

STATE OF MICHIGAN
COURT OF APPEALS

FARM BUREAU INSURANCE COMPANY,

Plaintiff-Appellant,

v

WIRT FINANCIAL SERVICES,

Defendant-Appellee,

and

TIMOTHY W. REINHARDT, SUSAN K.
REINHARDT and GENERAL TOWING &
COLLISION,

Defendants.

UNPUBLISHED

July 13, 2001

No. 221879

Wayne Circuit Court

LC No. 98-827559-NF

Before: Saad, P.J., and Holbrook, Jr. and Murphy, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for sanctions pursuant to MCR 2.625(A)(2) and MCL 600.2591. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

If the court finds that an action or defense was frivolous, it must award costs pursuant to MCL 600.2591. MCR 2.625(A)(2). That statute provides that if the court finds that a civil action is frivolous, it must award the prevailing party "the costs incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney." MCL 600.2591(1). An action is frivolous if it meets one of the following conditions:

(i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.

(ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.

(iii) The party's legal position was devoid of arguable legal merit. [MCL 600.2591(3)(a); MSA 27A.2591(3)(a).]

The purpose of § 2591 is “to sanction attorneys and litigants who file lawsuits or defenses without reasonable inquiry into the factual basis of a claim or defense, not to discipline those whose cases are complex or face an ‘uphill fight.’” *Louya v William Beaumont Hosp*, 190 Mich App 151, 163-164; 475 NW2d 434 (1991). Also, important for our analysis, “[t]he circumstances existing at the time a case is commenced is of critical importance in determining if a lawsuit has a basis in fact or law.” *Meagher v Wayne State Univ*, 222 Mich App 700, 727; 565 NW2d 401 (1997). The trial court's finding that an action is frivolous is reviewed for clear error, but the amount of sanctions awarded is reviewed for an abuse of discretion. *In re Attorney Fees & Costs*, 233 Mich App 694, 701, 704; 593 NW2d 589 (1999).

Here, the trial court clearly erred in granting defendant's motion. Defendant argued that plaintiff's claim was frivolous under § 2591(3)(a)(ii) and (iii) because after plaintiff filed suit, defendant provided ample evidence to prove that it was not liable. However, in determining whether a claim is frivolous, the primary focus is on the information known to plaintiff and its attorney at the time the suit was filed, not what is later discovered. *Louya, supra* at 162-163. The fact that discovery later shows the plaintiff's position to be untenable is not conclusive proof that the claim was frivolous when filed. *Id.* at 163-164. Because defendant never asserted in its motion that plaintiff had reason to know that the facts underlying its claim were untrue and thus its claim was without legal merit at the time the complaint was filed, defendant failed to establish a right to sanctions.

Reversed.

/s/ Henry William Saad
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy