MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

M & K Truck Center of Gary, LLC,
Appellant-Defendant,

v.

Rita M. Tafelski,
Appellee-Plaintiff.

January 31, 2024

Court of Appeals Case No. 23A-CT-1662

Appeal from the Lake Superior Court

The Honorable John M. Sedia, Judge

Trial Court Cause No. 45D01-1304-CT-29

Memorandum Decision by Judge Tavitas
Judges Pyle and Foley concur.

Tavitas, Judge.

Case Summary

[1] M&K Truck Centers of Gary, LLC ("M&K") appeals the trial court's denial of its motion for costs and attorney fees in litigation with Rita Tafelski. Tafelski brought this action against her aunt, Linda Salmon, and M&K, and the trial court granted M&K's motion for summary judgment. This Court affirmed the grant of summary judgment. M&K then filed a motion for costs and attorney fees, which the trial court denied. On appeal, M&K argues that the trial court abused its discretion because M&K was statutorily entitled to costs and because Tafelski's action was frivolous, unreasonable, or groundless. We conclude that the trial court did not abuse its discretion by denying M&K's motion for costs and attorney fees. Accordingly, we affirm.

Issues

[2] M&K raises two issues, which we restate as:

I. Whether the trial court abused its discretion by denying M&K's motion for costs.

II. Whether the trial court abused its discretion by denying M&K's motion for attorney fees.

Facts

[3] The relevant facts here were set forth in our opinion on Tafelski's interlocutory appeal:

> Tafelski is the daughter of Suzanne Neitzel, and Linda Salmon is Neitzel's sister and Tafelski's aunt. Neitzel died intestate in April

2012. According to Tafelski, prior to Neitzel's death, Salmon paid Neitzel $100.00 in exchange for Neitzel's shares in Pozzo Truck Center, Inc. and Pozzo Illinois, Inc. (collectively, "Pozzo"). At some point following Neitzel's death, Tafelski filed a complaint against Salmon in which she, in relevant part, sought the imposition of a constructive trust over "[a]ll distributions made from [Neitzel's] assets during her lifetime by" Salmon. Appellant's App. Vol. 2 at 33.

In August 2018, M&K entered into an asset purchase agreement ("the agreement") to purchase certain assets from Pozzo. And the agreement listed Judson Salmon and Salmon as additional parties. *Id.* Pursuant to the agreement, M&K purchased "certain assets owned and used" by Pozzo as well as Pozzo's "business goodwill associated therewith" in exchange for $14 million. *Id*.

After she had learned of the agreement, Tafelski amended her complaint to add M&K as a defendant and to file a claim against M&K under Indiana's Uniform Fraudulent Transactions Act ("the Act") on the ground that the assets M&K had purchased from Pozzo "represent the value of the stock owned by [Neitzel] and acquired by [Salmon] under fraudulent terms and/or by the imposition of undue influence or by breaching fiduciary duties owed by" Salmon. *Id*. at 36.

M&K filed a motion for summary judgment and alleged that it was entitled to judgment as a matter of law on Tafelski's fraudulent conveyance claim. In support of its motion, M&K designated as evidence the affidavit of M&K's general counsel, Lynn Esp; the agreement; and its interrogatories and requests for admission it had served on Tafelski. In her affidavit, Esp stated that M&K had "only purchased assets from Pozzo" and that it "did not purchase anything from" Salmon. *Id.* at 37. She further stated that the agreement "did not include M&K's purchase of any Pozzo stock" and that M&K "had no involvement in,

knowledge of or connection to the alleged 2012 sale of stock" from Neitzel to Salmon. *Id*. at 38.

In M&K's requests for admissions, Tafelski admitted that "M&K was not involved in any manner with the Pozzo stock transfer between" Neitzel and Salmon. *Id*. at 76. In addition, Tafelski admitted that she "did not inform M&K, or cause M&K to know, of the background and circumstances leading to the Pozzo stock transfer" and that the "assets purchased by M&K from [Pozzo] represented at a minimum the value of the Pozzo stock transferred from" Neitzel to Salmon. *Id.* at 77. And Tafelski admitted that she had "no documentation or evidence" to indicate "that M&K did not engage in an arm's-length transaction" when it purchased the Pozzo assets or "that M&K is not a bona fide, good-faith purchaser of the assets[.]" *Id*. at 77-78.

Tafelski responded and filed her motion in opposition to summary judgment. In her response, Tafelski asserted that M&K "knew . . . or should have known that the assets it was purchasing were the subject of" her claim for a constructive trust such that summary judgment would not be appropriate. *Id*. at 94. To support her motion, Tafelski designated as evidence M&K's responses to her interrogatories in which Esp stated that M&K had "learned the assets of Pozzo were for sale on the date that the Asset Purchase Agreement was signed." *Id.* at 99. Esp also stated that, as part of its due diligence, M&K had reviewed the "financial statements and inventory produced by Pozzo" and M&K's "knowledge of the industry and evaluating and valuing the assets of a truck dealership." *Id*. at 100.

Tafelski also designated M&K's supplemental response to interrogatories, in which Esp clarified that, as a part of its due diligence, M&K "would have toured the property and confirmed with the Original Equipment Manufacturer the equipment being

purchased, as well as transfer of the franchise rights." *Id*. at 108. Esp further stated:

> The information [M&K's] advisors reviewed would not have reflected any information regarding disputes over ownership and control of the assets because the terms of the Asset Purchase Agreement controlled the extent of the asset being acquired. The disputes raised in this lawsuit (ownership of the stock of Pozzo) would not have been part of the due diligence since [M&K] was not buying stock—only assets.

Id.

In addition, Tafelski designated as evidence an email from M&K's attorney to her attorney in which M&K's attorney stated that "[t]here was no due diligence involved with determining the value of" Pozzo's franchise rights and equipment but that M&K "knows the value of the franchise, and its sales people inventoried the equipment and placed a value on them." *Id*. at 120. Following a hearing at which the parties presented oral argument, the court granted M&K's motion for summary judgment.

Tafelski v. M & K Truck Centers of Gary, LLC, 22A-CT-2167, slip op. pp. 2-6 (Ind. Ct. App. Apr. 14, 2023) (mem.) (footnotes omitted).

[4] In an interlocutory appeal of the trial court's grant of summary judgment to M&K, this Court held:

> The designated evidence demonstrates that M&K was a good faith purchaser who obtained the assets of Pozzo for a reasonably equivalent value. As such, the sale of Pozzo's assets to M&K is

> not voidable, and the trial court did not err when it entered summary judgment in favor of M&K on Tafelski's claim under [Indiana's Uniform Fraudulent Transactions Act].

Id. at 14.

[5] During the pendency of the interlocutory appeal, M&K filed a motion for costs and attorney fees, and Tafelski filed a response to the motion. The motion was then stayed during the interlocutory appeal. After this Court's opinion on the interlocutory appeal, M&K renewed its motion for costs and attorney fees. M&K sought $138,073.00 in attorney fees and $1,428.04 in costs. After a hearing, the trial court denied M&K's motion as follows:

> M&K's Motion for Summary Judgment was granted by the trial court on August 11, 2022 without findings or comment. Tafelski appealed the decision, the Indiana Court of Appeals affirmed the judgment and denied rehearing. There is nothing to suggest in either the Court of Appeals opinion or the record of this case that Tafelski affirmatively operated in a state of mind with furtive design or ill will, that her claim was made primarily for the purpose of harassment and her attorney was unable to make a good faith and rational argument, that no reasonable attorney would consider that the claim or defense was worthy of litigation, or that no facts existed which supported her claim. M&K's opinion, expressed early on, regarding the efficacy of Tafelski's claim, although worthy of consideration, is not dispositive of any entitlement to have Tafelski pay its fees. This was a hotly contested good faith dispute over the voidability of a stock transfer that Tafelski lost. Losing a case in the courts of Indiana does not automatically entitle the winner to have the loser pay its attorney fees.

Appellant's App. Vol. II pp. 32-33. At M&K's request, the trial court entered final judgment. M&K now appeals.

Discussion and Decision

I. Costs

[6] M&K appeals the trial court's denial of its motion for costs. An award of costs was "unknown at common law and [costs] may be awarded by a court only when they are authorized by statute." *Van Winkle v. Nash*, 761 N.E.2d 856, 861 (Ind. Ct. App. 2002). Indiana Code Section 34-52-1-1(a), however, provides: "In all civil actions, the party recovering judgment shall recover costs, except in those cases in which a different provision is made by law." Further, Indiana Trial Rule 54(D) provides: "Except when express provision therefor is made either in a statute or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs in accordance with any provision of law[.]"

[7] "'The term 'costs' is an accepted legal term of art that has been strictly interpreted to include only filing fees and statutory witness fees.'" *Van Winkle*, 761 N.E.2d at 861 (quoting *Midland-Guardian Co. v. United Consumers Club Inc.*, 499 N.E.2d 792, 800 (Ind. Ct. App. 1986)). "Thus, in the absence of manifest contrary legislative intent, the term 'costs' must be given its accepted meaning which does not include litigation expenses." *Id.*

[8] Here, M&K claimed costs of $1,428.04, which included charges for online legal research, mileage fees, toll fees, and FedEx fees. None of the claimed costs

were for filing fees or statutory witness fees. Accordingly, the trial court properly denied M&K's motion for costs.[1]

II. Attorney Fees

[9] Next, M&K argues that the trial court erred by denying its request for attorney fees. We review a trial court's award of attorney's fees for an abuse of discretion. *River Ridge Dev. Auth. v. Outfront Media, LLC*, 146 N.E.3d 906, 912 (Ind. 2020). An abuse of discretion occurs when the court's decision either clearly contravenes the logic and effect of the facts and circumstances or misinterprets the law. *Id.* To make this determination, we review any findings of fact for clear error and any legal conclusions de novo. *Id.*

[10] "The general rule in Indiana, and across the country, is that each party pays its own attorney's fees; and a party has no right to recover them from the opposition unless it first shows they are authorized." *Id.* While this rule, commonly called the American Rule, "has narrow exceptions that allow a court to order one party to pay another's fees, it is a **hefty burden** to demonstrate that such an award is warranted." *Id.* at 911 (emphasis added). One such exception

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[1] M&K argues that Tafelski waived this issue by failing to make this argument to the trial court. The trial court, however, was obligated to follow the relevant statute and caselaw on this issue. As M&K's claimed expenses were plainly outside the definition of costs, the trial court was not obligated to accept M&K's assertion that these expenses were "costs." Furthermore, in *Citimortgage v. Barabas*, 975 N.E.2d 805, 813 (Ind. 2012), our Supreme Court stated that a party who has prevailed at the trial court, i.e., the appellee, "may defend the trial court's ruling on any grounds, including grounds not raised at trial." *Accord Ind. Bureau of Motor Vehicles v. Gurtner*, 27 N.E.3d 306, 312 (Ind. Ct. App. 2015).

is the General Recovery Rule, Indiana Code Section 34-52-1-1(b), which provides:

> In any civil action, the court may award attorney's fees as part of the cost to the prevailing party, if the court finds that either party:
>
> (1) brought the action or defense on a claim or defense that is frivolous, unreasonable, or groundless;
>
> (2) continued to litigate the action or defense after the party's claim or defense clearly became frivolous, unreasonable, or groundless; or
>
> (3) litigated the action in bad faith.

[11] This statute "balances an attorney's duty to zealously advocate with the goal of deterring unnecessary and unjustified litigation." *River Ridge Dev. Auth.*, 146 N.E.3d at 913. A trial court's decision under this statute is "reviewed under the clearly erroneous standard and legal conclusions regarding whether the litigant's claim was frivolous, unreasonable, or groundless are reviewed de novo." *Purcell v. Old Nat. Bank*, 972 N.E.2d 835, 843 (Ind. 2012).

> A claim or defense is "frivolous" if it is taken primarily for the purpose of harassment, if the attorney is unable to make a good faith and rational argument on the merits of the action, or if the lawyer is unable to support the action taken by a good faith and rational argument for an extension, modification, or reversal of existing law. A claim or defense is "unreasonable" if, based on the totality of the circumstances, including the law and facts known at the time of filing, no reasonable attorney would consider that claim or defense was worthy of litigation. A claim

> or defense is "groundless" if no facts exist which support the legal claim presented by the losing party. Bad faith is affirmatively operating with furtive design or ill will. A claim or defense is not groundless or frivolous merely because a party loses on the merits.

Bertucci v. Bertucci, 177 N.E.3d 1211, 1225 (Ind. Ct. App. 2021) (internal citations omitted).

[12] Here, M&K argues that Tafelski's claim against M&K was frivolous, unreasonable, or groundless and that Tafelski continued to litigate the claim after her claim clearly became frivolous, unreasonable, or groundless. Tafelski brought a claim against M&K under the Indiana Uniform Fraudulent Transfer Act. That Act provides the following in Indiana Code Section 32-18-2-14(a):

> A transfer made or an obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
>
> (1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or
>
> (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
>
> > (A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

> (B) intended to incur or believed or reasonably should have believed that the debtor would incur debts beyond the debtor's ability to pay as the debts became due.

M&K, however, argued that Indiana Code Section 32-18-2-18(a) was applicable; that section provides: "A transfer or an obligation is not voidable under section 14(a)(1) of this chapter against a person that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee."

[13] Although Tafelski was ultimately unsuccessful and this Court affirmed the grant of summary judgment to M&K, our review of the amended complaint, summary judgment pleadings, and appellate pleadings does not reveal that Tafelski's claims were or became frivolous, unreasonable, or groundless. As the trial court noted, this was a "hotly contested good faith dispute." Appellant's App. Vol. II p. 33. We agree with the trial court that:

> There is nothing to suggest in either the Court of Appeals opinion or the record of this case that Tafelski affirmatively operated in a state of mind with furtive design or ill will, that her claim was made primarily for the purpose of harassment and her attorney was unable to make a good faith and rational argument, that no reasonable attorney would consider that the claim or defense was worthy of litigation, or that no facts existed which supported her claim.

Id. Tafelski made a rational argument that genuine issues of material fact existed given the circumstances of the asset sale. M&K had a "hefty burden" to demonstrate it was entitled to attorney fees under Indiana Code Section 34-52-

1-1(b). *River Ridge Dev. Auth.*, 146 N.E.3d at 911. The trial court concluded that M&K did not meet its burden, and we cannot say the trial court abused its discretion.[2] *See, e.g.*, *Kitchell v. Franklin*, 26 N.E.3d 1050, 1060 (Ind. Ct. App. 2015) ("[T]here is support for refraining from awarding attorneys' fees in order to avoid a chilling effect in legitimate cases of first impression, even in cases where 'rudimentary legal reasoning' would have led a person to believe the Indiana courts probably would rule against the person raising the claim."), *trans. denied*.

Conclusion

[14] The trial court did not abuse its discretion by denying M&K's motion for costs and attorney fees. Accordingly, we affirm.

[15] Affirmed.

Pyle, J., and Foley, J., concur.

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[2] M&K also argues that the expenses identified as costs in Section I, *supra*, could be awarded as part of Indiana Code 34-52-1-1(b), but this section of the statute pertains to attorney fees. Regardless, we need not address the argument because we conclude that the trial court did not abuse its discretion by denying M&K's motion for attorney fees under Indiana Code Section 34-52-1-1(b).