Civil Action No. 25A612

IN THE SUPREME COURT OF THE UNITED STATES

Appeal from the Texas Supreme Court, case nos. 25-0411 and 25-0705

ALISON MAYNARD,

Petitioner,

vs.

WILLIAM R. LUCERO, JACOB VOS, and MARK BANKSTON,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court for the State of Texas

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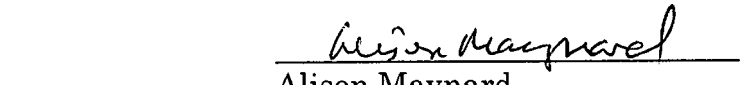
APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Submitted this 2nd day of February, 2026.

BY PETITIONER *PRO SE*:



Alison Maynard
7642 Hummingbird Hill Ln
San Antonio, TX 78255
Email: dinophile@gmail.com
Tel: 726-248-2141

FILE COPY

IN THE SUPREME COURT OF TEXAS

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NO. 25-0411	§	**Bexar County,**
	§	
ALISON MAYNARD	§	**04-23-00665-CV**
v.	§	
WILLIAM R. LUCERO AND	§	
JACOB VOS	§	**4th District.**

June 27, 2025

Petitioner's petition for review, filed herein in the above numbered and styled case, having been duly considered, is ordered, and hereby is, denied.

September 5, 2025

Petitioner's motion for rehearing of petition for review, filed herein in the above numbered and styled case, having been duly considered, is ordered, and hereby is, denied.

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I, BLAKE A. HAWTHORNE, Clerk of the Supreme Court of Texas, do hereby certify that the above is a true and correct copy of the orders of the Supreme Court of Texas in the case numbered and styled as above, as the same appear of record in the minutes of said Court under the date shown.

WITNESS my hand and seal of the Supreme Court of Texas, at the City of Austin, this the 5th day of September, 2025.

SUPREME COURT OF THE STATE OF TEXAS

Blake A. Hawthorne

Blake A. Hawthorne, Clerk

By Monica Zamarripa, Deputy Clerk

[redacted] 1c and [redacted] 1d

Fourth Court of Appeals
San Antonio, Texas

JUDGMENT

No. 04-23-00665-CV

Alison **MAYNARD** and Richard Carlisle,
Appellants

v.

William R. **LUCERO** and Jacob Vos,
Appellees

From the 131st Judicial District Court, Bexar County, Texas
Trial Court No. 2023-CI-11772
Honorable Tina Torres, Judge Presiding

BEFORE CHIEF JUSTICE MARTINEZ, JUSTICE SPEARS, AND JUSTICE MCCRAY

In accordance with this court's memorandum opinion of this date, the trial court's judgment granting the special appearance and dismissing the claims against William R. Lucero and Jacob Vos is AFFIRMED.

It is ORDERED that Appellees William R. Lucero and Jacob Vos recover their costs on appeal from Appellants Alison Maynard and Richard Carlisle.

All pending motions are DENIED.

SIGNED April 2, 2025.

Adrian A. Spears II, Justice

[redacted]

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Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-23-00665-CV

Alison **MAYNARD** and Richard Carlisle,
Appellants

v.

William R. **LUCERO** and Jacob Vos,
Appellees

From the 131st Judicial District Court, Bexar County, Texas
Trial Court No. 2023-CI-11772
Honorable Tina Torres, Judge Presiding

Opinion by: Adrian A. Spears II, Justice

Sitting: Rebeca C. Martinez, Chief Justice
Adrian A. Spears II, Justice
H. Todd McCray, Justice

Delivered and Filed: April 2, 2025

AFFIRMED

Allison Maynard and Richard Carlisle appeal from a final judgment granting special appearances and dismissing their claims against nonresident defendants William R. Lucero and Jacob Vos. Because we conclude the trial court had no personal jurisdiction over Lucero and Vos, we affirm the trial court's judgment.

BACKGROUND

In 2020, Maynard, a then-suspended Colorado lawyer, and Carlisle filed suit against Lucero and Vos in Bexar County, Texas, complaining that their private emails had been hacked and were being used in Colorado State Bar disciplinary proceedings against Maynard. Vos was the attorney for the Colorado Supreme Court's Office of Attorney Regulation Counsel ("OARC") who prosecuted the disciplinary complaint against Maynard. Lucero was the presiding disciplinary judge for the hearing panel that considered the disciplinary complaint against Maynard.

The Colorado disciplinary proceedings against Maynard were prompted by an inquiry from a Wisconsin attorney, Jacob Zimmerman. Zimmerman, who represented a plaintiff in a defamation suit filed in Wisconsin, alleged that Maynard was providing legal assistance to the defendants in the Wisconsin litigation, even though her Colorado law license was suspended. Vos, in turn, prepared the disciplinary complaint, alleging that Maynard had committed the unauthorized practice of law and violated the orders of a Wisconsin court. At the conclusion of the disciplinary proceedings, the Colorado hearing panel, presided over by Judge Lucero, found that Maynard had assisted unrepresented parties in litigation by drafting pleadings for them, and had undermined the legal system by violating the duty she owed as a professional to obey court orders and the rules governing the practice of law in each jurisdiction. Based on these findings, the Colorado hearing board stripped Maynard of her Colorado law license.

After Maynard's disbarment, Maynard and Carlisle amended their Texas suit to assert claims for the use and disclosure of their emails in the Colorado disciplinary proceedings, which they contended violated federal law. *See* 18 U.S.C. § 2520 ("Recovery of civil damages authorized"); 18 U.S.C. § 2511 ("Interception and disclosure of wire, oral, or electronic communications prohibited"); 18 U.S.C. § 2515 ("Prohibition of use as evidence of intercepted

wire or oral communications"). Specifically, Maynard's and Carlisle's amended pleadings alleged that: (1) Vos, in his capacity as a prosecutor with the Colorado OARC, pursued disciplinary action against Maynard based on information provided by Zimmerman; (2) Vos included quotations from private emails between Maynard, Richard Carlisle, and Wolfgang Halbig in the disciplinary complaint and motions filed in the Colorado disciplinary proceedings and "put them into evidence" at a hearing; (3) the emails were illegally intercepted; (4) Vos obtained the emails from a Texas attorney, Mark Bankston; (5) Bankston claimed to have obtained the emails through discovery in a separate suit filed in Austin, Texas; (6) Zimmerman's client or his agent obtained the emails by hacking Maynard's, Carlisle's, or Halbig's email accounts; (7) Maynard warned Vos that the emails had been illegally intercepted but Vos nevertheless used the emails in evidence in the Colorado disciplinary proceedings; (8) the emails were included in the record the OARC submitted in the Colorado disciplinary proceedings against Maynard; (9) during the disciplinary proceedings, Judge Lucero was provided with "unequivocal evidence" that the emails were "hacked," but he still denied Maynard's request for a protective order; (10) Judge Lucero punished Maynard for the content of the unlawfully intercepted emails; and (11) Judge Lucero published the panel's disciplinary decision on his official website.[1]

In response to the suit, Lucero and Vos each filed a special appearance, stating they lacked the minimum contacts necessary for a Texas court to assume personal jurisdiction over them. *See* TEX. R. CIV. P. 120a. In support of their special appearances, Lucero and Vos submitted declarations, stating they had never been a Texas citizen, they had never had a residence in Texas, they did not have an office or a place of business in Texas, they did not travel to Texas for any matter relating to Maynard or Carlisle or their claims, they did not own any real estate or personal

[1]Maynard and Carlisle named other defendants in their suit, including Zimmerman and Bankston.

property in Texas, they did not solicit business or advertise in Texas, they never traveled to Texas to seek business or clients there, they did not initiate litigation in Texas, they had nothing to do with service of process on Maynard in Texas, and they did not post anything on the Internet about Maynard in Texas or elsewhere. Maynard filed a response to the special appearances, but she attached no evidence to her response. Carlisle joined Maynard's response, but he did not attach any evidence.

After a hearing, the trial court signed a final judgment granting Lucero's and Vos's special appearances, dismissing Maynard's and Carlisle's claims against Lucero and Vos, and severing the claims against the remaining defendants into separate cause numbers.[2] Maynard and Carlisle appealed.

COMPLAINT ABOUT DECLARATIONS

As a preliminary matter, we address Maynard's and Carlisle's complaint that Lucero's and Vos's declarations are a nullity because they do not comply with section 132.001 of the Texas Civil Practice and Remedies Code. *See* TEX. CIV. PRAC. & REM. CODE § 132.001(a) (providing "an unsworn declaration may be used in lieu of a written sworn declaration, verification, certification, oath, or affidavit"). In both declarations, the jurat is placed at the beginning of the document and is followed by factual statements relating to the special appearances. Both jurats state: "I declare under penalty of perjury that the *foregoing* is true and correct." (Emphasis added). Maynard and Carlisle argue the declarations are "materially defective" based on the jurats' placement at the beginning of the declarations, noting that "foregoing" refers to the statements preceding it and not the statements following it.

[2]The appellate record does not include the reporter's record from this hearing.

Generally, to preserve a complaint for appellate review, a party must make a timely objection below and obtain a ruling from the trial court. TEX. R. APP. P. 33.1(a). "A defect in the form of [a declaration] . . . must be objected to in the trial court." *Stone v. Midland Multifamily Equity REIT*, 334 S.W.3d 371, 374 (Tex. App.—Dallas 2011, no pet.). "The failure to obtain a ruling from the trial court on an objection to the form of [a declaration] waives the objection." *Id.* Because their complaint about the jurats is a complaint about a defect in form, Maynard and Carlisle were required to object below and obtain a ruling on their objections from the trial court to preserve their complaint for appellate review. *See ACI Design Build Contractors Inc. v. Loadholt*, 605 S.W.3d 515, 517-18 (Tex. App.—Austin 2020, pet. denied) (holding complaint that declaration's jurat was placed "at the beginning" of the document rather than "at the end of the document" was waived when no objection was made in trial court); *see also Mansions in the Forest, L.P. v. Montgomery Cty.*, 365 S.W.3d 314, 317 (Tex. 2012) (holding failure to object to affidavit's lack of a jurat in trial court waived appellant's complaint on appeal).

The record shows that Maynard and Carlisle failed to timely object to the declarations and obtain rulings on their objections from the trial court. After the trial court granted the special appearances, Maynard and Carlisle filed a motion for sanctions, which contained their objections about the placement of the jurats in the declarations. The record does not show that the trial court ruled on these objections. Additionally, in their briefing, Maynard and Carlisle acknowledge that they did not obtain rulings on their objections from the trial court. Because Maynard and Carlisle did not timely object to the declarations and obtain rulings on their objections from the trial court, they have waived this complaint on appeal. *See ACI Design Build Contractors*, 605 S.W.3d at 518; *Stone*, 334 S.W.3d at 374; TEX. R. APP. P. 33.1(a).

However, even if Maynard and Carlisle had properly preserved this complaint for appellate review, we would overrule it. The declarations in this case substantially comply with the statute. Section 132.001 requires an unsworn declaration to be in writing and subscribed by the person making it as true under penalty of perjury. TEX. CIV. PRAC. & REM. CODE § 132.001(c). The key to allowing an unsworn declaration to replace an affidavit is the inclusion of the phrase "under penalty of perjury." *In re Cook Compression LLC,* No. 04-20-00517-CV, 2020 WL 6928397, at *3 (Tex. App.—San Antonio Nov. 25, 2020, orig. proceeding) (concluding declaration substantially complied with section 132.001 when made under penalty of perjury); *Bonney v. U.S. Bank Nat'l Ass'n*, No. 05-15-01057-CV, 2016 WL 3902607, at *3 (Tex. App.—Dallas July 14, 2016, no pet.) (holding section 132.001's main requirements are the declaration be in writing and be subscribed by declarant as true under penalty of perjury). Thus, the placement of the jurats at the beginning of Lucero's and Vos's declarations do not affect their validity. *See In re Cook Compression*, 2020 WL 6928397, at *3; *Bonney*, 2016 WL 3902607, at *3.

PERSONAL JURISDICTION

On appeal, Maynard and Carlisle argue the trial court erred in granting the special appearances because (1) Lucero and Vos failed to negate personal jurisdiction, (2) minimum contacts were established by violations of the above-cited federal wiretap laws "along with" Texas's long-arm statute, (3) the minimum contacts tests for both specific and general jurisdiction were satisfied, and (4) the exercise of jurisdiction did not offend traditional notions of fair play and substantial justice. Because it is dispositive, we focus on whether or not Lucero and Vos had the requisite minimum contacts with Texas to comport with constitutional due process.

Standard of Review

Whether a trial court has personal jurisdiction over a nonresident defendant is a question of law, which we review under a de novo standard. *BMC Software Belg., N.V. v. Marchand,* 83 S.W.3d 789, 794 (Tex. 2002). In deciding the jurisdictional issue, the trial court frequently must resolve questions of fact. *Id.* When, as here, the trial court does not issue findings of fact and conclusions of law with its special appearance ruling, the reviewing court implies all relevant facts necessary to support the judgment that are supported by the evidence. *M & F Worldwide Corp. v. Pepsi-Cola Metro. Bottling Co., Inc.*, 512 S.W.3d 878, 885 (Tex. 2017); *BMC Software*, 83 S.W.3d at 795.

Special Appearance Procedures

The plaintiff has the initial burden to plead sufficient allegations to bring a nonresident defendant within the provisions of the Texas long-arm statute. *Kelly v. Gen. Interior Constr., Inc.*, 301 S.W.3d 653, 658 (Tex. 2010). Once the plaintiff sufficiently pleads these jurisdictional allegations, the burden then shifts to the defendant to negate all the alleged bases of personal jurisdiction. *Id.* "If the plaintiff fails to plead facts bringing the defendant within reach of the long-arm statute (i.e., for a tort claim, that the defendant committed tortious acts in Texas), the defendant need only prove that it does not live in Texas to negate jurisdiction." *Id.* at 658–59. "The defendant can negate jurisdiction on either a factual or legal basis." *Id.* at 659. "Factually, the defendant can present evidence that it has no contacts with Texas, effectively disproving the plaintiff's allegations." *Id.* "The plaintiff can then respond with its own evidence that affirms its allegations, and it risks dismissal of its lawsuit if it cannot present the trial court with evidence establishing personal jurisdiction." *Id.* "Legally, the defendant can show that even if the plaintiff's alleged facts are true, the evidence is legally insufficient to establish jurisdiction; the defendant's contacts with

Texas fall short of purposeful availment; for specific jurisdiction, that the claims do not arise from the contacts; or that traditional notions of fair play and substantial justice are offended by the exercise of jurisdiction." *Id.*

Applicable Law

"Texas courts may exercise personal jurisdiction over a nonresident defendant when (1) our long-arm statute authorizes it and (2) doing so comports with federal and state constitutional due process guarantees." *Goldstein v. Sabatino*, 690 S.W.3d 287, 294 (Tex. 2024). The Texas long-arm statute permits a trial court to exercise personal jurisdiction over a defendant who "does business in this state," which is defined to include a nonresident defendant who "commits a tort in whole or in part in this state." *LG Chem Am., Inc. v. Morgan*, 670 S.W.3d 341, 346 (Tex. 2023) (quoting TEX. CIV. PRAC. & REM. CODE § 17.042(2)). "However, [even] allegations that a tort was committed in Texas do not necessarily satisfy the United States Constitution." *Old Republic Nat'l Title Ins. Co. v. Bell*, 549 S.W.3d 550, 559 (Tex. 2018). "[B]ecause Texas's long-arm statute extends personal jurisdiction as far as the federal constitutional requirements allow, the 'federal due process requirements shape the contours of Texas courts' jurisdictional reach.'" *Goldstein*, 690 S.W.3d at 294 (quoting *Searcy v. Parex Res., Inc.*, 496 S.W.3d 58, 66 (Tex. 2016)).

A state's exercise of personal jurisdiction comports with federal due process if (1) the nonresident defendant has "minimum contacts" with the state, and (2) the exercise of jurisdiction comports with traditional notions of fair play and substantial justice. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *M & F Worldwide Corp.*, 512 S.W.3d at 885. A nonresident defendant's minimum contacts may give rise to either specific jurisdiction or general jurisdiction. *Guardian Royal Exch. Assur., Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 227 (Tex. 1991).

Specific jurisdiction exists when (1) the defendant has made minimum contacts with Texas by purposefully availing itself of the privilege of conducting activities in the state and (2) the defendant's potential liability arose from or is related to those contacts. *In re Christianson Air Conditioning & Plumbing, LLC*, 639 S.W.3d 671, 679 (Tex. 2022). To show purposeful availment, a plaintiff must prove that a nonresident defendant seeks a benefit, advantage, or profit from the forum state. *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 785 (Tex. 2005). Only the defendant's contacts are relevant, not the unilateral activity of another party or a third person. *Id.* Plus, the defendant's contacts "must be purposeful rather than random, fortuitous, or attenuated." *In re Christianson Air Conditioning*, 639 S.W.3d at 679. A "minimum-contacts analysis focuses solely on the actions and reasonable expectations of the defendant." *Michiana*, 168 S.W.3d at 790.

General jurisdiction exists when a defendant's contacts with the forum are continuous and systematic so that the forum may exercise personal jurisdiction over the defendant even if the cause of action did not arise from or relate to activities conducted within the forum state. *BMC Software Belgium*, 83 S.W.3d at 795–96; *Guardian Royal,* 815 S.W.2d at 228. "When general jurisdiction is asserted, the minimum contacts analysis is more demanding and requires a showing of substantial activities in the forum state." *Guardian Royal,* 815 S.W.2d at 228. General jurisdiction requires that a defendant be "essentially at home" in the forum state. *In re Christianson Air Conditioning*, 639 S.W.3d at 679.

Analysis

Here, it is undisputed that the disciplinary proceedings against Maynard took place entirely in Colorado. Maynard and Carlisle nevertheless argue that the trial court had specific jurisdiction over Lucero and Vos because they directed intentional torts—the unlawful use and disclosure of

the emails—at a Texas resident. We disagree. The Texas Supreme Court has "explicitly rejected an approach to specific jurisdiction that turns upon where a defendant 'directed a tort' rather than on the defendant's contacts." *Old Republic*, 549 S.W.3d at 565; *see Kelly*, 301 S.W.3d at 661 ("[W]e rejected the concept of directed-a-tort jurisdiction in *Michiana*,[3] instead affirming the importance of the defendant's contacts with the forum state."); *Geo-Chevron Ortiz Ranch #2 v. Woodworth*, No. 04-06-00412-CV, 2007 WL 671340, at *3 (Tex. App.—San Antonio Mar. 7, 2007, pet. denied) ("The Texas Supreme Court has expressly rejected jurisdiction based solely upon where the tort was 'directed.'").

Maynard and Carlisle further argue that Lucero and Vos established minimum contacts with Texas because Maynard was served with the disciplinary complaint at her home in San Antonio, Texas. However, the jurisdictional evidence showed otherwise. Both Lucero and Vos stated in their declarations that they had "nothing to do with the service of process on Maynard or the service of anything on Plaintiff Maynard in Texas." Lucero's and Vos's declarations were uncontroverted. Thus, the record conclusively established that Lucero and Vos were not involved in serving Maynard with process in Texas. Furthermore, the fact that Maynard lived in Texas while the disciplinary proceedings were taking place in Colorado does not show that Lucero and Vos had minimum contacts with Texas. *See Searcy*, 496 S.W.3d at 76 "[T]the proper focus is on the quality of the defendant's contacts with the forum, as opposed to the residence of the plaintiff.").[4]

The only other Texas activity mentioned in Maynard's and Carlisle's pleadings involved Vos's receipt of the emails, which were allegedly obtained in two ways. First, Maynard's and

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[3]*Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 788-92 (Tex. 2005).

[4]Similarly, to the extent Maynard and Carlisle suggest the trial court had personal jurisdiction over Lucero based on their allegation that Lucero posted the disciplinary decision on his official website, Lucero stated in his declaration that he "personally did not post anything on the [I]nternet about [Maynard] in Texas or elsewhere." Thus, the record conclusively established that Lucero was not involved in posting anything about Maynard on the Internet.

Carlisle's pleadings alleged Vos received the emails from a Texas attorney, Bankston, who said the emails were produced in discovery in a lawsuit involving different parties in Austin, Texas. Second, Maynard's and Carlisle's pleadings alleged Zimmerman's client, or his client's agent, obtained the emails by hacking Maynard's, Carlisle's, or Halbig's email accounts. These allegations, which involve the unilateral activities of third parties, were insufficient to establish that Vos purposefully availed himself of the benefits and protections of Texas law. *See Guardian Royal*, 815 S.W.2d at 227-28 (noting that to qualify as a minimum contact, "the contact must have resulted from the nonresident defendant's purposeful conduct and not the unilateral activity of the plaintiff or others."); *see also Michiana*, 168 S.W.3d at 790 (noting the "minimum-contacts analysis focuses solely on the actions and reasonable expectations of the defendant."); *Guardian Royal,* 815 S.W.2d at 228 (recognizing when specific jurisdiction is asserted, the minimum contacts analysis focuses on the relationship among the defendant, the forum, and the litigation). Any contact Vos may have had with Texas in receiving the emails was not purposeful, but random, fortuitous, or attenuated. *See In re Christianson Air Conditioning*, 639 S.W.3d at 679 (stating the defendant's contacts with the forum state "must be purposeful rather than random, fortuitous, or attenuated" to satisfy Due Process Clause of the U.S. Constitution).

Because Lucero and Vos did not engage in any activities demonstrating they purposefully availed themselves of the benefits and protections of Texas law, we conclude the trial court did not have specific jurisdiction over them. *See Goldstein*, 690 S.W.3d at 294 (recognizing that to establish minimum contacts, the defendant must have purposefully availed himself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws).

Maynard and Carlisle also argue the trial court had general jurisdiction over Lucero and Vos. "General jurisdiction requires a showing that the defendant conducted substantial activities within the forum, a more demanding minimum contacts analysis than for specific jurisdiction." *CSR Ltd. v. Link,* 925 S.W.2d 591, 595 (Tex. 1996) (citing *Guardian Royal,* 815 S.W.2d at 228). A court has general jurisdiction over a nonresident defendant whose affiliations with the state are so continuous and systematic as to render him essentially at home in the forum state. *Old Republic*, 549 S.W.3d at 565. For an individual defendant, the paradigm forum for the exercise of general jurisdiction is the individual's domicile. *Marsenison v. Ross*, No. 04-22-00098-CV, 2023 WL 5280360, at *2 (Tex. App.—San Antonio Aug. 16, 2023, pet. denied) (citing *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014)).

Here, the activities that Maynard and Carlisle rely on to support general jurisdiction occurred in Colorado, not Texas. Specifically, Maynard and Carlisle argue general jurisdiction existed because Lucero and Vos engaged in a "campaign against a resident of Texas" and "conduct[ed] quasi-judicial proceedings against Maynard in Colorado for over a year," adding that the "[t]he pleadings file transmitted to the Colorado Supreme Court contains 1,264 pages." In sum, Maynard and Carlisle did not allege or show that Lucero and Vos had the "continuous and systematic" contacts with Texas required to confer general jurisdiction.

Additionally, the uncontroverted evidence supports an implied finding that Lucero and Vos were not domiciled in Texas. *See Boyd v. Davidovich*, No. 05-23-00457-CV, 2024 WL 4457021, at *3 (Tex. App.—Dallas Oct. 10, 2024, no pet.) ("To establish Texas as a domicile, a person must live in Texas intending to make it his or her fixed and permanent home."). In their declarations, Lucero and Vos stated that: (1) they were citizens of the State of Colorado, (2) they had never been a citizen of the State of Texas, (3) they did not have a residence in Texas, and (4) they had never

had a residence in Texas. Thus, their domicile cannot serve as a basis for general jurisdiction. *See Marsenison*, 2023 WL 5280360, at *4 ("There is no dispute Marsenison is domiciled in Florida and not in Texas. His domicile therefore cannot serve as the basis for general personal jurisdiction.").

Because Maynard and Carlisle failed to meet the demanding minimum contacts standard for general jurisdiction, we conclude the trial court did not have general jurisdiction over Lucero and Vos.

CONCLUSION

We hold Lucero's and Vos's contacts with Texas were insufficient to confer either specific or general jurisdiction over them in this case. Accordingly, the exercise of personal jurisdiction over Lucero and Vos did not comport with constitutional due process guarantees. The trial court's judgment is therefore affirmed.

Adrian A. Spears II, Justice

FILE COPY

IN THE SUPREME COURT OF TEXAS

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NO. 25-0705

ALISON MAYNARD AND RICHARD CARLISLE v. MARK BANKSTON	§ § § § § § §	**Bexar County,** **04-24-00074-CV** **4th District.**

November 14, 2025

Petitioners' petition for review, filed herein in the above numbered and styled case, having been duly considered, is ordered, and hereby is, denied.

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I, BLAKE A. HAWTHORNE, Clerk of the Supreme Court of Texas, do hereby certify that the above is a true and correct copy of the orders of the Supreme Court of Texas in the case numbered and styled as above, as the same appear of record in the minutes of said Court under the date shown.

WITNESS my hand and seal of the Supreme Court of Texas, at the City of Austin, this the 5th day of January, 2026.

Blake A. Hawthorne, Clerk

By Monica Zamarripa, Deputy Clerk

3cc

Fourth Court of Appeals
San Antonio, Texas

JUDGMENT

No. 04-24-00074-CV

Alison **MAYNARD** and Richard Carlisle,
Appellants

v.

Mark **BANKSTON**,
Appellee

From the 131st Judicial District Court, Bexar County, Texas
Trial Court No. 2024-CI-00306
Honorable Antonia Arteaga, Judge Presiding

BEFORE JUSTICE VALENZUELA, JUSTICE SPEARS, AND JUSTICE MCCRAY

The trial court's "Order on Mark Bankston's Motion to Dismiss" (the "Order") is AFFIRMED IN PART as to the granting of appellee's motion to dismiss appellants' claims pursuant to the Texas Citizens Participation Act. The Order is AFFIRMED AS MODIFIED as it relates to decretal paragraph number five to reflect sanctions rendered pursuant to Texas Civil Practices & Remedies Code 27.009(a)(2). The Order is REVERSED as it relates to decretal paragraphs numbers two and three awarding appellant attorney's fees for appellee Bankston's *pro se* representation and judgment is RENDERED removing the award of attorney's fees in connection with appellee's *pro se* self-representation in the trial court and in this court.

We order the costs of this appeal to be paid by the parties who incurred them.

SIGNED May 21, 2025.

Lori I. Valenzuela, Justice

[redacted]

Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-24-00074-CV

Alison **MAYNARD** and Richard Carlisle,
Appellants

v.

Mark **BANKSTON**,
Appellee

From the 131st Judicial District Court, Bexar County, Texas
Trial Court No. 2024-CI-00306
Honorable Antonia Arteaga, Judge Presiding

Opinion by: Lori I. Valenzuela, Justice

Sitting: Lori I. Valenzuela, Justice
Adrian A. Spears II, Justice
H. Todd McCray, Justice

Delivered and Filed: May 21, 2025

AFFIRMED IN PART, REVERSED IN PART, AND RENDERED

Appellants Alison Maynard and Richard Carlisle appeal the trial court's order granting appellee Mark Bankston's motion to dismiss appellants' claims pursuant to the Texas Citizens Participation Act ("TCPA"). We affirm in part and reverse and render in part.

BACKGROUND

On November 5, 2020, appellants sued Bankston and a host of other defendants alleging they had conspired to illegally obtain and use appellants' private email communications relating to "research" into the December 2012 Sandy Hook elementary school shooting in Newtown, Connecticut. According to the lawsuit, appellants learned on or around February 12, 2020, that Bankston was in possession of emails between appellants and third parties discussing the Sandy Hook shooting and related legal proceedings against the "researchers." In addition to alleging that Bankston was in illegal possession of their emails,[1] appellants claimed Bankston improperly used the emails as a basis for a declaration filed in a Colorado attorney disciplinary proceeding against Maynard, who was formerly licensed to practice law in the state.

In his declaration, Bankston stated that the emails were produced to him during the discovery process of a topically related high-profile case he was pursuing against Infowars and celebrity personality Alex Jones. *See generally e.g., Jones v. Lewis*, No. 03-19-00423-CV, 2019 WL 5090500 (Tex. App.—Austin Oct. 11, 2019, pet. denied) (mem. op.); *see also generally Jones v. Heslin*, No. 03-20-00008-CV, 2020 WL 4742834 (Tex. App.—Austin Aug. 14, 2020, pet. denied) (mem. op.); *Jones v. Pozner*, No. 03-18-00603-CV, 2019 WL 5700903 (Tex. App.—Austin Nov. 5, 2019, pet. denied) (mem. op.). Bankston declares he provided the emails to attorney Jake Zimmerman, who had requested an investigation be opened by the disciplinary arm of the Colorado Supreme Court against Maynard. The basis for the investigation, it was alleged, was because Maynard was participating in the unauthorized practice of law by improperly providing legal services to individuals, or "researchers," who were contesting the validity of the Sandy Hook

[1] By amended and supplemental petitions filed in 2023, appellants additionally claimed some of the defendants violated their rights under the Stored Communications Act. *See* 18 U.S.C. § 2707.

shooting. *See generally* COLO. R. CIV. P. 242.13; *id.* R. 242.5. Maynard was ultimately disbarred from practicing law in Colorado.

On May 25, 2023, appellants moved for a default judgment against Bankston asserting that Bankston was served with their lawsuit on April 27, 2023, and neither answered nor appeared. The same day, Bankston filed an answer and moved to dismiss appellants' claims pursuant to the TCPA. In his TCPA motion, Bankston described the nature of the litigation, including the Colorado disciplinary proceedings against Maynard and his declaration provided to Zimmerman in support of the investigatory request into Maynard.

After a hearing, the trial court granted Bankston's TCPA motion, dismissed appellants' claims against Bankston, and awarded Bankston attorney's fees and sanctions. Appellants appealed.

THE TEXAS CITIZENS PARTICIPATION ACT

Applicable Law and Standard of Review

The purpose of the TCPA "is to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury." TEX. CIV. PRAC. & REM. CODE § 27.002. Under the TCPA, a party may file a motion to dismiss a legal action if the "legal action is based on or is in response to [that] party's exercise of the right of free speech, right to petition, or right of association[.]" *Id.* § 27.003(a).

The filing of a TCPA motion triggers a three-step resolution process with shifting burdens. First, the movant must demonstrate that the TCPA applies. *See id.* § 27.005(b). To meet this burden, the movant must demonstrate that the nonmovant's legal action is based on or is in response to the movant's exercise of a right to associate, speak freely, or petition. *Id.* If the movant

meets its initial burden, the burden then shifts to the party bringing the legal action to establish by clear and specific evidence a prima facie case for each essential element of its claim. *Id.* § 27.005(c). If the nonmovant satisfies that requirement, the burden shifts back to the movant to establish, as a matter of law, any valid affirmative defense. *Id.* § 27.005(d). In making a TCPA determination, the trial court considers the pleadings, evidence a court could consider under Texas Rule of Civil Procedure 166a, and any supporting and opposing affidavits stating the facts on which the claim or defense is based. *Id.* § 27.006(a); TEX. R. CIV. P. 166a (stating evidence trial court may consider in summary judgment proceeding). We review *de novo* whether the parties have met their respective TCPA burdens. *See Dall. Morning News, Inc. v. Hall*, 579 S.W.3d 370, 377 (Tex. 2019).

"[A] TCPA motion to dismiss is not a trial on the merits and is not intended to replace either a trial or the summary judgment proceeding established by the Texas Rules of Civil Procedure." *Stallion Oilfield Servs. Ltd. v. Gravity Oilfield Servs., LLC*, 592 S.W.3d 205, 215 (Tex. App.—Eastland 2019, pet. denied); *see also West v. Quintanilla*, 573 S.W.3d 237, 243 n.9 (Tex. 2019) ("A finding that [non-movant] has met his TCPA burden does not establish that his allegations are true."). Accordingly, we do not resolve any issues unrelated to the purpose of the TCPA. *See* TEX. CIV. PRAC. & REM. CODE § 27.002.

Analysis

In his TCPA motion, Bankston asserted that his communication—i.e., his declaration in support of an investigation by the disciplinary arm of the Colorado Supreme Court—was made in a judicial proceeding, and, as such, he was exercising his right to petition. Likewise, Bankston also contended that appellants' claims in the underlying lawsuit implicated his right to free speech on a matter of public concern—i.e., Maynard's unauthorized practice of law. Addressing TCPA steps two and three, Bankston argued that appellants could not establish a prima facie case for each

essential element of their claims, and even if they could, he was entitled to judgment as a matter of law on his asserted affirmative defenses and immunity claims. In response, appellants conclude that the TCPA does not apply to their claims against Bankston, and even if it did, that appellants provided clear and specific evidence of their claims, and Bankston was not entitled to judgment as a matter of law on any of his affirmative defenses or assertions of immunity. Because the parties dispute all three TCPA steps, we address each step in turn.

Step One: TCPA Applicability

Under the first step, Bankston had the initial burden to show that appellants' "legal actions" were based on or were in response to Bankston's use and disclosure of appellants' emails through his declaration filed in support of the Colorado disciplinary proceeding. It is undisputed that the underlying lawsuit constitutes a "legal action" under the statute. *See id.* § 27.001(6) (defining "legal action" as used in the statute as "a lawsuit, cause of action, petition, complaint, cross-claim, or counterclaim or any other judicial pleading or filing that requests legal, declaratory, or equitable relief."). The parties do dispute, however, whether appellants' legal action implicates Bankston's right to petition and right to free speech.

The TCPA allows for a dismissal of a legal action that is "based on or is in response to a party's exercise" of their right to free speech or right to petition. *Id.* § 27.003(a). As to the former, "'[e]xercise of the right of free speech' means a communication made in connection with a matter of public concern." *Id.* § 27.001(3). "'Communication' includes the making or submitting of a statement or document in any form or medium, including oral, visual, written, audiovisual, or electronic." *Id.* § 27.001(1). "Matter of public concern" means a statement or activity regarding:

> (A) a public official, public figure, or other person who has drawn substantial public attention due to the person's official acts, fame, notoriety, or celebrity;
> (B) a matter of political, social, or other interest to the community; or
> (C) a subject of concern to the public.

Id. § 27.001(7). "'Based on or in response to' is not defined in the statutory scheme." *Baylor Scott & White v. Project Rose MSO, LLC*, 633 S.W.3d 263, 275 (Tex. App.—Tyler 2021, pet. denied). Without a statutory definition, Texas courts "have stated that the TCPA's required nexus is satisfied at minimum for legal actions that 'are factually predicated on' allegations of conduct that fall within one of the TCPA's protected rights." *Id.* at 276 (citations omitted).

As to the latter, the TCPA allows for a dismissal of a legal action that is "based on or is in response to a party's exercise of the . . . right to petition." TEX. CIV. PRAC. & REM. CODE § 27.003(a). The TCPA defines "exercise of the right to petition" as including "a communication in or pertaining to . . . a judicial proceeding." *Id.* § 27.001(4)(A)(i). In addition to "a communication in or pertaining to . . . a judicial proceeding," the TCPA defines "exercise of the right to petition" as "a communication that is reasonably likely to encourage consideration or review of an issue by a legislative, executive, judicial, or other governmental body or in another governmental or official proceeding." *Id.* § 27.001(4)(C).

"In determining whether the TCPA is applicable, we conduct 'a holistic review of the pleadings.'" *Baylor Scott & White*, 633 S.W.3d at 277 (quoting *Adams v. Starside Custom Builders, LLC*, 547 S.W.3d 890, 897 (Tex. 2018)). "Our analysis is not constrained by the 'precise legal arguments or record references' made by the moving party regarding the TCPA's applicability." *Id.* "Rather, our focus is 'on the pleadings and on whether, as a matter of law, they are based on or [in response to] a matter of public concern.'" *Id.* "In the final analysis then, '[w]hen it is clear from the [nonmovant's] pleadings that the action is covered by the [TCPA], the [movant] need show no more.'" *Id.*

Here, the gravamen of appellants' claims against Bankston for violating the Federal Wiretap and Stored Communications Acts is that Bankston, along with other defendants,

conspired[2] to intercept appellants' email communications regarding the Sandy Hook shooting and then used and attached the emails as support for his declaration filed in the Colorado disciplinary proceeding against Maynard. It is undisputed that the emails exchanged between appellants and others were widely publicized and garnered substantial press coverage during the trial of Infowars and Alex Jones. *See* TEX. CIV. PRAC. & REM. CODE § 27.001(1). The record reveals Bankston acquired the emails from Jones's attorney during the parties' exchange of discovery in the related lawsuit. Emphatically, "[t]he communications at issue forming the basis of the suit have at least a tenuous, remote, or tangential relationship to a matter of public concern." *Baylor Scott & White*, 633 S.W.3d at 277. Therefore, based on the unique facts of this case, Bankston's acquisition and use of appellants' emails falls within his right to speak freely. We additionally conclude that Bankston's declaration in the Colorado disciplinary proceeding is within the scope of the TCPA, but for a different reason.

As to Bankston's declaration, a review of his declaration demonstrates that Maynard's alleged unauthorized practice of law was "reasonably likely to encourage consideration or review of an issue" by the State of Colorado's attorney disciplinary enforcement arm. *See* TEX. CIV. PRAC. & REM. CODE § 27.001(4)(C); *see also generally* COLO. R. CIV. P. 242.25; *id.* R. 242.6. By stating in their petition that they learned about Bankston's declaration by reading the Colorado disbarment report, appellants appear to concede that their claims are in response to Bankston's declaration filed in the proceeding. *See generally Unauthorized Practice of Law Comm. v. Am. Home Assur. Co., Inc.*, 261 S.W.3d 24, 30 (Tex. 2008) (noting the procedures and protocols established by the Texas Supreme Court and Legislature to protect the public from the unauthorized practice of law);

[2] Because civil conspiracy is "derivative" of appellants' other claims, we do not address it separately. *See Jones v. Pozner*, No. 03-18-00603-CV, 2019 WL 5700903, at *1 n.2 (Tex. App.—Austin Nov. 5, 2019, pet. denied) (mem. op.).

TEX. GOV'T CODE § 81.101(a) (defining the "unauthorized practice of law" as "the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as a service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined."). Therefore, based on the pleadings, Bankston's declaration implicated his right to petition within the meaning of the TCPA.

Finally, appellants argue that their causes of action are not within the bounds of the TCPA because Bankston's alleged use and disclosure of their emails is illegal. We reject appellants' attempt to shift their TCPA step two burden to Bankston. *Robles v. Nichols*, 610 S.W.3d 528, 535 (Tex. App.—El Paso 2020, pet. denied); *see also Bartnicki v. Vopper*, 532 U.S. 514, 525 (2001) (holding substance of illegally intercepted communications, although the defendant did not know who recorded the communications, was a matter of public concern because if the statements had been made in the public arena, they would have been newsworthy).

We conclude that Bankston met his TCPA step one burden. As a result, he was entitled to file a motion to dismiss challenging the sufficiency of appellants' claims. *See* TEX. CIV. PRAC. & REM. CODE § 27.003(a); *Doe v. Cruz*, 683 S.W.3d 475, 491 (Tex. App.—San Antonio 2023, no pet.).

Steps Two and Three: Prima Facie Case and Bankston's Affirmative Defenses

Because Bankston demonstrated that the TCPA applies, the burden shifted to appellants to establish by clear and specific evidence a prima facie case for each essential element of their claims. *See* TEX. CIV. PRAC. & REM. CODE § 27.005(c). If appellants did so, then their "legal actions," nevertheless, must be dismissed if Bankston "establishe[d] an affirmative defense or other grounds on which [he] is entitled to judgment as a matter of law." *Id.* § 27.005(d).

"Neither the TCPA nor common law define 'clear and specific evidence.'" *Straehla v. AL Glob. Servs., LLC*, 619 S.W.3d 795, 803 (Tex. App.—San Antonio 2020, pet. denied). "Clear" and "specific" "mean, for the former, 'unambiguous,' 'sure,' or 'free from doubt' and, for the latter, 'explicit' or 'relating to a particular named thing.'" *In re Lipsky*, 460 S.W.3d 579, 590 (Tex. 2015) (orig. proceeding). Clear and specific evidence requires "enough detail to show the factual basis" of the claim, but it does not "impose an elevated evidentiary standard," "categorically reject circumstantial evidence," or "impose a higher burden of proof than that required of the plaintiff at trial." *Id.* at 591. A prima facie case "refers to evidence sufficient as a matter of law to establish a given fact if it is not rebutted or contradicted." *Id.* at 590. "It is the 'minimum quantum of evidence necessary to support a rational inference that the allegation of fact is true.'" *Id.* (citation omitted).

Here, we move to step three because, regardless of whether appellants can establish a prima facie case for each of their claims, we ultimately conclude that Bankston is entitled to judgment as a matter of law on his affirmative defense of statute of limitations.[3]

1. Statute of Limitations

A statute of limitations is an affirmative defense. *Godoy v. Wells Fargo Bank, N.A.*, 575 S.W.3d 531, 536 (Tex. 2019); *see also Harris Cnty. v. Deary,* 695 S.W.3d 566, 572 (Tex. App.—Houston [1st Dist.] 2024, no pet.) ("When a plaintiff sues for federal claims in a state court, we apply federal substantive law and state procedural law to those claims."). The applicable statute of limitations for appellants' claims is two years after a claimant discovered or had a reasonable opportunity to discover the alleged wrong. *See* 18 U.S.C. § 2520(e); *id.* § 2707(f); *Agar Corp., Inc. v. Electro Circuits Int'l, LLC*, 580 S.W.3d 136, 145 (Tex. 2019) ("Because a civil conspiracy claim is derivative of an underlying tort, the claim accrues when the underlying tort accrues."). Neither

[3] Having concluded Bankston established the affirmative defense of statute of limitations as a matter of law, we need not address his remaining asserted affirmative defenses and claims of immunity. *See* TEX. R. APP. P. 47.1.

party disputes that appellants filed their lawsuit within the applicable statute of limitations. The statute of limitations issue revolves around whether appellants diligently attempted to serve Bankston after filing their lawsuit.

Appellants' pleadings claim they discovered Bankston's alleged wrongs on or about February 12, 2020. Accordingly, the statute of limitations ran on appellants' claims on or about February 12, 2022. It is undisputed that Bankston was not served with appellants' lawsuit until over a year after the expiration of appellants' claims—on April 27, 2023. Nevertheless, "[i]f a party files its petition within the limitations period, service outside the limitations period may still be valid if the plaintiff exercises diligence in procuring service on the defendant." *Ashley v. Hawkins*, 293 S.W.3d 175, 179 (Tex. 2009). "When a defendant has affirmatively pleaded the defense of limitations, and shown that service was not timely, the burden shifts to the plaintiff to prove diligence." *Id.* "Diligence is determined by asking whether the plaintiff acted as an ordinarily prudent person would have acted under the same or similar circumstances and was diligent up until the time the defendant was served." *Id.* (internal quotations omitted). "Although a fact question, a plaintiff's explanation may demonstrate a lack of diligence as a matter of law, when one or more lapses between service efforts are unexplained or patently unreasonable." *Id.* "Thus, [appellants have] the burden to present evidence regarding the efforts that were made to serve [Bankston], and to explain every lapse in effort or period of delay." *Id.*

Here, Bankston pled the affirmative defense statute of limitations in his answer. Applying Texas procedural law, appellants failed to provide an evidence-based explanation for their failure to diligently serve Bankston following the expiration of the statute of limitations. *Id.* Although appellants incorrectly allege that Bankston failed to name the affirmative defense properly and that their claims provide no deadline for service, only a deadline to file an action, it is state procedural law we follow when determining substantive federal claims asserted in state court. *Deary,* 695

S.W.3d at 572; *see also McKesson v. Doe,* 592 U.S. 1, 5 (2020) ("Our system of 'cooperative judicial federalism' presumes federal and state courts alike are competent to apply federal and state law."). Likewise, appellants do not provide authority for their contention that a Texas state court is preempted from applying Texas procedural law to appellants' federal claims. *See Deary*, 695 S.W.3d at 572 ("State courts have concurrent jurisdiction to decide cases arising under federal law unless Congress expressly precludes state court jurisdiction."). Accordingly, Bankston established the affirmative defense of statute of limitations. Therefore, Bankston met his TCPA step three burden and was entitled to a dismissal of the underlying lawsuit. We affirm the trial court's order in this respect.

Attorney's Fees, Court Costs, and Sanctions

Finally, appellants argue the trial court abused its discretion by (1) awarding Bankston attorney's fees for his *pro se* representation and (2) awarding sanctions against appellants.[4]

Section 27.009 of the TCPA provides:

> (a) Except as provided by Subsection (c), if the court orders dismissal of a legal action under this chapter, the court:
>
> > (1) shall award to the moving party court costs and reasonable attorney's fees incurred in defending against the legal action; and
> >
> > (2) may award to the moving party sanctions against the party who brought the legal action as the court determines sufficient to deter the party who brought the legal action from bringing similar actions described in this chapter.
>
> (b) If the court finds that a motion to dismiss filed under this chapter is frivolous or solely intended to delay, the court may award court costs and reasonable attorney's fees to the responding party.

TEX. CIV. PRAC. & REM. CODE § 27.009(a), (b).

[4] Appellants additionally request this court allow appellants conduct to discovery into the reasonableness of Bankston's fees. Appellants fail to cite authority in support of this argument. *See* TEX. R. APP. P. 38.1(i).

1. Bankston is Not Entitled to Attorney's Fees for Pro Se Representation

Appellants contend Bankston is not entitled to an award of attorney's fees because he represented himself *pro se* in the trial court and on appeal. The trial court awarded Bankston the following attorney's fees:

> Pursuant to TEX. CIV. PRAC. & REM. CODE 27.009(a), Defendant Mark Bankston shall be awarded the reasonable value of legal services incurred in defending the lawsuit. Accordingly, the Court HEREBY ORDERS that [appellants] are jointly and severally liable to Defendant Mark Bankston for attorneys' fees in the following amounts: For representation in the trial court: $26,325.00; For representation through the court of appeals: $31,500.00; For representation at the petition for review stage in the Supreme Court of Texas: $12,600.00; For representation at the merits briefing stage in the Supreme Court of Texas: $13,500.00; and/or For representation through oral argument and the completion of proceedings in the Supreme Court of Texas: $7,200.00. The Court finds the above awards of attorneys' [sic] fees to be reasonable and necessary for Defendant Mark Bankston's defense of [appellants'] claims against him in this proceeding.

Section 27.009(a)(1) requires reasonable attorney's fees to be awarded to a party when fees are "incurred in defending against the legal action." *Id.* § 27.009(a)(1). "A fee is incurred when one becomes liable for it." *Garcia v. Gomez*, 319 S.W.3d 638, 642 (Tex. 2010). Because Bankston represented himself *pro se* in the underlying proceeding and on appeal, he never became liable for fees for the services performed. *See Jackson v. State Office of Admin. Hearings*, 351 S.W.3d 290, 300 (Tex. 2011) (holding attorney who did not incur fees as a *pro se* litigant was not entitled to fees); *see also Cruz v. Van Sickle*, 452 S.W.3d 503, 522–25 (Tex. App.—Dallas 2014, pet. struck) (holding attorney's *pro bono* representation meant client did not incur fees). Bankston represented himself *pro se* in the trial court and in this court, and the only evidence in the record to support the amount of awarded incurred attorney's fees is an affidavit from Bankston in which he attests to his own work on this case and his hourly rate. This being the case, Bankston did not become liable for

attorney's fees under the statute and, thus, cannot recover them.[5] Accordingly, we reverse the trial court's award of attorney's fees in this respect.

2. Sanctions

Addressing the sanctions awarded to Bankston, appellants argue the trial court abused its discretion because the reasoning in its order does not support the basis for sanctions levied against them. As for the basis for sanctions, the trial court's order states:

> Pursuant to Tex. Civ. Prac. & Rem. Code 27.009(b), the Court finds that sanctions are appropriate to deter [appellants] from bringing similar actions and HEREBY ORDERS that [appellants] are each sanctioned $2500.00, and said amounts are to be paid to Defendant Mark Bankston within 30 days of the signing of this order.

"We review sanctions awards in TCPA cases for abuse of discretion." *ADB Interest, LLC v. Wallace*, 606 S.W.3d 413, 443 (Tex. App.—Houston [1st Dist.] 2020, pet. denied). A trial court abuses its discretion in awarding sanctions only if it "acted without reference to any guiding rules and principles, such that its ruling was arbitrary or unreasonable." *Low v. Henry*, 221 S.W.3d 609, 614 (Tex. 2007).

Bankston posits that the trial court's citation to Texas Civil Practices & Remedies Code section 27.009 subsection (b), rather than subsection (a)(2), was a clerical error or "a scrivener's error" that should not affect the validity of the sanction order. Relying on the language of subsection (b), appellants argue there is no basis for the trial court's sanctions order because subsection (b) only operates to award sanctions to nonmovants for a frivolous motion or one intended solely for delay.

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[5] We express no view on the sufficiency of the evidence supporting the trial court's awarded amount of contingent appellate attorney's fees. *See Yowell v. Granite Operating Co.*, 620 S.W.3d 335, 355 (Tex. 2020) ("At the point when fees are awarded by the trial court, any appeal is still hypothetical. There is no certainty regarding who will represent the appellee in the appellate courts, what counsel's hourly rate(s) will be, or what services will be necessary to ensure appropriate representation in light of the issues the appellant chooses to raise.").

"Black's Law Dictionary defines 'scrivener's error' as a synonym for 'clerical error.'" *Odom v. Coleman*, 615 S.W.3d 613, 628 (Tex. App.—Houston [1st Dist.] 2020, no pet.); *Scrivener's Error*, BLACK'S LAW DICTIONARY (12th ed. 2024). "A 'clerical error' is one 'resulting from a minor mistake or inadvertence, esp. in writing or copying something on the record, and not from judicial reasoning or determination.'" *Odom*, 615 S.W.3d at 628; *Clerical Error*, BLACK'S LAW DICTIONARY (12th ed. 2024); *In re M & O Homebuilders, Inc.*, 516 S.W.3d 101, 109 (Tex. App.—Houston [1st Dist.] 2017, orig. proceeding) ("[A] clerical error is one made in the transcription or entry of a judgment that causes the judgment to incorrectly state what was actually rendered.").

Here, the trial court's order recites the applicable standard for awarding Bankston sanctions pursuant to subsection (a)(2). TEX. CIV. PRAC. & REM. CODE § 27.009(a)(2) (stating the court "may award to the moving party sanctions against the party who brought the legal action as the court determines sufficient to deter the party who brought the legal action from bringing similar actions[.]"). Bankston's TCPA motion and the appellate record evidence appellants' involvement in similar litigation in Texas and throughout the country. Having reviewed the entire record, we conclude the citation to the incorrect subsection of the TCPA statute to be a mere clerical error and reform the order to reflect the trial court's intent arising from the record—sanctions awarded pursuant to Texas Civil Practices & Remedies Code section 27.009(a)(2). *See* TEX. R. APP. P. 43.2(b); *Jordan-Nolan v. Nolan*, No. 07-12-00431-CV, 2014 WL 3764509, at *3 (Tex. App.—Amarillo July 28, 2014, no pet.) (mem. op.) ("Appellate courts have the power to reform whatever the trial court could have corrected by a judgment nunc pro tunc where the evidence necessary to correct the judgment appears in the record."); *c.f. Keating v. Keating,* No. 02-20-00271-CV, 2022 WL 187985, at *7 (Tex. App.—Fort Worth Jan. 20, 2022, no pet.) (mem. op.) (holding argument

that error in judgment was clerical was unsupported by the record). Accordingly, we affirm this portion of the trial court's order as modified.

CONCLUSION

We affirm the trial court's order applying the TCPA to appellants' legal action and dismissing the underlying lawsuit. We modify the portion of the trial court's order granting sanctions to reflect the sanctions granted pursuant to Texas Civil Practices & Remedies Code 27.009(a)(2). We reverse the trial court's award of attorney's fees in connection with Bankston's *pro se* self-representation in the trial court and in this court.

Lori I. Valenzuela, Justice

Additional material from this filing is available in the Clerk's Office.