

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL FRANCIS SPITZLEY, Personal
Representative of the ESTATE OF DAVID A.
SPITZLEY,

UNPUBLISHED
December 1, 2005

Plaintiff-Appellee,

v

THOMAS P. SPITZLEY and KIMBERLY S.
SPITZLEY.

No. 255345
Clinton Circuit Court
LC No. 03-009578-CZ

Defendants-Appellants.

Before: Smolenski, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court's order imposing sanctions for filing a frivolous claim. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The underlying case involved a dispute over ownership of forty acres of farmland. On November 14, 2002 plaintiff Michael Spitzley along with Lisa Spitzley-Klein, as co-personal representatives of their father's estate, signed a personal representative's deed selling real estate to defendants. The legal description on that deed included a legal description relating to a small parcel, under one acre, with a house on it, described as "Lot 4, Block 4, except the North 100 feet thereof." The remainder of the lengthy legal description described the forty acres of farmland that were in dispute. However, a review of the records revealed that the estate did not own the forty acres of farmland. Rather, prior to his death, the decedent signed a deed conveying the forty acres to himself and his son Michael Spitzley as joint tenants with rights of survivorship. Accordingly, at the time of the transfer at issue, the estate only owned the small parcel with the house on it.

Plaintiff filed its complaint requesting the personal representative's deed be reformed and the cloud on the title to the forty acres be removed. Defendants filed a counter-claim asserting breach of contract, breach of fiduciary obligation, and fraud and requesting the title be clarified and that damages be awarded.

The trial court granted summary disposition in favor of plaintiff, stating that the estate could not convey real estate that it did not own. The court also dismissed defendants counter-claim and found that it was frivolous and unsupported by evidence or Michigan law. Accordingly the trial court imposed attorney fees and costs against defendants pursuant to MCL 600.2591.

“A trial court’s finding that an action is frivolous is reviewed for clear error.” *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002). “A decision is clearly erroneous where, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made.” *Id.* at 661-662. When determining if sanctions are appropriate, courts must evaluate the claims and defenses at the time they were made. *In re Costs and Attorney Fees*, 250 Mich App 89, 94; 645 NW2d 697 (2002). The trial court’s factual determination depends of the specific facts and circumstances of the claim involved. *Id.* at 94-95.

MCL 600.2591 provides that costs and fees shall be awarded to a prevailing party “if a court finds that a civil action or defense to a civil action was frivolous.”

“Frivolous” means that at least 1 of the following conditions is met:

- (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).]

In this case, the trial court found that defendants did not present any documentary evidence to support their position that the original intent was to convey the small homestead parcel and the contiguous forty acres of farmland. Except for the legal description in question, none of the documentary evidence provided in the case below made reference to the forty acres of farmland. That documentary evidence included defendants’ “purchase proposal for the home in the estate,” the financing appraisal that was only for the small parcel of real estate with the homestead, and the purchase agreement between defendants and the estate. All documentary evidence referred to the homestead of the estate or a parcel that was smaller than one acre. There was also no indication in the documents that Michael Spitzley signed in any capacity other than in his position as co-personal representative of the estate. Additionally, defendants cited only foreign authority to support their position when in fact controlling Michigan authority was contrary to their position.

Because defendants set forth claims and defenses that were not grounded in fact or supported by controlling authority, the trial court did not clearly err in finding that defendants' counter-claim was frivolous.

Affirmed.

/s/ Michael R. Smolenski

/s/ Bill Schuette

/s/ Stephen L. Borrello