

FILE COPY

RE: Case No. 26-0445
COA #: 14-25-00331-CV

DATE: 6/12/2026
TC#: 19-DCV-264966

STYLE: SEXTON v. SEXTON

Today the Supreme Court of Texas denied the petition
for review in the above-referenced case.

DIANA REISMANN SEXTON

* DELIVERED VIA E-MAIL & POSTAL *

be appointed sole managing conservator; (4) the trial court's division of property; (5) the summary judgment in Gilbert's favor on Diana's personal-injury claims; and (6) the trial court's finding that Diana is a vexatious litigant. Of these issues, only Diana's challenge to the vexatious-litigant finding has merit. We accordingly modify the judgment to delete the finding that Diana is a vexatious litigant, and as modified, we affirm the trial court's judgment.

I. BACKGROUND

Gilbert was born in the United States, and Diana was born in Argentina. In 2007, they married in Argentina and had a child, and in 2008, the family moved to the United States. The record indicates that Diana and the child have dual citizenship in the United States and Argentina.

Gilbert filed the initial petition for divorce in 2019, and Diana filed a counter-petition. Three years later, Diana also filed a personal-injury suit against Gilbert, and at Gilbert's request, the personal-injury suit was consolidated with the divorce proceedings. In an amended petition, Gilbert alleged that Diana had filed four other cases, and he asked the trial court to find that Diana is a vexatious litigant.

The trial court granted Gilbert's combined traditional and no-evidence motion for summary judgment in his favor on Diana's personal-injury claims.

Issues relevant to conservatorship and access of the child were tried to a jury. The jury found that, before or during the pendency of the divorce action, Diana engaged in a history or pattern of family violence and in a pattern or practice of child abuse or child neglect. The jury further found that Gilbert should be appointed as the child's sole managing conservator. The trial court adopted the jury's verdict, granted the divorce on the grounds of Diana's cruelty to Gilbert and insupportability, and

challenges. We address separately Diana’s challenge to the summary judgment on her personal-injury claim and to the trial court’s vexatious-litigant finding, because each can be decided on the appellate record before us.

III. MATTERS NO LONGER REVIEWABLE

Because we cannot review the following matters at all, we describe them only briefly.

A. Challenge to the Trial Court’s Indigency Ruling

Although Diana argues that the trial court erred in failing to find her indigent, the ruling was appealed by motion to this Court in accordance with Texas Rule of Civil Procedure 145. By our order of July 31, 2025, we affirmed the trial court’s ruling, and it is not subject to further review by this Court.

B. Challenge to Superseded Temporary Orders

Complaints become moot when the court’s action on the merits cannot affect the parties’ rights or interests, as, for instance, when a justiciable controversy between the parties ceases to exist. *Heckman v. Williamson Cnty.*, 369 S.W.3d 137, 162 (Tex. 2012). Courts lack subject-matter jurisdiction to decide a moot controversy. *Guardianship of Fairley*, 650 S.W.3d 372, 379 (Tex. 2022).

Diana’s challenges to the trial court’s temporary orders on possession, access, and conservatorship are moot because those orders have been superseded by the final decree of divorce. *In re J.J.R.S.*, 627 S.W.3d 211, 225 (Tex. 2021). We accordingly lack jurisdiction to address them.

C. Final Rulings on Possession and Access

Much of the remainder of Diana’s appellate briefing focuses on her challenges to those parts of the final judgment that concern possession of, and access to, the child of the marriage; however, those issues are moot.

By its terms, the final decree’s rulings on possession and access apply only “while that child is under the age of eighteen years and not otherwise emancipated.” Because the child of the marriage reached the age of eighteen during the pendency of this appeal, the challenged parts of the final decree addressing possession and access are no longer in effect, and we lack jurisdiction to review them.

IV. CHALLENGES REQUIRING A REPORTER’S RECORD

In an appeal from a jury trial, the absence of a reporter’s record can be fatal. *See Kroger Co. v. Am. Alternative Ins. Corp.*, 468 S.W.3d 766, 768 (Tex. App.—Houston [14th Dist.] 2015, no pet.). The need for a complete reporter’s record may be most immediately apparent in the threshold question of error preservation. A party must preserve most complaints of error by raising the issue in the trial court through a timely and sufficiently specific request, objection, or motion. TEX. R. APP. P. 33.1(a). Having raised the issue, the complaining party also must either obtain a ruling on it or object to the trial court’s failure to rule. *Id.* If the record does not show that the party raised the issue and obtained or pursued a ruling in the trial court, an appellate court usually is unable to address the merits of the complaint on appeal. *See Fed. Deposit Ins. Corp. v. Lenk*, 361 S.W.3d 602, 604 (Tex. 2012) (explaining that the appellate courts generally lack jurisdiction to address unpreserved complaints of error); *Valley Baptist Med. Ctr. v. Gonzalez*, 33 S.W.3d 821, 822 (Tex. 2000) (per curiam) (stating that Texas courts lack jurisdiction to render advisory opinions); *Maxim Crane Works, L.P. v. Berkel & Co. Contractors, Inc.*, No. 14–15–00614–CV, 2016 WL 4198138, at *2 (Tex. App.—Houston [14th Dist.] Aug. 9, 2016,

pet. denied) (mem. op.) (overruling issues without addressing the merits where the limited record failed to show that the appellant preserved error). And even if the clerk's record is sufficient to show that the appellant preserved a complaint about a particular error, the appellant is faced with the presumption that the absent reporter's record would have shown that the evidence supports the challenged findings and the judgment. *See, e.g., Bryant v. United Shortline Inc. Assur. Services, N.A.*, 972 S.W.2d 26, 31 (Tex. 1998) (presumption in favor of trial court's findings); *Schafer v. Conner*, 813 S.W.2d 154, 155 (Tex. 1991) (per curiam) (presumption in favor of the judgment); *Guthrie v. Nat'l Homes Corp.*, 394 S.W.2d 494, 495 (Tex. 1965) (presumption in favor of jury's findings).

The record before us does not show that Diana's complaints regarding evidentiary rulings at trial, charge error,¹ and the composition of the jury² have been preserved for review. To the extent that Diana preserved any challenges to the legal or factual sufficiency of the evidence presented at trial to support the trial court's or the jury's findings concerning conservatorship, family violence, child abuse, child neglect, and the characterization and division of property, we presume that the evidence supports the findings.

We accordingly overrule Diana's challenges to the final judgment concerning all matters other than her personal-injury claim and the vexatious-litigant finding. We except these issues because the record before us is sufficient to address them.

¹ Diana's arguments about improper admission and exclusion of evidence and charge error appear to be part of a challenge about the sufficiency of the evidence, but we mention them separately in case these arguments were intended to be distinct grounds for reversal.

² Diana asserted that the trial court erred in seating non-lawyers as jurors.

V. SUMMARY JUDGMENT ON DIANA'S PERSONAL-INJURY CLAIMS

Diana sued Gilbert for battery and for assault by bodily injury, by threats of bodily injury, and by offensive physical contact. In the alternative to the intentional torts above, Diana pleaded negligence. Gilbert moved for summary judgment on Diana's personal-injury claims, and Diana filed a pro se response, after which her attorney filed an additional response with supporting evidence. The trial court signed Gilbert's proposed order granting the motion, and the order contains the following statement:

The Court finds that the evidence submitted by DIANA REISMANN SEXTON did not constitute admissible evidence and was contradicted by the responses to requests for disclosures provide[d]. Further, the evidence submitted was not accompanied by a business records affidavit, therefore the Court could not consider those records as they did not constitute admissible evidence as hearsay. The Court finds that no witness was listed to present at trial and each claim lacked evidence as to the element of causation or any numerical damage calculation which DIANA SEXTON intended to produce at trial.

In her summary-judgment response and on appeal, Diana correctly pointed out that the summary-judgment motion was unaccompanied by any evidence. Presumably, then—and despite the reference in the trial court's order to Diana's responses to requests for disclosures—the trial court granted the motion on the no-evidence grounds stated in the order, that is, no evidence of causation or of the amount of her damages.

We review summary judgments de novo. *Boerjan v. Rodriguez*, 436 S.W.3d 307, 310 (Tex. 2014) (per curiam). In a no-evidence motion for summary judgment, the movant asserts that there is no evidence of one or more essential elements of the claim or defense for which the nonmovant bears the burden of proof at trial. *Timpte Indus., Inc. v. Gish*, 286 S.W.3d 306, 310 (Tex. 2009). The burden then shifts to the

nonmovant to present evidence raising a genuine issue of material fact as to the elements specified in the motion. *Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 582 (Tex. 2006).

On appeal, Diana does not contend that the no-evidence portion of the motion lacked sufficient specificity to shift the burden of proof to her, nor does she challenge the trial court's ruling that her responsive evidence was inadmissible. She instead argues that Gilbert's counsel "filed a motion for summary judgment without any discovery completed."

That is not the same objection she raised in the trial court. In her pro se summary-judgment response, Diana argued that the summary-judgment proceedings were governed by Federal Rule of Civil Procedure 56, which states, "Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery." She seems to have interpreted this to mean that a summary-judgment motion could not be filed until all discovery had been completed, for she wrote that opposing counsel's "Motion was filed on the 03/05/2025, and the 'all' closed discovery was not finished; first, because she [that is, opposing counsel] did not provide all [Diana's] request for discovery and nor she waited [Diana's] discovery she requested to be filed on her time by 03/13/2025." Diana concluded that opposing counsel moved for summary judgment "not even waiting the 'all' complete discovery."

But summary-judgment proceedings in Texas courts are governed by Texas Rule of Civil Procedure 166a, and under the version of Rule 166a(i) then in effect,³ a party could file a no-evidence motion for summary judgment "[a]fter *adequate*

³ 60 TEX. B.J. 534 (1997, amended 2025) (now see TEX. R. CIV. P. 166a(b)(3)(B)).

time for discovery.”⁴ Discovery need not be complete, and Diana has not disputed, in the trial court or on appeal, that there had been adequate time for discovery when Gilbert moved for summary judgment.⁵

We overrule this issue.

VI. THE VEXATIOUS-LITIGANT FINDING

The determination that a person is a vexatious litigant has serious consequences. A court may issue an order, punishable by contempt, prohibiting the person from filing new pro se litigation without the permission of the appropriate administrative judge. TEX. CIV. PRAC. & REM. CODE § 11.101. The local administrative judge may grant such permission, with or without a hearing, only if it appears to the judge that the litigation has merit and has not been filed for the purposes of harassment or delay. *Id.* § 11.102. Permission can be conditioned on the furnishing of security. *Id.*

For a plaintiff to be found a vexatious litigant, the defendant must show there is no reasonable probability the plaintiff will prevail in the current litigation, and that another statutory requirement has been satisfied. *Id.* § 11.054. There are several alternatives for meeting the second requirement, but one way to do so is to prove that in the seven years immediately preceding the date of the defendant’s motion, the plaintiff “has commenced, prosecuted, or maintained at least five litigations as a pro se litigant other than in a small claims court that have been,” as relevant here, “finally determined adversely to the plaintiff.” *Id.* § 11.054(1)(A). On receipt of the

⁴ *Id.* (emphasis added).

⁵ Diana filed her personal-injury claims on August 11, 2022, and Gilbert filed his summary-judgment motion on March 5, 2025—more than two years after the claims were filed and less than thirty days before trial.

motion, and after notice to the parties, the trial court must conduct a hearing, at which it “may consider any evidence material to the ground of the motion.” *Id.* § 11.053. We review the vexatious-litigant ruling for abuse of discretion. *Nunu v. Risk*, 567 S.W.3d 462, 465 (Tex. App.—Houston [14th Dist.] 2019, pet. denied).

Gilbert did not file a motion to have Diana declared a vexatious-litigant, but his Fourth Amended Petition contains the following section:

14. Request for Post Trial Bond and Finding of Vexatious Litigant

Petitioner asserts herein that Respondent is a vexatious litigant, and requests that the Court make a finding to that effect at trial. This Court has authority under the Texas Civil Practice[] and Remedies Code Chapter 11 to make such finding in light of Respondent’s prior suits as follows:

Cause No. 14-23-00411CV Reismann v. Fort Bend County, et al (14th Court of Appeals, Texas)

Cause No., 4:24-CV-0852 Sexton v. Rollins (Southern District of Texas, U.S. District Court)

Cause No. 14-23-00175-CV Reismann v. Sexton (14th Court of Appeals, Texas)

Cause No. 22-DCV-296547 Resimann v. Fort Bend County, et al (240th Judicial District Court)

In finding that the above ***FOUR*** litigations were initiated by Respondent, and the outcomes meet the requirements of the TRCP [sic], which states that this Court shall Order Respondent to deposit a security if a moving Defendant so requests. Petitioner requests that this Court order that Respondent pay a security in the event of an appeal, further vexatious litigation against Defendant and dissemination of Respondent’s name on the list as provided by statute along with all other criteria as outlined in the Texas Civil Practices and Remedies Code.⁶

⁶ Bold and italics in original.

Diana moved to strike the Fourth Amended Petition. She argued that she had been falsely accused of being a vexatious litigant, because Texas Civil Practice & Remedies Code section 11.054(1)(A) requires a litigant to have had *five* prior qualifying litigations. Moreover, she pointed out that the Supreme Court of Texas held in *Serafine v. Crump* that an appellate proceeding is not a separate litigation, but a continuation of the same civil case that began in the trial court, and thus, proceedings in the trial court and on appeal in the same case constitute a single “litigation.”⁷ The trial court did not strike Gilbert’s Fourth Amended Petition, but instead made the requested vexatious-litigant finding. Diana unsuccessfully raised these arguments again in her motion for new trial,⁸ and she re-urges them in this appeal.

Gilbert argues that the absence of a reporter’s record is fatal to Diana’s challenge to the vexatious-litigant finding because we must presume that the evidence supports the trial court’s judgment. But a judgment also must conform to the pleadings.⁹ Gilbert raised only one ground for a vexatious-litigant finding, and

⁷ 691 S.W.3d 917, 921–22 (Tex. 2024) (per curiam).

⁸ Both in the trial court and on appeal, Diana has correctly pointed out that Gilbert has identified only two prior cases. Gilbert’s first and fourth citations are to the same case. The fourth citation refers to *Sexton v. Fort Bend County*, Cause No. 22-DCV-296547 in the 240th District Court, Fort Bend County, and the first citation is the attempted untimely appeal of that same case. See *Sexton v. Fort Bend County*, No. 14-23-00411-CV, 2023 WL 5554419, at *1 (Tex. App.—Houston [14th Dist.] Aug. 29, 2023, pet. denied) (per curiam) (mem. op.). Under *Serafine*, the two citations count as a single case. The second citation refers to a second case, *Sexton v. Rollins*, Civil Action No. 4:24-CV-0852 in the United States District Court, Southern District, Houston Division. The claims in that case were dismissed for failure to state a claim. The third citation does not refer to a prior case at all; it is *this* case: *Sexton v. Sexton*, Cause No. 19-DCV-264966 in the 505th District Court, Fort Bend County. Gilbert’s citation is to Diana’s attempted appeal of one of the trial court’s earlier non-final orders for which no interlocutory appeal was authorized. See *Sexton v. Sexton*, No. 14-23-00175-CV, 2023 WL 3372868, at *1 (Tex. App.—Houston [14th Dist.] May 11, 2023, pet. denied) (per curiam) (mem. op.). Moreover, this case was initiated by Gilbert, not Diana.

⁹ TEX. R. CIV. P. 301.

Texas Civil Practice and Remedies Code section 11.053(b) states that at the hearing on a vexatious-litigant motion, the trial court “may consider any evidence material *to the ground of the motion.*” TEX. CIV. PRAC. & REM. CODE § 11.053(b) (emphasis added). Gilbert sought a vexatious-litigant finding on the “ground” that Diana “initiated” “**FOUR** litigations” for which “the outcomes meet the requirements of the TRCP.” Although TRCP is an abbreviation for the Texas Rules of Civil Procedure, we assume that this was a scrivener’s error and that Gilbert meant to refer to the Texas Civil Practice & Remedies Code, which is where the vexatious-litigant statutory provisions are found.

Those provisions contain only one “ground” for a vexatious-litigant finding that is based on the number of litigations “initiated” and the “outcomes” of those litigations: a person can be found to be a vexatious litigant if, during the preceding seven years, the person “commenced . . . at least five litigations as a pro se litigant other than in a small claims court that have been . . . finally determined adversely to the plaintiff.” *Id.* § 11.054(1)(A). The statute does not authorize a vexatious-litigant finding based on the outcomes of four prior litigations.

But it is apparent from the judgment that the trial court made the vexatious-litigant finding on this basis, for the trial court stated in the judgment that “[a]t Petitioner’s request the Court considered *Petitioner’s request* to have DIANA REISMANN SEXTON declared as a vexatious litigant.”¹⁰ Gilbert’s request asserted a ground for a vexatious-litigant finding that the law does not recognize. Thus, presuming that a reporter’s record would have shown that Gilbert proved that Diana initiated four litigations, the trial court nevertheless erred, as a matter of law, in making the requested finding on that basis.

¹⁰ Emphasis added.

We sustain this issue.

VII. CONCLUSION

We sustain Diana's challenge to the trial court's vexatious-litigant finding, and we overrule all other issues that we have jurisdiction to address. We accordingly modify the judgment to delete the paragraph labeled "Court Findings," which appears at pages 33–34 of the Final Decree of Divorce, and as modified, we affirm the trial court's judgment.

/s/ Tracy Christopher
Chief Justice

Panel consists of Chief Justice Christopher and Justices Hart and Antú.



**In the
Fourteenth Court of Appeals**

NO. 14-25-00331-CV

DIANA REISMANN SEXTON, Appellant

V.

GILBERT SEXTON, Appellee

**On Appeal from the 505th District Court
Fort Bend County, Texas
Trial Court Cause No. 19-DCV-264966**

ORDER

In In the Matter of the Marriage of Gilbert Sexton and Diana Reismann Sexton and in the Interest of a Child, trial court cause no. 19-DCV-264966, the 505th District Court, Fort Bend County, signed a Final Decree of Divorce on June 3, 2025. The Final Decree of Divorce contains the following paragraph:

Court Findings

At Petitioner's request the Court considered Petitioner's request to have DIANA REISMANN SEXTON declared as a vexatious litigant pursuant to Texas Civil Practices and Remedies Code Chapter 11. After hearing evidence and argument of counsel the Court FINDS that DIANA REISMANN SEXTON has engaged in conduct and acts that would show that Page 33 of 35 Cause No. 19-DCV-264966; Final Decree of Divorce DIANA REISMANN SEXTON is a vexatious litigant. The Court declares that DIANA REISMANN SEXTON is a vexatious litigant as defined by Chapter 11 of the Texas Civil Practice and Remedies Code. This Court directs that the Clerk of this Court and

any other Court who receives notice of this finding to comply with the duties as set out in the Texas Civil Practices and Remedies Code Section 11.103; 11.1035. The Court further directs the District Clerk to Disseminate Notice to the Office of Court Administration of the Texas Judicial System a copy of this finding with the prefilng order issued under Section 11.101 no later than 30 days from the date of the prefilng order being signed pursuant to the statute.

In this appeal from the Final Decree of Divorce, this Court has sustained Diana Reismann Sexton's challenge to the vexatious-litigant finding and modified the trial court's judgment to delete this paragraph from the judgment, as seen in the attached memorandum opinion and judgment of this date.

Texas Civil Practice and Remedies Code section 11.104(c) imposes the following requirements for removing the name of a person previously found to be a vexatious litigant from the Office of Court Administration of the Texas Judicial System's list of vexatious litigants and from the agency's internet website:

The Office of Court Administration of the Texas Judicial System may not remove the name of a vexatious litigant subject to a prefilng order under Section 11.101 from the agency's Internet website unless the office receives a written order from the court that entered the prefilng order or from an appellate court. An order of removal affects only a prefilng order entered under Section 11.101 by the same court. A court of appeals decision reversing a prefilng order entered under Section 11.101 affects only the validity of an order entered by the reversed court.

TEX. CIV. PRAC. & REM. CODE § 11.104(c).

To give effect to our judgment, we hereby **ORDER** the Office of Court Administration of the Texas Judicial System to **remove the name of Diana Reismann Sexton from its List of Vexatious Litigants, and from the agency's internet website**, as required by section 11.104(c).

PER CURIAM

Panel Consists of Chief Justice Christopher and Justices Hart and Antú.

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