

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

THOMAS B. MURPHY and)
MARIAN S. MURPHY,)
)
Appellants,)
)
v.)
)
MICHAEL S. MURPHY and)
JACQUELINE K. MURPHY,)
)
Appellees.)
)
)
_____)

Case No. 2D06-194

Opinion filed December 8, 2006.

Appeal from the Circuit Court
for Pinellas County;
Amy M. Williams, Judge.

Kurt Von Gonten of Middagh Law
Group, P.L., Miami, for Appellants.

Sarah M. Chaves, St. Petersburg,
for Appellees.

KELLY, Judge.

Thomas and Marian Murphy appeal the final order awarding Jacqueline
Murphy attorney's fees pursuant to section 57.105, Florida Statutes (2005). Section
57.105(1) provides for an award of attorney's fees to the prevailing party in an action if

the court finds that the losing party or the losing party's attorney knew or should have known that a claim when initially presented "[w]as not supported by the material facts necessary to establish the claim" or "[w]ould not be supported by the application of then-existing law to those material facts." Although "[t]he post-1999 version of section 57.105 has greatly expanded the court's power to award fees when a party asserts a claim without an adequate factual foundation[,] . . . the new statute is still intended to address frivolous pleadings." Peyton v. Horner, 920 So. 2d 180, 183 (Fla. 2d DCA 2006) (citing Connelly v. Old Bridge Vill. Co-Op, Inc., 915 So. 2d 652, 656 (Fla. 2d DCA 2005)). Because the record in this case does not support a finding that the Murphys or their counsel knew or should have known that their claims against Michael and Jacqueline Murphy were not supported by the material facts or the application of then-existing law to those material facts, see section 57.105(1)(a), (b), we reverse the trial court's award of attorney's fees under section 57.105.

Reversed.

CASANUEVA and CANADY, JJ., Concur.