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Division II
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STATE OF WASHINGTON
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101167-9

NO. 56900-1-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

KITSAP COUNTY, Respondent,

v.

DOMINIC CAMPESE, Petitioner.

PETITIONER CAMPESE'S PETITION FOR REVIEW

Attorney for Petitioner Dominic Campese:

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I. Identification of Petitioner

Comes now Petitioner, Dominic Campese, by and through his attorney of record, Nicholas Power of the Law Office of Nicholas Power, PLLC, and submits for this Court's consideration pursuant to RAP 13.4 the instant Petition for Review of a decision by Division II of the Court of Appeals terminating review.

II. Court of Appeals Decision

Petitioner seeks review of Division II's Order of July 12, 2022. Attached as Exhibit A. Petitioner subsequently moved to have said Order published. The Motion to Publish was denied on July 29, 2022. This Petition follows.

III. Issue Presented for Review

Is a requester of public records a prevailing party for the purposes of the fee, cost and penalty provision of the Public Records Act when an agency brings a declaratory judgment action against a requester asserting the requested records are exempt but, during the course of the litigation, agrees that the records should be disclosed, tenders the records to the requester, and subsequently voluntarily dismisses its action prior

to a determination on the merits?

IV. Statement of the Case

Campese is a professional documentary film maker. He became interested in Kitsap County's law enforcement standards, policies, protocols, and oversight after the July 2019 killing of Stonechild Chiefstick by local law enforcement. Campese has produced a seven-episode series entitled "The Killing of Stonechild Chiefstick" distributed by Amazon and other media platforms.

To conduct research for his multipart documentary series, in March of 2020, Campese made a public records request of Kitsap County pursuant to Washington's Public Records Act, RCW 42.56, so that he could inspect Kitsap's "Brady List and Brady Materials".

Initially Kitsap indicated that it would be fulfilling the request albeit in installments. On August 28, 2020, Kitsap County proceeded to provide Campese with 72 pages of records that were purported to be responsive of Campese's request. Some 10 weeks later, on November 16, 2020, Kitsap disclosed its Brady List and further indicated that it would be providing the balance of the responsive materials by February 12, 2021.

Despite having indicated that it was going to produce the requested material, Kitsap changed its tune and on December 3, 2020, some 10 months after Campese made his request, initiated this action as a declaratory judgment action against Campese in Pierce County Superior Court.

Kitsap's suit against Campese sought determination of "whether investigative records compiled by the Kitsap County Prosecuting Attorney in compliance with the constitutional requirements of *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny, and Criminal Rule (CrR) 4.7, are exempt from disclosure under the Public Records Act pursuant to RCW 42.56.290 as attorney work-product."

In response to Kitsap's suit, Campese asserted a mirroring counterclaim asserting that Kitsap's refusal to provide the requested records was a violation of the PRA.

Campese commenced written discovery and took the depositions of Kitsap County Elected Prosecutor Chad Enright and the 30(b)(6) depositions of two deputy prosecutors who were responsible for the assembly and maintenance of Kitsap's Brady materials and the processing of Campese's request.

During his deposition, Prosecutor Enright admitted that Campese should be provided with the records he sought. Accordingly, shortly after these depositions, Kitsap tendered all remaining responsive records to Mr. Campese thereby fulfilling his request.

Kitsap then moved to voluntarily dismiss its declaratory judgment action.

After expending tens of thousands of dollars in fees and costs litigating against Kitsap so he could view the records, Campese moved for the fees, costs, and penalties, incurred defending against the aborted declaratory judgment action pursuant to RCW 42.56.550(4) and the frivolous claims statute RCW 4.84.185.

The trial court denied Campese's request for fees, costs, and penalties on April 16, 2021, holding that Campese's claims were premature as Campese had not proactively established that he was entitled to review the records despite Kitsap's acquiescence.

On review, the Court of Appeals upheld the trial court's determination that Campese was not entitled to recover fees, costs or penalties on July 12, 2022. See Exhibit A.

Holding that Mr. Campese's request was premature Division II understood the nature of Mr. Campese's appeal to be that "Campese appeals the [trial] court's order denying his motion as premature." Ex. A at 4. The Court of Appeals reasoned, "In light of the fact that Campese's counterclaims (alleging that the County violated the PRA) were still pending, the most logical reading of the order is that the trial court was merely deferring ruling on Campese's request until the case was fully concluded." Id. At 5.

Such is a legally insufficient and erroneous ground to deny fee and cost recovery. The declaratory judgment action was over, and Mr. Campese was entitled to fees and costs incurred defending against that action regardless of whether he chose to continue litigating his counterclaim.

Indeed, since the purpose behind PRA suits is to **obtain** records, Kitsap's tender obviated the need for Campese's counterclaim requesting that the court order the disclosure of the records. Simply, by virtue of Kitsap's tender, Campese's counterclaim became moot as he no longer needed to sue to obtain the records he wanted to review.

Kitsap asserted, and the courts below agreed, that it was

incumbent on Campese – a reluctant litigant -- to continue to litigate his moot counterclaim and establish something that need not be decided – that he had a right to review the records.

Because the burden to prove an exemption was on Kitsap (RCW 42.56.550(1)), the onus was unequivocally on Kitsap to establish as a matter of law that Campese ***was not*** entitled to the records. When Kitsap abandoned its claim of exemption after dragging Campese into court, fee and cost recovery was mandatory at that time. Accordingly, the lower courts' rulings that Campese's request for fees, costs and penalties was premature, were in error.

In other words, independent of whether Campese was entitled to fees, costs and penalties associated with his counterclaim, Campese was entitled as a matter of right to fees, costs and penalties incurred since Kitsap's abandoned declaratory judgment action and did not obtain a ruling on the merits and he had prevailed per the terms of RCW 42.56.550(4).

V. Grounds for Review: RAP 13.4(b)

The appeal merits direct review pursuant to RAP 13.4(b)(1), (2) and (4). As it presents a question of great public importance and would resolve conflicting dicta in opinions by

the Court of Appeals as to what is means to "prevail" under RCW 42.56.550(4).

VI. DISCUSSION

In Washington public records are presumptively open for public inspection and the burden is on the agency to establish that an exemption exists to justify the withholding of the record. RCW 42.56.550(1). Requesters that prevail "***in any action*** in the courts seeking the right to inspect or copy any public record…shall be awarded all costs, including reasonable attorney fees, incurred in connection of such legal action." RCW 42.56.550(4). (Emphasis supplied).

In the present case, Kitsap by filing its declaratory judgment action and withholding records from Campese unequivocally took the position that Campese had no right to review the records that he sought. If Campese wanted to review the records, he had no choice but to engage in litigation and defend against the declaratory judgment action. And that is what he did.

After discovery made it clear that Kitsap's position was factually and legally untenable, Kitsap relented, provided the records to Campese and moved for voluntary dismissal. Because

Mr. Campese was forced to litigate this matter to obtain records which Kitsap failed to establish were exempt, he is entitled to statutorily prescribed fees, costs and, potentially, penalties. This conclusion holds true regardless of whether Campese made (or litigated to completion) his counterclaim.

Because public records are presumptively open for public inspection, the onus was on Kitsap to demonstrate that Campese was not entitled to review the records. ("The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records." RCW 42.56.550(1).)

This matter is of profound public importance because should this Court let the decision on appeal stand agencies will be free to force a requester to incur fees and costs defending against declaratory judgment actions with impunity. Moreover, holding that Campese must proactively establish his right to review the records is inefficient as the tender of the records satisfied his interest. It makes little sense to force the litigants and the courts to make a theoretical decision on a matter that has been rendered moot by the voluntary tender of the records in

dispute.

In general, if a plaintiff voluntarily dismisses its suit under CR 41, the defendant is the prevailing party for purposes of attorney's fees. See, *Walji v. Candyco*, Inc., 57 Wn. App. 284 (1990), See also, *Andersen v. Gold Seal Vineyards*, Inc., 81 Wn. 2d 863 (1973), *Soper v. Clibborn*, 31 Wn. App. 767 (1982).

The Supreme Court has affirmed this proposition in PRA cases. "'Permitting an agency to avoid attorney fees by disclosing the documents after the plaintiff has been forced to file a lawsuit . . . would undercut the policy behind the act.'" *Spokane Research Fund v. City of Spokane,* 117 P.3d 1117 (2005), quoting *Coalition on Government Spying (COGS) v. King County Department of Public Safety*, 59 Wn. App. 856, 862 (Div. 1, 1990). In *COGS*, like here, the responding agency agreed to disclose records to the requester but continued to maintain that the requester was not legally entitled to those records under the Public Disclosure Act[1]. Nevertheless, for purpose of fees and costs, the requester was held to have

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[1] The Public Disclosure Act was recodified as the Public Records Act in 2006. The fee provision section of the PDA, RCW 42.17.350(3), was recodified in the PRA as RCW 42.56.550(4) as it exists today (except for an increase in the maximum per diem penalty) and the Supreme Court has held that decisions interpreting the PDA are authoritative with respect to the PRA. See, *Neighborhood Alliance of Spokane Cty. v. City. Of Spokane*, 172 Wash.2d 702, 261 P.3d 119 (2011).

been the substantially[2] prevailing party.

The *COGS* court posed the question thusly:

> The plain language of RCW 42.17.340(3)[3] is susceptible to more than one interpretation. It is unclear whether "in the courts" modifies "prevails" or "action." If "in the courts" modifies "prevails," then the plaintiff cannot recover unless it prevails *in court*. However, if "in the courts" modifies "action," then the plaintiff may recover if it has prevailed and if *filing an action in court was necessary to obtain disclosure*. Under the latter interpretation, the plaintiff could prevail if the documents were disclosed after the plaintiff filed an action, even though the plaintiff did not prevail *in court* for the simple reason that no court judgment was necessary.

Id. at 861. Emphasis in original.

The Court further noted:

> The scheme of the WPDA "establishes a positive duty to disclose public records unless they fall within the specific exemptions.'" *Progressive Animal Welfare Soc'y,* at 682-83 (quoting *Hearst,* at 130). If an agency discloses documents it believes to be exempt, that

2 The Supreme Court went further in *Spokane Research Fund v. City of Spokane, 117 P.3d 1117 (2005)* and criticized the *COGS* court for being too restrictive with respect to its test determining whether a party had prevailed under the PRA. "FOIA allows fees and costs to a party who "substantially prevail[s]," within the discretion of the court. 5 U.S.C. § 552(a)(4)(E). **To substantially prevail, the plaintiff must prove his action was reasonably necessary to obtain the information and the action had a causative effect on the release**. *See COGS,* 59 Wash.App. at 863, 801 P.2d 1009 (citing *Miller v. U.S. Dep't of State,* 779 F.2d 1378, 1389 (8th Cir.1985)). **The COGS court adopted this standard for the PDA; we never have, and decline to do so.** Our statute says nothing about "substantially prevailing" and differs from the federal scheme at several important points, notably mandatory fees and penalties. See PAWS I, 114 Wash.2d at 687-88, 790 P.2d 604. Further, we have said that "`strict enforcement of fees and fines will discourage improper denial of access to public records.'" *PAWS* II, 125 Wash.2d at 272, 884 P.2d 592 (quoting 114 Wash.2d at 686, 790 P.2d 604)." *Spokane Research* at 1126, n. 11.

> agency runs the risk of violating a governmental duty or an individual's right of privacy. **Thus, when the Department disclosed the records in 1980 without having sought any declaratory relief, the Department waived its right to claim they were exempt.**

Id. at 864. Emphasis supplied.

The purpose of the mandatory attorney's fee provision is to encourage broad disclosure and to deter agencies from improperly denying access to public records. *Confederated Tribes of Chehalis Reservation v. Johnson*, 135 Wn.2d 734, 757, 958 P.2d 260 (1998); see also WAC 44-14-08004(7) (Attorney General's non-binding Model Rules on Public Records) ("The purpose of the Act's mandatory fees and daily penalty provisions is to reimburse the requestor for vindicating the public's right to obtain public records, to make it financially feasible for requestors to do so, and to deter agencies from improperly withholding records."). An agency's good faith, if present, does not change the mandatory nature of the attorney's fee award. *Amren v. City of Kalama*, 131 Wn.2d 25, 35-36, 929 P.2d 389 (1997). Accordingly, "permitting a liberal recovery" of attorney's fees for a requestor in a PRA enforcement action "is consistent with the policy behind the act by making it financially feasible for private citizens to enforce the public's right to access public

records." *ACLU v. Blaine Sch. Dist.* No. 503, 95 Wn. App. 106, 115, 975 P.2d 536 (1999).

Washington courts have consistently held that agencies cannot escape attorney's fees by simply tendering the requested documents after suit has been filed. "'Permitting an agency to avoid attorney fees by disclosing the documents after the plaintiff has been forced to file a lawsuit . . . would undercut the policy behind the act.'" *Spokane Research Fund v. City of Spokane*, 117 P.3d 1117 (2005), quoting *Coalition on Government Spying (COGS) v. King County Department of Public Safety*, 59 Wn. App. 856, 862 (Div. 1, 1990).

It is the established public policy of the State of Washington that an individual citizen is not to bear the economic costs of obtaining records that they have a right to review. As Kitsap had the burden to establish a viable exemption and was the party that initiated this lawsuit, and later was the one to say essentially "oops! never mind! here are your records, and we are dismissing our suit against you" it is hard to see how it is just, fair, or lawful for Campese to bear economic costs.

It must be further recognized that Campese's counterclaim was compulsory as it arose out of the exact same factual circumstances of Kitsap's petition. *Schoeman v. New York Life Ins.*

Co., 106 Wn.2d 855, 726 P.2d 1, (1986). Campese ***had*** to assert his counterclaim, or forever lose it. Campese's counterclaim entitled him to undertake discovery not just on the issue of whether records were subject to an exemption (liability) but additionally the counterclaim allowed him to explore the ***motivations*** behind Kitsap's decision to withhold the records. *Yousoufian v. Office of Ron Sims, 168 Wash.2d 444, 229 P.3d 735 (2010).*

The determination by the lower courts that unless Campese established that he was entitled to the records, he did not "prevail" is correct is most circumstances. Such a proposition is valid in the normal circumstance when a requester sues an agency for records. But here it was the agency suing to establish the validity of its asserted exemption. Mr. Campese was a reluctant litigant. It therefore was incumbent on Kitsap to follow through with its suit and establish that the records were exempt from disclosure in order to escape liability for fees, costs and penalties. In other words, Kitsap had to prove that its claimed exemption was right.

In *Spokane Research,* this Court noted:

> Rather, the "prevailing" relates to the legal question of whether the records should have been disclosed *on request*. Subsequent events do not affect the wrongfulness of the agency's initial action to withhold the records if the records were wrongfully withheld at that time. Penalties

> may be properly assessed for the time between the request and the disclosure, even if the disclosure occurs for reasons unrelated to the lawsuit.

Spokane Research & Def. Fund v. City of Spokane, 155 Wash.2d 89, 103, 117 P.3d 1117 (2005).

Accordingly, "permitting a liberal recovery" of attorney's fees for a requestor in a PRA enforcement action "is consistent with the policy behind the act by making it financially feasible for private citizens to enforce the public's right to access public records." *ACLU v. Blaine Sch. Dist. No. 503*, 95 Wn. App. 106, 115, 975 P.2d 536 (1999).

After dragging Mr. Campese into court and causing him to needlessly expend tens of thousands of dollars to obtain the documents that Kitsap now freely admits he should be able to review, it is both fair and the law that Kitsap shoulder the financial burden of the litigation.

Recently, this Court rejected the notion that an agency could unilaterally construct barriers to requesters. In *Kilduff v. San Juan County*, this Court invalidated San Juan's local ordinance that required requesters to administratively appeal (at the county level) a denial of the right to inspect public records prior to bringing suit.

Kilduff v. San Juan County, 453 P.3d 719 (2019). Kitsap is attempting to engineer an end-run around *Kilduff*. Instead of making a requester go through an internal procedure, Kitsap cynically used the judicial machinery to make Campese unnecessarily mount a defense to its declaratory judgment action only to later abandon it.

This issue is of profound public importance. If the decision below is let stand, it will become the practice for agencies to attempt to dissuade requesters by filing these *faux* suits to test the fortitude of the requester before providing records which an agency does not want to disclose. This Court should take the opportunity to review this matter and give unequivocal guidance to discourage opportunistic litigation designed to do nothing more than frustrate the public's access to records and unnecessarily incur costs on citizens seeking public records.

Respectfully submitted this 12th day of August 2022.

/s/ Nicholas Power

____

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that today I e-filed and delivered a copy of the foregoing **Petition for Review** by email pursuant to an electronic service agreement among the parties to the following:

Susan Rogers at srogers@co.kitsap.wa.us
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Bill Crittenden at bill@billcrittenden.com

Signed under penalty of perjury in Friday Harbor, WA on August 12, 2022.

s/Nicholas Power
Nicholas Power WSBA No. 45974

Exhibit A

Filed
Washington State
Court of Appeals
Division Two

July 12, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

KITSAP COUNTY, a political subdivision of the State of Washington, Respondent, v. DOMINIC CAMPESE, an individual, Appellant.	No. 56900-1-II UNPUBLISHED OPINION

CRUSER, J. – Kitsap County, in response to Dominic Campese's public records request, brought an action for declaratory judgment. The County asked the court to determine whether certain records Campese requested fell under an exemption, absolving the County from its obligation to release the records to Campese. Campese counterclaimed. Prior to the court ruling on any of the claims, the court granted the County's motion to dismiss its suit. Campese then moved for a penalty award under the Public Records Act (PRA)[1] as well as attorney fees and costs under the PRA and RCW 4.84.185. The court concluded that Campese's motion was premature and denied his motion. Campese appeals the denial of his motion.

Campese argues that the trial court erred when it did not conclude Campese was the prevailing party for purposes of RCW 42.56.550(4) after the County dismissed its suit for

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[1] Chapter 42.56 RCW.

declaratory judgment, and declined to award him a PRA penalty, attorney fees, and costs pursuant to that statute. Campese also argues, as an alternative basis for awarding a PRA penalty, attorney fees and costs, the County violated the PRA when it failed to name similar requesters in its suit. Finally, Campese argues that he was entitled to attorney fees and costs under RCW 4.84.185 because the County's declaratory judgment suit was frivolous.

We conclude that the trial court did not err when it denied Campese's motion for a PRA penalty, attorney fees, and costs. Accordingly, we affirm.

FACTS

A. PRA Request

In March 2020, Campese submitted a public records request for Kitsap County's "*Brady* [l]ist and *Brady* material."[2] Clerk's Papers at 44 (italicization added). The County acknowledged Campese's request, and it provided Campese with records in two initial installments, in August and November respectively. The County also informed Campese it anticipated that another installment would be provided by February 12, 2021.

B. The County Filed Suit, and Campese Counterclaimed

Prior to the next installment, the County filed a petition for declaratory judgment, asking the court to determine, "Whether investigative records compiled by the Kitsap County Prosecuting Attorney in compliance with the constitutional requirements of *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny, and Criminal Rule (CrR) 4.7, are exempt from disclosure under the Public Records Act pursuant to RCW 42.56.290 as attorney work-product." *Id.* at 1. Campese was the only respondent listed in the petition, despite the County also noting that it had received "three

[2] *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

additional public records requests from other requesters for the same records." *Id.* at 3. Campese counterclaimed, arguing, among other things, that the County had the violated the PRA by seeking declaratory judgment on the applicability of an exemption, which Campese contended was tantamount to withholding the records, and by treating him differently than other requesters by allegedly seeking declaratory judgment as to his request only, and not in any other PRA matter involving other requesters who were seeking similar records.

C. VOLUNTARY DISMISSAL

A couple of months after filing the declaratory judgment action the County moved for voluntary dismissal of its suit, explaining that it had waived the work product privilege as to the records that would satisfy Campese's request and that those records had already been provided to Campese. In response to the County's motion, Campese requested an award of a PRA penalty, along with attorney fees and costs under the PRA and RCW 4.84.185 if the court granted the County's motion. The court granted the County's motion for voluntary dismissal. But it reserved ruling on Campese's request, stating, "Those elements of Respondent's counterclaim which are not rendered moot by the parties' settlement and this Order remain pending; [a]ttorney [f]ees and costs are reserved." *Id.* at 174.

Approximately two weeks later, Campese filed a motion for fees, costs, and penalties pursuant to RCW 42.56.550(4) and RCW 4.84.185. Although the motion is not a model of clarity, Campese appears to have argued that the County violated the PRA when it sought declaratory judgment regarding the application of an exemption, and that he was the "prevailing party" in an action under the PRA when the County voluntarily dismissed the suit. *Id.* at 207. Additionally, Campese contended that the County also violated the PRA by naming only him in the suit when

there were other individuals who had made similar requests. Finally, Campese argued that the County's suit for declaratory judgment was frivolous and he was entitled to attorney fees and costs pursuant to RCW 4.84.185.

The County responded that Campese's request was "premature" and that he was not entitled to attorney fees, costs, or a PRA penalty unless he prevailed on his counterclaims alleging that the County violated the PRA. *Id.* at 217. The court concluded that Campese's "motion for fees, costs, and penalties pursuant to RCW 42.56.550(4) and RCW 4.84.185 is premature and therefore denied." *Id.* at 378 (capitalization omitted).

Campese appeals the court's order denying his motion as premature.

DISCUSSION

Campese contends that he should have been awarded a PRA penalty as well as attorney fees and costs under RCW 42.56.550(4) because he became the prevailing party in an action under the PRA when the County dismissed its own declaratory judgment action and released the records he requested, and the trial court therefore erred in denying his motion.

We conclude that the trial court's denial of Campese's motion was not an abuse of discretion.

A. Scope of the Trial Court's Ruling

As an initial matter, we note that both parties appear to believe that in denying Campese's motion as premature, the trial court actually ruled on the *merits* of Campese's argument that the County's voluntary dismissal of its declaratory judgment suit rendered Campese the prevailing party in a PRA action for purposes of RCW 42.56.550(4).

Based on the record before us we cannot agree with the parties' assumption. The trial court's order is not particularly detailed or illuminating, and we cannot read words into it that are not there. In light of the fact that Campese's counterclaims (alleging that the County violated the PRA) were still pending, the most logical reading of the order is that the trial court was merely deferring ruling on Campese's request until the case was fully concluded. This reading is bolstered by language in the trial court's earlier order dismissing the County's suit. The language reads, "Those elements of Respondent's counterclaim which are not rendered moot by the parties' settlement and this Order remain pending; [a]ttorney [f]ees and costs are reserved." *Id.* at 174. We cannot accept the parties' invitation to conclude that the trial court ruled on the merits of Campese's underlying argument based on the limited language used in the order denying his motion.

B. Trial Court Did Not Abuse Its Discretion in Denying Campese's Motion

To the extent Campese also argues that the court abused its discretion in denying his motion as premature, we disagree. Trial courts have broad discretion in managing the cases before it. *State v. Dye*, 178 Wn.2d 541, 547, 309 P.3d 1192 (2013); *see also Woodhead v. Disc. Waterbeds*, *Inc.*, 78 Wn. App. 125, 129, 896 P.2d 66 (1995). A trial court abuses its discretion when the court's decision is exercised on untenable grounds, or for untenable reasons, or is manifestly unreasonable. *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003). A decision based on untenable grounds occurs if the decision rests on facts unsupported by the record, and a decision on untenable reasons is when the courts applies the wrong legal standard. *Id.* A decision is manifestly unreasonable if no other reasonable person would make the same decision. *Id.* Campese cites no case that would support an argument that a trial court abuses its discretion by deferring ruling on attorney fees and

cost requests until a case is fully concluded. Where, as here, "no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none." *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962). Moreover, it is reasonable, from a judicial economy standpoint, to defer a decision on such matters until the conclusion of a case. We find no abuse of discretion.[3]

CONCLUSION

We conclude that the trial court did not abuse its discretion when it denied Campese's motion for a PRA penalty, attorney fees, and costs as being premature at the time of the motion.[4] Accordingly, we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

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[3] Campese also argues that the court erred when it declined to (1) award a PRA penalty, attorney fees and costs under the PRA when the County violated the PRA by only seeking declaratory judgment in his PRA request, and not any additional requesters who asked for similar records, and (2) award him attorney fees and costs under RCW 4.84.185 because the County's suit was frivolous. However, as we explain above, there is no indication the trial court ruled on the merits of Campese's arguments. We note that the court's decision to not rule on Campese's request for fees and costs under RCW 4.84.185 lends further support to our conclusion that the trial court was simply waiting to rule on all fee, cost, and penalty requests until the conclusion of the case, and not because it made a substantive ruling on the merits of Campese's argument that he became the prevailing party under the PRA when the County voluntarily withdrew its declaratory relief suit.

[4] We express no opinion on the validity of Campese's claims or whether Campese's motion for attorney fees, costs, and a penalty could still be successful below. We note that Mr. Campese withdrew his counterclaims before filing this notice of appeal, but he did not renew his motion at the time he withdrew his counterclaims.

Cruser, J.

CRUSER, J.

We concur:

Maxa, J.

MAXA, J.

Glasgow, CJ

GLASGOW, C.J.

LAW OFFICE OF NICHOLAS POWER

August 12, 2022 - 11:33 AM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	56900-1
Appellate Court Case Title:	Kitsap County, Respondent v. Dominic Campese, Appellant
Superior Court Case Number:	20-2-08648-2

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