

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

MURNA HUBER,)	No. 66827-7-I
)	
Respondent,)	
)	
v.)	
)	
EAST EVERETT INVESTMENTS,)	
LLC,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: November 19, 2012
)	

Verellen, J. — Murna Huber sued East Everett Investments (EEI) for trespass and negligence related to the development of a plat in east Everett that surrounds Huber’s rental home. After EEI moved for summary judgment, Huber voluntarily dismissed the suit without prejudice. EEI moved for attorney fees and costs under the frivolous lawsuit statute, RCW 4.84.185. The court denied the motion, and EEI appeals. We affirm.

In her complaint, Huber alleged that EEI’s grading activities intentionally encroached upon her property without permission and were negligently performed, causing damage to her property and home. In response to EEI’s motion for fees, she submitted the declaration of her son and agent, David Huber.¹ David was a former

¹ To avoid confusion, we refer to David Huber as “David.” No disrespect is intended.

member of EEI through one of his companies and was closely involved in the east Everett development. As part of that development, EEI undertook substantial grading around Huber's property. In so doing, David asserts EEI took a larger portion of Huber's property than authorized and left an unstable slope that was steeper than allowed under applicable development codes. As a result, Huber's property eroded and shifted, causing a significant crack in her home's foundation. Additionally, the grading activities blocked Huber's access to her property and destroyed the septic system, resulting in lost rents. David further alleged that EEI was aware of the problems the grading caused and initially agreed to compensate Huber for the lost rents.

EEI contends the evidence establishes that the work Huber complains of was performed by an independent contractor for which EEI bears no liability. But though this defense might prove dispositive, it does not necessarily make Huber's suit frivolous.²

The purpose of RCW 4.84.185 is to discourage abuse of the legal system by providing for award of expenses and legal fees to any party forced to defend itself against meritless claims asserted for the purposes of harassment, delay, nuisance or spite.³ An action is frivolous if it cannot be supported by any rational argument based in fact or law.⁴ Attorney fees can be awarded under the statute only if the plaintiff's

² Gray v. Bourgette Const., LLC, 160 Wn. App. 334, 344, 249 P.3d 644 (2011) (“A case is not necessarily frivolous because a party ultimately loses on a factual or legal ground.”) (quoting W.R.P. Lake Union Ltd. P'ship v. Exterior Servs. Inc., 85 Wn. App. 744, 752, 934 P.2d 722 (1997)).

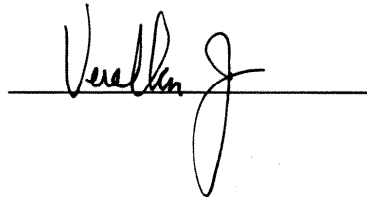
³ Biggs v. Vail, 119 Wn.2d 129, 134-36, 830 P.2d 350 (1992).

⁴ Wright v. Dave Johnson Ins. Inc., 167 Wn. App. 758, 785, 275 P.3d 339,

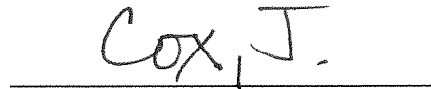
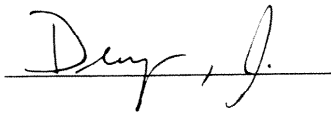
claim is frivolous in its entirety.⁵

The trial court concluded that EEI had not met its burden to prove Huber's complaint for trespass and negligence was entirely frivolous. Though it disagrees with that conclusion, EEI offers no compelling argument that the court abused its discretion.⁶

Affirmed.⁷



WE CONCUR:



review denied, 175 Wn.2d 1008, 285 P.3d 885 (2012).

⁵ Biggs, 119 Wn.2d at 133.

⁶ See Wright, 167 Wn. App. at 786 (appellate courts review decision whether to award fees under RCW 4.84.185 for abuse of discretion).

⁷ Finding insufficient basis for an award of attorney fees on appeal to either party, we decline both parties' requests.