

STATE OF MICHIGAN
COURT OF APPEALS

JAMES WELCH and KIM WELCH,

Plaintiffs-Appellants,

v

WILLIAM F. SCHROEDER,

Defendant-Appellant.

UNPUBLISHED

April 25, 2000

No. 221104

Wayne Circuit Court

LC No. 99-908081-CH

Before: Collins, P.J., and Neff and Smolenski, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendant's motion for summary disposition and finding their claim to be frivolous. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant obtained a judgment against James Welch, only, in an underlying action, *Schroeder v Welch*, Wayne County Circuit Court Docket No. 92-215435-CP. When collection efforts proved unsuccessful, defendant filed a writ of execution against plaintiffs' residence. Plaintiffs, who are husband and wife, own the property as tenants by the entireties. Plaintiffs moved in the underlying action to quash the writ. The trial court, relying on federal authority decided after the writ of execution was filed, *Craft v United States*, 140 F3d 638 (CA 6, 1998), concluded that a lien could not attach to property held by the entireties. The court declared the writ invalid, but held that it would not be removed until James Welch answered interrogatories in the underlying action.

Subsequently, plaintiffs filed the instant action for slander of title and to quiet title. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10), and requested sanctions pursuant to MCL 600.2591; MSA 27A.2591. The trial court granted the motion pursuant to MCR 2.116(C)(10), finding that reasonable minds could not differ on whether defendant filed the writ solely to harass James Welch. The court also found that plaintiffs' action was frivolous and granted defendant's request for sanctions.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

MCL 565.108; MSA 26.1278 provides:

No person shall use the privilege of filing notices hereunder for the purpose of slandering the title to land, and in any action brought for the purpose of quieting title to land, if the court shall find that any person has filed a claim for that reason only, he shall award the plaintiff all the costs of such action, including such attorney fees as the court may allow to the plaintiff, and in addition, shall decree that the defendant asserting such claim shall pay to plaintiff all damages that plaintiff may have sustained as the result of such notice of claim having been so filed for record.

The elements of slander of title are falsity of statement, malice, and special damages. *B & B Investment Group v Gitler*, 229 Mich App 1, 8; 581 NW2d 17 (1998). Malice cannot be inferred merely from the filing of an invalid lien. To sustain a claim of slander of title, the plaintiff must show that the defendant knowingly filed an invalid lien with the intent to cause the plaintiff injury. *Stanton v Dachille*, 186 Mich App 247, 262; 463 NW2d 479 (1990).

Plaintiffs argue that the trial court erred by granting defendant's motion for summary disposition and by imposing sanctions. We disagree. The judgment obtained by defendant in the underlying action is valid and outstanding. Falsity is an element of slander of title. *B & B Investment Group, supra*. The fact that the trial court was required to hold the lien invalid under *Craft, supra*, would not support a finding that defendant knowingly filed an invalid writ. At the time defendant filed the writ, the law allowed a lien to attach to a debtor's future interest in property held by the entireties. *Fischre v United States*, 852 F Supp 628 (WD Mich, 1994). The fact that defendant made no effort to sell the property did not create an issue of fact as to whether defendant acted with malice in filing the writ. James Welch had no divisible executable interest in the property. The grant of summary disposition was proper.

We will not reverse a trial court's finding that a claim is frivolous unless that finding is clearly erroneous. A claim is frivolous when: (1) the party's purpose in filing the claim was to harass, embarrass, or injure the prevailing party; (2) the party had no reasonable basis for believing that the underlying facts were true; or (3) the party's position was devoid of arguable legal merit. MCL 600.2591(3); MSA 27A.2591(3); *LaRose Market, Inc v Sylvan Center, Inc*, 209 Mich App 201, 210; 530 NW2d 505 (1995). We conclude that the trial court's finding that plaintiffs' claim was frivolous was not clearly erroneous. Plaintiffs' contention that defendant's only purpose in filing the writ was to slander their title was devoid of arguable legal merit.

We decline defendant's request to impose sanctions on the ground that plaintiffs have pursued a vexatious appeal. MCR 7.216(C)(1)(a). Sanctions on appeal are not merited simply because the appeal resulted from a frivolous claim below. The appeal itself must be vexatious.

DeWald v Isola (After Remand), 188 Mich App 697, 700; 470 NW2d 505 (1991). This appeal presented the meritorious issue of whether the trial court clearly erred in imposing sanctions.

Affirmed.

/s/ Jeffrey G. Collins

/s/ Janet T. Neff

/s/ Michael R. Smolenski