

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

VAN SANT LAW, LLC,

Appellant,

v.

AIR ISAAC, LLC,

Appellee.

No. 2D21-3714

December 2, 2022

Appeal from the Circuit Court for Pinellas County; George M. Jirotko, Judge.

David L. Luck of Lewis, Brisbois, Bisgaard & Smith, LLP, Coral Gables, for Appellant.

Steven Scott Stephens and John A. Anthony of Anthony & Partners, LLC, Tampa, for Appellee.

STARGEL, Judge.

Van Sant Law, LLC, challenges the order denying its motion for sanctions pursuant to section 57.105, Florida Statutes (2020),

against Air Isaac, LLC. Van Sant argues the trial court failed to exercise the reasoned discretion required to deny the motion because it did not render any factual findings or legal conclusions. Although a denial of a motion pursuant to section 57.105 does not require the specific findings dictated by the statute when granting a motion, the failure to make any findings—written or oral—prohibits meaningful appellate review. Accordingly, we must reverse and remand to the trial court to render findings.

BACKGROUND

Air Isaac, LLC, Van Sant Law, LLC, and North Coast Builder Corporation (NCBC) together formed RK324, LLC, a Delaware limited liability company operating in the State of Georgia. RK324's only asset is an aircraft that, pursuant to its operating agreement, maintains its home base in a Georgia hangar. The purpose of RK324 is to own, dry lease, and sell the aircraft. Air Isaac filed a complaint on April 19, 2021, in Pinellas County against Van Sant, NCBC, and RK324 seeking, inter alia, to dissolve RK324 and liquidate the aircraft. On May 27, 2021, Van Sant filed a motion for sanctions pursuant to section 57.105, and on June 3, 2021, Van Sant and NCBC filed a motion to dismiss for lack of jurisdiction,

improper venue, and forum non conveniens. The substance of the motion for sanctions was that Air Isaac frivolously filed the complaint in Florida instead of Georgia to delay resolution of the dispute. Air Isaac voluntarily dismissed the complaint on September 9, 2021, rendering the motion to dismiss moot; however, the dismissal was well after the expiration of the statutory twenty-one-day safe harbor provision provided by section 57.105(4). Van Sant pursued the motion for sanctions, and a hearing was held on November 1, 2021, wherein the trial court took the matter under advisement without making any findings. Subsequently, the trial court entered an unelaborated written order denying the motion on November 2, 2021.

ANALYSIS

An order denying a motion for attorney's fees and costs under section 57.105 is generally reviewed "for an abuse of discretion, but if the trial court's determination is based on a legal conclusion, such as the interpretation of a statute or contractual provision, a de novo standard applies." *Suarez v. Bank of N.Y. Mellon Tr. Co.*, 325 So. 3d 205, 208 (Fla. 2d DCA 2021) (quoting *Schurr v. Silverio & Hall, P.A.*, 290 So. 3d 634, 637 (Fla. 2d DCA 2020)). "[S]ection

57.105 expressly states courts 'shall' assess attorney's fees for bringing, or failing to timely dismiss, baseless claims or defenses." *de Vaux v. Westwood Baptist Church*, 953 So. 2d 677, 685 (Fla. 1st DCA 2007) (quoting *Smith v. Gore*, 933 So. 2d 567, 568 (Fla. 1st DCA 2006)). "The word 'shall' in section 57.105 has been found to evidence the legislative intent to impose a mandatory penalty in the form of reasonable attorney's fees to discourage baseless claims, by placing a price tag on losing parties who engage in these activities." *Albritton v. Ferrera*, 913 So. 2d 5, 8-9 (Fla. 1st DCA 2005) (emphasis omitted).

"Although the law requires a trial court to render findings of frivolity as a prerequisite to awarding fees under the relevant statute, findings to the contrary are not necessary in denying such fees." *Sans Souci Gated Homeowners Ass'n v. Lukov*, 317 So. 3d 243, 243 (Fla. 3d DCA 2021); *see* § 57.105(1); *Mason v. Highlands Cnty. Bd. of Cnty. Comm'rs*, 817 So. 2d 922, 923 (Fla. 2d DCA 2002); *Shortes v. Hill*, 860 So. 2d 1, 2 (Fla. 5th DCA 2003).

However, without rendering *any* findings, it is impossible to determine on appellate review whether the trial court abused its discretion in denying the motion. This court cannot supply the

missing reasoning that the trial court did not provide below. *See, e.g., Boca Burger, Inc. v. Forum*, 912 So. 2d 561, 569 (Fla. 2005) (stating that when a trial court fails to make findings under section 57.105, an appellate court is "without authority to do so in the first instance on appeal" (quoting *Kurzweil v. Larkin Hosp. Operating Co.* 684 So. 2d 901, 903 (Fla. 3d DCA 1996))). Thus, we reverse and remand to the trial court to make findings, either oral or written, regarding its denial of Van Sant's motion for sanctions pursuant to section 57.105.

Reverse and remanded with instructions.

MORRIS, C.J., and ROTHSTEIN-YOUAKIM, J., Concur.

Opinion subject to revision prior to official publication.