

STATE OF MICHIGAN
COURT OF APPEALS

R & B OF MUSKEGON, INC.,

Plaintiff-Appellant,

v

THE HERALD COMPANY, INC., d/b/a THE
MUSKEGON CHRONICLE,

Defendant-Appellee.

UNPUBLISHED

December 27, 1996

No. 189358

Muskegon County

LC No. 95-032876-NZ

Before: Hood, P.J., and Neff and M. A. Chrzanowski,* JJ.

PER CURIAM.

Plaintiff R & B of Muskegon, Inc., doing business as the Odyssey Adult Theatre and Book Store, sued defendant The Muskegon Chronicle, alleging a “constitutional tort” and claiming that defendant had denied it free speech, equal protection, due process, and freedom of assembly by virtue of defendant’s refusal to place plaintiff’s advertisement in its newspaper. The trial court granted summary disposition to defendant, denied plaintiff’s motion to amend its complaint to add a breach of contract claim, and sanctioned plaintiff and plaintiff’s attorney for filing a frivolous pleading. Plaintiff now appeals as of right. We affirm.

I

Plaintiff first challenges the trial court’s imposition of sanctions for filing a frivolous lawsuit. We will not reverse a trial court’s determination that a claim is frivolous unless it is clearly erroneous. *Cvengros v Farm Bureau Ins*, 216 Mich App 261, 266; 548 NW2d 698 (1996). Under this standard of review, reversal is permitted only where this Court is left with a definite and firm conviction that a mistake has been made. *Miller v Riverwood Recreation Center, Inc*, 215 Mich App 561, 572; 546 NW2d 684 (1996).

In its complaint plaintiff alleged a “constitutional tort”: that is, that defendant’s refusal to publish plaintiff’s proposed advertisement denied plaintiff its rights to free speech, equal protection, due

* Circuit judge, sitting on the Court of Appeals by assignment.

process, and freedom of assembly under both the United States and Michigan Constitutions. It is well settled that the business of publishing a newspaper is a private enterprise and a publisher is under no obligation to publish advertisements submitted to it. See generally *Bloss v Federated Publications, Inc*, 5 Mich App 74; 145 NW2d 800 (1966), aff'd 380 Mich 485; 157 NW2d 241 (1968), 18 ALR3d 1286, §§ 2, 3. Furthermore, plaintiff's contract with defendant expressly reserved defendant's right to reject any advertisement copy. Thus, under both *Bloss, supra*, and the parties' contract, plaintiff had no legal basis for its "constitutional tort" claim.

Plaintiff's counsel admitted that, prior to filing his claim, he consulted only one legal resource and that, although it provided him with no authority against his position, it did not provide him with any authority *for* his position. At the hearing on defendant's motion for summary disposition, when presented with the abundance of authority against his position, plaintiff's counsel refused to concede that his tort claim was not viable (although he does so on appeal); rather, he filed a motion to amend the complaint to add a breach of contract claim. As discussed more fully below, this claim was likewise without any legal merit, as the clear and unambiguous language of the contract permitted defendant to reject any advertisement submitted to it.

It is without question that plaintiff's counsel had an affirmative duty to conduct a reasonable inquiry into the factual and legal viability of a pleading before signing it. MCR 2.114(D); *Cvengros, supra*, at 266. Sanctions are mandatory where a party files a claim that is "devoid of arguable legal merit," MCL 600.2591; MSA 27A.2591, or is neither "warranted by existing law" nor a "good-faith argument for the extension, modification, or reversal of existing law." MCR 2.114(D), (E). Here, however, plaintiff's claims were not only barred by existing law, but also unsupported by a good-faith argument based on any authority whatsoever. Therefore, under both the statute and the court rule, the court was obligated to impose sanctions. *Id.*; cf. *Taylor v Lenawee Co Bd of Rd Commrs*, 216 Mich App 435, 444-446; 549 NW2d 80 (1996) (where there was no binding authority on point, and careful research did not establish a complete lack of support for the plaintiffs' position, the trial court clearly erred in awarding sanctions against the plaintiffs).

Because we are not left with a firm and definite conviction that a mistake was made, we affirm the trial court's imposition of sanctions.

II

Defendant next argues that the trial court abused its discretion in denying plaintiff's motion to amend its complaint. However, at oral argument on appeal, this claim was expressly abandoned and we therefore decline to address it.

Affirmed.

/s/ Harold Hood

/s/ Janet T. Neff

/s/ Mary A. Chrzanowski