

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT K. HEILMAN,

Plaintiff-Appellant,

and

FORT FUDGE SHOP, INC.,

Plaintiff,

v

MERIDIAN MUTUAL INSURANCE
COMPANY,

Defendant-Appellee.

UNPUBLISHED

August 19, 1997

No. 192856

Cheboygan Circuit Court

LC No. 91-002721-CZ

Before: Cavanagh, P.J., and Holbrook, Jr. and Jansen, JJ.

PER CURIAM.

Plaintiff Robert K. Heilman (hereafter plaintiff) appeals as of right the trial court order holding that defendant had no duty to reimburse Fort Fudge Shop, Inc., the amount of the judgment in an underlying action and imposing sanctions on him for filing a frivolous claim. We affirm.

I

Plaintiff first argues that the trial court erred in finding that, although defendant breached its contractual duty to defend Fort Fudge Shop, defendant did not have any obligation to indemnify Fort Fudge Shop for its payment of the consent judgment in the underlying action. However, plaintiff does not have standing to raise this issue on appeal. While plaintiff is the sole shareholder of Fort Fudge Shop, a sole shareholder lacks standing to sue in his individual capacity for damages sustained by his corporation. See *Environair, Inc v Steelcase, Inc*, 190 Mich App 289, 292; 475 NW2d 366 (1991). It is undisputed that Fort Fudge Shop paid the entire judgment in the underlying action. Thus, any appeal from the lower court's finding that defendant had no duty to provide coverage for the

consent judgment should have been raised by Fort Fudge Shop. Accordingly, we decline to reach the merits of this issue.

II

Plaintiff also argues that the trial court erred in imposing sanctions for the filing of a frivolous claim. A trial court's finding that a suit was frivolous is reviewed for clear error. *Dillon v DeNooyer Chevrolet Geo*, 217 Mich App 163, 169; 550 NW2d 846 (1996).

Fort Fudge Shop paid the entire consent judgment in the underlying action. Because plaintiff did not contribute to the consent judgment, he did not suffer damages. Absent damages, his claim against defendant was without arguable legal merit. See *Koenig v South Haven*, 221 Mich App 711, 721; 562 NW2d 509 (1997). Thus, the trial court did not clearly err in finding that the claim was frivolous. See MCL 600.2591(3)(a)(iii); MSA 27A.2591(3)(a)(iii).

Plaintiff contends that defendant was not a prevailing party. Plaintiff asserts that defendant did not win on the entire record because the trial court determined that Fort Fudge Shop was entitled to recover attorney fees from defendant based on a duty to defend. However, defendant was the prevailing party with respect to the claim made by plaintiff. Accordingly, we find no error.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Donald E. Holbrook, Jr.
/s/ Kathleen Jansen