

**IN THE COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION, AT NASHVILLE**

SECURE AIR CHARTER, LLC,	§	
	§	
<i>Plaintiff-Appellant,</i>	§	
	§	M2025-00312-COA-R3-CV
<i>v.</i>	§	
	§	Davidson Cty. Cir. Ct. No. 24C1828
MICHAEL JOHN BARRETT,	§	
JR.,	§	
	§	
<i>Defendant-Appellee.</i>	§	

BRIEF OF APPELLEE

DANIEL A. HORWITZ, BPR #032176
SARAH L. MARTIN, BPR #037707
HORWITZ LAW, PLLC
4016 WESTLAWN DR.
NASHVILLE, TN 37209
(615) 739-2888
daniel@horwitz.law
sarah@horwitz.law

Date: August 22, 2025

Counsel for Appellee

I. TABLE OF CONTENTS

I. TABLE OF CONTENTS _____ 2

II. TABLE OF AUTHORITIES _____ 4

III. INTRODUCTION _____ 9

IV. STATEMENT OF THE ISSUES _____ 11

V. STANDARDS OF REVIEW _____ 12

VI. STATEMENT OF THE CASE _____ 13

VII. STATEMENT OF FACTS _____ 16

VIII. ARGUMENT _____ 19

A. THE PLAINTIFF’S FAILURE TO INCLUDE A STATEMENT OF THE ISSUES WAIVES ALL ISSUES IN THIS APPEAL. _____ 19

B. THE PLAINTIFF HAS FAILED TO APPEAL MULTIPLE CASE-DISPOSITIVE RULINGS. _____ 24

1. The Plaintiff has not appealed one of the grounds for the trial court’s section 20-17-105(a) ruling. _____ 24

2. The Plaintiff has not appealed the trial court’s order dismissing the Plaintiff’s Complaint with prejudice under Tennessee Code Annotated sections 20-17-105(b) and (e). _____ 26

C. THE PLAINTIFF’S OBJECTIONS TO THE ADMISSIBILITY OF MR. BARRETT’S DECLARATION ARE BASELESS. _____ 27

D. THE TRIAL COURT ACTED WITHIN ITS DISCRETION TO DENY THE PLAINTIFF’S MOTION FOR LEAVE TO AMEND (THOUGH THE MATTER IS NOT YET WITHIN THIS COURT’S JURISDICTION TO REVIEW)____ 31

1.	The trial court’s order denying the Plaintiff’s motion for leave to amend is not yet within this Court’s jurisdiction to review. _____	32
2.	The Plaintiff ignores or fails to address the grounds for the trial court’s order to deny the Plaintiff’s motion for leave to amend. _____	33
3.	The trial court’s order denying the Plaintiff’s motion for leave to amend may be affirmed on multiple other grounds. _____	39
E.	MR. BARRETT IS ENTITLED TO RECOVER HIS ATTORNEY’S FEES ON APPEAL. _____	47
IX.	CONCLUSION _____	47
	CERTIFICATE OF COMPLIANCE _____	49
	CERTIFICATE OF SERVICE _____	50

II. TABLE OF AUTHORITIES

CASES

<i>Allen v. Albea</i> , 476 S.W.3d 366 (Tenn. Ct. App. 2015)	12
<i>Augustin v. Bradley Cnty. Sheriff's Off.</i> , 598 S.W.3d 220 (Tenn. Ct. App. 2019)	23, 33
<i>Basily v. Rain, Inc.</i> , 29 S.W.3d 879 (Tenn. Ct. App. 2000)	39
<i>Bean v. Bean</i> , 40 S.W.3d 52 (Tenn. Ct. App. 2000)	19
<i>Bemis Co., Inc. v. Hines</i> , 585 S.W.2d 574 (Tenn. 1979)	43
<i>Black v. Baldwin</i> , No. M2017-01502-COA-R3-CV, 2025 WL 1566392 (Tenn. Ct. App. June 3, 2025)	26, 47
<i>Brooks v. Bates</i> , No. E2017-02011-COA-R3-CV, 2019 WL 1771710 (Tenn. Ct. App. Apr. 22, 2019)	23
<i>Buckley v. Elephant Sanctuary in Tennessee, Inc.</i> , 639 S.W.3d 38 (Tenn. Ct. App. 2021)	10, 25
<i>Bunch v. Bunch</i> , 281 S.W.3d 406 (Tenn. Ct. App. 2008)	24
<i>Buttrey v. Holloway's, Inc.</i> , No. M2011-01335-COA-R3-CV, 2012 WL 6451802 (Tenn. Ct. App. Dec. 12, 2012)	41
<i>Charles v. McQueen</i> , 693 S.W.3d 262 (Tenn. 2024)	47

<i>Childress v. Union Realty Co.</i> , 97 S.W.3d 573 (Tenn. Ct. App. 2002)	9, 20
<i>Conley v. Life Care Centers of Am., Inc.</i> , 236 S.W.3d 713 (Tenn. Ct. App. 2007)	37
<i>Cumulus Broad., Inc. v. Shim</i> , 226 S.W.3d 366 (Tenn. 2007)	44
<i>In re Devin B.</i> , No. W2016-00121-COA-R3-JV, 2016 WL 4520859 (Tenn. Ct. App. Aug. 25, 2016)	22
<i>Dickson v. Kriger</i> , 374 S.W.3d 405 (Tenn. Ct. App. 2012)	12
<i>Doe v. Roe</i> , 638 S.W.3d 614 (Tenn. Ct. App. 2021)	29
<i>Fields v. Colgate Palmolive Co.</i> , 2010 WL 5252537 (D.N.J. Dec. 15, 2010)	38
<i>Freeman Indus. LLC v. Eastman Chem. Co.</i> , 227 S.W.3d 561 (Tenn. Ct. App. 2006)	12
<i>Goldberger v. Scott</i> , No. M2022-01772-COA-R3-CV, 2024 WL 3339314 (Tenn. Ct. App. July 9, 2024)	12
<i>Hawkins v. Hart</i> , 86 S.W.3d 522 (Tenn. Ct. App. 2001)	9, 20, 23, 24
<i>Hodge v. Craig</i> , 382 S.W.3d 325 (Tenn. 2012)	9, 19, 20
<i>Hwang v. Arita</i> , No. W2023-01703-COA-R3-CV, 2025 WL 1540652 (Tenn. Ct. App. May 30, 2025)	19
<i>Johnson v. Johnson</i> , No. E2020-00875-COA-R3-CV, 2021 WL 1263985 (Tenn. Ct. App. Apr. 6, 2021)	23

<i>Lazaroff v. Lazaroff</i> , No. M2022-01004-COA-R3-CV, 2023 WL 7039521 (Tenn. Ct. App. Oct. 26, 2023)	19
<i>Lee v. State Volunteer Mut. Ins. Co.</i> , No. E2002-03127-COA-R3-CV, 2005 WL 123492 (Tenn. Ct. App. Jan. 21, 2005)	40
<i>Loftis v. Rayburn</i> , No. M2017-01502-COA-R3-CV, 2018 WL 1895842 (Tenn. Ct. App. Apr. 20, 2018)	25
<i>Lovelace v. Baptist Mem’l Hosp.</i> , No. W2019-00453-COA-R3-CV, 2020 WL 260295 (2020)	25
<i>McGuire v. Lewis</i> , No. M2024-01242-COA-R3-JV, 2025 WL 1392217 (Tenn. Ct. App. May 14, 2025)	33, 35, 39
<i>McNeill v. Blount Mem’l Hosp. Inc.</i> , No. E2022-00209-COA-R3-CV, 2022 WL 16955177 (Tenn. Ct. App. Nov. 16, 2022)	33
<i>Memphis Pub. Co. v. Tennessee Petroleum Underground Storage Tank Bd.</i> , 975 S.W.2d 303 (Tenn. 1998)	42
<i>Merriman v. Smith</i> , 599 S.W.2d 548 (Tenn. Ct. App. 1979)	44
<i>Nandigam Neurology, PLC v. Beavers</i> , 639 S.W.3d 651 (Tenn. Ct. App. 2021)	12, 31, 46, 47
<i>Owen v. Long Tire, LLC</i> , No. W2011-01227-COA-R3CV, 2011 WL 6777014 (Tenn. Ct. App. Dec. 22, 2011)	19
<i>Payne v. Bradley</i> , No. M2019-01453-COA-R3-CV, 2021 WL 754860 (Tenn. Ct. App. Feb. 26, 2021)	10, 33
<i>Recipient of Final Expunction Ord. in McNairy Cnty. Cir. Ct. Case No. 3279 v. Rausch</i> , 645 S.W.3d 160 (Tenn. 2022)	32

<i>Smith v. Methodist Hosps. of Memphis</i> , No. W2018-00435-COA-R3-CV, 2019 WL 920149 (Tenn. Ct. App. Feb. 25, 2019)	23
<i>Smith v. Oakwood Subdivision Homeowners Ass'n, Inc.</i> , No. W2022-00845-COA-R3-CV, 2023 WL 8599720 (Tenn. Ct. App. Dec. 12, 2023)	25, 26
<i>Sneed v. Bd. of Prof'l Resp. of Sup. Ct.</i> , 301 S.W.3d 603 (Tenn. 2010)	39
<i>Tennessee Dep't of Mental Health & Mental Retardation v. Hughes</i> , 531 S.W.2d 299 (Tenn. 1975)	33
<i>Watson v. Watson</i> , No. E2010-00577-COA-R3-CV, 2010 WL 5549050 (Tenn. Ct. App. Dec. 29, 2010)	43

STATUTES

Tenn. Code Ann. § 20-17-103	29
Tenn. Code Ann. § 20-17-104(a)	21, 29, 38
Tenn. Code Ann. § 20-17-105	<i>passim</i>
Tenn. Code Ann. § 20-17-106	33, 34
Tenn. Code Ann. § 20-17-107(a)	47

RULES

Tenn. R. App. P. 13(b)	23
Tenn. R. App. P. 27	<i>passim</i>
Tenn. R. Civ. P. 11.02	45

Tenn. R. Civ. P. 12.02	37
Tenn. R. Civ. P. 15	37
Tenn. R. Civ. P. 41.01	43, 44
Tenn. R. Civ. P. 59	40
Tenn. R. Civ. P. 60	40
Tenn. R. Evid. 701	21
Tenn. R. Evid. 803	25

III. INTRODUCTION

The Plaintiff—a charter jet company—sued its former employee and pilot, Defendant Michael Barrett, for whistleblowing to the Federal Aviation Administration about the Plaintiff’s non-compliance with safety standards. The Plaintiff claimed that Mr. Barrett’s reports to the FAA tortiously interfered with the Plaintiff’s prospective business relationships. After the trial court granted Mr. Barrett’s Tennessee Public Participation Act (TPPA) Petition to Dismiss the Plaintiff’s Complaint, the Plaintiff filed this interlocutory appeal as of right.

Unfortunately, the Plaintiff’s brief does not include a Statement of the Issues, leaving this Court (and Mr. Barrett) to guess at what the Plaintiff is asking this Court to review. *See* Appellant’s Br. That defect alone waives every issue in this appeal and warrants dismissing it. *See, e.g., Hawkins v. Hart*, 86 S.W.3d 522, 531 (Tenn. Ct. App. 2001) (“Courts have consistently held that issues must be included in the Statement of Issues Presented for Review required by Tennessee Rules of Appellate Procedure 27(a)(4). An issue not included is not properly before the Court of Appeals.”); *Childress v. Union Realty Co.*, 97 S.W.3d 573, 578 (Tenn. Ct. App. 2002) (“We consider an issue waived where it is argued in the brief but not designated as an issue.”); *Hodge v. Craig*, 382 S.W.3d 325, 335 (Tenn. 2012) (“[A]n issue may be deemed waived when it is argued in the brief but is not designated as an issue in accordance with Tenn. R. App. P. 27(a)(4).”).

Apart from that defect, the Plaintiff has failed to appeal multiple case-dispositive issues. The Plaintiff’s brief also fails to address the trial court’s reasoning as to the orders it challenges. These failures, too, doom

the Plaintiff's appeal. *Buckley v. Elephant Sanctuary in Tennessee, Inc.*, 639 S.W.3d 38, 55 (Tenn. Ct. App. 2021) (“[W]here 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, we must affirm the judgment of the trial court on the ground that was not challenged on appeal.”); *Payne v. Bradley*, No. M2019-01453-COA-R3-CV, 2021 WL 754860, at *7–8 (Tenn. Ct. App. Feb. 26, 2021) (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.”).

Waivers aside, the Plaintiff's claims are meritless. Mr. Barrett's Declaration was admissible to establish the facts asserted in it—namely, what he sent to the FAA and why—and the Plaintiff's contrary claims that Mr. Barrett's Declaration was inadmissible opinion testimony, or lacked foundation, or suffered from some other admissibility defect are wrong. Mr. Barrett's Declaration established that the Plaintiff's claims were filed in response to Mr. Barrett's exercise of his rights to free speech and to petition. Mr. Barrett also met, on a separate basis, his burden of proving that the Plaintiff's claims were filed in response to his exercise of the right to free speech and to petition, given that the Plaintiff's own Complaint said so explicitly. Further, for multiple reasons, the trial court acted within its discretion to deny the Plaintiff's motion for leave to amend, though that issue is not yet before the Court.

For all of these reasons, the trial court's judgment should be **AFFIRMED**. Mr. Barrett also is entitled to recover his attorney's fees incurred on appeal.

IV. STATEMENT OF THE ISSUES

1. Whether the Plaintiff's failure to include a Statement of the Issues Presented for Review waives review of all issues that the Plaintiff has argued in this appeal.

2. Whether the Plaintiff's failure to challenge case-dispositive rulings and to address the trial court's reasoning in the orders the Plaintiff challenges waives review of all issues that the Plaintiff has argued in this appeal.

3. Whether this Court should affirm the trial court's ruling that Mr. Barrett met his initial burden under Tennessee Code Annotated section 20-17-105(a) and the trial court's resulting, unchallenged dismissal order.

4. Whether this Court has subject-matter jurisdiction to review the trial court's order denying the Plaintiff's motion for leave to amend.

5. Whether, if this Court has subject-matter jurisdiction to review the trial court's order denying the Plaintiff's motion for leave to amend, the trial court abused its discretion by denying the Plaintiff's motion for leave to amend.

6. Whether Mr. Barrett is entitled to recover his attorney's fees incurred on appeal.

V. STANDARDS OF REVIEW

1. Whether the Plaintiff's briefing deficiencies warrant dismissing this appeal—and whether waiver doctrines apply—are matters considered by this Court in the first instance.

2. This Court reviews a trial court's decision to admit evidence for abuse of discretion. *Allen v. Albea*, 476 S.W.3d 366, 377 (Tenn. Ct. App. 2015) (citing *Dickson v. Kriger*, 374 S.W.3d 405, 408 (Tenn. Ct. App. 2012)).

3. The trial court's Tennessee Public Participation Act rulings are reviewed *de novo*. See *Goldberger v. Scott*, No. M2022-01772-COA-R3-CV, 2024 WL 3339314, at *3 (Tenn. Ct. App. July 9, 2024).

4. This Court's subject-matter jurisdiction over the issues presented in this interlocutory appeal is a threshold legal question that this Court must address in the first instance. *Recipient of Final Expunction Ord. in McNairy Cnty. Cir. Ct. Case No. 3279 v. Rausch*, 645 S.W.3d 160, 167 (Tenn. 2022).

5. A trial court's order denying a motion to amend is reviewed for abuse of discretion. See *Freeman Indus. LLC v. Eastman Chem. Co.*, 227 S.W.3d 561, 565 (Tenn. Ct. App. 2006).

6. Whether Mr. Barrett may recover attorney's fees on appeal is a mandatory determination made by this Court in the first instance. See *Nandigam Neurology, PLC v. Beavers*, 639 S.W.3d 651, 668 (Tenn. Ct. App. 2021).

VI. STATEMENT OF THE CASE

On July 30, 2024, the Plaintiff filed a single-count Complaint for Intentional Interference With Business Relationships.¹ On September 11, 2024, Mr. Barrett answered.² The same day, Mr. Barrett moved under Rule 12.02(6) and petitioned under the Tennessee Public Participation Act to dismiss the Plaintiff's Complaint.³ Mr. Barrett moved for summary judgment, too.⁴

On September 20, 2024, the Plaintiff filed a one-page response to Mr. Barrett's TPPA Petition that included no evidence.⁵ The Plaintiff also moved to amend its Complaint.⁶ The Plaintiff's proposed amended complaint sought to abandon the only cause of action asserted in its operative Complaint and to replace it with a different claim entirely.⁷ The Plaintiff also filed a motion to conduct discovery that does not appear to have been included in the appellate record.

Afterward, Mr. Barrett replied to assert, among other things, that the Plaintiff's motion to amend "does not affect Mr. Barrett's pending TPPA petition," that the "Plaintiff's claimed need for discovery [was] inadequately supported[,]" and that Mr. Barrett's TPPA petition should be granted without delay.⁸ Mr. Barrett also asked the Court to continue

¹ R. (Vol. 1) at 1–4.

² *Id.* at 5–8.

³ *Id.* at 9–12; *see also id.* at 13–34 (Memorandum of Law).

⁴ *Id.* at 35–49.

⁵ *Id.* at 50–51.

⁶ *Id.* at 52–59.

⁷ *Id.* at 54–59.

⁸ *Id.* at 66–134.

the Plaintiff's motions and to adjudicate his TPPA petition first.⁹

All pending motions came before the Court for hearing on September 27, 2025.¹⁰ Following that hearing, the trial court did not adjudicate Mr. Barrett's TPPA Petition as Mr. Barrett had requested, nor did it continue the Plaintiff's discovery motion as Mr. Barrett had requested. Instead, the trial court granted the Plaintiff leave to take limited discovery; it afforded the Plaintiff 90 days to do so; and it continued both Mr. Barrett's TPPA Petition and the Plaintiff's Motion to Amend until January 24, 2025.¹¹

The Parties then returned to the trial court for hearing on January 24, 2025. In advance of that hearing, Mr. Barrett responded in opposition to the Plaintiff's Motion to Amend.¹² The Plaintiff, for its part, filed a one-page "Supplemental Response" to Mr. Barrett's TPPA Petition that (once again) included no evidence.¹³ The Plaintiff also filed another motion to conduct further discovery that does not appear to have been included in the appellate record, either. Afterward, Mr. Barrett filed a Reply urging the trial court to grant his TPPA Petition without further delay and to deny the Plaintiff's motion for further discovery.¹⁴

On January 31, 2025, the trial court entered a written order that—as relevant here—granted Mr. Barrett's TPPA Petition and denied the

⁹ R. (Vol. 2) at 135–38.

¹⁰ *Id.* at 159–99.

¹¹ *Id.* at 139–42.

¹² *Id.* at 143–204.

¹³ *Id.* at 205–07.

¹⁴ *Id.* at 208–39.

Plaintiff's Motion to Amend.¹⁵ Afterward, the Plaintiff filed this interlocutory appeal as of right.¹⁶ This interlocutory appeal followed. While it proceeds, the trial court has "held in abeyance" Mr. Barrett's "claims for further relief under the TPPA, including sanctions[.]"¹⁷

¹⁵ *Id.* at 241–45.

¹⁶ *Id.* at 246–48.

¹⁷ *Id.* at 242.

VII. STATEMENT OF FACTS

On July 30, 2024, the Plaintiff sued Mr. Barrett for a single-count of Intentional Interference With Business Relationships.¹⁸ The Plaintiff's Complaint was explicit about why it was suing Mr. Barrett: It was because Mr. Barrett made "reports to the Federal Aviation Administration regarding the Plaintiff's business and operations" and its "safety procedures" and because Mr. Barrett made "written statements to the Federal Aviation Administration" that the Plaintiff alleged were "false."¹⁹

The Plaintiff did not qualify these allegations or assert that it needed discovery to support them.²⁰ Instead, without qualification, the Plaintiff asserted that Mr. Barrett had made "false reports to the Federal Aviation Administration" that "contain false statements related to Plaintiff's safety procedures[,] "business[,] and operations."²¹ When forced to support its claims with evidence, though, the Plaintiff later judicially admitted—through counsel—that it could not do so because: (1) it had never seen any of the written documents that Mr. Barrett sent to the FAA, (2) "[w]e don't know what he told them[.]" and (3) as to Mr. Barrett's statements to the FAA, "we don't know what they are."²²

¹⁸ R. (Vol. 1) at 1–4.

¹⁹ *Id.* at 2.

²⁰ *Id.*

²¹ *Id.*

²² R. (Vol. 2) at 171:3–5 ("[H]e filed written documents with the FAA. We don't have them. We don't know what he told them."); *id.* at 171:20–22 ("we don't know what they are"). Because the transcript in which these statements were made appears in the Technical Record as an exhibit, Mr.

Mr. Barrett then filed a TPPA Petition to dismiss the Plaintiff's claim against him.²³ Mr. Barrett's TPPA Petition asserted that he was being sued for exercising his right to speech and petition.²⁴ As evidence, Mr. Barrett pointed to: (1) the party admissions in the Plaintiff's Complaint indicating that the Plaintiff was suing Mr. Barrett for making statements to the FAA related to, among other things, the Plaintiff's safety procedures; and (2) his own Declaration, which explained that, "[t]o encourage review of an issue by a federal governmental body, and in the hopes of protecting the public, [Mr. Barrett] made truthful reports to the Federal Aviation Administration (FAA) regarding Plaintiff Secure Air Charter, LLC's non-compliance with certain safety standards."²⁵ Mr. Barrett's Declaration also explained that his reports "included forwarding the FAA verbatim, unmodified emails that [he] received while employed by the Plaintiff."²⁶

When the trial court ultimately heard and adjudicated Mr. Barrett's TPPA Petition, the evidentiary record was one-sided. As noted, to meet his own initial burden, Mr. Barrett had introduced—and the trial court admitted—the party admissions in the Plaintiff's Complaint and Mr. Barrett's Declaration.²⁷ The Plaintiff, by contrast, introduced no evidence at all, whether "by affidavit, declaration, deposition,

Barrett has moved this Court to order the trial court clerk to supplement the appellate record with the relevant transcript of proceedings.

²³ R. (Vol. 1) at 9–12; *see also id.* at 13–34.

²⁴ *Id.* at 9; *see also id.* at 24–27.

²⁵ *Id.* at 25–27, 34; *see also id.* at 2.

²⁶ *Id.* at 34.

²⁷ R. (Vol. 2) at 240.

documentation” or anything else.²⁸ Thus, the trial court ruled that Mr. Barrett met his initial burden under Tennessee Code Annotated section 20-17-105(a), and it ruled that the Plaintiff failed to meet its evidentiary burden in response as to “any essential element of the claim in [the Plaintiff’s] Complaint.”²⁹ As a result, the trial court “grant[ed] [Mr. Barrett’s] Tennessee Public Participation Act Petition and dismiss[ed] the Plaintiff’s Complaint under Tenn. Code Ann. § 20-17-105(b) for failure to establish a prima facie case for any essential element of the claim in [its] Complaint.”³⁰ Thus, the trial court granted Mr. Barrett’s TPPA Petition and dismissed the Plaintiff’s Complaint with prejudice under Tennessee Code Annotated section 20-17-105(e).³¹

After dismissing the Plaintiff’s Complaint, the trial court adjudicated the Plaintiff’s Motion to Amend. The trial court then denied that motion on two grounds: (1) because the trial court’s dismissal of this action with prejudice rendered the motion moot, and (2) because the Plaintiff’s proposed amended complaint relied “on the same essential factual allegations” as its operative Complaint and the Plaintiff had already made clear that—despite its Complaint’s unqualified allegations about Mr. Barrett’s reports—the Plaintiff had “no evidence to support them,” even after a discovery period.³² This appeal followed.

²⁸ *Id.* at 241.

²⁹ *Id.* at 240–41.

³⁰ *Id.* at 241.

³¹ *Id.*

³² *Id.* at 242.

VIII. ARGUMENT

A. THE PLAINTIFF’S FAILURE TO INCLUDE A STATEMENT OF THE ISSUES WAIVES ALL ISSUES IN THIS APPEAL.

This appeal is governed by the Tennessee Rules of Appellate Procedure. “[T]he failure to comply with Rule 27 of the Tennessee Rules of Appellate Procedure may result in the dismissal of an appeal and/or the waiver of all issues.” *See Hwang v. Arita*, No. W2023-01703-COA-R3-CV, 2025 WL 1540652, at *4 (Tenn. Ct. App. May 30, 2025); *see also Lazaroff v. Lazaroff*, No. M2022-01004-COA-R3-CV, 2023 WL 7039521, at *4 (Tenn. Ct. App. Oct. 26, 2023) (“Ordinarily, ‘failure to comply with the Rules of Appellate Procedure and the Rules of this Court’ constitutes a waiver of the issues raised by the appellant.”) (citing *Bean v. Bean*, 40 S.W.3d 52, 55 (Tenn. Ct. App. 2000)). Applying waiver also is especially appropriate when—as here—an appellant has omitted “the most important part of an appellate brief.” *Hodge*, 382 S.W.3d at 334.

The Plaintiff’s brief is massively deficient. Those deficiencies also unfairly prejudice Mr. Barrett’s ability to respond. Thus, all issues presented here should be deemed waived. *See id.*

Here, “[t]he most glaring deficiency” in the Plaintiff’s brief is “the complete omission of any statement of issues presented for review.” *See Owen v. Long Tire, LLC*, No. W2011-01227-COA-R3CV, 2011 WL 6777014, at *4 (Tenn. Ct. App. Dec. 22, 2011). As this Court has made clear many times, the requirement that an appellant designate the issues raised on appeal “is no mere technicality.” *Id.* For one thing, “the appellee is entitled to fair notice of the appellate issues so as to prepare his or her response.” *Id.* For another, “this Court is not charged with the

responsibility of scouring the appellate record for any reversible error the trial court may have committed.” *Id.* Thus, “[c]ourts have consistently held that issues must be included in the Statement of Issues Presented for Review required by Tennessee Rules of Appellate Procedure 27(a)(4).” *Hawkins*, 86 S.W.3d at 531. And “[a]n issue not included is not properly before the Court of Appeals.” *Id.*

Here, the Plaintiff has not included a Statement of the Issues Presented for Review. *See generally* Appellant’s Br. To be sure, the Plaintiff’s brief includes *argument* on many matters. *See id.* at 9–25. But this Court will “consider an issue waived where it is argued in the brief but not designated as an issue.” *See Childress*, 97 S.W.3d at 578; *see also Hodge*, 382 S.W.3d at 335 (“[A]n issue may be deemed waived when it is argued in the brief but is not designated as an issue in accordance with Tenn. R. App. P. 27(a)(4).”). There also is good reason for this rule: “Rather than searching for hidden questions, appellate courts prefer to know immediately what questions they are supposed to answer.” *Id.* at 334.

Apart from interfering with this Court’s ability to adjudicate the Plaintiff’s claims, the Plaintiff’s failure to specify the issues presented in this appeal prejudices Mr. Barrett’s ability to respond to them. To illustrate why, Mr. Barrett notes that—although the Plaintiff’s brief includes argument headings that suggest certain issues—the arguments within those sections imply a huge number of additional issues that go well beyond the scope of those headings, including:

1. whether the Plaintiff was “unfairly preclude[d] . . . from

conducting discovery or from [taking] a voluntary dismissal[,]" Appellant's Br. at 15;

2. whether the trial court erred by reasoning that the Plaintiff had "no evidence" to support his proposed amended claim, *id.* at 16;

3. whether the trial court "imposed an improper burden on to the Plaintiff" when it denied the Plaintiff's motion for leave to amend, *id.*;

4. whether Mr. Barrett's Declaration was inadmissible under Tennessee Rule of Evidence 701(a)(2), *id.* at 17;

5. "[i]n addition," whether Mr. Barrett's Declaration "was legally insufficient to satisfy the requirements of Tenn. Code Ann. § 20-17-104(a)[,]" *id.*;

6. whether Mr. Barrett's Declaration was "rationally based upon [his] perception [as a] witness[,]" *id.* at 18;

7. whether Mr. Barrett's Declaration was supported by a proper foundation, *id.*;

8. whether Mr. Barrett's Declaration was improperly "conclusory[,]" *id.* at 18–19, 21;

9. whether the trial court erred by "afford[ing] . . . any credibility" to Mr. Barrett's Declaration, *id.* at 19;

10. whether Mr. Barrett's Declaration was inadmissible under "Tenn. R. Evid. Rule 701(a)(1)[,]" *id.* at 20;

11. whether "[t]he emails and reports" referenced in Mr. Barrett's Declaration "were not admissible either," *id.*;

12. whether "[i]t was an abuse of discretion for the Trial Court to admit the Declaration of Michael John Barrett, Jr. into evidence for any

purpose,” *id.*;

13. whether “[t]he writings referred to in Mr. Barrett’s Declaration were extrinsic evidence which should not have been indirectly admitted or considered[.]” *id.*

14. whether Mr. Barrett “was wholly unqualified to opine about non-compliance with certain safety standards[.]” *id.* at 22;

15. whether “[t]he only purported proof submitted to support the Petition was the defective Declaration of Michael John Barrett, Jr.[.]” *id.* at 23;

16. whether, “if the Motion should have been granted at all, it should have been on” non-TPPA grounds, *id.*;

17. whether “Mr. Barrett failed to prove any petitioning activity because he failed to lay a proper foundation for the introduction of his so-called Declaration[.]” *id.*; and

18. whether, “even if the Declaration of Michael John Barrett, Jr. were properly admissible, it fails to satisfy any of the elements required to meet his initial burden under the TPPA[.]” *id.* at 24.

It is not Mr. Barrett’s job—or the Court’s—to guess at which of these issues “buried . . . within [the Plaintiff’s] appellate brief” the Plaintiff actually intends to present in this appeal. *Cf. In re Devin B.*, No. W2016-00121-COA-R3-JV, 2016 WL 4520859, at *5 (Tenn. Ct. App. Aug. 25, 2016) (“Father failed to raise this issue in his Statement of Issues Presented for Review and instead buried a two sentence reference to the issue within his appellate brief. Accordingly, we must conclude that Father waived any issues related to due process.”). Leaving Mr.

Barrett to guess at the arguments that he needs to rebut also unfairly prejudices his ability to respond. Thus, this Court should follow the same waiver rules it has applied “consistently” for decades. *See Hawkins*, 86 S.W.3d at 531. In particular, this Court should hold that: (1) “issues must be included in the Statement of Issues Presented for Review required by Tennessee Rules of Appellate Procedure 27(a)(4)[,]” and (2) “[a]n issue not included is not properly before the Court of Appeals.” *Id.*; *see also* Tenn. R. App. P. 13(b) (“Review generally will extend only to those issues presented for review.”). As a result, all issues that are not included in a Statement of Issues Presented for Review—which encompasses all of the issues in this appeal—should be deemed waived. *See, e.g., Augustin v. Bradley Cnty. Sheriff's Off.*, 598 S.W.3d 220, 226 (Tenn. Ct. App. 2019) (a statement of the issues is “an integral portion of an appellate brief” and “issues that are not properly designated are generally waived even when argued in the body of the brief.”); *Johnson v. Johnson*, No. E2020-00875-COA-R3-CV, 2021 WL 1263985, at *2 (Tenn. Ct. App. Apr. 6, 2021) (“[W]here a party fails to specifically present an issue for appeal, we may deem the issue to be waived.”); *Smith v. Methodist Hosps. of Memphis*, No. W2018-00435-COA-R3-CV, 2019 WL 920149, at *5 (Tenn. Ct. App. Feb. 25, 2019) (same; collecting authority); *Brooks v. Bates*, No. E2017-02011-COA-R3-CV, 2019 WL 1771710, at *2 (Tenn. Ct. App. Apr. 22, 2019) (“As we have noted numerous times: ‘Courts have consistently held that issues must be included in the Statement of Issues Presented for Review required by Tennessee Rules of Appellate Procedure 27(a)(4). An issue not included is not properly before the Court of Appeals.’”) (quoting

Hawkins, 86 S.W.3d at 531); *Bunch v. Bunch*, 281 S.W.3d 406, 410 (Tenn. Ct. App. 2008) (same).

B. THE PLAINTIFF HAS FAILED TO APPEAL MULTIPLE CASE-DISPOSITIVE RULINGS.

The trial court made two essential rulings under the TPPA. First, it held that Mr. Barrett met his initial burden under Tennessee Code Annotated section 20-17-105(a). Second, it held that the Plaintiff's Complaint must be dismissed under section 20-17-105(b) due to the Plaintiff's "failure to establish a prima facie case for any essential element of the claim in [its] Complaint."³³ As detailed below, the Plaintiff has not appealed one of the grounds for the trial court's section 20-17-105(a) ruling, and it has not appealed the trial court's section 20-17-105(b) ruling at all. These failures are case-dispositive.

1. The Plaintiff has not appealed one of the grounds for the trial court's section 20-17-105(a) ruling.

The trial court held that Mr. Barrett presented admissible evidence to meet his initial burden under section 20-17-105(a).³⁴ This holding also was not limited to Mr. Barrett's Declaration. Instead, it *also* was based on "the party admissions in the Plaintiff's Complaint[.]"³⁵ That determination was well-supported; as Mr. Barrett emphasized below, "the Plaintiff's own statements in [its] Complaint make clear that the Plaintiff has sued Mr. Barrett for petitioning 'the Federal Aviation Administration,'"³⁶ and "[s]uch statements in the Plaintiff's Complaint

³³ R. (Vol. 2) at 241.

³⁴ *Id.* at 240.

³⁵ *Id.*

³⁶ *Id.* at 209–10 (citing R. (Vol. 1) at 2 ¶¶ 7, 8, 9, 13).

are, of course, conclusive judicial admissions of a party opponent that are fully admissible as evidence against the Plaintiff.”³⁷

Although the trial court grounded its section 20-17-105(a) ruling on both forms of evidence—Mr. Barrett’s Declaration *and* the party admissions in the Plaintiff’s Complaint³⁸—the Plaintiff’s brief addresses only Mr. Barrett’s Declaration. *See generally* Appellant’s Br. Thus, the party admissions in the Plaintiff’s Complaint upon which the trial court relied in holding that Mr. Barrett met his initial burden under section 20-17-105(a) are unmentioned. *Id.*

This omission is dispositive of any challenge to the trial court’s section 20-17-105(a) ruling. As this Court has explained many times, “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 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 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”); *Buckley*, 639 S.W.3d at 55 (same). There also is

³⁷ *Id.* at 210 (citing *Loftis v. Rayburn*, No. M2017-01502-COA-R3-CV, 2018 WL 1895842, at *11 (Tenn. Ct. App. Apr. 20, 2018); Tenn. R. Evid. 803(1.2)).

³⁸ *Id.* at 240.

no exception to this rule when it comes to TPPA cases. *See Black v. Baldwin*, No. M2024-00151-COA-R3-CV, 2025 WL 1566392, at *5 (Tenn. Ct. App. June 3, 2025) (collecting authority and holding that “we must conclude that Plaintiffs have waived review of the trial court's dismissal of the action pursuant to the TPPA by failing to appeal all alternative grounds of dismissal.”). For these reasons, the trial court’s section 20-17-105(a) ruling must be affirmed on the unappealed ground that Mr. Barrett met his initial burden by introducing into the TPPA evidentiary record “the party admissions in the Plaintiff’s Complaint.”³⁹

2. The Plaintiff has not appealed the trial court’s order dismissing the Plaintiff’s Complaint with prejudice under Tennessee Code Annotated sections 20-17-105(b) and (e).

The Plaintiff does not challenge the trial court’s section 20-17-105(b) ruling. Instead, the Plaintiff’s argument is that Mr. Barrett failed to “meet his initial burden under the TPPA and, therefore, the burden of proof should have never shifted to Secure Air.” Appellant’s Br. at 24.

As detailed above, the Plaintiff has failed to appeal one of the trial court’s grounds for ruling that Mr. Barrett met his initial burden under section 20-17-105(a). Thus, 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. And because the Plaintiff offers no argument that the trial court erred by then dismissing its Complaint with prejudice under sections 20-17-105(b) and (e), *see generally* Appellant’s Br., the trial court’s unchallenged dismissal ruling must be affirmed, too.

³⁹ *Id.*

* * *

For the foregoing reasons, the Plaintiff has failed to appeal one of the trial court's bases for ruling that Mr. Barrett met his initial burden under section 20-17-105(a). The Plaintiff also has not challenged the trial court's resulting order dismissing the Plaintiff's Complaint with prejudice under sections 20-17-105(b) and (e). In combination, these unchallenged rulings are dispositive of this appeal. Thus, the trial court's judgment should be affirmed.

C. THE PLAINTIFF'S OBJECTIONS TO THE ADMISSIBILITY OF MR. BARRETT'S DECLARATION ARE BASELESS.

Though the Plaintiff leaves unchallenged the trial court's order finding that the party admissions in the Plaintiff's Complaint enabled Mr. Barrett to meet his initial burden under section 20-17-105(a), the Plaintiff does complain at length about the trial court's order admitting Mr. Barrett's Declaration. *See* Appellant's Br. at 17–22. As grounds, the Plaintiff variously insists that Mr. Barrett's Declaration was inadmissible opinion testimony under Tennessee Rule of Evidence 701(a)(1)–(2), that it lacked foundation, that it was improper expert testimony, and that the documents referenced in Mr. Barrett's Declaration were extrinsic evidence that should not have been considered. *Id.* The Plaintiff also asserts that, even if properly admitted, Mr. Barrett's Declaration was insufficient to meet his initial burden under section 20-17-105(a). *Id.* at 24.

None of these objections makes sense. The Plaintiff's Complaint asserted explicitly—and repeatedly—that the Plaintiff was suing Mr. Barrett based on reports that Mr. Barrett made to the FAA, including

about “Plaintiff’s safety procedures.”⁴⁰ Thus, to meet his initial burden under section 20-17-105(a), Mr. Barrett’s Declaration asserted—based on his personal knowledge—that he had made truthful reports to the FAA about the Plaintiff’s non-compliance with safety standards that “included forwarding the FAA verbatim, unmodified emails that [he] received while employed by the Plaintiff.”⁴¹ Mr. Barrett’s Declaration also explained the reason why he did so: “To encourage review of an issue by a federal governmental body, and in the hopes of protecting the public[.]”⁴²

This was not opinion testimony. Instead, Mr. Barrett’s Declaration presented *facts* detailing what he sent to the FAA and why.⁴³ The foundation for Mr. Barrett’s testimony also was clear from the face of his Declaration: It was based on his “personal knowledge of the facts” asserted in his Declaration.⁴⁴ Nor was Mr. Barrett offering expert testimony; instead, once again, Mr. Barrett explained only what he sent to the FAA and why. The Plaintiff’s complaint about the documents referenced in Mr. Barrett’s Declaration being admitted improperly is similarly baffling; the trial court did not admit any documents referenced in Mr. Barrett’s Declaration. For these reasons, the Plaintiff’s objections to the admissibility of Mr. Barrett’s Declaration lack merit.

The Plaintiff’s undeveloped assertion that “even if the Declaration of Michael John Barrett, Jr. were properly admissible, it fails to satisfy

⁴⁰ R. (Vol. 1) at 2–3.

⁴¹ *Id.* at 34.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

any of the elements required to meet his initial burden under the TPPA and, therefore, the burden of proof should have never shifted to Secure Air” makes even less sense. *See* Appellant’s Br. at 24. Under section 20-17-103(4)(A), “[e]xercise of the right to petition’ means a communication that falls within the protection of the United States Constitution or the Tennessee Constitution and: (A) Is intended to encourage consideration or review of an issue by a federal . . . governmental body[.]” The FAA inarguably qualifies as such a federal governmental body, and Mr. Barrett’s Declaration explained that he made the reports at issue to encourage the FAA’s review.⁴⁵ The Plaintiff also does not dispute that it sued Mr. Barrett in response to his reports to the FAA, which—again—the Plaintiff’s own Complaint stated explicitly many times.⁴⁶

Under these circumstances, the trial court understandably concluded that “the Plaintiff’s legal action against the Defendant is based on, relates to, or is in response to the Defendant’s exercise of . . . the right to petition within the meaning of Tenn. Code Ann. § 20-17-104(a) and Tenn. Code Ann. § 20-17-103 . . . (4)(A).”⁴⁷ That ruling fits neatly within both this Court’s precedent and the statute’s plain text. *See Doe v. Roe*, 638 S.W.3d 614, 623 (Tenn. Ct. App. 2021) (“[B]ased on our plain reading of the TPPA, the right to petition merely requires there to be a communication that is either intended to elicit consideration or review by a governmental body or intended to “enlist public participation’ to effectuate such consideration.”) (quoting Tenn. Code Ann. § 20-17-

⁴⁵ *Id.*

⁴⁶ *Id.* at 2–3.

⁴⁷ *Id.* at 240.

103(4)). The trial court’s petition-based ruling also was separate from the trial court’s speech-based determination under section 20-17-103(3),⁴⁸ which Mr. Barrett also established. *Compare* R. (Vol. 1) at 34 (Mr. Barrett made reports to the FAA about the Plaintiff’s “non-compliance with certain safety standards” and he did so “in the hopes of protecting the public[.]”) *and id.* at 2 (indicating that the Plaintiff sued Mr. Barrett for making statements to the FAA “related to Plaintiff’s safety procedures.”), *with* Tenn. Code Ann. § 20-17-103(6)(A) (“‘Matter of public concern’ includes an issue related to: . . . safety[.]”) *and* Tenn. Code Ann. § 20-17-103(3) (“‘Exercise of the right of free speech’ means a communication made in connection with a matter of public concern . . . that falls within the protection of the United States Constitution or the Tennessee Constitution”). By contrast, the basis for the Plaintiff’s insistence that “even if the Declaration of Michael John Barrett, Jr. were properly admissible, it fails to satisfy any of the elements required to meet his initial burden under the TPPA” is a mystery. Appellants’ Br. at 24.

Whatever the Plaintiff’s reasoning, though, it is wrong. Simply put: The Plaintiff’s explicit allegations that it was suing Mr. Barrett over his reports to the FAA, including his statements “related to the Plaintiff’s safety procedures”⁴⁹ —on their own, but certainly when paired with Mr. Barrett’s Declaration detailing what he sent to the FAA and why—satisfied Mr. Barrett’s initial burden under section 20-17-105(a). *See*

⁴⁸ *Id.*

⁴⁹ *Id.* at 2.

Tenn. Code Ann. § 20-17-105(a) (“The petitioning party has the 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.”). Thus, the evidentiary burden shifted to the Plaintiff to “establish[] a prima facie case for each essential element of the claim in the legal action” or see its Complaint dismissed. *See* Tenn. Code Ann. § 20-17-105(b). Afterward, given that the Plaintiff failed to introduce any evidence at all in response to Mr. Barrett’s TPPA Petition, the trial court correctly dismissed the Plaintiff’s Complaint under sections 20-17-105(b) and (e)—a result that this Court’s precedent instructed was “mandatory” given the Plaintiff’s failure to offer any proof. *Nandigam Neurology, PLC*, 639 S.W.3d at 668.

D. THE TRIAL COURT ACTED WITHIN ITS DISCRETION TO DENY THE PLAINTIFF’S MOTION FOR LEAVE TO AMEND (THOUGH THE MATTER IS NOT YET WITHIN THIS COURT’S JURISDICTION TO REVIEW).

The Plaintiff separately complains that the trial court erred by denying the Plaintiff’s motion for leave to amend his complaint. *See* Appellants’ Br. at 9–16. But that issue is not within the scope of this interlocutory appeal, which is limited narrowly to review of the trial court’s “order dismissing or refusing to dismiss a legal action pursuant to a petition filed under [the Tennessee Public Participation Act].” Tenn. Code Ann. § 20-17-106. Thus, the issue would not be subject to review here even if the Plaintiff had designated it.

If the issue can be considered, though, then this Court should affirm. The Plaintiff’s brief fails to challenge—or mention at all—one of the two bases for the trial court’s order denying the Plaintiff leave to

amend (mootness). Additionally, as to the second basis for the trial court's order (futility), the Plaintiff fails to challenge the specific reasoning underlying the trial court's ruling. The trial court's order denying the Plaintiff leave to amend may be affirmed on a huge number of other grounds, too. For all of these reasons, the trial court's order denying the Plaintiff's motion for leave to amend should not be disturbed.

1. **The trial court's order denying the Plaintiff's motion for leave to amend is not yet within this Court's jurisdiction to review.**

This is an interlocutory appeal⁵⁰ taken as of right under Tennessee Code Annotated section 20-17-106. In full, section 20-17-106 states:

The court's order dismissing or refusing to dismiss a legal action pursuant to a petition filed under this chapter is immediately appealable as a matter of right to the court of appeals. The Tennessee Rules of Appellate Procedure applicable to appeals as a matter of right governs such appeals.

Id.

Based on this provision, the only order that this Court has subject-matter jurisdiction to review here is “[t]he [trial] court’s order dismissing . . . [the Plaintiff’s] legal action pursuant to” Mr. Barrett’s TPPA Petition. *Id.*; *cf. Recipient of Final Expunction Ord. in McNairy Cnty. Cir. Ct. Case No. 3279*, 645 S.W.3d at 167 (“The scope of review in interlocutory appeals is narrower than the scope of review in appeals as of right. Parties to an appeal as of right have broad latitude about the issues that may be raised, while review in an interlocutory appeal is limited to the

⁵⁰ This appeal is interlocutory because Mr. Barrett’s claims for attorney’s fees and sanctions remain adjudicated. *See R. (Vol. 2) at 242.*

issues certified by the lower courts and to ‘those matters clearly embraced within’ the issues certified.”); *Tennessee Dep’t of Mental Health & Mental Retardation v. Hughes*, 531 S.W.2d 299, 300 (Tenn. 1975) (“When dealing with an interlocutory appeal, the Court can and will deal only with those matters clearly embraced within the question certified to it.”). As such, this Court does not yet have subject-matter jurisdiction to review the trial court’s order denying the Plaintiff’s motion for leave to amend. For that reason, this Court could not appropriately consider the issue even if the Plaintiff had designated it. Otherwise, though, this Court should affirm.

2. The Plaintiff ignores or fails to address the grounds for the trial court’s order to deny the Plaintiff’s motion for leave to amend.

This Court has “repeatedly held that an appellant’s failure to craft a more-than-skeletal argument that is actually responsive to the trial court’s ruling may result in waiver on appeal.” *McGuire v. Lewis*, No. M2024-01242-COA-R3-JV, 2025 WL 1392217, at *8 (Tenn. Ct. App. May 14, 2025) (citing *McNeill v. Blount Mem’l Hosp. Inc.*, No. E2022-00209-COA-R3-CV, 2022 WL 16955177, at *7 (Tenn. Ct. App. Nov. 16, 2022); *Payne v. Bradley*, No. M2019-01453-COA-R3-CV, 2021 WL 754860, at *7–8 (Tenn. Ct. App. Feb. 26, 2021); *Augustin v. Bradley Cty. Sheriff’s Off.*, 598 S.W.3d 220, 226 (Tenn. Ct. App. 2019)). Here, as to the trial court’s order denying the Plaintiff’s motion for leave to amend, the Plaintiff has failed entirely to address one of the grounds for the trial court’s ruling. Further, as to the trial court’s second ground for its ruling, the Plaintiff’s argument is merely skeletal. Thus, opposition to the trial court’s order is waived. *Id.*

The trial court’s order denying the Plaintiff’s Motion to Amend was based on two separate conclusions. To begin, the trial court adjudicated the Parties’ respective motions in the order they were filed. Thus, the trial court adjudicated Mr. Barrett’s TPPA Petition—which Mr. Barrett filed on September 11, 2024⁵¹—*before* it adjudicated the Plaintiff’s Motion to Amend (which the Plaintiff filed on September 20, 2024⁵²).⁵³ Further, given the trial court’s order granting Mr. Barrett’s TPPA Petition, the trial court dismissed the Plaintiff’s action “with prejudice” before it reached the Plaintiff’s Motion to Amend.⁵⁴ *See* Tenn. Code Ann. § 20-17-105(e) (“If the court dismisses a legal action pursuant to a petition filed under this chapter, the legal action or the challenged claim is dismissed with prejudice.”). Given this chronology, the trial court’s first basis for denying the Plaintiff leave to amend was that, “[b]ecause the Plaintiff’s Complaint has been dismissed with prejudice, the Court finds that the Plaintiff’s Motion to Amend is **DENIED AS MOOT.**”⁵⁵

On appeal, the Plaintiff does not craft any argument addressing this reasoning. *See generally* Appellant’s Br. To start, the Plaintiff does not challenge the trial court’s decision to adjudicate Mr. Barrett’s TPPA Petition first, *id.*—something that Mr. Barrett insisted the trial court was obligated to do based on persuasive authority from other jurisdictions and the broad construction required of the TPPA’s text.⁵⁶ Nor does the

⁵¹ R. (Vol. 1) at 9.

⁵² *Id.* at 52.

⁵³ R. (Vol. 2) at 241–42.

⁵⁴ *Id.*

⁵⁵ *Id.* at 242.

⁵⁶ *Id.* at 144–48.

Plaintiff develop an argument contesting the trial court’s resulting mootness ruling. *See id.* Indeed, the only time the Plaintiff’s brief even *mentions* the trial court’s mootness ruling is in a single sentence that merely recounts what the trial court ruled. *Id.* at 16 (“The Trial Court denied Secure Air’s Motion to Amend on the grounds that because the Court had already dismissed its Complaint, the Motion to Amend was moot.”). As a result, the Plaintiff has not developed any argument—skeletal or otherwise—challenging the trial court’s mootness-based decision to deny the Plaintiff’s Motion to Amend. That failure waives opposition to the ruling on appeal. *McGuire*, 2025 WL 1392217, at *8 (“[A]n appellant’s failure to craft a more-than-skeletal argument that is actually responsive to the trial court’s ruling may result in waiver on appeal.”).

The trial court also offered a second basis—futility—for its order denying the Plaintiff’s Motion to Amend, and it detailed its reasoning at length.⁵⁷ *First*, the trial court observed that it had afforded the Plaintiff an extended opportunity to obtain discovery from the FAA, but during the months between the trial court’s discovery order and the Parties’ ultimate TPPA hearing, the Plaintiff did not obtain any evidence whatsoever, and it made “no effort” to do so in the manner the FAA had invited.⁵⁸ *Second*, the trial court noted that the Plaintiff had made numerous unqualified statements in its Complaint indicating that it had evidence to support its Intentional Interference with Business

⁵⁷ *Id.* at 241–42.

⁵⁸ *Id.* at 241.

Relationships claim, but when required to substantiate those allegations with evidence, the Plaintiff presented “no . . . evidence” to support any element of its claim.⁵⁹ *Third*, the trial court observed that the Plaintiff’s proposed amended complaint—which sought to swap the Plaintiff’s Intentional Interference with Business Relationships claim for a Breach of Contract claim—“relie[d] on the same essential factual allegations” that the Plaintiff had already failed to support with evidence.⁶⁰ For all of these reasons, the trial court determined that the Breach of Contract claim that the Plaintiff sought to assert in its proposed amended complaint—which overlapped factually with the Plaintiff’s Intentional Interference with Business Relationships claim—was futile, given that “the Plaintiff has failed to meet its evidentiary burden already despite some lenience from the Court[.]”⁶¹

Yet again, the Plaintiff does not meaningfully challenge this reasoning on appeal. Instead, the Plaintiff argues that “the Trial Court abused its discretion and . . . committed error in its reading and analysis of the Plaintiff’s proposed First Amended Complaint” because the Plaintiff’s “First Amended Complaint *alleges sufficient facts* to support a claim for breach of contract which is distinct from the single cause of action in its original Complaint for intentional interference with prospective business relationships[.]” See Appellant’s Br. at 16 (emphasis added). The trial court did not deny the Plaintiff’s Motion to Amend on the basis that the Plaintiff’s proposed amended complaint

⁵⁹ *Id.*

⁶⁰ *Id.* at 242.

⁶¹ *Id.*

failed to “allege[] sufficient facts” to support a Breach of Contract claim, though. Instead, the trial court denied the Plaintiff leave to amend because the Plaintiff’s proposed Breach of Contract claim “relie[d] on the same essential factual allegations” as the Plaintiff’s Intentional Interference with Business Relationships claim, and as to those factual allegations, the Plaintiff had “failed to meet its evidentiary burden already despite some lenience from the Court.”⁶² Thus, the trial court denied the Plaintiff leave to amend based on *evidentiary* futility—it concluded that the Plaintiff could not sustain its proposed claim—not based on legal insufficiency.

Notably, evidentiary futility arguably is the *only* proper basis for deeming a proposed amendment futile under Tennessee law. As this Court has explained:

If the legal sufficiency of the proposed Complaint is at issue—*instead of . . . futility*—the better protocol is to grant the motion to amend the pleading, which will afford the adversary the opportunity to test the legal sufficiency of the amended pleading by way of a Tenn. R. Civ. P. 12.02(6) Motion to Dismiss.

Conley v. Life Care Centers of Am., Inc., 236 S.W.3d 713, 724 (Tenn. Ct. App. 2007) (emphasis added). Thus, Tennessee law makes clear that “futility” means something *other than* legal insufficiency. *Id.*

Put another way: If a defendant’s objection is that a proposed amendment is legally insufficient, then the “better protocol” is to permit the amendment and allow the defendant to move to dismiss it under Rule 12.02(6). *Id.* By contrast, when the issue is that, for whatever case-

⁶² *Id.*

specific reason, a trial court has determined that a plaintiff *cannot prevail*, proposed amendments may appropriately be denied as futile, and trial courts may exercise their discretion to forbid them. *Id.*; *cf. Fields v. Colgate Palmolive Co.*, No. CIV.A. 10-365 PGS, 2010 WL 5252537, at *5 (D.N.J. Dec. 15, 2010) (“Because Plaintiff’s prior admissions signify that an employment relationship never existed between Plaintiff and Defendant, Plaintiff’s proposed claims for hostile work environment and wrongful termination are fatally flawed. In short, Plaintiff cannot construct any viable claim against Defendant[,]” so “Plaintiff’s attempts to amend Plaintiff’s Complaint would be futile.”).

Here, the trial court found that the Plaintiff’s “proposed amendment would be futile because it relies on the same essential factual allegations with no evidence to support them, and the Plaintiff has failed to meet its evidentiary burden already despite some lenience from the Court.”⁶³ And whether this analysis was right or wrong, the Plaintiff does not meaningfully challenge it. Instead, the Plaintiff asserts that its proposed amended complaint “allege[d] sufficient facts to support a claim for breach of contract[,]” which *was not the basis for the trial court’s futility ruling*. After that, the Plaintiff offers a single citationless sentence asserting that “the Trial Court imposed an improper burden on to the Plaintiff because it was not required to offer proof of the factual allegations at this stage of the litigation under Rules 12 or 15 Tenn. R. Civ. P., or even Tenn. Code Ann. § 20-17-104(a).” *See* Appellant’s Br. at 16.

⁶³ *Id.*

To the extent that this can be construed as responding to the trial court's ruling, this one-sentence argument cannot be described as anything but skeletal. That waives opposition to the trial court's order. *Sneed v. Bd. of Prof'l Resp. of Sup. Ct.*, 301 S.W.3d 603, 615 (Tenn. 2010) ("It is not the role of the courts, trial or appellate, to research or construct a litigant's case or arguments for him or her, and where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived."). As this Court has explained: "[A]n appellant's failure to craft a more-than-skeletal argument that is actually responsive to the trial court's ruling may result in waiver on appeal." *McGuire*, 2025 WL 1392217, at *8.

For these reasons, the Plaintiff has waived opposition to the trial court's order denying the Plaintiff's Motion to Amend. The Plaintiff has done so by failing to address the trial court's first ground for its ruling. The Plaintiff also has done so by offering nothing more than a skeletal argument as to the trial court's second ground for its ruling. For either reason, opposition is waived here.

3. The trial court's order denying the Plaintiff's motion for leave to amend may be affirmed on multiple other grounds.

This Court also "may affirm a judgment upon different grounds than those relied on by the trial court when the trial court has reached the correct result." *Basily v. Rain, Inc.*, 29 S.W.3d 879, 884 n.3 (Tenn. Ct. App. 2000). Here, as to the trial court's order denying the Plaintiff's Motion to Amend, a huge number of additional grounds support affirming, too.

- a. The trial court's order dismissing this case with prejudice necessarily precluded the Plaintiff's proposed amendment.

By the time the trial court reached the Plaintiff's Motion to Amend, the trial court had already granted Mr. Barrett's TPPA Petition and dismissed this action with prejudice.⁶⁴ As noted already, the Plaintiff also has not challenged the trial court's decision to adjudicate Mr. Barrett's TPPA Petition before ruling on the Plaintiff's Motion to Amend. Further, having entered a judgment dismissing the Plaintiff's action "with prejudice" as the TPPA required,⁶⁵ *see* Tenn. Code Ann. § 20-17-105(e), the Plaintiff's motion to amend was *not permissible* unless and until the Plaintiff convinced the trial court to set aside its judgment under Rule 59 or 60. *See Lee v. State Volunteer Mut. Ins. Co., Inc.*, No. E2002-03127-COA-R3-CV, 2005 WL 123492, at *11 (Tenn. Ct. App. Jan. 21, 2005) ("[O]nce a judgment dismissing a case has been entered, the plaintiff cannot seek to amend [the] complaint without first convincing the trial court to set aside its dismissal pursuant to Tenn. R. Civ. P. 59 or 60.") (collecting authority).

This basis for denying the Plaintiff's motion to amend is something different from a mootness problem. Instead, the issue is that, following the trial court's dismissal of this action with prejudice, the Plaintiff "[could not] seek to amend" its Complaint unless and until the Plaintiff "convince[ed] the trial court to set aside its dismissal pursuant to Tenn. R. Civ. P. 59 or 60." *Id.* And because the Plaintiff made no effort to do

⁶⁴ *Id.* at 241–42.

⁶⁵ *Id.*

that, the trial court not only acted within its discretion to deny the Plaintiff's Motion to Amend; it was *obligated* to deny the Plaintiff's motion to amend because the trial court already had entered a judgment dismissing this case. *Id.*

b. The law of the case doctrine precluded the Plaintiff's Breach of Contract claim.

A separate appropriate basis for affirming the trial court's order denying the Plaintiff's Motion to Amend is that the Plaintiff's proposed Breach of Contract claim was precluded—on the merits—by the trial court's order dismissing the Plaintiff's Intentional Interference with Business Relationships claim. In its TPPA ruling, the trial court determined that the Plaintiff had “fail[ed] to establish a prima facie case for *any* essential element of” its Intentional Interference with Business Relationships claim.⁶⁶ That ruling also necessarily precluded—on the merits—the Plaintiff's proposed Breach of Contract claim, given that the claims shared essential elements, including “damages.” *See Trau-Med of Am., Inc. v. Allstate Ins. Co.*, S.W.3d 691, 701 (Tenn. 2002) (requiring proof of “damages resulting from the tortious interference”); *Buttrey v. Holloway's, Inc.*, No. M2011-01335-COA-R3-CV, 2012 WL 6451802, at *7 (Tenn. Ct. App. Dec. 12, 2012) (“In a breach of contract action, damages resulting from the breach are a necessary element of the claim and, therefore, the claimant has the burden of proving damages at trial.”). Thus, the trial court having ruled—on the merits—that the Plaintiff failed to meet its burden of proving damages, future relitigation of the

⁶⁶ *Id.* at 241 (emphasis added).

same issue was foreclosed by the law of the case doctrine, and the Plaintiff's proposed Breach of Contract claim was precluded. *See Memphis Pub. Co. v. Tennessee Petroleum Underground Storage Tank Bd.*, 975 S.W.2d 303, 306 (Tenn. 1998) (“The law of the case doctrine . . . is a longstanding discretionary rule of judicial practice which is based on the common sense recognition that issues previously litigated and decided by a court of competent jurisdiction ordinarily need not be revisited.”).

- c. The substance of the Plaintiff's Motion to Amend was a request to voluntarily dismiss without prejudice and refile.

Yet another problem with the Plaintiff's Motion to Amend was that it did not seek leave to file anything resembling a typical amendment. Instead, the Plaintiff proposed to abandon entirely the Plaintiff's original cause of action and assert a different claim altogether. In that sense, the Plaintiff did not propose to “amend” its Complaint at all; it sought leave to file a different action in an effort to evade nonsuit restrictions. The Plaintiff also candidly acknowledges what it was seeking to accomplish through this strategy. *See* Appellant's Br. at 9 (“The breach of contract claim was intended to wholly replace the original cause of action[.]”).

This proposal was a dubious use of Rule 15. It also looked much more like an effort to nonsuit under Rule 41 and to refile a new action—something the Plaintiff was prohibited from doing because a motion for summary judgment was pending.

Such a strategy was forbidden. Tennessee Rule of Civil Procedure 41.01—not Rule 15—governs voluntary dismissals without prejudice,

and that Rule provides (among other things) that a plaintiff has no right to take a voluntary dismissal without prejudice “when a motion for summary judgment made by an adverse party is pending[.]” Tenn. R. Civ. P. 41.01(1). Tennessee law also instructs that courts must “construe a person’s motion according to its substance and not its label.” *Watson v. Watson*, No. E2010-00577-COA-R3-CV, 2010 WL 5549050, at *5 (Tenn. Ct. App. Dec. 29, 2010) (citing *Bemis Co., Inc. v. Hines*, 585 S.W.2d 574, 576 (Tenn. 1979)).

Here, although styled as a Motion to Amend, the substance of the Plaintiff’s motion was a request to voluntarily dismiss without prejudice the Plaintiff’s pending claim for Intentional Interference with Business Relationships and to replace that action with an entirely new and different lawsuit asserting a Breach of Contract claim.⁶⁷ Thus, in substance, the Plaintiff’s motion sought to voluntarily dismiss the Plaintiff’s original action without prejudice and to refile this lawsuit as a breach of contract case. Treating the Plaintiff’s motion according to its substance also was especially important under the circumstances presented, given that any contrary approach would enable plaintiffs to evade Rule 41.01(2)’s limitations on the number of voluntary dismissals a plaintiff may take. *See id.* (“Notwithstanding the provisions of the preceding paragraph, a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has twice dismissed in any

⁶⁷ Compare R. (Vol. 1) at 1–4 (Complaint asserting a single-count claim for Intentional Interference with Business Relationships), *with id.* at 54–59 (proposed First Amended Complaint asserting a claim for Breach of Contract).

court an action based on or including the same claim.”).

For these reasons, the Plaintiff’s Motion to Amend was, in substance, an attempted Rule 41.01(1) voluntary dismissal of its original action without prejudice. But here, given Mr. Barrett’s pending motion for summary judgment,⁶⁸ the Plaintiff lacked the right to nonsuit because “a motion for summary judgment made by an adverse party [was] pending[.]” See Tenn. R. Civ. P. 41.01(1). Thus, for that reason, too, the trial court acted within its discretion to deny the Plaintiff’s motion for leave to amend.

- d. The Plaintiff’s bad faith and prejudice to Mr. Barrett support affirming the trial court’s order denying the Plaintiff leave to amend.

“Although permission to amend should be liberally granted,” whether to grant leave to amend is a discretionary determination. See *Cumulus Broad., Inc. v. Shim*, 226 S.W.3d 366, 374 (Tenn. 2007). Factors that trial courts “should consider when deciding whether to allow amendments include . . . ‘bad faith by the moving party’” and “‘undue prejudice to the opposing party[.]’” *Id.* (quoting *Merriman v. Smith*, 599 S.W.2d 548, 559 (Tenn. Ct. App. 1979)). Here, both considerations warranted denying the Plaintiff’s Motion to Amend.

As to bad faith: The nature and timing of the Plaintiff’s motion betrayed the bad faith involved. As already noted, the Plaintiff’s motion was not an attempt to modify the allegations in the Plaintiff’s Complaint, to supplement the claim asserted in it, or otherwise to update the Plaintiff’s operative Complaint. Instead, it was an attempt to replace its

⁶⁸ *Id.* at 35–49.

operative Complaint with an entirely new lawsuit. The transparent purpose of this effort was to prevent the trial court from adjudicating Mr. Barrett’s TPPA Petition, which the Plaintiff believed (and asserted) its proposed amended complaint would “render . . . moot.”⁶⁹

Moreover, the Plaintiff admitted repeatedly *that it did not even know the substance of the statements over which it was suing Mr. Barrett*. See, e.g., R. (Vol. 2) at 171:3–5 (“[H]e filed written documents with the FAA. We don’t have them. We don’t know what he told them.”); *id.* at 171:21–22 (“we don’t know what they are”). Thus, the Plaintiff’s proposed amended complaint—which made ten unqualified allegations that Mr. Barrett’s statements were “false”⁷⁰ despite the Plaintiff’s later admission that it had no idea what they were—could not satisfy even Rule 11 standards. See Tenn. R. Civ. P. 11.02(3) (“By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, . . . (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery[.]”). For this reason, too, the trial court’s order denying the Plaintiff’s Motion to Amend may appropriately be affirmed on bad faith grounds.

Separately, as to prejudice: Allowing the Plaintiff—in the face of a

⁶⁹ R. (Vol. 1) at 50.

⁷⁰ *Id.* at 55–56.

pending TPPA Petition and motion for summary judgment—to amend by removing the only claim in its operative complaint and replacing it with a different claim entirely would have prejudiced Mr. Barrett. The point of the TPPA is to ensure that SLAPP lawsuits are resolved “expediently” and before “substantial costs associated with defending” such litigation mount. *Nandigam Neurology, PLC*, 639 S.W.3d at 666. With that context in mind, permitting the Plaintiff to delay further the trial court’s resolution of Mr. Barrett’s TPPA Petition and restart the litigation anew through a strategically timed amendment would impair the TPPA’s fundamental purposes, subjecting Mr. Barrett to precisely the kind of drawn-out and costly litigation the TPPA was designed to avoid. Subjecting Mr. Barrett to such prejudicial delay and expense also would have made little practical sense here, given—at minimum—that the Plaintiff: (1) had by this point admitted that it did not even know the substance of the statements over which it was suing Mr. Barrett, *see supra* at 45, and (2) failed to substantiate even its own claimed damages despite having sole access to the evidence that, if it existed, would have supported them.

* * *

For these reasons, whether due to this Court’s lacking subject-matter jurisdiction to consider the trial court’s ruling on the Plaintiff’s Motion to Amend, because the Plaintiff has not challenged the trial court’s grounds for denying the Plaintiff’s Motion to Amend, or because multiple other grounds support affirming the trial court’s order denying the Plaintiff’s Motion to Amend, the trial court’s order denying the Plaintiff’s Motion to Amend should not be disturbed.

E. MR. BARRETT IS ENTITLED TO RECOVER HIS ATTORNEY’S FEES ON APPEAL.

Fee-shifting in favor of prevailing TPPA petitioners is mandatory. See 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 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 v. McQueen*, 693 S.W.3d 262, 284 (Tenn. 2024). These standards are met here. Thus, upon affirming the trial court’s order dismissing the Plaintiff’s Complaint under the TPPA, this Court should award Mr. Barrett his attorney’s fees under section 20-17-107(a)(1). *Id.*; see also *Black*, 2025 WL 1566392, at *6 (“Having affirmed the trial court’s dismissal of the action pursuant to the TPPA, we now award attorney fees on appeal pursuant to Section 20-17-107(a)(1).”).

IX. CONCLUSION

All of the issues the Plaintiff argues should be deemed waived, and the trial court’s order dismissing the Plaintiff’s Complaint under the TPPA should be affirmed. Separately, this Court should not reach the trial court’s order denying the Plaintiff’s Motion to Amend, but if it does, this Court should affirm it. This Court also should award Mr. Barrett his appellate attorney’s fees under section 20-17-107(a)(1).

Respectfully submitted,

By: /s/ Daniel A. Horwitz
DANIEL A. HORWITZ, BPR #032176
SARAH L. MARTIN, BPR #037707
HORWITZ LAW, PLLC
4016 WESTLAWN DR.
NASHVILLE, TN 37209
(615) 739-2888
daniel@horwitz.law
sarah@horwitz.law

Counsel for Appellee

CERTIFICATE OF ELECTRONIC FILING COMPLIANCE

Pursuant to Tennessee Supreme Court Rule 46, § 3.02, the relevant sections of this brief contain 9,747 words, as calculated by Microsoft Word, and it was prepared using 14-point Century Schoolbook font pursuant to § 3.02(a)(3).

By: /s/ Daniel A. Horwitz
Daniel A. Horwitz

CERTIFICATE OF SERVICE

I hereby certify that on this the 22nd day of August, 2025, a copy of the foregoing was sent via the Court's e-filing system, via USPS mail, postage prepaid, or via email to the following parties:

G. Kline Preston
Belle Meade Office Park
4515 Harding Pike, Suite 107
Nashville, TN 37205
kpreston@klineprestonlaw.com

Counsel for Appellant

By: /s/ Daniel A. Horwitz
Daniel A. Horwitz, BPR #032176