UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

DENNIS EDWARD FRASER,

Plaintiff,

v. Case Number: 09-14906 Honorable Denise Page Hood

LIVINGSTON COUNTY, COUNTY SHERIFF ROBERT BEZOTTE, TARA BLACK.

Defendants.

ORDER DENYING DEFENDANTS' MOTION FOR ATTORNEY FEES

I. INTRODUCTION

This matter is before the Court on Defendants Shana Adkins and Tara Black's Motion for Attorney Fees [Docket No. 45, filed April 8, 2011]. The Court granted Defendants' Motion to Dismiss and Defendants' Motion for Summary Judgment on March 25, 2011 [Docket No. 41].

II. ANALYSIS

Defendants bring this action pursuant to Federal Rule of Civil Procedure 11 and Michigan Compiled Laws § 600.2591. Defendants filed essentially the same motion in the companion case *Fraser v. Law Offices of Parker and Parker*, Case No. 11-10585. In diversity cases, such as the instant action, the issue of attorney fees is governed by state law. *Hometown Folks LLC v. S&B Wilson, Inc.*, 643 F.3d 520, 533 (6th Cir. 2011). Section 600.2591 allows the Court to award attorney fees to the prevailing party if the Court "finds that a civil action or defense to a civil action is frivolous..." A civil action or defense is frivolous when 1) the action was meant to harass, embarrass, or injure the prevailing party; 2) the party had no reasonable

basis to believe the underlying facts were true; or 3) the claim had no legal merit. MICH. COMP.

Laws § 600.2591(a).

Defendants argue that they are entitled to fees because Plaintiff was aware that his claims

arose from the estate proceedings in Livingston County Probate Court and that he failed to

comply with that court's orders. Plaintiff's decision to bring this action based on the prior estate

proceedings, although unsuccessful, was not completely devoid of legal merit. "Not every error

in legal analysis constitutes a frivolous position. Moreover, merely because this Court concludes

that a legal position asserted by a party should be rejected does not mean that the party was

acting frivolously in advocating its position." Kitchen v. Kitchen, 641 N.W.2d 245, 251 (Mich.

2002). Defendants' Motion for Attorney Fees is DENIED.

III. **CONCLUSION**

Accordingly,

IT IS ORDERED that Defendants' Motion for Attorney Fees [Docket No. 45, filed

April 8, 2011] is **DENIED**.

S/Denise Page Hood

United States District Judge

Dated: December 8, 2011

I hereby certify that a copy of the foregoing document was served upon Dennis E. Fraser, 21 Poppy Street, Homosassa, FL 34446 and counsel of record on December 8, 2011, by electronic

and/or ordinary mail.

S/LaShawn R. Saulsberry

Case Manager

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