

NANDIGAM NEUROLOGY, PLC, §
and KAVEER NANDIGAM, M.D., §
§ Case: M2020-00553-COA-R3-CV
Plaintiffs-Appellants, §
§ Wilson County Circuit Court Case
v. § No.: 2020-cv-89
§
KELLY BEAVERS, § Wilson County General Sessions
§ Court Case No.: 2020-cv-152
Defendant-Appellee and §
Cross-Appellant. §

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III. INTRODUCTION

As Cross-Appellant, Defendant Kelly Beavers raised the following four issues for this Court's review:

[1] Whether this Court has jurisdiction over Ms. Beavers's "immediate" appeal taken as of right under Tennessee Code Annotated § 20-17-106.

[2] Whether the General Sessions Court's February 13, 2020 Order granting Ms. Beavers's Tennessee Code Annotated § 20-17-104(a) petition to dismiss the Plaintiffs' legal action should be affirmed.

[3] Whether this Court should recognize that Tennessee's common law "presumption of falsity" doctrine in defamation cases—first announced by *Hinson v. Pollock*, 15 S.W.2d 737, 738 (Tenn. 1929), reiterated in *Memphis Publ'g Co. v. Nichols*, 569 S.W.2d 412, 420 (Tenn. 1978), rejected as a matter of First Amendment law by *Wilson v. Scripps-Howard Broad. Co.*, 642 F.2d 371, 375 (6th Cir. 1981), *Phila. Newspapers, Inc. v. Hepps*, 475 U.S. 767, 777 (1986), and *Milligan v. United States*, 644 F. Supp. 2d 1020, 1033 (M.D. Tenn. 2009), *aff'd*, 670 F.3d 686 (6th Cir. 2012), and seemingly disregarded by *Sullivan v. Young*, 678 S.W.2d 906, 910 (Tenn. Ct. App. 1984)—has been abrogated.

[4] Whether Ms. Beavers is entitled to an award of reasonable attorney's fees regarding this appeal.¹

In response, the Plaintiffs contest this Court's jurisdiction to hear Ms. Beavers's cross-appeal, which she has taken as of right under Tennessee Code Annotated § 20-17-106.² The Plaintiffs also dispute this

¹ See Principal Brief of Kelly Beavers at 9–10. To promote clarity, the issues that Ms. Beavers has presented for review as Cross-Appellant have been renumbered in this brief.

² See Plaintiffs' Reply Brief at 14.

Court’s authority to affirm the General Sessions Court’s February 13, 2020 Order on any ground, although they do not advance any argument in opposition to the merits of Ms. Beavers’s claims.³ Neither have the Plaintiffs responded to the merits of Ms. Beavers’s argument regarding Tennessee’s “presumption of falsity” doctrine.⁴

Notwithstanding the fact that they do not contest Ms. Beavers’s arguments concerning the merits of this case, the Plaintiffs do dispute that Ms. Beavers is entitled to an award of appellate attorney’s fees at this juncture. Specifically, the Plaintiffs contend that Tennessee Code Annotated § 20-12-119(c)(3)—a separate statute that is not implicated in this case—would not permit such a fee award “at this time.”⁵

For the reasons that follow, the Plaintiffs’ arguments are uniformly meritless. Accordingly, the General Sessions Court’s February 13, 2020 Order dismissing the Plaintiffs’ claims with prejudice should be affirmed. Ms. Beavers is also entitled to an award of appellate attorney’s fees regarding this appeal.

IV. ARGUMENT

A. THIS COURT HAS JURISDICTION OVER MS. BEAVERS’S APPEAL.

Ms. Beavers has invoked this Court’s appellate jurisdiction by taking an “immediate[]” appeal as of right under Tennessee Code Annotated § 20-17-106.⁶ Contending that Ms. Beavers’s appeal should not be adjudicated, though, the Plaintiffs complain that Ms. Beavers has

³ *Id.* See also *id.* at 13.

⁴ *See id.* at 14.

⁵ *See id.* at 15.

⁶ *See* Kelly Beavers’s Notice of Cross-Appeal, Apr. 14, 2020.

opted “to take advantage of the wording of T.C.A. §20-17-106 by filing her own notice of appeal to the Court of Appeals on a matter in which she prevailed.”⁷

Significantly, the Plaintiffs admit that “the technical wording of this statute appears to allow a party the right to appeal the successful grant of their own petition to dismiss.”⁸ Even so, the Plaintiffs insist that Ms. Beavers’s appeal “should not be allowed”⁹—the admittedly unambiguous text of Tennessee Code Annotated § 20-17-106 notwithstanding. For several reasons, the Plaintiffs’ arguments are unpersuasive.

1. **Ms. Beavers’s appeal is expressly authorized by Tennessee Code Annotated § 20-17-106, which permits an immediate appeal of “the court’s order dismissing . . . a legal action” pursuant to a TPPA Petition.**

Tennessee Code Annotated § 20-17-106 provides in straightforward terms as follows:

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. The Tennessee Rules of Appellate Procedure applicable to appeals as a matter of right governs such appeals.

Here, despite an apparent dispute over whether this appeal is interlocutory due to Ms. Beavers’s unadjudicated claims for attorney’s

⁷ Plaintiffs’ Reply Brief at 14.

⁸ *Id.*

⁹ *Id.*

fees and sanctions,¹⁰ the Parties agree that Ms. Beavers has taken an appeal from “the court’s order dismissing . . . a legal action pursuant to a petition filed under [the Tennessee Public Participation Act].” *Id.* The Plaintiffs also begrudgingly concede that the text of Tennessee Code Annotated § 20-17-106 “appears to allow a party the right” to take an appeal under these circumstances,¹¹ although they insist that Ms. Beavers’s appeal “should not be allowed” anyway.¹²

Helpfully, when faced with unambiguous statutory text, the Tennessee Supreme Court has repeatedly made clear what courts are obligated to do, holding that:

¹⁰ In support of her position on the matter, Ms. Beavers has cited extensive authority holding that an outstanding claim for attorney’s fees renders an order interlocutory and categorically precludes finality. *See* Beavers’s Principal Brief at 38–39 (collecting eight cases). Notably, outstanding claims for sanctions—also present in this case—preclude finality, too. *See, e.g., Menche v. White Eagle Prop. Grp., LLC*, No. W2018-01336-COA-R3-CV, 2019 WL 4016127, at *6 (Tenn. Ct. App. Aug. 26, 2019) (“[J]udgment does not become final unless and until a pending motion for sanctions is adjudicated.”), *no app. filed*.

By contrast—and without engaging with any of the overwhelming authority that Ms. Beavers cited on the matter—the Plaintiffs assert that claims for attorney’s fees should be considered claims “in the nature of discretionary costs,” which do not preclude finality. *See* Plaintiffs’ Reply Brief at 8–10. Attorney’s fees are not discretionary costs, though. Indeed, Tennessee Code Annotated § 20-17-107(a)(1) specifically identifies them as separate items. This Court’s caselaw also forecloses the argument. *See, e.g., Menche*, 2019 WL 4016127, at *6 (holding that “in contrast to a motion for discretionary costs[,] . . . because motions for sanctions most typically involve requests for attorney’s fees, . . . a judgment is not final where it does not adjudicate a prejudgment request for attorney’s fees.”).

¹¹ Plaintiffs’ Reply Brief at 14.

¹² *Id.*

It is the duty of the Court to enforce [the] law as it is found upon the statute-book. . . .” *Scheibler v. Munding*, 86 Tenn. 674, 9 S.W. 33, 39 (1888); *see also Gleaves v. Checker Cab Transit Corp.*, 15 S.W.3d 799, 803 (Tenn. 2000) (“[C]ourts must ‘presume that the legislature says in a statute what it means and means in a statute what it says there,’” and “[a]ccordingly, courts must construe a statute as it is written.”) (quoting *BellSouth Telecomms., Inc. v. Greer*, 972 S.W.2d 663, 673 (Tenn. Ct. App. 1997)); *Jackson v. Jackson*, 186 Tenn. 337, 210 S.W.2d 332, 334 (1948) (stating that the Supreme Court is to construe legislative acts as they are written, not as the court might write them). Courts are to interpret statutes by looking to the plain language and giving effect to the ordinary meaning of the words. *Riggs v. Burson*, 941 S.W.2d 44, 54 (Tenn. 1997); *Cohen v. Cohen*, 937 S.W.2d 823, 827 (Tenn. 1996); *Miller v. Childress*, 21 Tenn. 320, 321–22 (1841) (“Where a statute is plain and explicit in its meaning, and its enactment within the legislative competency, the duty of the courts is simple and obvious, namely, to say sic lex scripta, and obey it.”).

State v. Jennings, 130 S.W.3d 43, 45–46 (Tenn. 2004).

As the Supreme Court has made clear, there is also no jurisdictional barrier that prevents a prevailing party who desires additional or different relief from taking an appeal as long as the party maintains a personal stake in the litigation. *See, e.g., Camreta v. Greene*, 563 U.S. 692, 702 (2011) (“So long as the litigants possess the personal stake discussed above, an appeal presents a case or controversy, **no matter that the appealing party was the prevailing party below.**”) (emphasis added, citations omitted). Indeed, the U.S. Supreme Court’s own appellate jurisdiction permits such appeals by prevailing parties. *See id.* at 700 (“The relevant provision confers unqualified power on this Court to grant certiorari ‘upon the petition of *any* party.’ 28 U.S.C. §

1254(1) (emphasis added). That language covers petitions brought by litigants who have prevailed, as well as those who have lost, in the court below.”). Thus, seeking appellate review is not, in any sense, “gamesmanship.”¹³ Instead, it is the exercise of Ms. Beavers’s statutory right to appellate review. *See* TENN. CODE ANN. § 20-17-106.

2. Ms. Beavers’s appeal is permitted by the portion of Tennessee Code Annotated § 20-17-106 that permits an appeal of “the court’s order . . . refusing to dismiss a legal action” pursuant to a TPPA Petition.

Significantly, the General Sessions Court’s February 13, 2020 Order also “refus[ed] to dismiss”¹⁴ the Plaintiffs’ legal action based on myriad grounds that Ms. Beavers raised in support of dismissal—declining to reach several of her arguments¹⁵ and even rejecting one of them.¹⁶ Accordingly, Ms. Beavers did not obtain the full measure of relief that she sought, and her appeal is cognizable under that portion of Tennessee Code Annotated § 20-17-106 as well.

This reality is ignored by the Plaintiffs’ briefing. It is also fatal to the Plaintiffs’ anti-textual, policy-based arguments about why Ms. Beavers’s appeal supposedly “should not be allowed”¹⁷ despite statutory text that unambiguously allows it. Put another way: Ms. Beavers is entitled—as a matter of right—to take an appeal under Tennessee Code

¹³ *Id.*

¹⁴ *See* TENN. CODE ANN. § 20-17-106.

¹⁵ *See* Beavers’s Principal Brief at 53 (citing R. at 11–25).

¹⁶ *See id.* at 54–55 (citing February 13, 2020 Hearing, p. 11, line 25–p. 12, line 3).

¹⁷ *See* Plaintiffs’ Reply Brief at 14.

Annotated § 20-17-106 and to seek appellate review regarding the claims upon which she did not prevail. An appeal under such circumstances cannot plausibly be characterized as “gamesmanship,”¹⁸ either, and her appeal is cognizable independent of any other issue as a result.

B. THE GENERAL SESSIONS COURT’S FEBRUARY 13, 2020 ORDER GRANTING MS. BEAVERS’S TPPA PETITION TO DISMISS THE PLAINTIFFS’ LEGAL ACTION SHOULD BE AFFIRMED ON ADDITIONAL GROUNDS—INCLUDING BECAUSE THE PLAINTIFFS HAD THE BURDEN OF PROVING FALSITY.

1. The only proper outcome is to affirm the General Sessions Court’s February 13, 2020 Order dismissing the Plaintiffs’ claims with prejudice.

Nowhere in their briefing—either in their Principal Brief or in Reply—do the Plaintiffs advance any argument that the General Sessions Court’s February 13, 2020 Order granting Ms. Beavers’ TPPA Petition was wrong on its merits. Further, as Ms. Beavers has detailed at length, no other conclusion is even possible under the circumstances of this case, because “the Plaintiffs did not introduce any evidence to satisfy their burden of proof under Tennessee Code Annotated §§ 20-17-105(b) and (c) or otherwise make any attempt to respond to the merits of Ms. Beavers’s TPPA Petition at all”¹⁹ in advance of the Parties’ hearing on Ms. Beavers’ TPPA Petition.

Given this context, the General Sessions Court’s February 13, 2020 Order granting Ms. Beavers’ TPPA Petition to dismiss the Plaintiffs’ claims must necessarily be affirmed. This Court may also affirm the

¹⁸ *See id.*

¹⁹ *See* Beavers’s Principal Brief at 26 (citing R. at 80–83).

General Sessions Court’s Order dismissing the Plaintiffs’ claims on multiple grounds—under either Tennessee Code Annotated §§ 20-17-105(b) or (c) (or both)—including based on different grounds than those relied upon by the General Sessions Court. *State v. Hester*, 324 S.W.3d 1, 21 n.9 (Tenn. 2010) (“This Court may affirm a judgment on different grounds than those relied upon by the lower courts when the lower courts have reached the correct result.”) (citations omitted); *Hopkins v. Hopkins*, 572 S.W.2d 639, 641 (Tenn. 1978) (“[T]his Court will affirm a decree of the trial court correct in result, though rendered upon different, incomplete or erroneous grounds.”) (collecting cases). Critically, other than insisting that this Court may not adjudicate the merits of this case, the Plaintiffs also do not contend otherwise or argue that the General Sessions Court erred in any respect.

2. Insulating a General Sessions Court’s order on a TPPA Petition from appellate review in this Court would ensure gamesmanship, rather than preventing it.

Because affirming the General Sessions Court’s February 13, 2020 Order dismissing the Plaintiffs’ claims with prejudice is the only plausibly correct result in this case, the Plaintiffs’ allegations of “gamesmanship”²⁰ are also severely misplaced. Under the Plaintiffs’ theory of appellate jurisdiction, even though dismissing the Plaintiffs’ claims was the correct outcome below, Ms. Beavers would have been better off if she had *lost* in the General Sessions Court, because only then could she obtain an appellate judgment from this Court granting her

²⁰ See Plaintiffs’ Reply Brief at 14.

TPPA Petition. In a similar vein, the wisest strategy for a plaintiff who is pursuing a SLAPP-suit is to: (1) file a claim in General Sessions Court; (2) abusively impose litigation costs there; and then (3) make sure to lose in response to a defendant's TPPA Petition, because by losing, a plaintiff can circumvent review in this Court and begin its claims anew in Circuit Court without consequence.

In other words: as the Plaintiffs read Tennessee Code Annotated § 20-17-106, both parties would be far better off *losing* than winning a TPPA claim filed in General Sessions Court. Unsurprisingly, the Plaintiffs' proposal would also allow them to do precisely what the TPPA was designed to prohibit: abusively maximize litigation costs through baseless, speech-based litigation and avoid any consequences for doing so. Thus, to the extent that this Court is concerned about deterring "gamesmanship"—as the Plaintiffs insist it should be²¹—TENN. CODE ANN. § 20-17-106 should be interpreted in precisely the opposite way than the interpretation the Plaintiffs have proposed.

3. Ms. Beavers does not seek a declaratory judgment on any issue. Instead, she seeks a judgment affirming the dismissal of the Plaintiffs' claims against her with prejudice based on several additional grounds that she specifically raised and preserved during the proceedings below.

The Plaintiffs' additional arguments against affirming the General Sessions Court's February 13, 2020 Order are similarly unpersuasive. In particular, the Plaintiffs contend that "it appears Appellee Beavers has initiated her own appeal under T.C.A. § 20-17-106 substantially for the

²¹ See *id.*

purpose of requesting a declaratory judgment on issues which were not part of the underlying case.”²² This assertion is grossly inaccurate.

To be clear: Ms. Beavers does not seek a declaratory judgment on any issue. Instead, she seeks an order affirming the General Sessions Court’s dismissal of the Plaintiffs’ claims against her with prejudice—including based on multiple arguments that the General Sessions Court did not reach. And contrary to the Plaintiffs’ assertion that Ms. Beavers’s additional arguments in favor of affirming the General Sessions Court’s February 13, 2020 Order concern “issues which were not part of the underlying case[.]”²³ every single one of them was raised with specificity in Ms. Beavers’ TPPA Petition filed in the General Sessions Court.²⁴

Ms. Beavers also has valid and case-specific reasons for desiring a final appellate ruling on the additional grounds that she has raised in this appeal, which are detailed on pages 54 through 56 of her Principal Brief. As just one example: Ms. Beavers seeks the issue-preclusive effects of a judgment on certain additional grounds, which will allow her “to speak about her experience at Nandigam Neurology without fear of incurring liability.”²⁵ *See, e.g., Jennings v. Stephens*, 574 U.S. 271, 278 (2015) (“Whenever an appellee successfully defends a judgment on an

²² *See id.* at 14 (arguing that “[t]he word ‘remedy’ implies that any rights for a party to appeal under any other non-TPPA statute or Rule of Civil Procedure remains [sic] applicable[.]” and that a contrary view would be “a strained interpretation of T.C.A. §20-17-106 [that] would surely break and completely contradict long-standing statutory interpretation principles.”).

²³ *See id.* at 14.

²⁴ *See R.* at 11–26.

²⁵ *See Beavers’s Principal Brief* at 54.

alternative ground, he changes what would otherwise be the judgment’s issue-preclusive effects. Thereafter, issue preclusion no longer attaches to the ground on which the trial court decided the case, and instead attaches to the alternative ground on which the appellate court affirmed the judgment.” (citing Restatement (Second) of Judgments § 27 (1982))).

Further, if she did not take an immediate appeal regarding an issue upon which she did not prevail, Ms. Beavers risked permanently waiving her right to appeal the issue later on. Notably, Ms. Beavers’s concern that a party who declines to seek immediate appellate review under Tennessee Code Annotated § 20-17-106 waives the right to seek review at a later point is one that *the Plaintiffs themselves* identified as valid in their Principal Brief.²⁶ In reply, however—and without attempting to explain their abrupt change in position on the matter—the Plaintiffs inexplicably characterize that concern as a “strained interpretation” that “would surely break and completely contradict long-standing statutory interpretation principles.”²⁷ Because a party that declines to seek immediate appellate review under Tennessee Code Annotated § 20-17-106 *does* waive appellate review at a later point, however, the Plaintiffs’ first position on the matter is correct, and their second position on the matter is not. *Cf. Mitchell v. Owens*, 185 S.W.3d 837, 841 (Tenn. Ct. App.

²⁶ See Plaintiffs’ Principal Brief at 11 (arguing by analogy to the Tennessee Uniform Arbitration Act that under Tennessee Code Annotated § 20-17-106, “if the current Appellants do not desire to appeal to the Court of Appeals under T.C.A. §20-17-106, they simply **wave their right to bring the issue to the Court of Appeals after the judgment becomes final.**”) (emphasis added).

²⁷ See Plaintiffs’ Reply Brief at 13.

2005) (“Mitchell had the right to immediately appeal the issue of arbitration, but failed to file such an appeal in a timely manner, and has waived the issue of whether arbitration was appropriate.”).

4. **Ms. Beavers raised and preserved her argument regarding Tennessee’s presumption of falsity doctrine, and she is entitled to seek relief regarding it.**

Ms. Beavers’s argument regarding Tennessee’s “presumption of falsity” doctrine was similarly raised and preserved as an issue below.²⁸ Specifically, Ms. Beavers’ TPPA Petition argued that although Tennessee law recognizes truth as an affirmative defense to defamation,

Tennessee law provides that establishing truth is a defendant’s burden. *See Memphis Publ’g Co. v. Nichols*, 569 S.W.2d 412, 420 (Tenn. 1978). Although Ms. Beavers has no difficulty establishing truth as a defense to this action under the circumstances of this case, **Ms. Beavers nonetheless preserves and maintains the claim that the presumption of falsity doctrine recognized under Tennessee law should be overruled.**²⁹

Notably, this issue does not merely affect Ms. Beavers in an abstract sense. Instead, it also determines the proper outcome in this very case—specifically, whether the Plaintiffs’ claims should be dismissed under Tennessee Code Annotated §§ 20-17-105(b) or (c). Accordingly, Ms. Beavers has properly exercised her right to seek review of this important issue of law, regarding which she has a direct personal stake. *Cf. Camreta*, 563 U.S. at 702 (“So long as the litigants possess the personal stake discussed above, an appeal presents a case or controversy,

²⁸ R. at 25 n.5.

²⁹ *Id.* (emphasis added).

no matter that the appealing party was the prevailing party below.”). Further, as Ms. Beavers observed in her Principal Brief, the issue also carries enormous First Amendment implications that the United States Supreme Court, the U.S. Court of Appeals for the Sixth Circuit, and several other courts have previously identified at length.³⁰

The Plaintiffs, for their part, do not even attempt to respond to the merits of Ms. Beavers’s argument that this Court should recognize that Tennessee’s presumption of falsity doctrine is abrogated. For the reasons detailed in Ms. Beavers’s Principal Brief, however, the doctrine is incompatible with modern First Amendment law and has been recognized as such by several courts, including the U.S. Supreme Court.³¹ Accordingly, this Court should formally recognize the doctrine’s abrogation.

C. MS. BEAVERS IS ENTITLED TO AN AWARD OF APPELLATE ATTORNEY’S FEES.

Ms. Beavers has additionally identified as an issue and argued that because the General Sessions Court’s Order granting her TPPA Petition must be affirmed, she is entitled to an award of appellate attorney’s fees under the mandatory fee-shifting provision set forth in Tennessee Code Annotated § 20-17-107(a)³² (“If the court dismisses a legal action pursuant to a petition filed under this chapter, the court *shall* award to the petitioning party . . . [c]ourt costs, reasonable attorney’s fees, and . . . [a]ny additional relief, including sanctions, that the court determines

³⁰ See generally Beavers’s Principal Brief at 57–59, 58–59 n.99.

³¹ *Id.*

³² See *id.* at 59–60.

necessary to deter repetition of the conduct by the party who brought the legal action or by others similarly situated.”) (emphasis added). Critically, in previous cases, this Court has held that: (1) failing to provide advance notice of a party’s intent to seek appellate attorney’s fees;³³ (2) failing to raise the issue of appellate attorney’s fees in one’s Statement of the Issues;³⁴ and/or (3) failing to advance an argument regarding one’s entitlement to appellate attorney’s fees—even if the propriety of such fees is uncontested³⁵—results in waiver of a claim for appellate attorney’s fees that is otherwise valid. Accordingly, Ms. Beavers has raised, identified as an issue, and advanced an argument regarding her claim to appellate attorney’s fees to avoid waiver.³⁶

³³ *Killingsworth v. Ted Russell Ford, Inc.*, 205 S.W.3d 406, 410 (Tenn. 2006) (holding that “a plaintiff must initially request [attorney’s fees] in his or her appellate pleadings in a timely manner”).

³⁴ *Anderson v. Metro. Gov’t of Nashville & Davidson Cty.*, No. M2017-00190-COA-R3-CV, 2018 WL 527104, at *14 (Tenn. Ct. App. Jan. 23, 2018) (not for citation) (holding, in § 1983 litigation, that “[a]side from the fact that the Andersons do not request appellate attorney’s fees in their ‘Statement of the Issues,’ we observe that they have not prevailed on any justiciable federal constitutional claims in this appeal”), *appeal denied* (Tenn. June 12, 2018).

³⁵ *Tennesseans for Sensible Election Laws v. Tenn. Bureau of Ethics & Campaign Fin.*, No. M2018-01967-COA-R3-CV, 2019 WL 6770481, at *27 (Tenn. Ct. App. Dec. 12, 2019) (holding, in a case in which: (1) the trial court had held that the prevailing party was entitled to attorney’s fees, (2) the party specifically raised a claim for appellate attorney’s fees, and (3) the party’s right to appellate attorney’s fees was uncontested in the event that that party prevailed on appeal, that “[b]ecause TSEL has not cited any relevant authority on appeal to support its request for attorney’s fees, we respectfully decline to award such fees on appeal.”), *no app. filed*.

³⁶ See Beavers’s Principal Brief at 59–60.

In response, the Plaintiffs do not appear to contest that Ms. Beavers is entitled to an award of appellate attorney's fees. Instead, they only contest the timing of the award.³⁷ As grounds for delaying the award due to Ms. Beavers, the Plaintiffs specifically assert that "[i]t is a matter for the trial court to determine the amount of attorney [sic] fees to award a party[.]" and "[u]nder T.C.A. § 20-12-119 (relating to the award of discretionary attorney fees and costs)," attorney's fee awards can only be issued after appeals have been exhausted.³⁸

With respect to the court that should determine the award: Ms. Beavers agrees that it is a matter for the General Sessions Court to determine upon remand, and she has previously argued as much. *See* Beavers's Principal Brief at 60 (arguing that "this Court should affirm and remand this case to the Wilson County General Sessions Court with instructions that Ms. Beavers be awarded her appellate attorney's fees and costs for prevailing in this appeal").

The timing of the award, however, is not governed by Tennessee Code Annotated § 20-12-119(c)(3) as the Plaintiffs claim. Here, Ms. Beavers's claim for an attorney's fee award has been asserted under Tennessee Code Annotated § 20-17-107(a). *See* Beavers's Principal Brief at 60. By contrast, Tennessee Code Annotated § 20-12-119(c)(3) is an altogether different statute that does not apply to this case at all.

Unlike § 20-12-119(c)(3), Tennessee Code Annotated § 20-17-107(a)

³⁷ *See* Plaintiffs' Reply Brief at 14–15 ("Such a request is premature. . . . Accordingly, this court should deny Appellee's request for her appellate fees and costs at this time.").

³⁸ *Id.* at 15.

also does not provide that an attorney’s fee award will be delayed until after appeals have been exhausted. This material difference between the two statutes—which concern similar subject matter—is presumed to carry meaning. *See, e.g., Stevens ex rel. Stevens v. Hickman Cmty. Health Care Servs., Inc.*, 418 S.W.3d 547, 560 (Tenn. 2013) (“[L]egislative silence in this particular context offers a strong suggestion that the legislature intended Tenn. Code Ann. §§ 29–26–121 and –122 to function differently.”).

Further, because this appeal represents the Parties’ first (and last) opportunity to obtain appellate review of the General Sessions Court’s ruling on Ms. Beavers’s TPPA Petition absent a further appeal to the Tennessee Supreme Court, *see supra*, pp. 17–18, this appeal represents the conclusion of appellate review on the matter. As a consequence, a fee award would be appropriate as soon as this Court’s mandate issues regardless. As a result, Ms. Beavers is entitled to an award of attorney’s fees—including appellate attorney’s fees—upon remand. *Id.*

V. CONCLUSION

For the foregoing reasons, the General Sessions Court’s February 13, 2020 Order granting Ms. Beavers’s Tennessee Code Annotated § 20-17-104 petition to dismiss the Plaintiffs’ claims should be **AFFIRMED**. This Court should additionally remand this matter to the Wilson County General Sessions Court with instructions to award Ms. Beavers attorney’s fees under Tennessee Code Annotated § 20-17-107(a)(1) with respect to the proceedings on appeal.

Respectfully submitted,

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CERTIFICATE OF ELECTRONIC FILING COMPLIANCE

Pursuant to Tennessee Supreme Court Rule 46, § 3.02, this brief (Sections III–V) contains 4,284 words pursuant to § 3.02(a)(1)(b), as calculated by Microsoft Word, and it was prepared using 14-point Century Schoolbook font pursuant to § 3.02(a)(3).

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CERTIFICATE OF SERVICE

I hereby certify that on this the 21st day of December, 2020, a copy of the foregoing was served via the Court's electronic filing system upon:

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