

Judgment Affirmed as Modified and Memorandum Opinion filed February 26, 2026.



**In The
Fourteenth Court of Appeals**

NO. 14-24-00172-CV

**STEVEN BURNS, JACQUELINE BURNS, ERIC B. DICK, AND THE DICK
LAW FIRM, PLLC, Appellants**

V.

STANDARD CASUALTY COMPANY, Appellee

**On Appeal from the 10th District Court
Galveston County, Texas
Trial Court Cause No. 23-CV-0258**

MEMORANDUM OPINION

Appellants, Steven Burns, Jacqueline Burns, Eric B. Dick, and the Dick Law Firm, PLLC, challenge the trial court's rendition of summary judgment and award of sanctions in favor of appellee, Standard Casualty Company, in the Burnses' suit against appellee for breach of contract, breach of the duty of good faith and fair dealing, fraud, negligent misrepresentation, negligence, civil conspiracy, and violations of the Texas Deceptive Trade Practices-Consumer Protection Act (DTPA)

and the Texas Insurance Code. In three broad issues—which we reorganize into six for purposes of our analysis—appellants contend that the trial court erred in granting summary judgment, sanctioning appellants, and awarding appellee attorneys’ fees.

We modify the trial court’s judgment to make the award of appellate attorneys’ fees conditional and affirm the judgment as modified.

I. BACKGROUND

In February of 2021, the Burnses’ home (the property) was damaged due to multiple burst water pipes caused by freezing temperatures. The property was insured through a policy issued by appellee.

1. The Policy

The policy insured against physical loss to covered property caused by enumerated “Perils Insured Against,” under which “Explosion” was listed as Peril 4. The policy did not define “Explosion.” However, the policy included an amendatory endorsement adding a ninth peril, which in relevant part covered “Sudden and Accidental Discharge, Eruption, Overflow or Release of Water or Steam from . . . [w]ithin any portion of any plumbing system that is above the surface of the ground.” The endorsement limited liability for “any and all loss(es) caused by Peril 9” to \$5,000.

2. Insurance Claim and Subsequent Lawsuit

The Burnses filed a claim with appellee under the policy. Appellee sent an adjustor to inspect the property. In his subsequent report, the adjustor wrote that the damage to the property was “a result of 3 frozen pipes” located in the attic over the kitchen and two bathrooms. Appellee informed the Burnses the loss was caused by Peril 9 and that coverage for the loss was therefore limited to \$5,000. Appellants do not dispute that appellee paid the Burnses \$5,000.00.

The Burnses disagreed with appellee’s decision, arguing that appellee “inadequately assessed the Plaintiffs’ claim for damages covered under their policy,

specifically those arising from water damage due to a pipe burst caused by freezing conditions.” They also alleged appellee “failed and refused to pay [appellee’s] Policy’s full proceeds.” The Burnses filed suit against appellee.¹ The Burnses’ live pleading alleges causes of action for “vicarious liability,” breach of contract, breach of the duty of good faith and fair dealing, violations of the DTPA, violations of Texas Insurance Code chapters 541 and 542, negligent misrepresentation, fraud, and civil conspiracy.

3. Appellee’s Motion for Summary Judgment and Motion for Recovery of Attorneys’ Fees and Costs

As the result of other motions filed in the case, the trial court dismissed the Burnses’ “vicarious liability” and Texas Insurance Code chapter 542 causes of action with prejudice.² On December 6, 2023, appellee filed a motion for traditional and no evidence summary judgment as to the Burnses’ remaining claims. In the same filing, appellee also moved for recovery of attorneys’ fees and costs.

Appellee asserted it was entitled to traditional summary judgment on the Burnses’ claims for negligence, negligent misrepresentation, breach of contract, breach of the duty of good faith and fair dealing, and violations of the DTPA and Texas Insurance Code section 541.060. Appellee argued the Burnses’ DTPA, negligence, and negligent misrepresentation claims were barred by the statute of limitations. It argued the Burnses’ breach of contract claim failed because appellee had paid the Burnses the policy limit for the covered peril, and that the Burnses’ claims for breach of the duty of good faith and fair dealing and violation of Texas Insurance Code chapter 541 failed for the same reason. Appellee asserted it was

¹ The Burnses also sued Best Insurance and Financial Services, Inc. However, all causes of action against Best were severed from the Burnses’ original suit. The Burnses’ appealed the severance order, but this court dismissed that appeal after the Burnses moved to dismiss the appeal. *See Burns v. Best Ins. & Fin. Services, Inc.*, No. 14-23-00920-CV, 2024 WL 2150103, at *1 (Tex. App.—Houston [14th Dist.] May 14, 2024, no pet.) (per curiam).

² Appellants do not challenge that order in this appeal.

entitled to a no-evidence summary judgment on the Burnses' claims under the DTPA, breach of the duty of good faith and fair dealing, fraud, and civil conspiracy because there was no evidence to show that appellee violated the DTPA, breached the duty of good faith and fair dealing, committed fraud, or engaged in civil conspiracy.

In its motion for recovery of attorneys' fees and costs, appellee argued appellants should be sanctioned for the filing of the Burnses' suit and subsequent amended pleadings under Texas Insurance Code section 541.153, Texas Rule of Civil Procedure 13, Texas Civil Practice and Remedies Code section 10.001, and DTPA section 17.50(c). *See* Tex. Ins. Code § 541.153; Tex. R. Civ. P. 13; Tex. Civ. Prac. & Rem. Code § 10.001; Tex. Bus. & Com. Code § 17.50(c). Appellee argued sanctions were appropriate because the Burnses' suit was groundless and brought in bad faith or for the purpose of harassment. Appellee requested both trial and appellate attorneys' fees and costs.

In their response to appellee's motion for summary judgment, the Burnses' argued that a "pipe burst" aligned "with the definition of an explosion" and that the "inclusion of the term 'explosion' without a precise definition within the policy could lead to an inclusive understanding that covers instances like a pipe bursting." The Burnses appeared to argue, among other things, that they were entitled to coverage under Peril 9 and additional coverage under Peril 4. The Burnses' attached three exhibits to their response: (1) Steven Burns' affidavit, (2) the policy, and (3) the Burnses' damages estimate. Appellee objected to Steven Burns' affidavit, the Burnses' damages estimate, and the "fact" section of the Burnses' response.

The record reflects that an in-person oral hearing was held on appellee's summary judgment motion and motion for recovery of attorneys' fees and costs on

January 23, 2024.³ However, there is no reporter's record from the hearing.⁴ The trial court signed a final judgment that granted appellee's motion for traditional and no-evidence summary judgment. In the final judgment, the trial court also sustained appellee's objections to the Burnses' summary judgment evidence, struck Exhibits A and C to the Burnses' summary judgment response, and struck the "fact" section of the Burnses' summary judgment response.

The trial court's final judgment also granted appellee's motion for recovery of fees and costs "under Section 541.153 of the Texas Insurance Code, Rule 13 of the Texas Rules of Civil Procedure, Section 10.001 of the Texas Civil Practice and Remedies Code, and Section 17.50(c) of the DTPA." "Findings of Fact supporting the sanctions awarded against" appellants were included in the final judgment. The trial court awarded appellee trial and appellate attorneys' fees and costs; it did not, however, condition the award of appellate attorneys' fees upon appellee's success on appeal.

4. Appellants' Motion for Leave to Consider Additional Evidence and Motion for Reconsideration

On February 26, 2024, appellants filed a motion for leave to consider additional evidence and motion for reconsideration of the trial court's order granting appellee's motion for summary judgment and motion for recovery of attorneys' fees and costs. Appellants asserted that their failure to present the additional evidence in response to appellee's motion for summary judgment "was not the result of conscious indifference by the Plaintiffs" and that appellee would not be "prejudiced by the consideration of this evidence." The trial court denied appellants' motion for leave to consider additional evidence and motion for reconsideration, and appellants

³ The appellate record contains a notice of in-person oral hearing on these motions as well as a docket sheet entry stating the trial court held a hearing on the motions on that date.

⁴ The court reporter informed this court that a reporter's record does not exist for this case.

filed this appeal.

II. ANALYSIS

While appellants' statement of the issues presented lists three issues, they organize the body of their brief into eight subparts. We reorganize and address appellants' contentions into the following six issues:

1. Whether the trial court abused its discretion in denying appellants leave to file late summary judgment evidence and denying appellants' motion for reconsideration of the trial court's summary judgment order.
2. Whether the trial court abused its discretion in striking the Burnses' summary judgment evidence and entering findings of fact in connection with its summary judgment order.
3. Whether the trial court erred in granting appellee summary judgment as to all of the Burnses' live claims.
4. Whether the trial court abused its discretion in granting appellee's motion for sanctions against appellants.
5. Whether the trial court's award of trial and appellate attorneys' fees is supported by legally and factually sufficient evidence.
6. Whether the trial court erred in awarding appellee unconditional appellate attorneys' fees.

1. Denial of Leave to File Late Summary Judgment Evidence and Denial of Motion for Reconsideration

In issue one, appellants argue the trial court abused its discretion by failing to grant appellants leave to file late evidence in response to appellee's motion for summary judgment and failing to grant appellants' motion for reconsideration of the summary judgment order. We disagree.

A. Standard of Review and Applicable Law

After the trial court grants a summary judgment motion, the court generally

has no obligation to consider further motions on the issues adjudicated by the summary judgment. *Di Angelo Publ'ns, Inc. v. Kelley*, No. 14-20-00546-CV, 2022 WL 401561, at *2 (Tex. App.—Houston [14th Dist.] Feb. 10, 2022, no pet.) (mem. op.). The denial of a motion for reconsideration of a summary judgment order is reviewed for abuse of discretion. *Walker v. Wolfe Airpark Civic Club, Inc.*, No. 14-23-00748-CV, 2025 WL 1037265, at *2 (Tex. App.—Houston [14th Dist.] Apr. 8, 2025, pet. denied) (mem. op.). A trial court abuses its discretion when its decision is arbitrary or unreasonable, or when it acts without reference to any guiding rules or principles. *Id.* A trial court does not abuse its discretion in denying a motion for reconsideration “if the movant cites no additional evidence ‘beyond that available to him’ when the first summary judgment was granted.” *Macy v. Waste Mgmt., Inc.*, 294 S.W.3d 638, 651 (Tex. App.—Houston [1st Dist.] 2009, pet. denied) (quoting *Kelly v. Gaines*, 181 S.W.3d 394, 416 (Tex. App.—Waco 2005), *rev'd on other grounds*, 235 S.W.3d 179 (Tex. 2007)); *see also Shanley v. First Horizon Home Loan Corp.*, No. 14-07-01023-CV, 2009 WL 4573582, at *7 (Tex. App.—Houston [14th Dist.] Dec. 8, 2009, no pet.) (mem. op.).

Except on leave of court, a nonmovant's summary judgment evidence must be filed seven days before the hearing. *See* Tex. R. Civ. P. 166a(c), (d). We review a trial court's refusal to consider late-filed summary judgment evidence for an abuse of discretion. *See Williams v. Huber*, 964 S.W.2d 84, 87 (Tex. App.—Houston [14th Dist.] 1997, no pet.). Appellants argue a trial court should grant leave to supplement a summary judgment response with additional evidence if the nonmovant shows good cause for the tardiness.

Appellants rely on the supreme court's holding in *Carpenter v. Cimarron Hydrocarbons Corp.*, 98 S.W.3d 682, 688 (Tex. 2002), where the court stated:

a motion for leave to file a late summary-judgment response should be granted when a litigant establishes good cause for failing to timely

respond by showing that (1) the failure to respond was not intentional or the result of conscious indifference, but the result of accident or mistake, and (2) allowing the late response will occasion no undue delay or otherwise injure the party seeking summary judgment.

Consistent with appellants' argument, we assume without deciding that this standard applies to a motion for leave to file late summary judgment evidence. *See Stockdick Land Co. v. Deutsche Bank Nat'l Tr. Co.*, No. 14-17-00537-CV, 2019 WL 6913329, at *6 (Tex. App.—Houston [14th Dist.] Dec. 19, 2019, no pet.) (mem. op.). Under the *Carpenter* standard, the party seeking leave to file an untimely response has the burden of showing good cause for the tardiness. *Carpenter*, 98 S.W.3d at 688 (“leave to file a late summary-judgment response should be granted *when a litigant establishes good cause for failing to timely respond*”) (emphasis added). In *Carpenter*, the supreme court concluded it could not say the trial court abused its discretion in denying leave to file a late response “based upon counsel’s bare assertion that he had ‘miscalendared’ the summary-judgment hearing.” *Id.*

B. Application

Appellee’s motion for summary judgment was set for hearing on January 23, 2024, and the trial court signed its ruling on the motion on that date. Appellants filed their motion for reconsideration a little over a month after the trial court rendered summary judgment in favor of appellee. In that filing, the Burnses’ also requested that the trial court consider the following “additional” late evidence: the Burnses’ formal notice of claim; the 2023 deposition of one of the Burnses’ experts; the Burnses’ damages estimate;⁵ a cross-motion for summary judgment from a separate case, filed in 2022; an order granting the cross-motion for summary judgment in the separate case, signed in 2022; the insurance adjustor’s 2021 report; and affidavits

⁵ It appears that the only difference between this exhibit and Exhibit C to the Burnses’ summary judgment response—which the trial court struck—was the omission a business records affidavit that was included in Exhibit C.

from Steven Burns, Dick, and four of the Burnses' expert witnesses.

Appellants argue appellee had the burden of showing it would be unduly prejudiced by the introduction of late evidence. Appellants are mistaken. Under *Carpenter*, the party seeking leave to file an untimely response bears the burden of establishing good cause for failing to timely respond, including showing that allowing the late response will occasion no undue delay or otherwise injure the party seeking summary judgment. *See Carpenter*, 98 S.W.3d at 688. Appellants also assert the "record clearly demonstrates that the failure to present" the additional evidence earlier "was not the result of conscious indifference." In support, appellants cite only to their motion for leave to file late evidence, in which they asserted without further explanation:

Plaintiffs' failure to present this evidence in response to Standard's Motion was not the result of conscious indifference by the Plaintiffs. The Plaintiffs are not lawyers, insurance adjusters, or anything of the sort. The Plaintiffs are just ordinary individuals who believe they have been wronged.

Notably, the Burnses were represented by counsel throughout this lawsuit, including when they responded to appellee's motion for summary judgment.

Appellants' bare assertion that their failure to timely present the late evidence "was not the result of conscious indifference" provides even less explanation for appellants' failure to timely file evidence than the calendaring error explanation rejected by the supreme court in *Carpenter*. *See id.* Because appellants failed to establish good cause for failing to timely file their additional evidence, the trial court did not abuse its discretion by denying appellants leave to file late summary judgment evidence.⁶ *See id.*

⁶ Absent leave of court, late-filed evidence may not be considered as part of the summary judgment record. *Shanley*, 2009 WL 4573582, at *9. Because the trial court did not err in denying appellants leave to file late summary judgment evidence, we do not consider appellants' late evidence as part of the summary judgment record on appeal. *See id.*

As for appellants’ motion for reconsideration, nothing in the record indicates appellants’ “additional” evidence was unavailable before the summary judgment hearing, and appellants have not argued otherwise. Although the affidavits are all dated after the hearing date, they do not purport to address evidence, facts, or arguments that were unavailable before the hearing date. The record does not reflect that appellants provided any explanation for why they could not have obtained these documents earlier and filed them seven days before the summary judgment hearing. Because appellants’ motion for reconsideration of the trial court’s summary judgment was based on evidence available to appellants before the trial court rendered summary judgment, we cannot conclude the trial court abused its discretion by refusing to reconsider its summary judgment ruling.⁷ *See Macy*, 294 S.W.3d at 651.

We overrule appellants’ contentions in issue one.

2. Preliminary Summary Judgment Issues

In issue two, we address appellants’ complaints regarding the trial court’s evidentiary rulings and fact findings.

A. Evidentiary Rulings

Appellants assert that the trial court abused its discretion by “striking the Burnses’ summary judgment evidence.” However, appellants have forfeited this issue due to inadequate briefing.

An appellant’s brief “must contain a clear and concise argument for the

⁷ Appellants’ brief describes their motion for reconsideration as a “motion for reconsideration of a prior summary judgment.” Appellants’ motion for reconsideration also asked the trial court to “reconsider and reverse its award of attorney’s fees.” However, appellants do not address that component of their motion for reconsideration on appeal and do not argue the trial court erred in denying the motion for reconsideration as to their request for reconsideration of the award of attorneys’ fees. Therefore, appellants have forfeited any such contention. *See generally Abram v. James*, No. 14-12-00010-CV, 2013 WL 4511878, at *2 n.2 (Tex. App.—Houston [14th Dist.] Aug. 22, 2013, no pet.) (mem. op.) (concluding a contention not raised on appeal by an appellant was waived).

contentions made, with appropriate citations to authorities and to the record.” Tex. R. App. P. 38.1(i). Briefing forfeiture occurs when a party fails to make proper citations to authority or the record or provide any substantive legal analysis. *See Mejia v. Mejia*, No. 14-24-00145-CV, 2025 WL 2215911, at *3 (Tex. App.—Houston [14th Dist.] Aug. 5, 2025, no pet.) (mem. op.) (citing Tex. R. App. P. 38.1(i)).

We are mindful that the supreme court recently explained in *Borusan Mannesmann Pipe US, Inc. v. Hunting Energy Services, LLC*, 716 S.W.3d 572, 575 (Tex. 2025), that “a finding of insoluble forfeiture or waiver should be a last resort.” *Borusan* reversed an opinion from this court in which we held an issue was waived due to inadequate briefing. *Borusan*, 716 S.W.3d at 576. In *Borusan*, the supreme court explained that appellate courts may “order additional briefing under Rule of Appellate Procedure 38.9(b)” when the briefing is “adequate to preserve an issue but insufficient to properly assist” the appellate court. *Id.* (quoting *Bertucci v. Watkins*, 709 S.W.3d 534, 542 (Tex. 2025)). However, the supreme court clarified that “Rule 38.9’s authorization of supplemental briefing ‘provides a tool to assist the court in performing its appellate function; it does not burden the court with an obligation to allow a party an additional bite at the briefing apple.’” *Id.* at 576 (quoting *Bertucci*, 709 S.W.3d at 542 n.9).

The facts of this case are distinguishable from *Borusan*. The briefing at issue in *Borusan* contained “roughly five pages” of argument explaining why the trial court allegedly erred on the challenged issue. *See id.* at 575. In contrast, appellants’ brief does not address appellee’s objections to the summary judgment evidence and does not explain *why* appellants believe the trial court abused its discretion in sustaining those objections. Due to appellants’ deficient briefing, any attempt to address the merits of this issue would require this court to step into the shoes of appellants’ counsel and formulate an argument explaining why the trial court abused

its discretion. This we will not do. *See Canton-Carter v. Baylor Coll. of Med.*, 271 S.W.3d 928, 931–32 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (“It is not this court’s duty to review the record, research the law, and then fashion a legal argument for appellant when she has failed to do so.”). Because appellants provided no substantive analysis or argument to support their conclusory assertions that the trial court erred, we hold that appellants have forfeited this issue on appeal due to inadequate briefing.⁸ *See* Tex. R. App. P. 38.1(i); *see also Aleman v. Standard Cas. Co.*, No. 01-23-00572-CV, 2025 WL 2445991, at *12–3 (Tex. App.—Houston [1st Dist.] Aug. 26, 2025, no pet.) (mem. op.) (holding on similar facts that appellants waived their complaint due to inadequate briefing).

B. Challenges to the Trial Court’s Fact Findings

As part of their argument challenging the trial court’s summary judgment rulings, appellants also argue the trial court “made several findings during the summary judgment proceedings which amount to an abuse of discretion.” To the extent appellants’ conclusory statements regarding errors in the trial court’s fact findings are intended as challenges to the trial court’s summary judgment order, we reject those arguments because the trial court did not make findings of fact in connection with its summary judgment order. Rather, the trial court’s final judgment includes the trial court’s findings of fact on appellee’s counterclaims for sanctions.⁹

⁸ Because the trial court struck Exhibit A (Steven Burns’ affidavit) and Exhibit C (the damages estimate), and appellants have forfeited any challenge to those evidentiary rulings, that evidence is not part of the summary judgment record and cannot be considered on appeal. *See City of Houston v. Chourng*, No. 14-24-00251-CV, 2025 WL 1187191, at *7 (Tex. App.—Houston [14th Dist.] Apr. 24, 2025, no pet.) (mem. op.).

⁹ Under Texas Rule of Civil Procedure 299a, a trial court should not include findings of fact in its judgment. *See* Tex. R. Civ. P. 299a (“Findings of fact must not be recited in a judgment.”). However, because the record does not contain any additional findings of fact or conclusions of law, the findings in the judgment have probative value as to the trial court’s sanctions order and will be treated as valid findings. *See George Joseph Assets, LLC v. Chenevert*, 557 S.W.3d 755, 764 (Tex. App.—Houston [14th Dist.] 2018, pet. denied).

The final judgment states, “The Court enters the following Findings of Fact supporting the sanctions awarded against Plaintiffs Steven and Jacqueline Burns and their attorneys, Eric B. Dick and the Dick Law Firm, PLLC.” The trial court’s fact findings on sanctions are not a proper basis for challenging the grant of summary judgment. *See generally IKB Indus. (Nigeria) Ltd. v. Pro-Line Corp.*, 938 S.W.2d 440, 441 (Tex. 1997) (“The trial court should not make, and an appellate court cannot consider, findings of fact in connection with a summary judgment”).

We overrule appellants’ contentions in issue two.

3. Summary Judgment

In issue three, appellants contend the trial court erred in granting appellee’s motion for traditional and no-evidence summary judgment because the Burnses supported their claims with more than a scintilla of evidence and genuine issues of material fact exist as to each of the claims challenged by appellee. We disagree.

A. Standard of Review and Applicable Law

We review the trial court’s summary judgment de novo. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005). In reviewing either a no-evidence or traditional summary judgment motion, we must take as true all evidence favorable to the nonmovant and draw every reasonable inference and resolve all doubts in favor of the nonmovant. *Mendoza v. Fiesta Mart, Inc.*, 276 S.W.3d 653, 655 (Tex. App.—Houston [14th Dist.] 2008, pet. denied).

The party moving for a traditional summary judgment has the burden to show that no material fact issue exists and that it is entitled to summary judgment as a matter of law. Tex. R. Civ. P. 166a(c); *M.D. Anderson Hosp. & Tumor Inst. v. Willrich*, 28 S.W.3d 22, 23 (Tex. 2000). To be entitled to traditional summary judgment, a defendant must conclusively negate at least one essential element of each of the plaintiff’s causes of action or conclusively establish each element of an affirmative defense. *Navy v. Coll. of the Mainland*, 407 S.W.3d 893, 898 (Tex.

App.—Houston [14th Dist.] 2013, no pet.). If the movant produces sufficient evidence to establish the right to summary judgment, the burden shifts to the nonmovant to come forward with competent controverting evidence raising a genuine issue of material fact. *Salas v. Fluor Daniel Services Corp.*, 616 S.W.3d 137, 145 (Tex. App.—Houston [14th Dist.] 2020, pet. denied).

A no-evidence motion for summary judgment is essentially a motion for a pretrial directed verdict. *See* Tex. R. Civ. P. 166a(i); *Timpte Indus., Inc. v. Gish*, 286 S.W.3d 306, 310 (Tex. 2009). After an adequate time for discovery, a party without the burden of proof may, without presenting evidence, seek summary judgment on the ground that there is no evidence to support one or more essential elements of the nonmovant’s claim or defense. Tex. R. Civ. P. 166a(i). The nonmovant is required to present evidence raising a genuine issue of material fact supporting each element contested in the motion. *Id.*; *Timpte Indus.*, 286 S.W.3d at 310. “[A] party submitting summary judgment evidence must specifically identify the supporting proof on file that it seeks to have considered by the trial court.” *Jones v. Hale*, No. 01-21-00506-CV, 2023 WL 1974889, at *7 (Tex. App.—Houston [1st Dist.] Feb. 14, 2023, no pet.) (mem. op.) (quoting *Bich Ngoc Nguyen v. Allstate Ins. Co.*, 404 S.W.3d 770, 775-76 (Tex. App.—Dallas 2013, pet. denied)).

Where, as here, a summary judgment fails to specify the grounds upon which the trial court relied for its ruling, we must affirm the judgment if any of the grounds advanced is meritorious. *See Muller v. Stewart Title Guar. Co.*, 525 S.W.3d 859, 868 (Tex. App.—Houston [14th Dist.] 2017, no pet.). We must also affirm if the appellant fails to challenge all grounds on which summary judgment could have been granted. *McCrary v. Hightower*, 513 S.W.3d 1, 5 (Tex. App.—Houston [14th Dist.] 2016, no pet.). If the movant files a hybrid summary-judgment motion, we usually address no-evidence grounds first, but need not do so if we conclude we must affirm the ruling on traditional grounds. *See McCoy v. FemPartners, Inc.*, 484 S.W.3d 201,

205 (Tex. App.—Houston [14th Dist.] 2015, no pet.).

B. Traditional Summary Judgment

In issue three, we construe appellants’ brief as arguing that the trial court erred in granting appellee’s motion for traditional summary judgment on the Burnses’ breach of contract, DTPA, negligence, negligent misrepresentation, breach of the duty of good faith and fair dealing, and Texas Insurance Code chapter 541 (Chapter 541) claims. We address the traditional summary judgment grounds for the trial court’s rulings on the Burnses’ breach of contract, DTPA, negligence, negligent misrepresentation, and Chapter 541 claims first because we conclude we must affirm those rulings on traditional grounds. *See id.* We address appellants’ challenge to the trial court’s summary judgment ruling on the Burnses’ breach of the duty of good faith and fair dealing claim on no-evidence rather than traditional grounds in subsection II.3.C.i. of this opinion. *See generally id.*

i. Breach of Contract

We construe appellants’ brief as arguing that the trial court erred in granting appellee traditional summary judgment on the Burnses’ breach of contract claim because the Burnses provided more than a scintilla of evidence to substantiate their claim that they suffered a covered loss that has not been paid. This issue turns on whether, under the plain language of this policy, burst water pipes resulting from a freeze fall within the meaning of an “explosion.”

a. Rules of Construction

The construction of an insurance policy is a question of law for the court to determine.¹⁰ *Clemons v. State Farm Fire & Cas. Co.*, 879 S.W.2d 385, 391 (Tex.

¹⁰ Appellants emphasize that the deposition testimony of one of their expert witnesses’ “unequivocally confirmed that the damages suffered could be covered under the policy providing for coverage as a result of ‘explosion.’” However, this testimony on the interpretation of the policy is irrelevant, as the interpretation of a contract is a question of law to be determined by the court based on the language in the policy itself. *See Davis v. Nat’l Lloyds Ins. Co.*, 484 S.W.3d 459, 469

App.—Houston [14th Dist.] 1994, no writ). We apply the ordinary rules of contract construction to insurance policies, and we ascertain the parties’ intent by looking only to the four corners of the policy to see what is actually stated. *Kayihura v. Homeowners of Am. MGA, Inc.*, No. 14-22-00680-CV, 2023 WL 5286911, at *3 (Tex. App.—Houston [14th Dist.] Aug. 17, 2023, pet. denied) (mem. op.). We examine the entire insurance policy, read all of its parts together, and seek to give effect to all of its provisions so that none will be meaningless. *Id.* To the extent of any conflict, specific provisions control over more general ones. *Lederer v. Lederer*, 561 S.W.3d 683, 693 (Tex. App.—Houston [14th Dist.] 2018, no pet.).

If we determine that only one party’s interpretation of the insurance policy is reasonable, then the policy is unambiguous and the reasonable interpretation should be adopted. *Kayihura*, 2023 WL 5286911, at *3. A contract is not ambiguous simply because the parties to a lawsuit offer conflicting interpretations of the contract’s provisions. *Nassar v. Liberty Mut. Fire Ins. Co.*, 508 S.W.3d 254, 258 (Tex. 2017). A policy is ambiguous if it is genuinely subject to more than one meaning after applying the pertinent rules of contract interpretation. *Id.*

b. Analysis

In this case, the trial court granted traditional summary judgment based on appellee’s motion asserting that appellee did not breach a contractual obligation to the Burnses under the policy because appellee paid the Burnses the full \$5,000 limit available for the covered peril. The crux of appellants’ argument on appeal appears to be that a burst pipe fits within the dictionary definition of an “explosion,” and thus the damage to the property from burst water pipes is covered under both the more general coverage for physical loss caused by “Explosion” under Peril 4 and the more

(Tex. App.—Houston [1st Dist.] 2015, pet. denied).

specific coverage for physical loss caused by “Sudden and Accidental Discharge, Eruption, Overflow or Release of Water or Steam” from a plumbing system under Peril 9. Appellee counters that the damage to the property was not caused by a covered “explosion.” We conclude that, based on the specific terms of this policy, appellee’s interpretation of the policy is reasonable, and appellants’ interpretation is not.

The endorsement adding Peril 9 states:

THIS ENDORSEMENT AMENDS THE HO-A Policy Form by adding Perils 9, 10, 11, 12, and 13 to Section I PERILS INSURED AGAINST:

**SECTION I PERILS INSURED AGAINST
COVERAGE A (DWELLING) AND
COVERAGE B (PERSONAL PROPERTY)**

- (9) Sudden and Accidental Discharge, Eruption, Overflow or Release of Water or Steam from:**
- a. Within any portion of any plumbing system that is above the surface of the ground.
 - b. Within any portion of any heating or air conditioning system that is above the surface of the ground.
 - c. Within any portion of an automatic fire protection system that is above the surface of the ground.
 - d. Within any household appliance.

The endorsement also states:

Our total **LIMIT OF LIABILITY** is \$ 5,000.00 for any and all loss(es) caused by Peril 9 during the policy period stated on the declarations page, whether for Coverage A (Dwelling), Coverage B (Personal Property), additional living expense or fair rental value, or any combination. This total limit of liability is the most we will pay for any and all loss(es) caused by Peril 9 regardless of the number of losses that occur during the policy period stated on the declarations page. Each payment for a loss for this peril during the policy period will reduce this limit of liability by the amount of each such payment for the remainder of the policy period.

Neither party disputes the cause of the damage to the property. In its motion for summary judgment, appellee described the loss as “water damage caused by burst pipes that had frozen.” In the Burnses’ response to appellee’s summary judgment motion, the Burnses described the damage to the property as “water damage from explosion, a result of freezing conditions,” and damage “from water and pipe bursts resulting from a freeze.”

We are mindful of this court’s conclusion in *Aleman v. Standard Cas. Co.*, No. 14-24-00123-CV, 2025 WL 2487106, at *7 (Tex. App.—Houston [14th Dist.] Aug. 29, 2025, no pet.) (mem. op.), that the undefined word “explosion” in an insurance policy should be given its ordinary meaning, and that the term’s ordinary meaning includes “bursting.” However, we cautioned in *Aleman* that nothing in that opinion “should be read as a holding that all frozen, broken pipes fall within the meaning of an ‘explosion,’” and that such a determination “depends on the policy’s language and the facts of each case.” *See Aleman*, 2025 WL 2487106, at *10 n.8. Although the policy at issue in *Aleman* also insured against loss caused by “Explosion,” it did *not* contain an endorsement or other provision specifically addressing—and limiting liability for—loss caused by the sudden and accidental eruption of water from a plumbing system. *Id.* at *3.

We do not read Peril 4 or Peril 9 in isolation. *See Kayihura*, 2023 WL 5286911, at *3. Rather, we examine the entire insurance policy and read all of its parts together. *See id.* To the extent there is a conflict between the more general coverage for loss caused by explosion under Peril 4 and the more specific, limited coverage for loss caused by sudden and accidental eruption of water from a plumbing system under Peril 9, the specific provision controls over the more general. *See Lederer*, 561 S.W.3d at 693. Under the plain language of the terms of this particular policy, burst water pipes do not fall within the meaning of an “explosion,” and the Burnses were thus not entitled to additional coverage under Peril 4. *See Lederer v.*

561 S.W.3d at 693. Following these well-settled rules of construction, we conclude appellants’ interpretation of the policy is not reasonable, appellee’s interpretation of the policy is reasonable, and the policy language is unambiguous. *See Nassar*, 508 S.W.3d at 258–59.

Under this interpretation of the policy, the trial court properly concluded that appellee proved there was no genuine issue of material fact that a breach of the policy occurred. *See Kayihura*, 2023 WL 5286911, at *5; *see also Nassar*, 508 S.W.3d at 258–59. Under the applicable standard of review, the trial court did not err in concluding that the motion and evidence provided in support of appellee’s motion for traditional summary judgment established that appellee correctly paid the Burnses’ the full amount owed under the policy. *See generally Kayihura*, 2023 WL 5286911, at *5.

ii. DTPA, Negligence, and Negligent Misrepresentation

Appellants also challenge the trial court’s grant of traditional and no-evidence summary judgment for appellee on the Burnses’ DTPA claims. Appellants argue the trial court erred because “more than a scintilla of evidence” was presented to the trial court with regard to those claims. We presume without deciding that appellants also sufficiently briefed a challenge to the trial court’s grant of traditional summary judgment on the Burnses’ negligence and negligent misrepresentation claims.

In the trial court, appellee argued it was entitled to traditional summary judgment on the Burnses’ DTPA, negligence, and negligent misrepresentation claims because those claims were barred by the statute of limitations. On appeal, appellants do not address appellee’s statute of limitations defense. Because appellants fail to challenge all grounds on which summary judgment could have been granted for appellee on the Burnses’ DTPA, negligence, and negligent misrepresentation claims, we must affirm the trial court’s judgment on those claims. *See McCrary*, 513 S.W.3d at 5.

iii. Texas Insurance Code Chapter 541

Presuming without deciding that appellants adequately briefed a challenge to the trial court's order granting traditional summary judgment for appellee on the Burnses' Chapter 541 claims, we conclude the trial court did not err.

Generally, “an insured cannot recover policy benefits as damages for an insurer's statutory violation if the policy does not provide the insured a right to receive those benefits.” *USAA Tex. Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 489 (Tex. 2018). Claims for Chapter 541 violations are extra-contractual claims. *See Kayihura*, 2023 WL 5286911, at *5. When the issue of coverage has been resolved in an insurer's favor, extra-contractual claims do not survive. *State Farm Lloyds v. Page*, 315 S.W.3d 525, 532 (Tex. 2010). Because we have held that the policy here does not provide the Burnses a right to additional benefits beyond those which they have already received, the Burnses are unable to maintain their extra-contractual claims for violation of Chapter 541.¹¹ *See Aleman*, 2025 WL 2445991, at *18; *see also Menchaca*, 545 S.W.3d at 497; *Reyes v. S. Vanguard Ins. Co.*, No. 14-19-00728-CV, 2020 WL 6741942, at *5 (Tex. App.—Houston [14th Dist.] Nov. 17, 2020, no pet.) (mem. op.). Accordingly, we hold that the trial court did not err in granting appellee traditional summary judgment on the Burnses' claims for violations of Chapter 541.¹²

¹¹ The Burnses did not assert in their live pleading, and appellants do not argue on appeal, that the independent-injury rule applies to this case. *See Menchaca*, 545 S.W.3d at 499 (Tex. 2018) (“if an insurer's statutory violation causes an injury independent of the insured's right to recover policy benefits, the insured may recover damages for that injury even if the policy does not entitle the insured to receive benefits”).

¹² Appellee moved for traditional summary judgment on the Burnses' claims under Texas Insurance Code section 541.060, but appellee did not request summary judgment as to the Burnses' section 541.051 and section 541.061 allegations. The trial court granted appellee a take nothing judgment as to all of the Burnses' causes of action. Appellants do not contend on appeal that the trial court granted more relief than requested in appellee's summary judgment motion. Therefore, appellants have forfeited any such contention. *See Abram*, 2013 WL 4511878, at *2 n.2.

C. No-Evidence Summary Judgment

In issue three, we also construe appellants' brief as arguing that the trial court erred in granting appellee's motion for no-evidence summary judgment on the Burnses' claims for violations of the DTPA, breach of the duty of good faith and fair dealing, fraud, and civil conspiracy. Because we have already concluded we must affirm the trial court's grant of traditional summary judgment for appellee on the Burnses' DTPA claims, we need not address whether the trial court could have properly granted appellee no-evidence summary judgment on those claims. *See* Tex. R. App. P. 47.1. Thus, we focus on the rulings regarding breach of the duty of good faith and fair dealing, fraud, and conspiracy.

i. Breach of the Duty of Good Faith and Fair Dealing, Fraud, and Conspiracy

In response to appellee's no-evidence motion, it was the Burnses' burden to produce summary judgment evidence raising a genuine issue of material fact as to the elements specified in the motion. *See* Tex. R. Civ. P. 166a(i); *Timpte Indus.*, 286 S.W.3d at 310. The Burnses' response contains general allusions to evidence supporting their claims for breach of the duty of good faith and fair dealing, fraud, and civil conspiracy. However, the Burnses' did not identify or cite to specific summary-judgment evidence raising a genuine issue of material fact as to each essential element attacked in appellee's no-evidence motion. *Jones*, 2023 WL 1974889, at *7 (explaining that a party submitting summary judgment evidence must specifically identify the supporting proof on file that it seeks to have considered by the trial court). Therefore, the trial court did not err in granting appellee's no-evidence motion for summary judgment as to the Burnses' claims for breach of the duty of good faith and fair dealing, fraud, and conspiracy. *See* Tex. R. Civ. P. 166a(i); *Timpte Indus.*, 286 S.W.3d at 310.¹³

¹³ Because summary judgment was proper as to the Burnses' breach of the duty of good

We overrule appellants' contentions in issue three.

4. Sanctions

In issue four, appellants argue that the trial court abused its discretion in finding the Burnses' lawsuit was groundless, brought in bad faith, and could only have been brought for the purpose of harassment. In their argument, appellants' assert that the trial court imposed sanctions under Texas Rule of Civil Procedure 13.¹⁴ However, the trial court sanctioned appellee's pursuant to Texas Rule of Civil Procedure 13, Texas Insurance Code section 541.153, Texas Civil Practice and Remedies Code section 10.001, and DTPA section 17.50(c). Tex. Ins. Code § 541.153; Tex. R. Civ. P. 13; Tex. Civ. Prac. & Rem. Code § 10.001; Tex. Bus. & Com. Code § 17.50(c).

An appellant must challenge all independent grounds supporting the judgment or legal conclusion under attack. *Akhtar v. Leawood HOA, Inc.*, 525 S.W.3d 814, 819 (Tex. App.—Houston [14th Dist.] 2017, no pet.). In *Akhtar v. Leawood HOA, Inc.*, 525 S.W.3d 814, 819 (Tex. App.—Houston [14th Dist.] 2017, no pet.), we concluded that an appellant's failure to challenge an independent basis for a trial court's sanctions order rendered harmless the errors, if any, alleged in their challenge of the order. Texas Rule of Civil Procedure 13 (Rule 13) and Texas Civil Practice and Remedies Code section 10.001 (Chapter 10) are "independent grounds" on which a trial court may base a sanctions order. *Aleman*, 2025 WL 2445991, at *20; *see* Tex. R. Civ. P. 13; Tex. Civ. Prac. & Rem. Code § 10.001.

faith and fair dealing claim on no-evidence grounds, we need not additionally consider whether summary judgment was also proper on traditional grounds. *See* Tex. R. App. P. 47.1.

¹⁴ Although appellants' "Statement of the Case" acknowledges that the trial court granted appellee's "Motion for Recovery of Attorney's Fees and Costs under the Texas Insurance Code, Texas Civil Practice and Remedies Code, the Texas Rules of Civil Procedure, and the DTPA," that is the only time in their appellate briefing that appellants acknowledge the other bases supporting the sanctions order.

Appellants do not raise a challenge to the sanctions order under Chapter 10.¹⁵ Chapter 10 is an independent basis for the award stated in the order. *See Aleman*, 2025 WL 2445991, at *20. Appellants’ failure to challenge the trial court’s sanctions order on the independent basis of Chapter 10 renders harmless the errors, if any, alleged in their challenge of the order.¹⁶ *See Akhtar*, 525 S.W.3d at 819; *Aleman*, 2025 WL 2445991, at *20.

We overrule appellants’ contentions in issue four.

5. Sufficiency Challenges to the Attorneys’ Fees Award

In issue five, appellants challenge the sufficiency of the evidence¹⁷ supporting the trial and appellate attorneys’ fees awarded to appellee.¹⁸ However, appellants cannot prevail on these appellate arguments because there is no reporter’s record from the hearing on appellee’s motion for recovery of attorneys’ fees and costs.

An appellant bears the burden to bring forward on appeal a sufficient record to show the error committed by the trial court. *Rodriguez v. Doe*, 614 S.W.3d 380,

¹⁵ Appellants do not cite or address Chapter 10 in their briefing. *See generally* Tex. R. App. P. 38.1(i). Appellants also fail to cite or address Texas Insurance Code section 541.153, which the trial court also relied on to support its sanctions order. *See generally id.* Appellants reference the DTPA once in their argument regarding the sanctions order. Even if this passing reference to the DTPA constituted a challenge to that basis for the sanctions order, appellants have still failed to challenge the imposition of sanctions under Chapter 10.

¹⁶ To the extent appellants’ conclusory challenges to the trial court’s fact findings within their arguments challenging the summary judgment order are also intended as challenges to the trial court’s sanctions order, we conclude amu such alleged errors are likewise rendered harmless. *See Akhtar*, 525 S.W.3d at 819; *see also Aleman*, 2025 WL 2445991, at *20.

¹⁷ Appellants’ argument that the fees are “excessive” is a factual sufficiency challenge. *See Ho & Huang Properties, L.P. v. Parkway Dental Associates, P.A.*, 529 S.W.3d 102, 122 (Tex. App.—Houston [14th Dist.] 2017, pet. denied) (“to show that an attorney’s-fees finding is excessive, a complaining party must establish that the evidence is factually insufficient to support the finding).

¹⁸ Appellants also state, “The Trial Court further made no finding that Ramsey’s fees were reasonable or necessary.” Appellants’ brief provides no argument or additional explanation regarding this issue. To the extent this statement is intended as an alternate basis for challenging the trial court’s award of attorneys’ fees, the issue is forfeited due to inadequate briefing. *See Mejia*, 2025 WL 2215911, at *3 (citing Tex. R. App. P. 38.1(i)).

383 n.4 (Tex. App.—Houston [14th Dist.] 2020, no pet.); *see also Christiansen v. Prezelski*, 782 S.W.2d 842, 843 (Tex. 1990) (per curiam). Settled law recognizes the impossibility of establishing on appeal that the evidence is either legally or factually insufficient without a complete reporter’s record.¹⁹ *Mbonu v. Office of Attorney Gen.*, No. 01-07-00659-CV, 2008 WL 2186504, at *4 (Tex. App.—Houston [1st Dist.] May 22, 2008, no pet.) (mem. op.) (citing *Schafer v. Conner*, 813 S.W.2d 154, 155 (Tex. 1991) (per curiam); *Englander Co. v. Kennedy*, 428 S.W.2d 806, 807 (Tex. 1968)).

In the absence of a reporter’s record of the hearing on attorneys’ fees and costs, we must presume the evidence at the hearing supported the trial court’s decision on attorneys’ fees. *See In Interest of D.A.*, No. 14-16-00491-CV, 2017 WL 3927443, at *2 (Tex. App.—Houston [14th Dist.] Sept. 7, 2017, no pet.) (mem. op.) (“Because there is no reporter’s record of the bench trial, we must presume the missing evidence supports the trial court’s decision on attorney’s fees.”); *see also Interest of T.R.H.*, No. 04-18-00834-CV, 2019 WL 6887143, at *2 (Tex. App.—San Antonio Dec. 18, 2019, no pet.) (mem. op.) (“When no record has been requested or filed, we presume the evidence admitted at trial is legally and factually sufficient to support the trial court’s findings and order.”).

We overrule appellants’ contentions in issue five.

6. Unconditional Appellate Fees

In issue six, appellants argue the trial court erred by not conditioning the award of appellate attorneys’ fees on a successful appeal.²⁰ We agree.

¹⁹ The exception for situations in which a partial reporter’s record is properly requested does not apply in this case. *See generally* Tex. R. App. P. 34.6(c)(4).

²⁰ Appellee asserts that appellants waived their complaint about the trial court’s failure to award appellate attorneys’ fees conditioned on appellee’s success on appeal. We disagree. *See, e.g., Aleman*, 2025 WL 2445991, at *25 n.25 (concluding challenge to unconditional appellate attorney’s fees award was not waived); *Branfman v. Alkek*, No. 13-18-00554-CV, 2020 WL 2776719, at *5 (Tex. App.—Corpus Christi–Edinburg May 28, 2020, no pet.) (mem. op.) (same);

A trial court may not penalize a party for taking a successful appeal. *Humble Nat. Bank v. DCV, Inc.*, 933 S.W.2d 224, 236 (Tex. App.—Houston [14th Dist.] 1996, writ denied). Consequently, an unconditional award of appellate attorneys’ fees is improper. *Id.* However, an unconditional award of appellate attorneys’ fees does not require reversal; instead, we may modify a trial court’s judgment to make the award of appellate attorneys’ fees contingent upon the receiving party’s success on appeal. *Messier v. Messier*, 458 S.W.3d 155, 170 (Tex. App.—Houston [14th Dist.] 2015, no pet.).

In the present case, the trial court’s error is harmless as to the award of unconditional fees for the appeal to this court because appellants have been ultimately unsuccessful in this appeal. *See Humble*, 933 S.W.2d at 236. Therefore, the trial court did not reversibly err in failing to condition the award of appellate attorneys’ fees on appellee’s success in this court. *See id.* However, the point of error is sustained to the extent it applies to the unconditional award of attorneys’ fees on appeal to the Supreme Court of Texas. *See id.* Therefore, we modify page 10 of the judgment by inserting the phrase, “conditioned upon Standard Casualty Company prevailing on appeal” as follows: “IT IS FURTHER ORDERED that if Plaintiffs and/or their counsel appeals the Final Judgment and award of sanctions, Standard Casualty Company is entitled to recover the following appellate fees, conditioned upon Standard Casualty Company prevailing on appeal.”

271 *Truck Repair & Parts, Inc. v. First Air Express, Inc.*, No. 03-07-00498-CV, 2008 WL 2387630, at *10 (Tex. App.—Austin June 11, 2008, no pet.) (mem. op.) (same); *see generally Ventling v. Johnson*, 466 S.W.3d 143, 156 (Tex. 2015) (explaining that an “award of conditional appellate attorney’s fees to a party is essentially an award of fees that have not yet been incurred and that the party is not entitled to recover unless and until the appeal is resolved in that party’s favor,” and adopting this court’s reasoning that “because an award of appellate attorney’s fees depends on the outcome of the appeal, it is not a final award until the appeal is concluded and the appellate court issues its final judgment.”) (quoting *Watts v. Oliver*, 396 S.W.3d 124, 135 (Tex. App.—Houston [14th Dist.] 2013, no pet.)).

We overrule in part and sustain in part appellants' contention in issue six.

III. CONCLUSION

We modify the trial court's judgment awarding appellate fees as specified above, making such an award conditional upon appellee prevailing on appeal. *See Messier*, 458 S.W.3d at 170–71. We affirm the remainder of the trial court's judgment.

/s/ Ken Wise
 Justice

Panel consists of Justices Wise, Bridges, and Antú.