 2013); *see also Houghton*, 2025 WL 2971436, at *15 ("The substance of the Defendant's issue is non-constitutional or prudential in nature, and, therefore, the issue is subject to forfeiture."); *see also Pershing Park Villas Homeowners Ass'n v. United Pac. Ins.*, 219 F.3d 895, 899 (9th Cir. 2000) ("[A] party waives objections to nonconstitutional standing not properly raised before the [trial] court.").

As noted above, "[a]lthough the word 'moot' is sometimes used to refer to an issue that need not be decided in light of the resolution in the same opinion of another issue, . . . it has never been thought that a court

that does decide it thereby violates Article III's implied prohibition against deciding moot cases." *Air Line Pilots Ass'n, Int'l*, 897 F.2d at 1397. Instead, such circumstances present only "prudential concerns[.]" *See Norfolk S. Ry Co.*, 608 F.3d at 163 (Goodwin, C.J., concurring in part and dissenting in part); *see also Saucedo*, 335 F. Supp. 3d at 222–23 ("This is not to say that plaintiffs' remaining constitutional claims are 'moot' in the technical sense. A case does not become moot for purposes of Article III merely because a court finds that the plaintiff is entitled to relief under one of a number of alternative theories. . . . In this case, the court concludes that it is neither necessary nor prudent to reach plaintiffs' other constitutional claims.").

The distinction between constitutional standing limitations and mere prudential concerns matters here for a basic reason: The Plaintiffs never argued below that Ms. Pitts's TPPA Petition should not be adjudicated if the trial court granted her Rule 12.02(6) motion.[101] And given the Plaintiffs' failure to make any argument on the matter, the trial court should not have raised the issue in the Plaintiffs' place. *See State v. Bristol*, 654 S.W.3d 917, 923–25 (Tenn. 2022) (explaining party-presentation rules); *accord MacLauchlan v. Prudential Ins. of Am.*, 970 F.2d 357, 359 n.1 (7th Cir. 1992) ("[W]e may not raise prudential standing issues sua sponte.").

At minimum, the trial court should not have raised and credited the claim *sua sponte* without first affording Ms. Pitts notice and an opportunity to be heard on the matter—especially given the trial court's

[101] R. (Vol. 5, No. M2025-01034-COA-R3-CV) at 677–87.

own expressed skepticism that its ruling was correct.[102] *See Bristol*, 654 S.W.3d at 927 (When a court "considers an issue that has not been properly presented, it must give the parties 'fair notice and an opportunity to be heard on the dispositive issues.'") (cleaned up). Further, because "[i]t is well settled" that waivable issues "not raised at the trial level are considered waived on appeal[,]" any prudential objection that the Plaintiffs could have had to the trial court adjudicating Ms. Pitts's TPPA Petition should be considered forfeited here.[103] *See Moses v. Dirghangi*, 430 S.W.3d 371, 381 (Tenn. Ct. App. 2013).

3. Persuasive authority instructs that Ms. Pitts's TPPA Petition is not moot.

Because the TPPA is not the nation's only anti-SLAPP statute, the situation presented here has come up elsewhere before now. Persuasive authority on exactly the issue presented here also instructs that Ms. Pitts's TPPA Petition is not moot. *See, e.g.*, *Fairbanks v. Roller*, 314 F. Supp. 3d 85, 93 (D.D.C. 2018) ("Dismissing the Amended Complaint for failure to state a claim does not moot Ms. Roller's anti-SLAPP motion since the motion seeks attorneys' fees in addition to dismissal."); *Bhambra v. True*, No. C 09-4685 CRB, 2010 WL 1758895, at *2 (N.D. Cal. Apr. 30, 2010) ("[A] 12(b) (6) dismissal does not moot a[n anti-SLAPP]

---

[102] *Id.* (Vol. 8) at 1083 (noting "that Defendant has raised legitimate concerns regarding th[e] decision" and "the lack of authority on the question").

[103] This Court and the Tennessee Supreme Court have recently noted the "distinction" between waiver and forfeiture, which historically have been used interchangeably in Tennessee jurisprudence. *See Houghton*, 2025 WL 2971436, at *6 n.13; *Bryce v. Partin*, No. E2024-01404-COA-R3-CV, 2025 WL 3023736, at *3 n.5 (Tenn. Ct. App. Oct. 29, 2025).

motion to strike[.]"); *White v. Lieberman*, 126 Cal. Rptr. 2d 608, 614 (2002), *as modified on denial of reh'g* (Nov. 27, 2002) ("The trial court ruled that because it sustained Lieberman's demurrer without leave to amend, his [anti-SLAPP] motion to strike White's complaint was moot. But a defendant who prevails in an anti-SLAPP motion is entitled to attorney's fees. . . . The trial court therefore erred in determining that Lieberman's motion was moot."); *Collins v. Allstate Indem. Co.*, 428 F. App'x 688, 690 (9th Cir. 2011) ("Resolution of the underlying action [on a motion to dismiss] did not moot the anti-SLAPP motion, because the anti-SLAPP statute mandates that 'a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs.'"). This Court should adopt the same reasoning.

Tennessee law in a host of other contexts supports reversal, too. As one example: Claims for contempt remedies do not become moot when a contemnor ceases contemptuous conduct. *See Overnite Transp. Co. v. Teamsters Loc. Union No. 480*, 172 S.W.3d 507, 511 (Tenn. 2005) ("When the contempt consists of the performance of a forbidden act, the cessation of the contemptuous conduct after the entry of the order prohibiting that conduct does not preclude a finding of civil contempt and an award of damages. . . . [A]ny disobedience of the injunction by the defendants would not be 'rectified' until the defendants paid damages to Overnite making it whole."). As a second: A defendant's claims for Rule 11 sanctions are not mooted by a plaintiff's dismissal of the underlying action. *See Menche v. White Eagle Prop. Grp., LLC*, No. W2018-01336-COA-R3-CV, 2019 WL 4016127, at *10 (Tenn. Ct. App. Aug. 26, 2019) ("[T]he trial court retained jurisdiction over the pending motion for

sanctions. . . . Consequently, Appellant's assertion that the trial court acted outside its authority in hearing Appellees' motion for sanctions is without merit under these circumstances."). As a third: A defendant's demand for the remedies available under Tennessee's Abusive Civil Action statute are not mooted by a plaintiff's dismissal of an underlying case. *See Justice v. Nelson*, No. E2023-00407-COA-R3-CV, 2024 WL 3172263, at *5 (Tenn. Ct. App. June 26, 2024) ("We would effectively render the ACA statutory scheme useless and defeat its legislative purpose if we were to permit a plaintiff to avoid the consequences of filing an abusive civil action by simply dismissing the case after a defendant has filed an ACA counterclaim."). The trial court's ruling departs from all of this authority.

Further, when—as here—a plaintiff seeks to appeal a trial court's order on a motion to dismiss and TPPA petition, this Court may choose to affirm solely on TPPA grounds. *See Black*, 2025 WL 1566392, at *5 (affirming dismissal of a complaint under the TPPA after the trial court granted both a Rule 12.02 motion and TPPA petition to dismiss). Thus, the fact that the Plaintiffs have cross-appealed the trial court's order granting Ms. Pitts's Rule 12.02(6) Motion makes this case easy. *See id.*

General procedural considerations militate against the trial court's ruling, too. For example, it is hornbook law that "[t]he mere pendency of parallel actions seeking the same relief does not of itself moot either action." *City of Colton v. Am. Promotional Events, Inc.-W.*, 390 F. App'x 749, 751 (9th Cir. 2010) (quoting 13A CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FED. PRAC. & PROC. § 3533.2.1 (3d ed. 2009)). Tennessee law also makes clear that "[r]elief in the alternative

or of several different types may be demanded." Tenn. R. Civ. P. 8.01. Further, even when litigants are required to elect remedies because "two inconsistent and irreconcilable" claims have been asserted (which is not the case here), "[t]he purpose of the doctrine is to prevent double redress for a single wrong," not to foreclose a litigant from obtaining complete relief on one of a litigant's alternative claims. *See Concrete Spaces, Inc. v. Sender*, 2 S.W.3d 901, 906 (Tenn. 1999).

A recent decision from this Court suggests the same result. In *Horst v. Gaar*, No. W2023-00442-COA-R3-CV, 2024 WL 4972013 (Tenn. Ct. App. Dec. 4, 2024), a TPPA petitioner who also moved to dismiss "did not pursue relief under the TPPA by way of a hearing while claims were actually pending against him." *Id.* at *10. Thus, "there was not a hearing on the TPPA petition until after the trial court had already dismissed [the plaintiff's] action and denied a motion to alter or amend in relation to the dismissal order." *Id.* Upon review, this Court held that "the adjudication of an *unheard* TPPA petition" is not "justiciable when the plaintiff's complaint has already been dismissed for failure to state a claim and the trial court has already denied a motion to alter or amend regarding the dismissal order." *Id.* at *12.

This Court's emphasis that the TPPA petition in *Horst* was "*unheard*" strongly suggests that this fact was relevant to this Court's analysis. *Id.* Here, by contrast, Ms. Pitts's TPPA Petition *was* heard, it was finally submitted for decision, and it was adjudicated alongside Ms. Pitts's Motion to Dismiss at the same June 27, 2025 hearing.[104] As the

[104] R. (Vol. 6, No. M2025-01034-COA-R3-CV) at 842.

trial court's order states: "This matter came before the Court on Defendant Eriana Pitts' Motion to Dismiss the Amended Complaint for failure to state a claim pursuant to Tenn. R. Civ. P. 12.02(6) ***and*** Petition for Dismissal under the Tennessee Public Participation Act, Tenn. Code Ann. §20-17-101 *et seq*."[105] Thus, the situation here differs on exactly the point that *Horst* suggested was material to the outcome.

4. <u>TPPA petitioners' rights to judicial review vest after final submission.</u>

Apart from long-settled mootness doctrine, the final submission of a case for a determination on the merits has long been considered important under Tennessee law—including in the TPPA context. *See, e.g.*, *Long v. Beasley*, No. M2024-00444-COA-R3-CV, 2025 WL 782310, at *5 (Tenn. Ct. App. Mar. 12, 2025); *Richman v. Debity*, No. E2024-00919-COA-R3-CV, 2025 WL 1454842, at *4–5 (Tenn. Ct. App. May 21, 2025). Indeed, controlling precedent instructs that the final submission to the Court of a dispositive claim precludes even a plaintiff's otherwise liberal right to nonsuit. *See, e.g.*, *Ewan v. Hardison L. Firm*, 465 S.W.3d 124, 136 (Tenn. Ct. App. 2014) ("Once the case finally has been submitted to the trial court for a determination on the merits, however, the plaintiff no longer can take a voluntary dismissal as a matter of right."); *Akers v. Gregory Funding, LLC*, No. M2020-01351-COA-R3-CV, 2021 WL 5576108, at *3 (Tenn. Ct. App. Nov. 30, 2021) ("[W]hen a case 'has been finally submitted to the trial court for a determination on the merits, . . . the plaintiff can no longer take a voluntary dismissal as a

[105] *Id.* (emphasis added).

matter of right.'") (cleaned up); *Hamilton v. Cook*, No. 02A01-9712-CV-00324, 1998 WL 704528, at *5 (Tenn. Ct. App. Oct. 12, 1998) ("At the point they filed their notice of nonsuit, the Hamiltons had participated in a hearing on the Defendants' motion to dismiss at which the Defendants demonstrated valid defenses to a majority of the Hamiltons' claims for relief. Moreover, the trial court already had issued its oral ruling dismissing all claims against the Defendants. We hold that, under these circumstances, the trial court did not abuse its discretion in refusing to permit the Hamiltons to take a voluntary dismissal."); *SecurAmerica Bus. Credit v. Schledwitz*, No. W2009-02571-COA-R3-CV, 2011 WL 3808232, at *8 (Tenn. Ct. App. Aug. 26, 2011) ("[A]fter the matter has been finally submitted to the trial court for a determination on the merits, the plaintiff can no longer take a voluntary dismissal as a matter of right."); *cf. Mack v. Cable Equip. Servs., Inc.*, No. W2020-00862-COA-R3-CV, 2022 WL 391458, at *7 (Tenn. Ct. App. Feb. 9, 2022) (similar), *app. denied* (Tenn. Aug. 3, 2022); *Anderson v. Smith*, 521 S.W.2d 787, 791 (Tenn. 1975) ("Under these circumstances, we hold that when the appellee obtained a court order for possession of the property being condemned, leaving nothing to be decided except the compensation to be paid appellants for the land taken, the appellee lost its right to take a nonsuit over the objections of the appellants."); *Hollow v. Ingrim*, No. E2010-00683-COA-R3-CV, 2010 WL 4861430, at *5–6 (Tenn. Ct. App. Nov. 29, 2010) (holding that when a special master's report was "filed but not yet acted upon by the court" and Tenn. R. Civ. P. 53.04 obligated the trial court to act, the trial court was required to issue a decision on the

merits before acting on a plaintiff's nonsuit); *Lacy v. Cox*, 152 S.W.3d 480, 481 (Tenn. 2004) ("Reversing the Court of Appeals, we hold that a trial court has no authority to grant a voluntary dismissal without prejudice while the jury is deliberating.").

Flade v. City of Shelbyville, 699 S.W.3d 272, 296 n.28 (Tenn. 2024), is instructive on the point. There, in analyzing when TPPA petitioners' rights vest, the Tennessee Supreme Court "reiterate[d] that at the time of the voluntary nonsuit . . . , the TPPA petitions had not been argued or submitted to the trial court for decision" and that "[w]e do not decide if the result we reach today would be the same were those circumstances different." *Id.* Citing *Flade*, this Court then suggested that TPPA petitioners' rights vest after "the matter [is] submitted to the trial court for adjudication[.]" *Richman*, 2025 WL 1454842, at *4; *cf. Long*, 2025 WL 782310, at *6. Thus, in that context, TPPA petitioners have a right to a ruling.

"The same logic applies here." *Richman*, 2025 WL 1454842, at *5. And even if it did not, *Flade* is a *Rule 41* case—not a mootness case—and it was concerned narrowly with a plaintiff's Rule 41 right to end litigation by nonsuiting. Such considerations are not present here, given that the Plaintiffs never sought to nonsuit below and still seek to continue this litigation even now.

5. Denying a TPPA petition as moot when a plaintiff has failed to state a claim conflicts with the TPPA's text and would make no practical sense.

The trial court's ruling that an order granting a Rule 12 motion necessarily moots a TPPA petition suffers from yet another problem: It

conflicts with the TPPA's text and makes no practical sense. The TPPA states explicitly that a TPPA petition should be granted when a petitioner "establishes a valid defense to the claims in the legal action." *See* Tenn. Code Ann. § 20-17-105(c) ("[T]he court shall dismiss the legal action if the petitioning party establishes a valid defense to the claims in the legal action."). Rule 12.02 also identifies several valid "defenses" under Tennessee law, including "failure to state a claim upon which relief can be granted." *See* Tenn. R. Civ. P. 12.02(6). Thus, a TPPA petitioner who asserts a meritorious Rule 12 defense should have her TPPA petition granted. *See* § 20-17-105(c).

According to the trial court, though, if a TPPA petitioner asserts a valid Rule 12 defense, then a TPPA petition must be *denied*. That conclusion is textually unsupportable. The TPPA does not state that "the court shall dismiss the legal action if the petitioning party establishes a valid defense to the claims in the legal action ***unless it is a Rule 12 defense***." *See* § 20-17-105(c). Instead, the TPPA instructs that "the court shall dismiss the legal action if the petitioning party establishes a valid defense to the claims in the legal action." *Id.* Definitionally, a meritorious Rule 12 defense also is "a valid defense to the claims in the legal action." *Id.*; *cf. Pavuk v. U.S. Bank Nat'l Ass'n ND*, No. 2:09-CV-00514, 2010 WL 518165, at *3 (S.D. Ohio Feb. 3, 2010) ("Failure to state a claim is a 'defense cognizable at law' and therefore meets the requirement of a meritorious defense."). Even so, the trial court ruled that a valid Rule 12 defense *precludes* a trial court from granting a TPPA petition because such a defense renders a TPPA petition moot.

That can't be right. As a practical matter, it also introduces absurd results. TPPA petitioners should not have to withhold valid Rule 12 defenses to ensure their ability to secure the TPPA's remedies, including uncapped attorney's fee awards and sanctions. Certainly, requiring TPPA petitioners to abandon valid Rule 12 defenses would be inconsistent with the General Assembly's instruction that the TPPA "shall be construed broadly to effectuate its purposes and intent." Tenn. Code Ann. § 20-17-102. Section 20-17-102's countervailing goal—to "protect the rights of persons to file meritorious lawsuits for demonstrable injury"—also is not implicated here even theoretically, given that, by definition, a complaint that fails to state a claim upon which relief can be granted cannot be a "meritorious lawsuit[]." *Id.* Requiring TPPA petitioners to abandon valid Rule 12 defenses also would conflict with the General Assembly's instruction that the TPPA "is intended to provide an additional substantive remedy to protect the constitutional rights of parties and to supplement any remedies which are otherwise available to those parties . . . under the Tennessee Rules of Civil Procedure." Tenn. Code Ann. § 20-17-109.

More than that: Section 20-17-107(a)(2) contemplates that a court "shall award to the petitioning party . . . [a]ny additional relief, including sanctions, that the court determines necessary to deter repetition of the conduct by the party who brought the legal action or by others similarly situated[.]" One also might reasonably assume that a plaintiff who files and maintains through hearing—after months of litigation and after amending—a SLAPP-suit that fails even to state a claim would be *more* deserving of sanctions than a plaintiff who files a SLAPP-suit that fails

for lack of proof. *Cf.* *Liberty Synergistics Inc. v. Microflo Ltd.*, 718 F.3d 138, 147 (2d Cir. 2013) ("[T]he point of the anti-SLAPP statute is that you have a right *not* to be dragged through the courts because you exercised your constitutional rights.") (cleaned up). Under the trial court's reasoning, though, a plaintiff who files a SLAPP-suit that fails to state a claim upon which relief can be granted will always escape TPPA sanctions, because a Rule 12.02(6) dismissal moots a TPPA petition and the broader claims for relief asserted in it. This result would make no sense, either. It also saddles defendants like Ms. Pitts with enormous uncompensated expenses in contravention of the robust protection the TPPA was intended to provide. *See* *Nandigam Neurology, PLC*, 639 S.W.3d at 665–66.

* * *

For all of these reasons—settled mootness jurisprudence, persuasive authority on exactly the issue in controversy, vested rights authority, the TPPA's text, and practical policy considerations—Ms. Pitts's TPPA Petition is not moot. Thus, the trial court's order denying Ms. Pitts's TPPA Petition as moot should be reversed.

B. THIS COURT SHOULD REVERSE WITH INSTRUCTIONS TO GRANT MS. PITTS'S TPPA PETITION.

Normally, this Court is "constrained to only review those issues that have been decided by the trial court in the first instance." *Whalum v. Shelby Cty. Election Comm'n*, No. W2013-02076-COA-R3-CV, 2014 WL 4919601, at *3 n.3 (Tenn. Ct. App. Sept. 30, 2014). Remanding to adjudicate an undecided issue is not required, though. Instead, under Tennessee Rule of Appellate Procedure 36(a), an appellate court may

"grant the relief on the law and facts to which the party is entitled or the proceeding otherwise requires[.]" *Id.*; *see also Lovlace v. Copley*, 418 S.W.3d 1, 37 (Tenn. 2013) ("The typical remedies of a remand and de novo review are not the only options available to this Court. Tennessee Rule of Appellate Procedure 36(a) authorizes appellate courts to grant 'the relief on the law and facts to which the party is entitled or *the proceeding otherwise requires*.' 'This subdivision makes clear that the appellate courts are empowered to grant whatever relief an appellate proceeding requires.'") (internal citations omitted). Ruling on controlling issues of law that the record enables this Court to adjudicate also is especially appropriate when, as here, a statute contemplates that courts will resolve cases expediently. *See State ex rel. Iverson v. Halbert*, No. W2025-00097-COA-R3-CV, 2025 WL 3002824, at *4 (Tenn. Ct. App. Oct. 27, 2025) (invoking Rule 2 authority to waive finality rule in part because "actions such as this should be resolved expeditiously"); *Nandigam Neurology, PLC*, 639 S.W.3d at 666 (courts should "expediently resolve" TPPA petitions in keeping with the TPPA's purpose).

Here, given the extraordinary volume and expense of these proceedings to date and the simple nature of the issue left to be decided, this Court should consider and grant Ms. Pitts's TPPA Petition in the first instance. The reasons why are straightforward.

At the TPPA's first step, a TPPA petitioner has the initial burden "of making a prima facie case that a legal action against the petitioning party is based on, relates to, or is in response to that party's exercise of the right to free speech, right to petition, or right of association." Tenn. Code Ann. § 20-17-105(a). In cases like this one—where the Plaintiffs

filed malicious prosecution claims against Ms. Pitts for petitioning the judiciary and reporting their misconduct to a public university—that showing is easy. *See Doe v. Roe*, 638 S.W.3d 614, 623 (Tenn. Ct. App. 2021) ("[B]ased on our plain reading of the TPPA, the right to petition merely requires there to be a communication that is either intended to elicit consideration or review by a governmental body or intended to 'enlist public participation' to effectuate such consideration."). Indeed, because all malicious prosecution claims arise out of petitions to a "governmental body," *id.*, the TPPA necessarily will apply "to every malicious prosecution action" filed in a Tennessee court. *See Jarrow Formulas, Inc. v. LaMarche*, 74 P.3d 737, 741 (Cal. 2003) ("[B]y its terms, [California's anti-SLAPP statute] potentially may apply to every malicious prosecution action, because every such action arises from an underlying lawsuit, or petition to the judicial branch. By definition, a malicious prosecution suit alleges that the defendant committed a tort by filing a lawsuit. . . . Accordingly, every Court of Appeal that has addressed the question has concluded that malicious prosecution causes of action fall within the purview of the anti-SLAPP statute[.]").

Given this context, Ms. Pitts met her initial burden under the TPPA. And because she established a valid defense to liability (that the Plaintiffs failed to state a claim on which relief can be granted), her TPPA Petition necessarily must be granted. *See* Tenn. Code Ann. § 20-17-105(c) ("[T]he court shall dismiss the legal action if the petitioning party establishes a valid defense to the claims in the legal action."). Thus, this Court should remand with instructions to grant Ms. Pitts's TPPA Petition and adjudicate her claims for attorney's fees and sanctions.

C. MS. PITTS IS ENTITLED TO HER FULL ATTORNEY'S FEES AND COSTS.

Fee-shifting in favor of prevailing TPPA petitioners is mandatory. *See* Tenn. Code Ann. § 20-17-107(a)(1). Thus, this Court has "conclude[d] that the TPPA allows for an award of reasonable attorney's fees incurred on appeal, provided that the court dismisses a legal action pursuant to a petition filed under this chapter and that such fees are properly requested in an appellate pleading." *Nandigam Neurology*, 639 S.W.3d at 670.

As explained above, this Court should reverse with instructions to grant Ms. Pitts's TPPA Petition. Upon doing so, this Court also should order that Ms. Pitts is entitled to recover her attorney's fees and costs incurred in the trial court and on appeal. *Id.* Ms. Pitts is entitled to receive that relief, given that: (1) in compliance with the Tennessee Supreme Court's instructions, she has expressly raised her entitlement to such fees in her Statement of the Issues and in her Brief's conclusion, *see Killingsworth v. Ted Russell Ford, Inc.*, 205 S.W.3d 406, 410 (Tenn. 2006), *Charles v. McQueen*, 693 S.W.3d 262, 284 (Tenn. 2024); and (2) prevailing in this appeal is necessary to secure the ultimate relief that Ms. Pitts is seeking here, *see, e.g.*, *Norman v. Hous. Auth. of Montgomery*, 836 F.2d 1292, 1305 (11th Cir. 1988) ("To paraphrase the acute observation of baseball great Yogi Berra, a case ain't over till it's over. This means that . . . counsel are entitled to compensation until all benefits obtained by the litigation are in hand.").

IX. CONCLUSION

For the foregoing reasons, this Court should reverse the trial court's judgment denying Ms. Pitts's TPPA Petition as moot. This Court also should remand with instructions to: (1) grant Ms. Pitts's TPPA Petition; (2) consider Ms. Pitts's unadjudicated claims for attorney's fees and sanctions; and (3) award Ms. Pitts her reasonable attorney's fees and costs incurred in the trial court and on appeal.

Respectfully submitted,

By: /s/ Daniel A. Horwitz

DANIEL A. HORWITZ, BPR #032176
SARAH L. MARTIN, BPR #037707
LAURA E. CANTWELL, BPR #043452
HORWITZ LAW, PLLC
4016 WESTLAWN DR.
NASHVILLE, TN 37209
(615) 739-2888
daniel@horwitz.law
sarah@horwitz.law
laura@horwitz.law

Counsel for Eriana Pitts

CERTIFICATE OF ELECTRONIC FILING COMPLIANCE

Under Tennessee Supreme Court Rule 46, § 3.02, the relevant sections of this brief contain 9,587 words, as calculated by Microsoft Word, and it was prepared using 14-point Century Schoolbook font.

By: /s/ Daniel A. Horwitz
Daniel A. Horwitz

CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2025, a copy of the foregoing was sent via the Court's e-filing system, via USPS mail, postage prepaid, or via email to the following:

Mark T. Freeman, Esq. (#16098)
2126 21st Avenue South
Nashville, Tennessee 37212
mark@freemanfuson.com
Phone: 615-298-7272
Fax: 615-298-7274

Attorney for Plaintiffs/Cross-Appellants

Chelsey A. Stevenson
Rudd Law Offices, PLLC
611 Commerce St. Ste. 2613
Nashville, TN 37203
chelsey@ruddlawoffices.com

Pro se Third-Party Defendant

By: /s/ Daniel A. Horwitz
DANIEL A. HORWITZ, BPR #032176