

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

John Sadek and Tammy Sadek, as
surviving parents of Andrew Sadek on
behalf of all heirs-at-law, and the Estate
of Andrew Sadek,

Plaintiffs/Appellants,

v.

Jason Weber, individually and as a
Richland County Sheriff's Deputy and
Task Force Officer of the South East
Multi County Agency Narcotics Task
Force, and Richland County, North
Dakota, a political subdivision,

Defendants/Appellees.

Supreme Court No. 20220155

District Court No. 39-2016-CV-00128

MOTION FOR SANCTIONS

APPEAL FROM THE ORDER ON PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT ON MARCH 16, 2022 (DKT. NO. 231)
APPEAL FROM THE ORDER GRANTING DEFENDANTS' MOTION FOR
SANCTIONS ON MAY 27, 2022 (DKT. NO. 240)
COUNTY OF RICHLAND
SOUTHEAST JUDICIAL DISTRICT
THE HONORABLE JAY A. SCHMITZ

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INTRODUCTION

¶1 Defendants hereby move this Court for an award of sanctions against Plaintiffs' counsel for bringing this frivolous appeal. Despite the district court dismissing Plaintiffs' case for the second time and awarding sanctions for bringing a frivolous motion, Plaintiffs continue their attempts to relitigate a case that has been resolved for more than three years. Defendants now seek a recovery of attorney fees for having to respond to this frivolous appeal.

LAW AND ARGUMENT

¶2 If this Court determines that an appeal is frivolous, or that any party has been dilatory in prosecuting the appeal, it may award just damages and single or double costs, including reasonable attorney's fees. N.D. R. App. P. 38. An appeal is frivolous if it is flagrantly groundless, devoid of merit, or demonstrates persistence in the course of litigation which could be seen as evidence of bad faith. *Riemers v. O'Halloran*, 2004 ND 79, ¶ 16, 678 N.W.2d 547. "Where the appellant's arguments are both factually and legally so devoid of merit that he should have been aware of the impossibility of success on appeal, an assessment of costs and attorney fees is proper." *United Bank of Bismarck v. Young*, 401 N.W.2d 517, 518 (N.D. 1987) (citations omitted).

¶3 "Open access to the courts is a valued asset of our democratic form of government. Counsel and their clients should be permitted to present issues that could arguably be correct, even if it is extremely unlikely that they will win on appeal." *Williams v. State*, 405 N.W.2d 615, 624 (N.D. 1987) (citing See N.D. Const. Art. I, § 9). Balanced against this ideal of open access to the courts is the need to conserve judicial resources and prevent

abuse of process, unnecessary delay, and dilatory and frivolous proceedings in the administration of justice. *Id.*

[¶4] Punitive sanctions must be imposed when an appeal is frivolous and interferes with the proper administration of justice. *Id.* Appeals must have some legitimate basis in fact and law. *Id.* Otherwise, appellees are forced to expend time and money in the defense of unnecessarily bothersome claims. *Id.* This Court should neither tolerate nor reward any course of conduct deliberately designed to disrupt the orderly administration of justice. *Id.*

[¶5] This Court has awarded sanctions for a frivolous appeal where an appellant's brief failed to cite any legal authorities in support of the proffered issues on appeal and where it was "unclear exactly what issues and legal theories the plaintiffs/appellants rely upon for relief from this Court." *Id.* at 625.

[¶6] Similarly here, it is unclear exactly what legal authorities Plaintiffs are relying on in their pursuit of this closed case. This appeal is frivolous for the same reasons their Motion for Summary Judgment was deemed frivolous. Their Motion for Summary Judgment on a dismissed case had absolutely no legal justification. As any competent attorney should know, summary judgment cannot be rendered on a case where there are no pending causes of action. Plaintiffs' attempted arguments that there are some pending causes of action is likewise without merit. Plaintiffs continue to argue that Defendants were negligent despite the district court making a finding that there was no proximate cause and this Court affirming that finding.

[¶7] Plaintiffs cannot honestly believe that they have any chance of success on appeal. The district court had no basis to grant them summary judgment, and likewise, this Court

has no basis to overturn the district court's order. Plaintiffs' appeal serves only to harass Defendants, unjustly burden the resources of this Court, and delay justice.

CONCLUSION

¶8 Seeking yet again to relitigate this case without any sound basis or legal argument, Plaintiffs have forced Defendants to not only defend themselves against these accusations once again, but also to incur legal fees and costs associated with this appeal. As a result, Plaintiffs and/or Plaintiffs' counsel should be sanctioned for advancing this flagrantly groundless appeal and an assessment of costs and attorney fees is proper.

Dated: September 8, 2022.

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