

**IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE**

DAVID L. RICHMAN and	§	
CHRISTINE N. BROOKS,	§	
	§	
<i>Plaintiffs-Appellees,</i>	§	No. E2024-00919-COA-R3-CV
<i>v.</i>	§	
	§	Blount Cty. General Sessions
JOSHUA DEBITY and	§	Ct. No. CV-35903
LEAH DEBITY,	§	
	§	
<i>Defendants-Appellants.</i>	§	

PRINCIPAL BRIEF OF DEFENDANTS-APPELLANTS

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III. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the trial court erred by refusing to comply with this Court's mandate in *Richman v. Debity*, No. E2022-00908-COA-R3-CV, 2023 WL 4285290, at *4 (Tenn. Ct. App. June 30, 2023).

2. Whether the Plaintiffs had a right to nonsuit after the Defendants' Tennessee Public Participation Act ("TPPA") Petition was argued, submitted, and adjudicated.

3. Whether the Plaintiffs were permitted to deprive the Defendants of their rights under Tennessee Code Annotated section 20-17-106 or the protection and benefits of this Court's mandate by nonsuiting after remand.

4. Whether this case should be remanded with instructions to comply with this Court's mandate within thirty days of this Court's mandate issuing.

5. Whether the Defendants are entitled to an award of attorney's fees, costs, and expenses regarding this and their previous appeal if their TPPA Petition is ultimately granted.

IV. APPLICABLE STANDARDS OF REVIEW

1. The scope of this Court’s mandate presents an issue of law reviewable de novo, taking into account the mandate’s letter and spirit. *Carter v. Mitchell*, 829 F.3d 455, 463 (6th Cir. 2016) (“We review de novo the scope of our own mandates, ‘taking into account the letter and spirit of the mandate.’” (quoting *United States v. Brika*, 487 F.3d 450, 456 (6th Cir. 2007))).

2. Whether the trial court erred by refusing to comply with this Court’s mandate—and whether the Plaintiffs had a right to nonsuit under the circumstances presented here—are legal questions. This Court “review[s] the trial court’s resolution of legal questions de novo with no presumption of correctness.” *Marla H. v. Knox Cty.*, 361 S.W.3d 518, 527 (Tenn. Ct. App. 2011) (citing *Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn. 2000)).

V. INTRODUCTION

“[I]nferior courts must abide the orders, decrees and precedents of higher courts.” *Rudd v. Rudd*, No. W2011-01007-COA-R3-CV, 2011 WL 6777030, at *7 (Tenn. Ct. App. Dec. 22, 2011) (quoting *Weston v. State*, 60 S.W.3d 57, 59 (Tenn. 2001)), *no app. filed*. They also “must strictly comply with this Court’s mandates and on remand ‘lack[] the power to enter any other judgment, or consider or determine any other issue, that is not included in the direction for entry of judgment made by’ this Court.” *Doe v. Roe*, No. M2023-00045-COA-R3-CV, 2024 WL 3887272, at *5 (Tenn. Ct. App. Aug. 21, 2024) (emphasis added) (cleaned up), *no app. filed*. Thus, when this Court remanded to the trial court with instructions to enter “an order explaining the trial court’s decision” denying the Defendants’ TPPA Petition, *Richman*, 2023 WL 4285290, at *4, the trial court was obliged to comply. This appeal arises from the fact that the trial court refused to do so.

The circumstances that prompted the trial court’s mutiny are straightforward. Years ago, the trial court denied the Defendants’ TPPA Petition.¹ It did so after making bizarre mistakes (like taking live testimony the day of the TPPA hearing)² and holding that the Plaintiffs—who never even *asserted* (much less supported) a legally cognizable cause of action³—had met their burden of proof.⁴ But the reasoning underlying the trial court’s ruling that the Defendants’ TPPA Petition was “denied

¹ Supp. R. Vol. I at 73.

² *See generally* Supp. R. Vol. II.

³ Supp. R. Vol. I at 28 ¶ 1.

⁴ Supp. R. Vol. II at 11:3–9.

and dismissed”⁵ was inexplicable in the literal sense that this Court could not “discern the basis for it[].” *Richman*, 2023 WL 4285290, at *4. Thus, after Mr. and Mrs. Debity appealed, this Court remanded “for entry of an order explaining the trial court’s decision.” *Id.*

On remand, the Plaintiffs filed a notice of nonsuit.⁶ Afterward, instead of complying with this Court’s mandate, the trial court entered the Plaintiffs’ proposed nonsuit order, and it refused to enter an order explaining its earlier decision denying the Defendants’ TPPA Petition as this Court ordered.⁷

When the Defendants then complained that, notwithstanding the Plaintiffs’ attempted nonsuit, the trial court was required to comply with this Court’s mandate,⁸ the trial court disagreed.⁹ In particular, relying on this Court’s then-pending-appeal decision in *Flade v. City of Shelbyville*, No. M2022-00553-COA-R3-CV, 2023 WL 2200729, at *1 (Tenn. Ct. App. Feb. 24, 2023), *aff’d*, No. M2022-00553-SC-R11-CV, 2023 WL 5198445 (Tenn. Aug. 9, 2023), the trial court held that “Defendants’ TPPA Petition does not survive the nonsuit”¹⁰ and this Court’s mandate was not “binding.”¹¹

Afterward, the Tennessee Supreme Court adjudicated *Flade*. See *Flade v. City of Shelbyville*, No. M2022-00553-SC-R11-CV, 2024 WL

⁵ Supp. R. Vol. I at 73.

⁶ R. at 1–2.

⁷ *Id.* at 3–4.

⁸ *Id.* at 5–23.

⁹ *Id.* at 75–80.

¹⁰ *Id.* at 79.

¹¹ *Id.* at 78.

4448736 (Tenn. Oct. 9, 2024) (slip op.). The Tennessee Supreme Court also emphasized that its ruling in *Flade* did not address the “different” circumstances that are now presented here, stating: “We reiterate that at the time of the voluntary nonsuit in this case, the TPPA petitions had not been argued or submitted to the trial court for decision. *We do not decide if the result we reach today would be the same were those circumstances different.*” *Id.* at *18 n.28 (emphasis added).

Faced with the “different” circumstances now presented here—a SLAPP plaintiff attempting to nonsuit *after* a TPPA petition has been adjudicated (and after a remand from this Court, at that)—this Court must look beyond *Flade* for guidance. Fortunately, three straightforward lines of precedent point the way under the peculiar circumstances presented here.

First, because “[v]ertical *stare decisis* is absolute, as it must be in a hierarchical system[,]” *Nat’l Republican Senatorial Comm. v. Fed. Election Comm’n*, 117 F.4th 389, 395 (6th Cir. 2024) (quoting *Ramos v. Louisiana*, 590 U.S. 83, 124 n.5 (2020) (Kavanaugh, J., concurring in part)), trial courts may not refuse to comply with an appellate court’s mandate. Instead, when a case is remanded, the receiving court is “obligated to adhere to [the higher court’s] directive, considering no more or less than what [it has] been directed to consider.” *Com. Painting Co. Inc. v. Weitz Co. LLC*, No. W2019-02089-COA-R3-CV, 2024 WL 4360219, at *3 (Tenn. Ct. App. Oct. 1, 2024), *no app. filed*. Trial courts also lack “authority to expand the directive or purpose of” an appellate court’s mandate on remand. *See Weston*, 60 S.W.3d at 59. As such, they “lack[]

the power to enter any other judgment, or consider or determine any other issue, that is not included in the direction for entry of judgment made by' this Court.” *Doe*, 2024 WL 3887272, at *5 (cleaned up). For these reasons, the trial court lacked authority to refuse to comply with this Court’s mandate, and it erred by accepting the Plaintiffs’ argument that “[t]he Court of Appeals’ mandate does not have to be honored[.]”¹²

Second, where, as here, a TPPA petition has already been argued and submitted for decision, a plaintiff may not prevent entry of an order on it by nonsuiting. *See, e.g., Ewan v. Hardison Law Firm*, 465 S.W.3d 124, 136 (Tenn. Ct. App. 2014) (“Once the case finally has been submitted to the trial court for a determination on the merits, however, the plaintiff no longer can take a voluntary dismissal as a matter of right.”); **Attach. 1**, Order, *Allen v. Law*, No. 23-CV-132, at 2 (Lincoln Cty. Cir. Ct. Jan. 23, 2024) (“In this case, the Court is simply precluded from entering the Order of Voluntary Dismissal because the Defendants’ TPPA Petition has been fully heard, all exhibits and arguments have been submitted, and such has been tendered as a ‘final submission’ to the trial court. Had the Voluntary Dismissal been requested prior to final closing arguments on December 13, 2023, this Court may have found itself in a much different posture.”). The Plaintiffs certainly had no right to nonsuit after the Defendants’ TPPA Petition was *adjudicated*. *See, e.g., Irvin v. Green Wise Homes, LLC*, No. M2019-02232-COA-R3-CV, 2021 WL 709782, at *9 (Tenn. Ct. App. Feb. 24, 2021) (no right to nonsuit after the “case ha[s] been decided on the merits”), *app. denied* (Tenn. June 9, 2021). Thus, the

¹² R. at 28.

trial court erred by holding otherwise.

Third, the implied vested rights exception applies here. “Liberty interests can be created by state rules or mutually explicit understandings as well as by statute.” *Bills v. Henderson*, 631 F.2d 1287, 1291 (6th Cir. 1980). And to protect speakers against exactly the problem presented here—a nescient trial court that fails to adjudicate correctly or dismiss promptly a lawsuit that targets protected speech—the legislature codified such a liberty interest. See Tenn. Code Ann. § 20-17-106 (“The court’s order . . . refusing to dismiss a legal action pursuant to a petition filed under this chapter is immediately appealable as a matter of right to the court of appeals.”). Misbehaving plaintiffs accordingly lack authority to interfere with a defendant’s “right” to appeal under section 20-17-106 by nonsuiting after a trial court has adjudicated a TPPA petition. They also lack authority to deprive opposing litigants of the benefits and protections of an appellate court’s mandate. Thus, the trial court erred by ruling that the Plaintiffs’ attempted nonsuit precluded further proceedings.

For these reasons, the trial court erred by refusing to comply with this Court’s mandate. Thus, once more, this Court should remand. Further, given the trial court’s unrelenting legal errors below; its extended delay in adjudicating this case; and its refusal to comply with this Court’s mandate the first time around, this Court should remand with instructions to comply with this Court’s mandate within no more than thirty days. If the Defendants ultimately prevail, they also should be awarded their appellate attorney’s fees.

VI. STATEMENT OF THE CASE

A. INITIAL TRIAL COURT PROCEEDINGS

On October 14, 2021, the Plaintiffs initiated this action for a “Civil Warrant Restraining Order” against Defendants Joshua and Leah Debity.¹³ The Plaintiffs’ “Civil Warrant” alleged that Mr. and Mrs. Debity “harassed plaintiffs [and] invaded privacy by taking pictures of [Plaintiffs’] minor daughter (in bathing suit) [and] pictures inside open garage (from street)[.]”¹⁴ The Plaintiffs’ Civil Warrant did not assert any cause of action.¹⁵ The Plaintiffs served process on October 16, 2021.¹⁶

On December 14, 2021, Mr. and Mrs. Debity timely petitioned the trial court to dismiss the Plaintiffs’ lawsuit under the TPPA.¹⁷ Because the Plaintiffs’ Civil Warrant pleaded that the Plaintiffs were suing the Defendants for the facially First Amendment-protected activity of “taking pictures” from the “street[.]”¹⁸ and because—based on the admissible evidence appended to the Defendants’ TPPA Petition—the Plaintiffs were suing Mr. and Mrs. Debity in response to their request for an accommodation for their disabled son, Mr. and Mrs. Debity asserted that the Plaintiffs’ lawsuit was a “legal action filed in response to a party’s exercise of the right to free speech[.]”¹⁹ *See* Tenn. Code Ann. §§ 20-17-104(a) & -105(a)–(b). Specifically, Mr. and Mrs. Debity

¹³ *See* Supp. R. Vol. I at 1.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* (“Date of Service: 10-16-21”).

¹⁷ *Id.* at 3–27.

¹⁸ *Id.* at 1.

¹⁹ *Id.* at 8.

demonstrated with admissible evidence that the Plaintiffs filed this action in response to Mr. and Mrs. Debity:

(1) seeking a legally required accommodation for their disabled son;²⁰ and

(2) taking photographs from the street,²¹ the purpose of which was to document selective enforcement of the Vintage Villages Homeowners Association’s bylaws to support a forthcoming lawsuit.²²

On February 25, 2022, the Plaintiffs responded in opposition to the Defendants’ TPPA Petition.²³ The Plaintiffs’ response—which was unsworn and included no exhibits—did not contain any “admissible evidence” as contemplated by section 20-17-105(d).²⁴ Accordingly, the Plaintiffs neither met—nor even attempted to meet—their evidentiary burden before the hearing on the Defendants’ TPPA Petition.

The Plaintiffs’ response also clarified that their action was a “non-emergent request for a restraining order against Defendants, Joshua and Leah Debity” that did not assert any legal claim or cause of action.²⁵ Thus, because no legal claim was even being *alleged*,²⁶ it was *impossible*

²⁰ See *id.* at 7–9 (citing *id.* at 17–27).

²¹ *Id.* at 1.

²² See *id.* at 7.

²³ *Id.* at 28–30.

²⁴ *Id.*

²⁵ *Id.* at 28 ¶ 1.

²⁶ A restraining order is not a claim or cause of action. Instead, as this Court has made clear, a restraining order is a *remedy*. See, e.g., *City of Lebanon ex rel. Craighead v. Dodson*, No. M2016-01745-COA-R3-CV, 2018 WL 2027239, at *5 (Tenn. Ct. App. Apr. 30, 2018) (“Injunctive relief . . . is a remedy, not an independent cause of action. . . . So a permanent

for the Plaintiffs to establish a “prima facie case for each essential element of the claim in the legal action” as section 20-17-105(b) required.

The trial court held a hearing on the Defendants’ TPPA Petition on March 4, 2022.²⁷ During that hearing, the trial court ruled that the Defendants met their initial burden under section 20-17-105(a) of making a prima facie case that the Plaintiffs’ legal action was based on, related to, or was in response to the Defendants’ exercise of the right to free speech, right to petition, or right of association.²⁸ In particular, although the trial court never reduced its ruling to a written order, the trial court held “that the petitioners/defendants ha[d], in fact, in comportment with the statute, made a prima facie case showing that would require the burden to now shift to [the plaintiffs’] presentation . . . as far as rebutting that petition.”²⁹

Because the Defendants met their initial burden under the TPPA, the Plaintiffs’ failure to timely introduce any admissible evidence in response to the Defendants’ TPPA Petition should have ended this case. *See* Tenn. Code Ann. §§ 20-17-104(c) & -105(a)–(b), (d). Instead of granting the Defendants’ TPPA Petition, though, the trial court inexplicably held an evidentiary hearing featuring live testimony from five witnesses.³⁰

After the conclusion of proof, Plaintiffs’ counsel reiterated that no

injunction is available as a remedy only if an applicant prevails on the merits of a claim.”), *no app. filed*.

²⁷ *See generally* Supp. Tr. Vol. I.

²⁸ *Id.* at 11:3–9.

²⁹ *Id.*

³⁰ *See generally id.*

cognizable claim or cause of action was even being alleged in this lawsuit.³¹ In particular, although “[i]njunctive relief is a remedy, not an independent cause of action” and “is available as a remedy only if an applicant prevails on the merits of a claim[,]” *City of Lebanon ex rel. Craighead*, 2018 WL 2027239, at *5 (cleaned up), Plaintiffs’ counsel insisted: “[T]he causes of action are not invasion of privacy and harassment. The cause of action is a restraining order.”³² Plaintiffs’ counsel also conceded that “[c]reating a photo in and of itself might be protected” by the First Amendment.³³ Afterward, the trial court took the Defendants’ TPPA Petition under advisement.³⁴

On May 13, 2022, the Parties reconvened, and the trial court delivered its ruling.³⁵ The trial court determined that the Defendants’ TPPA Petition failed “based on the review of the proof, the reception of the proof, and the applicable case law.”³⁶ The trial court’s oral ruling denying the Defendants’ TPPA Petition was reduced to an unreasoned written order entered on July 6, 2022.³⁷

B. THE DEFENDANTS’ FIRST TPPA APPEAL

The Defendants timely exercised their right to appeal the trial court’s order refusing to dismiss the Plaintiffs’ legal action under the TPPA. *See* Tenn. Code Ann. § 20-17-106. On appeal, this Court vacated

³¹ *Id.* at 155:17–19.

³² *Id.*

³³ *Id.* at 160:2–4.

³⁴ *Id.* at 166:19–67:9.

³⁵ *See* Supp. Tr. Vol. II.

³⁶ *Id.* at 3:2–4.

³⁷ *See* Supp. R. Vol. I at 73–81.

the trial court’s judgment and remanded, holding that: “Because the trial court’s written order does not contain the reasoning for its denial of the TPPA Petition, we vacate and remand for entry of an order explaining the trial court’s decision.” *Richman*, 2023 WL 4285290, at *4.

Recognizing that they were now at risk of being held accountable for filing a facially bogus, retaliatory lawsuit in response to Mr. and Mrs. Debity’s exercise of their First Amendment rights, the Plaintiffs then scrambled to nonsuit this action, which they attempted to do twice. First, on July 12, 2023—*before* this Court’s mandate issued—the Plaintiffs filed their first notice of nonsuit, which the trial court then entered despite its lacking jurisdiction on July 13, 2023.³⁸ Given that that order was facially void for lack of jurisdiction, though, after this Court’s mandate issued,³⁹ the Plaintiffs filed a second notice of nonsuit as well.⁴⁰

On September 15, 2023, jurisdiction having returned to the trial court, the Defendants submitted a proposed order for entry that both reflected the asserted basis for the trial court’s earlier rulings and would comply with this Court’s mandate.⁴¹ The trial court did not enter it. Indeed, the trial court refused to comply with this Court’s mandate at all.⁴²

³⁸ R. at 75 (“1. On July 12, 2023, while this matter was pending before the Tennessee Court of Appeals, Plaintiffs filed a Notice of Nonsuit with this Court. 2. On July 13, 2023, this Court entered an Order for Nonsuit.”).

³⁹ R. at 91.

⁴⁰ *Id.* at 1–2.

⁴¹ *Id.* at 6.

⁴² *See id.* at 75–80.

Instead, on October 27, 2023, the trial court entered the Plaintiffs’ second proposed nonsuit order.⁴³ It did not notify the Parties that it had done so, though.⁴⁴ The trial court also never served the Defendants with a copy of it.⁴⁵ The trial court did send *the Plaintiffs* a copy of the order, but it waited until November 30, 2023, to do so.⁴⁶

The Plaintiffs forwarded the secretly entered order to the Defendants’ counsel at 12:10 p.m. EST on November 30, 2023.⁴⁷ The same day, the Defendants moved the trial court to vacate both of its nonsuit orders and to comply with this Court’s mandate.⁴⁸ The Plaintiffs then responded in opposition to the Defendants’ motion.⁴⁹ In their response, the Plaintiffs insisted that “[t]he Court of Appeals’ mandate does not have to be honored if the case has been nonsuited while on remand.”⁵⁰

Almost seven months later—on June 21, 2024—the trial court finally adjudicated the Parties’ dispute over whether this Court’s mandate could be lawfully disregarded.⁵¹ The trial court entered an order declining to comply with this Court’s mandate, reasoning that: “[W]hile *Rudd* emphasizes the importance of complying with a Court of Appeals’ mandate, it fails to assert that an appellate mandate overrides

⁴³ *Id.* at 3.

⁴⁴ *Id.* at 5; *id.* at 6.

⁴⁵ *Id.* at 5; *id.* at 6.

⁴⁶ *Id.* at 21.

⁴⁷ *Id.*

⁴⁸ *Id.* at 5–23.

⁴⁹ *Id.* at 26–74.

⁵⁰ *Id.* at 28.

⁵¹ *See id.* at 75–80.

the right of a plaintiff to nonsuit[.]”⁵² Thus, the trial court concluded that this Court’s mandate was not “binding.”⁵³ The same day, the Defendants appealed again under section 20-17-106.⁵⁴

VII. STATEMENT OF FACTS⁵⁵

In July 2021, Defendants Joshua and Leah Debitz closed on and moved into their new home in Maryville, Tennessee.⁵⁶ Because their neighborhood was governed by the Vintage Villages Homeowners Association, before moving in, the Defendants emailed HOA board members about obtaining a special accommodation for their disabled child: a wooden privacy fence for their backyard.⁵⁷ After multiple email exchanges, however—which included descriptions of the new wooden fence and explanations detailing why the Defendants needed it—and even though the Defendants had seen another wooden fence in the neighborhood,⁵⁸ the HOA approved only a metal fence.⁵⁹

After this conflict, Mr. and Mrs. Debitz took photos of objects in

⁵² *Id.* at 78.

⁵³ *Id.*

⁵⁴ *Id.* at 84–86.

⁵⁵ The TPPA does not contemplate an evidentiary hearing at which live testimony is taken. *See* Tenn. Code. Ann. §§ 20-17-104(c) & -105(d). Accordingly, when adjudicating the Defendants’ TPPA Petition, the only admissible evidence that can lawfully be considered are: (1) the exhibits to the Defendants’ TPPA Petition, (2) the Parties’ statements as party opponents, and (3) Mr. Debitz’s “stipulated affidavit” affirming the authenticity of the Parties’ correspondence. *See* Supp. Tr. Vol I at 8:5–6; Supp. R. Vol. II at 1.

⁵⁶ Supp. R. Vol I at 20.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 23.

front of the Plaintiffs’ house.⁶⁰ They did so to document “selective enforcement of HOA rules for purposes of a forthcoming federal lawsuit arising from the HOA’s refusal to provide reasonable accommodations for the Defendants’ disabled son”⁶¹—a lawsuit that Mr. and Mrs. Debitz later filed. *See Debitz v. Vintage Vill. Homeowners Ass’n*, No. 23-5897, 2024 WL 3936828 (6th Cir. Aug. 26, 2024).

The Plaintiffs then filed this action for a “Civil Warrant Restraining Order.”⁶² The Plaintiffs’ pleading alleged that Mr. and Mrs. Debitz taking photos “from [the] street” caused the Plaintiffs to feel “harassed” and “invaded [their] privacy[.]”⁶³ The Plaintiffs did *not* allege—either in their initial filing or in their later response to the Defendants’ TPPA Petition—that Mr. and Mrs. Debitz had trespassed on their property when taking these photos.⁶⁴

After the Plaintiffs sued Mr. and Mrs. Debitz, the Parties’ counsel corresponded about the Plaintiffs’ lawsuit by email.⁶⁵ In an email about this lawsuit, Plaintiffs’ counsel—who, like the Plaintiffs, was involved in and represented the Vintage Villages HOA—stated:

[T]he Debitzs’ doctor’s office (Pediatric Choice) has informed the HOA that the PA that wrote the letter to the HOA is out on maternity leave until 1/5/2022. Said PA asked for an extension until after her return to respond to our last letter. **Can you ascertain from your clients whether they want us to wait until then to take any further action, or to**

⁶⁰ *Id.* at 7.

⁶¹ *Id.*

⁶² *Id.* at 1.

⁶³ *Id.*

⁶⁴ *See generally id.* at 1–2; *id.* at 28–30.

⁶⁵ *See id.* at 26.

proceed with the information we have?⁶⁶

This email confirmed that the Plaintiffs’ lawsuit and the Defendants’ request for an accommodation for their disabled son were inextricably connected; otherwise, there was no plausible reason why a letter from the Defendants’ pediatrician would have any bearing on this case. Thus, fueled by the Plaintiffs’ written confirmation that this action was a “response to a party’s exercise of the right of free speech,” *see* Tenn. Code Ann. § 20-17-104(a), and because the Plaintiffs themselves pleaded that this action was filed in response to the Defendants’ exercising their right of free speech by taking photographs “from [the] street”⁶⁷—Mr. and Mrs. Debity petitioned the trial court to dismiss this action under the TPPA.

The Plaintiffs’ response to the Defendants’ TPPA Petition did not include any evidence.⁶⁸ Thus, the Plaintiffs made no attempt to meet their evidentiary burden of proof before hearing, and they “essentially failed to respond to Defendant’s TPPA petition at all.” *Cf. Nandigam Neurology, PLC v. Beavers*, 639 S.W.3d 651, 668 (Tenn. Ct. App. 2021). This failure should have ended this case. *See id.* Now more than two years later, though—due to cascading trial court errors that most recently include refusing to comply with this Court’s mandate—this case continues.

⁶⁶ *See id.* (emphasis added).

⁶⁷ *Id.* at 1.

⁶⁸ *Id.* at 28–30.

VIII. ARGUMENT

A. *FLADE* DOES NOT CONTROL THIS APPEAL.

Based on this Court’s then-pending-appeal decision in *Flade*, the trial court held that the Plaintiffs’ post-remand nonsuit ended this litigation.⁶⁹ But the Tennessee Supreme Court’s later decision in *Flade* explicitly states that it does not control the “different” circumstances presented here. *See Flade*, 2024 WL 4448736, at *18 n.28. In particular, while the *Flade* defendants had filed TPPA petitions before a plaintiff nonsuited, their petitions had not been argued or submitted—let alone adjudicated—when Mr. Flade nonsuited. *Id.* Thus, the Tennessee Supreme Court stated: “We reiterate that at the time of the voluntary nonsuit in this case, the TPPA petitions had not been argued or submitted to the trial court for decision. We do not decide if the result we reach today would be the same were those circumstances different.” *Id.*

The “different” circumstances that *Flade* suggests might merit a different “result” are present here. *See id.* In this case, Mr. and Mrs. Debity’s TPPA Petition not only had been argued and submitted for final decision when the Plaintiffs attempted to nonsuit; it had been *adjudicated*. Thus, *Flade*—which goes out of its way to emphasize that it does not control the circumstances presented here—does not control this appeal. Instead, this Court must look to other authority for guidance.

⁶⁹ R. at 78–79.

B. THE TRIAL COURT WAS REQUIRED TO COMPLY WITH THIS COURT’S MANDATE.

“Vertical *stare decisis* is absolute, as it must be in a hierarchical system[.]” *Nat’l Republican Senatorial Comm.* 117 F.4th at 395 (quoting *Ramos*, 590 U.S. at 124 n.5 (Kavanaugh, J., concurring in part)). One of the primary ways that higher courts ensure that lower courts comply with their decrees is through “the mandate rule.” *M.D. ex rel. Stukenberg v. Abbott*, 977 F.3d 479, 483 (5th Cir. 2020). As the Sixth Circuit has explained:

The mandate rule “compels compliance on remand with the dictates of the superior court and forecloses relitigation of issues expressly or *impliedly* decided by the appellate court.” Likewise, where an issue was ripe for review at the time of an initial appeal but was nonetheless foregone, the mandate rule generally prohibits the [trial] court from reopening the issue on remand unless the mandate can reasonably be understood as permitting it to do so.

United States v. O’Dell, 320 F.3d 674, 679 (6th Cir. 2003) (quoting *United States v. Ben Zvi*, 242 F.3d 89, 95 (2d Cir. 2001)).

Tennessee follows the mandate rule. *See Rudd*, 2011 WL 6777030, at *7. Thus, this Court has explained that “inferior courts must abide the orders, decrees and precedents of higher courts.” *Id.* (quoting *Weston*, 60 S.W.3d at 59). As such, “[w]hen a trial court receives a case that has been remanded, the trial court must strictly comply with the appellate court’s mandate, and typically lacks the power to deviate from the terms of the appellate court’s mandate, absent either permission from the appellate court or extraordinary circumstances.” *Id.*

Lower courts similarly lack “authority to expand the directive or

purpose of” a remanding court’s mandate. *See Weston*, 60 S.W.3d at 59; *see also Com. Painting Co. Inc.*, 2024 WL 4360219, at *3 (“Because this case is before us on remand from the Tennessee Supreme Court, we are obligated to adhere to its directive, considering no more or less than what we have been directed to consider.”). That means when a trial court is subject to an appellate court’s limited remand, the trial court is bound by its narrow scope. *O’Dell*, 320 F.3d at 679 (“The basic tenet of the limited remand component of the mandate rule is that ‘a [trial] court is bound to the scope of the remand issued by the court of appeals.’” (quoting *United States v. Campbell*, 168 F.3d 263, 265 (6th Cir. 1999))).

With these principles in mind, when this Court issued a limited remand instructing the trial court to enter “an order explaining the trial court’s decision” denying the Defendants’ TPPA Petition so as to enable meaningful appellate review, *Richman*, 2023 WL 4285290, at *4, this Court’s precedent compelled the trial court to comply. *See supra*. By contrast, the Plaintiffs’ argument that “[t]he Court of Appeals’ mandate does not have to be honored”⁷⁰ enjoys no basis in law. Indeed, as one appellate court has suggested, “[a]ccepting Plaintiffs’ approach would replace judicial hierarchy with judicial anarchy.” *M.D. ex rel. Stukenberg*, 977 F.3d at 483.

Here, there is no doubt that the trial court refused to comply with this Court’s mandate.⁷¹ It is easy to tell, given that the trial court both did not do what this Court ordered it to do and explicitly stated that it

⁷⁰ *Id.* at 28.

⁷¹ *See id.* at 75–80.

did not consider this Court’s mandate “binding.”⁷² As justification for dishonoring this Court’s mandate, the trial court reasoned that: “[W]hile *Rudd* emphasizes the importance of complying with a Court of Appeals’ mandate, it fails to assert that an appellate mandate overrides the right of a plaintiff to nonsuit[.]”⁷³

The trial court’s reasoning was wrong. As this Court has explained, when a trial court is subject to a limited remand, it “***lacks the power to enter any other judgment***, or consider or determine any other issue, that is not included in the direction for entry of judgment made by’ this Court.” *Doe*, 2024 WL 3887272, at *5 (emphasis added) (quoting *Raleigh Commons, Inc. v. SWH, LLC*, 580 S.W.3d 121, 129 (Tenn. Ct. App. 2018)). That limited jurisdictional grant thus precluded the trial court from entering “any” contrary judgment below. *Id.*; cf. *Port of Corpus Christi, LP v. Port of Corpus Christi Auth. of Nueces Cnty.*, No. 13-21-00463-CV, 2023 WL 8817844, at *2 (Tex. App. Dec. 21, 2023) (“Because our prior mandate has issued, 361 Holdings’ nonsuit simply has no effect on those issues for which we rendered judgment[.]” (citing *Cessna Aircraft Co. v. Aircraft Network, LLC*, 345 S.W.3d 139, 144 (Tex. App. 2011) (“On remand, the filing of the mandate with the trial court vests the trial court with limited jurisdiction, as defined by the parameters of the mandate, to decide those issues specified in the mandate.”); *Seeger v. Yorkshire Ins. Co.*, 503 S.W.3d 388, 408 (Tex. 2016) (“When an appellate court remands a case to the trial court, the trial court ‘has no authority to take any action

⁷² *Id.* at 78.

⁷³ *Id.*

that is inconsistent with or beyond the scope of that which is necessary to give full effect to the appellate court’s judgment and mandate.”)); *Wheatley v. Int’l Harvester Co.*, 166 Ill. App. 3d 775, 777 (1988) (“[W]e necessarily conclude that the dismissal of Wheatley I without prejudice was null and void.”).

For these reasons, the trial court was obliged to “strictly comply with this Court’s mandates[,]” and it “lack[ed] the power to enter any other judgment, or consider or determine any other issue[.]” *Doe*, 2024 WL 3887272, at *5 (cleaned up). Nevertheless, the trial court *did* enter another judgment; it *did* determine another issue; and it refused to do on remand the one thing that this Court ordered it to do.⁷⁴ The trial court’s “proceedings on remand which [were] contrary to the directions contained in the mandate from [this Court] may be considered null and void” as a result. *See Raleigh Commons, Inc.*, 580 S.W.3d at 129 (quoting 5 AM. JUR. 2d APPELLATE REVIEW § 791 (n.d.)). Thus, this Court should vacate and remand—again—with instructions to comply with this Court’s earlier mandate.

C. BECAUSE THE DEFENDANTS’ TPPA PETITION HAD BEEN FINALLY SUBMITTED TO THE TRIAL COURT AND ADJUDICATED, THE PLAINTIFFS COULD NOT PREVENT THE TRIAL COURT FROM ENTERING A JUDGMENT ON THE PETITION BY NONSUITING.

Where—as here—a TPPA petition has already been argued and submitted for final decision, a plaintiff may not prevent a trial court from entering an order on it by nonsuiting. *See, e.g., Attach. 1* at 2 (“In this case, the Court is simply precluded from entering the Order of Voluntary

⁷⁴ *Id.* at 3–4, 75–80.

Dismissal because the Defendants' TTPA Petition has been fully heard, all exhibits and arguments have been submitted, and such has been tendered as a 'final submission' to the trial court. Had the Voluntary Dismissal been requested prior to final closing arguments on December 13, 2023, this Court may have found itself in a much different posture.”).

Longstanding authority supports this rule. *See, e.g., Weedman v. Searcy*, 781 S.W.2d 855, 857 (Tenn. 1989) (“In a non-jury case, *until the case has finally been submitted to the trial court for a decision*, the plaintiff has a right to a voluntary dismissal.”) (emphasis added); *Ewan*, 465 S.W.3d at 136 (“Once the case finally has been submitted to the trial court for a determination on the merits, however, the plaintiff no longer can take a voluntary dismissal as a matter of right.”); *Akers v. Gregory Funding, LLC*, No. M2020-01351-COA-R3-CV, 2021 WL 5576108, at *3 (Tenn. Ct. App. Nov. 30, 2021) (“[W]hen a case ‘has been finally submitted to the trial court for a determination on the merits, . . . the plaintiff can no longer take a voluntary dismissal as a matter of right.’”) (cleaned up), *no app. filed*; *Hamilton v. Cook*, No. 02A01-9712-CV-00324, 1998 WL 704528, at *5 (Tenn. Ct. App. Oct. 12, 1998) (“At the point they filed their notice of nonsuit, the Hamiltons had participated in a hearing on the Defendants’ motion to dismiss at which the Defendants demonstrated valid defenses to a majority of the Hamiltons’ claims for relief. Moreover, the trial court already had issued its oral ruling dismissing all claims against the Defendants. We hold that, under these circumstances, the trial court did not abuse its discretion in refusing to permit the Hamiltons to take a voluntary dismissal.”), *no app. filed*; *SecurAmerica Bus. Credit*

v. Schledwitz, No. W2009-02571-COA-R3-CV, 2011 WL 3808232, at *8 (Tenn. Ct. App. Aug. 26, 2011) (“[A]fter the matter has been finally submitted to the trial court for a determination on the merits, the plaintiff can no longer take a voluntary dismissal as a matter of right.”), *no app. filed.*; *cf. Mack v. Cable Equip. Servs., Inc.*, No. W2020-00862-COA-R3-CV, 2022 WL 391458, at *7 (Tenn. Ct. App. Feb. 9, 2022), *app. denied* (Tenn. Aug. 3, 2022) (similar); *Anderson v. Smith*, 521 S.W.2d 787, 791 (Tenn. 1975) (“Under these circumstances, we hold that when the appellee obtained a court order for possession of the property being condemned, leaving nothing to be decided except the compensation to be paid appellants for the land taken, the appellee lost its right to take a nonsuit over the objections of the appellants.”); *Hollow v. Ingram*, No. E2010-00683-COA-R3-CV, 2010 WL 4861430, at *5–6 (Tenn. Ct. App. Nov. 29, 2010) (holding that when a special master’s report was “filed but not yet acted upon by the court” and Tenn. R. Civ. P. 53.04 obligated the trial court to act, the trial court was required to issue a decision on the merits before acting on a plaintiff’s nonsuit)), *no app. filed.*; *Lacy v. Cox*, 152 S.W.3d 480, 481 (Tenn. 2004) (“Reversing the Court of Appeals, we hold that a trial court has no authority to grant a voluntary dismissal without prejudice while the jury is deliberating.”).

Because Tennessee law does not recognize a right to nonsuit after a matter has been decided, allowing a plaintiff to nonsuit following a post-adjudication, post-appeal remand makes even less sense. *See Irvin*, 2021 WL 709782, at *9 (no right to nonsuit after the “case ha[s] been decided on the merits[.]”); *cf. Miami-Dade Cnty. v. Mitchell*, 835 So. 2d 1196, 1197

(Fla. Dist. Ct. App. 2002) (“To allow claimant to take a voluntary dismissal after remand, under the circumstances of this case, would allow the claimant the benefit of 20/20 hindsight, a benefit not afforded to other claimants or contemplated by the rule.” (citing *Middlebrooks v. St. Johns Water Mgmt. Dist.*, 529 So.2d 1167, 1169–70 (Fla. Dist. Ct. App. 1988))). Here, the sole purpose of this Court’s order remanding “for entry of an order explaining the trial court’s decision” was to enable this Court to review a trial court determination that the trial court made years ago. *See Richman*, 2023 WL 4285290, at *4. Thus, permitting SLAPP plaintiffs to prevent this Court from completing its review by letting them nonsuit years after a trial court has ruled would enable precisely the abuse that “the TPPA . . . was designed to prevent and deter[.]” *See Nandigam Neurology, PLC*, 639 S.W.3d at 666 n.7.

For these reasons, the trial court erred by failing to enter the order that this Court mandated and by permitting the Plaintiffs to nonsuit after the Defendants’ TPPA Petition had already been heard, submitted for decision, and adjudicated. Under these circumstances, at minimum, the trial court was obliged to enter the mandated order while permitting the Plaintiffs to nonsuit the balance of their case. *See Autin v. Goetz*, 524 S.W.3d 617, 633 (Tenn. Ct. App. 2017) (“We also cannot agree that *Rickets* stands for the proposition that the filing of a notice of nonsuit deprives the trial court of jurisdiction to enter any additional orders in the case other than an order confirming the voluntary dismissal.” (citing *Rickets v. Sexton*, 533 S.W.2d 293 (Tenn. 1976))).

D. THE TRIAL COURT’S ENTRY OF THE PLAINTIFFS’ POST-REMAND NONSUIT ILLICITLY DEPRIVED THE DEFENDANTS OF THEIR VESTED RIGHTS.

A plaintiff may not nonsuit when doing so would “deprive the defendant of some right that became vested during the pendency of the case.” *Anderson*, 521 S.W.2d at 790; *see also Rickets*, 533 S.W.2d at 294–95 (“The right of a plaintiff to take a nonsuit is subject to the further qualification that it must not operate to deprive the defendant of some right that vested during the pending of the case.”). This principle of Tennessee law “is rooted in due process.” *See Solomon v. Solomon*, No. M2021-00958-COA-R3-CV, 2023 WL 3730597, at *3 (Tenn. Ct. App. May 31, 2023) (“The protection of ‘vested rights’ is rooted in due process. . . . [I]n the context of Rule 41.01, due process principles prevent a plaintiff from voluntarily dismissing a lawsuit when doing so would deprive a defendant of some right that vested during the pendency of the case.” (citing *Morris v. Gross*, 572 S.W.2d 902, 905 (Tenn. 1978))), *no app. filed*.

The Tennessee Supreme Court has “stated generally that a vested right is ‘one “which it is proper for the state to recognize and protect and of which [an] individual could not be deprived arbitrarily without injustice.”’” *Flade*, 2024 WL 4448736, at *14 (citing *Doe v. Sundquist*, 2 S.W.3d 919, 923 (Tenn. 1999)). It also has characterized “a vested right as including ‘legal or equitable title to enforcement of a demand.’” *Id.* (citing *Morris*, 572 S.W.2d at 905). Elsewhere, the term “vested right” “has been defined as a ‘fixed right to present or future enjoyment . . . that does not depend on an event that is uncertain’ or a ‘right complete and consummated, and of such character that it cannot be divested without

the consent of the person to whom it belongs, and fixed or established, and no longer open to controversy.” *Id.* (quoting *Vested Rights*, BLACK’S LAW DICTIONARY (6th ed. 1990)).

For due process purposes, “[l]iberty interests can be created by state rules or mutually explicit understandings as well as by statute.” *Bills*, 631 F.2d at 1291. Liberty interests also can be created by a “state court order.” *See, e.g., Walters v. Grossheim*, 990 F.2d 381, 384 (8th Cir. 1993) (“As the District Court held, the state court order gave Walters a liberty interest . . . and liberty interests are protected by the Due Process Clause of the Fourteenth Amendment.”).

Here, when the Plaintiffs attempted to nonsuit, Mr. and Mrs. Debity’s rights had vested in two respects:

First, under Tennessee Code Annotated section 20-17-106, Mr. and Mrs. Debity had a vested statutory right to appeal the trial court’s denial of their TPPA Petition. *Id.* (“The 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 the court of appeals.”) (emphasis added). The trial court’s order denying their TPPA petition also was entered well before the Plaintiffs nonsuited.⁷⁵ Thus, the Plaintiffs could not interfere with Mr. and Mrs. Debity’s “right” to appellate review of the trial court’s order by nonsuiting well over a year after the trial court entered it. *Cf. Irvin*, 2021 WL 709782, at *9 (no right to nonsuit after the “case ha[s] been decided on the merits.”), *Hamilton*,

⁷⁵ *See* Supp. R. Vol. I at 73 (entered July 6, 2022); R. at 1–2 (filed on Sept. 21, 2023).

1998 WL 704528, at *5 (no right to nonsuit when “the trial court already had issued its oral ruling”).

The “right” codified by section 20-17-106 is critical to the TPPA’s effectiveness. As other courts have recognized: “Summary proceedings ‘are essential in the First Amendment area because if a suit entails “long and expensive litigation,” then the protective purpose of the First Amendment is thwarted even if the defendant ultimately prevails.” *Kahl v. Bureau of Nat’l Affs., Inc.*, 856 F.3d 106, 116 (D.C. Cir. 2017) (cleaned up). Unfortunately, though, some of Tennessee’s trial court judges proved that they were not up to the task. *See, e.g., Weidlich v. Rung*, No. M2017-00045-COA-R3-CV, 2017 WL 4862068 (Tenn. Ct. App. Oct. 26, 2017) (holding, on legal grounds, that a defendant’s “Facebook post, viewed in its entire context, constitutes non-actionable commentary upon disclosed facts” after the defendant had endured a full trial on the merits below, had been found liable for defamation at a bench trial, and had been ordered to pay a money judgment), *no app. filed*. Thus, to protect speakers from trial courts that either cannot or will not correctly dismiss lawsuits that target protected speech, the General Assembly codified the right to an immediate appeal that enables this Court to rectify the error in TPPA cases “immediately.” *See* Tenn. Code Ann. § 20-17-106.

This case illustrates the importance of that right. For whatever reason, the trial court demonstrated repeatedly that it was incapable of applying the law—any law—correctly. The trial court took live testimony at the Parties’ TPPA hearing, notwithstanding that the TPPA requires that responsive evidence be “filed by the opposing party no less than five (5) days before the hearing or, in the court’s discretion, at any earlier time

that the court deems proper.” *Nandigam Neurology, PLC*, 639 S.W.3d at 656 (citing section 20-17-104(c)). The trial court then found that the Plaintiffs had sustained their evidentiary burden of proof on their claim, even though a restraining order—a form of injunctive relief—is not a claim at all, but a *remedy*. See *City of Lebanon ex rel. Craighead*, 2018 WL 2027239, at *5 (“Injunctive relief is a remedy, not an independent cause of action.’ . . . So a permanent injunction is available as a remedy only if an applicant prevails on the merits of a claim.” (citing *Curb Records, Inc. v. McGraw*, No. M2011-02762-COA-R3-CV, 2012 WL 4377817, at *4 (Tenn. Ct. App. Sept. 25, 2012), *app. denied* (Tenn. Feb. 12, 2013); 42 AM. JUR. 2d INJUNCTIONS § 11 (2018) (“For a permanent injunction to issue, the plaintiff must prevail on the merits of his or her claim and establish that equitable relief is appropriate in all other respects.”))) (cleaned up); see also *Smith Mech. Contractors, Inc. v. Premier Hotel Dev. Grp.*, 210 S.W.3d 557, 565 (Tenn. Ct. App. 2006) (“Tenn. R. Civ. P. 65 presupposes that a party will bring the request for injunctive relief and the underlying claim together. . . . Thus, when a party is seeking injunctive relief, that party should bring one action containing both the request for injunctive relief as well as the underlying cause of action.”).

After that, the trial court entered an improperly unreasoned order that this Court vacated on the ground that it could not “discern the basis for the trial court’s ruling[.]” *Richman*, 2023 WL 4285290, at *3. And after *that*, the trial court refused to comply with this Court’s mandate on

the asserted basis that it was not “binding.”⁷⁶

Given these circumstances, it is easy to understand why the legislature codified TPPA petitioners’ “right” to immediate appellate review. *See* Tenn. Code Ann. § 20-17-106. It also is easy to understand why the no-good, very-bad Plaintiffs involved here—having subjected Mr. and Mrs. Debit to years of bogus litigation and well over \$100,000.00 in legal expenses through a facially meritless lawsuit that aimed to retaliate against them for exercising their right to free speech—sought to obstruct this Court from reviewing the trial court’s errors. But Mr. and Mrs. Debit secured a statutory “right” to immediate appellate review under section 20-17-106 after having their TPPA Petition adjudicated below, and the Plaintiffs had no authority to interfere with that right through their post-judgment, post-remand shenanigans.

Second, Mr. and Mrs. Debit are entitled to the benefits and protection of the order that they secured from this Court. *See, e.g., Anderson*, 521 S.W.2d at 791 (“[W]e hold that when the [State] obtained a court order for possession of the property being condemned, leaving nothing to be decided except the compensation to be paid [the landowners] for the land taken, the appellee lost its right to take a nonsuit over the objections of the [landowners].”). Court orders—like this Court’s—can establish vested rights and due-process-protected liberty interests. *See, e.g., Anderson*, 521 S.W.2d at 79; *J.E.T., Inc. v. Hasty*, No. M2023-00253-COA-R3-CV, 2024 WL 1156558, at *6 (Tenn. Ct. App. Mar.

⁷⁶ R. at 78.

18, 2024) (agreed orders create vested rights that can preclude a nonsuit), *no app. filed*; *Miller v. Am. Ass’n, Inc.*, 6 Tenn. App. 506, 513 (1927) (same); *Walters*, 990 F.2d at 384 (state court orders may create liberty interests for due process purposes); *Cordova v. City of Albuquerque*, No. 11-CV-806-GBW/ACT, 2013 WL 12040728, at *7 (D.N.M. Dec. 19, 2013) (discussing authority holding that “a state court order can create a liberty interest if it is mandatory”). The Plaintiffs thus lacked authority to interfere with the benefits that this Court’s mandate afforded the Defendants by nonsuiting after this Court’s mandate issued. *Cf. Rashid v. Newberry Fed. Sav. & Loan Ass’n*, 526 So. 2d 772, 773 (Fla. Dist. Ct. App. 1988) (“The entry of the order granting the mortgagee’s voluntary dismissal was error because it deprived the successful mortgagor of the benefit and protection of our mandate.”).

Flade is not to the contrary. There, “[t]he relevant procedural posture was simply that the Petitioners’ TPPA petitions had been filed but were awaiting argument and submission to the trial court for determination.” *Flade*, 2024 WL 4448736, at *14. The *Flade* Court also made clear that that specific procedural posture—which is not present here—undergirded its ruling that the plaintiff’s nonsuit did not deprive *Flade*’s defendants of any vested right. *See id.* Furthermore, the *Flade* Court strongly implied that the point when a defendant’s right to have a TPPA petition adjudicated *would* vest is after “the final submission of a TPPA petition to the trial court[.]” *Id.* at *18 (“we do not believe that the availability of a voluntary nonsuit *at any time prior to the final submission of a TPPA petition to the trial court* . . . deprives a TPPA

petitioner of due process.”) (emphasis added) (citing *Himmelfarb v. Allain*, 380 S.W.3d 35, 40 (Tenn. 2012)). That is the circumstance here.

For both of these reasons—or for either of them—the Plaintiffs lacked authority to interfere with the Defendants’ vested rights to: (1) an immediate appeal of the trial court’s order denying their TPPA Petition, and (2) the benefits of this Court’s mandate. As a result, the trial court’s judgment should be vacated. Afterward, this Court should remand with instructions to comply with this Court’s earlier mandate.

E. THIS COURT SHOULD REMAND WITH EXPRESS INSTRUCTIONS TO COMPLY WITH THIS COURT’S MANDATE WITHIN THIRTY DAYS.

This litigation has been plagued by extreme delay. The length of time it has been pending also is mostly attributable to a combination of trial court error and long, unexplained trial court delays that followed hearings where the trial court took matters under advisement. These lengthy delays presumptively violated judicial ethics rules. *See* Tenn. Sup. Ct. R. 10, RJC 2.5(A) (requiring judges to “perform judicial . . . duties competently, promptly and diligently[]”); *id.* at cmt. 5 (“A judge is required by law to promptly dispose of cases.”); Tenn. Sup. Ct. R. 11, § III(d) (“No case may be held under advisement in excess of sixty days and no motion, or other decision of the trial judge that delays the date of trial or final disposition in the trial court, shall be held under advisement for more than thirty days, absent the most compelling of reasons.”).

This is not acceptable. Courts are supposed “to expediently resolve” TPPA claims, and the TPPA presumes that they will. *See Nandigam Neurology*, 639 S.W.3d at 666; *cf. Charles v. McQueen*, 693 S.W.3d 262, 267 (Tenn. 2024) (“The primary aim of a SLAPP is not to prevail on the

merits, but rather to chill the speech of the defendant by subjecting him or her to costly and otherwise burdensome litigation. . . . Because SLAPPs threaten to interfere with the exercise of constitutionally protected rights, more than twenty states have adopted anti-SLAPP statutes to protect defendants ‘from the often punishing process of defending’ such suits.”). Thus, when a trial court refuses to adjudicate a TPPA petition promptly—not to mention when it adjudicates a TPPA petition: (1) adversely, (2) based on nonsensical, unexplained grounds, after (3) disregarding the statutory process for evidentiary review, and (4) determining that plaintiffs met their evidentiary burden by supporting a claim that hornbook law makes clear *is not a claim at all*—it does not merely frustrate litigants like the Defendants. Instead, a trial court that behaves this way interferes with the legislature’s exclusive policymaking role itself by participating in and exacerbating the “punishing process” that the TPPA is designed to prevent. *See id.*; *cf. Fisher v. Hargett*, 604 S.W.3d 381, 405 n.19 (Tenn. 2020) (noting “the prerogative of the Legislature . . . to make policy choices”); *Dorning v. Bailey*, No. M2004-02392-COA-R3-CV, 2006 WL 287377, at *13 (Tenn. Ct. App. Feb. 6, 2006) (“It is left to the legislative branch of government to set the policy for this state.”), *app. denied* (Tenn. Aug. 21, 2006); *McClay v. Airport Mgmt. Servs., LLC*, 596 S.W.3d 686, 709 (Tenn. 2020) (Lee, J., dissenting) (“It goes without saying that this Court does not make policy—that is for the legislature.” (collecting cases)).

This Court has “inherent power to administer the system of appeals and remand.” *Culbertson v. Culbertson*, 455 S.W.3d 107, 158

(Tenn. Ct. App. 2014) (quoting 5 AM. JUR. 2d APPELLATE REVIEW § 754 (2007)). Thus, to promote the “expedient[] resol[ution]” that the TPPA was designed to ensure, *Nandigam Neurology*, 639 S.W.3d at 666—and to protect Mr. and Mrs. Debity from their otherwise certain fate of suffering further extended delay on remand—this Court should order the trial court to comply with this Court’s mandate within no more than thirty days of this Court’s mandate issuing. This Court also should make clear that it will exercise its authority to enforce its mandate if the trial court does not comply.

F. SHOULD THE DEFENDANTS ULTIMATELY PREVAIL, THEY ARE ENTITLED TO RECOVER THEIR APPELLATE ATTORNEY’S FEES AND COSTS.

Prevailing TPPA petitioners are entitled to recover their full expenses incurred, *see* Tenn. Code Ann. § 20-17-107(a)—including attorney’s fees incurred on appeal when they are properly requested. *See Nandigam Neurology, PLC*, 639 S.W.3d at 669 (“Defendant asserts that she is entitled to her appellate attorney’s fees because such an award is in keeping with section 20-17-107, which provides for costs and attorney’s fees when a case is dismissed under the TPPA. . . .we agree with Defendant.”). As this Court has explained:

We are required to construe the TPPA “broadly to effectuate its purposes and intent.” Tenn. Code Ann. § 20-17-102. As discussed at length already, the TPPA is largely intended to deter SLAPP lawsuits and prevent litigants from spending thousands of dollars defending themselves in frivolous litigation. Consequently, as a matter of first impression, we conclude that the TPPA allows for an award of reasonable attorney’s fees incurred on appeal, provided that the court dismisses a legal action pursuant to a petition filed under this

chapter and that such fees are properly requested in an appellate pleading. *See* Tenn. Code Ann. § 20-17-107; *Killingsworth*, 205 S.W.3d at 409. Because we conclude that Plaintiffs’ legal action was properly dismissed under the TPPA, and because Defendant properly requested her appellate fees in this case, Defendant’s request for attorney’s fees is well-taken. We remand this matter to the general sessions court for a determination of the proper amount of reasonable fees incurred by Defendant during this appeal.

Id. at 670.

Thus, this Court should order that the Defendants are entitled to an award of appellate attorney’s fees if their TPPA Petition is ultimately granted, given that:

1. the Defendants have expressly raised their entitlement to such fees in their Statement of the Issues here, *see, e.g., Killingsworth v. Ted Russell Ford, Inc.*, 205 S.W.3d 406, 410 (Tenn. 2006); and

2. prevailing in this appeal is necessary to secure the ultimate relief that the Defendants are seeking upon remand. *See, e.g., Norman v. Hous. Auth. of Montgomery*, 836 F.2d 1292, 1305 (11th Cir. 1988) (“To paraphrase the acute observation of baseball great Yogi Berra, a case ain’t over till it’s over. This means that . . . counsel are entitled to compensation until all benefits obtained by the litigation are in hand.”).

IX. CONCLUSION

For the foregoing reasons, the trial court’s judgment should be vacated, and this Court should remand this case with instructions to comply with this Court’s mandate within no more than thirty days.

Respectfully submitted,

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CERTIFICATE OF ELECTRONIC FILING COMPLIANCE

Pursuant to Tennessee Supreme Court Rule 46, § 3.02, the relevant sections of this brief contain 8,779 words under § 3.02(a)(1)(a), as calculated by Microsoft Word, and it was prepared using 14-point Century Schoolbook font under § 3.02(a)(3).

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CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2024, a copy of the foregoing was served via the Court's electronic filing system, via email, and/or via USPS mail, postage prepaid, to the following parties:

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