Third District Court of Appeal
State of Florida

Opinion filed July 22, 2020.
Not final until disposition of timely filed motion for rehearing.

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No. 3D19-508
Lower Tribunal No. 17-2393

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Preferred Government Insurance Trust,
Appellant,

vs.

Isaac Aelion and Riva Aelion, and Michelle Aelion,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, David C. Miller, Judge.

Garrison, Yount, Forte, & Mulcahy, LLC, and Scott P. Yount and Madeline C. St. Clair (Tampa), for appellant.

Panter, Panter & Sampedro, P.A., and Brett A. Panter and David Sampedro; Joel S. Perwin, P.A., and Joel S. Perwin, for appellees.

Before EMAS, C.J., and SCALES and LOBREE, JJ.

PER CURIAM.

Appellant Preferred Government Insurance Trust ("PGIT") appeals an order determining a worker's compensation lien subrogation amount, as well as an order imposing sanctions on PGIT in the amount of $4,500.00 pursuant to section 57.105(1), Florida Statutes (2019).

Based upon our review of the contingent fee contract at issue; the petition filed with the circuit court pursuant to and in compliance with the requirements of Rule 4-1.5(f)(4)(B)(ii), Rules Regulating the Florida Bar; the trial court's proper approval of the contingency fee contract pursuant to that rule; and our review of the entire record, we find no error or abuse of discretion in the trial court's findings and determinations contained within the lien subrogation order, and affirm. See § 440.39, Fla. Stat. (2019); Manfredo v. Empr.'s Cas. Ins. Co., 560 So. 2d 1162 (Fla. 1990); Nikula v. Michigan Mut. Ins., 531 So. 2d 330 (Fla. 1988); Luscomb v. Liberty Mut. Ins. Co., 967 So. 2d 379 (Fla. 3d DCA 2007); AGC Risk Mgmt. Grp., Inc. v. Orozco, 635 So. 2d 1034 (Fla. 3d DCA 1994).

However, we reverse the trial court's order imposing sanctions against PGIT pursuant to section 57.105(1).[1] Under that subsection, a court may impose sanctions

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[1] Section 57.105(1), Florida Statutes (2019) provides:

> (1) Upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's

on an attorney for a frivolous filing where, for example, the claim was not supported by the material facts necessary to establish the claim or would not be supported by the application of then-existing law. In this context, we have defined "frivolous" as a claim that "presents no justiciable question and is so devoid of merit on the face of the record that there is little prospect it will ever succeed." JP Morgan Chase Bank, N.A. v. Hernandez, 99 So. 3d 508, 513 (Fla. 3d DCA 2011). See also MC Liberty Express, Inc. v. All Points Servs., Inc., 252 So. 3d 397, 403 (Fla. 3d DCA 2018) (holding "the trial court *must* find that the action was 'frivolous or so devoid of merit both on the facts and the law as to be completely untenable.' . . . .

> attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:
>
> (a) Was not supported by the material facts necessary to establish the claim or defense; or
>
> (b) Would not be supported by the application of then-existing law to those material facts.

Subsection (3) of section 57.105 provides in relevant part:

> (3) Notwithstanding subsections (1) and (2), monetary sanctions may not be awarded:
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> (a) Under paragraph (1)(b) if the court determines that the claim or defense was initially presented to the court as a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, as it applied to the material facts, with a reasonable expectation of success.
>
> (b) Under paragraph (1)(a) or paragraph (1)(b) against the losing party's attorney if he or she has acted in good faith, based on the representations of his or her client as to the existence of those material facts.

Additionally, the trial court's findings must be based on substantial competent evidence that is either contained in the record or is otherwise before the court") (internal citations omitted).

In the instant case, the trial court abused its discretion in imposing sanctions under section 57.105, as there was no basis in the record to support a determination that the motion filed by PGIT was frivolous. Santini v. Cleveland Clinic Fla., 65 So. 3d 22, 36 (Fla. 4th DCA 2011) (holding if a good faith basis argument is made to extend, modify or alter existing law, it is an abuse of discretion for the court to impose sanctions on the attorney presenting that argument). See also Jones v. ETS of New Orleans, Inc., 793 So. 2d 912, 918 (Fla. 2001) (noting "nothing prevents the employer/carrier from challenging whether the costs are reasonable and the circuit court from determining whether the actual costs incurred are reasonable.") The mere fact that PGIT did not ultimately prevail on its argument did not render it frivolous or support the imposition of sanctions under section 57.105. Resnick v. Cty. Line Auto Ctr., Inc., 639 So. 2d 1091, 1092 (Fla. 3d DCA 1994) (reversing order imposing sanctions under section 57.105, noting the mere fact that the defendant prevailed on a motion for summary judgment does not demonstrate that "the action was so clearly devoid of merit both on the facts and the law as to be completely untenable" and further noting that the "standard of frivolousness necessary to support an award of fees pursuant to section 57.105 'is not equivalent to the standard

required to prevail on a summary judgment, judgment on the pleadings, or even a motion to dismiss for failure to state a cause of action'") (additional citations omitted). See also Chaiken v. Suchman, 694 So. 2d 115 (Fla. 3d DCA 1997); Rojas v. Drake, 569 So. 2d 859 (Fla. 2d DCA 1990).

Affirmed in part, reversed in part and remanded for further proceedings.