

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
HURON COUNTY

Norwalk MK., Inc. d.b.a. Kasper
Chevoret Buick

Appellee

v.

Darlyss H. McCormick

Appellant

Court of Appeals No. H-05-026

Trial Court No. CIV 0401535

DECISION AND JUDGMENT ENTRY

Decided: April 24, 2006

* * * * *

William W. Owens, for appellee.

Thomas J. Stoll, for appellant.

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PER CURIAM

{¶1} Appellee, Norwalk MK., Inc., has filed a motion to dismiss the appeal filed by Darlyss H. McCormick alleging that it is frivolous. McCormick filed a memorandum in opposition. We find the motion not well taken.

{¶2} A claim of a frivolous appeal under App.R. 23 is not a grounds for dismissal of an appeal, rather, it is a basis on which the court can award sanctions against

the party filing the frivolous appeal. The court cannot determine whether an appeal is frivolous prior to hearing the appeal on its merits after full briefing and review of the record. Accordingly, the court denies the motion to dismiss. Appellee can file a motion for sanctions under App.R. 23 which the court will consider at the time the case is decided on its merits.

{¶3} It is so ordered.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, P.J.

CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.
