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SUPREME COURT
OF THE STATE OF WASHINGTON

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SHAW RAHMAN,

Plaintiff/Appellant,

v.

THE BOEING COMPANY, ET AL.,

Defendants/Respondents.

RESPONDENTS' BRIEF

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I. INTRODUCTION

Shaw Rahman’s rambling and disjointed 79-page Appeal Brief fails to articulate any basis for this Court to reverse the trial court’s well-reasoned Order granting summary judgment to The Boeing Company and the individual defendants (collectively “Boeing”).¹ Rahman worked briefly for Boeing in 2008 and he later sued claiming that his termination was in violation of the Washington Law Against Discrimination. Rahman submitted large volumes of documents with the trial court in opposition to Boeing’s Motion for Summary Judgment, but missing was any evidence of discrimination or any evidence that Boeing’s compelling proffered reasons for terminating Rahman were a pretext for an unlawful motive.

Boeing respectfully asks this Court to affirm the Order Granting Defendant’s Motion for Summary Judgment and the

¹ The trial court granted summary judgment to Boeing in an Order Granting Defendant’s Motion for Summary Judgment dated March 9, 2015. CP 6113-6115. The trial court issued a Supplemental Order Granting Defendants’ Motion for Summary Judgment on March 13, 2015 clarifying that summary judgment was also granted in favor of each of the individual defendants. CP 6116-6117.

Supplemental Order Granting Defendants' Motion for Summary Judgment issued by the trial court.

II. RESPONSE TO ASSIGNMENTS OF ERROR

Rahman's Appeal Brief contains no recognizable assignments of error. To the extent Boeing can determine what Rahman is seeking in terms of relief as it relates to the orders from which he appeals, it appears to be found on page 46 of his Appeal Brief under the heading "CONCLUSION: ORDER REVIEW." He states:

"Plaintiff therefore, appeals by a panel of, non Jewish & non-India descendant, African American judges, for a de novo review of this case, because he was not only discriminated in procedure of, or due process at trial court but was oppressed, that deprived him from proper discovery, discovery in deposition and production of documents, in motion to compel" (sic) besides EEOC charges. Therefore all throughout this appeal Plaintiff has proven that, substantial evidence embodies with reasonable inference, to assert with clear, cogent, and convincing evidence special and substantial, in analysis of facts of claims, that defendants, defrauded, misrepresented, overreaching, and obtained release, violating Summary judgment standards" (citations omitted).

Boeing strongly rejects Rahman's request for relief (to the extent it is his assignment of error) and respectfully requests that this Court affirm the trial court's orders of summary judgment.

III. RESPONSE TO ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

In addition to containing no recognizable assignments of error, Rahman's Appeal Brief contains no issues pertaining to assignments of error. Boeing submits the following issues for this Court's consideration:

1. Should this Court refuse to consider Rahman's arguments that are unsupported by meaningful analysis or authority?

2. Did Rahman fail to satisfy his burden of establishing a prima facie case of disparate treatment discrimination by showing that he was doing satisfactory work during his brief six month tenure with Boeing?

3. If Rahman did satisfy his burden of establishing a prima facie case of disparate treatment discrimination, did Rahman fail to produce evidence that would allow a reasonable trier-of-fact to conclude that Boeing's stated legitimate non-discriminatory reason for terminating Rahman's employment was a pretext for discrimination or that discrimination was a substantial factor motivating Boeing?

4. Did Rahman fail to provide any factual basis or legal support for any other legal “claims” made in the trial court?

5. Should this Court reject Rahman’s effort to inject new claims on appeal?

6. Should this Court affirm other orders issued by the trial court?

IV. STATEMENT OF THE CASE

A. Procedural History

Rahman filed this action in King County Superior Court on October 13, 2011 alleging that Boeing terminated him in violation of the Washington Law Against Discrimination because of his race and/or national origin as well several related claims. Clerk’s Papers (“CP”) at 1-140.² Rahman’s Complaint was 140 pages. *Id.* Boeing moved for summary judgment on all of Rahman’s claims on February 5, 2015. CP 3526-3547. The trial court granted Boeing’s motion and dismissed all of Rahman’s claims, with prejudice, in two

² Mr. Rahman, the King County Superior Court Clerk’s office and the Washington Supreme Court Clerk’s office have exchanged dozens of emails regarding the numbering of Clerk’s papers. Boeing is using the designations sent by Mr. Rahman on April 17, 2015.

orders dated March 9, 2015 and March 13, 2015. CP 6113-6115, 6116-6117.

B. Factual Statement

Boeing hired Shaw Rahman as a Project Management Specialist 4 (*i.e.*, a project manager) in February 2008, after a selection process that included a phone interview and an in-person interview with Boeing managers Kari Fogelman and Trina Goehring. CP 3583-3584. Thus, to the extent that there were outward signs of Rahman's ethnicity and his potential foreign birth or religion (*e.g.*, his dark skin, Asian features, noticeably foreign-accented English, and his name, Mohammad Mushfiqur Rahman), such signs were apparent during the interview process before Fogelman decided to hire Rahman at Boeing. *Id.* Fogelman and Goehring jointly selected Rahman based on the project management experience set forth in his resume, and based on his responses to the structured interview questions that were part of the initial phone interview and the final in-person interview. *Id.*

Rahman reported to Fogelman as part of the 787 Parts Information Management Systems group. This group uses

engineering data for Boeing's 787 aircraft to create maintenance manuals for use by airline mechanics. CP at 3584. As a project manager in this group, Rahman was responsible for scheduling of project reviews and other meetings; budget forecasting; project status reporting; statement-of-work development; coordinating various cross-functional project teams; and initiating, planning, controlling and closing out projects and related documentation. *Id.*

Fogelman soon found that Rahman was not performing as expected. CP 3483-3511. She observed that Rahman failed to complete work assignments, and she received reports from various Boeing employees because Rahman's failure to perform (*e.g.*, his failure to show up for scheduled meetings, or his failure to provide team members with needed information) adversely impacted the ability of other employees to complete their own Boeing job assignments. *Id.* In addition, Rahman repeatedly evaded his own job responsibilities by attempting to delegate his work to other Boeing employees. CP 3485; CP 3574-3577; CP 3522-3523. Rahman persisted in his improper attempts to delegate work to others even after Fogelman—Rahman's immediate supervisor—repeatedly

told Rahman he must complete his own work and that he had no authority to delegate his work to others. CP 3485.

In the hopes of improving Rahman's job performance, Fogelman engaged in numerous one-to-one coaching sessions with him. CP 3486. At such meetings, Fogelman would ask Rahman why work was not getting done and would offer him training or help if needed. *Id.* Fogelman also asked him if there were certain project management courses that he was interested in taking, in order to sure he had all the training he needed in order to succeed in his role. *Id.* However, Rahman did not respond to Fogelman's inquiry until two months later after further prompting, and at that time, asked only to take courses that were not designed for those in a Boeing Project Manager role. *Id.*

Before her various one-on-one meetings with Rahman, Fogelman asked him to come to those meetings with any statement of work he needed help with, and to identify and discuss any documents and projects he had completed. CP 3486. However, Rahman would show up empty handed to these meetings, and would make excuses as to why the work was not done, most frequently

claiming that the work was either not his job, or that he had delegated it to someone else. *Id.* Fogelman was concerned not only that Rahman was not producing any usable work product (and was producing scant work product overall), but that Rahman was also submitting claims for overtime pay, so Fogelman took some assignments off his plate. *Id.* Nonetheless, Rahman still failed to complete any work assignment. *Id.*

As Rahman's performance problems continued, Fogelman enlisted the help of others in various attempts to get Rahman on track. CP 3486-3487. For example, Gerry Larson, a subject matter expert with over 20 years of experience in Boeing's Parts Management group, met with Rahman on several occasions for several hours each time to help further explain the duties of a project manager at Boeing, including a detailed description of the project management process, mapped out on a whiteboard. *Id.*; CP 3514-3515. Rahman had few, if any, questions for Larson during these sessions, and he told Fogelman he had understood the process. CP 3414-3415; CP 3486-3487. Hilary Okrent-Grilley and Andrew Wright also made themselves available to answer Rahman's

questions, but instead of relying on these individuals as a source of information, he simply tried to get them to perform his job duties. CP 3574-3575; CP 3522-3523.

In addition to his failures to perform his job duties, Rahman also too frequently failed to report to work or to timely inform Boeing of his absences from work. CP 3487. Rahman's attendance problems started just a few weeks after his Boeing employment started. *Id.* Specifically, he repeatedly failed to follow the SIP&T (Systems Integration Processes & Tools) Attendance Policy by failing to inform his supervisor when he was going to be late or absent from work (Rahman called co-workers instead) and failed to timely and properly submit his work time through ETS (Boeing's employee timekeeping system). *Id.* Fogelman reminded him of Boeing's process requirements by sending him a copy of the SIP&T Attendance Policy. *Id.*; CP 3500-3503.

Despite Fogelman's earnest and repeated attempts to coach and direct Rahman, his performance and attendance issues remained unchanged. CP 3487-3488. After first consulting with Boeing Human Resources Generalist Kim Trulson, Fogelman issued

Rahman his first verbal warning at a meeting on May 1, 2008. *Id.*, CP 3493. Fogelman asked a colleague, Boeing manager Kristi Patterson, to accompany her to the disciplinary meeting with Rahman. CP 3487-3488. At the meeting, Fogelman described her continued concerns with Rahman's attendance and performance, including his continued failure to complete his assigned work, his tendency to try to push off his work to others, and his failure to follow Boeing procedure when calling in sick or late. CP 3487-3488. Fogelman also provided Rahman with another set of the Project Manager Expectations and SIP&T Attendance Policy, documents that Rahman had previously received and reviewed with Fogelman and others. CP 3487-3488.

Because the verbal warning had no apparent impact on Rahman or his job performance, Fogelman and her manager Kimberly Yeaton met with Rahman a month later on May 30, 2008 to deliver two Corrective Action Memos (or "CAMs"), one regarding his job performance and one regarding his continued attendance problems. CP 3488; CP 3505-3506; CP 3578-3579. As Fogelman read out-loud through performance related CAM, Rahman

became visibly agitated, and when she handed Rahman the CAM for his signature, he threw the document, growing increasingly agitated and raising his voice, accusing Fogelman of lying about his performance. CP 3488; CP 3578-3579. Fogelman then turned to the attendance CAM, which seemed to further anger Rahman, who became increasingly more agitated and hostile: he threw a pen, pounded the table, refused to sign the CAM, and then crinkled up the CAM before throwing it at Fogelman. CP 3488; CP 3578-3579. Rahman then stormed out of the room, and slammed the door so loudly that other employees in a meeting next door came to see what was going on. *Id.* Rahman's actions left both Fogelman and Yeaton feeling frightened and surprised, as neither had ever experienced such an employee outburst before. *Id.*

Despite continued coaching and mentorship of Rahman by Fogelman and others, and despite the disciplinary warnings he received, Rahman's performance and attendance showed no improvement after five months on the job. CP 3488. Rahman continued to improperly report his attendance; continued to improperly delegate work to others; and continued to improperly

challenge Fogelman's authority to assign him work, all while failing to properly complete even a single assignment. *Id.* This was the first time in Fogelman's 20-plus years of Boeing employment that she had encountered an employee who so completely failed to produce or to otherwise perform his job duties. *Id.* This was especially frustrating and embarrassing for Fogelman because she was one of two managers who had decided to hire Rahman. *Id.*

Fogelman worked with Human Resources Generalist Kimberly Trulson to move to the next stage in Boeing's performance management process, a five-day unpaid disciplinary suspension in combination with a detailed Performance Improvement Plan (or "PIP"). CP 3489; CP 3557-3558. Based on documents and information from Fogelman, Trulson drafted the suspension memo that would be given to Rahman at his suspension meeting on July 31, 2008. CP 3557-3558; CP 3562-3564; CP 3566-3569; CP 3508-3511. These documents describe the reasons for his disciplinary suspension, and set forth his job expectations for the forty calendar days following his return from his suspension. CP 3557-3558. Because Rahman had become so agitated and hostile at his May 1

disciplinary meeting, Trulson and Fogelman asked for two additional witnesses at this suspension meeting, Boeing Senior Manager Larry Little (Fogelman's manager at the time), and Boeing Senior Manager Ken Naethe (an individual who had mentored Fogelman during her Boeing career). CP 3489; CP 3558; CP 3516-3518; CP 3519-3521.

At the suspension meeting, Fogelman attempted to read the PIP document out loud, but was soon interrupted by Rahman's angry outburst. Rahman started yelling, stood up, became visibly agitated, and he called Fogelman and the others in the room liars. CP 3489-3490; CP 3558-3559; CP 3516-3518; CP 3519-3521. Despite attempts by Naethe and Little to get him to calm down, Rahman continue to yell and behave in erratic and intimidating ways. *Id.* He stood up from the table, flailed his arms, threw objects, and claimed he wanted to quit because he had other job offers. *Id.* His outburst scared Fogelman and, concerned for her own safety, she briefly left the meeting room to call Boeing Security. *Id.* Still visibly shaken, Fogelman soon returned to the room and tried to finish reading the PIP while Rahman continued to yell and try to talk over her, even after Boeing Security arrived and instructed him to calm down. *Id.*

Because Rahman would not permit her to finish reading the PIP or suspension documents, Fogelman handed Rahman the suspension memo for his signature, an act which further agitated him. *Id.* Little encouraged Rahman to sign the document, referring to him once or twice by his first name, “Mohammad,” but Rahman refused to sign the document. *Id.* Before being escorted out of the building by Boeing Security after his violent outbursts, Rahman was again reminded that he was suspended for five days because he failed to follow management direction, and was required to return his badge (which he threw towards Fogelman), and was told that Fogelman and Little would meet him in the lobby to escort him back to his desk when he returned to work after his five-day suspension. *Id.*

Due to concerns about Rahman’s outbursts at both of his disciplinary meetings, Kim Trulson from Human Resources soon sent a letter to Rahman in which she informed him that he must report to Boeing’s Medical Department for a return-to-work evaluation before returning to his office at the conclusion of his five-day disciplinary suspension, and that he must schedule an appointment with Boeing Medical for this purpose. CP 3559;

CP 3571. The letter also stated that Rahman's failure to comply with these instructions by August 8, 2008 would constitute insubordination and would result in the immediate termination of his employment. CP 3571. In spite of these clear directives, Rahman failed to make an appointment with Boeing Medical, and failed to return to work following his five-day suspension. CP 3490; CP 3559. Boeing therefore terminated Rahman's employment effective August 8, 2008, for insubordination. CP 3490; CP 3559; CP 3573. Fogelman made the decision to terminate Rahman's employment, in consultation with Trulson. CP 3490; CP 3559. So far as Boeing can determine, Rahman made no attempt to contact Boeing until August 20, 2008, nearly two weeks after his five-day suspension had ended. CP 3559.

V. ARGUMENT

A. Standard of Review

"Summary judgment rulings are reviewed de novo." *Potter v. Washington State Patrol*, 165 Wn.2d 67, 78, 196 P.3d 691 (2008). Summary judgment is proper if the record shows that there are no genuine issues of any material fact and that the moving party is

entitled to judgment as a matter of law. CR 56(c). Summary judgment should be granted where the plaintiff cannot make a showing sufficient to establish an essential element of the case. *Does v. State, Dep't of Transp.*, 85 Wn. App. 143, 147, 931 P.2d 196 (1997). A party opposing summary judgment may not rest on mere allegations in the pleadings, but must set forth specific facts showing there is a genuine issue of material fact. CR 56(e). Where reasonable minds could reach but one conclusion from the admissible facts in the record, summary judgment should be granted. *Marquis v. City of Spokane*, 130 Wn.2d 97, 105, 922 P.2d 43 (1996).

Rahman's Appeal Brief (at page 3) misstates the standard of review as whether the trial court's order convinces "the fair minded plaintiff with 'reason' and 'law' that justice was provided."

B. Rahman's Appeal Is Unsupported by Meaningful Analysis or Authority

Rahman's *pro se* briefing is in violation of the rules of appellate procedure.³ RAP 10.3(a). In addition, his conclusory and largely irrelevant and cryptic arguments fail to identify any

³ Rahman's briefing does not include proper assignments of error, statement of the case or citation to meaningful legal authority.

meritorious legal theories that would support a favorable resolution of his appeal.⁴ Rahman's Appeal Brief does not provide any coherent or meaningful factual or legal analysis. This Court need not consider arguments that are unsupported by meaningful analysis or authority. *Cowiche Canyon Conservancy v. Bosely*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (arguments must be supported by authority); *State v. Elliott*, 114 Wn.2d 6, 15, 785 P.2d 440 (1990) (court need not consider claims that are insufficiently argued); *State v. Marintorres*, 93 Wn. App. 442, 452, 696 P.2d 501 (1999) (noting that *pro se* appellants are held to the same standard as attorneys and refusing to consider *pro se's* conclusory and unsupported claims). On this ground alone, this Court should reject Rahman's appeal.

C. **Rahman Has Not Produced Evidence to Establish a Prima Facie Case of Disparate Treatment Discrimination Under the WLAD**

To the extent that this Court considers Rahman's appeal, he appears to argue that the trial court failed to properly assess the factual record. Rahman contends that Boeing terminated his employment because of his race and/or national origin. To survive

⁴ Most sentences in Rahman's Appeal Brief are incomplete and/or incoherent.

summary judgment on his claims for discrimination, he must establish, as part of his prima facie case, that he was “doing satisfactory work.” *Grimwood v. Univ. of Puget Sound, Inc.*, 110 Wn.2d 355, 362-64, 753 P.2d 517 (1988). The trial court correctly concluded that Rahman completely failed to present any evidence that he was satisfactorily performing his work at Boeing.⁵ Indeed, all evidence is to the contrary. Boeing presented numerous declarations from Rahman’s supervisors and colleagues who attested to the fact that Rahman evaded his work obligations, disregarded his supervisor’s instructions and failed to perform any work at all. CP 3483-3511 (Declaration of Kari Fogelman); CP 3512-3513 (Declaration of Russell Jones); CP 3514-3515 (Declaration of Gerry Larson); CP 3516-3518 (Declaration of Larry Little); CP 3519-3521

⁵ Rahman’s Appeal Brief (at page 5) appears to rely on deposition testimony of a George Prator that he filed in King County Superior Court on August 24, 2015, more than 5 months after the trial court granted summary judgment. CP 6460-6467. RAP 9.12 provides that on review of an order granting summary a motion for summary judgment, the appellate court will consider only evidence and issues called to the attention of the trial court. The purpose of RAP 9.12 “is to effectuate the rule that the appellate court engages in the same inquiry as the trial court.” *Washington Fed’n of State Employees, Council 28 v. Office of Fin. Mgmt.*, 121 Wn.2d 152, 157, 849 P.2d 1201 (1993). Rahman does not dispute that the Prator deposition was not considered by the trial court; indeed, he appears to ask this Court to consider it despite that fact. In any case, the deposition testimony of Mr. Prator does not relate to Mr. Rahman’s work at Boeing so could not create a dispute of fact in any event.

(Declaration of Kendall Naethe); CP 3522-3523 (Declaration of Hilary Okrent-Grilley); CP 3557-3573 (Declaration of Kimberly Trulson); CP 3574-3577 (Declaration of Andrew Wright); CP 3578-3579 (Declaration of Kimberly Yeaton). These declarants explained how Rahman engaged in egregious misconduct at his disciplinary meetings, failed to return to work as directed at the end of his disciplinary suspension, was frequently absent from work, and failed to provide advance or proper notice of his absences.

In response to Boeing's evidence, Rahman offered nothing more than his own self-serving assertion that he performed satisfactory work (and he barely offered that). Such self-serving assertions are not sufficient for Rahman's claims to survive summary judgment. *Grimwood*, 110 Wn.2d at 360. In his Appeal Brief, Rahman cites to dozens of unrelated cases,⁶ but one would search in vain to find any citation to evidence in the record of his satisfactory

⁶ Among the many cases cited by Rahman is the English common law decision (and law school favorite) *Hadley v. Baxendale*, 156 Eng. Rep. 145 (Ex. Ch. 1854), which Rahman cites for the principle that he is entitled to recover "all damages" for breach of an alleged employment contract under "WAC 192-150-210 6-e/42 USC, Under title VII." Neither the *Hadley* decision nor the Employment Security Department regulation cited by Rahman provide any guidance regarding any issue in this lawsuit.

performance. On pages 24-25 of his Appeal Brief, Rahman finally mentions his performance, but only in the context of a curious rant toward Judge Downing for refusing to recuse himself. Rahman argues that “[w]ithin the Fine line of inference vs. speculation – each decomposed (sic) factual allegation supported with evidence accompany – ‘with direct testimony’ and admissible evidence – judge took resort to ‘vagueness and ambiguity’ in his order to avoid direct and circumstantial evidence,” Appeal Brief at 24. Boeing is hard-pressed to decipher the meaning of Rahman’s argument, but it certainly is the case that Rahman is the party who presents only speculation. In contrast, Boeing has presented direct testimony and admissible evidence.

Rahman similarly presents no competent argument to overcome the same actor inference. When an employee is hired and fired within a short period of time by the same decision maker, there is a strong inference that the allegedly discriminatory action was not due to any attribute the decision maker was aware of at the time of hire. *See Hill v. BCTI Income Fund-I*, 144 Wn.2d 172, 188, 23 P.3d 440 (2001), *overruled on other grounds by McClarty v. Totem Elec.*,

157 Wn.2d 214, 137 P.3d 844 (2006). Here, Fogelman participated in the decision to hire Rahman as a Boeing project manager, and she made that decision after a face-to-face interview with him. CP 3483-3484. Just weeks later, Fogelman started the counseling and disciplinary process after she discovered Rahman refusing to work as directed. CP 3485. And Fogelman then participated in the decision to terminate Rahman's employment for insubordination. CP 3485-3490. Rahman's Appeal Brief (page 29) asserts that Fogelman was "motivated by malice" and summarily states that "[n]o doubt exists."⁷ But as he does throughout his Appeal Brief, Rahman cites to nothing in the record to overcome the same actor inference. And Rahman does not provide any competent evidence that Fogelman harbored any malice toward him because of a protected characteristic.

D. Boeing Produced Evidence Providing a Legitimate Non-Discriminatory Reason for Rahman's Termination and Rahman Failed to Produce Evidence of Pretext

Boeing provided a legitimate non-discriminatory reason for termination Rahman's employment. The evidence cited above in the

⁷ Presumably about Fogelman's alleged malice.

fact section amply supports the conclusion that Fogelman and others at Boeing had legitimate, indeed compelling, non-discriminatory reasons to terminate Rahman's employment. Rahman completely fails to present any evidence of pretext; instead simply repeating his own subjective belief that Boeing discriminated against him and treated him unfairly (*see* Appeal Brief at 24-27). He does not offer evidence that Boeing's reason for termination was unworthy of belief or pretextual. He does not offer evidence that discrimination was a substantial factor, or indeed any factor, motivating Boeing. The trial court's orders on summary judgment should therefore be affirmed. *See Scrivener v. Clark College*, 181 Wn.2d 439, 334 P.3d 541 (2014) (employee can satisfy pretext prong by offering "sufficient evidence" to create a genuine issue of material fact either (1) that the defendant's stated reason is pretextual; or (2) that although the defendant's stated reason is legitimate, discrimination was nevertheless a substantial factor motivating the employee); *Domingo v. Boeing Employees' Credit Union*, 124 Wn. App. 71, 88, 98 P.3d 1222 (2004) (affirming summary judgment because plaintiff

offered no evidence to show stated reason for termination was unworthy of belief or a mere pretext for discrimination).

E. Rahman Failed to Provide Any Factual Basis or Legal Support for any Other Legal “Claims” Made in the Trial Court

To the extent that Rahman’s Complaint raised other claims for retaliation, a hostile work environment, and violation of Washington’s Family Care Act, he provides no facts or legal argument in his Appeal Brief. In an offhand fashion, Rahman mentions (on page 29 of his Brief) that “Plaintiff refused and retaliated to subject him to involuntary servitude to accept these malicious untruthful act under his constitutional rights of the 13th amendment” And he uses the word “retaliated” on page 30 of his Appeal Brief. But Rahman does not articulate any statutorily protected activity, which is a prerequisite for a retaliation claim, nor does he show any causal link to his termination. *See Crownover v. State ex rel. Dept. of Transp.*, 165 Wn. App. 148, 265 P.3d 971 (2011) (listing three elements of retaliation claim). Similarly, Rahman mentions “workplace hostility” on page 30 of his Appeal Brief, but completely fails to cite to any evidence supporting a

hostile work environment claim. *See Glasgow v. Georgia-Pacific Corp.*, 103 Wn.2d 401, 406-07, 693 P.2d 708 (1985) (listing elements of unlawful harassment claim). Finally, Rahman ignores the Family Care Act claim entirely. An appellant is deemed to have waived any issues that are not raised as assignments of error and argued by their brief. *See, e.g., Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

F. This Court Should Reject Rahman’s Effort to Assert New Claims on Appeal

In his Appeal Brief, Rahman raises various claims that he never asserted in the trial court, including fraud (page 7, page 26), constitutional claims under the 14th, 13th and 7th Amendments to the United States Constitution (page 10 and 42), obstruction of justice (page 21 and 40), violation of the Sarbanes-Oxley Act (page 42), breach of contract (page 43) and defamation (page 45). In general, issues not raised in the trial court may not be raised on appeal. *Roberson v. Perez*, 156 Wn.2d 33, 39, 123 P.3d 844 (2005); RAP 2.5(a) (an “appellate court may refuse to review any claim of error which was not raised in the trial court”). “While an appellate court

retains the discretion to consider an issue raised for the first time on appeal, such discretion is rarely exercised.” *Karlberg v. Otten*, 167 Wash. App. 522, 531, 280 P.3d 1123 (2012). Rahman offers no reason for this Court to exercise such discretion here.

G. This Court Should Either Refuse to Consider, or Affirm Other Orders Issued By The Trial Court as Rahman Offers No Basis For Reversal

Rahman’s Appeal Brief includes seemingly random references to other trial court orders or rulings that occurred prior to the Orders granting summary judgment. He also oddly claims he was denied bifurcation of his damages claim even though he sought no such relief. He attacks the integrity of the trial court judge and his failure to recuse himself as well as attacking various discovery orders and rulings, but without any legal or factual support for why any order or ruling should be reconsidered. Rahman’s failure to assign error any of the trial court’s rulings waives any argument as to those claims.⁸

To the extent that this Court reviews any of the underlying orders referenced by Rahman, he offers no factual or legal basis for

⁸ Indeed, Rahman does not even assign error to the trial court’s ruling on summary judgment; his Appeal Brief includes no assignments of error.

reversal. Rahman claims that the trial court abused its discretion in failing to recuse, but Rahman failed to offer any basis for recusal⁹. *See Order re: Case Status* (CP 3102-3104). Rahman claims that the trial court “short cut[.]” discovery time” (Appeal Brief at 5), but there is no such order from the trial court.¹⁰ Rahman claims that the trial court “evaded to allow to depose” certain witnesses, but the record does not indicate that the trial court allowed any “evasion” of depositions. In an Order re: Case status dated December 12, 2014 (CP 3102-3104), Judge Downing ruled on the status of certain depositions, but that order does not suggest that Boeing was allowed to evade any such depositions. And most tellingly, when Boeing filed its motion for summary judgment on February 5, 2015 (CP 3526-3547), Rahman never sought a continuance under CR 56(f) to conduct any additional discovery or take additional depositions.

⁹ Rahman’s Appeal Brief suggests he believes he is entitled to a “panel of, non Jewish & non-India descendant, African American judges.” (Appeal Brief at 46).

¹⁰ Boeing did file its motion for summary judgment prior to the close of discovery, which is of course permitted by the Civil Rules, and Rahman did not seek a continuance under CR 56(f).

Finally, Rahman claims, without basis, that Boeing's attorneys somehow engaged in nefarious conduct, perhaps in cahoots with various judges. (*see* Appeal Brief at 17). Rahman offers no support for these wild and scandalous claims and Boeing respectfully requests that this Court ignore or reject them.

VI. CONCLUSION

In light of the undisputed evidence, no reasonable jury could find that Boeing terminated Rahman in violation of the Washington Law Against Discrimination. The trial court's order of dismissal of Rahman's claims against Boeing and the individual defendants should be affirmed.

RESPECTFULLY SUBMITTED this 16th day of October,
2015.

RIDDELL WILLIAMS P.S.

By 

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Gena M. Bomotti, WSBA #39330

Attorneys for Respondents

CERTIFICATE OF SERVICE

I, Ashley Rogers, certify that:

1. I am an employee of Riddell Williams P.S., attorneys for Respondents in this matter. I am over 18 years of age, not a party hereto, and competent to testify if called upon.
2. On October 16, 2015, I served a true and correct copy of the foregoing document on the following party, via email (with permission) as follows:

Shaw Rahman, *Pro Se*
4739 University Way NE, #1422
Seattle, WA 98105-4412
mailto:shawrahmanstate@gmail.com

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED at Seattle, Washington, this 16th day of October, 2015.



Ashley Rogers