

STATE OF MICHIGAN
COURT OF APPEALS

C & D CAPITAL, L.L.C.,

Plaintiff-Appellant,

v

COLONIAL TITLE COMPANY,

Defendant-Appellee,

and

TRI-COUNTY TITLE AGENCY, INC.,

Defendant/Third-Party Plaintiff,

and

MIDWEST PROPERTY INVESTMENTS, L.L.C.,
a/k/a MIDWEST PROPERTY, L.L.C., OLIVER
PROPERTY HOLDINGS, L.L.C., DOROTHY JO
OLIVER, ELIZABETH OLIVER, and JAYSON
OLIVER,

Third-Party Defendants.

UNPUBLISHED
May 23, 2013

No. 306927
Wayne Circuit Court
LC No. 09-010683-CK

C & D CAPITAL, L.L.C.,

Plaintiff-Appellee,

v

COLONIAL TITLE COMPANY,

Defendant,

and

No. 308262
Wayne Circuit Court
LC No. 09-010683-CK

TRI-COUNTY TITLE AGENCY, INC.,

Defendant/Third-Party Plaintiff-
Appellant,

and

MIDWEST PROPERTY INVESTMENTS, L.L.C.,
a/k/a MIDWEST PROPERTY, L.L.C., OLIVER
PROPERTY HOLDINGS, L.L.C., DOROTHY JO
OLIVER, ELIZABETH OLIVER, and JAYSON
OLIVER,

Third-Party Defendants.

Before: DONOFRIO, P.J., and MARKEY and OWENS, JJ.

PER CURIAM.

This case involves two consolidated appeals from the same lower court file.¹ In Docket No. 306927, plaintiff, C & D Capital, L.L.C., appeals as of right from an order granting attorney fees to defendant, Colonial Title Company, against C & D, in the amount of \$40,640. In Docket No. 308262, defendant, Tri-County Title Agency, Inc., appeals as of right from an order denying its motion for costs, attorney fees, and sanctions against C & D.² In Docket No. 306927, we affirm in part, vacate in part, and remand for further proceedings consistent with this opinion. In Docket No. 308262, we reverse and remand for further proceedings consistent with this opinion.

I. DOCKET NO. 306927

Initially, we reject Colonial's challenge to this Court's jurisdiction. Colonial argues that this Court has jurisdiction to review only the reasonableness of the amount of attorney fees awarded, and not the decision whether to award attorney fees. In particular, Colonial asserts that this Court lacks jurisdiction to review the determination that costs and attorney fees were appropriate as made by the June 24, 2011 order because the claim of appeal was not timely filed

¹ The appeals were consolidated "to advance the efficient administration of the appellate process." *C & D Capital, LLC v Colonial Title Co*, unpublished order of the Court of Appeals, entered February 8, 2012 (Docket Nos. 306927, 308262).

² In this opinion, we will use the term "defendants" to refer collectively to Colonial and Tri-County. The third-party defendants are not involved in this appeal.

with respect to the June 24, 2011 order, and this Court's order of partial dismissal³ limits the appeal to review of the October 13, 2011 order. However, we conclude that the October 13, 2011 order that finally determined the amount of attorney fees to be awarded encompassed the determination, as reflected in the June 24, 2011 order, that it was appropriate to award attorney fees.

Under MCR 7.203(A)(1) and MCR 7.202(6)(a)(iv), there is an appeal of right from "a postjudgment order awarding or denying attorney fees and costs under MCR 2.403, 2.405, 2.625 or other law or rule." With respect to an appeal from a substantive final order as defined in MCR 7.202(6)(a)(i), an order that determines liability, but leaves the amount of damages for later determination, will not support an appeal of right; the right to appeal does not arise until an order is entered that finally determines the damages. See *Children's Hosp of Mich v Auto Club Ins Ass'n*, 450 Mich 670, 677; 545 NW2d 592 (1996). In addition, a claim of appeal from a final order encompasses all prior, non-final orders. See *Dean v Tucker*, 182 Mich App 27, 31; 451 NW2d 571 (1990).

Applying these rules to the instant appeal from a postjudgment order awarding attorney fees, we conclude that the June 24, 2011 order that merely determined that attorney fees were appropriate without determining the amount of the award, would not have supported an appeal of right. However, the claim of appeal from the October 13, 2011 order that finally determined the amount of the award properly encompasses that prior order. Therefore, this Court has jurisdiction to review the trial court's determination that attorney fees should be awarded, as well as the amount of attorney fees awarded.

Having determined that this Court possesses the requisite jurisdiction, we now turn to the substantive issues raised by C & D. C & D first argues that the trial court clearly erred in imposing sanctions against it pursuant to MCR 2.114 and MCL 600.2591. We disagree. We review for clear error a trial court's determination whether to impose sanctions for filing a frivolous action. *Jerico Constr, Inc v Quadrants, Inc*, 257 Mich App 22, 35; 666 NW2d 310 (2003). "A decision is clearly erroneous when, although there may be evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *Guerrero v Smith*, 280 Mich App 647, 677; 761 NW2d 723 (2008).

Pursuant to MCR 2.114(D), an attorney is under an affirmative duty to conduct a reasonable inquiry into both the factual and legal basis of a document before it is signed. Under MCR 2.114(D), the signature of a party or an attorney is a certification that the document is "well grounded in fact and . . . warranted by

³ On December 5, 2011, this Court dismissed in part the claim of appeal for lack of jurisdiction. Specifically, the claim of appeal was dismissed with respect to the April 12, 2011, order granting summary disposition to defendants because the claim of appeal was not timely with respect to that order. We further indicated that the appeal may proceed with respect to the October 13, 2011, order that finally decided Colonial's postjudgment motion for attorney fees and costs. *C & D Capital, LLC v Colonial Title Co*, unpublished order of the Court of Appeals, entered December 5, 2011 (Docket No. 306927).

existing law or a good-faith argument for the extension, modification, or reversal of existing law” and that “the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.” The filing of a signed document that is not well grounded in fact and law subjects the filer to sanctions pursuant to MCR 2.114(E). MCR 2.114(E) states that the trial court “shall” impose sanctions upon finding that a document has been signed in violation of the rule. Therefore, if a violation of MCR 2.114(D) has occurred, the sanctions provided for by MCR 2.114(E) are mandatory. [*Guerrero*, 280 Mich App at 677-678 (citations omitted).]

Sanctions ordered under the court rule “may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees.” MCR 2.114(E).

In addition, MCL 600.2591 provides:

(1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney.

(2) The amount of costs and fees awarded under this section shall include all reasonable costs actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees.

(3) As used in this section:

(a) “Frivolous” means that at least 1 of the following conditions is met:

(i) The party’s primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.

(ii) The party had no reasonable basis to believe that the facts underlying that party’s legal position were in fact true.

(iii) The party’s legal position was devoid of arguable legal merit.

(b) “Prevailing party” means a party who wins on the entire record.

Accordingly, “[p]ursuant to MCL 600.2591, a claim is frivolous when: (1) the party’s primary purpose was to harass, embarrass or injure the prevailing party; (2) the party had no reasonable basis to believe the underlying facts were true; or (3) the party’s position was devoid of arguable legal merit.” *Jerico Constr, Inc*, 257 Mich App at 35-36. A reasonable inquiry is not invalidated by a subsequent discovery that the facts are untrue, and an error in legal analysis does not always constitute a frivolous claim. *Id.* at 36.

Here, the trial court granted Colonial's motion to assess attorney fees for sanctions pursuant to MCR 2.114(E) and MCL 600.2591 "for the reasons stated on the record." At the May 13, 2011 hearing on Colonial's motion for attorney fees, the trial court provided the following reasons for granting the motion:

The Court: Okay. Well, I'll grant your motion in terms of are you entitled to an award and assessment of attorney fees, and then you [Colonial] have to file a bill of particulars and you [C & D] will be entitled to an Evidentiary Hearing if there were aspects of the bill of particulars that you would seek to challenge. All right, thank you, sir.

Mr. Rollins (attorney for Colonial): Thank you.

Mr. Delonis (attorney for C & D): So, judge, I just want to make the record clear. Are you finding then that the case the plaintiff filed was—be frivolous and devoid of legal matter [sic]?

The Court: No. Actually, I'm filing [sic] that there was not a reasonable investigation into the facts of [sic] law.

Mr. Rollins: Thank you, Your Honor.

The Court: And I didn't see that there was any arguable reason that you would put forward to change the law, which is the other part of the analysis. So thank you.

Mr. Delonis: Thank you.

Although the court's reasoning is less than entirely clear, due perhaps in part to transcription errors, it appears the court found both that C & D's complaint was not well grounded in fact and that its claims were not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law. Although the court answered "[n]o" when asked whether the complaint was frivolous and devoid of arguable legal merit, the court went on to say that "there was not a reasonable investigation into the facts of [sic] law," and that the court did not see an "arguable reason that you [C & D] would put forward to change the law, which is the other part of the analysis." It is thus apparent that the trial court found that the complaint was not well grounded in fact and law, and that no argument was advanced to modify the law. The finding effectively amounted to a determination that the action was frivolous as defined in MCL 600.2591(3)(a), and that the complaint was signed in violation of MCR 2.114(D).

C & D asserts various challenges to the trial court's determination. First, C & D suggests that attorney fees and costs could not be awarded because the April 12, 2011 order granting summary disposition stated that it was a final order, fully disposed of all matters between the parties, and closed the case, and the order did not anticipate any post-judgment motions for sanctions. C & D cites no authority for this argument. "An appellant may not merely announce its position or assert an error and leave it to this Court to discover and rationalize the basis for its claims, unravel or elaborate its argument, or search for authority for its position. Insufficiently

briefed issues are deemed abandoned on appeal.” *Blackburne & Brown Mortgage Co v Ziomek*, 264 Mich App 615, 619; 692 NW2d 388 (2004) (internal quotation marks and citations omitted). In any event, C & D’s argument lacks merit. The language that C & D quotes from the April 12, 2011 order granting summary disposition merely reflected that the order constituted a final order under MCR 7.202(6)(a)(i). It did not preclude a motion for sanctions.

Next, C & D argues that it had an appropriate factual basis for the allegations in its complaint. We conclude that the trial court did not clearly err in finding that C & D failed to undertake a reasonable inquiry into the facts and that the complaint was not well grounded in fact. C & D’s complaint alleged that its mortgages were “duly recorded in the Wayne County Register of Deeds” and that defendants, “with full knowledge of C & D’s mortgages, wrote title so that some of the houses could be sold without C & D’s mortgages being discharged.” C & D’s complaint listed nine properties for which Colonial “wrote title” and facilitated the sale and claimed that Colonial wrote the title policies “despite the existence of C & D’s recorded mortgages.” C & D alleged that defendants were negligent in “providing title insurance policies for properties that were encumbered with C & D’s valid, duly recorded mortgages and failing to take actions to ensure that C & D’s mortgages were discharged.” For its negligent misrepresentation claim, C & D alleged that defendants “made a material representation that they were writing good title policies for properties that were in fact encumbered by mortgages” and that defendants’ “representations of good title were false as duly recorded mortgages were in the chain of title.”

Colonial established that at least some of the material allegations in C & D’s complaint were not factually supported. In particular, Colonial produced evidence that sales of four of the nine properties were closed by Colonial *before* C & D’s mortgage was recorded, that C & D had provided a partial discharge of mortgage for a fifth property before closing, and that Colonial was not involved in the title work or the closing for a sixth property. For the seventh and eight properties at issue, C & D or its agent had notified Colonial in writing before closing that the mortgage encumbering the two lots had been discharged.

Thus, C & D’s allegation that Colonial closed the sales for the nine properties set forth in the complaint despite the existence of duly recorded mortgages with respect to those properties was not well grounded in fact. A reasonable inquiry before filing suit would have revealed that the mortgage was not duly recorded before closing with respect to four of the properties, that Colonial did not “write title” for one of the properties, and that the mortgage was either discharged or represented to be discharged before closing with respect to three other properties. Accordingly, the trial court did not clearly err in finding that C & D failed to undertake a reasonable factual inquiry and that its allegations were not well grounded in fact.

Next, C & D contends that its claims had an arguable legal basis. We disagree. The full credit bid rule set forth in *New Freedom Mortgage Corp v Globe Mortgage Corp*, 281 Mich App 63; 761 NW2d 832 (2008), is an established legal principle that barred C & D’s claims. As explained in *New Freedom Mortgage Corp*, 281 Mich App at 68 (citations omitted):

When a lender bids at a foreclosure sale, it is not required to pay cash, but rather is permitted to make a credit bid because any cash tendered would be returned to it. If this credit bid is equal to the unpaid principal and interest on the

mortgage plus the costs of foreclosure, this is known as a “full credit bid.” When a mortgagee makes a full credit bid, the mortgage debt is satisfied, and the mortgage is extinguished.

In *New Freedom Mortgage Corp*, this Court discussed case law applying this rule, see *id.* at 70-75, dating back to *Janower v F M Sibley Lumber Co*, 245 Mich 571, 572-573; 222 NW 736 (1929), in which a mortgagee purchased secured property at a foreclosure sale for the full amount of the indebtedness and then sought the appointment of a receiver to perform repairs and pay unpaid taxes. The *Janower* Court held:

The rule of *caveat emptor* applies with full force to this judicial sale. The petitioner, purchaser, took “subject to defects, liens, and incumbrances of which he has notice or of which he could obtain knowledge under his duty to inform himself.” It purchased subject to the very tax liens of which it complains, and the premises in the condition of which it complains, and it bid the full amount due. There can be no decree for deficiency. [*Id.* at 573 (citation omitted).]

See also *Bank of Three Oaks v Lakefront Props*, 178 Mich App 551, 555; 444 NW2d 217 (1989) (citations omitted) (“When property is purchased at a foreclosure sale for an amount equal to the amount due on the mortgage, the debt is satisfied. Moreover, the mortgage is extinguished at the time of the foreclosure sale.”). In *New Freedom Mortgage Corp*, 281 Mich App at 84, although a genuine issue of material fact existed regarding an appraiser’s negligence and fraud or misrepresentation, “the full credit bid rule preclude[d] recovery because plaintiff did not suffer any damages.”

Likewise, here, the full credit bid rule bars recovery because C & D did not suffer any damages. Damages are an essential element of C & D’s claims. See *id.* at 85. It is undisputed that C & D bid the entire amount of the remaining indebtedness at the foreclosure sales to obtain fee simple title to the properties in question. Although C & D asserts that other lenders have competing claims to the properties, C & D has presented no evidence that any claims exist that are senior to its interests in the properties. Because C & D made a full credit bid, its mortgage debt was satisfied and its mortgages were extinguished as a matter of law. *New Freedom Mortgage Corp*, 281 Mich App at 68. C & D’s claims thus failed on summary disposition because it suffered no damages. C & D contends that the foreclosed properties are in disrepair, rendering them virtually worthless, and that its damages arose from defendants’ failure to disburse sales proceeds to C & D or to ensure other properties were substituted as security. However, C & D purchased the properties at the foreclosure sales “subject to the condition[s] of the propert[ies], and the rule of *caveat emptor* applies.” *Id.* at 74. The law in this area is well settled. See *Janower*, 245 Mich at 573; *Bank of Three Oaks*, 178 Mich App at 555. Further, case law makes plain that the full credit bid rule extends to negligence and fraud or misrepresentation claims against a non-borrower third party. *New Freedom Mortgage Corp*, 281 Mich App at 84. C & D failed to argue for the modification or reversal of these legal principles. Therefore, the trial court did not clearly err in concluding that C & D’s claims were devoid of arguable legal merit.

Next, C & D asserts that sanctions were unwarranted because Colonial failed to respond to a letter that C & D sent to Colonial four months before filing suit. However, C & D has failed

to cite authority that a defendant must respond to a pre-litigation letter in order to later seek attorney fees for filing a frivolous action. This argument is deemed abandoned. *Blackburne & Brown Mortgage Co*, 264 Mich App at 619.

Next, we note that Colonial asserts in its appellate brief that its motion for sanctions was timely. However, it does not appear that C & D is presenting a general challenge to the timeliness of the motion for sanctions; rather C & D is arguing that language in the order granting summary disposition closed the case and barred a subsequent motion for sanctions, and that Colonial should have responded to a pre-litigation letter sent by C & D, which arguments we concluded above lack merit. C & D does not cite *Maryland Cas Co v Allen*, 221 Mich App 26, 30; 561 NW2d 103 (1997), in which this Court stated “that, to be timely, a request for sanctions [under MCR 2.114(E)] should be filed before the action’s dismissal.” This holding in *Maryland Cas Co* is limited to motions for sanctions under MCR 2.114(E); a motion for sanctions under MCL 600.2591 is timely if it “was filed within a reasonable time after the prevailing party was determined.” *In re Attorney Fees and Costs*, 233 Mich App 694, 699-701; 593 NW2d 589 (1999) (upholding the timeliness of a motion for sanctions under MCL 600.2591 that was filed 70 days after the entry of summary disposition).

Accordingly, even if C & D did challenge the timeliness of the motion under *Maryland Cas Co*, it would not preclude awarding sanctions under MCL 600.2591. The sanctions motion was filed 20 days after the entry of summary disposition, which we conclude is a reasonable period under *In re Attorney Fees and Costs*. Thus, any error in failing to timely seek sanctions under MCR 2.114(E) did not affect the outcome, given that sanctions were also appropriate under MCL 600.2591.

C & D next argues that the trial court awarded an excessive amount of attorney fees, \$40,640, and failed to make requisite findings in determining the amount awarded. We hold that the trial court failed to make the requisite findings to permit meaningful appellate review of the court’s decision; we therefore vacate the determination of the amount awarded and remand for further proceedings. We review a trial court’s determination regarding the amount of a sanctions award for an abuse of discretion. *Vittiglio v Vittiglio*, 297 Mich App 391, 408; 824 NW2d 591 (2012). “[A]n abuse of discretion occurs when the trial court’s decision is outside the range of reasonable and principled outcomes.” *Augustine v Allstate Ins Co*, 292 Mich App 408, 424; 807 NW2d 77 (2011).

“The party requesting an award of attorney fees bears the burden of proving the reasonableness of the fees requested.” *Adair v Michigan (On Third Remand)*, 298 Mich App 383, 391; 827 NW2d 740 (2012). “If a factual dispute exists over the reasonableness of the hours billed or hourly rate claimed by the fee applicant, the party opposing the fee request is entitled to an evidentiary hearing to challenge the applicant’s evidence and to present any countervailing evidence.” *Smith v Khouri*, 481 Mich 519, 532; 751 NW2d 472 (2008). In *Wood v Detroit Auto Inter-Ins Exch*, 413 Mich 573; 321 NW2d 653 (1982), our Supreme Court listed six factors relevant to computing a reasonable attorney fee:

- (1) the professional standing and experience of the attorney;
- (2) the skill, time and labor involved;
- (3) the amount in question and the results achieved;
- (4) the difficulty of the case;
- (5) the expenses incurred; and
- (6) the nature and length

of the professional relationship with the client. [*Id.* at 588 (internal quotation marks and citation omitted).]

The *Smith* Court noted that the eight factors listed in MRPC 1.5(a), which overlap the *Wood* factors, have also been utilized to determine reasonable attorney fees:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent. [*Smith*, 481 Mich at 530, quoting MRPC 1.5(a).]

“In determining ‘the fee customarily charged in the locality for similar legal services,’ the trial courts have routinely relied on data contained in surveys such as the Economics of the Law Practice Surveys that are published by the State Bar of Michigan.” *Id.* (citation omitted).

The *Smith* Court held that some fine-tuning of the multifactor approach was needed:

We hold that a trial court should begin its analysis by determining the fee customarily charged in the locality for similar legal services, i.e., factor 3 under MRPC 1.5(a). In determining this number, the court should use reliable surveys or other credible evidence of the legal market. This number should be multiplied by the reasonable number of hours expended in the case (factor 1 under MRPC 1.5[a] and factor 2 under *Wood*). The number produced by this calculation should serve as the starting point for calculating a reasonable attorney fee. We believe that having the trial court consider these two factors first will lead to greater consistency in awards. Thereafter, the court should consider the remaining *Wood*/MRPC factors to determine whether an up or down adjustment is appropriate. And, in order to aid appellate review, a trial court should briefly discuss its view of the remaining factors. [*Smith*, 481 Mich at 530-531.]

The *Smith* Court explained that the trial “court must determine the reasonable number of hours expended by each attorney.” *Id.* at 532. To aid the trial court in this determination, the fee applicant is required to “submit detailed billing records, which the court must examine and

opposing parties may contest for reasonableness. The fee applicant bears the burden of supporting its claimed hours with evidentiary support.” *Id.* The reasonable hourly rate must be multiplied by the reasonable hours billed to produce a baseline figure. *Id.* at 533. The court then “should consider the other factors and determine whether they support an increase or decrease in the base number.” *Id.*

In addition to articulating this new approach, the *Smith* Court noted that, unlike the approach articulated in *Wood*, a “court should briefly address on the record its view of each of the factors” to aid appellate review. The Court also noted that, as in *Wood*, courts are not limited to the specific factors discussed; however, it emphasized that, “[t]o the extent a trial court considers any factor not enumerated in *Wood* or MRPC 1.5(a), the court should expressly indicate this and justify the relevance and use of the new factor.” [*Prins v Mich State Police*, ___ Mich App ___, ___ NW2d ___ (Docket No. 309803, issued March 5, 2013) (slip op at 6) (citations omitted).]

In *Augustine*, 292 Mich App at 413, this Court vacated an award of attorney fees and remanded for rehearing and redetermination because, among other reasons, the trial court did not properly apply *Smith*. This Court found that the trial court’s determination that \$500 was a reasonable fee “did not comply with the first step in the *Smith* analysis, which is to determine the fee customarily charged in the locality for similar legal services.” *Id.* at 426. Although “the trial court discussed the evidence presented regarding the fee customarily charged in the locality for similar legal services, it did not conclude that \$500 an hour was the fee customarily charged.” *Id.* “[T]he trial court apparently failed to credit the Michigan Bar Journal in its calculus of the appropriate hourly rate. The Michigan Bar Journal article not only ranks fees by percentile, it differentiates fee rates on the basis of locality, years of practice, and fields of practice.” *Id.* at 427. Although the trial court found that \$500 was a reasonable fee, it “did not find that \$500 an hour was the *fee customarily charged in the locality for similar legal services.*” *Id.* at 427-428. Further, after multiplying the \$500 an hour rate by the number of hours expended, the trial court failed to determine “whether an upward or downward adjustment was appropriate on the basis of the *Wood* and MRPC 1.5(a) factors as our Supreme Court discussed in [*Smith*].” *Id.* at 428.

Likewise, in *Prins*, ___ Mich App at ___ (slip op at 7), this Court determined that the trial court’s attorney-fee analysis was insufficient:

In this case, the circuit court took the attorney-fee issue under advisement at the conclusion of the March 15, 2012, hearing and then issued the following attorney-fee analysis in its opinion and order: “This Court has reviewed the attorney fees requested by Defendant [sic] and determines without any disrespect to defense [sic] counsel’s experience or expertise, that a reasonable attorney fee for representation at the trial and appellate court levels is \$175 per hour at 70 hours or \$12,250” Essentially, there is no attorney-fee analysis at all—let alone an analysis pursuant to *Smith*—for this Court to conduct a meaningful review of the circuit court’s attorney-fee determination. *Smith* explicitly requires trial courts to briefly address each of the *Smith* factors when reaching its decision to aid appellate review; the circuit court did not do so in this case. Therefore, we vacate the circuit court’s April 2012 opinion and order with respect to attorney

fees and remand this case to the circuit court to reevaluate the attorney-fee issue pursuant to *Smith*.

Here, as in *Augustine* and *Prins*, the trial court failed to articulate the findings required by *Smith* to permit meaningful appellate review of the attorney-fee determination. The trial court did not make findings or announce its decision at the September 23, 2011 evidentiary hearing. On October 13, 2011, the trial court entered an order merely stating “that Colonial Title’s Motion is granted in the amount of \$40,640.00 for the reason that under *Smith v Khouri*, 481 Mich 519; 751 N.W.2d 472(2008) [sic], MRPC 1.5, and 2010 Economics of Law Practice Attorney Income and Billing Rate Summary Report, State Bar of Michigan, January 2011, the attorneys’ fees are reasonable.” Although the court cited *Smith*, MRPC 1.5, and a State Bar of Michigan survey, the court failed to make the requisite findings under *Smith*. The court did not expressly find that \$200 an hour, the rate asserted by Colonial, was the fee customarily charged in the locality for similar legal services. Even if the court is deemed to have implicitly made such a determination by citing the State Bar survey and finding that the attorney fees were reasonable, the court did not then address C & D’s challenges to the reasonableness of the hours claimed to have been expended by Colonial’s counsel. In particular, the court failed to address C & D’s contention that Colonial had access to information that formed the basis for its summary disposition motion early in the litigation, and that Colonial’s counsel engaged in discovery that was unnecessary, thereby rendering unreasonable, according to C & D, the number of hours claimed to have been expended by Colonial’s counsel. Further, the court failed to multiply the hourly rate by the number of hours expended and to then briefly address the remaining *Wood*/MRPC factors to determine whether an upward or downward adjustment to the base fee was appropriate. *Smith*, 481 Mich at 531; *Prins*, ___ Mich App at ___ (slip op at 7); *Augustine*, 292 Mich App at 428. Because the court failed to make the required findings, meaningful appellate review is not possible.

A meaningful application of the factors is more than a recitation of those factors prefaced by a statement such as “after careful review of the criteria the ultimate finding is as follows” Similarly, an analysis is not sufficient if it consists merely of the recitation of the factors followed by a conclusory statement that “the trial court has considered the factors and holds as follows” without clearly setting forth a substantive analysis of the factors on the record. The trial court should consider the interplay between the factors and how they relate to the client, the case, and even the larger legal community. [*Augustine*, 292 Mich App at 436.]

As the trial court’s findings regarding the various factors were inadequate or nonexistent, we vacate the trial court’s determination of the amount of the attorney fee award and remand to the trial court to provide the analysis required by *Smith*, *Prins*, and *Augustine*.

II. DOCKET NO. 308262

Tri-County argues that the trial court clearly erred in denying its motion for attorney fees as sanctions against C & D for filing a frivolous action. We agree. As discussed above,

Pursuant to MCL 600.2591, a claim is frivolous when: (1) the party's primary purpose was to harass, embarrass or injure the prevailing party; (2) the party had no reasonable basis to believe the underlying facts were true; or (3) the party's position was devoid of arguable legal merit. The filing of a signed pleading that is not well-grounded in fact and law subjects the filer to similar sanctions pursuant to MCR 2.114(E). [*Jerico Constr, Inc*, 257 Mich App at 35-36 (citations omitted).]

As with the claims against Colonial, it is undisputed that C & D bid the full amount of indebtedness owed to C & D with respect to the properties at issue in the claims against Tri-County, and that C & D thereby obtained fee simple title to those properties.⁴ That is, C & D made a full credit bid. Thus, as a matter of law, the mortgage debts were satisfied, and the mortgages were extinguished. *New Freedom Mortgage Corp*, 281 Mich App at 68; *Bank of Three Oaks*, 178 Mich App at 555. Therefore, C & D cannot establish the essential element of damages with respect to any of its claims.

Despite its grant of sanctions in favor of Colonial, the trial court incongruously denied Tri-County's motion for sanctions on the theory that the court had "extended" *New Freedom Mortgage Corp* when it granted summary disposition. As discussed above, however, case law makes plain that the full credit bid rule extends to negligence and fraud or misrepresentation claims against a non-borrower third party. *New Freedom Mortgage Corp*, 281 Mich App at 84. Thus, under existing law, the full credit bid rule barred C & D's claims; the trial court did not "extend" the law when it granted summary disposition to defendants. C & D failed to argue for the modification or reversal of these legal principles. Therefore, C & D's claims were devoid of arguable legal merit, and the trial court clearly erred in denying Tri-County's motion for sanctions. We therefore reverse and remand for a determination of the amount of sanctions Tri-County is entitled to against C & D.

In Docket No. 306927, we affirm in part, vacate in part, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

In Docket No. 308262, we reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction. Defendant, Tri-County Title Agency, Inc., being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Pat M. Donofrio
/s/ Jane E. Markey
/s/ Donald S. Owens

⁴ C & D again contends that other lenders have competing claims to the properties, but C & D has presented no evidence that any claims exist that are senior to its interests in the properties.