No. 131714

IN THE SUPREME COURT OF ILLINOIS

NICHOLAS T. ANDERSON,	)	On Petition for Leave to Appeal
	)	from the Appellate Court of Illinois
	)	Fourth District, No. 4-16-0527
Appellant	)	
	)	
v.	)	Appeal from the Circuit Court of
	)	Schuyler County, Illinois,
MEGAN M. SMITH (F/K/A) WOHFEIL,	)	Case No. 2018-L-2
	)	
Appellee.	)	Honorable Judge Roger Thomson,
Judge	)	Presiding
	)	

BRIEF AND ARGUMENT OF APPELLANT

ORAL ARGUMENT REQUESTED

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NATURE OF THE ACTION AND OF THE JUDGMENT APPEALED

The underlying action was brought by Plaintiff, NICHOLAS T. ANDERSON ("Anderson") against Defendant, MEGAN M. SMITH ("Smith") for defamation and malicious prosecution. Anderson alleged that Smith falsely accused him of assault during a press conference and protest concerning a proposed hog concentrated animal feeding operation ("CAFO") in Schuyler County, Illinois. Anderson was subsequently charged with battery based on the same set of circumstances by the Office of the Illinois Appellate Prosecutor. Anderson was found not guilty of the battery charge. Anderson amended his complaint to include a count of malicious prosecution against Smith. Anderson alleges that Smith falsely accused him of assault during their interaction and that her true motivation for pursuing battery charges was not to seek justice but to retaliate against him for his advocacy in support of the Schuyler County CAFO.

In January 2024, Smith filed a motion asking the trial court to, in relevant part, dismiss Anderson's claims pursuant to the Citizens Participation Act, 735 ILCS 110/1, *et seq.* ("CPA"). The circuit court denied Smith's motion.

Smith then filed a petition for interlocutory appeal by permission of the denial of the motion to dismiss pursuant to the CPA pursuant to Illinois Supreme Court Rule 306(a)(9). The petition was granted. The Fourth Appellate District reversed the circuit court's order and remanded the matter for the circuit court to reevaluate Smith's motion pursuant to the Fourth Appellate District's statutory construction of the CPA, in particular the second prong of the *Sandholm* test.

Anderson appeals from the March 7, 2025, Opinion of the Fourth District Appellate Court, *Anderson v. Smith,* 2025 IL App (4th) 241076 and requests reversal in accordance with the Court's decision in *Sandholm* interpreting the CPA and the First District Appellate Court's formulation of the post-*Sandholm* test.

STATEMENT OF THE ISSUES AND QUESTIONS PRESENTED

1. Whether the Fourth District Appellate Court's reformulation of the *Sandholm* framework impermissibly disrupts the balance between the movant's and nonmovant's rights to petition the government and whether this reformulation will be workable for lower courts.
2. Whether the Fourth District correctly interprets the empirical material cited in *Sandholm*.
3. Whether the CPA's unique procedures supply sufficient incentives to file motions pursuant to the CPA even if a merits analysis is duplicative to motions filed under 735 ILCS 5/2-619 and 735 ILCS 5/2-1005.
4. Whether the lower court correctly denied the motion to dismiss applying the First Appellate District's framework for motions filed pursuant to the CPA.

STATUTES INVOLVED

Pursuant to Illinois Supreme Court Rule 341(h)(5), Anderson includes the following statutes and constitutional provisions pertinent to this matter in the Appendix: Citizen Participation Act, 735 ILCS 110/1, et seq., The Constitution of the United States, Amendment 1.

STATEMENT OF FACTS

On June 1, 2017, the Illinois Department of Agriculture and the Schuyler County Board convened a public hearing in Rushville, Illinois, concerning a proposal to approve a hog CAFO. A press conference in a nearby park preceded the hearing. Anderson attended in support of the CAFO as a contractor for the Illinois Pork Producers Association; Smith attended in opposition. While another supporter of the proposal was giving a television interview, Smith stood behind him holding a sign expressing opposition to the measure.

Afterward, Anderson approached Smith. Although the precise details of the interaction are disputed, it is undisputed that, in the presence of bystanders, Smith said, "I don't know you," and "don't touch me." Smith reported to law enforcement officers at the scene that Anderson had shoved and assaulted her. Officer Rick Wright of the Rushville Police Department arrested Anderson and issued a citation for assault, 720 ILCS 5/12-1, but declined to issue a battery citation. Anderson was later charged with battery, 720 ILCS 5/12-3, and was acquitted after a bench trial on May 31, 2019.

ARGUMENT

Standard of Review

Questions of statutory interpretation under the Citizen Participation Act (CPA), 735 ILCS 110/1 et seq., and the proper analytical framework for CPA motions are reviewed *de novo.* *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55. The Fourth District's construction of the statute and its directives to trial courts present pure questions of law.

I. The Fourth District Appellate Court's reformulation of the *Sandholm* framework impermissibly disrupts the balance between the movant's and nonmovant's rights to petition the government and will ultimately prove to be an unworkable standard.

This case is about how courts should decide a motion under the CPA. Reading *Sandholm v. Kuecker*, 2012 IL 111443, the First District applies a two-part test at the second prong: the movant must show that the claim is legally meritless and that it is solely brought for a retaliatory purpose rather than to seek a redress of wrongs. *See Glorioso v. Sun-Times Media Holdings*, LLC, 2024 IL 130137, ¶ 55 (citing *Hammons v. Society of Permanent Cosmetic Professionals*, 2012 IL App (1st) 102644, ¶ 18); *Prakash v. Parulekar*, 2020 IL App (1st) 191819, ¶ 34; *Goral v.*

Kulys, 2014 IL App (1st) 133236, ¶ 38. A claim is meritless if the movant disproves an essential element. *Garrido v. Arena*, 2013 IL App (1st) 120466, ¶ 19. The retaliatory component is a question of subjective purpose, but courts assess it through workable indicators such as timing and the fit between damages and the alleged injury, which allow reasonable inferences without an evidentiary hearing. *Ryan v. Fox Television Stations*, Inc., 2012 IL App (1st) 120005, ¶ 23. That framework is faithful to *Sandholm*. *Sandholm* rejected reliance on the CPA's separate sham exception and directed courts to ask whether the plaintiff's suit is based on, related to, or in response to protected petitioning. 2012 IL 111443, ¶¶ 52, 56 to 57. The Court went on to state that "construing the Act only to meritless SLAPPs accords with another express goal in section 5: 'to strike a balance between the rights of persons to file lawsuits for injury and the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government.'" Id. at ¶ 49.

The First District's approach honors both the letter and stated goal of the Court's directive in *Sandholm* by pairing an objective legal screen with a targeted, inference-based assessment of retaliatory purpose. *See also Glorioso v. Sun-Times Media Holdings*, LLC, 2023 IL App (1st) 211526, ¶ 85 (Hyman, J., dissenting) (noting that allowing objectively meritless claims to proceed undermines the Act's aim to dispose of facially invalid cases quickly).

The Fourth District took a different view. It reasoned that if legal meritlessness can be shown under sections 735 ILCS 5/2-619 or 735 ILCS 5/2-1005, then reading the CPA to allow dismissal based on meritlessness would make the CPA redundant, even though the CPA has distinct features like a 90-day hearing, a discovery stay, and fee-shifting. *Anderson v. Smith*, 2025 IL App (4th) 241076, ¶¶ 39, 42; see 735 ILCS 110/20, 110/25. To avoid that perceived redundancy, the Fourth District's test asks circuit courts to determine whether "the plaintiff's true

goal is to chill participation in government or to stifle political expression, rather than to seek damages." *Anderson* at ¶ 29. If the plaintiff raises a genuine factual dispute as to whether the plaintiff's true goal is to chill participation in government rather than to seek damages, the circuit court must then hold an evidentiary hearing to resolve the disputed issue of fact, applying the burden-shifting framework set forth in *Glorioso II*. Id. at ¶ 75. The plaintiff bears the burden of rebutting the motion with clear and convincing evidence. Id. at ¶ 76.

This formulation tilts the balance of the rights of the movant and plaintiff towards the interests of the movant. If a movant is able to meet the first prong of the *Sandholm* test, it is hard to imagine a plausible scenario where the movant could not raise a question of fact as to whether the nonmovant's interest in bringing the suit was to stifle government participation or to seek damages. Under this framework, the nonmovant is placed into the unenviable position of producing clear and convincing evidence without the benefit of discovery without leave of the court and on an expedited timeline. This will undoubtedly discourage those with meritorious claims from coming forward for fear of bearing the costs of their opponent's attorney's fees along with their own.

The Fourth Appellate District provides scant guidance to the lower courts as to how to determine the true goal of the plaintiff other than to point to the malice standard. However, malice is typically proven by a preponderance of the evidence, after full discovery, and is determined by the ultimate finder of fact. Here, the lower courts are asked to make a dispositive decision with limited information.

The purely subjective standard that the Fourth Appellate District has developed is yet another venture down a well-worn circular road that always seems to be rejected as unworkable. The federal appellate courts attempted to formulate a workable subjective standard in motions to

dismiss antitrust suits pursuant to the "sham exception." In *Professional Real Estate Investors v. Columbia Pictures Industries, Inc.*, 508 U.S. 49, 60, n.3 (1993), the Court explicitly rejected the contention that the "sham exception" turned on subjective intent alone as there was inconsistency and contradictory subjective tests developed by the Courts of Appeals. The Court also held that applying a purely subjective test "would utterly fail to supply 'real intelligible guidance,'" and "renders 'sham' no more than a label courts could apply to activity they deem unworthy of antitrust immunity." Id. at 60; *Allied Tube & Conduit Corp. v. Indian Head*, 486 U.S. 492, 508 n.10 (1988).

Massachusetts courts went down a similar road of trying to craft a workable subjective standard following the Massachusetts Supreme Court's decision in *Duracraft Corp. v. Holmes Products Corp.*, 427 Mass. 156 (1998) but have since rejected these standards as unworkable and have reasserted the *Duracraft* objective/subjective standard. *See Bristol Asphalt Co. v. Rochester Bituminous Prods.*, Inc., 493 Mass. 539, 555–57 (2024).

Wherefore, the Fourth Appellate District's test should be rejected as it skews the balance the CPA and *Sandholm* sought to strike and will ultimately prove to be unworkable as proven by previous attempts to develop purely subjective tests in similar contexts.

II. The Fourth District misreads the empirical material cited in *Sandholm* and builds a legal rule on unsound foundations.

The linchpin of the logic employed by the Fourth Appellate District is the citation in *Sandholm* which states, "defendants win eighty to ninety percent of all SLAPP suits litigated on the merits." Id. at 406." From this point, the Fourth Appellate District concluded that "meritless" cannot mean that SLAPP suits lack legal merit because 10-20% of these cases are decided in favor of the plaintiffs. *Anderson*, 2025 IL App (4th) 241076, ¶ 42. However, this analysis fails to

look deeper into the cited statistic. The academic paper relied upon by the Court in *Sandholm* is John C. Barker, Common-Law and Statutory Solutions to the Problem of SLAPPs, 26 Loy. L.A. L. Rev. 395 (1993). That paper cited several sources to reach its conclusion that defendants win eighty to ninety percent of SLAPP suits litigated on the merits. Id. at 406, n.63. The relevant cited academic articles defined SLAPP suits as those cases which fit into defined inclusion criteria. In George W. Pring, SLAPPs: Strategic Lawsuits against Public Participation, 7 Pace Envtl. L. Rev. 3 (1989), the study analyzed 228 cases that fit the following inclusion criteria:

1. A civil complaint or counterclaim (for monetary damages and/or injunction)
2. Filed against non-governmental individuals and/or groups,
3. Because of their communications to a government body, official, or the electorate,
4. On an issue of some public interest or concern.

Pring expressly acknowledged the limitations of that dataset. As he explained, SLAPPs are not easy to locate or catalog, they are typically submerged under conventional tort labels such as defamation or business interference, many matters do not result in reported decisions, and the cases located are not statistically representative of all such suits. See *Id*. at 8 n.6. The data were assembled from four heterogeneous sources: a mail survey of 975 public interest groups, keyword searches of reported cases and legal literature, referrals from attorneys, journalists, and citizens, and manual review of filings in six trial courts. *Id*. Those methods produce a useful descriptive picture of a litigation phenomenon, but they do not support the kind of hard, adjudication based inference the Fourth District draws.

There is an additional temporal problem. Pring's 1989 article predates the widespread adoption of anti-SLAPP statutes. California enacted the first modern anti-SLAPP law in 1992. See Cal. Code Civ. Proc. § 425.16. It is not plausible to read Barker and Pring as reporting

outcomes from adjudicated anti-SLAPP merits rulings in any systematic way. They were describing patterns in ordinary tort litigation involving petitioning activity, much of which never produced reported decisions.

Against that backdrop, the observation that defendants prevail in many SLAPP cases does not undermine an objective understanding of "meritless." If anything, the high defense success rate is consistent with a merits screen that filters out legally spurious claims. The Fourth District's conclusion that "meritless" cannot mean legally meritless because some plaintiffs still win takes a limited, nonrepresentative dataset and treats it as if it were a comprehensive adjudicative record. That is not a sound basis for statutory construction, particularly where the Court directs lower courts to evaluate whether the suit is in substance a response to petitioning and to use familiar legal tools to assess the claim's strength. See *Sandholm* at ¶ 55 (the determination as to whether a suit should be dismissed under the CPA is constrained by the typical framework of a motion under 735 ILCS 5/2-619(a)).

III. The CPA's unique procedures supply sufficient incentives to file motions pursuant to the CPA even if a merits analysis is duplicative to motions filed under 735 ILCS 5/2-619 and 735 ILCS 5/2-1005.

The CPA's 90-day hearing, automatic discovery stay, and fee-shifting speak directly to the harms *Sandholm* identified: delay, distraction, and expense. 735 ILCS 110/20, 110/25; *Sandholm*, 2012 IL 111443, ¶ 34. Those features are not available under ordinary motion practice. They give defendants a concrete reason to invoke the CPA even when a legal merits showing is required. The Fourth District's concern about redundancy is therefore misplaced. The statute already does independent work. It speeds resolution, controls cost, and shifts fees in appropriate cases, all without forcing courts into subjective motive hearings.

IV. Application of the First Appellate District's framework leads to affirmation of the lower court's holding that dismissal under the CPA was improper.

A. Defamation – Retaliatory Intent

The alleged defamatory statement and Anderson's discovery of it both occurred on June 1, 2017. (D279–81.) He filed the defamation action on May 29, 2018, two days before the one-year limitations period expired. (C14); 735 ILCS 5/13201. It would be unreasonable to infer "retaliatory intent" from a filing made at the end of the limitations period, long after the hog-confinement controversy had subsided and nearly a year after the arrest. The publications at issue were not statements made to law enforcement, even if similar statements were later repeated to police. Rather, the challenged remarks were made to the crowd assembled behind Mr. Ufkes during his interview and were repeated to Keatra Smith and nearby protestors. (D302; D232–33.)

Smith argues that Anderson admitted his motivation was retaliation for Smith's report to police. But that isolates a single answer and ignores the remainder of Anderson's testimony, which makes clear the suit was not filed solely for that reason. Anderson explained that his claim was based on Smith's false statements to her mother, to police, and to others who circulated the accusation, including Katherine Thompson and Karen Hudson. (D335.)

The damages sought also cut against any inference of a classic SLAPP. Anderson did not demand exorbitant damages; he requested compensatory damages in excess of $50,000 and unspecified punitive damages, not "millions" typical of SLAPPs. *Jursich v. Chicago Reg'l Council of Carpenters*, 2013 IL App (1st) 113279, ¶ 17; *See also Capeheart v. Terrell*, 2013 IL App 122517, ¶ 17 (suit filed almost a year after the meeting and after protests had ended; demand was $500,000, "not millions as in the classic SLAPP scenario").

On this record, Defendant cannot meet her burden to show Anderson's defamation claim was brought solely to retaliate for statements to law enforcement.

B. Malicious Prosecution – Retaliatory Intent

Smith contends that the very decision to assert malicious prosecution proves retaliation. That is not the law. Plaintiffs bring malicious prosecution claims to seek redress for an unjust criminal case, not to punish petitioning in the abstract. If Smith's logic were accepted, all malicious prosecution claims would be deemed "retaliatory," effectively abolishing the tort. *Sandholm* confirms that a movant must prove the suit was brought solely for a retaliatory purpose, which preserves legitimate malicious prosecution claims.

Timing here supports Anderson. He added the malicious prosecution count shortly after he was acquitted. An acquittal is an essential element of the tort, so the claim could not properly be filed earlier. The relationship between timing and ripeness is especially telling: a malicious prosecution claim filed before acquittal would be meritless, while filing after acquittal reflects legal sufficiency, not retaliation. And by the time acquittal occurs, there is no realistic risk that a civil filing would chill Smith's right to petition.

The damages sought in the malicious prosecution count mirror those in defamation. For the reasons already discussed, those requests do not suggest a solely retaliatory purpose.

C. Defamation – Merit

1. Publication to a Third Party

There is evidence of publication. Anderson testified that Smith stated "you assaulted me" to the crowd behind Mr. Ufkes. (D302.) Keatra Smith corroborated that Smith told her Anderson

had shoved her. (D232–33.) Smith also admitted telling her mother that Anderson battered her. (D54.)

Defendant's suggestion that Anderson offering a business card constitutes an "uncontested" battery does not follow. Words supporting *per se* defamation need not mirror the technical elements of an indictment; it is enough that they fairly impute a crime. *Kirchner v. Greene*, 294 Ill. App. 3d 672, 680 (1st Dist. 1998). In common usage, "assault" is often used to describe a physical attack. Unlike *Dobias v. Oak Park & River Forest High Sch. Dist. 200*, 2016 IL App (1st) 152205, ¶¶ 93–100, these statements were made during a charged public protest and were followed by efforts to seek criminal charges. A reasonable listener could understand Smith to be accusing Anderson of criminal conduct.

2. Damages

If the statement is defamatory *per se*, Anderson need not plead or prove actual damages. *Bryson v. News America Publications*, *Inc.,* 174 Ill. 2d 77, 87 (1996). And even if treated as defamation *per quod*, a claim may proceed where republication and resulting harm were reasonably foreseeable. Illinois courts do not require a plaintiff to trace a person-by-person chain of transmission to prove special damages. *Tunca v. Painter*, 965 N.E.2d 1237, 1260–61 (1st Dist. 2012); see also *Halpern v. News-Sun Broadcasting Co.*, 53 Ill. App. 3d 644, 646–47 (1977). Jennifer Tirey's testimony links the accusation to specific reputational and economic harm within the Livestock Development Group and the Illinois Farm Bureau, including contract restrictions and reduced public roles. (D543–46; D549–52; D553–55.) Tirey's statement that she did not witness the incident but heard that Anderson had "touched or hurt or assaulted an activist" from others is sufficient under Illinois law. (D545.)

3. False Statement

Several witnesses deny any battery and describe events consistent with Anderson's account. (E195–96; E205–08; E214–15; D299–300.) Anderson testified that Smith pushed her sign toward him and that he stepped aside; he did not say he touched Smith. (D299.) Wilson testified he photographed the interview, saw Anderson approach with a business card, heard Smith say something like "get away," and observed no contact. (E195–96.) Jackson saw no commotion consistent with Smith's claim that Anderson "kept shoving" her off the sidewalk. (E205–08; E27; D37.) Borjic saw Anderson slide between protestors and Mr. Ufkes but saw neither stumbling nor contact. (E214–15.) Although Smith cites witnesses in support of her version, their accounts contain inconsistencies, and some of the proffered testimony is inadmissible. These conflicts create a genuine issue of material fact on falsity.

4. Affirmative Defenses – Privilege and Substantial Truth

Affirmative defenses like substantial truth and privilege do not make a claim "meritless"; they offer a potential defense to liability. *Garrido v. Arena*, 2013 IL App (1st) 120466, ¶ 27. In any event, substantial truth is disputed given the testimony above. And while statements to law enforcement may be absolutely privileged, there is ample evidence that Smith made unprivileged statements to third parties, creating a triable fact issue.

D. Malicious Prosecution – Merit

1. Commencement or Continuation of the Criminal Proceeding by Smith

The Court recently rejected an approach that required proof of pressure, deception, or knowing misstatements as the only path to liability. *Beaman v. Freesmeyer*, 2019 IL 122654, ¶¶

46–47. Instead, the Court reaffirmed the broader rule, tracing to *Gilbert v. Emmons*, 42 Ill. 143, 147 (1866), that a person may be liable if her conduct played a "significant role" in initiating or continuing the prosecution. *Beaman*, 2019 IL 122654, ¶ 43.

Viewed in the light most favorable to Anderson, the record supports that inference. Smith, through counsel, provided John Wolf's statement to the prosecutor. (D399–401; D406–07.) The special prosecutor testified she could not say whether the battery charge would have been filed without Wolf's statement. (D405.) That conduct may be found "active and positive," amounting to advice and cooperation. *Beaman*, 2019 IL 122654, ¶ 45.

Defendant's reliance on Officer Wright's investigation is also unavailing. Wright initially concluded the evidence supported only assault, not battery. (E292.) He later changed his position without reviewing new evidence after speaking with the special prosecutor. (D500.) His trial testimony vacillated on probable cause for battery. (E60; E72; E75; E77–78.) A subsequent affidavit again indicated that his independent work supported only assault. (E288–89.) On this record, a jury could find Smith's conduct played a significant role in the decision to prosecute.

2. Probable Cause

In malicious prosecution, the focus is the complainant's state of mind, not the ultimate truth of the charge. *Szczesniak v. CJC Auto Parts*, Inc., 2014 IL App (2d) 130636, ¶ 16. As explained above, whether Anderson offensively touched Smith is genuinely disputed. (E195–96; E205–08; E214–15; D299–300.) The competing accounts from Anderson's witnesses and the inconsistencies in Defendant's proof preclude resolving probable cause as a matter of law.

3. Malice

Smith, along with her sister, the Moons, and her mother, were all actively opposed to the hog farm. (D128-29, D453, D19). They participated in protests, held signs, and attended other informational meetings organized by those opposing large hog farms. Notably, Ms. Johnson admitted that they were aware of Anderson in advance of the protest and public meeting. (D167). These circumstantial facts provide a solid basis for a trier of fact to infer that Smith acted with malice.

CONCLUSION

The Fourth District's construction of the Citizen Participation Act replaces the balanced, workable framework recognized after *Sandholm* with an open-ended subjective motive inquiry that invites mini-trials at the threshold. That approach conflicts with Illinois procedure, misreads the empirical sources referenced in *Sandholm*, and is unnecessary given the CPA's existing safeguards, including a 90-day hearing, a discovery stay, and mandatory fee-shifting. Under the First District's application of *Sandholm*, the movant must establish both legal meritlessness and retaliatory purpose. On this record, Smith has not carried that burden. The judgment of the Fourth District should be reversed and the matter remanded to the circuit court with instructions to apply the First District's framework.

Respectfully submitted,

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MEGAN M. SMITH (F/K/A) WOHFEIL,	)	Case No. 2018-L-2
	)	
Appellee.	)	Honorable Judge Roger Thomson, Judge
	)	Presiding

CERTIFICATE OF COMPLIANCE

I certify that this Brief conforms to the requirements of Supreme Court Rules 341(a) and (b), and 315(h). The length of this Brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is fifteen (15) pages.

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NOTICE OF FILING

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PLEASE TAKE NOTICE that on **October 29, 2025**, we electronically filed with the Illinois Supreme Court, the **BRIEF AND ARGUMENT OF APPELLANT**, on behalf of Appellant, Nicholas T. Anderson, a copy of which is attached hereto and served upon you.

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STATE OF ILLINOIS)
) SS
COUNTY OF MCDONOUGH)

CERTIFICATE OF SERVICE

I, the undersigned attorney for Appellant, after being first duly sworn on oath, depose and certify that a copy of the foregoing **Notice of Filing** and **Brief and Argument of Appellant** were served on the attorneys of record as addressed below, **via Microsoft Outlook e-mail transmission** on **October 29, 2025.**

/s/Dustin Clark

[x] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

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NO. 4-24-1076

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March 7, 2025
Carla Bender
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IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

NICHOLAS T. ANDERSON, Plaintiff and Counterdefendant-Appellee, v. MEAGAN M. SMITH, f/k/a Meagan M. Wohlfeil, Defendant and Counterplaintiff-Appellant.	)	Appeal from the Circuit Court of Schuyler County No. 18L2 Honorable Roger B. Thomson, Judge Presiding.

JUSTICE DOHERTY delivered the judgment of the court, with opinion.
Justices Steigmann and Cavanagh concurred in the judgment and opinion.

OPINION

¶ 1 Defendant Meagan M. Smith appeals from the trial court's order denying her motion to dispose of plaintiff Nicholas T. Anderson's defamation and malicious prosecution claims against her pursuant to the Citizen Participation Act (Act) (735 ILCS 110/1 *et seq.* (West 2022)). Because the court ruled on the motion without conducting the inquiry required by the Act, we reverse the court's order and remand with directions that the court conduct that inquiry.

¶ 2 I. BACKGROUND

¶ 3 The ultimate forum for resolution of civil claims is a trial, whether before a judge or a jury. The Code of Civil Procedure (Code) (735 ILCS 5/1-101 *et seq.* (West 2022)), however, provides several ways in which a civil defendant might defeat a claim via motion short of trial. A claim might be defeated based on the inadequacy shown on the face of the plaintiff's pleadings. *Id.* § 2-615. A defendant might advance a claim that some affirmative matter defeats the plaintiff's

claim. *Id.* § 2-619. Finally, a defendant may obtain summary judgment by demonstrating that the evidence marshalled by both sides is insufficient to present a triable issue. *Id.* § 2-1005. Success on any one of these motions would allow the defendant to prevail without having to defend the subject claim at trial. Moreover, where a plaintiff's claim is so patently lacking in merit that it is rightly deemed frivolous, the defendant might seek recovery of attorney fees from the plaintiff. Ill. S. Ct. R. 137 (eff. Jan. 1, 2018).

¶ 4 It is into this well-known environment that the legislature dropped the Act, presumably intending it to serve as a new and *different* vehicle for defendants facing a particular type of claim to obtain early dismissal and avoid trial. See 735 ILCS 110/30(a) (West 2022) (providing that the Act does not preclude preexisting remedies for defendants). The challenge presented by this case is understanding *how* the Act's provisions differ from the preexisting Code provisions regarding dispositive motions.

¶ 5 A. The Act

¶ 6 In 2007, the legislature passed the Act as a response to what it found was "a disturbing increase in lawsuits termed 'Strategic Lawsuits Against Public Participation' in government or 'SLAPPs.' " *Id.* § 5. "SLAPPs *** are lawsuits aimed at preventing citizens from exercising their political rights or punishing those who have done so. [Citation.] SLAPPs use the threat of money damages or the prospect of the cost of defending against the suits to silence citizen participation." *Wright Development Group, LLC v. Walsh*, 238 Ill. 2d 620, 630 (2010). A SLAPP plaintiff "do[es] not intend to win but rather to chill [the] defendant's speech or protest activity and discourage opposition by others through delay, expense, and distraction." *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 34.

¶ 7 Section 15 of the Act provides:

> "This Act applies to any motion to dispose of a claim in a judicial proceeding on the grounds that the claim is based on, relates to, or is in response to any act or acts of the moving party in furtherance of the moving party's rights of petition, speech, association, or to otherwise participate in government.
>
> Acts in furtherance of the constitutional rights to petition, speech, association, and participation in government are immune from liability, regardless of intent or purpose, except when not genuinely aimed at procuring favorable government action, result, or outcome." 735 ILCS 110/15 (West 2022).

We will use the term "Act motion" to refer to "any motion as described in Section 15." *Id.* § 20(a); see *id.* § 10 (" 'Motion' includes any motion to dismiss, for summary judgment, or to strike, or any other judicial pleading filed to dispose of a judicial claim.").

¶ 8 The Act provides for the following procedure and standards for an Act motion:

> "(a) On the filing of any motion as described in Section 15, a hearing and decision on the motion must occur within 90 days after notice of the motion is given to the respondent. An appellate court shall expedite any appeal or other writ, whether interlocutory or not, from a trial court order denying that motion or from a trial court's failure to rule on that motion within 90 days after that trial court order or failure to rule.
>
> (b) Discovery shall be suspended pending a decision on the motion. However, discovery may be taken, upon leave of court for good cause shown, on the issue of whether the movant[']s acts are not immunized from, or are not in furtherance of acts immunized from, liability by this Act.
>
> (c) The court shall grant the motion and dismiss the judicial claim unless

> the court finds that the responding party has produced clear and convincing evidence that the acts of the moving party are not immunized from, or are not in furtherance of acts immunized from, liability by this Act." *Id.* § 20.

"The court shall award a moving party who prevails in a motion under this Act reasonable attorney's fees and costs incurred in connection with the motion." *Id.* § 25.

¶ 9 Because the Act applies not just to SLAPPs but to discrete claims within lawsuits, we will use the term "SLAPP claim" when referring to an individual claim subject to dismissal under section 20(c) of the Act. See *id.* § 10 (" 'Judicial claim' or 'claim' include any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing alleging injury."). While the Act uses the general terms " '[m]oving party' " and " '[r]esponding party' " (*id.*), for simplicity, we will use the terms specific to this case, where the Act motion has been filed by the defendant and seeks dismissal of an alleged SLAPP claim in the plaintiff's complaint. When faced with an Act motion, the trial court's task is to determine whether the challenged claim is a SLAPP claim or an ordinary claim.

¶ 10 B. Factual and Procedural History

¶ 11 1. *Undisputed Facts*

¶ 12 On June 1, 2017, the Illinois Department of Agriculture and the Schuyler County Board held a public hearing in Rushville, Illinois, regarding a proposed measure to approve a hog farming operation. The hearing was preceded by a press conference in a nearby park. Anderson and Smith both attended the press conference; Anderson supported the measure, and Smith opposed it. At some point, while another proponent of the measure was giving a television interview, Smith was positioned behind him with a protest sign that expressed opposition to the measure.

¶ 13 Anderson subsequently approached Smith; the exact details of their encounter are disputed. However, it is undisputed that Smith said, "I don't know you" and "don't touch me" during the encounter and in the presence of bystanders. Smith spoke to law enforcement officers present at the scene and told them that Anderson had shoved and assaulted her. As a result, Officer Rick Wright of the Rushville Police Department arrested Anderson and issued a citation against him for assault (720 ILCS 5/12-1 (West 2016)) but declined to issue a citation for battery. However, Anderson was later charged with battery (*id.* § 12-3) and acquitted after a bench trial on May 31, 2019.

¶ 14 2. *The Parties' Contentions*

¶ 15 Smith has brought counterclaims against Anderson for battery and intentional infliction of emotional distress. Both claims allege, among other things, that Anderson intentionally shoved her in an offensive manner and almost knocked her to the ground during their encounter. Anderson denies this allegation, asserting that he did no more than hold out his hand to offer Smith his business card.

¶ 16 Anderson has brought claims against Smith for defamation and malicious prosecution. Anderson alleges, among other things, that Smith falsely said, "you assaulted me" during their encounter and that her primary motive for participating in the battery prosecution was not to bring him to justice for the alleged battery but to retaliate against him for his work "as an advocate for pro-farming activities, including the siting of agricultural facilities," such as the proposed hog farming operation. Smith denies these allegations.

¶ 17 3. *Smith's Motion for Summary Judgment*

¶ 18 In January 2024, Smith filed a motion asking the trial court to (1) grant summary judgment in her favor on her battery counterclaim and on Anderson's claims pursuant to section

2-1005 of the Code (735 ILCS 5/2-1005 (West 2022)) or (2) dispose of Anderson's claims pursuant to the Act. The court denied Smith's motion in its entirety, finding that it presented triable issues of fact for the jury, although the court failed to explain why it denied Smith's request for relief under the Act.

¶ 19 We granted defendant's petition for leave to appeal pursuant to Illinois Supreme Court Rule 306(a)(9) (eff. Oct. 1, 2020).

¶ 20 II. ANALYSIS

¶ 21 Although the trial court's order addressed other issues in this case, Rule 306(a)(9) limits the scope of our interlocutory review to the narrow question of whether Anderson's claims are subject to dismissal under the Act. See *Glorioso v. Sun-Times Media Holdings, LLC*, 2024 IL 130137, ¶ 1 (*Glorioso II*). We express no opinion as to the remaining issues, which we discuss only to the extent necessary to determine whether the trial court erred in denying Smith relief under the Act. See *In re Lawrence M.*, 172 Ill. 2d 523, 526 (1996); *Sandholm*, 2012 IL 111443, ¶ 58.

¶ 22 A trial court errs when its denial of relief rests on an incorrect legal standard. "When determining whether [the trial] court applied the incorrect legal standard, we must first ascertain the correct legal standard, which is a question of law subject to *de novo* review." *In re Marriage of Trapkus*, 2022 IL App (3d) 190631, ¶ 22. Ascertaining the correct interpretation of the Act is also a question of law that we review *de novo*. *People v. Howard*, 2017 IL 120443, ¶ 19. In interpreting the Act, our objective "is to ascertain and give effect to the legislature's intent." *Id.*

¶ 23 However, we are not writing on a blank slate; we are bound by the supreme court's explanation of the standard in *Walsh*, *Sandholm*, and *Glorioso II*. See *Doyle v. Hood*, 2018 IL App (2d) 171041, ¶ 35 (explaining that the supreme court's interpretation of a statute binds this court). Because *Glorioso II* is the most recent of these decisions—more recent even than the trial court's

decision in this case—we start there.

¶ 24 A. The Post-*Sandholm* Test

¶ 25 In *Glorioso II*, the supreme court articulated the relevant standard by endorsing what it called the post-*Sandholm* test:

> "The appellate court has consistently employed a three-part, post-*Sandholm* test to determine whether a lawsuit is subject to dismissal pursuant to the Act. [Citations.] Pursuant to the post-*Sandholm* test, the [defendant] has the burden to show that (1) the [defendant's] acts were in furtherance of [her] rights to petition, speak, associate, or otherwise participate in government to obtain favorable government action and (2) [the] plaintiff's claims are *solely* based on, related to, or in response to the [defendant's] exercise of these rights. [Citation.] If the [defendant] meets [her] burden under the first two prongs, in order to defeat the motion, [the] plaintiff must prove by clear and convincing evidence what is considered the third prong of the test: that the [defendant's] acts were not *genuinely* aimed at procuring favorable government action." (Emphases in original.) *Glorioso II*, 2024 IL 130137, ¶ 55.

¶ 26 In *Glorioso II*, the court explained that the first prong "requires a court to consider whether an objective person would find the [defendant's] acts were reasonably calculated to elicit a favorable government action or outcome." *Id.* ¶ 67. In contrast, the third prong is subjective rather than objective; in other words, the court must consider whether *this person's* acts were *actually* intended to elicit a favorable government action or outcome. *Id.* ¶ 67 n.3.

¶ 27 Our focus in the present case is the second prong, which originated in *Sandholm* itself (*id.* ¶ 62) and has presented difficulties for the appellate court. See *Glorioso v. Sun-Times*

Media Holdings, LLC, 2023 IL App (1st) 211526, ¶ 107 (*Glorioso I*) (Hyman, J., dissenting) (seeking "clarification and correction by our supreme court"). In *Glorioso II*, the supreme court pointedly declined to resolve the difficulties articulated by Justice Hyman's dissenting opinion in *Glorioso I* (see *Glorioso II*, 2024 IL 130137, ¶¶ 56-57), leaving *Sandholm* as the supreme court's last word on the issue.

¶ 28 B. *Sandholm*

¶ 29 *Sandholm* addressed section 15 of the Act, which requires the defendant's motion to rest "on the grounds that the [alleged SLAPP] claim is based on, relates to, or is in response to any act or acts of the [defendant] in furtherance of the [defendant's protected] rights." 735 ILCS 110/15 (West 2022). *Sandholm* construed this requirement as meaning that the "lawsuit was *initiated* solely to interfere with [the] defendant['s] protected rights." (Emphasis added.) *Glorioso II*, 2024 IL 130137, ¶ 53. In other words, the defendant must show that it is not "the *true goal* of [the] plaintiff's claims" to seek relief for damages for the defendant's allegedly wrongful act. (Emphasis added.) *Sandholm*, 2012 IL 111443, ¶ 57; accord *Glorioso II*, 2024 IL 130137, ¶ 52 ("[A] defendant's initial burden as the moving party is to show the true goal of the lawsuit is to 'chill participation in government or to stifle political expression,' rather than to seek damages for personal harm from the defendants' tortious acts."). At that point, of course, the trial court moves from the second prong of the post-*Sandholm* test to the third prong and considers the genuineness of the defendant's acts, as required by sections 15 and 20(c) of the Act. *Sandholm*, 2012 IL 111443, ¶ 53.

¶ 30 Smith argues that *Sandholm* did not merely interpret the Act but warped it beyond recognition by imposing an extrastatutory burden on defendants. See generally Emily L. Jenkinson, Note, *Sandholm v. Kuecker: The Illinois Supreme Court "SLAPPS" Away a Protection*

of Illinois Citizens' First Amendment Rights, 63 DePaul L. Rev. 1093 (2014) (endorsing a similar view). For our purposes, however, there is no difference between a burden imposed by the Act or by *Sandholm*; as an inferior court, we must faithfully apply *Sandholm* absent a change in the law, which is something that the judiciary and the legislature have both declined to do since *Sandholm* was decided. See *Glorioso II*, 2024 IL 130137, ¶ 53.

¶ 31 C. The "Meritless and Retaliatory" Standard

¶ 32 Although *Sandholm* established the "true goal" inquiry, the court spent just one brief paragraph engaging in the inquiry itself:

> "We conclude, based on the parties' pleadings, that plaintiff's lawsuit was not solely based on, related to, or in response to the acts of defendants in furtherance of the rights of petition and speech. Plaintiff's suit does not resemble in any way a strategic lawsuit intended to chill participation in government or to stifle political expression. It is apparent that the true goal of plaintiff's claims is not to interfere with and burden defendants' free speech and petition rights, but to seek damages for the personal harm to his reputation from defendants' alleged defamatory and tortious acts. Defendants have not met their burden of showing that plaintiff's suit was based solely on their petitioning activities." *Sandholm*, 2012 IL 111443, ¶ 57.

¶ 33 While *Sandholm*'s conclusion is clear enough, the standard applied to reach that conclusion has proven somewhat elusive. After *Sandholm* was decided, the First District adopted what has been called the "meritless and retaliatory" standard based on *Sandholm*'s conclusion that the Act intended "to subject only meritless, retaliatory SLAPP suits to dismissal." *Id.* ¶ 45; see *Ryan v. Fox Television Stations, Inc.*, 2012 IL App (1st) 120005, ¶ 26 (adopting this standard). As there was no clearly contrary authority, we understand that the trial court was obligated to follow

Ryan and its progeny. See *Schramer v. Tiger Athletic Ass'n of Aurora*, 351 Ill. App. 3d 1016, 1020 (2004) (noting that circuit courts are bound by the decisions of the appellate court in other districts absent a split among districts).

¶ 34 But while *Sandholm*'s interpretation of the Act binds us, *Ryan*'s interpretation of *Sandholm* does not. See *O'Casek v. Children's Home & Aid Society of Illinois*, 229 Ill. 2d 421, 440 (2008) (explaining that one district may part company from another). As we will explain, *Ryan* and its progeny misconstrued *Sandholm*, so we decline to adopt the "meritless and retaliatory" standard. *Id.*; see *Glorioso I*, 2023 IL App (1st) 211526, ¶ 73 (Hyman, J., dissenting) (positing that "a decade of appellate court decisions" since *Sandholm* "have repeatedly fallen short").

¶ 35 The primary vice of *Ryan*'s "meritless and retaliatory" standard is that it attempts to ascribe legal meaning to two words that *Sandholm* used in their rhetorical sense. We first address the flaws with this standard and then articulate what we find to be the appropriate standard for the second prong of the post-*Sandholm* test, which we believe comports with the supreme court's admittedly terse application of the standard in *Sandholm*.

¶ 36 1. *Meritless*

¶ 37 Although *Sandholm* used the word "meritless" several times when describing SLAPP claims, the word "meritless" may mean different things in different contexts. A plaintiff's claim can be described as meritless when (1) it has proceeded to trial and failed on the merits, meaning that the finder of fact has resolved the case against the plaintiff; (2) it can be resolved by an ordinary dispositive motion under the Code, meaning that the court can dispose of the claim without a trial on the merits; or (3) it is frivolous, meaning that the claim lacks even arguable merit. Attempting to incorporate any of these definitions of "merit" in the context of deciding an Act motion presents significant problems.

¶ 38 If a trial court were to apply the first definition of merit in deciding an Act motion, it would be required to preemptively resolve the factual issues of the plaintiff's claim *itself* and conclude that the claim will fail at trial. However, this approach would effectively deny the plaintiff his right to a jury trial on the claim. Put another way, if the Act allows the court to find that the defendant's acts are *immunized* from liability only by first finding that defendant *has no* liability for those acts, then the Act does not truly confer immunity; it simply shifts the role of determining liability from the jury to the court in the first instance. We must interpret the Act to avoid doubts as to whether it infringes on the plaintiff's constitutional right to a jury trial. See *Knauerhaze v. Nelson*, 361 Ill. App. 3d 538, 564 (2005) ("Courts will avoid *** any construction which would raise doubts as to [a] statute's constitutionality [citation]."); see also *Sandholm*, 2012 IL 111443, ¶ 60 (emphasizing that its interpretation of the Act avoided constitutional issues). Surely the Act does not contemplate the trial court would decide "merit" in this manner.

¶ 39 The problem with the second and third approaches arises from the fact that sections 15 and 20(c) of the Act (*i.e.*, the third prong of the post-*Sandholm* test) do not *require* dismissal of the plaintiff's "meritless" claim if the defendant's conduct falls under the "sham exception." *Sandholm*, 2012 IL 111443, ¶¶ 52-53; see *Glorioso II*, 2024 IL 130137, ¶ 55 (listing this as a requirement for dismissal under the Act). This means that to dispose of a claim under the Act, the defendant would first have to make the same showing required to dispose of the claim via a motion to dismiss or a motion for summary judgment *and then* defend against allegations that her conduct was not genuinely aimed at procuring favorable government action, including the possibility of discovery on the issue. See 735 ILCS 110/20(b) (West 2022).

¶ 40 Prevailing on a traditional dispositive motion means that the plaintiff's claim is resolved, which in the pre-Act world could only be viewed as a clear victory for the defendant.

What else might be achieved by a defendant who seeks to go beyond these traditional "merits" motions by arguing that the claim is "meritless" under the Act? The additional benefits of an Act motion would effectively consist only of the 90-day time limit, stay of discovery, and possibly an award of attorney fees. But how often would these ancillary benefits convince the defendant to abandon the surefire, half-prong test of an ordinary dispositive motion and pursue dismissal pursuant to a three-prong test contingent on the genuineness of her conduct? Even here, Smith sought both forms of relief in the alternative.

¶ 41 *Ryan* and its progeny do not avoid this problem by requiring only genuinely undisputed facts that "can disprove some element of the plaintiff's claim." *Glorioso I*, 2023 IL App (1st) 211526, ¶ 56; see *Ryan*, 2012 IL App (1st) 120005, ¶ 26. If the defendant could make this showing, then she could also move for summary judgment on the claim. See 735 ILCS 5/2-1005 (West 2022) (allowing for the defendant to seek summary judgment "at any time" when she can "show that there is no genuine issue as to any material fact and that [she] is entitled to a judgment as a matter of law").

¶ 42 We will not presume that the legislature intended for the Act to create a variant of preexisting dispositive motions that requires more litigation with a lower chance of success, nor does *Sandholm* stand for such a proposition. See *People v. Gutman*, 2011 IL 110338, ¶ 12 ("[A] court presumes that the legislature did not intend to create absurd, inconvenient, or unjust results."). As the supreme court recognized in *Sandholm*, "SLAPPs are, by definition, meritless." *Sandholm*, 2012 IL 111443, ¶ 34. However, the supreme court went on to explain that " 'defendants win eighty to ninety percent of all SLAPP suits litigated on the merits.' " *Id.* (quoting John C. Barker, *Common-Law and Statutory Solutions to the Problem of SLAPPs*, 26 Loy. L.A. L. Rev. 395, 406 (1993)). If it is true that 80% to 90% of SLAPP claims fail at trial, then 10% to

20% of them succeed; in other words, even some meritorious claims are SLAPP claims. Therefore, *Sandholm* does not stand for the principle that a SLAPP claim is meritless because it will necessarily *lose* if litigated on the merits; rather, a SLAPP claim is meritless because it does not *deserve* to be litigated on the merits.

¶ 43 2. *Retaliatory*

¶ 44 With respect to the word "retaliatory," we agree that the inquiry prescribed by *Sandholm* requires consideration of the plaintiff's "true goal" and "genuineness," but *Ryan* and its progeny fail to recognize the inherently factual nature of that inquiry. It is true that the supreme court's brief analysis of this issue was "based on the parties' pleadings," but the court predicated its conclusion on the defendants' failure to supply sufficient *evidence* supporting its "initial burden of *proving* that [the] plaintiff's lawsuit was solely 'based on, relate[d] to, or in response to' their acts." (Emphasis added.) *Id.* ¶¶ 56-57. Indeed, the supreme court specifically recognized that a defendant may support an Act motion with materials outside of the pleadings when attempting to meet its initial burden. *Id.* ¶ 54 (citing 735 ILCS 5/2-619(a)(9) (West 2008)).

¶ 45 By taking a contrary approach to determining whether a plaintiff's claim is retaliatory, *Ryan* and its progeny fail to acknowledge that a defendant's "claim of immunity is conceptually distinct from the merits of the plaintiff's claim" and presents a distinct factual inquiry involving evidence that may be unrelated to the merits of the plaintiff's claim. See *Mitchell v. Forsyth*, 472 U.S. 511, 527-29 (1985) (addressing qualified immunity for federal officials); *Barber-Colman Co. v. A&K Midwest Insulation Co.*, 236 Ill. App. 3d 1065, 1073 (1992) ("It is only in the context of the plaintiff's *claim* that it is proper to state that a defendant in a section 2-619 motion admits all well-pleaded facts. The defendant does not admit the truth of any allegations in plaintiff's complaint that may touch on the affirmative matters raised in the 2-619 motion."

(Emphasis in original.)). As such, limiting the scope of the trial court's inquiry to the face of the plaintiff's claim will simply encourage SLAPP plaintiffs to do a better job of making SLAPP claims *appear* to be ordinary claims in order to stave off an Act motion.

¶ 46 As the supreme court recognized in *Sandholm*, "SLAPPs 'masquerade as ordinary lawsuits,' " so *Ryan*'s standard will not deter the abuse of the judicial process sought to be addressed by the Act. *Sandholm*, 2012 IL 111443, ¶ 35 (quoting Kathryn W. Tate, *California's Anti-SLAPP Legislation: A Summary of and Commentary on Its Operation and Scope*, 33 Loy. L.A. L. Rev. 801, 804-05 (2000)). Accordingly, we decline to limit the scope of the trial court's inquiry in such a way.

¶ 47 D. The "True Goal" Inquiry

¶ 48 We now turn to *Sandholm* itself to consider how courts should ascertain the true goal of the plaintiff's claims. *Sandholm* explained that the inquiry turns on whether the plaintiff is "genuinely seeking relief." *Id.* ¶ 45. Although "[t]he word 'genuine' has both objective and subjective connotations" (*Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc.*, 508 U.S. 49, 61 (1993)), the parties' dispute turns on Anderson's subjective intent in bringing these claims, not the objective question of whether a reasonable plaintiff might have brought these claims under the circumstances. We agree that *Sandholm* calls for subjective inquiry, given that it directed courts to examine "the plaintiff's intent in bringing [the] suit" (*Sandholm*, 2012 IL 111443, ¶ 42) and compared genuineness under the second prong of the post-*Sandholm* test with genuineness under the third prong (*id.* ¶ 53; see 735 ILCS 110/15 (West 2022)), which the court has since explained calls for a subjective inquiry (*Glorioso II*, 2024 IL 130137, ¶ 67 n.3). However, a person's subjective intent may be inferred by the finder of fact based on the person's conduct as well as the circumstances. *People v. Grayer*, 2023 IL 128871, ¶ 28.

¶ 49 We also note that *Sandholm* and *Glorioso II* examined entire *lawsuits* rather than individual *claims*, asking why the "*lawsuit was initiated*." (Emphasis added.) *Glorioso II*, 2024 IL 130137, ¶ 53 (citing *Sandholm*, 2012 IL 111443, ¶ 45). Here, Smith alleges that both of Anderson's claims were initiated for the same improper purpose despite being initially filed at different times, so we decline to reach the question of how a court should address allegations that a plaintiff has different motives for bringing different claims or that his motives have changed over time.

¶ 50 We first provide some background on when courts will inquire into a plaintiff's motive, then explain the factual inquiry required by the Act, and finally address the procedure for conducting that inquiry.

¶ 51 1. *The Plaintiff's Motive*

¶ 52 Ordinarily, "[a] plaintiff's right of recovery is in no way barred by the motive which prompts him to bring the action." *Somers v. AAA Temporary Services, Inc.*, 5 Ill. App. 3d 931, 935 (1972). As such, courts have consistently held that a defendant's allegation that the plaintiff has a bad motive is not a defense to an otherwise valid claim (*id.*), although it may affect the availability of equitable remedies under the doctrine of unclean hands (see *Zahl v. Krupa*, 365 Ill. App. 3d 653, 658 (2006) ("[T]he unclean hands doctrine bars only equitable remedies and does not affect legal rights."); *Ocwen Loan Servicing, LLC v. DeGomez*, 2020 IL App (2d) 190774, ¶ 32 ("To determine whether a party acted with unclean hands, the court must look to the intent of that party."); see also *Merrill v. Dibble*, 12 Ill. App. 85, 86-87 (1882) (suggesting in *dicta* that the plaintiff's motive for bringing the suit might affect an award of punitive damages)).

¶ 53 Similarly, the plaintiff cannot salvage an invalid claim or bolster a valid claim because he has a good motive for seeking compensatory damages, such as avoiding severe

financial hardship. See *McHale v. Kiswani Trucking, Inc.*, 2015 IL App (1st) 132625, ¶ 30 (explaining that the plaintiff's poverty is immaterial when only compensatory damages are sought); *Hall v. Chicago & North Western Ry. Co.*, 5 Ill. 2d 135, 151-52 (1955) ("[W]hat the plaintiff does with an award *** is of no concern to the court or jury."). Because the plaintiff's motive for bringing a claim for compensatory damages is immaterial to the question of whether the defendant wrongfully caused those damages, it is unnecessary for the plaintiff to plead and prove his good motive; indeed, the defendant could presumably move to strike such an immaterial allegation from the plaintiff's pleadings (see *Doe v. Coe*, 2019 IL 123521, ¶ 24).

¶ 54 The immateriality of the plaintiff's motive is significant here for two reasons: (1) it renders the plaintiff's motive conceptually distinct from the merits of his claim for purposes of an immunity determination and (2) a genuine factual dispute as to the plaintiff's motive is not a genuine issue of *material* fact to be addressed at a trial on the merits of a claim or defense. However, courts are not completely unconcerned with plaintiffs' motives; it has long been understood that a court has the authority to ascertain whether a plaintiff's improper motive should bar resolution of his claim on the merits. See *Mederacke v. Becker*, 129 Ill. App. 2d 434, 438 (1970) (explaining that a court has the inherent power and duty "to protect itself and litigants against harassing and vexatious litigation"); see, *e.g.*, *Wilson v. OSF Healthcare System*, 2023 IL App (4th) 220475-U, ¶ 25 (affirming the trial court's dismissal of a facially sufficient claim as a sanction for fraud on the court). For example, if the plaintiff's actual motive in bringing a suit is to lose, then the court might decline to hear the suit as collusive; similarly, if the plaintiff and the defendant have a shared motive apart from resolving the alleged dispute between themselves, such as harming a nonparty to the litigation, the court might decline to hear the case as feigned or

fictitious. See *Kern v. Chicago & Eastern Illinois R.R. Co.*, 44 Ill. App. 2d 468, 472-73 (1963) (collecting cases).

¶ 55 These long-standing concerns about improperly motivated litigation are now reflected in Rule 137, which requires a signature on the plaintiff's complaint certifying that the plaintiff's claim "is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." Ill. S. Ct. R. 137(a) (eff. Jan. 1, 2018); see *Krautsack v. Anderson*, 223 Ill. 2d 541, 561-62 (2006) (explaining that Rule 137 encompasses vexatious, harassing, and bad-faith litigation). If the defendant does file a motion for sanctions, then she has the burden of proving the plaintiff's improper purpose (see *Kotara, LLC v. Schneider*, 2018 IL App (3d) 160525, ¶ 20), employing a subjective standard. See *Clark v. Gannett Co.*, 2018 IL App (1st) 172041, ¶ 67 (quoting *Century Road Builders, Inc. v. City of Palos Heights*, 283 Ill. App. 3d 527, 531 (1996)); see also *Krautsack*, 223 Ill. 2d at 561-62 (explaining that Rule 137 may be used to penalize vexatious, harassing, and bad-faith litigation). Before imposing sanctions on the basis of the plaintiff's improper purpose, "a hearing must be conducted to afford the parties an opportunity to present evidence to support or rebut the claim and to allow them to articulate their respective positions," and the court's ruling must be "based on adequate information." *Clark*, 2018 IL App (1st) 172041, ¶ 67; see *Walton v. Throgmorton*, 273 Ill. App. 3d 353, 357 (1995) (reversing the trial court's dismissal of a plaintiff's lawsuit where "there [wa]s no evidence of record and no claim made that [the plaintiff] or any of his attorneys signed any pleading for any improper purpose").

¶ 56 2. *Improper Motive*

¶ 57 In essence, the various inquiries described above all require the court to conclude that a person is doing something that *appears* proper but with an improper motive. The concept of

improper motive is most frequently examined as an element of the tort of malicious prosecution known as "malice." See *Beaman v. Freesmeyer*, 2021 IL 125617, ¶ 141 ("Malice, as an element of malicious prosecution, has been defined as the initiation of a prosecution for an improper motive."); *cf. Reed v. Doctor's Associates, Inc.*, 355 Ill. App. 3d 865, 875-76 (2005) (explaining that the tort of abuse of process requires a showing that the plaintiff had "an ulterior purpose or motive," meaning that the plaintiff "intended to use the action to accomplish some result that could not be accomplished through the suit itself").

¶ 58 In the context of civil claims, malice means that the "proceedings must have been initiated or continued primarily for a purpose other than that of securing the proper adjudication of the claim on which they are based." Restatement (Second) of Torts § 676 (1977); see, *e.g.*, *Miller v. Rosenberg*, 196 Ill. 2d 50, 54 (2001) (referring to a medical malpractice lawsuit filed as retribution for perceived discourtesies). Put another way, the plaintiff bringing the claim is using the litigation *process*, as opposed to the *outcome* of that process, as a weapon against the defendant. *City of Columbia v. Omni Outdoor Advertising, Inc.*, 499 U.S. 365, 380 (1991).

¶ 59 "[I]t is generally recognized that, because malice is incapable of positive, direct proof, it necessarily rests on inferences and deductions from the facts that are heard by the [finder] of fact." *Beaman*, 2021 IL 125617, ¶ 142. As such, when conflicting inferences may be drawn from the evidence as to whether the person acted with a proper motive, the finder of fact must determine which inference to draw. *Id.* ¶ 141. Here, Smith alleges in her Act motion that the true goal of Anderson's claims is to retaliate against her for pursuing a prosecution against him for battery.

¶ 60 With respect to Anderson's defamation claim, Anderson alleges that his goal is legitimate: to "retaliate" against Smith for defaming him. Therefore, the narrow factual question

at the second prong of the post-*Sandholm* test is whether Anderson's true goal is (1) to obtain an award of damages as redress for harm to his reputation, with litigation of the defamation claim serving as a necessary step toward that goal, or (2) to require Smith to litigate the defamation claim as retribution for pursing the battery prosecution, with an award of damages serving only as a threat and potential windfall. See *Sandholm*, 2012 IL 111443, ¶ 57; *Walsh*, 238 Ill. 2d at 630 (explaining that SLAPPs rely on the threat of money damages, as well as the cost of defending against the suit).

¶ 61 With respect to Anderson's malicious prosecution claim, the narrow distinction between the parties' positions becomes a hairline. In a strict sense, every claim of malicious prosecution is "retaliation" for the defendant's participation in government because the claim must allege "the commencement or continuance of [a previous] original criminal or civil judicial proceeding by the defendant." (Internal quotation marks omitted.) *Beaman*, 2021 IL 125617, ¶ 74 (identifying this as an element of the tort of malicious prosecution); see *Sandholm*, 2012 IL 111443, ¶ 35 (noting that SLAPPs may include claims of malicious prosecution). Therefore, the factual question at the second prong of the post-*Sandholm* test is whether Anderson's true goal is (1) to recover damages from Smith for harm resulting from her commencement of the criminal prosecution or (2) to require her to litigate the malicious prosecution claim as retribution for that same conduct.

¶ 62 Interestingly, the factual question at the third prong of the post-*Sandholm* test will be the same as another element of Anderson's malicious prosecution claim, namely, whether Smith had an improper motive in pursuing the criminal prosecution against Anderson. Compare *Beaman*, 2021 IL 125617, ¶ 140 (requiring a malicious prosecution plaintiff to prove that the defendants "were motivated by any reason other than attempting to bring the [plaintiff] to justice"), with

Glorioso II, 2024 IL 130137, ¶ 55 (requiring an alleged SLAPP plaintiff to prove "that the [defendants'] acts were not genuinely aimed at procuring favorable government action" (emphasis omitted)). As we will explain, however, the two inquiries will be addressed by different finders of fact.

¶ 63 3. *Procedure*

¶ 64 *Sandholm* explained that an Act motion is appropriately brought under section 2-619 of the Code (735 ILCS 5/2-619 (West 2008)), except with the specific procedure and standard required by section 20 of the Act, *i.e.*, the post-*Sandholm* test. See *Sandholm*, 2012 IL 111443, ¶¶ 54-55; *Glorioso II*, 2024 IL 130137, ¶ 49; see also *People v. Botruff*, 212 Ill. 2d 166, 175 (2004) ("A fundamental rule of statutory construction is that where there exists a general statutory provision and a specific statutory provision, either in the same or in another act, both relating to the same subject, the specific provision controls and should be applied.").

¶ 65 We first address the general principles for analyzing a section 2-619 motion and then explain how the Act supplants that analysis in several respects.

¶ 66 a. Section 2-619

¶ 67 Section 2-619 allows for the defendant to move for dismissal of the plaintiff's claim on the grounds that it is "barred by [an] affirmative matter avoiding the legal effect of or defeating the claim," supporting the motion with an affidavit if the affirmative matter is not evident from the face of the pleading. 735 ILCS 5/2-619(a)(9) (West 2022); see *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 115-16 (1993) (noting that affidavits, answers to interrogatories, and discovery depositions may be used to support a section 2-619 motion). "The phrase 'affirmative matter' encompasses any defense other than a negation of the essential allegations of the plaintiff's cause of action. [Citation.] For that reason, it is recognized that a

section 2-619(a)(9) motion to dismiss admits the legal sufficiency of the plaintiff's cause of action ***." *Id.* at 115.

¶ 68 If the defendant's evidence is inadequate to support the asserted defense, then the motion may be denied; otherwise, the burden shifts to the plaintiff to "establish that the defense is unfounded or requires the resolution of an essential element of material fact before it is proven." *Id.* at 116. Using affidavits or other proof, the plaintiff must refute evidentiary facts properly asserted by the defendant, or else those facts are deemed admitted. *Id.* Otherwise, "[a]ll pleadings and supporting documents must be interpreted in the light most favorable to the [plaintiff]." *Rehfield v. Diocese of Joliet*, 2021 IL 125656, ¶ 22.

¶ 69 As trial courts are well aware, it is fundamental that a court hearing a section 2-619 motion should not weigh the evidence or make credibility determinations. *Schacht v. Lome*, 2016 IL App (1st) 141931, ¶ 33. But this is the trap that is presented when considering an Act motion embedded within a section 2-619 motion. As discussed below, an Act motion requires the court to do exactly what experience has taught is normally improper in deciding a section 2-619 motion: weigh the evidence and make findings of fact on the issues specific to the Act.

¶ 70 b. The Act

¶ 71 Under the Act and *Sandholm*, the affirmative matter that defeats the claim is the plaintiff's improper motive in bringing the claim. See *Sandholm*, 2012 IL 111443, ¶ 57; *Glorioso II*, 2024 IL 130137, ¶ 53. Because the plaintiff's motive is immaterial to the merits of the claim, it is conceptually distinct from the legal sufficiency of the claim itself. Put another way, the question of whether the plaintiff is genuinely *seeking* relief is separate from whether he is actually *entitled* to relief. See *Sandholm*, 2012 IL 111443, ¶ 45.

¶ 72 As such, a defendant filing an Act motion has the initial burden of supplying affidavits or other evidence sufficient to support a conclusion that (1) an objective person would find that her acts were reasonably calculated to elicit a favorable government action or outcome and (2) the plaintiff's true goal is to chill participation in government or to stifle political expression, rather than to seek damages. If the defendant fails to satisfy her initial burden, the trial court must deny the motion. See *id.* ¶ 56.

¶ 73 However, if the defendant does satisfy her initial burden, the plaintiff may respond either by producing (1) evidence that the defendant's showing on either of the first two prongs is unfounded or (2) clear and convincing evidence that defendant's acts were not genuinely aimed at procuring favorable government action. If the plaintiff believes he will be unable to make this showing with the information available to him, he may attempt to establish good cause for the trial court to allow discovery on the issue of whether the defendant's acts are protected by the Act. 735 ILCS 110/20(b) (West 2022).

¶ 74 Here, a crucial difference between section 2-619 of the Code and the Act comes into play. Whereas section 2-619 contains little specification for how the motion is to be heard, section 20 of the Act provides that "a hearing and decision on the [Act] motion *must occur* within 90 days after notice of the motion is given to the [plaintiff]" and that "[t]he court *shall* grant the motion and dismiss the judicial claim unless *the court finds*" that the plaintiff has met his shifted burden of proof. (Emphases added.) *Id.* § 20(a), (c); *contra* 735 ILCS 5/2-619(c) (West 2022) (providing that the court "*may* decide the motion upon the affidavits and evidence offered by the parties" or "*may* deny the motion without prejudice" when the plaintiff's right to a jury trial is not implicated (emphases added)).

¶ 75 Accordingly, if the plaintiff manages only to create a genuine factual dispute as to one of the prongs of the post-*Sandholm* test, then the trial court must conduct an evidentiary hearing and decide the disputed factual issues *itself* using the burden-shifting framework set forth in *Glorioso II*. See *Donelson v. Hinton*, 2018 IL App (3d) 170426, ¶ 10; *cf.* 735 ILCS 5/8-907 (West 2022) (allowing the trial court to divest a reporter's privilege "only if the court, after hearing the parties, finds" that divestiture is warranted "under the particular facts and circumstances of [the] particular case"). This makes sense; to defer a finding that the plaintiff's claim is a SLAPP claim until after the claim is litigated on the merits at a jury trial deprives the defendant of the efficient resolution guaranteed by the Act. See 735 ILCS 110/5, 20(a) (West 2022); see also *Sandholm*, 2012 IL 111443, ¶ 34 (" '[D]efendants win eighty to ninety percent of all SLAPP suits litigated on the merits.' " (quoting Barker, *supra* at 406)).

¶ 76 For trial courts who have rightly obeyed the usual prohibition against making their own factual determinations in the context of a section 2-619 motion, the process described above will undoubtedly be a shock to the system. When it comes to the findings required of trial courts under the Act, however, the trial court *must* make its own findings rather than defer factual disputes to the jury. The Act requires "clear and convincing evidence," inherently an exercise in weighing the evidence. 735 ILCS 110/20(c) (West 2022). Moreover, *Glorioso II* makes clear that application of the standards it prescribes requires trial courts to make factual findings. *Glorioso II*, 2024 IL 130137, ¶ 67; see *Sandholm*, 2012 IL 111443, ¶ 56 (referring to the defendant's burden of proof).

¶ 77 The Act's requirement of judicial fact-finding raises the question of whether the Act denies the plaintiff his right to a jury trial on the challenged claim. The answer is no. With respect to the trial court's factfinding at the second prong of the post-*Sandholm* test, the right to a jury trial does not extend to the immaterial issue of whether the plaintiff has a good motive; as

explained above, neither party is allowed to address the plaintiff's motive at a jury trial. Furthermore, a plaintiff cannot insist on litigating a claim for the purpose of harassment. See Ill. S. Ct. R. 137 (eff. Jan. 1, 2018); *Guttman v. Guttman*, 65 Ill. App. 2d 44, 53 (1965) ("[N]o man has a constitutional right to maintain vexatious or harassing litigation.").

¶ 78 With respect to the trial court's fact-finding at the third prong of the post-*Sandholm* test, there may be circumstances, as in this case, where the genuineness of the defendant's conduct will also be an element of the plaintiff's claim on which the plaintiff would be entitled to a jury trial *if the claim is not dismissed* pursuant to the Act. In such circumstances, however, the plaintiff's claim has already been found vexatious under the second prong, and therefore, it is unsurprising that the Act would require the plaintiff to make a sufficient factual showing to undercut the defendant's right to invoke the Act's protections; if successful, the plaintiff would retain the right to proceed to a trial on the merits.

¶ 79 If the trial court does find that the plaintiff has met his shifted burden of proof, then the plaintiff's motive again drops out of the case as usual. However, to the extent that the court's finding on the third prong overlaps with any of the issues in the case, the finding would not preclude the jury from reaching its own conclusion on those issues.

¶ 80 E. The Present Case

¶ 81 Finally, we consider the post-*Sandholm* test as it applies to this case.

¶ 82 On the first prong, Anderson does not dispute that an objective person would find that Smith's participation in the criminal prosecution was reasonably calculated to elicit a favorable government action or outcome. See *Glorioso II*, 2024 IL 130137, ¶ 67; see, *e.g.*, *Meyer v. Board of County Commissioners of Harper County*, 482 F.3d 1232, 1243 (10th Cir. 2007)

(concluding that an "attempt to report an alleged criminal offense was conduct protected by the First Amendment").

¶ 83 On the second prong, the trial court concluded that Smith's motion presented triable issues of fact, albeit under *Ryan*'s "meritless and retaliatory" standard. See *Ryan*, 2012 IL App (1st) 120005, ¶ 26. This was error because the court itself was obligated to resolve the factual issues, and in any event, we have concluded that *Ryan* was wrongly decided. As such, we reverse the trial court's order and remand with directions for it to ascertain whether Smith has supplied sufficient evidence to support a conclusion that the true goal of Anderson's claims is to chill participation in government or to stifle political expression; if not, the trial court must deny the motion. Otherwise, the trial court must ascertain whether Anderson has responded with sufficient evidence to show that (1) Smith's allegation of Anderson's improper motive is unfounded, in which case the court must deny Smith's motion, or (2) there is a genuine factual dispute as to Anderson's motive, in which case the court must hold an evidentiary hearing and make a factual finding as to whether Anderson's motive was retaliatory. If the court concludes that Anderson's motive is not retaliatory, it must deny Smith's motion; otherwise, it must proceed to the third prong of the post-*Sandholm* test.

¶ 84 If the trial court reaches the third prong and finds that Anderson has shown by clear and convincing evidence that Smith's acts were not genuinely aimed at procuring favorable government action, the court must deny Smith's motion; the court's finding will not preclude the parties from litigating any issues on the merits of their claims before the jury. Otherwise, the court must grant Smith's motion and dismiss Anderson's claims against her.

¶ 85 III. CONCLUSION

¶ 86 For the reasons stated, we reverse the trial court's order denying Smith's motion to dispose of Anderson's claims and remand for the court to determine whether Anderson's claims are subject to dismissal under the Act. We express no opinion as to Smith's counterclaims against Anderson.

¶ 87 Reversed and remanded with directions.

Anderson v. Smith, 2025 IL App (4th) 241076

Decision Under Review:	Appeal from the Circuit Court of Schuyler County, No. 18-L-2; the Hon. Roger B. Thomson, Judge, presiding.
Attorneys for Appellant:	Erin Wilson Laegeler, of Wilson Laegeler Law LLC, of Rushville, for appellant.
Attorneys for Appellee:	Dustin Clark, of Bougher, Krisher, Stuckart & Clark, Attorneys at Law, P.C., of Macomb, for appellee.

IN THE CIRCUIT COURT FOR THE EIGHTH JUDICIAL CIRCUIT
SCHUYLER COUNTY, ILLINOIS

NICHOLAS T. ANDERSON,)
Plaintiff,)
v.) 2018-L-2
)
MEAGAN M. WOHLFEIL,)
Defendants.)

ORDER

On January 31, 2024, this cause came on for hearing on Defendant's Motion for Summary Judgement filed January 10, 2024; Plaintiff's Response filed January 24, 2024; and Defendant's Reply filed January 31, 2024; Plaintiff appeared with attorney Dustin Clark; Defendant appeared by attorney Dennis Woodworth and Erin Laegeler; the Court, having heard the arguments of counsel and being fully advised in the premises finds and orders as follows:

Defendant's Motion for Summary Judgment, under 735 ILCS 5/2-1005(c), asserts that after viewing the pleadings, depositions, admissions on file, and affidavits strictly against the movant (Defendant) and liberally in favor of the opponent (Plaintiff), there is no genuine issue as to any material fact so the Defendant is entitled to a judgment as a matter of law.

A genuine issue of material fact exists where the facts are in dispute, or where reasonable minds could draw different inferences from the undisputed facts. Morrissey v. Arlington Park Racecourse, LLC, 404 Ill.App.3d 711, 724 (2010).

Count I of Plaintiff's Second Amended Complaint asserts a cause of action for defamation. To prevail at trial, Plaintiff must prove (1) that Defendant made a false statement about Plaintiff, (2) that Defendant made an unprivileged publication of that false statement to a third party, and (3) that the publication caused damages. Plaintiff alleges "Defendant falsely stated and announced publicly that Plaintiff had assaulted Defendant. Defendant's statement was within earshot of several bystanders and was heard by such bystanders. Defendant's statement was false." See Complaint par. 4. Defendant denies this allegation. See Amended Answer par. 4. Plaintiff alleges Defendant's "false statements were knowingly false and made with evil intent and malice to damage and harm the reputation of Plaintiff." See Complaint par. 7. Defendant denies this allegation. See Amended Answer par. 7. Plaintiff alleges "Defendant has caused reputational harm to Plaintiff." See Complaint par. 8. Defendant denies this allegation. See Amended Answer par. 8. Defendant alleges "True Statements" as an affirmative defense to Plaintiff's Defamation claim. See Amended Answer – Affirmative Defenses.

The Court finds that there are genuine issues of material fact or that reasonable minds could draw different inferences from the undisputed facts concerning Plaintiff's allegations and Defendant's allegations, including but not limited to whether the Defendant's statements about Plaintiff were false, as alleged by Plaintiff, or true, as alleged by Defendant. Therefore, the motion for summary judgment is denied as to Count I of Plaintiff's Amended Complaint.

Count II of Plaintiff's Second Amended Complaint asserts a cause of action for malicious prosecution. To prevail at trial, Plaintiff must prove that (1) the commencement or continuance

of an original criminal or civil judicial proceeding by the defendant; (2) the termination of the proceeding in favor of the plaintiff; (3) the absence of probable cause for such proceeding; (4) the presence of malice; and (5) damages resulting to the plaintiff. Plaintiff asserts that Defendant's false accusations of assault and battery led to Plaintiff's unsuccessful criminal prosecution, and damages. Defendant denies allegations.

The Court finds that there are genuine issues of material fact or that reasonable minds could draw different inferences from the undisputed facts concerning Plaintiff's allegations and Defendant's allegations, including but not limited to, whether Defendant's conduct played a significant role in the commencement or continuance of the original criminal judicial proceedings against the Plaintiff, whether Defendant had probable cause to accuse Plaintiff of a crime, and whether Defendant acted with malice. Therefore, the motion for summary judgment is denied as to Count II of Plaintiff's Amended Complaint.

Count I of Defendant's Counterclaim asserts a cause of action for battery. To prevail at trial, Defendant must prove that (1) an intentional act on the part of Plaintiff, (2) resulting in offensive contact with Defendant's person, and (3) Defendant's lack of consent to Plaintiff's conduct. Defendant asserts that Plaintiff "shoved her by using his body in an offensive and intimidating fashion." Plaintiff denies these allegations.

The Court finds that there are genuine issues of material fact or that reasonable minds could draw different inferences from the undisputed facts concerning Plaintiff's allegations and Defendant's allegations, including but not limited to which party made physical contact with the other party, and whether the nature of that physical contact was of an insulting, offensive, or provoking nature to a reasonable person.

Count II of Defendant's Counterclaim asserts a cause of action for intentional infliction of emotional distress, claiming that Plaintiff's actions caused Defendant severe emotional distress. Defendant denies these allegations. However, Defendant makes no motion for summary judgment on this Count in Defendant's Motion for Summary Judgment.

The Schuyler County Circuit Clerk is directed to deliver a copy of this order to the attorney of record for each party.

Enter: July 15, 2024.

JUDGE

✓D. Clark
✓E. Laegeler
✓D. Woodworth

C 675

E-FILED
Transaction ID: 4-24-1076
File Date: 8/14/2024 9:45 AM
Carla Bender, Clerk of the Court
APPELLATE COURT 4TH DISTRICT

No. 4-24-1076

IN THE APPELLATE COURT
FOR THE FOURTH JUDICIAL CIRCUIT OF ILLINOIS

NICHOLAS T. ANDERSON, Plaintiff- Respondent, vs. MEAGAN M. SMITH (F/K/A) WOHFEIL, Defendant-Petitioner.	Appeal from the Circuit Court of the Eighth Judicial Circuit Adams County, Illinois Case No. 2018L2 The Honorable Roger B. Thomson, presiding

CERTIFICATE OF FILING

The undersigned certifies that on the Defendant-Petitioner's Petition for Leave to Appeal Pursuant to Illinois Supreme Court Rule 306(a)(9) was filed with the Fourth District Appellate Court on 13th day of August 2024. The undersigned further certifies parts one through four of the Supporting Record, comprised of the common law record, exhibits, the summary judgment hearing transcript, and the deposition transcripts, were filed on the 14th day of August 2024, along with Defendant-Petitioner's Docketing Statement. Finally, the undersigned certifies that each of the listed documents as well as this certificate were served upon Plaintiff-Respondent's attorney of record, Dustin Clark, via email (dustin@bougherlaw.com) on the 14th day of August 2024.

Erin Wilson Laegeler

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No. 131714

IN THE SUPREME COURT OF ILLINOIS

NICHOLAS T. ANDERSON, Appellant v. MEGAN M. SMITH (F/K/A) WOHFEIL, Appellee.	))))))))))	On Petition for Leave to Appeal from the Appellate Court of Illinois Fourth District, No. 4-16-0527 Appeal from the Circuit Court of Schuyler County, Illinois, Case No. 2018-L-2 Honorable Judge Roger Thomson, Judge Presiding

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