

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 50-2018-AP-000160-CAXX-MB
L.T. NO.: 50-2016-CC-008391-XXXX-MB

MICHELLE GRAEVES,
Appellant,

v.

AVATAR PROPERTY & CAUSALITY
INSURANCE COMPANY,
Appellee

Opinion filed: November 23, 2020

Appeal from the County Court in and for Palm Beach County,
Judge Nancy Perez

For Appellants: Kimberly L. Boldt, Esq. and Ryan C. Tyler, Esq.
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PER CURIAM.

Appellant, Michelle Graeves, and her trial counsel (“Counsel”) timely appeal the trial court’s order granting final judgment awarding attorney’s fees and costs to Appellee, Avatar Property and Casualty Insurance Co. (“Avatar”). Appellant challenges Avatar’s entitlement to fees and the amount of fees and costs awarded. We affirm the trial court’s imposition of attorney’s fees pursuant to section 57.105, Florida Statutes (2018), as well as the amount of fees and costs levied against Appellant. However, we reverse the award of additional monies as a sanction to punish Counsel based on the inherent authority of the trial court.

Factual and Procedural Background

On July 20, 2016, Appellant filed a complaint against her homeowner's insurance company, Avatar, alleging that Avatar breached the insurance policy by "fail[ing] to make the appropriate payment of the damages claimed." Subsequently, Appellant voluntarily dismissed the action without prejudice. Thereafter, Avatar moved for attorneys' fees pursuant to section 57.105, Florida Statutes. The motion stated that Avatar did not breach the policy and that Appellant's claims were unsupported because Appellant failed to give prompt notice, mitigate damages, and to submit a timely sworn proof of loss to Avatar before filing the lawsuit.

Following an evidentiary hearing, the trial court granted Avatar's motion for attorney's fees. The court found that, based on the "unrefuted testimony," Appellant "failed to satisfy numerous conditions precedent before bringing legal action against Avatar." The court also found that Avatar did not breach the insurance policy, but rather the Appellant failed to contact the contractor that Avatar hired for the repairs. The court further found that Counsel's testimony was not credible and that Appellant failed to refute the testimony and evidence presented by Avatar.

Based on the foregoing, the trial court entered a final judgment awarding Avatar \$42,352.50 in attorney's fees pursuant to section 57.105(1), explaining that Appellant filed her lawsuit "without the requisite due diligence" and that Counsel's obstinacy resulted in disregard for judicial economy and resources. The trial court also ordered Appellant to pay \$10,000.00 pursuant to the court's inherent authority to sanction a party for filing a claim "without the requisite due diligence." Finally, the trial court awarded costs of \$21,893.90, which included the fee for Avatar's expert attorney witness, pursuant to Florida Rule of Civil Procedure 1.420(c). This appeal followed.

Analysis

Appellant challenges three aspects of the trial court's award of attorney's fees. First, Appellant alleges that the trial court erred when it granted Avatar's motion for attorney's fees pursuant to section 57.105, Florida Statutes on the ground that Appellant's claim was frivolous. Second, Appellant claims that the trial court miscalculated the amount of fees and costs levied against Appellant and Counsel. Finally, Appellant argues that the trial court abused its discretion when it imposed an additional \$10,000.00 in sanctions based on Counsel's conduct. As to Appellant's first two arguments, we affirm the trial court's final judgment without further comment. We do, however, reverse the trial court's \$10,000.00 sanction against Appellant and Counsel since the trial court failed to make a bad faith finding with a high degree of specificity and used the wrong vehicle to sanction Counsel's conduct.

The Florida Supreme Court has held that "a trial court possesses the inherent authority to impose attorneys' fees against an attorney for bad faith conduct." *Moakley v. Smallwood*, 826 So. 2d 221, 226 (Fla. 2002). The trial court's sanction "must be supported by detailed factual findings describing the specific acts of bad faith conduct that resulted in the unnecessary incurrence of attorneys' fees." *Id.* "Thus, a finding of bad faith conduct must be predicated on a high degree of specificity in the factual findings." *Id.* Additionally, "if a specific statute or rule applies, the trial court should rely on the applicable rule or statute rather than on inherent authority" to sanction. *Id.* at 227. Where a trial court sanctions an attorney for a frivolous claim, the correct vehicle for sanctions is section 57.105—not inherent authority. *Santini v. Cleveland Clinic Florida*, 65 So. 3d 22, 38 (Fla. 4th DCA 2011). The Fourth District Court of Appeal has made it clear that a trial court should rely on the applicable statute where the party's conduct is sanctionable under the statute. *Id.*

In the instant case, the trial court exercised its inherent authority and ordered Appellant to pay \$10,000.00 for filing her claim “without the requisite due diligence.” In other words, the trial court exercised its inherent authority to sanction Appellant for filing a frivolous claim. However, this conduct was sanctioned under section 57.105 and, therefore, the trial court should not have imposed an additional sanction under its inherent authority. Moreover, the trial court failed to describe the acts of bad faith with a high degree of specificity. *Moakley*, 826 So. 2d at 227. The finding of “without the requisite due diligence” lacks that high degree of specificity. Since the court’s sanction did not satisfy the requirements of an inherent authority sanction, the Court reverses the trial court’s \$10,000.00 sanction against Appellant and Counsel.

Conclusion

The trial court properly sanctioned Appellant and Counsel pursuant to section 57.105 based on competent substantial evidence that Appellant’s claims were not supported by material facts, nor did it abuse its discretion in determining the amount of fees and costs to be awarded. Conversely, the trial court erred in imposing a sanction based upon its inherent authority. We therefore **REVERSE** the trial court’s \$10,000.00 sanction imposed against Appellant under its inherent authority and **AFFIRM** the final judgment and award of attorney’s fees and costs in all other respects.

KASTRENAKES, KELLEY, and KERNER, JJ., concur.