

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

STEPHEN P. LAMB
VICE CHANCELLOR

New Castle County Court House
500 N. King Street, Suite 11400
Wilmington, Delaware 19801

Submitted: November 2, 2004
Decided: November 17, 2004

Alvin R. and Mary M. Mitchell
20346 Cedar Beach Road
Milford, DE 19963

Eugene H. Bayard, Esquire
Wilson, Halbrook and Bayard, P.A.
1107 West Market Street
P.O. Box 690
Georgetown, DE 19947

***RE: Alvin R. Mitchell and Mary M. Mitchell
v. Amanda Parisi and James A. Parisi
C.A. No. 2284-S***

Dear Mr. and Mrs. Mitchell and Mr. Bayard:

I have read and considered the October 28, 2004 application for an award of fees and costs, filed by Mr. Bayard on behalf of the Parisis, as well as the Mitchells' letter in response, dated November 2, 2004. Although both the application and the response contain numerous statements of fact, neither is sworn to nor accompanied by an affidavit. Moreover, neither the application nor the response requests a hearing to resolve the issues presented. Instead, both appear to be content to have the Court resolve the issues on the basis of the submissions.

I will deny the application, except that the defendants will be awarded their taxable costs of this proceeding, in accordance with Chancery Court Rule 54(d), which provides, pertinently, that "costs shall be allowed as of course to the prevailing party unless the Court otherwise directs." Thus, I will deny the request for reimbursement of attorneys' fees, the costs of subdividing and surveying the Parisis' property and related expenses claimed by them.

Generally speaking, this Court has the discretion to award attorneys' fees where a party has acted in bad faith in the prosecution or defense of litigation.¹

¹ *Nagy v. Bistricher*, 770 A.2d 43, 64 (Del. Ch. 2000).

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Suffice it to say, however, that although the Mitchells eventually chose to abandon their claim, the record before me does not support the conclusion that they either brought this action in bad faith or engaged in bad faith misconduct during the course of its litigation. To the extent the application seeks to recover the other costs mentioned (i.e. surveying, subdivision, etc.), it goes beyond the normal scope of a fee shifting application and appears to seek damages flowing from some unspecified tort. The Court would only consider awarding damages of that nature if a pleading were filed alleging a basis upon which to recover damages of that nature and proper proceedings took place thereon. Since that has not happened, the Court will not entertain the demand for damages.

Mr. Bayard should submit a form of order, on notice to the Mitchells, in accordance with this letter opinion.

/s/ Stephen P. Lamb
Vice Chancellor