STATE OF MICHIGAN

COURT OF APPEALS

WAINO PIHL and SUSAN TAYLOR,

Plaintiffs-Appellants,

v

DAVID J. CRUMBAUGH,

Defendant-Appellee.

UNPUBLISHED
July 11, 1997

No. 194030
Gratiot Circuit Court
LC No. 94-003257-CK

Before: McDonald, P.J., and Griffin and Bandstra, JJ.

PER CURIAM.

In this action arising out of the sale of a parcel of farmland, plaintiffs appeal as of right an order of the circuit court awarding defendant costs and attorney fees. We affirm.

Plaintiffs purchased 299 acres of farmland from defendant through their agent, Raymone Fricke. The signed purchase agreement[1], which contained a merger clause limiting the parties' agreement to the written contract, set forth the meets and bounds of the property and contains no language regarding the number of tillable acres to be conveyed. Nevertheless, after realizing that the parcel had only 176 tillable acres, plaintiffs filed this lawsuit claiming, inter alia, breach of contract and innocent misrepresentation. Plaintiffs contended that, before the closing, defendant told Fricke that the land had over two hundred tillable acres. Defendant denied making any representations concerning tillable acreage. In any event, defendant claimed that evidence of any presale oral representations was barred by the parole evidence rule.

At his first deposition, Fricke testified that before the closing he farmed the property and informed plaintiff Waino Pihl that the land contained less than two hundred tillable acres. During his second deposition, Fricke recanted this testimony and claimed that he did not learn that the land had less than two hundred tillable acres until after the closing. Given Fricke's conflicting testimony, plaintiffs moved to voluntarily dismiss the case without costs, attorney fees, or sanctions. Defendant objected and filed a motion requesting that, along with dismissal, the court award sanctions pursuant to MCL 600.2591; MSA 27A.2591, MCR 2.114(f), and MCR 2.625(A)(2). Agreeing that the action was

frivolous, the trial court dismissed the suit and awarded sanctions against plaintiffs and their attorney in the sum of $6,284.06.

On appeal, plaintiffs claim that the trial court clearly erred in finding their suit frivolous under MCL 600.2591; MSA 27A.2591. We disagree. A claim is frivolous under MCL 600.2591(3)(a)(iii); MSA 27A.2591(iii) if "[t]he party's legal position was devoid of arguable legal merit." This determination largely depends on the facts and circumstances of the particular claim. *Dillon v DeNooyer Chevrolet*, 217 Mich App 163, 169; 550 NW2d 846 (1996); *In re Stafford*, 200 Mich App 41, 42-43; 503 NW2d 678 (1993). We review a circuit court's determination that a claim is frivolous for clear error. *Dillon, supra* at 169; *Gramer v Gramer*, 207 Mich App 123, 126; 523 NW2d 861 (1994). A decision is clearly erroneous if this Court is left with a definite and firm conviction that a mistake has been made. *Burgess v Clark*, 215 Mich App 542, 547; 547 NW2d 59 (1996).

The trial court's finding that plaintiffs' claims were frivolous is not clearly erroneous. Plaintiffs establish no legitimate basis for circumventing the unambiguous merger clause and adding a major term to the contract. Moreover, plaintiffs' only evidence regarding an additional term derives from an alleged oral agreement that is inadmissible under the parole evidence rule. *Schmude Oil v Omar Operating*, 184 Mich App 574, 580; 458 NW2d 659 (1990); *Central Transport, Inc v Fruehauf Corp*, 139 Mich App 536, 544; 362 NW2d 823 (1984). Therefore, plaintiffs' contract claim lacked arguable merit.

Plaintiffs' fraud-based claims also lacked foundation. Plaintiffs cannot claim fraud or misrepresentation when defendant did not inhibit them from utilizing available means for uncovering the truthfulness of the alleged representation. *Montgomery Ward & Co v Williams*, 330 Mich 275; 47 NW2d 607 (1951); *Nieves v Bell Industries*, 204 Mich App 459, 464; 517 NW2d 235 (1994); *Webb v First of Michigan Corp*, 195 Mich App 470, 474; 491 NW2d 851 (1992). Here, plaintiffs had ample opportunity before the sale to inspect the land and investigate defendant's alleged claims regarding tillable acreage. Indeed, plaintiffs not only had access to the land during contract negotiations, but their agent farmed the land before the closing. Additionally, plaintiffs could have accessed public records to glean the number of cultivated acres on the subject property. Therefore, even if, as plaintiffs claim, defendant told plaintiffs' agent that the subject property contained over two hundred tillable acres, "plaintiffs cannot claim to have been defrauded when they had information available to them that they chose to ignore." *Webb, supra* at 475; see *Neives, supra* at 465; see also *Schuler v American Motors Sales Corp*, 39 Mich App 276, 279-280; 197 NW2d 493 (1972).

Next, plaintiffs argue that the trial court erred in awarding sanctions under MCL 600.2591; MSA 27A.2591 because there is no "prevailing party" where a trial court grants plaintiffs' motion for voluntarily dismissal. However, plaintiffs cite no authority to support this position. Therefore, the issue has been waived. A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for a claim. *Goolsby v Detroit*, 419 Mich 651, 655, n 1; 358 NW2d 856 (1984); *Patterson v Allegan Co Sheriff*, 199 Mich App 638, 640; 502 NW2d 368 (1993); cf. *Froling v Carpenter*, 203 Mich App 368, 373; 512 NW2d 6 (1994). Nevertheless, there is no

question that defendant is the "prevailing party" where, as here, the trial court dismissed plaintiffs' lawsuit with prejudice.

Additionally, we are not compelled by *McKelvie v Mt Clemens,* 193 Mich App 81; 483 NW2d 442 (1992), to afford plaintiffs the option whether to proceed. In *McKelvie*, this Court held that plaintiffs must be given the option to withdraw its motion for voluntary dismissal where the trial court accepts dismissal on the condition that plaintiffs pay sanctions under MCR 2.504. However, *McKelvie* is distinguishable because, in the present case, the trial court had authority independent of MCR 2.504 to impose sanctions. See *McKelvie, supra* at 84, n 1, distinguishing *Canton Twp v Kaufman,* 87 Mich App 719; 276 NW2d 505 (1979). Moreover, remanding this case would be futile in light of the trial court's ruling that plaintiffs' claim is frivolous. Indeed, frivolous claims by definition are devoid of merit. Dismissal is the appropriate disposition for frivolous claims. See *Dillon, supra* at 169; *Martin v Michigan Consolidated Gas Co,* 114 Mich App 380, 384; 319 NW2d 352 (1982). Under these circumstances, we see no reason to waste the judicial resources by giving plaintiffs the option to proceed with this frivolous action.

Affirmed.

/s/ Richard Allen Griffin
/s/ Richard A. Bandstra

[1] Originally, defendant sold the property via a land contract. However, a purchase agreement was drafted and signed when plaintiffs decided to obtain a mortgage and purchase the property outright.