

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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INEZ MARIE STARKS,

Plaintiff-Appellant,

v

CITY OF WARREN, RANDY S. BAIRD, SCOTT  
TAYLOR, D. SCOTT, T. SCUILLO, M. WOODS,  
K. NORTHRUP, A. GILL, W. ROSS, and C.  
LIVINGSTON,

Defendants-Appellees,

and

DOG LIBERTY AND/OR ALTO,<sup>1</sup>

Defendant.

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Before: FORT HOOD, P.J., and TALBOT and MURRAY, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting defendants' motion for attorney fees and costs.<sup>2</sup> We affirm.

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<sup>1</sup> The dog was misnamed in the caption and is named "Atos." The dog was dismissed from the litigation when counsel for plaintiff acknowledged that the dog was named in the lawsuit for publicity purposes.

<sup>2</sup> Plaintiff also challenges the trial court's summary disposition decision. However, the court's October 13, 2009, summary disposition order was a final order in its own right pursuant to MCR 7.202(6)(a)(i). The trial court entered its order denying plaintiff's motion for rehearing/reconsideration on December 30, 2009. Thus, under the court rules, plaintiff had 21 days from the time of that order's entry to appeal. MCR 7.204(A)(1)(b). Because plaintiff did not file her appeal until March 9, 2010, this Court lacks jurisdiction to hear any issues related to the trial court's summary disposition order. Accordingly, the only issue properly on appeal is

Plaintiff argues that the trial court erred in granting defendants' motion for attorney fees on the basis that her claims were frivolous. We review for clear error a trial court's decision that an action is frivolous. *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002). "A decision is clearly erroneous where, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id.* at 661-662.

MCR 2.114(F) allows a trial court to impose sanctions on a party for pleading a frivolous claim or defense. MCL 600.2591(3) defines "frivolous" as:

(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.

This case arose from an alleged bite plaintiff suffered by a police dog during the course of her arrest. In regard to plaintiff's claims against the police dog, counsel admitted to the trial court that the claim was essentially a publicity stunt. Therefore, the trial court did not clearly err in finding that the claims were frivolous. MCL 600.2591(3)(a)(i), (ii). Also, the trial court did not clearly err in finding that plaintiff's claims against the police officers, other than Officer Baird, were frivolous. MCL 600.2591(3)(a)(ii). Plaintiff's counsel admitted at the summary disposition hearing that there was no factual basis for these claims. He provided no evidence to even suggest a belief that any of these officers might have had contact with plaintiff to justify adding them as defendants.

Lastly, the trial court did not clearly err in finding that plaintiff's dog-bite claims were frivolous. MCL 600.2591(3)(a)(iii). Case law clearly established that defendants City of Warren and Officer Baird were entitled to governmental immunity. Our Supreme Court's decision in *Ballard v Ypsilanti Twp*, 457 Mich 564; 577 NW2d 890 (1998), did not conflict with this Court's decision in *Tate v City of Grand Rapids*, 256 Mich App 656; 671 NW2d 84 (2003).

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plaintiff's challenge to the trial court's decision granting defendants' attorney fees. For purposes of completeness, plaintiff failed to oppose the motion for summary disposition with documentary evidence, *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), summary disposition is proper despite incomplete discovery when a party fails to comply with MCR 2.116(H), *Coblentz v City of Novi*, 475 Mich 558, 570-571; 719 NW2d 73 (2006), and the trial court does not abuse its discretion by failing to consider documentary evidence submitted with a motion for reconsideration, *Charbeneau v Wayne Co Gen Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987).

Affirmed.

/s/ Karen M. Fort Hood

/s/ Michael J. Talbot

/s/ Christopher M. Murray