

IN THE COURT OF APPEALS 1/31/97

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00767 COA

DOUG MASELLE

APPELLANT

v.

JACQUES AND EDITH SOLLBERGER

APPELLEES

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. ROBERT LOUIS GOZA JR.

COURT FROM WHICH APPEALED: RANKIN COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

K. F. BOACKLE

ATTORNEY FOR APPELLEES:

BETH RICHMOND

NATURE OF THE CASE: LITIGATION ACCOUNTABILITY ACT SANCTIONS

TRIAL COURT DISPOSITION: DENIED SANCTIONS

BEFORE FRAISER, C.J., DIAZ, AND KING, JJ.

PER CURIAM:

Appellees Jacques and Edith Sollberger (the Sollbergers) desired to purchase a lake front lot upon which to build a house. They purchased a lot in Rankin County, Mississippi and ascertained subsequent to the purchase that the lot had a very large amount of "Yazoo clay" beneath the surface which left as is would cause a great deal of shrinking and swelling in the proposed structure. The Sollbergers filed suit against the previous owners of the property (the Gniadeks); the real estate agent with whom the property was listed (Coldwell Banker, Sylvia Wright, Inc.); the real estate agent that sold them the property (Dewey Owens); the realtor for whom Dewey Owens worked (Maselle Realty) ; the director of Maselle Realty (Jan Maselle); and the appellant, a builder with whom they had discussed house plans, Doug Maselle (Maselle). The Sollbergers claimed that the defendants knowingly withheld important information about the soil content of their lot and information about Yazoo clay. Jan Maselle and the Gniadeks were dismissed as a result of their motions for summary judgment, and agreements were reached with Sylvia Wright, Inc., Dewey Owens, and Maselle Realty. Maselle was offered an opportunity to be released from the suit at no cost to him when the agreement was reached with Maselle Realty, but he refused. Maselle's third motion for summary judgment was granted, but the Rankin County Circuit Court judge denied his motion for sanctions under the Litigation Accountability Act, Mississippi Code section 11-55-1 et seq. Maselle appeals, claiming that the trial judge erred in refusing to grant sanctions and attorney's fees for the filing of a frivolous lawsuit. The Sollbergers claim that Maselle's appeal is frivolous, but fail to support this contention with authority.

Section 11-55-5 of the Litigation Accountability Act of 1988 states in pertinent part:

[I]n any civil action commenced or appealed in any court of record in this state, the court shall award. . . reasonable attorney's fees and costs against any party or attorney if the court, upon the motion of any party or on its own motion, finds that an attorney or party brought an action, or asserted any claim or defense, that is without substantial justification, or that the action, or any claim or defense asserted, was interposed for delay or harassment, or if it finds that an attorney or party unnecessarily expanded the proceedings by other improper proceedings. . . .

M.C.A. § 11-55-5 (Supp. 1996). The Mississippi Supreme Court stated that "[a] claim is without substantial justification when it is frivolous, groundless in fact or in law, or vexatious, as determined by the court." *Leaf River Forest Prods., Inc. v. Deackle*, 661 So. 2d 188, 196 (Miss. 1995) (quoting M.C.A. § 11-55-3(a) (Supp.1994)). "[A] claim is frivolous "'only when, objectively speaking, the pleader or movant has no hope' [of prevailing on the claim]." *Leaf River Forest Prods., Inc.*, 661 So. 2d at 196 (citations omitted). Just because a case is weak or light-headed does not mean that it is frivolous or was brought to harass. *Id.*

In reviewing trial court decisions on sanctions, this court is limited to the familiar abuse of discretion standard. *Id.* While the Sollbergers claims against Maselle individually may have been weak, we cannot say the trial court abused its discretion in not awarding sanctions. Nothing in the record

shows that the claim was brought in bad faith or for an improper purpose. In denying sanctions to Maselle, the trial court did not make a specific finding that the claim was not frivolous; however, we infer that the trial court resolved that issue in favor of the appellee. *Pace v. Owens*, 511 So. 2d 489, 492 (Miss. 1987). Finding no error, we affirm.

THE JUDGMENT OF THE RANKIN COUNTY CIRCUIT COURT DENYING LITIGATION ACCOUNTABILITY ACT SANCTIONS FOR THE FILING OF A FRIVOLOUS LAWSUIT IS AFFIRMED. COSTS ARE TAXED TO APPELLANT.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.