IN THE TENNESSEE COURT OF APPEALS
MIDDLE SECTION, AT NASHVILLE

PEPPER BLACK AND S. BRAD DOZIER, *Plaintiffs-Appellants,* *v.* THERESA BALDWIN, *Defendant-Appellee.*	§ § § § § § § § § §	Case No. M2024-00151-COA-R3-CV Robertson Cnty. Circuit Court Case No.: 74CC1-2022-CV-247

BRIEF OF APPELLEE

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III. INTRODUCTION

This is a Tennessee Public Participation Act case in which the Plaintiffs have failed to appeal multiple case-dispositive rulings. Thus, affirming is a straightforward matter. *See Lovelace v. Baptist Mem'l Hosp. Memphis,* No. W2019-00453-COA-R3-CV, 2020 WL 260295, at *3 (Tenn. Ct. App. Jan. 16, 2020 (a party "waive[s] its claim of error on appeal by appealing less than all of the grounds upon which the trial court issued its ruling").

In determining that the TPPA applied here, the trial court found that Defendant Theresa Baldwin met her initial burden under section 20-17-105(a) on two grounds: (1) based on her exercise of her right to free speech; and (2) based on her exercise of her right to petition. On appeal, the Plaintiffs contest only the first ground. Thus, having appealed "less than all of the grounds upon which the trial court issued its ruling," the Plaintiffs have waived any claim of error regarding the trial court's section 20-17-105(a) ruling. *Lovelace,* 2020 WL 260295, at *3.

Because Ms. Baldwin met her burden under section 20-17-105(a), the evidentiary burden shifted to the Plaintiffs to support each element of their claims with admissible evidence. The Plaintiffs did not meet this burden, however. Indeed, the Plaintiffs did not even introduce the most minimal evidence necessary to support their claims, like the statements over which they were suing or evidence that they were damaged. Thus, the trial court ruled that the Plaintiffs failed to meet their burden under section 20-17-105(b). On appeal, the Plaintiffs do not contest this case-dispositive ruling, which is fatal to all of their claims.

The trial court also found that Ms. Baldwin established valid

defenses to the Plaintiffs' claims. Thus, the trial court ruled that "the Plaintiffs' Amended Complaint must be dismissed under both Tenn. Code Ann. § 20-17-105(b) and Tenn. Code Ann. § 20-17-105(c)."

The Plaintiffs do not appeal the trial court's ruling that "the Plaintiffs' Amended Complaint must be dismissed under . . . Tenn. Code Ann. § 20-17-105(c)." This failure, too, is fatal to all of their claims. *Lovelace*, 2020 WL 260295, at *3.

The Plaintiffs' remaining arguments fare no better. They assert that the TPPA is unconstitutional, though they waived that argument by raising it for the first time in a Rule 59 motion. The Plaintiffs also claim that the trial court's January 2, 2024 Order was not its own, though the claim is meritless. The trial court did not abuse its discretion by sanctioning the Plaintiffs for their vindictive SLAPP-suit, either. The trial court's order granting Ms. Baldwin's motion to dismiss was correct, too—though the issue is pretermitted by the fact that the Plaintiffs do not appeal the trial court's case-dispositive TPPA rulings.

Adjudicating the merits of this appeal is not even necessary, though. That is because the Plaintiffs' briefing deficiencies and unclean hands—including fraudulently transferring all of their collectible assets after the trial court entered a final money judgment against them—merit dismissing this appeal summarily.

For these reasons, the trial court's judgment should be affirmed. Ms. Baldwin also is entitled to recover her attorney's fees on appeal.

IV. STATEMENT OF THE ISSUES

1. Whether the Plaintiffs' briefing deficiencies and unclean hands warrant dismissing this appeal.

2. Whether the trial court's order that Ms. Baldwin met her burden under section 20-17-105(a) should be affirmed.

3. Whether the trial court's order dismissing the Plaintiffs' Amended Complaint under section 20-17-105(b) should be affirmed.

4. Whether the trial court's order dismissing the Plaintiffs' Amended Complaint under section 20-17-105(c) should be affirmed.

5. Whether the trial court abused its discretion by sanctioning the Plaintiffs under section 20-17-107(a)(2).

6. Whether the trial court's order granting in part Ms. Baldwin's motion to dismiss should be affirmed.

7. Whether Ms. Baldwin is entitled to appellate attorney's fees.

V. STANDARDS OF REVIEW

1. Whether the Plaintiffs' briefing deficiencies and unclean hands warrant dismissing this appeal are matters considered by this Court in the first instance.

2. The trial court's orders finding that the TPPA applies and dismissing the Plaintiffs' Amended Complaint under sections 20-17-105(b)–(d) are reviewed *de novo*. *Goldberger v. Scott*, No. M2022-01772-COA-R3-CV, 2024 WL 3339314, at *3 (Tenn. Ct. App. July 9, 2024).

3. When a trial court's decision to sanction depends on factual findings, "reviewing courts defer to trial courts' factual findings and review their sanctions decisions using the abuse of discretion standard." *Fenn v. Highland Credit Bureau, Inc.*, No. 01A01-9503-CV-00100, 1995 WL 705207, at *3 (Tenn. Ct. App. Dec. 1, 1995).

4. The trial court's order granting in part Ms. Baldwin's motion to dismiss is reviewed de novo. *Ralph v. Pipkin*, 183 S.W.3d 362, 367 (Tenn. Ct. App. 2005).

5. Whether Ms. Baldwin may recover her appellate attorney's fees is a mandatory determination made by this Court in the first instance. *Nandigam Neurology, PLC v. Beavers*, 639 S.W.3d 651, 670 (Tenn. Ct. App. 2021).

VI. STATEMENT OF THE CASE

On September 8, 2022, the Plaintiffs sued Ms. Baldwin for injunctive relief and damages.[1] Their original complaint purported to be verified, though their verifications were defective.[2] *PMC Squared, LLC v. Gallo*, No. E2023-00524-COA-R3-CV, 2024 WL 3757839, at *4 (Tenn. Ct. App. Aug. 12, 2024). The Plaintiffs immediately sought a temporary restraining order and a temporary injunction.[3]

Ms. Baldwin responded to the Plaintiffs' complaint by moving for a more definite statement.[4] She also moved under Rule 12.02(6) and petitioned under the TPPA to dismiss the Plaintiffs' complaint.[5] The Plaintiffs responded in opposition and filed a huge volume of materials, most of which they neither authenticated nor cited.[6] Ms. Baldwin objected to the Plaintiffs' asserted evidence.[7]

On February 7, 2023, the trial court heard the pending motions.[8] Afterward, it ruled that Ms. Baldwin's motion for a more definite statement "should be granted and the remaining motions held in abeyance pending the filing of the Amended Complaint."[9]

On April 10, 2023, the Plaintiffs filed an unverified Amended

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[1] R. (Vol. 1) at 1–20.
[2] *Id.* at 18–19.
[3] *Id.* at 21–36.
[4] *Id.* at 43–47.
[5] *Id.* at 48–159.
[6] R. (Vol. 2) at 166–R. (Vol. 12) at 1818.
[7] R. (Vol. 13) at 1863–81.
[8] *Id.* at 1893.
[9] *Id.*

Complaint that asserted five claims.[10] The Plaintiffs sought $3 million and a permanent injunction restraining Ms. Baldwin's speech.[11]

Once again, Ms. Baldwin moved under Rule 12.02(6) and petitioned under the TPPA to dismiss the Plaintiffs' Amended Complaint.[12] Ms. Baldwin's TPPA Petition was supported by extensive admissible evidence that the trial court later admitted.[13] The Plaintiffs responded to Ms. Baldwin's motion and TPPA Petition to dismiss their Amended Complaint by seeking leave to depose Ms. Baldwin.[14]

The Parties came before the trial court for hearing on June 6, 2023.[15] This was the second time Ms. Baldwin's TPPA Petition was heard. The trial court found that the TPPA applied and denied the Plaintiffs leave to depose Ms. Baldwin.[16] Because the "Plaintiffs did not file a response [to Ms. Baldwin's TPPA Petition] in advance of hearing," the trial court also accommodated the Plaintiffs by resetting the TPPA hearing "[t]o enable the Defendants to file a response[.]"[17]

Afterward, the Plaintiffs responded to Ms. Baldwin's motion and TPPA Petition.[18] Their response referenced various documents,[19] but

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[10] *Id.* at 1895–1913.
[11] *Id.* at 1911–12.
[12] R. (Vol. 13) at 1948–R. (Vol. 14) at 2105.
[13] R. (Vol. 18) at 2559–63.
[14] R. (Vol. 15) at 2110–14.
[15] *Id.* at 2193–94.
[16] *Id.*
[17] *Id.* at 2194.
[18] *Id.* at 2132–2144.
[19] *Id.*

"[n]one of these documents were actually filed with the Court[.]"[20]

The Parties then returned to the trial court for hearing on July 11, 2023.[21] This was the *third* time Ms. Baldwin's TPPA Petition was heard. At this hearing, though, the trial court "announced that it had determined *sua sponte*" to set aside its earlier order denying the Plaintiffs' motion for leave to depose Ms. Baldwin.[22] Thus, the trial court granted the Plaintiffs leave to depose Ms. Baldwin and ordered her motion and TPPA Petition "rescheduled" again.[23] The trial court also permitted the Parties "to submit further evidence and arguments derived from" discovery.[24] Ms. Baldwin unsuccessfully appealed this order under Rule 10.[25]

The Plaintiffs then deposed Ms. Baldwin.[26] Afterward, they cited portions of her deposition testimony in a supplemental filing.[27] As to Ms. Baldwin's evidence offered in support of her TPPA Petition: the Plaintiffs objected only to "the Declaration of Brooke Modlin[,]" which they characterized as a hearsay expert opinion.[28]

Ms. Baldwin's motion and TPPA Petition to dismiss came before the trial court for a *fourth* time on December 5, 2023.[29] Afterward, the trial

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[20] R. (Vol. 18) at 2563.
[21] R. (Vol. 15) at 2198.
[22] *Id*.
[23] *Id*.
[24] *Id*.
[25] R. (Vol. 15) at 2209–10.
[26] R. (Vol. 16) at 2259–R. (Vol. 17) at 2496.
[27] R. (Vol. 18) at 2564. The filing itself is not in the appellate record.
[28] *Id*. at 2562; *see also* R. (Vol. 15) at 2141.
[29] R. (Vol. 18) at 2669–R. (Vol. 19) at 2798–2801.

court dismissed three of the Plaintiffs' claims under Rule 12.02(6) and ruled separately that the Plaintiffs' entire Amended Complaint "should be dismissed pursuant to the TPPA."[30] On January 2, 2024, the trial court entered an order fully adjudicating all issues concerning Ms. Baldwin's TPPA Petition, ultimately ruling that "the Plaintiffs' Amended Complaint must be dismissed under both Tenn. Code Ann. § 20-17-105(b) and Tenn. Code Ann. § 20-17-105(c)."[31]

The Plaintiffs simultaneously appealed the trial court's January 2, 2024 Order and moved to alter or amend it.[32] Their Rule 59 motion argued that the TPPA was unconstitutional.[33] The Plaintiffs also asserted that the trial court's January 2, 2024 Order was entered upon a "submission by the Defendant . . . shared ex parte with the Court."[34]

Ms. Baldwin moved for an award of attorney's fees, costs and expenses as well as an award of sanctions. The trial court granted Ms. Baldwin her attorney's fees, costs, and expenses.[35] The trial court also granted in part Ms. Baldwin's motion for sanctions.[36]

On July 18, 2024, the trial court denied the Plaintiffs' Rule 59 motion.[37] This appeal followed.

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[30] R. (Vol. 17) at 2553.
[31] R. (Vol. 18) at 2579.
[32] R. (Vol. 19) at 2792–97; *id.* at 2800.
[33] *Id.* at 2794.
[34] *Id.* at 2795.
[35] *Id.* at 2815–17.
[36] R. (Vol. 19) at 2820–22.
[37] R. (Vol. 20) at 2889–90.

VII. STATEMENT OF FACTS

Because the facts asserted in the Plaintiffs' Statement of Facts neither concern their Amended Complaint nor cite any evidence the trial court admitted, Ms. Baldwin presents her own statement:

The Plaintiffs—one of them an oft-sanctioned lawyer[38]—engaged in disturbing behavior toward Ms. Baldwin's vulnerable young daughter, Gracie, over several years.[39] The Plaintiffs also brought Gracie—a minor—into their home to live with them without Ms. Baldwin's permission.[40]

In December 2020, Ms. Baldwin contacted Plaintiff Black to warn against allowing her daughters to spend time with Gracie.[41] When Plaintiff Black ignored Ms. Baldwin's concerns, Ms. Baldwin instructed Plaintiff Black that she was not to have further contact with Gracie.[42] Plaintiff Black responded that she understood, and she agreed not to contact Gracie further.[43]

Soon after, the Plaintiffs resumed contact with Gracie against Ms. Baldwin's instructions.[44] During a period when Ms. Baldwin understood that Gracie was staying at a friend's home that Ms. Baldwin had approved and "arranged in advance[,]" Plaintiff Black asked Gracie to

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[38] R. (Vol. 18) at 2575.
[39] R. (Vol. 14) at 2009–18.
[40] *Id*. at 2042 ¶9.
[41] R. (Vol. 14) at 2009 ¶¶4–5.
[42] *Id*. at ¶6.
[43] *Id*. at ¶7.
[44] R. (Vol. 14) at 2042 ¶9.

come stay with the Plaintiffs instead.[45]

After convincing Ms. Baldwin's minor daughter—against Ms. Baldwin's instructions not to contact her—to stay with the Plaintiffs, the Plaintiffs took Gracie, a minor, to Florida without Ms. Baldwin's permission.[46] The Plaintiffs' Amended Complaint acknowledges that they "took Gracie with them" to Florida without Ms. Baldwin's permission.[47] This happened weeks after Ms. Baldwin's demand that Plaintiff Black cease contacting Gracie.[48]

Ms. Baldwin learned that Gracie was staying with the Plaintiffs when she saw on social media that Gracie was in the Plaintiffs' car on the way to Florida.[49] Concerned that individuals whom Ms. Baldwin had instructed to stay away from her minor daughter were instead *transporting her to another state*—and after Plaintiff Dozier refused to return Gracie to Tennessee—Ms. Baldwin contacted law enforcement and advocated for kidnapping charges.[50]

In January 2021, Gracie returned to Ms. Baldwin's home.[51] "During that time, Gracie explained [Plaintiff] Black's erratic outbursts in which she would scream, have a complete meltdown, then beg for forgiveness claiming the devil had entered her body"—outbursts that

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[45] *Id.*
[46] *Id.* at 2010, ¶9.
[47] R. (Vol. 13) at 1896–97, ¶10.
[48] *Id.*; R. (Vol. 14) at 2009 ¶¶5–6.
[49] *Id.* at 2010 ¶9.
[50] *Id.* at ¶¶10–12.
[51] *Id.* at ¶13.

Gracie described Plaintiff Black as having "daily."[52] Gracie also described Plaintiff Black "being physically violent with her children."[53] Gracie recounted to Ms. Baldwin other concerning behavior, too—including the Plaintiffs' "requirement that Gracie get into their bed with them each night for a group prayer session."[54] As Gracie attested below: the Plaintiffs "had prayer time every night where [Gracie] sat in Brad and Pepper's bed[.]"[55]

The Plaintiffs—who had no relation to Gracie—then filed an ex parte custody petition[56] seeking emergency custody of Gracie.[57] "The petition included multiple falsities, including that [Ms. Baldwin] was mentally ill, that Gracie was neglected, and that Gracie was abandoned."[58] Somehow, the Plaintiffs' ex parte motion seeking emergency custody of Ms. Baldwin's child "was granted."[59] One week later, the Plaintiffs nonsuited their petition.[60] Plaintiff Black later sent Ms. Baldwin a handwritten apology stating that she was "deeply sorry" for her actions, promising that the Plaintiffs would no longer "be interfering in any way with [Ms. Baldwin's] parenting," stating that she "made a huge mistake" that was "all [her] fault," asking Ms. Baldwin to "please forgive [her] for filing the custody papers," and noting "how

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[52] *Id.* at ¶14.
[53] *Id.* at ¶15.
[54] *Id.* at ¶16; *see also id.* at 2011, ¶¶17–18.
[55] *Id.* at 2041, ¶7.
[56] R. (Vol. 18) at 2631–34.
[57] R. (Vol. 14) at 2011, ¶19.
[58] *Id.*
[59] *Id.* at ¶19.
[60] R. (Vol. 18) at 2635.

painful it must have been" while acknowledging that her apology "doesn't take away the pain."[61]

In part to protect Gracie from the Plaintiffs, Ms. Baldwin enrolled Gracie at a boarding school.[62] There, Gracie began seeing a licensed clinical therapist, Brooke Modlin.[63] Ms. Modlin concluded that the Plaintiffs "manipulated and controlled Gracie"[64] and had "proven themselves to be unsafe and meddlesome."[65] Ms. Modlin's "professional recommendation"—which she discussed and shared with Ms. Baldwin "many times"—was that "Gracie needs to stay away from the Black/Dozier family and work to repair her relationship with her mother, which the Black/Dozier family have severely damaged."[66]

When Gracie returned from boarding school, the Plaintiffs continued contacting her. And from February 2022 until Gracie dramatically escaped from their home during this litigation, Gracie went back to live with the Plaintiffs.[67]

Following additional unacceptable conduct—including demanding that Gracie "show loyalty to Mr. Dozier and Ms. Black by legally changing her last name"[68]—Ms. Baldwin realized that she "had to do something to protect [her] child's safety and wellbeing[.]"[69] Thus, Ms. Baldwin began

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[61] R. (Vol. 14) at 2020–25.
[62] *Id.* at 2011, ¶21.
[63] *Id.* at 2054, ¶3.
[64] *Id.* at ¶6.
[65] *Id.* at ¶7.
[66] *Id.* at 2054–55, ¶¶9–10.
[67] *Id.* at 2017, ¶50; *see also* R. (Vol. 13) at 1897 ¶16.
[68] R. (Vol. 14) at 2013, ¶28.
[69] *Id.* at ¶31.

publishing short videos on TikTok detailing the Plaintiffs' disturbing behavior toward her daughter—actions Ms. Baldwin took to protect her daughter and out of "genuine concern for [Gracie's] safety and wellbeing[.]"[70] Ms. Baldwin also endeavored to "bring awareness—both generally as to the harms of grooming and manipulation, as well as specifically as to Mr. Dozier and Ms. Black's alarming behavior towards [her] minor daughter—so others could navigate similar situations with greater knowledge and understanding."[71] In these videos—alongside Ms. Baldwin's honest, good faith impressions of her daughter's interactions with the Plaintiffs—Ms. Baldwin recounted events that occurred as reported to her by others, including Gracie, who had personal knowledge of the Plaintiffs' disturbing behavior.[72]

Ms. Baldwin also came to learn that Plaintiff Black was physically abusive toward her own child[73] and that Plaintiff Black drove drunk with the children in the vehicle.[74] Ms. Baldwin reported that misconduct to the Department of Children's Services.[75] This retaliatory lawsuit—which asserted that Ms. Baldwin's videos about the Plaintiffs and their interactions with Ms. Baldwin's minor child were false and damaged the Plaintiffs personally and professionally—quickly followed.[76]

Following lengthy proceedings and discovery, the Parties came

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[70] *Id.* at ¶31.
[71] *Id.* at ¶32.
[72] *Id.* at 2013–14, ¶33; *see also id.* at 2046, ¶23.
[73] *Id.* at 2018, ¶52; *see also id.* at 2035.
[74] *Id.* at 2014–15, ¶39.
[75] *Id.* at 2018 ¶53; *id.* at 2037.
[76] *Compare id.* ("07/05/2022"), *with* R. (Vol. 1) at 1 ("SEP 08 2022").

before the trial court for a fourth TPPA hearing on December 5, 2023.[77] Despite the trial court having afforded the Plaintiffs repeated opportunities to cure the evidentiary deficiencies in their response before then, the admissible evidence introduced into the TPPA record was lopsided. Ms. Baldwin introduced sixteen items of admissible evidence including three declarations; multiple statements by Plaintiff Black; photographic evidence that Plaintiff Black had assaulted her own daughter, prompting Ms. Baldwin's DCS report; Ms. Baldwin's report to DCS; evidence of Plaintiff Dozier's pre-existing financial issues and suspension from the practice of law based on his unethical conduct toward multiple clients; and portions of Ms. Baldwin's deposition, all of which (and more) the trial court admitted.[78] By contrast, the admissible evidence that the Plaintiffs introduced was minimal: the trial court admitted only "the portions of [Ms. Baldwin's] deposition transcript . . . cited by the Plaintiffs in their supplemental filing."[79]

Based on the one-sided evidentiary record, the trial court made four essential rulings:

1. Ms. Baldwin "established a prima facie case that the Plaintiffs' legal action against her is based on, relates to, or is in response to her exercise of the right of free speech as defined by Tenn. Code Ann. § 20-17-103(3) and (6)[;]"[80]

2. Ms. Baldwin "established a prima facie case that the

[77] R. (Vol. 18) at 2669–R. (Vol. 19) at 2719.
[78] R. (Vol. 18) at 2559–63.
[79] *Id.* at 2564.
[80] *Id.* at 2567.

Plaintiffs' legal action against her is based on, relates to, or is in response to the Defendant's exercise of her right to petition" within the meaning of Tennessee Code Annotated section 20-17-103(4)(A);[81]

3. "the Plaintiffs have failed to establish a prima facie case for each essential element of the claims they have asserted in their Amended Complaint[,]" requiring dismissal of the Plaintiffs' Amended Complaint "under Tenn. Code Ann. § 20-17-105(b)[;]"[82] and

4. "the Defendant has established valid defenses to liability in this action[,]" requiring that the Plaintiffs' Amended Complaint "be dismissed under Tenn. Code Ann. § 20-17-105(c)."[83]

Afterward, the trial court granted Ms. Baldwin's motion for attorney's fees, costs, and expenses, to which the Plaintiffs "did not file a response[.]"[84] The trial court also granted in part Ms. Baldwin's motion for sanctions under section 20-17-107(a)(2), finding:

> Plaintiff Dozier is an experienced attorney. He has a history of ethical misconduct for which he has been sanctioned, including a suspension from the practice of law and a public censure of which the Court has taken judicial notice. The Plaintiffs have previously initiated litigation against the Defendant and engaged in questionable conduct toward the Defendant during the litigation of this case that appears vindictive. The Defendant has also introduced evidence of her need to incur substantial out-of-pocket expenses as a result of this litigation; the debt that she incurred to finance her defense; the difficult financial and emotional effects that this litigation had on her; and Plaintiff Black's ability to pay the

[81] *Id.* at 2568.
[82] *Id.* at 2573.
[83] *Id.* at 2573–74.
[84] R. (Vol. 19) at 2815–17.

sanction sought. The Court further considers that Plaintiffs sought $3 million from the Defendant.[85]

Extensive post-judgment proceedings followed. While this case was pending appeal—but before execution could commence—the Plaintiffs "fraudulently transferred Plaintiff Black's property after the Court entered its judgment[.]"[86] Plaintiff Black also admitted under oath during the Parties' post-judgment bond hearing that Gracie had sat "at the foot of the [Plaintiffs'] bed" during a prayer session and that "she's sat on my bed before, and we've talked and prayed together[.]"[87]

VIII. ARGUMENT

A. THE PLAINTIFFS' BRIEFING DEFICIENCIES AND UNCLEAN HANDS WARRANT DISMISSING THIS APPEAL.

1. The Plaintiffs' briefing deficiencies merit dismissal.

"Courts have routinely held that the failure to make appropriate references to the record and to cite relevant authority in the argument section of the brief as required by Rule 27(a)(7) constitutes a waiver of the issue." *Bean v. Bean*, 40 S.W.3d 52, 55 (Tenn. Ct. App. 2000). Rule 27(g) elaborates: "If reference is made to evidence, the admissibility of which is in controversy, reference shall be made to the pages in the record at which the evidence was identified, offered, and received or rejected." Tenn. R. App. P. 27(g). This Court has applied these rules in TPPA cases, which necessarily involve considering evidence. *Lee v. Mitchell*, No. M2022-00088-COA-R3-CV, 2023 WL 5286117, at *8 (Tenn. Ct. App. Aug.

[85] *Id.* at 2821–22.
[86] Supp. R. (Vol. 23) at 81.
[87] *Id.* at 42:15–24.

17, 2023).

The Plaintiffs' brief repeatedly violates these rules in ways that prejudice Ms. Baldwin's ability to respond. Consider the Plaintiffs' fact section. Appellants' Br. at 9–22. Pages 9–13 cite only to the Plaintiffs' *original* complaint—even though the Plaintiffs filed an Amended Complaint with modified allegations that "supersede[d] and destroy[ed] the original as a pleading." *McBurney v. Aldrich*, 816 S.W.2d 30, 33 (Tenn. Ct. App. 1991). And the balance of that section cites only to documents that were filed in response to Ms. Baldwin's *pre-amendment* TPPA petition to dismiss their *original* complaint. Appellants' Br. at 13–22. But the cited documents—which the Plaintiffs did not rely on in their response to Ms. Baldwin's TPPA Petition to dismiss their Amended Complaint—were not admitted below.[88] The Plaintiffs also have not raised any issue on appeal challenging the trial court's evidentiary rulings. Appellants' Br. at 23. Thus, the Plaintiffs' entire fact section is based on either citations to the wrong complaint or to excluded evidence, the trial court's exclusion of which the Plaintiffs do not appeal.

It gets worse. The section of the Plaintiffs' brief asserting that the trial court erred in finding that the publications over which the Plaintiffs sued Ms. Baldwin involved matters of public concern contains no record references. *Id.* at 42–46. Nor do the Plaintiffs include record references in the sections of their brief addressing their false light (*id.* at 35–36), IIED (*id.* at 37–38), defamation by implication (*id.* at 38–39); intrusion upon seclusion (*id.* at 39–40); intentional interference with business

[88] R. (Vol. 18) at 2571 at n.15; *see also id.* at 2559.

relationships (*id.* at 40–41); or Tennessee Consumer Protection Act (*id.* at 41–42) claims—the last of which the Plaintiffs' Amended Complaint *does not even plead*.[89] The defamation section of the Plaintiffs' brief does contain record references, *id.* at 24–35, but those references are only to the Plaintiffs' *original* complaint, *id.*, and the entire section is useless anyway because—like their TCPA claim—the Plaintiffs' Amended Complaint removed their simple defamation claim.[90] The Plaintiffs' argument that the trial court's TPPA order did not reflect its own judgment is nearly barren of record citations, too. *Id.* at 46–49.

That is not all, either. The Plaintiffs raise an issue—"Whether the evidence before the Court was sufficient to create material questions of fact"—that is never addressed in the argument section of their brief. *Compare* Appellants' Br. at 23, *with id.* at 23–62. Their brief also includes undeveloped arguments that are not raised as issues. *See, e.g., id.* at 38 ("This tort is not subject to the TPPA."); *id.* at 62 (claiming the trial court "failed to rule upon all of the Plaintiffs' claims").

It is not this Court's role—or responsibility—"to scour the record to address failures of the parties to cite thereto[.]" *Simmons v. Islam*, No. M2023-01698-COA-R3-CV, 2024 WL 4948939, at *6 (Tenn. Ct. App. Dec. 3, 2024); *Galison v. Brownell*, No. W2023-00526-COA-R3-CV, 2024 WL 3718640, at *5 (Tenn. Ct. App. Aug. 8, 2024) ("It is simply not this Court's responsibility to remedy a party's technical errors and also develop the legal basis for their argument."). Nor is it Ms. Baldwin's job to

[89] R. (Vol. 13) at 1905–10.
[90] *Compare* R. (Vol. 1) at 11–12, *with* R. (Vol. 13) at 1905–10.

hypothesize and respond to arguments that the Plaintiffs could have made about their Amended Complaint or by referencing admitted evidence, but did not. *Cf. Stevens ex rel. Stevens v. Hickman Cmty. Health Care Servs., Inc.*, 418 S.W.3d 547, 559 (Tenn. 2013) ("Plaintiff—not Defendants—was responsible for complying with the requirements").

For these reasons, all of the Plaintiffs' merits arguments are waived due to briefing deficiencies. And under such circumstances, "dismissal of the appeal" is the "appropriate" remedy. *Labbe v. Karn*, No. E2019-01408-COA-R3-CV, 2020 WL 1426672, at *2 (Tenn. Ct. App. Mar. 20, 2020). These deficiencies also are not curable through a reply brief. *Duckworth Pathology Grp., Inc. v. Reg'l Med. Ctr. at Memphis*, No. W2012-02607-COA-R3-CV, 2014 WL 1514602, at *11 (Tenn. Ct. App. Apr. 17, 2014) ("It would be fundamentally unfair to permit an appellant to advance new arguments in the reply brief, as the appellee may not respond to a reply brief.").

2. <u>The Plaintiffs' unclean hands merit dismissal.</u>

The Plaintiffs seek equity in this case.[91] The Plaintiffs even sought a temporary restraining order and a preliminary injunction at the outset of litigation.[92] And they now seek to reinstate an Amended Complaint that demands injunctive relief.[93]

As a case that seeks equity, this case is subject to equitable maxims. One of them is that: "Once found to exist, the doctrine of unclean hands repels the unclean plaintiff at the steps of the Courthouse." *Farmers &*

[91] R. (Vol. 13) at 1911.
[92] R. (Vol. 1) at 21–36.
[93] R. (Vol. 13) at 1911.

Merchants Bank v. Templeton, 646 S.W.2d 920, 924 (Tenn. Ct. App. 1982); *see also Durr v. Buerger*, No. 0A01-9901-CH-00030, 1999 WL 807701, at *3 (Tenn. Ct. App. Oct. 12, 1999) ("Upon discovering [unclean hands], the court may apply the maxim on its own motion.").

Here, the Plaintiffs have acted with unclean hands. As reflected by the trial court's October 22, 2024 Order, "the Plaintiffs fraudulently transferred Plaintiff Black's property after the Court entered its judgment in this matter."[94] The Plaintiffs have not appealed this finding. Appellants' Br. at 23. It also is confirmed by the Plaintiffs' trust documents (which Plaintiff Dozier, who has no assets of his own and owes "a couple hundred thousand" dollars to the IRS,[95] prepared) transferring "all assets of every kind and description and wherever situated which [Plaintiff Black] presently own[s]" into a self-settled trust called "The Southern Spice Living Trust."[96] The Plaintiffs undertook this fraudulent transfer roughly two weeks after the trial court's final money judgment was entered against them.[97] Further, to ensure that their fraud would protect them, the Plaintiffs quitclaimed their shared home (which was deeded only in Plaintiff Black's name) to the Southern Spice Living Trust on August 5, 2024.[98] Plaintiff Dozier prepared that deed, too.[99]

For the reasons explained by the trial court during the Parties'

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[94] Supp. R. (Vol. 23) at 81.
[95] *Id.* at 47:13–18.
[96] Supp. R. (Vol. 24) at 4–9.
[97] *Id.*
[98] *Id.* at 11–12.
[99] *Id.*

October 4, 2024 hearing below, these transfers were fraudulent.[100] And the purpose of the Plaintiffs' fraudulent transfers of all of their collectible assets—which aligns with its timing—was to prevent Ms. Baldwin from recovering her attorney's fees and collecting the sanctions award the trial court entered. Plaintiff Black even admitted during her testimony below that she "of course" does not want Ms. Baldwin to collect the money judgments that the trial court entered below.[101]

Although Ms. Baldwin later discovered the Plaintiffs' fraud, it nevertheless harmed her. Other than Plaintiff Black's home, the assets that the Plaintiffs fraudulently transferred into Ms. Black's self-settled trust have not apparently been transferred back, hampering judgment execution. Further, by quitclaiming Plaintiff Black's home without her lender's approval, Plaintiff Black triggered a default on the property that deprives it of its value to Ms. Baldwin as security.[102] Put another way: the Plaintiffs' fraud has "'injured the party making the complaint.'" *Fuller v. Cmty. Nat'l Bank*, No. E2018-02023-COA-R3-CV, 2020 WL 1485696, at *4 (Tenn. Ct. App. Mar. 27, 2020) (quoting *Edmisten v. Edmisten*, No. M2001-00081-COA-R3-CV, 2003 WL 21077990, at *7 (Tenn. Ct. App. May 13, 2003)).

For these reasons, this Court should dismiss this appeal. The TPPA aims "to deter SLAPP lawsuits" and make victims of SLAPP-suits whole by preventing them from having to "spend[] thousands of dollars"—or, in

[100] Supp. R. (Vol. 23) at 60:9–64:11.
[101] *Id.* at 47:23–48:1.
[102] *Id.* at 28:3–29:22; *see also* Supp. R. (Vol. 24) at 21.

Ms. Baldwin's case, $116,773.03 through November 30, 2023[103] — "defending themselves in frivolous litigation." *Nandigam Neurology, PLC*, 639 S.W.3d at 670. Permitting misbehaving plaintiffs to nullify these purposes through fraud would destroy the TPPA's utility, eliminating the TPPA's deterrence value and enabling Plaintiffs to heap uncompensated expenses on their victims even when a court has ordered fee-shifting. Further, because the Plaintiffs engaged in the fraud at issue after filing this appeal, this Court must be the one to "repel[] the unclean plaintiff[s] at the steps of the Courthouse" by dismissing it. *Farmers*, 646 S.W.2d at 924.

The Plaintiffs' fraud is not even the only reason to apply the unclean hands doctrine. This case arises substantially from the Plaintiffs' claim—which both Plaintiffs swore under oath was true—that Ms. Baldwin's statement that the Plaintiffs brought Gracie into their bed for prayer time was "a complete lie and has never happened in any of the times Gracie has lived in our home."[104] In fact, it did happen. After the trial court ruled below, Plaintiff Black even posted a statement on social media that said it happened "once."[105] Plaintiff Black then admitted that Gracie was "at the foot of the bed" at the time and also had "sat on my bed before, and we've talked and prayed together[.]"[106] Plaintiff Black then asserted that, in this litigation, she had been drawing a distinction

[103] R. (Vol. 19) at 2816.
[104] R. (Vol. 2) at 200; 211.
[105] Supp. R. (Vol. 24) at 37 (Ex. 7).
[106] Supp. R. (Vol. 23) at 42:15–24.

between Gracie being at "the foot of the bed versus in the bed[.]"[107]

That is not what the Plaintiffs said in their declarations, though.[108] It also is not what the Plaintiffs—who assert here that Ms. Baldwin "falsely accused [the Plaintiffs] of taking her daughter to their bed for 'prayer'"—argue even now. Appellants' Br. at 26. Such rank dishonesty—baselessly suing Ms. Baldwin *for years*, tendering false sworn declarations, and seeking $3 million from Ms. Baldwin based largely on an allegation that Plaintiff Black has since admitted was *true*—similarly merits dismissal under the unclean hands doctrine. *Smith v. Est. of Smith*, No. 86-194-II, 1986 WL 13786, at *3 (Tenn. Ct. App. Dec. 10, 1986) ("once that perjury had been found to exist, 'the doctrine of unclean hands repels the unclean plaintiff at the steps of the Courthouse.'") (quoting *Farmers & Merchants Bank*, 646 S.W.2d at 924).

B. MS. BALDWIN SATISFIED HER INITIAL BURDEN UNDER SECTION 20-17-105(a) BY PROVING THAT THE TPPA APPLIES ON TWO GROUNDS—ONE OF WHICH THE PLAINTIFFS HAVE NOT APPEALED.

The trial court ruled that Ms. Baldwin "met her burden of establishing a prima facie case that the Plaintiffs' legal action is based on, relates to, or is in response to the Defendant's exercise of the right to free speech and [her] right to petition as defined by the TPPA under Tenn. Code Ann. § 20-17-105(a)."[109] The Plaintiffs appeal only the trial court's free speech ruling. But the Plaintiffs' failure to appeal one of the grounds for the trial court's section 20-17-105(a) ruling waives any claim

[107] *Id.* at 42:22–24.
[108] R. (Vol. 2) at 200; *id.* at 211.
[109] R. (Vol. 18) at 2565.

of error regarding it, and both rulings were correct anyhow.

1. The Plaintiffs have failed to appeal the trial court's ruling that their lawsuit was filed in response to Ms. Baldwin's exercise of the right to petition, thus waiving opposition to the trial court's section 20-17-105(a) ruling.

Under the TPPA, the petitioning party has the initial burden "of making a prima facie case that a legal action against the petitioning party is based on, relates to, or is in response to that party's exercise of the right to free speech, right to petition, or right of association." § 20-17-105(a). In her TPPA Petition, Ms. Baldwin asserted, with evidence, that the Plaintiffs' legal action was filed in response to both her exercise of the right to free speech and her exercise of the right to petition.[110]

The trial court ruled that Ms. Baldwin sustained her burden as to both her right to free speech claim *and* her right to petition claim.[111] As relevant to Ms. Baldwin's petition-based claim, the trial court ruled that "Ms. Baldwin has established with admissible evidence that this action was filed shortly after and in response to Ms. Baldwin reporting the Plaintiffs to DCS" and that "the Plaintiffs have sued her for a presumptively protected communication that was intended to encourage consideration or review of an issue by a governmental body."[112]

On appeal, the Plaintiffs challenge only the trial court's finding that they sued Ms. Baldwin in response to her exercise of the right of free speech. Appellants' Br. at 42–46. But having appealed "less than all of

[110] R. (Vol. 14) at 1986–91.
[111] R. (Vol. 18) at 2565–68.
[112] *Id.* at 2568.

the grounds upon which the trial court issued its ruling" under section 20-17-105(a), the Plaintiffs have waived any claim of error as to the trial court's section 20-17-105(a) ruling. *Lovelace,* 2020 WL 260295, at *3. Thus, this Court is "require[d] . . . to affirm" it. *Ramos v. Caldwell*, No. M2022-00222-COA-R3-CV, 2023 WL 1776243, at *4 (Tenn. Ct. App. Feb. 6, 2023) (citing *Duckworth Pathology Group, Inc.*, 2014 WL 1514602, at *12).

2. Ms. Baldwin also proved that this action was filed in response to her exercise of the right of free speech, and the Plaintiffs have waived opposition to that ruling.

Ms. Baldwin asserted separately that this action was filed in response to her exercise of the right of free speech.[113] To support that claim, her TPPA Petition addressed several relevant factors under section 20-17-103(6).[114]

In their response to Ms. Baldwin's TPPA Petition, the Plaintiffs did not address any of these factors.[115] That waived opposition to Ms. Baldwin's free speech claim. *Kedalo Constr., LLC v. Ward*, No. M2024-00224-COA-R3-CV, 2024 WL 4892032, at *2 (Tenn. Ct. App. Nov. 26, 2024). As a result, opposition remains waived here. *Charles v. McQueen*, 693 S.W.3d 262, 273 n.4 (Tenn. 2024) (citing *State v. Bristol*, 654 S.W.3d 917, 925 (Tenn. 2022)).

At any rate, upon review, the trial court ruled that:

> Upon consideration of the admissible evidence in the TPPA record, the Court finds that the Defendant has met her burden

[113] R. (Vol. 14) at 1988–89.
[114] *Id.*
[115] R. (Vol. 15) at 2135–2143.

> of making a prima facie case that she has been sued for speech-based tort claims arising from statements concerning an issue of "[h]ealth or safety" (her daughter's), *see* § 20-17-103(6)(A); broader issues of "community well-being[,]" *see* § 20-17-103(6)(B); "[t]he government" (law enforcement, child custody proceedings, and DCS), *see* § 20-17-103(6)(C); and other "matter[s] of public concern" (including, for instance, two adults allegedly taking a minor child into their home, into their bed, and across state lines without her mother's permission, or Ms. Black's alleged abuse of her own child), *see* § 20-17-103(6)(G). Thus, absent countervailing proof, the evidence submitted by Ms. Baldwin establishes a prima facie case that the alleged communications over which she has been sued fall within the protection of the United States Constitution or the Tennessee Constitution.[116]

The Plaintiffs' brief (at 42–46) "contains little argument to address the trial court's actual ruling" quoted above. *Payne v. Bradley*, No. M2019-01453-COA-R3-CV, 2021 WL 754860, at *7 (Tenn. Ct. App. Feb. 26, 2021). But an appellant who fails to address "the very foundation of the trial court's ruling" and makes no effort "to actually 'analyze or explain' why the trial court's ruling was in error falls far short of the requirements of Rule 27." *Id.* at *8. Under such circumstances, this Court "must affirm the trial court's decision" because the burden "'of identifying issues for review on appeal and setting forth argument in support of those issues falls upon the appellant.'" *Id.* (cleaned up).

Waiver aside, the Plaintiffs' arguments are meritless. Indeed, the Plaintiffs' brief establishes that the trial court's ruling was *correct*.

The Plaintiffs first declare that "[b]ecause defamatory speech is protected by neither [the United States Constitution nor the Tennessee

[116] R. (Vol. 18) at 2566.

Constitution], the TPPA does not apply." Appellants' Br. at 43. But speech like Ms. Baldwin's is protected *unless* a plaintiff proves it is defamatory: precisely why the trial court's ruling explained that Ms. Baldwin's speech was constitutionally protected "absent countervailing proof[.]"[117] As a result, the TPPA routinely applies to allegations of defamation. *See, e.g., Charles*, 693 S.W.3d at 283; *Nandigam Neurology, PLC*, 639 S.W.3d at 668. For these reasons, the Plaintiffs' theory that merely *alleging* a claim of defamation precludes the TPPA's application is wrong. *Id.* at 658 ("SLAPPs 'masquerade as ordinary lawsuits' and may include myriad causes of action, including defamation[.]") (cleaned up).

The Plaintiffs next complain that treating "accusations of . . . crimes" and other misconduct as matters of public concern "would transform any number of private altercations into public affairs." Appellants' Br. at 45. But the Plaintiffs' gripe is not with Ms. Baldwin; it is with the General Assembly, which expressly defined "issue[s] related to: . . . safety; . . . community well-being; [and] [t]he government" (among other issues) as matters of public concern. Tenn. Code Ann. § 20-17-103(6). The Plaintiffs also apparently agree that statements related to safety, community well-being, and the government (at minimum) were involved here. *See, e.g.,* Appellants' Br. at 19 (addressing statements about the Plaintiffs having Ms. Baldwin's minor daughter "come into their bed"); *id.* at 45 (addressing a "statement that Ms. Black physically abused her own daughter"); *id.* at 20 (noting that Ms. Baldwin's

[117] *Id.*

statements concerned an incident that involved multiple Sheriffs' offices); *id.* at 21 (addressing and acknowledging the truth of Ms. Baldwin's statement that the Plaintiffs "requested temporary custody" of Ms. Baldwin's minor daughter).

Though unnecessary, the trial court's decision also may be affirmed on a different ground that Ms. Baldwin argued below[118] but which the trial court did not credit: she was sued for statements that "relate to services in the marketplace[.]" § 20-17-103(6)(E). That argument was correct; as the trial court noted elsewhere in its order, Ms. Baldwin "has been sued for characterizing Plaintiff Black as a member of a 'multi-level marketing group.'"[119] The Plaintiffs also sued Ms. Baldwin for "using the . . . hashtags . . . #ASEA (Mrs. Black's company) and #nashvilleattorney (referring to Mr. Dozier, who is a licensed attorney in Tennessee)" in her statements. [120] Furthermore, both Plaintiffs complained that Ms. Baldwin's statements about the Plaintiffs and their businesses were intended to "induce the termination of the[ir] business relationships and prospective business relationships."[121]

The trial court—which afforded the Plaintiffs repeated opportunities to overcome Ms. Baldwin's TPPA Petition, and which the Plaintiffs have falsely charged with adopting Ms. Baldwin's positions without scrutiny—did not accept Ms. Baldwin's argument on the

[118] R. (Vol. 14) at 1988.
[119] R. (Vol. 18) at 2574 (quoting R. (Vol. 13) at 1902, ¶47).
[120] R. (Vol. 13) at 1899, ¶28.
[121] *Id.* at 1910, ¶106.

matter.[122] Even so, it is correct. *Goldberger*, 2024 WL 3339314, at *7 (favorably citing authority "that allegations of unethical behavior by a regulated professional would fall under identical statute as would any 'allegation of illegal behavior'"). Thus, this Court may affirm the trial court's judgment on this different ground, too. *First Am. Tr. Co. v. Franklin-Murray Dev. Co., L.P.*, 59 S.W.3d 135, 142 n.10 (Tenn. Ct. App. 2001).

For all of these reasons, the trial court's ruling that Ms. Baldwin "met her burden of establishing a prima facie case that the Plaintiffs' legal action is based on, relates to, or is in response to [her] exercise of the right to free speech . . . as defined by the TPPA under Tenn. Code Ann. § 20-17-105(a)"[123] should be affirmed.

C. THE TRIAL COURT CORRECTLY DISMISSED THE PLAINTIFFS' CLAIMS WITH PREJUDICE—AND THE PLAINTIFFS HAVE FAILED TO APPEAL ITS REASONS FOR DOING SO.

The trial court ruled that "the Plaintiffs' Amended Complaint must be dismissed under both Tenn. Code Ann. § 20-17-105(b) and Tenn. Code Ann. § 20-17-105(c)."[124] The Plaintiffs now purport to appeal only the trial court's section 20-17-105(b) dismissal. But "where a trial court provides more than one separate and independent ground for its judgment and a party fails to appeal one or more of the independent grounds, [this Court] must affirm the judgment of the trial court on the ground that was not challenged on appeal." *Smith v. Oakwood*

[122] R. (Vol. 18) at 2566.
[123] *Id.* at 2565.
[124] *Id.* at 2579.

Subdivision Homeowners Ass'n, Inc., No. W2022-00845-COA-R3-CV, 2023 WL 8599720, at *14 (Tenn. Ct. App. Dec. 12, 2023), *appeal denied* (May 16, 2024) (cleaned up); *see also Lovelace,* 2020 WL 260295, at *3. And both rulings were correct anyhow.

1. The Plaintiffs have failed to appeal the trial court's case-dispositive ruling that Ms. Baldwin established valid defenses.

The trial court ordered the Plaintiffs' Amended Complaint dismissed under the TPPA "under *both* Tenn. Code Ann. § 20-17-105(b) *and* Tenn. Code Ann. § 20-17-105(c)."[125] The trial court's order also explains at length why Ms. Baldwin established multiple valid defenses.[126]

On appeal, the Plaintiffs do not contest or even *mention* the trial court's order dismissing their claims under section 20-17-105(c). They never cite section 20-17-105(c), never address any of the valid defenses that the trial court found Ms. Baldwin established, and do not ask that the trial court's section 20-17-105(c) ruling be overturned. Thus, the Plaintiffs have failed to challenge one of the trial court's grounds for dismissing their Amended Complaint. And as this Court has explained many times: Under such circumstances, this Court "must affirm the judgment of the trial court on the ground that was not challenged on appeal." *Smith*, 2023 WL 8599720, at *14 (cleaned up); *see also Halliman v. Austin Peay State University*, No. M2023-01326-COA-R3-CV, 2024 WL 5103386, at *2 (Tenn. Ct. App. Dec. 13, 2024); *Buckley v. Elephant*

[125] *Id.* (emphases added).
[126] *Id.* at 2573–78.

Sanctuary in Tennessee, Inc., 639 S.W.3d 38, 55 (Tenn. Ct. App. 2021); *Koblitz v. State*, No. M2021-00282-COA-R3-CV, 2021 WL 5549586, at *3 (Tenn. Ct. App. Nov. 29, 2021); *Hatfield v. Allenbrooke Nursing & Rehab. Ctr., LLC*, No. W2017-00957-COA-R3-CV, 2018 WL 3740565, at *7 (Tenn. Ct. App. Aug. 6, 2018); *Ramos*, 2023 WL 1776243, at *4; *Lovelace,* 2020 WL 260295, at *3; *Frogge v. Joseph*, No. M2020-01422-COA-R3-CV, 2022 WL 2197509, at *17 (Tenn. Ct. App. June 20, 2022); *Duckworth Pathology Grp., Inc.*, 2014 WL 1514602, at *12; *Stark v. McLean*, No. W2020-00086-COA-R3-CV, 2022 WL 1751747, at *7 (Tenn. Ct. App. June 1, 2022).

2. The Plaintiffs failed to introduce admissible evidence to support their claims under section 20-17-105(b)—and the Plaintiffs have failed to appeal that ruling, too.

To survive the second step of the TPPA's burden-shifting framework, the Plaintiffs needed to "establish[] a prima facie case for each essential element of the claim in the legal action." Tenn. Code Ann. § 20-17-105(b). The trial court determined that they failed to do so, ruling: "the Plaintiffs have failed to meet their burden of establishing a prima facie case for each essential element of their claims."[127] This ruling was correct. And it, too, is effectively unchallenged on appeal.

a. The Plaintiffs have waived any challenge to the trial court's order dismissing their claims under section 20-17-105(b).

The second issue in the Plaintiffs' brief is: "Whether the evidence before the Court was sufficient to create material questions of fact."

[127] R. (Vol. 18) at 2556; *see also id.* at 2568–73.

Appellants' Br. at 23. But the Plaintiffs' brief does not include any argument on the issue. *Id.* at 23–61. Thus, this Court may affirm the trial court's section 20-17-105(b) dismissal on waiver grounds. *Hodge v. Craig*, 382 S.W.3d 325, 335 (Tenn. 2012) ("An issue may be deemed waived, even when it has been specifically raised as an issue, when the brief fails to include an argument satisfying the requirements of Tenn. R. App. P. 27(a)(7).").

b. The trial court's order dismissing the Plaintiffs' claims under section 20-17-105(b) was correct.

Waiver aside, under section 20-17-105(b), the Plaintiffs needed to "present enough evidence to allow the jury to rule in [their] favor" as to each essential element of their claims. *Charles*, 693 S.W.3d at 281. Only "admissible evidence" can satisfy that burden. § 20-17-105(d).

Below, the Plaintiffs' response to Ms. Baldwin's TPPA Petition referenced various documents, but "[n]one of these documents were actually filed with the Court[.]"[128] Nor were any of the documents that the Plaintiffs filed in response to Ms. Baldwin's earlier (pre-amendment) TPPA petition—which the Plaintiffs did not attempt to reintroduce after amending their complaint, and to which Ms. Baldwin had objected—admitted into the TPPA evidentiary record.[129] Thus, the trial court ruled that the Plaintiffs successfully admitted into the TPPA evidentiary record only "the portions of [Ms. Baldwin's] deposition transcript . . . cited by the Plaintiffs in their supplemental filing."[130] The Plaintiffs also have

[128] *Id.* at 2563.
[129] *Id.* at 2571 n.15.
[130] *Id.* at 2564.

not appealed any of the trial court's evidentiary rulings, Appellants' Br. at 23, so they are unchallenged here.

Left only with the cited portions of Ms. Baldwin's deposition transcript, the Plaintiffs had several fatal problems.

First, the Plaintiffs "made no attempt to explain or develop an argument about which portions of Ms. Baldwin's testimony are being used to support their respective tort claims in this case. This results in waiver."[131] The Plaintiffs have failed to appeal this Court's dispositive waiver ruling. Appellants' Br. at 23. And for the same reasons already noted above, that failure alone requires this Court to affirm the trial court's section 20-17-105(b) dismissal. *Lovelace*, 2020 WL 260295, at *3.

Second, waiver aside, Ms. Baldwin's deposition did not establish the essential elements of any of the Plaintiffs' claims. As the trial court noted, for example, the videos over which the Plaintiffs sued Ms. Baldwin—which were not introduced during her deposition—are absent from the TPPA evidentiary record.[132] Thus, the Plaintiffs failed to "introduce[] into the TPPA record evidence of the statements over which they are suing . . . either in context or at all[.]"[133] And because, in her deposition, Ms. Baldwin *denied* calling Mr. Dozier a pedophile[134]—one of the central statements at issue here—"the only admissible evidence in the TPPA record regarding this statement is that it was *not* made."[135]

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[131] R. (Vol. 18) at 2569.
[132] R. (Vol. 18) at 2570.
[133] *Id.*
[134] *Id.*; *see also* R. (Vol. 16) at 2350:11–16.
[135] R. (Vol. 18) at 2570.

During the proceedings below, the Plaintiffs did not dispute that they failed to introduce into the TPPA evidentiary record the statements over which they are suing—even though those statements are essential to each claim they asserted, *see McGuffey v. Belmont Weekday Sch.*, No. M2019-01413-COA-R3-CV, 2020 WL 2754896, at *15–18 (Tenn. Ct. App. May 27, 2020) (a plaintiff's failure to introduce into evidence allegedly tortious statement is fatal to a plaintiff's prima facie case). Instead, "[a]s an explanation for failing to introduce the statements over which they are suing into the TPPA record, Plaintiffs' counsel argued at the TPPA hearing that the allegations set forth in the Plaintiffs' Amended Complaint are sufficient to prevail at this stage in proceedings."[136] But as the trial court correctly ruled, "the unsworn allegations in the Plaintiffs' Amended Complaint may not be considered" [137] when adjudicating Ms. Baldwin's TPPA Petition.

The trial court also found that "the Plaintiffs have failed to introduce any admissible evidence into the TPPA record establishing their claimed damages."[138] As to this failure, the Plaintiffs argued that "it's alleged that there were damages" and "there are certain types of defamation that presume damages."[139] In rejecting these arguments, the trial court stated: "the Court rejects the Plaintiffs' argument that the allegations of their Amended Complaint suffice to establish their damages or that Tennessee law allows any of the Plaintiffs' claims to

[136] *Id.* at 2571.
[137] *Id.* at 2569.
[138] *Id.* at 2571.
[139] R. (Vol. 19) at 2716:5–6; *id.* at 2717:16–17.

survive dismissal on a defamation per se theory."[140] The law supports these rulings, which the Plaintiffs make no effort to appeal. *PMC Squared, LLC*, 2024 WL 3757839, at *5 (TPPA burdens can only be met with "admissible evidence"); *Steele v. Ritz*, No. W2008-02125-COA-R3-CV, 2009 WL 4825183, at *1, n.2 (Tenn. Ct. App. Dec. 16, 2009) ("a plaintiff must allege and prove injury as a result of a defamatory statement. . . . [D]efamation per se . . . no longer exists as a separate cause of action in Tennessee") (citing *Byrd v. State*, 150 S.W.3d 414, 421–22 (Tenn. Ct. App. 2004)).

In sum: Under section 20-17-105(b), the Plaintiffs' failure to introduce any evidence into the TPPA record other than cited portions of Ms. Baldwin's deposition transcript precluded each of the Plaintiffs' claims. Thus, the Plaintiffs failed to "present enough evidence to allow the jury to rule in [their] favor" on their claims, *Charles*, 693 S.W.3d at 281, and the trial court's order dismissing their Amended Complaint under section 20-17-105(b) should be affirmed.

D. THE PLAINTIFFS' UNTIMELY CONSTITUTIONAL CHALLENGE FAILS.

The Plaintiffs assert that the TPPA is unconstitutional. But because they did not timely assert that argument below, they waived it. At any rate, the argument is meritless.

1. The Plaintiffs' untimely constitutional challenge is waived.

In response to Ms. Baldwin's TPPA Petition, the Plaintiffs vaguely asserted that the TPPA "deprives Plaintiffs of procedural and

[140] R. (Vol. 18) at 2571.

substantive due process under the Constitutions of the United States and the State of Tennessee."[141] But that response failed to raise—much less develop—an argument contesting the TPPA's constitutionality. It also acknowledged that constitutional challenges must be served on the Attorney General, though the Plaintiffs' response was not.[142] The Plaintiffs' response suggested that they were *not* yet raising any constitutional challenge to the TPPA, too.[143]

After the trial court granted Ms. Baldwin's TPPA Petition, the Plaintiffs sought to raise a constitutional challenge to the TPPA for the first time in a post-judgment Rule 59 motion.[144] But the trial court rejected as waived the Plaintiffs' untimely constitutional challenge, ruling that "the Plaintiffs may not raise their constitutional arguments for the first time in a Rule 59 motion."[145]

The Plaintiffs do not contest the trial court's finding that they did not raise their constitutional challenge until after judgment. Instead, they assert that they "could only have raised the question of constitutionality after the trial court had ruled on the Defendant's petition." Appellants' Br. at 53.

The Plaintiffs are wrong. If the Plaintiffs wished to argue that the TPPA was unconstitutional, they needed to "'make a timely, specific objection' in the trial court[.]" *Emory v. Memphis City Sch. Bd. of Educ.*,

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[141] R. (Vol. 15) at 2133–34.
[142] *Id.* at 2144.
[143] *Id.* at 2133–34.
[144] R. (Vol. 19) at 2794.
[145] R. (Vol. 20) at 2890.

514 S.W.3d 129, 146 (Tenn. 2017) (quoting *Welch v. Bd. of Prof'l Resp., for the Sup. Ct. of Tenn.*, 193 S.W.3d 457, 464 (Tenn. 2006)). And the time to do so was in response to Ms. Baldwin's TPPA Petition. *Id.* ("a litigant must raise his objection at the first available opportunity").

The Plaintiffs chose not to raise a constitutional challenge to the TPPA in response to Ms. Baldwin's TPPA Petition, though. Instead, they raised it for the first time in a Rule 59 motion, which this Court has explained "should not be used to raise or present new, previously untried or unasserted theories or legal arguments." *In re M.L.D.*, 182 S.W.3d 890, 895 (Tenn. Ct. App. 2005). Thus, the Plaintiffs waived their constitutional challenge "as too late." *Induction Techs., Inc. v. Justus*, 295 S.W.3d 264, 268–69 (Tenn. Ct. App. 2008).

The Plaintiffs' claim that courts refrain from addressing constitutional issues when a case can be decided on non-constitutional grounds (Appellants' Br. at 53) does not save them, either. It is true that "*courts* avoid adjudicating constitutional issues when a case can be resolved on non-constitutional grounds." *Keough v. State*, 356 S.W.3d 366, 371–72 (Tenn. 2011) (emphasis added). But that doctrine—a "principle of *judicial* restraint[,]" Gilbert Lee, *How Many Avoidance Canons Are There After Clark v. Martinez?*, 10 U. PA. J. CONST. L. 193, 196 (2007) (emphasis added)—does not relieve *litigants* of the obligation to timely raise constitutional challenges. Thus, the trial court correctly denied as waived the Plaintiffs' untimely constitutional challenge.

2. <u>The Plaintiffs' constitutional challenge fails on its merits.</u>

Waiver aside, the Plaintiffs' constitutional challenge fails on its

merits. The Plaintiffs first suggest that the TPPA contravenes the right to trial by jury, Appellants' Br. at 60, though this Court already rejected that argument in *SmileDirectClub, Inc. v. NBCUniversal Media, LLC*, No. M2021-01491-COA-R3-CV, 2024 WL 4233949, at *9–10 (Tenn. Ct. App. Sept. 19, 2024)—a case the Plaintiffs fail to mention.

The Plaintiffs' separate argument—that the TPPA contravenes the separation of powers doctrine—fares no better.

> As the Tennessee Supreme Court explained in *Charles v. McQueen*, 693 S.W.3d 262 (Tenn. 2024), the TPPA's prima facie case requirement is analogous to the evidentiary requirements in Rules 50.01 and 56 of the Tennessee Rules of Civil Procedure because the Act requires the "production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor." *Id.* at 280 (quoting Prima Facie Case, Black's Law Dictionary 1441 (11th ed. 2019)). Accordingly, when determining whether a party has satisfied its burden, courts must "view the evidence in the light most favorable to the party seeking to establish the prima facie case and disregard countervailing evidence." *Id.* at 281.

Id. at *9.

Given these circumstances, there is no meaningful conflict between the TPPA's evidentiary standard and Rule 56's; from an evidentiary standpoint, the standards are "analogous[.]" *Id.* Thus, nothing prevents the TPPA and the Tennessee Rules of Civil Procedure from being "harmonized." *Reiss v. Rock Creek Constr., Inc.*, No. E2021-01513-COA-R3-CV, 2022 WL 16559447, at *7 (Tenn. Ct. App. Nov. 1, 2022). As a result, the TPPA does not "strike at the very heart of a court's exercise of judicial power[.]" *State v. Mallard*, 40 S.W.3d 473, 483 (Tenn. 2001). Further, "[i]n deference to separation of powers, judges will lean over

backward to avoid encroaching on the legislative branch's (power)" when applying statutes, *id.* at 482, particularly when—as here—they are asked to enforce "an integral part of a purely statutory remedy created by the General Assembly" like the TPPA's expedited dismissal procedure. *Cf. Bush v. State*, 428 S.W.3d 1, 16 (Tenn. 2014); *see also Reiss*, 2022 WL 16559447, at *8 ("We therefore reject Rock Creek's argument that the traditional Rule 12 dismissal procedure must be applied when dismissal is sought pursuant to the TPPA. . . . To hold otherwise would render the dismissal provision contained within the TPPA statute meaningless.").

Nor were the Plaintiffs deprived of the opportunity to take discovery before Ms. Baldwin's TPPA Petition was adjudicated as they claim. To the contrary, the Plaintiffs were *permitted* to obtain all the discovery they sought from the only witness from whom they sought any.[146] Thus, the Plaintiffs' complaint on appeal that they "could not compel the attendance of the Sheriff's deputies who made [certain] reports to authenticate the reports, impeach the Defendant, or quote Ms. Baldwin" (Appellants' Br. at 60) is not attributable to the TPPA. Instead, the issue is that the only discovery the Plaintiffs sought below was "leave to depose Ms. Baldwin[.]"[147]

For these reasons, the Plaintiffs' separation of powers claim fails.

E. THE PLAINTIFFS' *LAKESIDE* CHALLENGE FAILS.

The Plaintiffs assert that "the final order was not the work of the trial court and must be set aside." Appellants' Br. at 46. This challenge

[146] R. (Vol. 15) at 2112; *id.* at 2198.
[147] *Id.* at 2112.

is limited to the trial court's January 2, 2024 Order. *Id.* But the Plaintiffs' claim that "the final order was not the work of the trial court and must be set aside" (Appellants' Br. at 46) fails for several reasons.

1. <u>The Plaintiffs' theory of impropriety has changed and is unsupported by the record.</u>

In their Rule 59 motion, the Plaintiffs presented a theory of impropriety that is meaningfully different from the one they assert now: they claimed that Ms. Baldwin "shared ex parte with the Court" a proposed order for the trial court to enter, which the Plaintiffs asserted it "appears that the Court did not prepare[.]"[148] As the trial court made clear in its order denying the Plaintiffs' Rule 59 motion, though, that charge was baseless.[149] In reality, "[t]he Court had no ex parte communications with anyone involved in this case, either when the Court was drafting its orders or at any other time."[150]

On appeal, the Plaintiffs unveil a new theory. In a breezy paragraph unburdened by a record citation, they claim: "[Ms. Baldwin's counsel] submitted a prolix order of 26 pages on January 2, 2024. He stated in his certificate of service that it was 'hand delivered' on that date. Judge Frye *signed it the same day*, without any opportunity of Plaintiffs' counsel to review or comment upon it." Appellants' Br. at 46.

This didn't happen, either. Ms. Baldwin's counsel did not submit any proposed order on January 2, 2024—much less "hand deliver" one—nor did her counsel certify that he had "hand delivered" any such order.

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[148] R. (Vol. 19) at 2795–96.
[149] R. (Vol. 20) at 2890.
[150] *Id.*

Neither did the trial court "*sign[] . . . the same day*" any such order (or sign any order at all during the life of this case before affording Plaintiffs' counsel the opportunity "to review or comment upon it").

2. <u>The Plaintiffs inaccurately characterize the trial court's January 2, 2024 Order in several respects.</u>

The Plaintiffs also inaccurately characterize the trial court's January 2, 2024 Order in several material ways. They assert, for example, that it was a "reprise" of Ms. Baldwin's brief, Appellants' Br. at 48—though they fail to note that the order did not credit several of Ms. Baldwin's arguments. To offer two examples: (1) the order did not credit Ms. Baldwin's argument that she was sued for statements that "relate to services in the marketplace" within the meaning of section 20-17-103(6)(E);[151] and (2) the order did not credit Ms. Baldwin's argument that Plaintiff Dozier was a "limited-purpose public figure."[152]

The Plaintiffs separately complain that "[t]he Plaintiffs' argument . . . that the evidence relied upon by the Defendant was inadmissible hearsay was not discussed or ruled upon by the trial court." Appellants' Br. at 48. But the only evidence Ms. Baldwin introduced to which the Plaintiffs objected was "the Declaration of Brooke Modlin[,]"[153] which the Plaintiffs asserted was "a plainly incompetent, undisclosed and inadmissible affidavit from a counselor at [a] 'boarding school.'"[154] And the trial court *did* adjudicate the Plaintiffs' objection to Ms. Modlin's

[151] *Compare* R. (Vol. 14) at 1988, *with* R. (Vol. 18) at 2566.
[152] *Compare* R. (Vol. 14) at 1992, *with* R. (Vol. 18) at 2555–80.
[153] R. (Vol. 18) at 2562.
[154] R. (Vol. 15) at 2141.

declaration, ruling that it was "not being tendered as an expert opinion" and was admissible to show the effect of Ms. Modlin's statements on Ms. Baldwin.[155]

The Plaintiffs have not appealed this ruling, Appellants' Br. at 23, which was correct in any event, *State v. Harris*, No. W2017-01706-CCA-R3-CD, 2018 WL 6012620, at *9 (Tenn. Crim. App. Nov. 15, 2018) ("A statement introduced for its effect on the listener is not hearsay."). Instead, they have posited that the issue "was not discussed or ruled upon by the trial court" when, in fact, it was. Appellants' Br. at 48. By the same token, Gracie Baldwin's declaration attesting, among other things, that the Plaintiffs "had prayer time every night where we all sat in Brad and Pepper's bed each night"[156]—to which the Plaintiffs did not object below—was not "hearsay" as the Plaintiffs now assert (*see id.*) in an appeal that raises no evidentiary issues for this Court's review (*id.* at 23).

The Plaintiffs next assert that:

> The order submitted by counsel and signed by the trial court contains theories unstated by the Court but created by counsel. The Court never stated that it relied on foreign law. The Court never laid out 'nonexhaustive factors' or indeed any factors at all. The Court never found that the litigation was "vindictive." She never mentioned Ms. Black's supposed ability to pay, for which no evidence was given by the Court in any event.

Appellants' Br. at 48–49.

The Plaintiffs are confused. The January 2, 2024 Order that they assert was deficient under *Lakeside* says none of these things. Instead,

[155] R. (Vol. 18) at 2562–63.
[156] R. (Vol. 14) at 2041, ¶7.

the only trial court order mentioning "nonexhaustive factors" or the "vindictive" nature of the Plaintiffs' litigation is the trial court's April 2, 2024 *sanctions* order,[157] which the trial court entered months later and which the Plaintiffs do not challenge on *Lakeside* grounds. Appellants' Br. at 46. Further, contrary to the Plaintiffs' claim that "no evidence was given" regarding Ms. Black's ability to pay, *id.* at 49, Ms. Baldwin's sanctions motion asserted—with evidence that the Plaintiffs did not contest—that Plaintiff Black "lives in a mansion that she purchased for $1.1 million less than three years ago" and "can afford to pay the substantial but reasonable sanction sought here."[158]

Ms. Baldwin also notes that the Plaintiffs have failed to file or include in the record on appeal the transcripts of the hearings where these determinations were made. Such failure "constitutes an effective waiver of the appellant's right to appeal" any issue as to whether the trial court's orders accurately reflect the reasons the trial court provided for its rulings. *Wells v. Illinois Cent. R. Co.*, No. W2010-01223-COA-R3-CV, 2011 WL 6777921, at *6 (Tenn. Ct. App. Dec. 22, 2011).

Next, the Plaintiffs assert that "[t]he Court never discussed the mere ad damnum clause in the Complaint. Had she, that would have been easily rebutted." Appellants' Br. at 48. Once more, this is not true. During the Parties' hearing on Ms. Baldwin's TPPA Petition, Plaintiffs' counsel stated: "If I thought this case could bring $3 million, then I would have demanded ten."[159] Afterward, the trial court noted in its January

[157] R. (Vol. 19) at 2820; *id.* at 2821–22.
[158] R. (Vol. 18) at 2594.
[159] R. (Vol. 19) at 2716:18–20.

2, 2024 Order that: "Plaintiffs' counsel stated during the Parties' TPPA hearing that his asserted ad damnum does not generally reflect the damages that his clients actually suffered."[160] Thus, the finding at issue—which the Plaintiffs do not challenge other than to say it "would have been easily rebutted" (they do not say how), Appellants' Br. at 49—was *correct*.[161]

3. The Plaintiffs' unsupported theory of a *Lakeside* deficiency lacks merit.

Apart from changing their theory of events and mischaracterizing the order they are challenging, *see supra* at 50–54, the Plaintiffs' *Lakeside* claim lacks merit. In reality, the trial court never signed "wholesale" and without revision—whether on January 2, 2024 or otherwise—any dismissal order proposed by Ms. Baldwin: a fact that precludes the Plaintiffs' *Lakeside* claim. *Salas v. Rosdeutscher*, No. M2021-00449-COA-R3-CV, 2024 WL 1119818, at *1 (Tenn. Ct. App. Jan. 9, 2024) (revisions reflect independent judgment); *McGarity v. Jerrolds*, 429 S.W.3d 562, 568 (Tenn. Ct. App. 2013) ("Nothing in the record indicates that the trial court failed to review both proposed orders before entering the order prepared by Grandparents."); *Louis v. Singh*, No. M2024-00385-COA-R3-CV, 2024 WL 4836819, at *4 (Tenn. Ct. App. Nov. 20, 2024) (trial court's independent judgment was apparent from its choice among party-proposed orders). Instead, the trial court's order was its own.[162]

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[160] R. (Vol. 18) at 2576.
[161] R. (Vol. 19) at 2716:18–20.
[162] R. (Vol. 20) at 2890 ("the Court . . . draft[ed] its orders").

The Plaintiffs' claim about the trial court's January 2, 2024 Order can be dispatched on six other grounds, too:

First, the Plaintiffs' preferred relief would not even help them. The Plaintiffs ask that the trial court's January 2, 2024 Order "be set aside." Appellants' Br. at 49. But that would still leave them with the trial court's December 15, 2023 Order, which the Plaintiffs concede reflected the trial court's independent judgment as to the proper disposition of Ms. Baldwin's TPPA Petition. *Id.* at 46. And the trial court's December 15, 2023 Order held that: "[t]he Amended Complaint should be dismissed pursuant to the TPPA" both because "[t]he responding party (Plaintiffs) have failed in their pleadings and Amended Complaint to establish a prima facie case for each essential element of the claim in their legal action" and because "[e]ven if the court found that the Plaintiffs had established a prima facie case for each essential element of the claims in their legal action, the Defendant would have established a valid defense or defenses."[163] As noted above, the Plaintiffs also *have not appealed either of these grounds for dismissal*. *Supra* at 39–45. Thus, the outcome—affirming the trial court's order dismissing the Plaintiffs' Amended Complaint under sections 20-17-105(b) and 20-17-105(c)—would be the same even if the Plaintiffs obtained their desired relief.

Second, as in previous cases in which an appellant has asserted a *Lakeside* deficiency, "multiple interrelated reasons" would militate against vacating even if the Plaintiffs' argument had basis. *Com. Painting Co. Inc. v. Weitz Co. LLC*, No. W2019-02089-COA-R3-CV, 2024

[163] R. (Vol. 17) at 2553.

WL 4360219, at *13 (Tenn. Ct. App. Oct. 1, 2024). Most prominently: "Despite the thoroughness of the trial court's findings, [the Plaintiffs] ha[ve] not developed a substantive attack against the trial court's" TPPA rulings. *Id.* That includes failing to challenge any of the trial court's evidentiary rulings; failing to challenge one of the trial court's grounds for ruling that the TPPA applies here; and failing to challenge either of the trial court's case-dispositive grounds for ruling that the Plaintiffs' Amended Complaint must be dismissed. Appellants' Br. at 23. Under these circumstances—given that "the trial court's reasoning" and "findings" are clear—this Court is "especially reluctant to vacate and remand rather than soldiering on[.]" *Id.*

Third, "[w]hether the parties satisfied their respective burdens [under the TPPA] is a legal issue that [this Court] review[s] de novo." *Gersper v. Turner*, No. M2022-01136-COA-R3-CV, 2024 WL 4554706, at *3 (Tenn. Ct. App. Oct. 23, 2024). Thus, what the trial court ruled below makes little practical difference; when appealed, this Court reviews the trial court's TPPA rulings without deference in any event. *Id.* But on appeal, the Plaintiffs have not contested multiple case-dispositive rulings on Ms. Baldwin's TPPA Petition. *Supra* at 33–45. Thus, there would be no value in vacating anyway.

Fourth, "[n]othing in the record indicates that the order entered does not reflect the trial court's view of the case." *Beach Cmty. Bank v. Labry*, No. W2011-01583-COA-R3-CV, 2012 WL 2196174, at *5 (Tenn. Ct. App. June 15, 2012). The Plaintiffs do not even argue otherwise. Presumably, that is because the trial court also issued *five* other orders

that held that Ms. Baldwin was entitled to TPPA-based relief, arose from the trial court's grant of TPPA relief, or maintained its grant of TPPA relief—none of which the Plaintiffs claim did not reflect the views of the trial court. In particular, the trial court entered: (1) a July 11, 2023 order stating: "The Court finds that the TPPA applies to this speech-based tort case[;]"[164] (2) a December 15, 2023 Order holding that Ms. Baldwin was entitled to dismissal of the Plaintiffs' entire Amended Complaint under two provisions of the TPPA;[165] (3) an April 2, 2024 Order granting Ms. Baldwin's motion for attorney's fees, costs, and expenses under the TPPA;[166] (4) an April 2, 2024 Order granting in part Ms. Baldwin's motion for sanctions under the TPPA;[167] and (5) a July 18, 2024 Order denying in full the Plaintiffs' Rule 59 motion to alter or amend and maintaining in full the trial court's January 2, 2024 Order dismissing the Plaintiffs' Amended Complaint under the TPPA[168]—not one of which the Plaintiffs even allege involves a *Lakeside* deficiency.

Notably, even after the Plaintiffs complained, in a Rule 59 motion, about what they asserted was a *Lakeside* deficiency—the trial court maintained its TPPA order in full, and it made clear during that hearing (which the Plaintiffs have not included in the record) both that what the Plaintiffs theorized had happened did not and that its order reflected its own judgment.[169] Thus, the record reflects that the trial court "conducted

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[164]R. (Vol. 15) at 2194.
[165] R. (Vol. 17) at 2553.
[166] R. (Vol. 19) at 2815–17.
[167] *Id.* at 2820–22.
[168] R. (Vol. 20) at 2889–90.
[169] *Id.* at 2890.

its own review[.]" *Com. Painting Co. Inc.*, 2024 WL 4360219, at *13 ("as reflected in various orders issued by the trial court including but not limited to the trial court's response to [appellant's] *Lakeside* argument in its motion for new trial, the trial court conducted its own review in the present case."). As a result, vacating and remanding would be a purposeless exercise and "amount to little more than requiring the trial court judge to perform an editing task"—a task that "would be occurring within a backdrop in which [the Plaintiffs have] not developed any actual substantive attack on the trial court's" ruling. *Id.*

Fifth, the Plaintiffs' argument is waived. The Plaintiffs have failed to include multiple necessary parts of the record on appeal that bear on the issue they raise, and this Court has explained that "[t]he failure of the appellant to ensure that documents necessary to consider a particular issue raised on appeal are included in the appellate record constitutes an effective waiver of the appellant's right to appeal that issue." *Wells*, 2011 WL 6777921, at *6; *see also Hidden Lake Resorts Homeowners Ass'n, Inc. v. Moore*, No. M2022-01323-COA-R3-CV, 2024 WL 2844447, at *13 (Tenn. Ct. App. June 5, 2024) (citing *In re M.L.D.*, 182 S.W.3d 890, 894 (Tenn. Ct. App. 2005) and Tenn. R. App. P. 24(b), (c)).

Sixth, this is a TPPA case. As such, it is supposed to be "expediently resolve[d]." *Nandigam Neurology, PLC*, 639 S.W.3d at 666. But expedience is the opposite of what has happened here; instead, the trial court bent over backward to afford the Plaintiffs *four* opportunities spanning *years*—including through supplemental post-discovery briefing—to come forward with evidence to support their claims. This

prompted massively expensive litigation and multi-year delay about which Ms. Baldwin complained unsuccessfully in a Rule 10 appeal.[170]

Eventually, though, the trial court entered the only order that the lopsided evidentiary record permitted, and it granted Ms. Baldwin's TPPA Petition.[171] Thus, because "[t]his court has been especially reluctant to vacate and remand rather than soldiering on where a case, much like the present one, has been lingering in the judicial system for many years," vacating "rather than soldiering on" would be improper regardless. *Com. Painting Co. Inc.*, 2024 WL 4360219, at *12.

For all of these reasons—or for any of them—the Plaintiffs' *Lakeside* challenge fails.

F. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY SANCTIONING THE PLAINTIFFS.

The Plaintiffs assert that the trial court erred in assessing sanctions under section 20-17-107(a)(2). But the Plaintiffs do not contest the trial court's finding "that sanctions are necessary to deter repetition of the Plaintiffs' conduct,"[172] which supports a sanctions award. *Id.* The Plaintiffs also make no effort to challenge most of the reasoning underlying the trial court's sanctions award, including that: (1) "Plaintiff Dozier is an experienced attorney" who "has a history of ethical misconduct for which he has been sanctioned[;]" (2) the Plaintiffs "have previously initiated litigation against the Defendant[;]" (3) the Plaintiffs "engaged in questionable conduct toward the Defendant during the

[170] R. (Vol. 15) at 2209–10.
[171] R. (Vol. 18) at 2579.
[172] R. (Vol. 19) at 2821.

litigation of this case that appears vindictive[;]" (4) Ms. Baldwin incurred "substantial out-of-pocket expenses as a result of this litigation[,]" including going into debt "to finance her defense;" and (5) this litigation had "difficult financial and emotional effects" on Ms. Baldwin.[173] And although the Plaintiffs claim to contest the legal standard the trial court applied, they do not explain why they believe that standard was wrong or what standard they think the trial court should have applied instead. Appellant's Br. at 50. Thus, once more, the Plaintiffs' brief "contains little argument to address the trial court's actual ruling" and does not "actually 'analyze or explain' why the trial court's ruling was in error[,]" resulting in waiver. *Payne*, 2021 WL 754860, at *7–8.

Waiver aside, the Plaintiffs' arguments challenging the trial court's sanctions are wrong.

First, the Plaintiffs complain that "[n]o Rule 11 safe harbor notice had been given" to them before they were sanctioned. *Id.* at 50. But section 20-17-107(a)(2) does not contain a safe harbor provision.

Second, the Plaintiffs suggest that the trial court erred by considering the previous litigation they initiated against Ms. Baldwin. Appellant's Br. at 50. The Plaintiffs' apparent argument is that, because that previous litigation did not concern "the same subject" as their SLAPP-suit here, it was improper for the trial court to consider it. *Id.* at 51–52. But the relevant question is whether the Plaintiffs had "any prior history of sanctionable conduct."[174] And the reason the earlier litigation

[173] *Id.* at 2821–22.
[174] *Id.* at 2821.

matters here is that, after Ms. Baldwin contacted law enforcement to complain that the Plaintiffs had taken her minor child to another state without her permission, the Plaintiffs responded by suing Ms. Baldwin, seeking, and somehow *obtaining* (ex parte) emergency temporary custody of her minor daughter—thus punishing Ms. Baldwin and forcing her to incur legal expenses for reporting them to law enforcement.[175] The Plaintiffs then nonsuited their bogus retaliatory custody petition right afterward.[176] Plaintiff Black then claimed to be deeply sorry for having initiated the bogus petition.[177] Under these circumstances, the trial court properly ruled that the Plaintiffs' previous litigation abuse was relevant prior history.

Third, the Plaintiffs complain that the trial court considered that "Plaintiffs sought $3 million from the Defendant."[178] Their specific complaints are that: (1) "[b]ecause the TPPA was the asserted basis for dismissal, damages were never considered[,]" (2) "paragraphs 108-111 of the Complaint was [sic] more than ample to allege damages," (3) damages "were never subject to proof because no discussions and no trial was had[,]" and (4) "[d]amages were not contested in the determination of the petition." Appellant's Br. at 51.

None of this is accurate. Damages *were* considered by the trial court; it found that "the Plaintiffs have failed to introduce any admissible

[175] R. (Vol. 18) at 2631–35.
[176] *Id.* at 2635.
[177] R. (Vol. 14) at 2020–25.
[178] R. (Vol. 19) at 2822.

evidence into the TPPA record establishing their claimed damages."[179] And merely alleging damages was *not* "more than ample[,]" *id.*—instead, because a TPPA petition "is an evidentiary motion," the trial court "reject[ed] the Plaintiffs' argument that the allegations of their Amended Complaint suffice to establish their damages[.]"[180] Thus, damages *were* "subject to proof"—the problem is that the Plaintiffs didn't have any. And damages *were* "contested in the determination of the petition"; Ms. Baldwin asserted with evidence that "the Plaintiffs did not suffer actual damages,"[181] and the Plaintiffs responded to that claim by insisting—incorrectly, as they continue to do now—that "the allegations of their Amended Complaint suffice to establish their damages[.]"[182] Further, the point of the trial court's observation that the Plaintiffs sued Ms. Baldwin for $3 million was that the Plaintiffs had baselessly threatened Ms. Baldwin with financial ruin—a fact that the Plaintiffs do not contest.

Fourth, the Plaintiffs assert that: "The Defendant labored hard to characterize Plaintiff Brad Dozier as an attorney who had been disciplined. The initial claim for damages to his legal business, however, was abandoned when the complaint was amended on April 10, 2023." Appellant's Br. at 52. But this is not true, either. Paragraphs 103–107 of the Plaintiffs' Amended Complaint assert an intentional interference with business relationships claim *on behalf of Plaintiff Dozier*,[183] a

[179] R. (Vol. 18) at 2571.
[180] *Id.*
[181] R. (Vol. 14) at 2001–03.
[182] R. (Vol. 18) at 2571.
[183] R. (Vol. 13) at 1909–10, ¶¶103–107.

professionally disgraced lawyer. Thus, Plaintiff Dozier asserted against Ms. Baldwin—and he maintained through hearing—a $3 million tort claim that he himself now apparently concedes was groundless.

Fifth, the Plaintiffs assert that the "justifications offered [by the court] would essentially add a sanction to every case dismissed under the TPPA." Appellants' Br. at 52. Not so. To issue sanctions, a trial court must determine that sanctions are "necessary to deter repetition of the conduct by the party who brought the legal action or by others similarly situated." Tenn. Code Ann. § 20-17-107(a)(2). Based on multiple findings that the Plaintiffs do not now contest, the trial court made that finding here.[184] By contrast, other courts have not. *See, e.g., Small v. Law*, No. M2024-00255-COA-R3-CV, 2024 WL 3665755, at *1 n.2 (Tenn. Ct. App. Aug. 6, 2024).

For these reasons, the trial court did not err—much less abuse its discretion—by sanctioning the Plaintiffs a fraction of the amount that Ms. Baldwin sought and barely 1% of the $3 million that the Plaintiffs placed in controversy. Thus, the trial court's sanctions judgment should be affirmed.

G. THE TRIAL COURT CORRECTLY GRANTED MS. BALDWIN'S MOTION TO DISMISS.

Because the trial court's order dismissing the Plaintiffs' Amended Complaint with prejudice under the TPPA may be affirmed on multiple grounds that the Plaintiffs have not appealed, this Court "need not consider" any issue concerning the trial court's Rule 12.02(6) order.

[184] R. (Vol. 19) at 2821–22.

Duckworth Pathology Grp., Inc., 2014 WL 1514602, at *12. Even so, Ms. Baldwin responds to the Plaintiffs' motion to dismiss arguments.

1. This Court may affirm on waiver grounds.

The Plaintiffs' trial court response did not meaningfully address Ms. Baldwin's motion to dismiss arguments.[185] Instead, their opposition was limited to a short introductory section that contained undeveloped references to their claims and failed to respond substantively to any of Ms. Baldwin's asserted grounds for dismissal.[186] That skeletal response waived opposition. *Sneed v. Bd. of Prof'l Resp. of Sup. Ct.*, 301 S.W.3d 603, 615 (Tenn. 2010). And because issues are waived unless they are preserved from trial court through appeal, this Court may deem opposition waived here as well. *Charles*, 693 S.W.3d at 273 n.4 (Tenn. 2024); *cf. Humphrey v. U.S. Att'y Gen.'s Off.*, 279 F. App'x 328, 331 (6th Cir. 2008) ("where, as here, plaintiff has not raised arguments in the district court by virtue of his failure to oppose defendants' motions to dismiss, the arguments have been waived.").

2. The Plaintiffs' Amended Complaint does not assert a simple defamation or a TCPA claim.

The Plaintiffs purport to defend the validity of their simple defamation and TCPA claims. Appellants' Br. at 24–35; *id.* at 41–42. But the Plaintiffs *removed* their claim of simple defamation from their Amended Complaint[187] and asserted only a claim of "defamation by

[185] R. (Vol. 15) at 2132–44.
[186] *Compare id.* at 2132–33, *with* R. (Vol. 14) at 1965–86.
[187] *Compare* R. (Vol. 1) at 11–12, *with* R. (Vol. 13) at 1905–10.

implication or innuendo" instead,[188] which the Plaintiffs address in a separate section of their brief, *see* Appellants' Br. at 38–39. The Plaintiffs' Amended Complaint removed their TCPA claim, too.[189] Nevertheless, in a waste of everyone's time, the Plaintiffs defend on appeal two inoperative claims that their Amended Complaint abandoned.

3. False Light.

The Plaintiffs' defense of their false light claim in the trial court was limited to one sentence: "These comments were highly offensive to a reasonable person, *Loftis v. Rayburn,* supra, and portrayed plaintiffs in a false light."[190] On appeal, the Plaintiffs expand that defense to a page. Appellants' Br. at 35–36. The Plaintiffs do not include any record citations to support their argument, however. *Id.* This waives the issue. *DiNovo v. Binkley*, No. M2023-00345-COA-R3-CV, 2024 WL 3517642, at *3 (Tenn. Ct. App. July 24, 2024).

Based on the inadequacy of the Plaintiffs' briefing, Ms. Baldwin remains unclear what the Plaintiffs contend placed them in a "false light." The Plaintiffs assert that "Ms. Baldwin had published information regarding her daughter, Gracie," *id.* at 36, though neither Plaintiff is "Gracie." They also assert that Ms. Baldwin "mischaracterized Gracie's decision to reside temporarily with Ms. Black and Mr. Dozier," though they explain neither how they believe she did so nor how such a "mischaracteriz[ation]" could be deemed highly offensive to a reasonable person. *Id.* The Plaintiffs then reference "claims that Mr. Dozier is a

[188] R. (Vol. 13) at 1908–09.
[189] *Id.* 1905–10.
[190] R. (Vol. 15) at 2133.

pedophile, that he forced Gracie to crawl into bed with him for prayer time, and that Ms. Black and Mr. Dozier 'kidnapped' and 'groomed' Gracie[.]" *Id.* But the essence of a false light claim is that—although the published facts may be true—"the angle from which the facts are presented, or the omission of certain material facts, results in placing the plaintiff in a false light[,]" *West v. Media Gen. Convergence, Inc.*, 53 S.W.3d 640, 646 n.5 (Tenn. 2001), and the Plaintiffs make no effort to explain what material facts they believe were omitted or what inferences they believe damaged them. It also is not this Court's (or Ms. Baldwin's) job to guess what the Plaintiffs' undeveloped arguments could be. *Simmons*, 2024 WL 4948939, at *5. This, this Court should affirm the dismissal of Ms. Baldwin's false light claim.

4. Intentional Infliction of Emotional Distress.

The IIED section of the Plaintiffs' brief contains no record citations. Appellants' Br. at 37–38. This waives the issue. *DiNovo*, 2024 WL 3517642, at *3.

Waiver aside, the Plaintiffs' IIED claim fails. To be actionable, an IIED claim must satisfy a "high threshold standard[.]" *Bain v. Wells*, 936 S.W.2d 618, 622 (Tenn. 1997). It is not enough "that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by 'malice,' or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort." *Odom v. Claiborne Cnty., Tennessee*, 498 S.W.3d 882, 887 (Tenn. Ct. App. 2016) (cleaned up). "The outrageous conduct requirement is a high standard which has

consistently been regarded as a significant limitation on recovery." *Doe 1 ex rel. Doe 1 v. Roman Cath. Diocese of Nashville*, 154 S.W.3d 22, 39 (Tenn. 2005).

With the above standard in mind, IIED claims require an astonishing degree of outrageousness to survive. Tennessee's appellate courts appear to have blessed the theory in only six total cases ever, none of which resembles this one. *See Johnson v. Woman's Hosp.*, 527 S.W.2d 133, 140 (Tenn. Ct. App. 1975); *Lourcey v. Est. of Scarlett*, 146 S.W.3d 48, 52 (Tenn. 2004); *Akers v. Prime Succession of Tenn., Inc.*, 387 S.W.3d 495, 499 (Tenn. 2012); *Leach v. Taylor*, 124 S.W.3d 87, 89 (Tenn. 2004); *Levy v. Franks*, 159 S.W.3d 66, 84 (Tenn. Ct. App. 2004); *White v. Target Corp.*, No. W2010-02372-COA-R3-CV, 2012 WL 6599814, at *6 (Tenn. Ct. App. Dec. 18, 2012).

Here, the Plaintiffs maintain that their IIED claim was cognizable because Ms. Baldwin made "accusations" that "have absolutely no basis in fact." Appellants' Br. at 37. But this Court has never come close to holding that mere "accusations" give rise to IIED liability. And the Plaintiffs' own characterization of their IIED claim—that they should be able to recover for the "embarrassment and annoyance" they suffered, *id.* at 38—prevents the claim from being actionable not only under an IIED theory, but also removes it from the realm of *defamation*. *See Davis v. Covenant Presbyterian Church of Nashville*, No. M2014-02400-COA-R9-CV, 2015 WL 5766685, at *3 (Tenn. Ct. App. Sept. 30, 2015) ("'A libel does not occur simply because the subject of a publication finds the publication annoying, offensive or embarrassing.'") (cleaned up).

Nor does asserting an IIED claim based on the same statements as the Plaintiffs' other speech-based tort claims remove the tort from the TPPA's ambit. Thus, the Plaintiffs' undeveloped, citationless argument that "[t]his tort is not subject to the TPPA" (Appellees' Br. at 38) is waived, unsupported, and—most importantly—"misconstrue[s] the purpose and scope of the TPPA." *Goldberger*, 2024 WL 3339314, at *7.

5. Defamation by Implication or Innuendo.

The "Defamation by Implication or Innuendo" section of the Plaintiffs' brief contains no record citations. Appellants' Br. at 38–39. This waives the issue. *DiNovo*, 2024 WL 3517642, at *3.

This is no mere technical defect, either. As the trial court observed, a huge number of the statements that the Plaintiffs' Amended Complaint suggested were defamatory were not statements at all, but "questions."[191] For instance, Ms. Baldwin is alleged to have asked questions like: "'How is that not grooming?'";[192] "'And you're going to tell me this isn't a cult?'";[193] "Something sinister going on?'";[194] and "'Does Gracie have Stockholm Syndrome?'"[195] But a *question*—no matter how unflattering—cannot be defamatory. *Abbas v. Foreign Pol'y Grp., LLC*, 783 F.3d 1328, 1338–39 (D.C. Cir. 2015). The Plaintiffs also reference without citation "accusations that Mr. Dozier is a pedophile," Appellants' Br. at 38–39, though their Amended Complaint alleges differently that Ms. Baldwin

[191] R. (Vol. 17) at 2552.
[192] R. (Vol. 13) at 1899 ¶24.
[193] *Id*. at ¶34.
[194] *Id*. at 1901 ¶40.
[195] *Id*. at ¶42.

stated: "**I don't know** if you are a predator or a pedophile."[196]

At any rate, the Plaintiffs make no effort to engage with the essential reasoning underlying the trial court's dismissal: that "[t]he majority of the claimed remarks are questions[,]" "[a] question is incapable of providing a basis for a defamatory meaning as a matter of law[,]" and "[t]he statements made of the Defendant's opinion are not and cannot be defamatory as a matter of law."[197] The Plaintiffs' failure to engage with the trial court's reasoning waives the issue. *Payne*, 2021 WL 754860, at *7–8. Doubly so because the Plaintiffs waived opposition by failing to address Ms. Baldwin's well-developed arguments on these same points below.[198] *Charles*, 693 S.W.3d at 273 n.4.

6. <u>Intrusion Upon Seclusion.</u>

The Plaintiffs assert that they "stated a claim for invasion of privacy by intrusion upon seclusion." Appellants' Br. at 39–40. But although Ms. Baldwin *asserted* that the Plaintiffs failed to state a cognizable intrusion upon seclusion claim,[199] the trial court did not credit her argument.[200] Instead, that claim was dismissed only under Tennessee Code Annotated sections 20-17-105(b) and 20-17-105(c).[201]

Neither case-dispositive basis for dismissing this claim has been appealed. But because the trial court's dismissal was under the TPPA, this Court's decision affirming the dismissal of the Plaintiffs' intrusion

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[196] *Id*. at 1900 ¶30 (emphasis added).
[197] R. (Vol. 17) at 2552–53.
[198] *Compare* R. (Vol. 14) at 1965–86, *with* R. (Vol. 15) at 2132–33.
[199] R. (Vol. 14) at 1982–85.
[200] R. (Vol. 17) at 2552–53.
[201] R. (Vol. 18) at 2579.

upon seclusion claim must be under the TPPA, too.

7. Intentional Interference with Business Relationships.

Although asserted by both Plaintiffs in their Amended Complaint,[202] Plaintiff Black alone maintains in a citationless section that she stated a valid intentional interference with business relationships claim. Appellants' Br. at 40–41. But like the Plaintiffs' intrusion upon seclusion claim, the trial court did not dismiss the Plaintiffs' intentional interference with business relationships claim under Rule 12.02(6).[203] Instead, this claim was dismissed only under "Tenn. Code Ann. § 20-17-105(b) and Tenn. Code Ann. § 20-17-105(c)[.]"[204] As noted above, these rulings also are unappealed by the Plaintiffs—and Plaintiff Dozier has apparently abandoned his intentional interference claim anyway. Appellant's Br. at 52. Thus, this Court's order affirming the dismissal of the Plaintiffs' intentional interference with business relationships claim must be under the TPPA as well.

H. MS. BALDWIN IS ENTITLED TO RECOVER HER APPELLATE ATTORNEY'S FEES.

Fee-shifting in favor of prevailing TPPA petitioners is mandatory. Tenn. Code Ann. § 20-17-107(a)(1). Thus, this Court has "conclude[d] that the TPPA allows for an award of reasonable attorney's fees incurred on appeal, provided that the court dismisses a legal action pursuant to a petition filed under this chapter and that such fees are properly

[202] R. (Vol. 13) at 1909–10, ¶¶103–107.
[203] R. (Vol. 17) at 2552–53.
[204] R. (Vol. 18) 2572–73, 2579.

requested in an appellate pleading." *Nandigam Neurology, PLC*, 639 S.W.3d at 670.

"[A]n appellee is required to present the request [for attorney's fees] to the appellate court by raising it in the body of the brief, adequately developing the argument, and specifying that relief in the brief's conclusion." *Charles*, 693 S.W.3d at 284. These standards are met. Thus, upon affirming the trial court's order dismissing the Plaintiffs' claims under the TPPA, this Court should award Ms. Baldwin her attorney's fees under section 20-17-107(a)(1).

IX. CONCLUSION

The trial court's judgment should be affirmed, and this Court should award Ms. Baldwin her appellate attorney's fees under section 20-17-107(a)(1).

Respectfully submitted,

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CERTIFICATE OF ELECTRONIC FILING COMPLIANCE

Pursuant to Tennessee Supreme Court Rule 46, § 3.02, the relevant sections of this brief contain 15,000 words, as calculated by Microsoft Word, and it was prepared using 14-point Century Schoolbook font pursuant to § 3.02(a)(3).

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CERTIFICATE OF SERVICE

I hereby certify that on this the 9th day of January, 2025, a copy of the foregoing was served via the Court's electronic filing system, via email, and/or via USPS mail, postage prepaid, to the following parties:

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