939217

No. 47500-6-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

Division II

WCEM, INC. a Washington Corporation,
Appellant

Vs.

LOST LAKE RESORT, LLC,
Respondent

PETITION FOR REVIEW

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RULE CR 11
SIGNING AND DRAFTING OF PLEADINGS, MOTIONS, AND LEGAL MEMORANDA: SANCTIONS

(a) Every pleading, motion, and legal memorandum of a party represented by an attorney shall be dated and signed by at least one attorney of record in the attorney's individual name, whose address and Washington State Bar Association membership number shall be stated. A party who is not represented by an attorney shall sign and date the party's pleading, motion, or legal memorandum and state the party's address. Petitions for dissolution of marriage, separation, declarations concerning the validity of a marriage, custody, and modification of decrees issued as a result of any of the foregoing petitions shall be verified. Other pleadings need not, but may be, verified or accompanied by affidavit. The signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading,motion, or legal memorandum, and that to the best of the party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is well grounded in fact;

(2) is warranted by existing law or a good faith argument for the extension,modification, or reversal of existing law or the establishment of new law;

(3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. If a pleading, motion, or legal memorandum is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee.

(b) In helping to draft a pleading, motion or document filed by the otherwise self-represented person, the attorney certifies that the attorney has read the pleading,motion, or legal memorandum, and that to the best of the attorney's knowledge,information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is well grounded in fact;

(2) it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. The attorney in providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

CR 7:

RULE 7
PLEADINGS ALLOWED; FORM OF MOTIONS

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross claim, if the answer contains a cross claim; a third party complaint, if a person who was not an original party is summoned under the provisions of rule 14; and a third party answer, if a third party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third party answer.

(b) Motions and Other Papers.

(1) How Made. An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set

forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) Form. The rules applicable to captions and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) Signing. All motions shall be signed in accordance with rule 11.

(4) Identification of Evidence. When a motion is supported by affidavits or other papers, it shall specify the papers to be used by the moving party.

(5) Telephonic Argument. Oral argument on civil motions, including family law motions, may be heard by conference telephone call in the discretion of the court. The expense of the call shall be shared equally by the parties unless the court directs otherwise in the ruling or decision on the motion.

(c) Demurrers, Pleas, etc., Abolished. Demurrers, pleas and exceptions for insufficiency of a pleading shall not be used.

(d) Security for Costs. (Reserved. See RCW 4.84.210 et seq.)

Important Court Rules Applicable:

CR 41
DISMISSAL OF ACTIONS

(a) Voluntary Dismissal.

(1) Mandatory. Subject to the provisions of rules 23(e) and 23.1, any action shall be dismissed by the court:

(A) By stipulation. When all parties who have appeared so stipulate in writing; or

(B) By plaintiff before resting. Upon motion of the plaintiff at any time before plaintiff rests at the conclusion of plaintiff's opening case.

(2) Permissive. After plaintiff rests after plaintiff's opening case, plaintiff may move for a voluntary dismissal without prejudice upon good cause shown and upon such terms and conditions as the court deems proper.

(3) Counterclaim. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of plaintiff's motion for dismissal, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court.

(4) Effect. Unless otherwise stated in the order of dismissal, the dismissal is without prejudice, except that an order of dismissal operates as an adjudication upon the merits when obtained by a plaintiff who has once dismissed an action based on or including the same claim in any court of the United States or of any state.

(b) Involuntary Dismissal; Effect. For failure of the plaintiff to prosecute or to comply with these rules or any order of the court, a defendant may move for dismissal of an action or of any claim against him or her.

(1) Want of Prosecution on Motion of Party. Any civil action shall be dismissed, without prejudice, for want of prosecution whenever the plaintiff, counterclaimant, cross claimant, or third party plaintiff neglects to note the action for trial or hearing within 1 year after any issue of law or fact has been joined, unless the failure to bring the same on for trial or hearing was caused by the party who makes the motion to dismiss. Such motion to dismiss shall come on for hearing only after 10 days' notice to the adverse party. If the case is noted for trial before the hearing on the motion, the action shall not be dismissed.

(2) Dismissal on Clerk's Motion.

(A) Notice. In all civil cases in which no action of record has occurred during the previous 12 months, the clerk of the superior court shall notify the attorneys of record by mail that the court will dismiss the case for want of prosecution unless, within 30 days following the mailing of such notice, a party takes action of record or files a status report with the court indicating the reason for inactivity and projecting future activity and a case completion date. If the court does not receive such a status report, it shall, on motion of the clerk, dismiss the case without prejudice and without cost to any party.

(B) Mailing notice; reinstatement. The clerk shall mail notice of impending dismissal not later than 30 days after the case becomes eligible for dismissal because of inactivity. A party who does not receive the clerk's notice shall be entitled to reinstatement of the case, without cost, upon motion brought within a reasonable time after learning of the dismissal.

(C) Discovery in process. The filing of a document indicating that discovery is occurring between the parties shall constitute action of record for purposes of this rule.

(D) Other grounds for dismissal and reinstatement. This rule is not a limitation upon any other power that the court may have to dismiss or reinstate any action upon motion or otherwise.

(3) Defendant's Motion After Plaintiff Rests. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of the evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subsection and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under rule 19, operates as an adjudication upon the merits.

(c) Dismissal of Counterclaim, Cross Claim, or Third Party Claim. The provisions of this rule apply to the dismissal of any counterclaim, cross claim, or third party claim. A voluntary dismissal by the claimant alone pursuant to subsection (a)(1) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(d) Costs of Previously Dismissed Action. If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of taxable costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

(e) Notice of Settlements. If a case is settled after it has been assigned for trial, it shall be the duty of the attorneys or of any party appearing pro se to notify the court promptly of the settlement. If the settlement is made within 5 days before the trial date, the notice shall be made by telephone or in person. All notices of settlement shall be confirmed in writing to the clerk.

[Originally effective July 1, 1967; amended effective September 1, 1997; April 28, 2015.]

RULE CR 11
SIGNING AND DRAFTING OF PLEADINGS, MOTIONS, AND LEGAL MEMORANDA: SANCTIONS

(a) Every pleading, motion, and legal memorandum of a party represented by an attorney shall be dated and signed by at least one attorney of record in the attorney's individual name, whose address and Washington State Bar Association membership number shall be stated. A party who is not represented by an attorney shall sign and date the party's pleading, motion, or legal memorandum and state the party's address. Petitions for dissolution of marriage, separation, declarations concerning the validity of a marriage, custody, and modification of decrees issued as a result of any of the foregoing petitions shall be verified. Other pleadings need not, but may be, verified or accompanied by affidavit. The signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion, or legal memorandum, and that to the best of the party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is well grounded in fact;

(2) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. If a pleading, motion, or legal memorandum is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee.

(b) In helping to draft a pleading, motion or document filed by the otherwise self-represented person, the attorney certifies that the attorney has read the pleading, motion, or legal memorandum, and that to the best of the attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

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[Originally effective March 1, 1974; amended effective January 1, 1974; September 1, 1985; September 1, 1990; September 17, 1993; October 29, 2002; September 1, 2005.]

A. Identity of Petitioner

WCEM, the appellant, requests that The Supreme Court review of the Court of Appeals decision terminating review, but only the single issue designated in Part B of this petition.[1]

B. Court of Appeals Decision

WCEM seeks review of the unpublished decision only insofar as it affirms the award of CR 11 sanctions against Mr. Gerling, who is not a party, but was merely a witness. A copy of the decision is appended.

C. Issues Presented for Review

A single issue is presented for review: May a court sanction a witness under CR-11 if the court finds the witness' testimony inaccurate?

[1] Most of the decision has been rendered moot by passage of time. For example, whether a dismissal with prejudice or without is now irrelevant as the statute of limitations now makes the note uncollectible. It's also irrelevant whether the lawsuit was frivolous since defendants would be entitled to fees under the provisions of the note. What remains pertinent and important is whether CR 11 can be properly used to sanction a non-party witness, or whether it applies only to pleadings, motions and memoranda.

Statement of the Case

Generally, the facts set out in the decision for which review is sought are not challenged.

The case started as an action to collect a written promissory note. There was a late filing of witness list by plaintiff. The case came on for trial and the court refused to allow any witness to be called. Plaintiff requested a CR 41 dismissal without prejudice. The court dismissed the case with prejudice.

What's important to this appeal is that Christian Gerling, who owned the company seeking to recover on its note, signed answers to interrogatories, which were apparently inaccurate and which the court found to be inaccurate.

Nothing indicates that Mr. Gerling was called to testify, or otherwise comment or explain, the apparent inaccuracy in his testimony as presented in discovery answers.

The court assessed sanctions personally against Mr. Gerling, not a party, based on CR 11.

ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

CR-11 is not a proper authority for sanctioning a witness for inaccuracies in testimony.

This case should be accepted for review pursuant to RAP 13.4(b)(3) because a judgment against a non-party, who has never been served with any summons and is unrepresented by independent counsel implicates core notions of due process and involves a significant question under Washington's Constitution and the U.S. Constitution about whether a court has jurisdiction to start summarily entering judgments against witnesses, rather than parties.

The case should be accepted for review under RAP 13.4(b)(4) because it presents an issue of substaial public interest inasmuch as most persons who appear in court as witnesses, or who submit evidence pursuant to discovery requests, are unaware that they could be subject to summary sanctions under CR-11.

CR-11, on its face, applies to a "pleading, motion or legal memorandum." A pleading is defined at CR-7 which says:

> (a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross claim, if the answer contains a cross claim; a third party complaint, if a person who was not an original party is summoned under the provisions of rule 14; and a third party answer, if a third party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third party answer.

A "motion" is generally understood to be a request for action by the court. CR 7 also says:

> (1) How Made. An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

A "legal memorandum" is not defined by the rules, but it is commonly understood to be a writing provided to the court designed to assist the court in understanding the law each side believes applies to the case.

Testimony is neither a "pleading," a "motion," or a "legal memoranda. It is a sworn statement as to facts. It is not uncommon for witnesses to be mistaken about facts and a mere inaccuracy in the recitation of facts generally does not subject any witness to sanctions. The purpose of the "adversary system" is to allow for discerning of truth by weighing competing statements as to facts by witnesses, and in almost all cases, the witnesses have conflicting or at least differing versions of fact.

The integrity of our judicial system depends largely on the truthfulness of statements made under oath, and strict perjury laws are necessary to deter and punish false declarations in court proceedings. That a jury rather than a judge determines materiality does not affect the primary purpose of the perjury statute. State v. Abrams, 178 P.3d 1021, 163 Wn.2d 277 (Wash. 2008).

Perjury requires a false statement, known to be false, made under oath. See WPIC 118.11. Perjury constitutes a serious crime for which there are rather severe sanctions. See RCW 9A.72.010 et. seq.

A knowingly false statement provided by a witness, either at trial or in discovery is subject to potential perjury sanctions, but then there are a panoply of defenses and due process rights that attach.

So, it cannot be said that a witness can, with impunity, simply tender false responses to discovery. However, the question here is whether sanctions for perjury can be simply summarily rendered by reference to CR-11.

This is an important issue because every single day, lawyers are gathering up answers to interrogatories, and other such discovery material for use in cases. Most people who provide answers would have no way of knowing that it's not the perjury standards which apply, but rather they are subject to summary assessment of fees and costs under CR-11.

If that is indeed the rule, then not only the public, but the lawyers of Washington State need to know that to provide fair notice to all kinds of witnesses the lawyers enlist for help in litigating cases. Very likely, it will make witnesses much more reluctant to assist, and importantly, it will also mean that witnesses would be well advised to hire counsel to protect their interests before signing any affidavits, declarations, or interrogatory answers, or otherwise participating in discovery.

CONCLUSION.

For reasons set out above, the court should accept review of this case pursuant to RAP 13.4(b)(3) and (4).

RESPECTFULLY SUBMITTED this 29th day of November, 2016.

/S/ Thomas T. Osinski, Jr.
Thomas T. Osinski, Jr.
WSBA# 34154
Attorney for Appellant

Filed
Washington State
Court of Appeals
Division Two

November 1, 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

WCEM, INC., a Washington Corporation, Appellant v. LOST LAKE RESORT, LLC, a Washington Limited Liability Company, Respondent.	No. 47500-6-II UNPUBLISHED OPINION

SUTTON, J. — WCEM, Inc. appeals the trial court's order dismissing its claims with prejudice based on its willful violation of the court's case scheduling order.[1] We hold that the trial court did not err when it dismissed WCEM's claims with prejudice because WCEM willfully violated the court's case scheduling order, the case had been pending for a year and a half, and WCEM moved to dismiss without prejudice after the court struck its witnesses. We affirm the trial court's award of CR 11 sanctions against Gerling individually. We also award Lost Lake its reasonable attorney fees and costs on appeal under RAP 18.1(a) and under the frivolous claims statute, RCW 4.84.185.

[1] WCEM also argues that the trial court erred when it excluded all witnesses without considering lesser sanctions. Because we hold that the trial court did not err when it dismissed WCEM's claims with prejudice, we do not reach this issue.

FACTS

In September 2009, WCEM and Lost Lake entered into a promissory note in which Lost Lake agreed to repay WCEM $33,914.64 no later than June 2010. The promissory note provided that "[i]f action be instituted on this note, Maker agrees to pay such sum as the Court may fix as attorney[ ] fees." Clerk's Papers (CP) at 81.

In February 2014, WCEM filed a complaint against Lost Lake for breach of contract and alleged that Lost Lake owed WCEM monies on the promissory note. The trial court's case schedule required that the parties file their disclosure of primary witnesses by September 22. WCEM concedes that it did not file a disclosure of primary witnesses until March 9, 2015.

On March 23, Lost Lake filed a motion to exclude testimony from WCEM's primary witnesses and to prohibit WCEM from calling any undisclosed witnesses based on its willful violation of the trial court's case scheduling order. On March 30, the date of the scheduled trial, the trial court granted Lost Lake's motion to exclude WCEM's witnesses. The trial court found that WCEM's untimely disclosure of trial witnesses was willful and without a reasonable excuse or justification; that its untimely disclosure of trial witnesses caused substantial prejudice to Lost Lake's ability to prepare for trial; and, that a lesser sanction, such as a monetary sanction, was considered, but would not have been adequate.

Immediately after the trial court granted Lost Lake's motion to exclude WCEM's witnesses, WCEM moved to dismiss the claim without prejudice under CR 41.[2] Lost Lake objected because the case had been pending for a year and a half and asked the trial court to dismiss WCEM's claim with prejudice. The trial court granted WCEM's motion to dismiss, but dismissed the claim with prejudice.

On April 22, Lost Lake filed a motion for attorney fees and costs. Lost Lake argued it was entitled to fees based on the promissory note[3] and the frivolous claims statute.[4] Lost Lake also argued that it was entitled to CR 11[5] sanctions against WCEM and against Christian Gerling, WCEM's owner and president, because Gerling had signed the discovery under oath stating that

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[2] CR 41 provides that an action shall be dismissed by the trial court "[u]pon motion of the plaintiff at any time before plaintiff rests at the conclusion of plaintiff's opening case" unless a counterclaim cannot be independently adjudicated by the trial court. CR 41(a)(1)(B), (a)(3). Unless otherwise stated in the order of dismissal, the dismissal is without prejudice. CR 41(a)(4).

[3] Where a contract specifically provides that attorney fees and costs incurred to enforce the provisions of such contract shall be awarded to one of the parties, the prevailing party, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney fees and costs. RCW 4.84.330.

[4] In any civil action where the trial court has jurisdiction and finds that the action, counterclaim, cross claim, third party claim, or defense was frivolous and advanced without reasonable cause, the trial court may require the nonprevailing party to pay the prevailing party the reasonable expenses, including attorney fees, incurred in opposing such action, counterclaim, cross claim, third party claim, or defense after a voluntary or involuntary order of dismissal. RCW 4.84.185.

[5] CR 11 provides that the signature of a party to a pleading, motion, or legal memorandum constitutes a certificate that the party has read the document and that to the best of their knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact. If the pleading, motion, or legal memorandum is signed in violation of CR 11, the trial court may impose upon the person who signed it, a represented party, or both, appropriate sanctions, including an order to pay the other party's reasonable expenses and attorney fees incurred because of the filing. CR 11.

WCEM was an active corporation since 2001. WCEM objected to an award of fees and costs under the frivolous claims statute and under CR 11, but not under the promissory note.

The trial court found that WCEM was not a licensed or an active corporation when the note was executed with Lost Lake on September 1, 2009, nor was WCEM a licensed or an active corporation when it sued to enforce the note on February 6, 2014. The trial court further found that Gerling, as the owner and the president of WCEM, answered interrogatories on behalf of WCEM, and stated under oath that WCEM had operated as a corporation since 2001. Based on these findings, the trial court concluded that because WCEM was not a licensed or active corporation, that it had no legal standing to enter into the claimed promissory note or to sue to enforce the note, and that there was "no rational legal or factual basis to support [WCEM's] claims . . . and [WCEM's] entire lawsuit was frivolous." CP at 66.

The trial court also concluded that "[t]here was no legal or factual basis to support the interrogatory answers that Christian Gerling signed under oath" and that his interrogatory answers "were frivolous and advanced without reasonable cause." CP at 66-67. The trial court granted Lost Lake's motion for fees and costs based on the promissory note, the frivolous claims statute, and under CR 11. The trial court awarded Lost Lake reasonable attorney fees and costs against WCEM and Gerling, jointly and severally. WCEM appeals.[6]

[6] WCEM appeals the trial court's order dismissing the claim with prejudice and the trial court's award of fees and costs against Gerling individually under CR 11. WCEM does not appeal the trial court's award of fees and costs under the promissory note or the frivolous claims statute.

ANALYSIS

I. CR 41 MOTION TO DISMISS

WCEM argues that the trial court erred in refusing to grant its motion to dismiss without prejudice under CR 41(a)(1)(B) and argues that WCEM has a mandatory, absolute right to a dismissal without prejudice under *Calvert v. Berg*, 177 Wn. App. 466, 312 P.3d 683 (2013). We disagree.

We review a trial court's order granting a motion to dismiss with prejudice under CR 41(a)(1)(B) for an abuse of discretion. *Escude v. King County Pub. Hosp. Dist. No. 2*, 117 Wn. App. 183, 190, 69 P.3d 895 (2003). An abuse of discretion occurs when the ruling is manifestly unreasonable or discretion was exercised on untenable grounds. *Escude*, 117 Wn. App at 190. "[A] trial court has the discretion to grant a nonsuit with or without prejudice, especially as a part of the court's inherent power to impose a sanction of dismissal in a proper case." *Escude*, 117 Wn. App. at 191 (citing *In re Det. of G.V.*, 124 Wn.2d 288, 297-98, 877 P.2d 680 (1994)).

CR 41 provides that an action shall be dismissed by the court "[u]pon motion of the plaintiff at any time before plaintiff rests at the conclusion of plaintiff's opening case" unless a counterclaim cannot be independently adjudicated by the trial court. CR 41(a)(1)(B), (a)(3). Unless otherwise stated in the order of dismissal, the dismissal is without prejudice. CR 41(a)(4).

Here, WCEM moved to dismiss its claim without prejudice on the morning of trial after the case had been pending for a year and a half. WCEM had failed to prepare its case adequately and chose to move to dismiss rather than proceeding. The trial court acted within its discretion by imposing dismissal with prejudice as the consequence for WCEM's failure to comply with the court's scheduling order or to be prepared after a year and a half. The trial court found that

WCEM's untimely disclosure of trial witnesses was willful and without a reasonable excuse or justification; that its untimely disclosure of trial witnesses caused substantial prejudice to the defendant's ability to prepare for trial; and that a lesser sanction, such as a monetary sanction, had been considered, but would have been inadequate. Accordingly, dismissing the case with prejudice was reasonable in light of WCEM's willful violation of the trial court's scheduling order.

The trial court had the inherent power to determine whether to dismiss with or without prejudice under CR 41. *Escude*, 117 Wn. App. at 191. The trial court's ruling was not manifestly unreasonable or an abuse of discretion. Thus, we hold that the trial court did not err when it dismissed WCEM's claims with prejudice under CR 41(a)(1)(B).

II. CR 11 SANCTIONS AWARD

WCEM argues that because Gerling was not a party to the action and he did not sign any of the pleadings, the trial court erred in awarding CR 11 sanctions. We disagree.

We review an award of CR 11 sanctions for an abuse of discretion. *Biggs v. Vail*, 124 Wn.2d 193, 197, 876 P.2d 448 (1994). A trial court's award of CR 11 sanctions requires specific findings that "either the claim is *not* grounded in fact or law and the attorney or party failed to make a reasonable inquiry into the law or facts, *or* the paper was filed for an improper purpose." *Biggs*, 124 Wn.2d at 201.

As analyzed above, the trial court's findings, that there was no legal or factual basis to support the interrogatory answers that Gerling signed under oath and that his interrogatory answers were frivolous and advanced without reasonable cause, support the court's award of CR 11 sanctions against Gerling individually. Thus, we hold that because the trial court found a CR 11 violation, the trial court did not err in awarding CR 11 sanctions against Gerling, and we affirm.

III. ATTORNEY FEES AND COSTS ON APPEAL

Lost Lake requests attorney fees and costs on appeal under RAP 18.1(a) and the frivolous claims statute, RCW 4.84.185. RAP 18.1(a) provides that we may award a party reasonable attorney fees and costs on appeal when an applicable law grants the party the right to recover them. The trial court found that WCEM's action was "frivolous and advanced without reasonable cause" under RCW 4.18.185. CP at 66. WCEM did not challenge this finding and it is a verity on appeal. *Kitsap County v. Kitsap Rifle & Revolver Club*, 184 Wn. App. 252, 267, 337 P.3d 328 (2014), *review denied*, 183 Wn.2d 1008 (2015). Also, WCEM lacked any capacity to sue or to enforce the note; therefore, Gerling's signed answers to discovery were advanced without reasonable cause. Thus, we award Lost Lake its reasonable attorney fees and costs on appeal under RAP 18.1(a) and under RCW 4.84.185.

CONCLUSION

We affirm, and we award Lost Lake its reasonable attorney fees and costs on appeal.

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.

Sutton, J.

SUTTON, J.

We concur:

Johanson, J.

JOHANSON, P.J.

LEE, J.

WASHINGTON STATE COURT OF APPEALS
Division Two

WCEM, INC., a Washington Corporation, Plaintiff, Vs. LOST LAKE RESORT, LLC, a Washington Limited Liability Company, Defendant.	No. 47500-6-II Declaration of Service

JEFF GRAHAM declares under penalty of perjury of the State of Washington that I am over the age of 18 and that on 12/1/2016, a copy of the Appellant's Opening Brief, Petition for review, and Authorities was delivered at approximately 4:50 PM to the office of Dan Kyler, 4701 South 19th Street, Suite 300, Tacoma, WA, attorney for the Lost Lake Resort, LLC herein.

DATED at Tacoma, WA this 14th day of December, 2016.

JEFF GRAHAM