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**IN THE**  
**COURT OF APPEALS OF INDIANA**

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SHONK ELECTRIC, INC., )

Appellant, )

vs. )

SIEMENS MEDICAL SOLUTIONS USA, INC., )

Appellee. )

No. 55A05-1009-CC-554

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APPEAL FROM THE MORGAN CIRCUIT COURT  
The Honorable Matthew G. Hanson, Judge  
Cause No. 55C01-0907-CC-710

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**May 17, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**DARDEN, Judge**

## STATEMENT OF THE CASE

Shonk Electric, Inc. (“Shonk”)<sup>1</sup> appeals the trial court’s entry of summary judgment in favor of Siemens Medical Solutions USA, Inc. (“Siemens”) and award of attorneys’ fees in favor of Siemens.

We affirm and remand.

## ISSUES

1. Whether the trial court improperly treated Siemens’ motion to dismiss for failure to state a claim as a motion for summary judgment.
2. Whether the trial court abused its discretion by denying Shonk’s motion for discovery.
3. Whether the trial court erred in granting summary judgment to Siemens.
4. Whether the trial court abused its discretion in awarding attorneys’ fees.

## FACTS

Pursuant to a lease agreement dated April 10, 2008, Washington County Memorial Hospital (the “Hospital”) leased an MRI unit and related equipment from Siemens. Siemens provided financing to the Hospital for the “build-out of its facilities to house” the equipment. (Siemens’ App. 128). On or about May 7, 2008, the Hospital’s general contractor, Richardson Construction Co. (“Richardson Co.”), hired Shonk as a subcontractor to perform electrical work at the Hospital, including work necessary for the

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<sup>1</sup> Shonk’s appellate counsel also represented Shonk in the underlying proceedings.

installation of the MRI equipment. Upon completion of work, Shonk submitted invoices to Richardson Co. for payment.

Subsequently, the Hospital defaulted under the terms of the lease and financing agreements. On June 16, 2009, the Hospital filed for bankruptcy under Chapter 11 of Title 11 of the United States Bankruptcy Code. Siemens filed a proof of claim in the amount of \$2,656,341.61. After the Hospital rejected the lease agreement on or about November 3, 2009, Siemens sold the MRI equipment for \$800,000.00, leaving Siemens with an unsecured claim in the amount of \$1,806,341.61.

On July 17, 2009, Shonk filed a complaint against Siemens; Jim Richardson and Jeff Richardson, individually; and Richardson Co. to recover payment due in the amount of \$41,583.00. Shonk alleged, in relevant part, as follows:

4. On or about May 7, 2008, and at later times, [Shonk] undertook to perform electrical work at [the Hospital] at request of defendants Richardson, along with later related work . . . .
5. Approximately \$41,583 of the reasonable charges for the work remain [sic] unpaid, after several demands.
6. The job was installing Siemens MRI equipment. Siemens . . . impliedly authorized [Shonk] to do the work; reasonably expected to pay [Shonk], and/or [Shonk] reasonably expected to be paid, as reflected by Siemens' close involvement with requirements of the work, virtually stepping into the shoes of the Richardson defendants.
7. In particular, Siemens met with [Shonk] prior to [Shonk]'s bid, to go over job requirements; met with [Shonk] when he began the work; inspected the work from time to time; advised [Shonk] on things that could be done, to reduce installation costs and meet specs; financed the work, and made all disbursements directly to Richardson, not through the Hospital.

8. Siemens was much more involved than the Richardson defendants, in subbing and managing the electrical work.

9. Siemens may have committed an actual wrong, in releasing the retainage to Richardson defendants, with no provision to assure unpaid subs would get paid, and may have committed actual wrong as to earlier disbursements, with no comparable assurances.

(Shonk's App. 16-17). Shonk attached several work invoices it had submitted to Richardson Co. on or about August 20, 2008, September 16, 2008, and February 19, 2009.

On September 14, 2009, Siemens filed a motion to dismiss and for attorneys' fees for failure "to state any cause of action against Siemens in contract, tort, equity or under Indiana's mechanics' lien law." (Shonk's App. 29). Shonk filed a response to Siemens' motion to dismiss and a counter-motion on October 20, 2009.

Shonk attached several exhibits in support of its response to the motion to dismiss, including the affidavit of Jeff Shonk, president of Shonk. Jeff Shonk averred as follows:

2. The documents attached to the complaint are true and accurate copies of records of Shonk . . . , including the invoices of Aug 20 and Sept 16, 08 and Febr 19, 09.

3. Siemens provided probably 90% of the supervision of his work at the [H]ospital, with Richardson and the [H]ospital in comparatively minor roles.

4. Most of Siemens['] supervision was by a man I believe from Martinsville, who supervised maybe 3 Siemens jobs I have done. This included initial briefing as to specifications and requirements; progress; and changes.

5. Normally, I might bill initially when the rough work is done, but here Richardson wanted to do a draw beforehand, so I gave him the Aug 20 invoice.

6. I continued to work, but the money did not come, and Richardson said after the Sept 16 billing, the [H]ospital did not have any funds, so I pulled off the job. The rough was about done, except for pulling wire by Sept 16.

7. I went back on the job after getting a check Jan 16, 09 for \$11,517 and another February 6, 09, for \$9,400. Richardson said Siemens was taking over the payments. I finished the work Feb 16, 09.

(Shonk's App. 85-86).

Shonk filed an amended complaint on November 4, 2009,<sup>2</sup> and on November 6, 2009, Siemens filed a reply to Shonk's response to Siemens' motion to dismiss. On December 4, 2009, the trial court held a hearing on Siemens' motion to dismiss. On December 14, 2009, the trial court entered its order, dismissing Shonk's complaint against Siemens with prejudice and awarding Siemens \$12,260.76 in attorneys' fees and costs.

On December 31, 2009, Shonk filed a "Second Amended Claim for Damages" against Richardson Co.; Jim Richardson and Jeff Richardson, individually; and Siemens.

Shonk, inter alia, alleged as follows:

7. . . . Siemens was the general contractor and probably the vendor of the MRI that was installed, . . . the lender; as to the funds for the project . . . ; stood in the shoes of the purchaser as to hiring, managing and paying the general contractor, Richardson . . . ; and played the dominant role, in directing the work of [Shonk], the electrical subcontractor . . . .

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<sup>2</sup> Shonk did not name Siemens as a defendant in this claim.

8. The signed documents outlining these Siemens relationships are in the possession of Siemens, which has declined to make them available, and possible Richardson, who just appeared in the case a few days ago. [Shonk] attached his best available unsigned copies, to his response to the first dismissal motion . . . .

9. The domination of the various roles in the transaction by Siemens[] was well beyond the level of contact and control, supporting judgments against unjustly enriched parties in Indiana case law.

10. Siemens was not the owner of the tract where the MRI was installed, but the legal elements of unjust enrichment do not require ownership (though many of the cases addressing unjust enrichment naturally involve owners.)

11. Siemens may emerge unjustly enriched, relative to (a) [Shonk] and (b) the result of Siemens would otherwise obtain, after the chapter 11 bankruptcy of the tract owner runs its course.

. . . .

13. Here, encouraging [Shonk] to complete the work, and failing to protect [Shonk]'s reimbursement—when Siemens had extraordinary control over the project and the fund disbursements—probably set up unjust enrichment.

. . . .

15. In addition to the value of the repossessed MRI; with Siemens possibly secured by a lien on the tract, though it filed an unsecured claim in the chapter 11; and with possible rebound of hospital revenues . . . Siemens could net a large amount of its total projected revenues from the MRI, although we do not know.

. . . .

17. [Shonk] was probably also a third party beneficiary of the contracts between Siemens, Richardson and the tract owner, clearly intended to benefit; with a duty imposed on Siemens and/or Richardson in favor of [Shonk]; and with performance necessary to render [Shonk] a direct benefit, intended by the parties.

(Shonk's App. 105-07).

Thereafter, Siemens filed a motion for mandatory withdrawal of the second amended complaint. On February 2, 2010, the trial court entered an order, ordering Shonk to withdraw its second amended complaint within ten days and pay Siemens the attorneys' fees and costs in the amount of \$12,260.76 previously awarded to Siemens, plus an additional \$1,000.00 in attorneys' fees and costs.

On February 18, 2010, Shonk filed a motion for relief from judgment pursuant to Trial Rule 60; response to Siemens' motion for mandatory withdrawal; and a motion for attorney's fees and costs. On February 25, 2010, the trial court set a hearing on the motions for March 23, 2010.

On March 5, 2010, Shonk filed a motion to correct error. On March 12, 2010, Siemens filed its response to Shonk's motion for relief from judgment; motion to correct error; and motion for fees and costs. Siemens also filed a cross-motion for attorneys' fees. On March 17, 2010, the trial court entered its order, wherein it denied Shonk's motion for relief from judgment. The trial court also denied Shonk's motion to correct error. On Siemens' cross-motion, the trial court entered judgment in favor of Siemens in the amount of \$22,752.49. Shonk filed a reply on March 22, 2010.

On March 23, 2010, the trial court held a hearing. Thereafter, the trial court found, in part, as follows:

2) It is quite clear under the rules that when a 12(b)(6) motion is made, as was done here by Siemens on September 14, 2009, the court must and did hold a hearing on that motion.

.....

6) In this case, [Shonk], in response to the 12(b)(6) motion to dismiss made by Siemens, did provide extensive matters outside the pleading itself, therefore this court must approach the dismissal hearing as one under Rule 56.

7) However, as briefly brushed over by [Shonk's counsel] in his various arguments, he was not given time to prepare for a Summary Judgment hearing.

(Shonk's App. 176). Accordingly the trial court ordered that

[a]ll orders granted, all pending motions and any filings, including the amended complaint by [Shonk] shall be struck from the file and the court will proceed on the initial complaint, the initial 12(b)(6) motion and the parties shall be provided sixty (60) days from the date of this order to file those matters now pertinent to Rule 56 Motion.

(Shonk's App. 177).

Subsequently, Shonk served Siemens with discovery. On April 27, 2010, Siemens filed a motion to stay discovery and for entry of a protective order. Siemens argued that Shonk was seeking "information that [Shonk] already knows (or should know) or is available from the public record, . . . require[s] Siemens to provide discussions of public policy and law, and . . . seek[s] information and documents wholly irrelevant to the issues raised in [Shonk]'s Complaint." (Shonk's App. 190). On April 28, 2010, the trial court granted Siemens' motion. Shonk filed a motion for relief from judgment on May 25, 2010, which the trial court denied.

On May 25, 2010, Siemens filed its statement of undisputed facts in support of its motion to dismiss and for summary judgment. Siemens also filed a motion for attorneys' fees and costs. On May 26, 2010, Shonk filed its designation of material issues of fact. Siemens filed its memorandum in support of its converted motion for summary judgment on June 23, 2010. On July 2, 2010, the trial court held a hearing on the motion for summary judgment.

On July 7, 2010, the trial court entered its order, granting summary judgment in favor of Siemens; awarding Siemens' attorneys' fees; and denying Shonk's motion for fees. On August 5, 2010, Shonk filed a motion to correct error, which the trial court denied on August 11, 2010.

Additional facts will be provided as necessary.

## DECISION

### 1. Motion for Summary Judgment

Shonk appears to argue that the trial court improperly treated Siemens' motion to dismiss as a motion for summary judgment. We disagree.

Indiana Trial Rule 12(B)(6) provides, in pertinent part, as follows:

If, on a to motion dismiss, asserting the defense number (6), to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented and not excluded by the trial court, the motion shall be treated as one for summary judgment . . . .

Citing to *Fox Dev., Inc. v. England*, 837 N.E.2d 161, 164 (Ind. Ct. App. 2005), Shonk argues that the trial court improperly treated Siemens' motion as one for summary

judgment because the exhibits attached to his response to the motion to dismiss “were all unsigned copies of contracts, or unauthenticated e[.]mails, except the Shonk affidavit . . . .” Shonk’s Br. at 7. As Shonk notes, however, matters outside the pleadings “are those materials that would be admissible for summary judgment purposes, such as depositions, answers to interrogatories, admissions, and affidavits.” *Fox*, 837 N.E.2d at 164 (emphasis added). *See also Bellows v. Bd. of Com’rs of County of Elkhart*, 926 N.E.2d 96, 113 (Ind. Ct. App. 2010) (stating that where affidavits are presented, “the motion is treated as one for summary judgment under Indiana Trial Rule 56”).

In this case, Shonk presented several matters outside the pleadings, including an affidavit, and there is no indication that the trial court excluded these matters. We therefore find that the trial court properly treated the motion to dismiss for failure to state a claim as a motion for summary judgment.<sup>3</sup>

## 2. Discovery

Shonk also asserts that the trial court “erred as a matter of law” in granting Siemens’ motion to stay discovery. Shonk’s Br. at 6. We note that “[r]ulings on motions for discovery rest in the sound discretion of the trial court and will be reversed only for an abuse of discretion.” *Reel v. Clarian Health Partners, Inc.*, 917 N.E.2d 714, 722 (Ind.

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<sup>3</sup> We note that Shonk maintains: “The dismissal served Dec[ember] 17, [20]09 gave no indication of being based on that affidavit, which affidavit only addressed one of several contested issues, in any event.” Shonk’s Br. at 7. It is unclear to which “dismissal” Shonk is referring. To the extent that Shonk is arguing that the affidavit attached to the response to the motion to dismiss is not a matter outside the pleadings, Shonk provides no cogent argument or citation to authority. Thus, this argument is waived. *See Lyles v. State*, 834 N.E.2d 1035, 1050 (Ind. Ct. App. 2005) (“A party waives an issue where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record.”).

Ct. App. 2009), *trans. denied*. “In addition, the sequence and timing of discovery has been left to the almost unlimited discretion of the trial court.” *Id.* (finding no abuse of discretion in “sequencing the discovery to avoid extensive and costly discovery until it ruled on the motion to dismiss”). Here, however, we need not address whether the trial court abused its discretion as we find that Shonk has waived this argument.

Indiana Rule of Appellate Procedure 46(A) clearly sets forth the standards to which appellants’ briefs must adhere. Specifically, subsection (8) instructs:

(8) *Argument*. This section shall contain the appellant’s contentions why the trial court or Administrative Agency committed reversible error.

(a) The argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on, in accordance with Rule 22.

(b) The argument must include for each issue a concise statement of the applicable standard of review; this statement may appear in the discussion of each issue or under a separate heading placed before the discussion of the issues. In addition, the argument must include a brief statement of the procedural and substantive facts necessary for consideration of the issues presented on appeal, including a statement of how the issues relevant to the appeal were raised and resolved by any Administrative Agency or trial court.

Shonk’s argument is neither supported by cogent reasoning nor citation to authority and fails to include the applicable standard of review.<sup>4</sup> Thus, it is waived. *See*

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<sup>4</sup> Shonk begins the argument section with a quotation from the dissenting opinion of *Trail v. Boys and Girls Clubs of Northwest Indiana*, 845 N.E.2d 130 (Ind. 2006). “Inasmuch as this was not the view of the majority of that court, it is not a precedent binding on this court.” *New York Life Ins. Co. v. Bruner*, 129 Ind. App. 271, 275, 153 N.E.2d 616, 618 (1958).

*Lyles*, 834 N.E.2d at 1050; *cf. Kirchoff v. Selby*, 703 N.E.2d 644, 656 (Ind. 1998) (“A party’s failure to follow the appellate rules can, in egregious situations, lead to dismissal of the appeal.”).

### 3. Summary Judgment

Shonk asserts that the trial court erred in granting summary judgment in favor of Siemens. Specifically, Shonk seems to argue that genuine issues of material fact exist as to whether a) Siemens was unjustly enriched by Shonk’s work; b) Shonk is a third-party beneficiary of any contract between the Hospital and Siemens; and c) Shonk is entitled to retainage, if any.

When reviewing a grant or denial of summary judgment, our well-settled standard of review is the same as it was for the trial court: whether there is a genuine issue of material fact, and whether the moving party is entitled to judgment as a matter of law. *Landmark Health Care Assocs., L.P. v. Bradbury*, 671 N.E.2d 113, 116 (Ind. 1996). Summary judgment should be granted only if the evidence sanctioned by Indiana Trial Rule 56(C) shows that there is no genuine issue of material fact and the moving party

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Furthermore, rather than presenting “a brief statement of the procedural and substantive facts necessary for consideration of the issue[] presented on appeal,” or “the contentions of the appellant on the issue[] presented, supported by cogent reasoning,” as required by Appellate Rule 46(A)(8), Shonk merely sets forth the entire motion for relief from judgment filed before the trial court, thereby waiving this issue on appeal. *See T-3 Martinsville, LLC v. U.S. Holding, LLC*, 911 N.E.2d 100, 105 n.3 (Ind. Ct. App. 2004) (reiterating that an appellant waives its issue for appellate review where it attempts to incorporate an argument raised and argued in the trial court by reference), *clarified on reh’g*, 916 N.E.2d 205 (Ind. Ct. App. 2009). Although Shonk contends that the motion “lays out the substance of this argument, as to each element of discovery,” we must disagree. Shonk’s Br. at 7. Even if this court were to accept Shonk’s attempt to incorporate his argument by reference, the motion also fails to present cogent reasoning or citation to authority.

deserves judgment as a matter of law. Ind. Trial Rule 56(C); *Blake v. Calumet Const. Corp.*, 674 N.E.2d 167, 169 (Ind. 1996). “A genuine issue of material fact exists where facts concerning an issue which would dispose of the litigation are in dispute or where the undisputed facts are capable of supporting conflicting inferences on such an issue.” *Scott v. Bodor, Inc.*, 571 N.E.2d 313, 318 (Ind. Ct. App. 1991).

All evidence must be construed in favor of the opposing party, and all doubts as to the existence of a material issue must be resolved against the moving party. *Tibbs v. Huber, Hunt & Nichols, Inc.*, 668 N.E.2d 248, 249 (Ind. 1996). However, once the movant has carried his initial burden of going forward under Trial Rule 56(C), the nonmovant must come forward with sufficient evidence demonstrating the existence of genuine factual issues, which should be resolved at trial. *Otto v. Park Garden Assocs.*, 612 N.E.2d 135, 138 (Ind. Ct. App. 1993), *trans. denied*. If the nonmovant fails to meet his burden, and the law is with the movant, summary judgment should be granted. *Id.*

a. *Unjust Enrichment*

Shonk makes several arguments in support of its claim for unjust enrichment: that “[t]here is a high probability[] that Siemens will receive all or nearly all of its expected gains, while Shonk has recouped only about a third of his gross,” Shonk’s br. at 17; “with Siemens selling the MRI, and getting 8-10% of projected lease proceeds from a lease just beginning, as a class 7 creditor, Seimens [sic] could easily recognize its intended profit margin,” *id.* at 18; and “[e]ven if Siemens were to only salvage its outlay, for example operating and some fixed costs, in the chapter 11, that could still count as a form of

enrichment, in an unstable (or worse) economy.” *Id.* Shonk also contends that “[r]elative scale” is pertinent in terms of how much each party can afford to pay or lose. *Id.* at 19.

A claim for unjust enrichment “is a legal fiction invented by the common law courts in order to permit a recovery . . . where the circumstances are such that under the law of natural and immutable justice there should be a recovery . . . .” “A person who has been unjustly enriched at the expense of another is required to make restitution to the other.” To prevail on a claim of unjust enrichment, a claimant must establish that a measurable benefit has been conferred on the defendant under such circumstances that the defendant’s retention of the benefit without payment would be unjust.

*Zoeller v. East Chicago Second Century, Inc.*, 904 N.E.2d 213, 220 (Ind. 2009) (internal citations omitted), *reh’g denied*.

Here, a review of the designated evidence shows no genuine factual issues regarding whether Shonk’s work under its contract with Richardson Co. conferred a benefit upon Siemens, such that retention of the benefit, if any, without payment would be unjust enrichment. Therefore, we cannot say that the trial court erred in granting Siemens’ motion for summary judgment on Shonk’s unjust enrichment claim.

b. *Third-party beneficiary*

Shonk asks: did any purported agreements between “Siemens and the [H]ospital intend[] to benefit Shonk in return for his work; require either or both to see that Shonk got paid; and render that benefit, as the space was electrically prepped out?” Shonk’s Br. at 20.

A third party beneficiary may directly enforce a contract. *Mogensen v. Martz*, 441 N.E.2d 34, 35 (Ind. Ct. App. 1982). To enforce a contract as a third-party beneficiary, the third-party beneficiary must show the following:

- (1) A clear intent by the actual parties to the contract to benefit the third party;
- (2) A duty imposed on one of the contracting parties in favor of the third party; and
- (3) Performance of the contract terms is necessary to render the third party a direct benefit intended by the parties to the contract.

*Luhnow v. Horn*, 760 N.E.2d 621, 628 (Ind. Ct. App. 2001). “[T]he intent to benefit the third party is the controlling factor and may be shown by specifically naming the third party or by other evidence.” *Id.*

When reviewing a grant of summary judgment, “[w]e consider only those facts that the parties designated to the trial court.” *Shepard v. Schurz Commc’n, Inc.*, 847 N.E.2d 219, 224 (Ind. Ct. App. 2006). Shonk’s mere questions and allegations<sup>5</sup> regarding whether Shonk is a third-party beneficiary do not create a genuine issue of material fact regarding whether any contract between Siemens and the Hospital was intended to benefit Shonk. We therefore cannot say that the trial court erred in granting Siemens summary judgment on this issue.

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<sup>5</sup> Again, Shonk attempts to incorporate arguments made before the trial court by reference. *See* Shonk’s Br. at 19-20 (referring this court to “MCE, pp 5-7”; “p 5 of Shonk’s Reply served Mar 22, 10”; paragraph nine of “[t]he original complaint”; page eight of “Shonk’s Response to the Motion to Dismiss”; and paragraph seventeen “of the Second Amended Claim . . .”). Thus, Shonk waives these arguments. *See T-3 Martinsville, LLC*, 911 N.E.2d at 105 n.3.

c. *Retainage*

Shonk presents its next issue as follows: “The loan or lease may well spell out retainage procedures, rights or duties.” Shonk’s Br. at 20. Shonk’s statement, however, fails to present any issue for our review. *See* Ind. Appellate Rule 46(A)(8). Moreover, Shonk’s entire argument reads as follows:

If discovery reveals a framework for the impression Shonk got from Richardson, that Siemens had taken over, that framework might point to a still more clear duty of Siemens, as to the last \$30,000, with Shonk the main unpaid sub. Especially, if Siemens knew Richardson had gotten shaky.

Shonk’s Br. at 21.

Shonk fails to support its argument that the trial court erred in granting summary judgment with cogent reasoning or citation to authorities. Thus, it is waived.<sup>6</sup> *See Lyles v. State*, 834 N.E.2d at 1050; *see also Thacker v. Wentzel*, 797 N.E.2d 342, 345 (Ind. Ct. App. 2003) (“While we prefer to decide cases on their merits, we will deem alleged errors waived where an appellant’s noncompliance with the rules of appellate procedure is so substantial it impedes our appellate consideration of the errors.”).

4. Attorneys’ Fees

Shonk argues that the trial court improperly awarded Siemens attorneys’ fees.<sup>7</sup> Shonk also argues that it is entitled to attorney’s fees and costs.

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<sup>6</sup> We note that Shonk does not assert that a retainage even exists.

<sup>7</sup> Shonk does not challenge the amount awarded, only the award itself.

In this case, the trial court awarded Siemens attorneys' fees pursuant to 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.

A claim is "frivolous" if it is made primarily to harass or maliciously injure another; if counsel is unable to make a good faith and rational argument on the merits of the action; or if counsel is unable to support the action by a good faith and rational argument for extension, modification, or reversal of existing law. *Inlow v. Henderson, Daily, Withrow & Devoe*, 804 N.E.2d 833, 839 (Ind. Ct. App. 2004). A claim is "unreasonable" if, based upon the totality of the circumstances, including the law and facts known at the time, no reasonable attorney would consider the claim justified or worthy of litigation. *Id.* A claim is "groundless" if no facts exist which support the claim relied upon and supported by the losing party. *Id.*

We review a trial court's decision to grant or deny attorneys' fees for an abuse of discretion, and we will reverse an award of attorneys' fees only upon a showing of an abuse of that discretion. *Thacker*, 797 N.E.2d at 345. An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.*

Here, Shonk pursued its claims against Siemens although it lacked credible evidence in support thereof. In fact, in its original complaint, Shonk failed to assert an actual claim against Siemens, stating only that “Siemens may have committed an actual wrong . . . .” (Shonk’s App. 16). Furthermore, in its response to Siemens’ motion to dismiss, Shonk acknowledged its lack of evidence, admitting “[t]here is a fair probability that the complete documents will clarify perceived gaps in Shonk’s claim, though we can’t be sure . . . .” (Shonk’s App. 52). Despite several communications from Siemens indicating the deficiencies in Shonk’s claims and requesting that Shonk withdraw its claims against Siemens, Shonk continued to pursue the clearly groundless and unreasonable claims.

Accordingly, we find no abuse of discretion in granting Siemens its attorneys’ fees and denying Shonk its attorney’s fees. We also find that appellate attorneys’ fees are appropriate in this case. We therefore remand to the trial court for a hearing to determine Siemens’ appellate attorneys’ fees.

Affirmed and remanded.

NAJAM, J., and BAILEY, J., concur.