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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff - Appellant,

v.

MARICOPA COUNTY, a political
subdivision,

Defendant - Appellee.

No. 08-15403

D.C. No. CV-02-01874-PHX-PGR

MEMORANDUM *

Appeal from the United States District Court
for the District of Arizona
Paul G. Rosenblatt, District Judge, Presiding

Argued and Submitted June 10, 2009
San Francisco, California

Before: TROTT, McKEOWN and IKUTA, Circuit Judges.

We consider on appeal the district court's imposition of attorney's fees and costs against the Equal Employment Opportunity Commission ("EEOC") on the basis of bad faith and pursuit of a frivolous suit. We first note that although the

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

majority of an earlier panel of this court concluded that summary judgment was appropriately granted, Judge Reinhardt's dissent raised valid concerns and illustrated the complexities of the matter. *See EEOC v. Maricopa County*, No. 05-15403, 220 Fed. Appx. 733, 2007 WL 570424 (9th Cir. Feb. 20, 2007). Based on our review of the record, including the details of Anderson's deposition testimony, along with the factors raised in the earlier dissent, we conclude that the the district court abused its discretion when it determined that the EEOC pursued its claims in bad faith and that its position was frivolous. The EEOC's arguments were ultimately unsuccessful. Nonetheless, a weak case is not tantamount to a frivolous case. *See EEOC v. Bruno's Rest.*, 13 F.3d 285, 290 (9th Cir. 1993). By awarding attorneys' fees under these circumstances, "[t]he district court failed to exercise its discretion within the permissible bounds" of 28 U.S.C. § 1927 and the court's inherent powers. *Id.* In light of this conclusion, we decline to address the other issues raised on appeal.

REVERSED.