

KENNETH LOBELL, ET AL	*	NO. 2018-CA-0559
VERSUS	*	COURT OF APPEAL
CINDY ANN ROSENBERG, ET AL	*	FOURTH CIRCUIT
	*	STATE OF LOUISIANA
	*	
	*	
	* * * * *	

LOBRANO, J., CONCURS IN PART, DISSENTS IN PART, AND ASSIGNS REASONS.

I respectfully concur in part and dissent in part. Considering only the issues raised by Lobell in this appeal, I concur in the majority’s affirmation of the district court’s March 23, 2018 judgment.¹

I dissent from the majority’s denial of sanctions to the Rosenbergs. The majority relies on Lobell’s “perspective,” that Lobell subjectively believes his arguments do not wholly lack any basis. This subjective standard applied by the majority is incorrect.

“Damages for frivolous appeals, like sanctions at the trial court level, are utilized to curtail the filing of appeals that are intended to delay litigation, harass another party, or those that have no reasonable basis in fact or law.” *Hunter v. Maximum Grp. Behavioral Servs., Inc.*, 2010-0930, p. 6 (La. App. 4 Cir. 3/16/11), 61 So.3d 735, 739 (quotation omitted). La. C.C.P. art. 2164 and the jurisprudence of this State empower the appellate court to award frivolous appeal damages “if the appellant is trying to delay the action”, if the appeal “does not present a substantial legal question,” or “if the appealing counsel does not seriously believe the law he

¹ I dissent separately in the companion appeal, *Lobell v. Rosenberg*, 2018-0600 (La. App. 4 Cir. --/--/--), in which I explain that I would reverse, in part, the March 23, 2018 judgment, with respect to the district court’s denial of post-trial rent, insurance, taxes, and interest to the Rosenbergs. Those issues are not raised in Lobell’s appeal.

or she advocates.” *Id.* (quotations omitted). Likewise, La. C.C.P. art. 863 “require[s] the attorney or litigant who signs a pleading to make an objectively reasonable inquiry into the facts and the law. Subjective good faith does not satisfy the duty of reasonable inquiry.” *Diesel Driving Acad., Inc. v. Ferrier*, 563 So.2d 898, 902 (La. App. 2nd Cir. 1990).

As acknowledged in the majority opinion, Lobell’s brief is replete with arguments that have been previously considered and rejected by this Court. I find this appeal *objectively* frivolous. The Rosenbergs should be awarded damages for frivolous appeal in the amount of \$2,500.00.