IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs January 3, 2023

ROBERT E. LEE FLADE v. CITY OF SHELBYVILLE, TENNESSEE ET AL.

Appeal from the Circuit Court for Bedford County
No. 13837 M. Wyatt Burk, Judge

No. M2022-00553-COA-R3-CV

This appeal involves application of the Tennessee Public Participation Act (TPPA). Plaintiff filed multiple causes of action against the City of Shelbyville, the Bedford County Listening Project, and several individuals – one of whom is a member of the Shelbyville City Council. Defendants filed motions to dismiss for failure to state a claim under Tennessee Rules of Civil Procedure 12.06, and two of the non-governmental Defendants also filed petitions for dismissal and relief under the TPPA. The non-governmental Defendants also moved the trial court to stay its discovery order with respect to Plaintiff's action against the City. The trial court denied the motion. The non-governmental Defendants filed applications for permission for extraordinary appeal to this Court and to the Tennessee Supreme Court; those applications were denied. Upon remand to the trial court, Plaintiff voluntarily non-suited his action pursuant to Tennessee Rule of Civil Procedure 41.01. The non-governmental Defendants filed motions to hear their TPPA petitions notwithstanding Plaintiff's nonsuit. The trial court determined that Defendants' TPPA petitions to dismiss were not justiciable following Plaintiff's nonsuit under Rule 41.01. The Bedford County Listening Project and one individual Defendant, who is also a member of the Shelbyville City Council, appeal. We affirm the judgment of the trial court.

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

KENNY ARMSTRONG, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and THOMAS R. FRIERSON, II, J., joined.

Daniel A. Horwitz, Lindsay Smith, and Melissa K. Dix, Nashville, Tennessee, for the appellant, Stephanie Isaacs.

Sarah L. Martin, Nashville, Tennessee, for the appellant, Bedford County Listening

Project.

Jason R. Reeves, Shelbyville, Tennessee, for the appellee, Robert E. Lee Flade.

Cassandra M. Crane, Shelbyville, Tennessee, for the appellee, City of Shelbyville.[1]

OPINION

I. Factual and Procedural History

This appeal requires us to construe the Tennessee Public Participation Act ("the TPPA" or the "Act"). The relevant facts are largely undisputed.

Plaintiff/Appellee Robert E. Lee Flade is a Bedford County resident who purchased a duplex in Shelbyville, Tennessee, in December 2020. According to Mr. Flade, he purchased the duplex with the intent to repair and resell it. Defendant/Appellant Stephanie Isaacs is a member of the Shelbyville City Council. Ms. Isaacs is also associated with Defendant/Appellant Bedford County Listening Project ("the BCLP," and together with Ms. Isaacs, "Appellants"). The BCLP is a non-profit organization that, according to its TPPA petition, "provides, among other things, resources to and advocacy on behalf of tenants in Bedford County, Tennessee[.]" From the record, Ms. Isaacs' association with the BCLP is unclear.[2]

In July 2021, Mr. Flade filed an action against the City of Shelbyville (the "City"), Ms. Isaacs, and the BCLP.[3] In his complaint, Mr. Flade asserted that Ms. Issacs contacted him by text in January 2021 stating: "My name is Stephanie, I'm with the Bedford County Listening Project and on the Shelbyville City Council. I need to speak with you about a major issue with one of your tenants." Mr. Flade asserted that he contacted Ms. Isaacs, who informed him that "he had tenants with a water leak and that he had to fix it for them." In his complaint, Mr. Flade asserted that, when he purchased the duplex, he informed the tenants that they needed to vacate the property, and that he was unaware that anyone was

[1] The City of Shelbyville did not submit a brief in this appeal. By order of November 1, 2022, this Court ordered "that this appeal shall be submitted for a decision without a brief on behalf of the City of Shelbyville."

[2] The record contains a September 2020 article from the *Shelbyville Times-Gazette* stating: "[Ms. Isaacs] is currently a Bedford County Listening Project (BCLP) leader and advocate for renter rights." We take judicial notice of the Shelbyville City Council website, which describes Ms. Isaacs as "a leader of the Bedford County Listening Project." Shelbyville City Council Members, *available at* https://www.shelbyvilletn.org/government/city_council. In her brief, Ms. Isaacs states that she "works privately as a member of the BCLP[.]"

[3] Mr. Flade also named Wesley Ford and Lyndsey Rivera, who allegedly resided in the Shelbyville duplex, as Defendants. Neither Wesley Ford, nor Lyndsey Rivera were served, and neither participated in this action.

residing in the property when Ms. Isaacs contacted him. He asserted that he informed Ms. Isaacs that, to the best of his knowledge, no tenants were occupying the duplex.

Mr. Flade asserted that he began to receive "unknown calls and texts demanding he make repairs for his tenants, threatening him and calling him names." He asserted that Ms. Isaacs and the BCLP had published his personal information on social media, including his address and telephone number, and had "encouraged others to contact [him] and demand that he make repairs." He asserted, "specifically, Defendants Isaacs and BCLP falsely claimed that [Mr. Flade] was the reason for a child going with[out] heat and water." He asserted:

> Defendants Isaacs, BCLP and [Kelly Sue] Waller placed a video on their social media page in which Isaacs claims she is acting as a city council person, that [Mr. Flade] is a slum lord and that people like Robert Flade are just messing with people's lives, among other numerous defamatory and libelous per se statements.[4] That said statements were harmful to [Mr. Flade], demeaning and false in every manner. Defendant Isaacs begged people watching her video to contact him and pressure him to make repairs and be a good neighbor.

Mr. Flade also asserted in his complaint that Ms. Isaacs at all times identified herself as a City Council member and a member of BLCP and that her comments "were not made in a public meeting as an act of government sufficient to remove her conduct from immunity under the [Governmental Tort Liability Act ("GTLA")]." He further asserted:

> Defendant Isaacs and BCLP caused Defendants Ford and/or Rivera to contact the City Codes Department to file a complaint against Plaintiff for codes violations he did not create or have an opportunity to know about. That said conduct resulted in the City's codes department issuing the Plaintiff a Notice of Repair demanding certain repairs be made within 30 days, a Notice Plaintiff was forced to file an appeal and request a formal hearing on costing him additional funds out of pocket.

Mr. Flade asserted causes of action against Ms. Isaacs and the BCLP for: (1) "libel per se"; (2) intentional interference with business; (3) intentional infliction of emotional distress; (4) stalking; and (5) harassment. He sought compensatory damages in the amount of $1,000,000 and an additional $1,000,000 in punitive damages. Mr. Flade asserted that "as an agent of the City of Shelbyville, Isaacs conduct should be related to the city making the city liable for all damages caused by her conduct." He also sought damages against Ms. Isaacs in her personal capacity should her conduct be determined to be "not part of her

[4] The BCLP characterized Kelly Sue Waller as its "lead organizer." Ms. Waller was not named as a Defendant.

employment and responsibility to the City."

Mr. Flade sent written discovery requests to the City on August 12, 2021, and the City agreed to respond to his discovery requests no later than October 26, 2021. In the meantime, on August 25, 2021, the City filed a motion to dismiss pursuant to Tennessee Rule of Civil Procedure Rule 12.02(6), along with a memorandum of law in support of its motion. The City asserted that under the GTLA, Tennessee Code Annotated section 29-20-101, *et seq.*, it was immune from liability for Mr. Flade's intentional tort claims. The City's motion was set to be heard on October 28, 2021 but was reset for December 9, 2021 by agreement of the parties. In its October 9, 2021 order resetting the matter, the trial court stated that Ms. Isaacs and the BCLP would have until December 17, 2021, "to answer, move, or otherwise respond to [Mr. Flade's] complaint."

On November 8, 2021, Ms. Isaacs filed a motion to dismiss pursuant to Tennessee Rule of Civil Procedure 12.02(6) and pursuant to the TPPA. In her November 23, 2021 memorandum of law in support of her Rule 12.02(6) motion to dismiss, Ms. Isaacs asserted, "Councilwoman Isaac's alleged actions are categorically barred from suit based on her absolute legislative immunity." She also asserted that Mr. Flade's claims were "inactionable as a matter of law[.]" Ms. Isaacs adopted the City's arguments concerning Mr. Flade's "GTLA claims . . . by virtue of her role as a city official."

In her memorandum, Ms. Isaacs argued that the TPPA governed Mr. Flade's claims against her in her personal capacity. She asserted that her statements were within the purview of speech protected by the Act because it concerned a "matter of public concern[.]" Ms. Isaacs maintained that she had met her burden of demonstrating that Mr. Flade's "legal action against [her] [was] based on, relates to, or is in response to [her] exercise of the right to free speech, right to petition, or right of association" under section 105(a) of the Act and that the court was required to dismiss the action unless Mr. Flade established a *prima facie* case for each essential element of his claim. Ms. Isaacs additionally asserted that she had established defenses to Mr. Flade's claims for the purposes of section 105(c) of the Act. She further asserted that Mr. Flade's defamation claim was "foreclosed from liability by the qualified common interest privilege." She prayed for dismissal of the claims against her with prejudice, attorney's fees, and costs. Ms. Isaacs additionally prayed for "discretionary sanctions" in the amount of $60,000 "to deter "future misconduct[.]" Ms. Isaacs attached a number of exhibits to her petition, including selected sections of the "International Property Management Code," several City proclamations, and a September 2020 *Shelbyville Times-Gazette* article that quotes her as stating that she was running for City Council to advocate for renters' rights and to "'work to hire a City manager that cares about renters.'"

On November 30, 2021, Mr. Flade filed a motion to compel the City to respond to his August discovery requests. He asserted that: (1) at the request of the City's legal counsel, he had emailed his requests to the City on September 10; (2) counsel had advised

him that she had been away from the office for a family emergency and was unable to respond to Mr. Flade's discovery requests by October 26, as initially agreed; and (3) he had agreed to reschedule the hearing to December 9 in order to allow the City additional time to respond. Ms. Isaacs filed a motion in opposition to Mr. Flade's motion to compel on the same day. In her motion, she asserted that discovery was not relevant to either the City's motion to dismiss or to her motion to dismiss under Rule 12.02(6). She additionally asserted that all discovery in the matter was automatically stayed pursuant to section 104(d) of the TPPA.

On December 1, 2021, the BCLP filed a motion to dismiss pursuant to Rule 12.02(6) and the TPPA.[5] In a memorandum of law filed the same day, the BCLP asserted that, on December 17, 2020, one of its "organizers" had been contacted by a "woman named Holly . . . via Facebook messenger because she had received a Notice of Eviction from Mr. Flade[]" requiring her and Wesley Ford to vacate the property by January 1, 2021. The BCLP asserted that: (1) the organizer provided Holly with "information and resources"; (2) it continued to work with her on issues relating to her heat and water; (3) Holly reported that her husband had contacted Mr. Flade, who refused to make repairs; and (4) on March 11, 2021, "Holly sent the BLPC organizer a Notice of Hearing on a detainer warrant" that she had received. The BCLP asserted that it was "diligently attempting to help" Holly and her family and that it "also worked with Councilmember Stephanie Isaacs to bring awareness of these issues via social media and to advocate for Holly's family, Mr. Flade's tenants." The BLCP asserted that: (1) Mr. Flade failed to state a "cognizable cause of action"; (2) its statements were true or substantially true; (3) Mr. Flade could not prove actual damages; and (4) its speech was protected speech under the TPPA. The BCLP sought dismissal of Mr. Flade's action, attorney's fees, and costs. Like Ms. Isaacs, the BCLP also sought sanctions to deter further action by Mr. Flade or "others similarly situated."

The BLCP also filed a "declaration" by Kelly Sue Waller in which she stated that she was the lead organizer for BCLP and the administrator of its Facebook page. Ms. Waller stated that she was the organizer who had been contacted by Holly and that she "worked with Councilmember Stephanie Isaacs to bring awareness to these issues via social media and to advocate for Holly's family, Mr. Flade's tenants." The BCLP also filed a flash drive that contains a 22-minute Facebook video in which Ms. Waller and Ms.

[5] As the parties acknowledge, the BCLP's petition to dismiss pursuant to the TPPA was filed beyond the 60-day period allocated by Tennessee Code Annotated section 20-17-104(b). However, the section permits the trial court to exercise its discretion to allow a party to file a petition to dismiss pursuant to the Act beyond the 60-day limit. In this case, although the BCLP did not move the trial court to exercise its discretion to permit a late filing, and the trial court clearly did not do so, BCLP filed its petition within the time period established by the court in its October 9, 2021 order, which gave the parties until December 17 "to answer, move, or otherwise respond to [Mr. Flade's] complaint." Further, the timeliness of BCLP's motion has not been raised as an issue.

Isaacs posted Mr. Flade's phone number and urged viewers to call, text, or message Mr. Flade via a link to his Facebook page to demand that he make repairs to the property and be a "good neighbor."

Mr. Flade responded in opposition to the motions filed by Ms. Isaacs and the BCLP on December 1 and December 10, respectively. He also filed an affidavit in which he stated, in relevant part, that the tenants, who had rented the property from the previous owner and had not paid rent for several months, had agreed to vacate the property by December 21, 2020. He also stated that Ms. Isaacs texted him on January 11, 2021, and identified herself as a member of the City Council and the BCLP which "led to feelings of fear and anxiety as a result of a member of the City Council contacting me directly." He also stated that he had received a notice from the City codes department that an inspection had been performed on January 26, 2021, and that the only "issue" identified was the absence of smoke alarms, which had been removed by the tenants. Mr. Flade stated that by March 29, 2021, the property "had been abandoned in a disgusting state with many damages to the property caused by Defendants Ford and Rivera." He asserted that he was "still . . . in fear for his safety based on the conduct of Defendants Isaacs and BCLP and continue[d] to suffer reputational harm based on their actions."

Ms. Isaacs and the BCLP filed responses in opposition to Mr. Flade's motions on December 2, 2021. The City filed a response to Mr. Flade's motion to compel on December 7, 2021, and adopted Ms. Isaacs' November response in opposition to "avoid making duplicative arguments[.]"

The trial court heard the matter on December 9, 2021. By order of December 20, 2021, the trial court found that: (1) Mr. Flade had proffered his first discovery requests on August 12; (2) Mr. Flade had agreed to afford the City an extension of time to respond; (3) Ms. Isaacs filed her TPPA petition before the City responded to Mr. Flade's request; and (4) the City subsequently refused to respond in light of the "apparent automatic stay" imposed by section 104 of the Act. The trial court further found that there was good cause to compel the City to respond in light of the parties' earlier agreement and because the City's response could result in Mr. Flade amending his complaint "to clear up some of the facts, allegations, or causes of action." The trial court also found that the TPPA did not preclude the City from responding to discovery as a "non-petitioning party[.]" The court granted Mr. Flade's motion to compel and for an extension of time to respond to the City's motion. The trial court ordered the City to respond to Mr. Flade's discovery requests no later than December 20, 2021. It declined to hear arguments on the remaining motions and petitions and continued the matter until February 24, 2022.

In the meantime, Ms. Isaacs and the BCLP filed a motion to stay discovery and a Tennessee Rules of Appellate Procedure Rule 10 application for permission for extraordinary appeal of the trial court's discovery order. We granted the motion to stay discovery pending consideration of the applications. On January 19, 2022, we denied the

applications for extraordinary appeal and lifted the stay of discovery. On January 20, 2022, the City provided Mr. Flade with a digital link to its discovery responses. On the same day, Ms. Isaacs filed a Rule 10 application for permission for extraordinary appeal to the Tennessee Supreme Court, which BCLP subsequently joined. The supreme court stayed discovery by order entered January 21, 2022. On February 3, 2022, the supreme court denied the application for extraordinary appeal and lifted the stay of discovery.

On February 18, 2022, Mr. Flade filed a notice of voluntary dismissal pursuant to Tennessee Rules of Civil Procedure 41.01. The trial court dismissed the matter without prejudice, and Ms. Isaacs filed a "notice of intent to proceed" with the hearing of her TPPA petition set for February 24, 2022. The BCLP filed a similar notice of intent on February 22, 2022. Mr. Flade filed his response on February 23, 2022, wherein he asserted that the trial court was without subject-matter jurisdiction to adjudicate the TPPA petitions because the TPPA is not excepted from his right to a nonsuit under Rule 41.01.

Following a hearing on February 24, 2022, the trial court engaged in a thorough and detailed analysis and determined that the TPPA was not excepted from the right to a dismissal without prejudice under Rule 41.01. The trial court entered its final order on April 25, 2022, and Appellants filed timely notices of appeal to this Court.

II. ISSUES

Appellants raise the following issues in their joint brief to this Court:

1. Whether the statutory exception to Rule 41.01(1) of the Tennessee Rules of Civil Procedure requires a trial court to adjudicate a filed and pending Tennessee Public Participation Act (TPPA) Petition after a plaintiff takes a voluntary nonsuit without prejudice.

2. Whether the vested rights exception to Rule 41.01(1) of the Tennessee Rules of Civil Procedure requires a trial court to adjudicate a filed and pending TPPA Petition after a plaintiff takes a voluntary nonsuit without prejudice.

3. Whether the trial court erred by refusing to adjudicate the Defendants' TPPA Petitions due to the Plaintiff's nonsuit.

4. Whether the trial court erred by concluding that Tennessee Code Annotated § 20-17-104(d)'s discovery stay does not apply to non-petitioning parties in TPPA cases and deferring a ruling on the Defendants' TPPA Petitions as a result.

5. Whether the trial court erred by concluding that "based upon the agreement" made between the Plaintiff and the Defendant City of Shelbyville regarding discovery, there was "good cause" to lift Tennessee Code Annotated § 20-17-104(d)'s discovery stay.

6. Whether the trial court erred by refusing to adjudicate the Defendants' TPPA Petitions when they came before the Court for hearing on December 9, 2021.

7. Whether the Defendants are entitled to their attorney's fees, costs, and expenses incurred in prosecuting this appeal provided that the trial court grants their TPPA Petitions upon remand

III. STANDARD OF REVIEW

The issue presented by this appeal involves the interpretation and applicability of the TPPA as codified at Tennessee Code Annotated section 20-17-101, *et seq*. The construction of a statute is a question of law. ***Coffman v. Armstrong Int'l, Inc.***, 615 S.W.3d 888, 893 (Tenn. 2021) (citations omitted). The application of a statute to the facts of a case also presents a question of law. ***Comm'ns of Powell-Clinch v. Util. Mgmt. Review Bd.***, 427 S.W.3d 375, 381 (Tenn. Ct. App. 2013) (citation omitted). We review questions of law *de novo* upon the record with no presumption of correctness for the determination of the trial court. ***Coffman***, 615 S.W.3d at 893 (citations omitted).

The courts' primary goal when construing a statute is to discern and effectuate the intent of the General Assembly. ***Coffman***, 615 S.W.3d at 894 (citations omitted). Therefore, we apply the plain and normal meaning of the words chosen by the legislature, and we seek to interpret the statute without restricting or expanding the legislature's intended scope. ***Id.*** (citations omitted). We must also "'avoid a construction that leads to absurd results.'" ***Id.*** (quoting ***Tennessean v. Metro. Gov't of Nashville***, 485 S.W.3d 857, 872 (Tenn. 2016) (citing ***Lee Med., Inc. v. Beecher***, 312 S.W.3d 515, 527 (Tenn. 2010))). Additionally, a statute "'should be construed, if practicable, so that its component parts are consistent and reasonable.'" ***In re Estate of Tanner***, 295 S.W.3d 610, 614 (Tenn. 2009) (quoting ***Marsh v. Henderson***, 424 S.W.2d 193, 196 (Tenn. 1968)).

"When the language of the statute is clear and unambiguous, we look no further than the language of the statute itself to determine its meaning." ***Nandigam Neurology, PLC v. Beavers***, 639 S.W.3d 651, 657 (Tenn. Ct. App. 2021) (citing ***Nationwide Mut. Fire Ins. Co. v. Memphis Light, Gas and Water***, 578 S.W.3d 26, 30 (Tenn. Ct. App. 2018)). When the statutory language is ambiguous or unclear, the courts may reference other sources, including the legislative history of the statute and the statutory scheme, to discern its meaning. ***Coffman***, 615 S.W. 3d at 894 (Tenn. 2021) (citations omitted). The courts must

seek to resolve potential conflicts between statutes in a way that "'provide[s] for a harmonious operation of the laws.'" ***Id.*** (quoting ***State v. Frazier***, 558 S.W.3d 145, 153 (Tenn. 2018) (citing ***Lovlace v. Copley***, 418 S.W.3d 1, 20 (Tenn. 2013))).

IV. ANALYSIS

We begin our discussion by observing that none of the parties' motions to dismiss under Tennessee Rule of Civil Procedure Rule 12.02 or the TPPA comply with Tennessee Rule of Civil Procedure 7.02(1), which requires that motions "state with particularity the grounds therefore." *See, e.g.,* ***Jennings v. Sewell-Allen Piggly Wiggly***, 173 S.W.3d 710, 711 (Tenn. 2005). As we have often stated, it is not sufficient that the grounds for dismissal be set-forth in a memorandum of law accompanying or supplementing the motion. *See, e.g.,* ***Justice v. Nelson***, No. E2018-02020-COA-R3-CV, 2019 WL 6716300, at *3 (Tenn. Ct. App. Dec. 10, 2019) (citing ***Willis v. Tenn. Dept. of Corr.***, 113 S.W.3d 706, 709 n. 2 (Tenn. 2003)). "'The party moving for dismissal must state the particular grounds for the motion in the motion itself. Merely moving for dismissal based on the failure to state a claim and stating the grounds in an accompanying memorandum does not fulfill the requirement.'"[6] ***Shomo v. City of Franklin***, No. M200600319COAR3CV, 2008 WL 490646, at *4 (Tenn. Ct. App. Feb. 22, 2008) (quoting ***Ralph v. Pipkin,*** 183 S.W.3d 362, 366 n.1 (Tenn. Ct. App. 2005)). However, because the memoranda of law are included in the appellate record, and because the issue of insufficiency of the motions was not raised by Mr. Flade in either the trial court or in this Court, we will consider the motions despite the fact that they do not comport with Rule 7.02(1). *See* ***Allen v. Ozment***, No. W2017-00887-COA-R3-CV, 2018 WL 6169238, at *6 (Tenn. Ct. App. Nov. 26, 2018); ***Shomo***, 2008 WL 490646, at *5.

Turning to the TPPA, which was enacted in 2019, we note that it has been characterized as Tennessee's "anti-SLAPP" statute. ***Doe v. Roe***, 638 S.W.3d 614, 617 Tenn. Ct. App. 2021); ***Nandigam Neurology***, 639 S.W.3d at 660 ("[T]he [TPPA] is, on its face, consistent with the anti-SLAPP legislation of many other states.").[7] Beginning in the

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[6] As we have repeatedly noted, under Rule 24(a) of the Tennessee Rules of Appellate Procedure, "'trial briefs and counsel's memoranda of law are not part of the record on appeal.'" *See, e.g.,* ***Shomo***, 2008 WL 490646, at *4 (quoting ***Willis v. Tenn. Dept. of Corr.***, 113 S.W.3d 706, 709 n.2 (Tenn. 2003)). Accordingly, we again "want to reiterate that a motion to dismiss must state the grounds for dismissal in the motion itself and not just in an accompanying memorandum of law." ***Id.*** at *5.

[7] We observe that Tennessee Code Annotated section 4-21-1001, *et. seq.*, which was enacted in 1997, is titled the "Tennessee Anti-Slapp Act of 1997." The 1997 act, which is far more limited in scope than the TPPA, provides, in part:

> (a) It is the intent of the general assembly to provide protection for individuals who make good faith reports of wrongdoing to appropriate governmental bodies. Information provided by citizens concerning potential misdeeds is vital to effective law enforcement and the efficient operation of government.

1980s, states have adopted anti-SLAPP statutes to respond to "strategic lawsuits against public participation"—lawsuits which appeared to be "'intended to silence speech in opposition to monied interests rather than to vindicate a plaintiff's right.'" ***Nandigam Neurology***, 639 S.W.3d at 657-658 (quoting Todd Hambidge, et al., *Speak Up. Tennessee's New Anti-SLAPP Statute Provides Extra Protections to Constitutional Rights*, 55 TENN. B.J. 14, 14-15 (Sept. 2019)). Plaintiffs in SLAPP suits abuse litigation to chill public speech or protest—or participation in matters of public concern—by forcing defendants to expend considerable funds on attorneys' fees and costs to defend the suit. ***Id.*** at 658 (quoting ***Sandholm v. Kuecker***, 356 Ill. Dec. 733, 962 N.E.2d 418, 427-428 (Ill. 2012) (citing John C. Barker, *Common–Law and Statutory Solutions to the Problem of SLAPPs*, 26 Loy. L.A. L.Rev. 395, 403-406 (1993))). Because the plaintiff achieved the goal of chilling opposition "through the ancillary effects of the lawsuit itself[,]" rather than by prevailing on the merits, the choice of a particular cause of action was of little consequence. ***Id.*** (quoting ***id.*** (quoting Mark J. Sobczak, Comment, *SLAPPed in Illinois: The Scope and Applicability of the Illinois Citizen Participation Act*, 28 N. Ill. U.L. Rev. 559, 561 (2008))) (internal quotation marks omitted). SLAPP suits often include claims for defamation, interference with contract or prospective economic advantage and, "[b]ecause winning is not a SLAPP plaintiff's primary motivation, the existing safeguards to prevent meritless claims from prevailing were seen as inadequate, prompting many states to enact anti-SLAPP legislation. These statutory schemes commonly provide for expedited judicial review, summary dismissal, and recovery of attorney fees for the party who has been "SLAPPed." ***Id.*** (quoting ***id.*** (citing Kathryn W. Tate, *California's Anti–SLAPP Legislation: A Summary of and Commentary on Its Operation and Scope,* 33 Loy. L.A. L.Rev. 801, 804–05 (2000))).

The General Assembly's purpose in enacting the TPPA was

> to encourage and safeguard the constitutional rights of persons to petition, to speak freely, to associate freely, and to participate in government to the fullest extent permitted by law and, at the same time, protect the rights of persons to file meritorious lawsuits for demonstrable injury.

Tenn. Code Ann. § 20-17-102. The General Assembly enacted the TPPA as "necessary to implement the rights protected by the Constitution of Tennessee, Article I, §§ 19 and 23, as well as by the First Amendment to the United States Constitution[.]" ***Id.*** The Act is

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> (b) The general assembly finds that the threat of a civil action for damages in the form of a "strategic lawsuit against political participation" (SLAPP), and the possibility of considerable legal costs, can act as a deterrent to citizens who wish to report information to federal, state, or local agencies. SLAPP suits can effectively punish concerned citizens for exercising the constitutional right to speak and petition the government for redress of grievances. Tenn. Code Ann. § 4-21-1002.

"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 common law, statutory law, or constitutional law or under the Tennessee Rules of Civil Procedure." ***Id.*** § 20-17-109. The TPPA is to "be construed broadly to effectuate its purposes and intent." Tenn. Code Ann. § 20-17-102.

The TPPA provides that "[i]f a legal action is filed in response to a party's exercise of the right of free speech, right to petition, or right of association, that party may petition the court to dismiss the legal action." ***Id.*** § 20-17-104(a). The Act defines the "[e]xercise of the right of free speech" as "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[.]" ***Id.*** § 20-17-103. A "matter of public concern" is defined as including an issue related to:

> (A) Health or safety;
> (B) Environmental, economic, or community well-being;
> (C) The government;
> (D) A public official or public figure;
> (E) A good, product, or service in the marketplace;
> (F) A literary, musical, artistic, political, theatrical, or audiovisual work; or
> (G) Any other matter deemed by a court to involve a matter of public concern[.]

Id. § 20-17-103(6). The TPPA defines a "legal action" as a claim, cause of action, petition, cross-claim, or counterclaim or any request for legal or equitable relief initiated against a private party[,]" and it provides that "party does not include a governmental entity agency, or employee." ***Id.*** § 20-17-103(5) & (7). The TPPA provides that "[a]ll discovery in the legal action is stayed upon the filing of a petition under this section. The stay of discovery remains in effect until the entry of an order ruling on the petition." Tenn. Code Ann. § 20-17-104(d). However, "[t]he court may allow specified and limited discovery relevant to the petition upon a showing of good cause." ***Id.***

A party petitioning for dismissal pursuant to the TPPA "has the 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." ***Id.*** § 20-17-105(a). Once the petitioning party has met his or her burden, the burden shifts to responding party to "establishe[] a prima facie case for each essential element of the claim in the legal action." ***Id.*** § 20-17-105(b). "If the court dismisses a legal action pursuant to a petition filed under this chapter, the legal action or the challenged claim is dismissed with prejudice." ***Id.*** § 20-15-105(e). Additionally, if the trial court

> dismisses a legal action pursuant to a petition filed under the chapter, the

court shall award to the petitioning party:

> (1) Court costs, reasonable attorney's fees, discretionary costs, and other expenses incurred in filing and prevailing upon the petition; and
> (2) Any 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."

Id. § 20-17-107(a)(1)&(2). However, '[i]f the court finds that a petition filed under this chapter was frivolous or was filed solely for the purpose of unnecessary delay, and makes specific written findings and conclusions establishing such finding, the court may award to the responding party court costs and reasonable attorney's fees incurred in opposing the petition." ***Id.*** § 20-17-107(b).

A "trial court's order dismissing or refusing to dismiss a legal action pursuant to a petition filed under this chapter is immediately appealable as a matter of right to" this Court. ***Id.*** § 20-17-106. The appeal is governed the Tennessee Rules of Appellate Procedure. ***Id.*** The Act does not apply to any enforcement action brought by the State or its political subdivisions, and it does not create a "private right of action" or "any cause of action for any government entity, agency, or employee." ***Id.*** § 20-17-108. It "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 common law, statutory law, or constitutional law or under the Tennessee Rules of Civil Procedure." ***Id.*** § 20-17-109.

With the provisions of the Act and the stated purpose of the General Assembly in mind, we turn to the issues raised in this appeal.

A. Exceptions to Tennessee Rule of Civil Procedure 41.01(1)

We turn first to whether a petition for relief under the TPPA precludes a plaintiff from taking a nonsuit without prejudice pursuant Rule 41.01(1) of the Tennessee Rules of Civil Procedure ("Rule 41.01"). This issue requires us to consider the interplay between Rule 41.01 and the TPPA.

We begin our discussion by reiterating that the Tennessee Rules of Civil Procedure are promulgated by the Tennessee Supreme Court, approved by the General Assembly, and "have the force and effect of law." ***Hall v. Haynes***, 915 S.W.3d 564, 571 (Tenn. 2010) (internal quotation marks omitted in original) (quoting ***Frye v. Blue Ridge Neurosci. Ctr., P.C.,*** 70 S.W.3d 710, 713 (Tenn. 2002) (quoting ***Crosslin v. Alsup,*** 594 S.W.2d 379, 380 (Tenn. 1980))). Accordingly, the interpretation of the Rules is a question of law subject to *de novo* review with no presumption of correctness. ***Thomas v. Oldfield***, 279 S.W.3d 259,

261 (Tenn. 2009). The rules applicable to statutory construction apply to the interpretation of the Rules. ***Id.*** The Tennessee Supreme Court has held that "'[c]onflicts between provisions of the Tennessee Rules of Civil Procedure and Tennessee statutes which cannot be harmonized are resolved in favor of the Rules of Civil Procedure.'" ***Ken Smith Auto Parts v. Thomas***, 599 S.W.3d 555, 566 (Tenn. 2020) (quoting ***Pratcher v. Methodist Healthcare Hospitals,*** 407 S.W.3d 727, 736 (Tenn. 2013) (citing Tenn. Code Ann. § 16-3-406)).

Rule 41.01(1) provides:

> Subject to the provisions of Rule 23.05, Rule 23.06, or Rule 66 or of any statute, and except when a motion for summary judgment made by an adverse party is pending, the plaintiff shall have the right to take a voluntary nonsuit to dismiss an action without prejudice by filing a written notice of dismissal at any time before the trial of a cause and serving a copy of the notice upon all parties, and if a party has not already been served with a summons and complaint, the plaintiff shall also serve a copy of the complaint on that party; or by an oral notice of dismissal made in open court during the trial of a cause; or in jury trials at any time before the jury retires to consider its verdict and prior to the ruling of the court sustaining a motion for a directed verdict. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of plaintiff's motion to dismiss, the defendant may elect to proceed on such counterclaim in the capacity of a plaintiff.[8]

Under Rule 41.01(1), a plaintiff may take "'a voluntary non-suit . . . **as a matter of right**.'" ***Ewan v. Hardison Law Firm***, 465 S.W.3d 124, 130 (Tenn. Ct. App. 2014) (quoting ***Clevenger v. Baptist Health Sys.***, 974 S.W.2d 699, 700 (Tenn. Ct. App. 1997)) (emphasis in original). In the absence of the exceptions and limitations contained in Rule

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[8] Rule 41.01 additionally provides:

> (2)Notwithstanding the provisions of the preceding paragraph, a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has twice dismissed in any court an action based on or including the same claim.
> (3)A voluntary nonsuit to dismiss an action without prejudice must be followed by an order of voluntary dismissal signed by the court and entered by the clerk. The date of entry of the order will govern the running of pertinent time periods.

In a case in which the defendant did not object to the plaintiff taking a nonsuit during the summary judgment hearing, the Tennessee Supreme Court recognized that "it is implicit in the Rule and inherent in the power of the Court that, under a proper set of circumstances, the Court has the authority to permit a voluntary dismissal, notwithstanding the pendency of a motion for summary judgment." ***Stewart v. Univ. of Tennessee***, 519 S.W.2d 591, 593 (Tenn. 1974).

41.01 or "an implied exception which prohibits a nonsuit when it would deprive the defendant of some vested right[,]" a plaintiff's right to a voluntary dismissal without prejudice under Rule 41.01 is "free and unrestricted[.]" ***Lacy v. Cox***, 152 S.W.3d 480, 484 (Tenn. 2004) (citation omitted). Although a case does not become final for the purposes of appeal until the trial court enters its final written order dismissing the matter, the right to a nonsuit under Rule 41.01 does not require the permission of, or an adjudication by, the trial court. ***Green v. Moore***, 101 S.W.3d 415, 420 (Tenn. 2003). Subject to the constraints contained in Rule 41.01 or another statute, or the implied exemption for a defendant's vested right, Rule 41.01 "permits liberal use of voluntary nonsuits at any time prior to 'final submission' to the trial court for decision in a bench trial or in a jury trial before the jury retires to deliberate." ***Himmelfarb v. Allain***, 380 S.W.3d 35, 40 (Tenn. 2012) (citations omitted).[9] Rule 41.01 permits a voluntary nonsuit notwithstanding the amount of time or expense that may have been expended by the parties. ***Adamson v. Grove***, No. M2020-01651-COA-R3-CV, 2002 WL 17334223, at *12 (Tenn. Ct. App. Nov. 30, 2022) (quoting ***Douglas v. Lowe***, No. M2012-02276-COA-R3-CV, 2013 WL 6040347, at *7 (Tenn. Ct. App. Nov. 12, 2013)). Tennessee courts have long observed that "the Tennessee rule on voluntary dismissal . . . is much more liberal than that obtaining [*sic*] in federal courts and in many other jurisdictions." ***Weedman v. Searcy***, 781 S.W.2d 856-57 (Tenn. 1989).

In their brief to this Court, Appellants maintain that the remedies provided by the TPPA are substantive and that Rule 41.01 "cannot be interpreted in a manner that nullifies a defendant's affirmative statutory rights under the TPPA, which supplement[s] any remedies which are otherwise available . . . under the Tennessee Rules of Civil Procedure." Appellants assert that their right to seek a dismissal with prejudice, attorney's fees, costs and sanctions "vested" when they filed their TPPA petitions. They rely on ***Anderson v. Smith***, 521 S.W.2d 787, 790 (Tenn. 1975), and ***Lacy v. Cox***, 152 S.W.3d 480 (Tenn. 2004), for the proposition that a plaintiff's right to a nonsuit under Rule 41.01 is subject to an "implied exception which prohibits nonsuit when it would deprive the defendant of some vested right." Appellants further contend that "interpreting Rule 41 in a manner that enables defendants to vindicate their rights under the TPPA even after a plaintiff's voluntary dismissal is necessary to achieve the TPPA's legislative purposes." Appellants

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[9] Rule 41 also limits the use of voluntary nonsuits in other situations.

> For example, a party may not take a voluntary nonsuit in a class action case, in a case in which a receiver has been appointed, or while an opposing party's motion for summary judgment is pending. *See* Tenn. R. Civ. P. 41.01. A party is also precluded from taking a nonsuit in a shareholder's derivative action. *See* Tenn. R. Civ. P. 41.01. adv. comm. cmt. (2002). A case may not be refiled following a voluntary nonsuit taken in a will contest action, a Governmental Tort Liability Act action, or if a voluntary nonsuit is taken outside the applicable statute of limitations and the one year permitted by the saving statute. *See* Tenn. R. Civ. P. 41.01 adv. comm. cmt. (2005), (2006); *see also* Lawrence A. Pivnick, 1 *Tennessee Circuit Court Practice* § 23:1.

Himmelfarb v. Allain, 380 S.W.3d 35, 40 (Tenn. 2012).

assert that the language contained in Rule 41.01 making it "subject to the provisions . . . of any statute" renders a nonsuit under the Rule "subject" to recovery under the TPPA. In sum, Appellants assert that their TPPA petitions fall within the statutory exception or the "vested right" exception to Rule 41.01. They further contend that the TPPA provides substantive rights, including dismissal with prejudice and the availability of sanctions, which rights survive plaintiff's notice of voluntary nonsuit under Rule 41.01.

Mr. Flade, on the other hand, relies on this Court's holdings in actions governed by the Health Care Liability Act ("HCLA") in support of his argument that the TPPA provides no exception to Rule 41.01. He relies on ***Hurley v. Pickens***, 536 S.W.3d 419 (Tenn. Ct. App. 2016); ***Clark v. Werther***, No. M2014-00844-COA-R3-CV, 2016 WL 5416335 (Tenn. Ct. App. Sept. 27, 2016); and ***Robles v. Vanderbilt University Medical Center***, M2010-01771-COA-R3-CV, 2011 WL 1532069, at *2-3 (Tenn. Ct. App. April 19, 2011), *perm app. denied* (Tenn. Aug. 25, 2011) in support of his argument "that case law in Tennessee requires a statute to expressly exempt itself from a plaintiff's right to a voluntary nonsuit of the action." He asserts that because the TPPA "does not expressly exclude itself from Rule 41.01[,]" it does not provide a statutory exception to the rule. Mr. Flade also submits that the TPPA was enacted after ***Hurley***, ***Clark***, and ***Robles*** were decided; as such, he argues that the legislature is presumed to be aware of the holdings in those cases but, nevertheless, chose not to except the TPPA from Rule 41.01.

In their reply brief, Appellants contend that "[t]he TPPA is materially different from the [HCLA] with respect to both the text and purpose underlying its remedies." They assert that the TPPA is expressly intended to supplement remedies available under the Tennessee Rules of Civil Procedure and that "the entire purpose of the TPPA is to ensure that actions that fall within its ambit do not[,]" in the words of the ***Robles*** court, '"proceed in accordance with the rules applicable to all actions[.]'" They rely on ***Mucerino v. Martin***, No. 3:21-CV-00284, 2021 WL 5585637 (M.D. Tenn. Nov. 30, 2021), in support of their argument that "the TPPA self-evidently establishes a specialized, expedited, hybrid, and atypical process to enable the dismissal of qualifying speech-based tort claims[.]" They further submit that, in contrast to the HCLA, the TPPA establishes statutory remedies when a TPPA petition is granted and also provides for discretionary sanctions. Appellants contend that the HCLA relates to the plaintiff's pre-suit duties while the focus of the TPPA "is on the affirmative statutory rights afforded to a defendant after being sued." They also submit that "the legislative purpose of the HCLA is not codified[]" and that, "[b]y contrast, the TPPA's purpose is embodied in the statute itself." Appellants further contend that the TPPA permits an award of sanctions in order to deter repetition of the party's conduct and also to deter "others similarly situated." They assert: "[Mr. Flade's] proposed rule would afford [Mr. Flade] and others who initiate SLAPP-suits an unrestricted right to impose costs for protected speech and then evade consequences for doing so by nonsuiting on the eve of a TPPA hearing." Appellants submit that this result is not consistent with the "literal text" of the TPPA, which must be "construed broadly to effectuate it purposes and intent." Appellants also submit that, unlike the HCLA, the TPPA exists to protect the free speech

rights guaranteed by the Tennessee Constitution and the Constitution of the United States and the public's right to receive information and ideas." They contend that to permit a plaintiff to nonsuit his/her action while a TPPA petition is pending allows the plaintiff to interfere with those rights "by imposing litigation costs — without incurring or even risking any consequences — upon those who speak out against him."

Having outlined the parties' respective arguments, we turn first to the question of whether the TPPA falls within the "statutory exception" provision of Rule 41.01.

1. Statutory Right Exception

A plaintiff's right to a nonsuit under Rule 41.01 is expressly "[s]ubject to the provisions of Rule 23.05, Rule 23.06, or Rule 66 or of any statute." Tennessee Rules of Civil Procedure 41.01(1). Appellants rely on Tennessee Code Annotated section 20-17-109 for the proposition that the TPPA "states explicitly that it was not intended to be subservient to the Tennessee Rules of Civil Procedure." They submit the section "supplement[s] any remedies which are otherwise available . . . under the Tennessee Rules of Civil Procedure" by providing petitioners "an additional substantive remedy." Appellants further contend that, "to the extent that there is any remaining ambiguity or conflict between the TPPA and the Rules of Civil Procedure," section 20-17-102 resolves such ambiguity by providing that the TPPA should be construed broadly "to effectuate its purpose and intent."

In ***Adamson v. Grove***, another panel of this Court held that the TPPA does not fall within the "statutory exception" provided by Rule 41.01 in the context of a TPPA motion filed after the trial court entered an order on plaintiff's notice of nonsuit. ***Adamson***, 2002 WL 17334223, at *18. The issue in ***Adamson*** involved the trial court's jurisdiction over the defendants' combined motion to alter or amend and petition to dismiss with prejudice pursuant to the TPPA. ***Id.*** at *1. The defendants in ***Adamson*** had filed neither an answer nor any "other pleading of any sort" before the plaintiff filed his notice of nonsuit under Rule 41.01. ***Id.*** We acknowledge that, in the present case, Appellants' TPPA petitions were pending when the trial court entered its order dismissing Mr. Flade's case without prejudice pursuant to Rule 41.01. Nevertheless, the ***Adamson*** court's analysis of whether the TPPA provides a statutory exception to Rule 41.01 is instructive here.

As noted in ***Adamson***, this Court has rejected the "statutory exception" argument with respect to motions to dismiss with prejudice pursuant to Tennessee Code Annotated section 29-26-122.[10] ***Id.*** at * 16-18 (citing ***Hurley***, 536 S.W.3d at 420); ***Clark v. Werther***,

[10] Tennessee Code Annotated section 29-26-122 is contained within the Health Care Liability Act. It provides, in relevant part:

> (c) The failure of a plaintiff to file a certificate of good faith in compliance with this section shall, upon motion, make the action subject to dismissal with prejudice.

No. M2014-00844-COA-R3-CV, 2016 WL 5416335 (Tenn. Ct. App. Sept. 27, 2016)). The ***Adamson*** court reiterated:

> Although [Rule 41.01] does not identify a particular statute to which it applies, consideration of Rules 23.05, 23.06 and 66 leads to the conclusion that exceptions to the right of a plaintiff to voluntarily dismiss an action without prejudice are limited, should result from a clear application of the rule or statute at issue, and should not be inconsistent with the fact that the right of voluntary dismissal without prejudice is "absolute." *See* 4 NANCY FRAAS MACLEAN, TENNESSEE PRACTICE, Author's Cmt. 41:2 at 99 (4th ed. 2006).

Id. at *17 (quoting ***Hurley***, 536 S.W.3d at 420 (quoting ***Robles***, 2011 WL 1532069, at *2-3)).

As in the instant case, the defendants' motion to dismiss in ***Hurley*** was pending before the trial court when the plaintiff filed his notice of voluntary nonsuit pursuant to Rule 41.01. ***Hurley***, 536 S.W.3d, at 420. The defendants in ***Hurley***, which was a HCLA action, filed a motion to dismiss pursuant to section 29-26-122. ***Id.*** In their motion, defendants asserted that the plaintiff failed to fully comply with the Certificate of Good Faith requirement of that section. The plaintiff responded to the motion and filed a motion for an extension of time to file a corrected Certificate of Good Faith or for leave to amend the certificate. The plaintiff also filed a motion for voluntary dismissal without prejudice under Rule 41.01. At the hearing on the motions, the plaintiff announced that he wanted to dismiss the matter pursuant to Rule 41.01. ***Id.*** The trial court heard argument on whether plaintiff could take a Rule 41.01 voluntary dismissal without prejudice while the defendants' motion to dismiss with prejudice pursuant to section 29-26-122 was pending. ***Id.*** at 421. The trial court granted plaintiff's motion for voluntary dismissal without prejudice, and defendants appealed. ***Id.*** On appeal, this Court reiterated the holding in ***Robles*** that section 29-26-122 does not limit a plaintiff's right to a voluntary dismissal without prejudice. ***Id.*** at 423.

In ***Robles***, the plaintiff failed to file a Certificate of Good Faith as required by section 29-25-122, and defendants moved to dismiss the action. ***Robles***, 2011 WL 1532069, at *1. The plaintiff filed an amended complaint that included the certificate. Plaintiff also filed a motion for additional time to file the certificate and a response to defendants' motion to dismiss. Defendants responded and moved to strike plaintiff's amended complaint. The plaintiff filed a notice of voluntary nonsuit pursuant to Rule 41.01 before the trial court heard the motions, and the trial court entered an order of dismissal without prejudice. On appeal, defendants asserted that the trial court erred by not

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Tenn. Code. Ann. § 29-26-122(c).

dismissing the matter with prejudice pursuant to section 29-26-122. They specifically asserted that "'the trial court erred in allowing plaintiffs to circumvent § 29-26-122 by taking a voluntary nonsuit in order to obtain a dismissal of this litigation *without prejudice.*' (Emphasis in original)." ***Id.***

> As this Court stated in ***Robles*** and reiterated in ***Hurley***,
>
> > Under Tenn. Code Ann. § 29-26-122, the dismissal of the complaint mandated by subsection (a) must be "as provided in subsection (c)"; that section provides that failure to file the certificate "make[s] the action *subject to* dismissal with prejudice." (emphasis added). In both sections of the statute, the failure to file the certificate with the complaint may be excused and not result in dismissal of the action with prejudice: under (a) upon a finding that the provider has failed to provide records in accordance with the statute or upon a showing of "demonstrated extraordinary cause," and under (c) where the court is given discretion to extend the time for filing the certificate "for other good cause shown." In short, the statute allows for the late filing of a certificate; dismissal of the action with prejudice based on the fact that the certificate was not filed with the complaint is not automatic. Nothing in the statute operates to prevent a plaintiff from exercising the right to voluntarily dismiss the action without prejudice.

Hurley, 536 S.W.3d at 423 (quoting ***Robles***, 2011 WL 1532069, at *2-3). The defendants in both actions,

> [a]rgue[d] that plaintiff's action in taking the nonsuit was a "blatant attempt" to avoid the dismissal of the action and that allowing the nonsuit to stand "frustrates" the intent of Tenn. Code Ann. § 29-26-122 "to discourage the filing of baseless medical malpractice lawsuits" and to "impos[e] stiff penalties on both parties and attorneys who file suit without complying with the good faith certification requirements."

Id. (quoting ***Id.***). We held that "Rule 41.01 . . . grants an absolute right to the plaintiff; the reason for the plaintiff's action is not a proper scope of inquiry for the court." ***Id.*** (quoting ***Id.***). The ***Hurley*** and ***Robles*** courts held that,

> [w]hile the requirements to file and prosecute a medical malpractice suit are rigorous, nothing in the legislative history or the statute itself reveals an intent that medical malpractice cases should not proceed in accordance with the rules applicable to all actions, including Tenn. R. Civ. P. 41.

Id. (quoting ***Id.***). In ***Hurley*** and ***Robles***, we concluded that nothing in the plain language of section 29-26-122 prevented a plaintiff from taking — or the trial court from granting

— a voluntary dismissal without prejudice under Rule 41.01. ***Hurley***, 536 S.W.3d at 424; ***Robles***, 2011 WL 1532069, at *3.

Clark v Werther, No. M2014-00844-COA-R3-CV, 2016 WL 5416335 (Tenn. Ct. App. Sept. 27, 2016), *perm. app. denied* (Tenn. Jan. 19, 2017), also addressed whether the HCLA provided a statutory exception to Rule 41.01. The plaintiff in ***Clark***, acting *pro se*, failed to attach a Certificate of Good Faith to his HCLA complaint, and the defendants moved to dismiss the action. ***Clark***, 2016 WL 5416335, at *1. The plaintiff filed a notice of voluntary nonsuit without prejudice before the trial court heard any of the defendants' motions to dismiss, and several of the fourteen defendants opposed his notice on the basis that the matter should be dismissed with prejudice. ***Id.*** The trial court held a hearing on defendants' motions to dismiss, and the plaintiff asked for permission to withdraw his notice of nonsuit. ***Id.*** at *2. The trial court denied plaintiff's request and dismissed the matter, without prejudice, against those defendants who did not object. The trial court dismissed the claims with prejudice with respect to the defendants who had objected to plaintiff's Rule 41.02 notice. Plaintiff appealed, and we phrased the dispositive issue as: "Whether the trial court erred in failing to enter an order dismissing this case without prejudice as to all defendants after Mr. Clark filed his notice of voluntary nonsuit under Rule 41.01 of the Tennessee Rules of Civil Procedure." ***Id.***

The ***Clark*** Court observed that Rule 41.01 makes no exception for pending motions to dismiss. ***Id.*** at *4. Like the ***Hurley*** and ***Robles*** courts, the ***Clark*** Court held that "the phrase 'of any statute' does not include the certificate of good faith statute." ***Id.*** The ***Clark*** Court additionally opined:

> The reference to "any statute" is part of a list which includes Rules 23.05, 23.06, and 66. Each of the listed rules expressly limits a party's right to take a voluntary nonsuit in certain types of cases. When a general phrase follows a more specific list, we construe the general phrase to refer to only the same general class of items as those enumerated. *See* ***State v. Marshall***, 319 S.W.3d 558, 561-62 (Tenn. 2010) (explaining that the canon of *ejusdem generis* operates to limit the breadth of a general phrase following a list of specific items). Thus, "of any statute" must refer to statutes that specifically limit a party's right to obtain a voluntary nonsuit or otherwise relate specifically to the effect of a voluntary nonsuit. This construction complies with the purpose of Rule 41.01, which was to preserve the historically liberal practice of allowing voluntary nonsuits in circuit court. *See* ***Evans v. Perkey***, 647 S.W.2d 636, 640 (Tenn. Ct. App. 1982). Because the good faith certificate statute does not expressly preclude a plaintiff from taking a voluntary nonsuit and, by its terms, allows a court the discretion to excuse noncompliance under certain circumstances, the statute does not preclude Mr. Clark from taking a voluntary nonsuit.

Id.

The Tennessee Supreme Court's analysis of the applicability of Rule 41.01 to a will contest is also instructive. In ***In re Estate of Barnhill***, the Court considered whether "Tennessee law bars the . . . filing of a second will contest" after a voluntary dismissal under Rule 41.01. ***In re Estate of Barnhill***, 62 S.W.3d 139, 143-44 (Tenn. 2001). The plaintiff/appellant in ***Barnhill*** filed a notice of will contest on the basis of undue influence on the part of the executrix. ***Id.*** at 140. After more than two years, which included denial of the plaintiff's request for an interlocutory appeal of the trial court's jurisdictional ruling, the plaintiff voluntarily dismissed the action after the trial court denied her motion to amend her pleadings during the hearing of the matter. ***Id.*** at 141. The plaintiff filed a second complaint, and the defendant/appellee filed a motion to dismiss on the grounds that the voluntary dismissal was with prejudice. The trial court ruled that a voluntary dismissal in a will contest is with prejudice and granted defendant's motion to dismiss. On appeal, this Court held that the Tennessee Rules of Civil Procedure do not allow a voluntary dismissal without prejudice in a will contest and affirmed the trial court's ruling. The Tennessee Supreme Court granted permission to appeal and affirmed. ***Id.***

The Tennessee Supreme Court's holding in ***Barnhill*** was predicated on its analysis of the interplay of Rule 41.01, Rule 66, and Tennessee Code Annotated section 30-1-310. The Court stated:

> Tennessee Rule of Civil Procedure 41.01 also makes the granting of voluntary dismissals subject to the provisions of Rule 66, which governs procedure in cases involving receivers. Rule 66 provides that
>
> > [a]n action wherein a receiver has been appointed shall not be dismissed except by order of the court. The practice in the administration of estates by receivers or by other similar officers appointed by the court shall be in accordance with the statutes of this state and with the practice heretofore followed in the courts of this state[.]

The supreme court noted that this Court:

> interpreted Rule 66 as preventing parties in will contests from taking voluntary dismissals because the court likened the role of estate administrators to the positions of court-appointed receivers, and therefore, in will contests, Rule 66 prevents parties from ending the contest on their own.

Id. at 144. The ***Barnhill*** Court further stated:

> In addition, section 30-1-310 of Tennessee Code Annotated likens the

> administrator of an estate to a receiver in chancery, holding the administrator to the same responsibilities and duty to report to the court. We believe the [Court of Appeals] to be correct in its view that the involvement of administrators of estates in will contests brings such actions into the purview of Rule 66, and reflects the historical understanding that a will contest "is a proceeding in rem, involving the distribution of the res, the estate," ***Arnold,*** 352 S.W.2d at 939, and that "[t]he proceedings do not depend on or refer to parties as did the proceedings in the common law courts; in a sense all the world are parties." ***Green,*** 891 S.W.2d at 222. Although the appellant contends that a voluntary dismissal is a court order under the language of Rule 66 since the court must enter an order granting the dismissal of the will contest, Rules 41 and 66, when considered together, do not permit such an interpretation, but indicate that voluntary dismissals are not permitted in will contest proceedings.

Id. at 144 (quoting ***Arnold v. Marcom,*** 49 Tenn. App. 161, 352 S.W.2d 936, 939 (1961); ***Green v. Higdon***, 891 S.W. 220, 222 (Tenn. Ct. App. 1994)).

Tennessee Code Annotated section 30-1-310 provides:

> An administrator shall be under the same responsibilities as a receiver in chancery, and shall make reports to the court in the same manner; and be removable from office for neglect or improper conduct, as a receiver may be; and when the administrator is removed, or dies or resigns, the court may appoint a successor.

Accordingly, because Rule 41.01 explicitly disallows a nonsuit without prejudice in actions governed by Rule 66, and because an administrator of an estate falls within the purview of Rule 66, the right to a nonsuit without prejudice is not available in a will contest proceeding. ***Estate of Barnhill***, 62 S.W.3d at 144-45.

The TPPA, on the other hand, does not come within the purview of actions explicitly or implicitly excepted by Rule 41.01. Rather, as the federal district court has observed, the TPPA provides for a dismissal procedure that differs from Rule 12(b)(6) of the Federal Rules of Civil Procedure. ***Mucerino v. Martin***, No. 3:21-CV-00284, 2021 WL 5585637, at *6 (M.D. Tenn. Nov. 30, 2021). The TPPA "appears, on its face, to be a means of circumventing the ordinary allocation of burdens imposed by Rule 12(b) and developed, in federal caselaw, over many years and countless incremental decisions." ***Id.*** This observation is similarly applicable to the TPPA's impact on Rule 12.02(6) of the Tennessee Rules of Civil Procedure. *See* ***Reiss v. Rock Creek Constr., Inc.***, No. E2021-01513-COA-R3-CV, 2022 WL 16559447 (Tenn. Ct. App. Nov. 1, 2022). This Court has opined, however, that "the dismissal provisions contained within the TPPA can be harmonized with the operation of Tennessee Rules of Civil Procedure 12." ***Id.*** at *8. The procedural

provisions governing dismissal contained in the TPPA should be followed when considering a TPPA motion "regarding the respective claims." ***Id.*** To do otherwise would render the TPPA statutory procedural provisions meaningless. ***Id.*** In short, the TPPA provides a dismissal procedure that differs from Rule 12.02. If the trial court finds that the act or speech complained of by the plaintiff falls within the purview of the TPPA, then the procedural mechanisms set forth in the Act govern a petition to dismiss filed in accordance with section 20-17-104.

However, the TPPA does not specifically or implicitly alter the right to a nonsuit provided by Rule 41.01. ***Adamson***, 2022 WL 17334223, at *18. In ***Adamson***, this Court held that the TPPA provides no statutory exemption to Rule 41.01 that would allow a court to exercise jurisdiction over a TPPA petition filed after the plaintiff avails him/herself of the right to a nonsuit under Rule 41.01. ***Id.*** Notwithstanding the distinguishable procedural posture of ***Adamson*** to the current case, we agree with the ***Adamson*** Court that the TPPA "is not the type of 'statute' contemplated by the exception stated in Rule 41.01." ***Id.***

2. Vested Right Exception

As noted above, there is "an implied exception" to Rule 41.01 "which prohibits nonsuit when it would deprive the defendant of some vested right." ***Lacy v. Cox***, 152 S.W.3d 480, 484 (Tenn. 2004) (footnotes omitted) (citing ***Anderson v. Smith,*** 521 S.W.2d 787, 790 (Tenn. 1975)). In their brief, Appellants contend that rights to the TPPA's "substantive remedies vest — *at minimum* — upon a petitioner filing a TPPA petition that satisfies the statute's '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.'" Appellants assert that, because a party petitioning for relief under the TPPA is entitled to a dismissal with prejudice, attorney's fees, and costs, unless the non-petitioning party establishes a prima facie case for each element of his/her claim, the right to relief vests upon the filing of the petition.[11]

The ***Adamson*** Court addressed whether the TPPA provides an implied "vested right" for the purposes of precluding a voluntary nonsuit under Rule 41.01. The court observed that, although "it is hard to pin down the definition of a 'vested right[,]'" it has been characterized "as a right 'which it is proper for the state to recognize and protect and of which [an] individual could not be deprived of arbitrarily without injustice.'" ***Adamson***, 2022 WL 17334223, at *19 (quoting ***State ex rel. Stanley v. Hooper***, No. M2000-00916-COA-R3-CV, 2001 WL 27378, at *2 (Tenn. Ct. App. Jan. 11, 2001) (quoting ***Morris v. Gross***, 572 S.W.2d 902, 907 (Tenn. 1978))). After reviewing and comparing the applicable

[11] Appellants also submit that the right to relief under the TPPA vests as long as the TPPA petition is filed within sixty days of service – presumably after a Rule 41.01 nonsuit. That issue was resolved by ***Adamson***.

case law, the ***Adamson*** Court determined that the plaintiff's nonsuit did not deprive the TPPA petitioners of any right that had vested during the pendency of the action because their petition was not filed prior to the nonsuit. ***Id.*** The ***Adamson*** Court held that the trial court did not have jurisdiction to adjudicate the defendants' TPPA petition because it was filed after the action was dismissed. ***Id.*** at *21.

Unlike the defendant in ***Adamson***, Appellants in this case filed their TPPA petitions well before Mr. Flade filed his Rule 41.01 notice of voluntary dismissal. Thus, Appellants' TPPA petitions were within the jurisdiction of the trial court when Mr. Flade nonsuited his action. As such, we turn to the question of whether any implied right vests that would require adjudication of a TPPA petition filed prior to plaintiff's nonsuit.

A vested right has been defined as:

> something more than a mere expectation based upon an anticipated continuance of the existing law; it must have become a title, legal or equitable, to the present or future enjoyment of property or to the present or future enjoyment of a demand, or a legal exemption from a demand made by another; and if before such rights become vested in particular individuals, the convenience of the state induces amendment or repeal of certain laws, these individuals have no cause to complain.

Id. at *19 (quoting 16B Am.Jur.2d Constitutional Law § 703). Vested rights include "'legal or equitable title to enforcement of a demand," and "exemption from new obligations created after the right has vested.'" ***Morris v. Gross,*** 572 S.W.2d 902, 905 (Tenn. 1978) (quoting 16 AM.Jur.2d Constitutional Law § 421 (1964)).

In the context of condemnation proceedings, the courts have recognized that a Rule 41.01 nonsuit may not be taken after the case has been "submitted to the trier of fact for decision[]," or after "the condemner has taken possession of the property under court order issued under circumstances leaving nothing to be decided by the court except the compensation to be paid the owner for the land taken." ***Anderson v. Smith***, 521 S.W.2d 787, 791 (Tenn. 1975). Because the condemner has the right of possession of the property, the right to compensation is a vested right. ***Id.*** Similarly, under "the vested rights doctrine, . . . [w]hen a property owner has obtained a permit allowing a certain use, and thereafter incurs substantial expenses in reliance on the permit, the use may continue regardless of any zoning changes enacted by a municipality." ***Ready Mix, USA, LLC v. Jefferson Cnty.***, 380 S.W.3d 52, 65-66 (Tenn. 2012).

In the context of the retroactive application of procedural statutes, Tennessee courts have concluded that vested rights that cannot be disturbed include the right to recovery under a wrongful death settlement, ***Spires v. Simpson***, 539 S.W. 134, 148 (Tenn. 2017); contractual rights or obligations, ***C.W.H. v. L.A.S.***, 538 S.W. 488, 498 (Tenn. 2017); and

rights that "accrue with the commission of [a] tort and the resulting injury to the plaintiff." ***Estate of Bell v. Shelby Cnty. Health Care Corp.***, 318 S.W.3d 823, 833 (Tenn. 2010); ***Mills v. Wong***, 155 S.W.3d 916, 921 (Tenn. 2005).[12]

With respect to the right to a cause of action, The Tennessee Supreme Court has opined that "a vested right of action is as much property as are tangible things and is protected from arbitrary legislation, whether such right of action be based upon the law of contracts or upon other principles of the common law." ***Morris v. Gross,*** 572 S.W.2d 902, 905 (Tenn. 1978). In the context of a vested right to a cause of action in tort, our supreme court has held that "[a] vested right of action in tort is a cause of action which has accrued, thereby becoming presently enforceable." ***Mills***, 155 S.W.3d at 921. Similarly, the right to recover court-ordered child support arrearages is a right that vests when the payment is due. ***Lichtenwalter v. Lichtenwalter***, 229 S.W.3d 690, 693 (Tenn. 2007). This Court has held that a nonsuit under Rule 41.01 could not be taken after a written and signed mediation agreement settled the non-movant's right to certain property in a divorce action. ***Shell v. Shell***, No. E2007-01209-COA-R3-CV, 2008 WL 2687529, at *3 (Tenn. Ct. App. July 9, 2008). The ***Shell*** Court determined that the trial court had jurisdiction to enforce a mediated divorce agreement that was executed during the course of the action and where the defendant filed his motion to enforce the agreement before the plaintiff filed her notice of nonsuit. ***Id.*** This Court has also noted, however, that "[t]he availability of a legal defense is not a 'vested right[.]'" ***Haynes v. Cumberland Builders, Inc.***, 546 S.W.2d 228, 231 (Tenn. Ct. App. 1976); ***Adamson***, 2022 WL 17334223, at *20.

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[12] The ***Mills*** Court further noted:

> Although common law rights of action in tort receive constitutional protection, they are not fundamental rights which demand heightened due process protection under the federal and Tennessee constitutions. *See* ***Crier v. Whitecloud,*** 496 So.2d 305, 310 (La.1986) ([T]he right to recover in tort is not a fundamental right...."); ***King–Bradwell P'ship v. Johnson Controls, Inc.,*** 865 S.W.2d 18, 21-22 (Tenn. Ct. App. 1993) (holding that application of Tennessee's products liability statute of repose "involve[d] neither a fundamental right nor a suspect class."); *see also* ***United States v. Kras,*** 409 U.S. 434, 445, 93 S.Ct. 631, 34 L.Ed.2d 626 (1973) (applying rational basis review to economic legislation); ***Klein v. Catalano,*** 386 Mass. 701, 437 N.E.2d 514, 522 (1982) ("[W]e see no basis for treating a law that abrogates a tort remedy differently from any other law that regulates economic activity" and which thus receives rational basis review.). As the United States Supreme Court has explained, property interests "are not created by the Constitution. Rather[,] they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." ***Bd. of Regents of State Colls. v. Roth,*** 408 U.S. 564, 577, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972).

Mills v. Wong, 155 S.W.3d 916, 921–22 (Tenn. 2005).

The filing of a TPPA petition does not provide an automatic right to recovery or to dismissal with prejudice. Rather, it provides a dismissal procedure with a burden-shifting mechanism that differs from Rule 12.02. There is no "right" to recovery under the TPPA. Rather, the recovery of attorney's fees and costs is predicated on the successful adjudication of the petition. A potential award of sanctions under the Act is at the discretion of the trial court. Accordingly, the TPPA does not fall within the ambit of the "vested rights" exception to Rule 41.01.

B. Survival of Petition to Dismiss After Nonsuit

We next turn to address whether the trial court erred by not adjudicating Appellants' TPPA petition notwithstanding Mr. Flade's nonsuit. Appellants argument, as we summarize it, is that to allow a voluntary dismissal without prejudice under Rule 41.01 notwithstanding their pending TPPA petitions works an end run around substantive protections afforded by the TPPA. Appellants rely on decisions from Texas and California construing the anti-SLAPP statutes of those states in support of the proposition that the right to a nonsuit under Rule 41.01 "is 'subject to' the provisions of the TPPA." Appellants rely on ***McDonald Oilfield Operations, LLC v. 3B Inspection***, ***LLC***, 582 S.W.3d 732, 752 (Tex. App. 2019), and ***eCash Techs., Inc. v. Guagliardo***, 127 F. Supp. 2d 1069 (C.D. Cal. 2000) for the proposition that, because the TPPA mandates an award of attorney's fees and allows for the imposition of sanctions if an action is dismissed pursuant to the Act, a TPPA petition to dismiss survives a Rule 41.01 nonsuit.

Appellants' argument on this issue largely mirrors their argument concerning whether the TPPA provides a statutory exception to Rule 41.01. As discussed above, we reject this argument. Appellants also assert that the holding of the Texas Court of Appeals in ***McDonald Oilfield*** is persuasive authority for the proposition that a TPPA petition survives a notice of voluntary dismissal under Rule 41.01. Appellants submit:

For instance, as the Texas Court of Appeals has explained:

> "A motion to dismiss that affords more relief than a nonsuit provides constitutes a claim for affirmative relief, which survives nonsuit," and a TCPA motion is such a motion because, unlike a nonsuit, the TCPA motion to dismiss provides for a dismissal with prejudice in addition to recovery of attorney's fees and sanctions. Here, McDonald Oilfield's TCPA motion requested not only dismissal with prejudice, but also costs, attorney's fees, and sanctions. Thus, its motion survived the nonsuit of the individual employees' claim and 3B Inspection's tortious interference with prospective business relations claim. And because the individual employees made no attempt to provide clear and specific proof regarding essential

> elements of their claims, and because 3B Inspection made no attempt to provide clear and specific proof regarding the essential elements of its tortious interference with prospective business relations claim, the trial court erred in denying McDonald Oilfield's TCPA motion to dismiss on those claims.
>
> ***McDonald Oilfield Operations, LLC v. 3B Inspection, LLC***, 582 S.W.3d 732, 752 (Tex. App. 2019) (citations omitted and emphasis added).

Although the TPPA and the Texas Citizen Participation Act ("TCPA") contain "almost identical provisions," ***Doe v. Roe***, 638 S.W.3d 614, 620 (Tenn. Ct. App. 2021), the citations of the ***McDonald*** Court to Texas cases construing Rule 162 of the Texas Rules of Civil Procedure ("the Texas Rule")—citations which Appellants omit in their brief—demonstrate that the Texas Rule governing nonsuits differs from Rule 41.01. The Texas Rule provides:

> At any time before the plaintiff has introduced all of his evidence other than rebuttal evidence, the plaintiff may dismiss a case, or take a non-suit, which shall be entered in the minutes. Notice of the dismissal or non-suit shall be served in accordance with Rule 21a on any party who has answered or has been served with process without necessity of court order.
>
> Any dismissal pursuant to this rule shall not prejudice the right of an adverse party to be heard *on a pending claim for affirmative relief* or excuse the payment of all costs taxed by the clerk. *A dismissal under this rule shall have no effect on any motion for sanctions, attorney's fees or other costs, pending at the time of dismissal, as determined by the court.* Any dismissal pursuant to this rule which terminates the case shall authorize the clerk to tax court costs against dismissing party unless otherwise ordered by the court.

Tex. R. Civ. P. 162 (emphasis added). The holding in ***McDonald*** was predicated on the Texas Rule, and the paragraph preceding the selection quoted by Appellants states:

> "A plaintiff has an absolute right to nonsuit a claim before resting its case-in-chief, but a nonsuit 'shall not prejudice the right of an adverse party to be heard on a pending claim for affirmative relief.'" ***CTL/Thompson Tex., LLC v. Starwood Homeowner's Ass'n, Inc.***, 390 S.W.3d 299, 300 (Tex. 2013) (quoting TEX. R. CIV. P. 162, which further provides that nonsuit "shall have no effect on any motion for sanctions, attorney's fees or other costs, pending at the time of the dismissal"). Thus, 3B Inspection and the individual employees had an absolute right to nonsuit any or all of their claims, but their decision to nonsuit does not affect McDonald Oilfield's right to continue to pursue independent claims for affirmative relief.

McDonald Oilfield Operations, 582 S.W.3d 732 at 752.

By contrast, Tennessee Rule of Civil Procedure 41.01 does not explicitly provide for survival of any pending claim for relief or motions for sanctions, attorney's fees, or costs following a voluntary nonsuit. Additionally, as noted above, the ability to voluntarily nonsuit an action as a matter of right under Rule 41.01 is broader than the nonsuit/voluntary dismissal provisions provided by the federal rules and the rules of most other jurisdictions.

Because the provisions of the TPPA and the TCPA are "almost identical," and because California's anti-SLAPP statute "was one of the earliest 'anti-SLAPP' laws and has been a primary model . . . [for] similar laws subsequently enacted in other states, including, directly or indirectly, the TCPA[,]" ***Serafine v. Blunt***, 466 S.W.3d 352, 386 (Tex. App. 2015) (Pemberton, J., concurring), we consider Appellants' reliance on California decisions construing the California's "Anti-SLAPP motion." In ***Pfeiffer Venice Properties v. Bernard***, the California Court of Appeal considered whether the trial court was required to rule on the merits of the defendants' "SLAPP motion" — a "special motion to strike" pursuant to California Civil Procedure Code § 425.16 through 425.18 — after the trial court dismissed the matter. ***Pfeiffer Venice Properties v. Bernard***, 123 Cal. Rptr. 2d 647 (Cal. Ct. App. 2002). As in the instant case, the defendants in ***Pfeiffer*** filed their motion before the lawsuit was dismissed. The ***Pfeiffer*** court held that the trial court was required to rule on the merits of defendants' motion and to award attorney's fees if the plaintiff was "unable to establish a reasonable probability of success" as required by the California Anti-SLAPP statute. ***Id.*** at 652.

In ***Moore v. Liu***, the California court addressed a similar issue in the context of a case that began as a personal injury/healthcare liability action filed by plaintiff Stefan Ashkenazy against Hong and Master Hong Alternative Healing (collectively, "defendants"). ***Moore v. Liu***, 81 Cal. Rptr.2d 807 (Cal. Ct. App. 1999), as modified (Feb. 5, 1999). Defendants filed a third-party cross-complaint against Deborah Moore ("Moore"), and Moore moved to strike the cross-complaint under California's anti-SLAPP provisions. ***Id.*** at 810. Defendants "filed a request to have their cross-complaint dismissed" before Moore's motion to strike was heard, and the trial court dismissed the claim without prejudice. Moore filed a motion seeking attorney's fees and costs under section 425.16. The trial court determined that Moore's motion to strike was moot, and, therefore, she could not prevail on her motion. ***Id.*** On appeal, the ***Liu*** Court concluded that the trial court's determination "work[ed] a nullification of an important provision of section 425.16." ***Id.*** at 811. The court reversed and remanded the matter for a hearing on Moore's motion to strike. ***Id.***

We observe, however, that California's anti-SLAPP provisions are contained within the California Rules of Civil Procedure and set-forth a set of rules specific to a "motion to

strike" filed pursuant to section 425.16. We observe that the California cases construing the survival of anti-SLAPP motions to strike did not rely on an analysis of the California Rules governing voluntary dismissals. Additionally, like the Texas Rule, the California Rule of Civil Procedure governing dismissal and Tennessee Rule of Civil Procedure 41.01 differ considerably.[13] Significantly, in 2012, the California legislature added section

[13] Section 581 of the California Rules of Civil Procedure provides, in relevant part:

> (b) An action may be dismissed in any of the following instances:
>
> (1) With or without prejudice, upon written request of the plaintiff to the clerk, filed with papers in the case, or by oral or written request to the court at any time before the actual commencement of trial, upon payment of the costs, if any.
>
> (2) With or without prejudice, by any party upon the written consent of all other parties.
>
> (3) By the court, without prejudice, when no party appears for trial following 30 days' notice of time and place of trial.
>
> (4) By the court, without prejudice, when dismissal is made pursuant to the applicable provisions of Chapter 1.5 (commencing with Section 583.110).
>
> (5) By the court, without prejudice, when either party fails to appear on the trial and the other party appears and asks for dismissal.
>
> (c) A plaintiff may dismiss his or her complaint, or any cause of action asserted in it, in its entirety, or as to any defendant or defendants, with or without prejudice prior to the actual commencement of trial.
>
> (d) Except as otherwise provided in subdivision (e), the court shall dismiss the complaint, or any cause of action asserted in it, in its entirety or as to any defendant, with prejudice, when upon the trial and before the final submission of the case, the plaintiff abandons it.
>
> (e) After the actual commencement of trial, the court shall dismiss the complaint, or any causes of action asserted in it, in its entirety or as to any defendants, with prejudice, if the plaintiff requests a dismissal, unless all affected parties to the trial consent to dismissal without prejudice or by order of the court dismissing the same without prejudice on a showing of good cause.
>
> (f) The court may dismiss the complaint as to that defendant when:
>
> (1) Except where Section 597 applies, after a demurrer to the complaint is sustained without leave to amend and either party moves for dismissal.
>
> (2) Except where Section 597 applies, after a demurrer to the complaint is sustained with leave to amend, the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal.
>
> (3) After a motion to strike the whole of a complaint is granted without leave to amend and either party moves for dismissal.
>
> (4) After a motion to strike the whole of a complaint or portion thereof is granted with leave to amend the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal.
>
> (g) The court may dismiss without prejudice the complaint in whole, or as to that defendant, when dismissal is made under the applicable provisions of Chapter 1.5 (commencing with Section 583.110).
>
> (h) The court may dismiss without prejudice the complaint in whole, or as to that defendant, when dismissal is made pursuant to Section 418.10.
>
> (i) No dismissal of an action may be made or entered, or both, under paragraph (1) of subdivision (b) where affirmative relief has been sought by the cross-complaint of a

425.17, which narrows the scope of section 425.16. The California legislature stated:

> (a) The Legislature finds and declares that there has been a disturbing abuse of Section 425.16, the California Anti-SLAPP Law, which has undermined the exercise of the constitutional rights of freedom of speech and petition for the redress of grievances, contrary to the purpose and intent of Section 425.16. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process or Section 425.16.

Cal. Civ. Proc. Code § 425.17(a).

We do not find the Texas or California authority to be particularly persuasive to our discussion of the interplay between the TPPA and the right to a nonsuit provided by Rule 41.01. Because the TPPA is silent with respect to this interplay, any exception to the rights afforded by Rule 41.01 must be found within the rule itself. The final sentence of Rule 41.01(1) provides:

> If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of plaintiff's motion to dismiss, the defendant may elect to proceed on such counterclaim in the capacity of a plaintiff.

The ***Adamson*** court determined that, because the plaintiff nonsuited the action before the defendant filed "any type of pleading[,]" the TPPA petition filed with defendant's motion to alter or amend the judgment could not be maintained as a counterclaim in that case. ***Adamson***, 2022 WL 17334223, at *15. After reviewing, ***Blake***

> defendant or if there is a motion pending for an order transferring the action to another court under the provisions of Section 396b.
>
> (j) No dismissal may be made or entered, or both, under paragraph (1) or (2) of subdivision (b) except upon the written consent of the attorney for the party or parties applying therefor, or if consent of the attorney is not obtained, upon order of dismissal by the court after notice to the attorney.
>
> (k) No action may be dismissed which has been determined to be a class action under the provisions of this code unless and until notice that the court deems adequate has been given and the court orders the dismissal.
>
> (*l*) The court may dismiss, without prejudice, the complaint in whole, or as to that defendant when either party fails to appear at the trial and the other party appears and asks for the dismissal.
>
> (m) The provisions of this section shall not be deemed to be an exclusive enumeration of the court's power to dismiss an action or dismiss a complaint as to a defendant.

Cal. Civ. Proc. Code § 581.

v. Plus Mark, Inc., 952 S.W.2d 413 (Tenn. 1997), the ***Adamson*** Court concluded that the defendant's TPPA petition could have survived dismissal as a counterclaim had it been properly pleaded before the plaintiff nonsuited the action. ***Adamson***, 2022 WL 17334223 at *14. The ***Adamson*** Court determined that defendant/appellant's TPPA petition

> amounted to more than "mere denials of the plaintiff's cause of action" and sought "affirmative relief" under the TPPA including attorney fees and sanctions. *See* [***Blake.***, 952 S.W.2d at 415-16]. The TPPA itself explains that the statutory scheme provides a "substantive remedy." *See* Tenn. Code Ann. § 20-17-109. Pursuant to Rule 41.01, then, [d]efendants were entitled to proceed with their counterclaim if it was "pleaded . . . prior to the service upon the defendant of plaintiff's motion to dismiss[.]" A pleaded counterclaim will "survive a voluntary nonsuit as of right." ***Menche***, [W2018-01336-COA-R3-CV,] 2019 WL 4016127, at *7 n.7 [(Tenn. Ct. App. Aug. 26, 2019)]; *see, e.g.*, ***Jolly v. Jolly***, No. W2001-00159-COA-R3-CV, 2002 WL 1592678, at *3 (Tenn. Ct. App. July 19, 2002) *rev'd on other grounds,* 30 S.W.3d 783 (Tenn. 2004) ("Husband's right to take a nonsuit is subject to Wife's right to proceed on her counterclaim."); ***Harrison v. Nat'l Life & Accident Ins. Co.***, 145 S.W.2d 1023, 1025 (Tenn. Ct. App. 1940) (concluding that an insurer could proceed with a cross-demand for the penalties provided in the bad-faith penalty statute, as "a plaintiff may at any time take a nonsuit or dismiss his action; but in all such cases there is a reservation to the defendant of his right to proceed with any set-off or counterclaim which he has presented at the trial").

Adamson, 2022 WL 17334223, at *15.[14]

[14] In a footnote, the ***Adamson*** court noted:

> Texas courts have repeatedly held that motions to dismiss filed under its anti-SLAPP statute, the Texas Citizens Participation Act, are claims for affirmative relief for purposes of a nonsuit, such that pending "TCPA motions to dismiss survive nonsuit." ***Gaskamp v. WSP USA, Inc.***, 596 S.W.3d 457, 468 (Tex. Ct. App. 2020); *see, e.g.*, ***McDonald Oilfield Operations, LLC v. 3B Inspection, LLC***, 582 S.W.3d 732, 752 (Tex. Ct. App. 2019) (explaining that a nonsuit does not prejudice "the right of an adverse party to be heard on a pending claim for affirmative relief," and a TCPA motion "constitutes a claim for affirmative relief, which survives nonsuit"); ***Walker v. Hartman***, 516 S.W.3d 71, 80 (Tex. Ct. App. 2017) ("Walker's motion to dismiss under the TCPA survived Hartman's nonsuiting of certain causes of action."); ***Rauhauser v. McGibney***, 508 S.W.3d 377, 383 (Tex. Ct. App. 2014) ("[Appellant's] statutorily-based motion to dismiss—asserting that Appellees' claims were based on, related to, or were in response to his exercise of free speech and moving for dismissal with prejudice, sanctions, and attorney's fees authorized by the TCPA—constituted a claim for affirmative relief that survived Appellees' nonsuit[.]"); Laura Lee Prather & Robert T. Sherwin, *The Changing Landscape of the Texas Citizens Participation Act*, 52 Tex. Tech L. Rev. 163, 179-80 (2020) ("It is well established that Texas law allows parties an absolute right to a nonsuit; however, if a TCPA

The ***Adamson*** Court concluded that the TPPA petition in that case, had it been filed before plaintiff's nonsuit, "would [have been] considered a counterclaim within the meaning of Rule 41.01." ***Adamson***, 2022 WL 17334223, at *14.

However, we observe that, although thorough, the ***Adamson*** Court's holding on the issue was largely *dicta* under the particular facts of that case. No pleading was filed before the plaintiff nonsuited the action in ***Adamson***. As such, we re-examine the issue here.

In ***Blake***, the Tennessee Supreme Court examined the elements of a counterclaim "within the meaning of the rule." ***Blake*** was a worker's compensation case in which the defendant "employer filed a pleading that included 'an answer and a 'counter-complaint.'" ***Blake***, 952 S.W.2d at 414. The counterclaim "adopt[ed] the allegations of its answer, and [sought] a determination . . . of the rights, duties and obligations of the parties' and general relief." ***Id.*** (internal quotation marks omitted). The matter was set to be heard and, on the day of trial, the plaintiff employee moved for a continuance. The trial court denied the motion, and plaintiff moved for dismissal without prejudice. The trial court granted the motion to dismiss and then adjudicated the "employer's 'counterclaim' for a determination of the workers' compensation benefits, if any, to which [the employee] was entitled from [the employer]." ***Id.*** (internal quotation marks omitted). Neither party presented any proof, and the trial court's judgment provided "that the employee 'recover no workers compensation benefits for her claimed injury.'" ***Id.*** at 414-15.

On appeal, the employee in ***Blake*** asserted, *inter alia*, that the trial court erred by proceeding on the employer's "counterclaim." ***Id.*** at 415. The appellant "insist[ed] that since the counterclaim asserted no grounds for relief other than the denial of liability, dismissal of the complaint required the dismissal of the counterclaim as well as the answer." ***Id.*** The ***Blake*** Court determined that the employer's pleading complied with the provisions of the workers' compensation statutes and addressed "whether [it] set forth a counterclaim within the meaning of the rule." ***Id.*** at 416.

The ***Blake*** Court observed that dismissal of the original complaint "ordinarily" resulted in "the dismissal of a cross bill or an answer filed as a cross bill, unless the answer or cross bill set up grounds for affirmative relief." ***Id.*** (citations omitted). The ***Blake*** Court noted "[t]he general rule" providing that:

> As used in a particular statute or rule precluding dismissal where the adverse

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> motion has already been filed, the nonsuit does not affect the TCPA movant's right to attorney's fees and sanctions. This reasoning has been followed by courts in the TCPA context when a nonsuit is filed while the motion is pending.").

Adamson, 2022 WL 17334223, at *14 n.6.

> party has sought affirmative relief, the term 'affirmative relief" requires the allegation of new matter that, in effect, amounts to a counterattack. The relief sought, if granted, must operate not as a defense, but affirmatively and positively to defeat the plaintiff's cause of action. Thus, where the pleadings in a counterclaim constitute mere denials of the plaintiff's cause of action and state no facts on which affirmative relief could be granted, the plaintiff's right to voluntary termination of the suit is not affected.

Id. (quoting 24 Am.Jur.2d *Dismissal* § 66 (1983)). The court determined that this "general rule" is consistent with Rule 13 of the Tennessee Rules of Civil Procedure and that the employer's statutory right to "'submit the entire matter for determination' by the court" could be "asserted as a counterclaim under Rule 41.01." ***Id.*** The ***Blake*** Court determined that the employer's pleading constituted a counterclaim that survived a Rule 41.01 nonsuit because the employer's pleading contained "allegations . . . [that were] more than 'mere denials of the plaintiff's cause of action.'" ***Id.*** The court held:

> They would have been sufficient to state a claim for relief under the workers' compensation statute *as an original complaint* filed by the employer. Consequently, they are sufficient to state a counterclaim under Rule 41.01.

Id. (emphasis added). The ***Blake*** Court determined that "[a]lthough the counterclaim was filed under the authority of the workers' compensation statute and not under the Declaratory Judgment Act, *it is in the nature of an action for declaratory judgment*." ***Id.*** at 417 (emphasis added).

As the ***Adamson*** court reiterated, a pleaded counterclaim may be maintained after a voluntary dismissal of the original action, and the counterclaimant may proceed as a plaintiff. ***Adamson***, 2022 WL 17334223, at *14. However, we are not persuaded that a TPPA petition constitutes a counterclaim within the meaning of Rule 41.01.

Like the TPPA, the TCPA

> provides a motion-to-dismiss procedure that allows defendants who claim that a plaintiff has filed a meritless suit in response to the defendant's proper exercise of a constitutionally-protected right to seek dismissal of the underlying action, attorney's fees, and sanctions at an early stage in the litigation.

McDonald Oilfield Operations, LLC v. 3B Inspection, LLC, 582 S.W.3d 732, 745 (Tex. App. 2019) (citations omitted). It is

> an expedited dismissal mechanism tied to a burden-shifting analysis "'through which a litigant may require, by motion, a threshold testing of the

> merits of legal [actions] that are deemed to implicate the express interests protected by the statute.'" ***Elite Auto Body LLC v. Autocraft Bodywerks, Inc.***, 520 S.W.3d 191, 201 (Tex. App.—Austin 2017, *pet. dism'd*) (quoting ***Serafine v. Blunt***, 466 S.W.3d 352, 369 (Tex. App.—Austin 2015, *no pet.*) (Pemberton, J., concurring)).

Id.

Although not binding on this Court, the majority of the federal circuits have construed anti-SLAPP statutes as procedural mechanisms rather than substantive law and have not applied them in federal actions. Carson Hilary Barylak, Reducing Uncertainty in Anti-SLAPP Protection, 71 Ohio St. L.J. 845, 850 (2010). Additionally, although approximately 34 states and Washington, D.C. have anti-SLAPP statutes, "recent decisions may reflect a new trend toward limiting or even eradicating the application of state anti-SLAPP laws in federal court—even in the Ninth Circuit." Josephine Petrick & Breana Burgos, Federal Anti-SLAPP Law Year in Review — 2019 roundup, Appellate Insight (available at: https://www.appellateinsight.com/2020/03/31/federal-anti-slapp-law-year-in-review-roundup); *see* ***La Liberte v. Reid***, 966 F.3d 79 (2nd Cir. 2020) (declining to apply California's anti-SLAPP statute in diversity action); ***Prince v. Intercept***, No. 21-CV-10075 (LAP), 2022 WL 5243417, at *18 (S.D.N.Y. Oct. 6, 2022) (holding New York's anti-SLAPP "standard conflicts with the standards under Federal Rules 12 and 56" and declining to award defendants' request for attorney's fees and costs under New York's anti-SLAPP statute). In ***Klocke v. Watson***, the Fifth Circuit Court of Appeals held that the TCPA does not apply in federal court. ***Klocke v. Watson***, 936 F.3d 240, 245 (5th Cir. 2019), *as revised* (Aug. 29, 2019). The ***Klocke*** Court held: "[b]ecause the TCPA's burden-shifting framework imposes additional requirements beyond those found in Rules 12 and 56 and answers the same question as those rules, the state law cannot apply in federal court." ***Id.***

Significantly, the federal courts considering that TPPA have determined that the "special-dismissal mechanism provision of [the TPPA] is unavailable in federal court." ***Apex Bank v. Rainsford***, No. 3:20-cv-198, 2020 WL 12840460, at *5 (E.D. Tenn. Sept. 16, 2020). Concluding that relief under the TPPA was not available as a substantive remedy, the district court in ***Apex Bank*** denied defendant's motion to dismiss under the TPPA and granted plaintiff's motion to dismiss and counterclaimant's motions to dismiss without prejudice. ***Id.*** The District Court for the Middle District of Tennessee reached the same conclusion. ***Hughes v. Gupta***, __F.Supp.3d __, 2002 WL 9881021, at *3 (July 14, 2021); ***Santoni v Mueller***, No. 3:20-cv-00975, 2022 WL 97049, at *14 (M.D. Tenn. Jan. 10, 2022); *see* ***Lampo Grp., LLC v. Paffrath***, No. 3:18-CV-01402, 2019 WL 3305143 (M.D. Tenn. July 23, 2019) ("Because Rules 8, 12, and 56 are valid under the Rules Enabling Act and the Constitution and govern the same basic question as the California anti-SLAPP statute, the motion-to-strike procedure created by the California anti-SLAPP

statute cannot apply in federal court."). The District Court for the Eastern District of Tennessee observed that several of the federal circuits have ruled that anti-SLAPP cannot be applied in federal courts because they "create a mechanism for the dismissal of claims that conflicts with" the federal rules governing dismissal, but the district court did not address the issue after determining that no evidence had been proffered to support dismissal under the Act. ***Dillard v. Richard***, 549 F.Supp.3d 753, 763 n.10, 766 (E.D. Tenn. 2021). The Sixth Circuit Court of Appeals has not yet addressed the question.

A counterclaim, on the other hand, is not a procedural mechanism; rather, it is an affirmative pleading that is "sufficient to state a claim for relief[.]" ***Blake***, 952 S.W.2d 416. In ***Blake***, the court held that the employer's prayer for relief could have been brought "as an original complaint" and, accordingly, could stand on its own as a counterclaim. ***Id.*** The relief available under the TPPA, including sanctions, is contingent on the favorable adjudication of a special motion to dismiss that includes a burden shifting provision. Sanctions under the Act are at the discretion of the trial court. The Act combines the procedural mechanism of a Tennessee Rules of Civil Procedure Rule 12.02(6) motion to dismiss with, as the California Court of Appeal has characterized it, "a procedure where the trial court evaluates the merits of the lawsuit using a summary-judgment-like procedure at an early stage of the litigation." ***Jenkins v. Brandt-Hawley***, 302 Cal. Rptr. 3d 883, 897 (Ct. App. 2022) (citations omitted). As counsel for Mr. Flade asserted at the February 2022 hearing in the trial court, the TPPA does not create a private right of action. Tenn. Code Ann. § 20-17-108. It also does not "[a]ffect[] the substantive law governing any asserted claim[.]" ***Id.***

Although Rule 41.01 disallows the taking of a nonsuit when a motion for summary judgment is pending, a TPPA petition is not, by its terms, a motion for summary judgment. Rule 41.01 also explicitly disallows a voluntary nonsuit when the matter has been submitted to a jury and after a court's ruling granting a motion for directed verdict. It explicitly excepts class actions, derivative actions by shareholders, and actions in which a receiver has been appointed. The Rule "'mandates a court order after the nonsuit.'" ***Ewan***, 465 S.W. 3d at 133 (quoting Tenn. R. Civ. P. 41.01(3), advisory comm. cmt to the 2004 amend.).

It is well-settled that courts

> presume that the General Assembly is aware of its prior enactments and knows the state of the law at the time it enacts legislation and also is aware of how courts have previously construed its statutes. ***Brundage v. Cumberland Cnty.***, 357 S.W.3d 361, 365 (Tenn. 2011). "Courts must presume that the Legislature did not intend an absurdity and adopt, if possible, a reasonable construction which provides for a harmonious operation of the laws." ***Fletcher v. State***, 951 S.W.2d 378, 382 (Tenn. 1997)

(citing ***Cronin v. Howe***, 906 S.W.2d 910, 912 (Tenn. 1995); ***Epstein v. State***, 211 Tenn. 633, 366 S.W.2d 914, 918 (1963)).

New v. Dumitrache, 604 S.W.3d 1, 14 (Tenn. 2020).

Accordingly, we presume the General Assembly was aware of the broad right to a voluntary dismissal afforded by Rule 41.01 and of the exceptions to the Rule. Additionally, the General Assembly's purpose in enacting the TPPA was two-fold: "to encourage and safeguard the constitutional rights of persons to petition, to speak freely, to associate freely, and to participate in government to the fullest extent permitted by law *and*, at the same time, protect the rights of persons to file meritorious lawsuits for demonstrable injury." Tenn. Code Ann. § 20-17-102 (emphasis added). Had the General Assembly intended to permit a petitioner to counterclaim for relief pursuant to the Act, to move for summary judgment under the Act, or to otherwise except the expedited motion to dismiss provided by the Act from the well-settled provisions of Rule 41.01, it could have done so. There is nothing in the text of the TPPA that suggests legislative intent to except the Act from the mandates of Rule 41.01. As such, we respectfully disagree with the *dicta* in the ***Adamson*** opinion suggesting that a petition for dismissal under the Act may be maintained as a counterclaim following dismissal pursuant to Rule 41.01.

C. Continuance of December 2022 Hearing

In their briefs, Appellants contend that, in light of the procedural history of this case, "the trial court's decision to defer adjudicating the Defendants' TPPA petitions was a legal error that constituted an abuse of discretion as a matter of law." We have long recognized that the trial courts have the inherent authority to manage their dockets and to control the proceedings in their courtrooms. *See, e.g.,* ***Shao ex rel. Shao v. HCA Health Servs. of Tennessee***, No. M2018-02040-COA-R3-CV, 2019 WL 4418363, at *3 (Tenn. Ct. App. Sept. 16, 2019). Although not unlimited, the trial court's discretion with respect to the management of proceedings is broad. *See, e.g.,* ***Relyant Global, LLC v. Fernandez***, No. E2021-00515-COA-R3-CV, 2022 WL 2903333, at *6 (Tenn. Ct. App. June 24, 2022). It is well-settled that

> "[a] trial court abuses its discretion only when it 'applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining.'" ***Eldridge v. Eldridge***, 42 S.W.3d 82, 85 (Tenn. 2001) (quoting ***State v. Shirley***, 6 S.W.3d 243, 247 (Tenn. 1999)). "The abuse of discretion standard does not permit the appellate court to substitute its judgment for that of the trial court." ***Id.*** (citing ***Myint v. Allstate Ins. Co.***, 970 S.W.2d 920, 927 (Tenn. 1998)).

Borne v. Celadon Trucking Servs., Inc., 532 S.W.3d 274, 294 (Tenn. 2017).

The TPPA provides that a petition to dismiss filed under the Act "may be filed within sixty (60) calendar days from the date of service of the legal action or, in the court's discretion, at any later time that the court deems proper." Tenn. Code Ann. § 20-17-104(b). Mr. Flade filed his complaint on July 9, 2021, and propounded written discovery requests on the City on August 21, 2021. The City filed its motion to dismiss on August 27, 2021, and the motion was set to be heard on October 28, 2021. On October 29, 2021, the trial court entered an agreed order resetting the hearing on the City's motion to dismiss to December 9, 2021. The trial court's October 29, 2021 order also provided: "Defendants Stephanie Issacs (sic) and Bedford County Listening Project have until December 17, 2021, to answer, move, or otherwise respond to [Mr. Flade's] complaint." Ms. Issacs filed her motion to dismiss on November 8, 2021, and her memorandum of law setting forth the grounds for dismissal on November 23, 2021. On November 30, 2021, Mr. Flade filed a motion for an extension of time and prayed for "an order rescheduling both [m]otions to [d]ismiss filed in [the] action[.]" The BCLP filed its motion to dismiss and memorandum of law on December 1, 2021. The record transmitted to this Court contains no order setting a hearing date for Appellants' motions, but on December 8, 2021, Mr. Flade served his response to BCLP's motion, and it was filed by the trial court on December 10, 2021.

During the December 9, 2021 hearing, counsel for Mr. Flade objected to any hearing on the BCLP's petition because it was filed just six days before the hearing and, under section 20-17-104(c), he was required to respond to the petition at least five days before the hearing. Counsel asserted:

> Now, this isn't in my motion [for an extension of time], but I think the same day I filed the motion, the Bedford County Listening Project filed their motion to dismiss and petition to dismiss, setting it [] for today. And so I think we've got an issue of timing here. I certainly don't think you can file it six days ahead of the hearing and have a hearing on it when I'm obligated to file a response before five days. So I'm also objecting to any hearing today on Bedford County Listening Project's petition.

Although it appears undisputed that the City agreed to provide Mr. Flade with its response to his discovery requests by October 26, the City did not respond before Ms. Isaacs filed her motion to dismiss on November 8. At the December 9 hearing, counsel for the City stated that Mr. Flade had "represented that the discovery he's concerned about specifically is whether or not Ms. Isaacs was acting in her capacity as a city council person,]" and we observe that Ms. Isaacs and the BCLP consistently referred to Ms. Isaacs as "Councilwoman Isaacs" in their pleadings. Thus, whether Ms. Isaacs was acting as a City official was a preliminary matter to be adjudicated by the trial court.[15] Additionally, the trial court stated at the hearing that the BLCP's petition was not before it. Following

[15] A "'[p]arty' does not include a governmental entity, agency, or employee[]" for the purposes of the TPPA. Tenn. Code Ann. § 20-17-103.

considerable discussion regarding Mr. Flade's discovery requests and the timing of the TPPA petitions to dismiss, which were filed beyond the 60 days allocated by section 20-17-104(b) but before the December 17 response deadline set by the trial court on October 29, the trial court stated:

> I think, for purposes of judicial economy it would not make sense to have—particularly in light of an argument that, well, the petition on one party asserting the same—in essence the same cause of action, I think it would be wise to hear all of that at the same time. And, two, it dispels of any issue with respect to the timing whether at this point the Court will deem that timely filed because it was filed in accordance with an agreed order that referenced a date in time in order to respond to the petition.

Neither counsel for Ms. Isaacs nor counsel for the BCLP objected to resetting the hearing; the trial court proposed a January 13, 2022 hearing date; and February 24 was agreed to as a mutually convenient date. In view of the procedural history of this case, we find Appellants' argument on this issue to be disingenuous at best. The trial court did not abuse its discretion by resetting the December 9 hearing.

C. Discovery

We turn finally to Appellants' assertion that the trial court erred by permitting discovery limited to the City. Appellants' argument, as we understand it, is that the stay of discovery "in the legal action" mandated by section 20-17-104(d) includes discovery concerning a non-petitioning party, including a governmental entity not within the purview of the TPPA.

"Tennessee courts have long recognized that 'the province of a court is to decide, not advise, and to settle rights, not to give abstract opinions.'" ***West v. Schofield***, 468 S.W.3d 482, 490 (Tenn. 2015) (quoting ***Norma Faye Pyles Lynch Family Purpose LLC v. Putnam Cnty.,*** 301 S.W.3d 196, 203 (Tenn. 2009) (quoting ***State v. Wilson,*** 70 Tenn. 204, 210 (1879))). Additionally, the appellate courts should dismiss issues "that that have become moot regardless of how appealing it may be to do otherwise." ***Norma Faye Pyles Lynch Fam. Purpose LLC***, 301 S.W.3d at 210.

Based on the foregoing, whether the trial court erred by permitting limited discovery with respect to the City is moot. Accordingly, we decline to address this issue as doing so would result in an advisory opinion. ***Thomas v. Shelby Cnty.,*** 416 S.W.3d 389, 393 (Tenn. Ct. App. 2011) (citing ***Norma Faye Pyles Lynch Family Purpose LLC***, 301 S.W.3d at 203) (noting that the court's role is to adjudicate legal rights, "not to give abstract or advisory opinions.")

V. CONCLUSION

The judgment of the trial court is affirmed. The parties' respective requests for an award of attorney's fees and costs on appeal are denied. Any issue not specifically addressed is pretermitted as unnecessary to our disposition of this matter, and the case is remanded to the trial court for such further proceedings as may be necessary and are consistent with this opinion. Costs of the appeal are assessed to Appellants, Stephanie Isaacs and the Bedford County Listening Project, for all which execution may issue if necessary.

S/ Kenny Armstrong
KENNY ARMSTRONG, JUDGE