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NO. 51996-8-II

Pierce County Superior Court Case No. 16-2-05677-1

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

JAY WRIGHT,

Appellant,

v.

MATTHEW DAVID FERGUSON,

Appellee

BRIEF OF APPELLANT

SEBRIS BUSTO JAMES

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I. INTRODUCTION

Appellant Jay Wright was one of three individual defendants along with Respondent Matthew Ferguson's employer in a lawsuit initiated by Respondent on February 23, 2016, seeking severance and damages for his purported wrongful discharge from Silverbow Honey Company, Inc. After all the other defendants declared bankruptcy or were voluntarily dismissed with prejudice by Ferguson, Wright was the last man standing. Wright, a resident of Maryland, succeeded in defending against this claim after nearly two years of litigation. On April 2, 2018, a Pierce County jury returned a special verdict fully in favor of Wright finding that he was not individually liable for Ferguson's alleged withheld wages. Pursuant to RCW 4.28.185(5) and Civil Rule 11, Wright sought his reasonable legal fees, which had mounted to approximately \$400,000 over the two-year course of the litigation, as the prevailing party in the lawsuit. His request was denied. He was not awarded any compensation for the costs he incurred in defending these claims and his legal fees as an out-of-state defendant. The trial court abused its discretion when it denied Wright his lawfully entitled costs and fees. Wright respectfully requests that this Court reverse the trial court's decision and grant his request for costs and legal fees.

II. IDENTITY OF APPELLANT

Appellant Jay Wright, a Maryland resident, asks this Court to accept review of the trial court's decision designated in Section III of this motion.

III. DECISION

Wright seeks review of the Pierce County Superior Court's May 11, 2018 order denying Wright's Motion for Fees.

IV. ISSUES PRESENTED

Did the trial court abuse its discretion when it denied Wright, the out-of-state defendant and prevailing party, his request for reasonable attorneys' fees pursuant to RCW 4.28.185(5), and did the trial court abuse its discretion when it denied Wright his request for attorneys' fees pursuant to Civil Rule 11?

V. STATEMENT OF THE CASE

Since February 23, 2016, appellant Jay Wright, who resides in Maryland, has tirelessly defended against three claims knowing that he could not be held liable for any of Ferguson's alleged withheld wages or other damages. This is evidenced by the record.

Matthew Ferguson filed the at issue lawsuit against Silverbow Honey Company, Inc. ("Silverbow") and individuals David Sackler, Silverbow's CEO and Ferguson's direct report under his employment agreement, Doug Scott, Silverbow's acting CFO, and Jay Wright, a director

of Silverbow. CP 2:17-19. Ferguson alleged that Silverbow wrongfully terminated his employment in violation of public policy and willfully withheld his wages in violation of Washington State law. *Id.* Ferguson chose to file suit in Pierce County solely because, at the time, he resided in University Place. CP 1493:9-12. Silverbow was located in Moses Lake, all the individuals employed by Silverbow were located in Moses Lake, and the individual defendants were all on the East Coast. *Id.* After the suit was filed, Silverbow and its CEO, defendant David Sackler, filed bankruptcy. CP 1054:18. Defendant Scott, the author and sender of Ferguson's termination letter, was voluntarily dismissed with prejudice in January 2017. CP 1054:19-20. Wright was the only individual remaining for Ferguson to seek his alleged damages from. A "last man standing" CP 1589:10-11. Wright had long ago placed Ferguson on notice that he would seek reimbursement of his legal fees and costs in order to defend this action. *See e.g.* CP 1057-1058.

On November 18, 2016, Wright filed a Motion to Dismiss.¹ CP 2-17. This motion was denied despite Ferguson's concession that he had no evidence to support a wrongful discharge claim against Wright. CP 1524:16-1525:2. At the hearing, the trial court asked Ferguson's counsel:

¹ The motion to dismiss became a motion for summary judgment when factual support was introduced into the record. CP 1523.

[I]s there any evidence whatsoever, that they, [Sackler and Wright], in fact, discussed anything about the honey labeling and putting in honey that did not comply with the label in order to just move product because they had demand for that product and that they didn't have supply for that product? *Id.*

Ferguson's Counsel responded:

No. I suspect, Your Honor, that we will never have that testimony. CP 1525:3-4.

There never was any evidence linking Wright to a potential wrongful termination in violation of public policy claim.

On January 23, 2017, Wright filed a Motion for Reconsideration of the Order Denying his Motion to Dismiss. His Request for Reconsideration was denied. On May 5, 2017, Wright filed a Motion for Discretionary Review with this Court. This too was denied. On May 26, 2017, Wright filed a Motion to Amend his Answer to assert that the claims maintained by Ferguson against him were frivolous.² Even his Motion to Amend his Answer was denied. Despite Ferguson's assertion that the claims brought against Wright were not frivolous, in August 2017, he decided to voluntarily dismiss his wrongful discharge claim against Wright. CP 1046-1052.

² Ferguson Voluntarily Dismissed the Claim of Wrongful Discharge in August 2017. CP 1046-1052. Wright requested that he be granted attorneys' fees for defending against this claim as the claim had no evidence to support it, Ferguson admitted there was no evidence to support this claim, and yet he maintained it. Wright's request for attorneys' fees was likewise denied. CP 1053-1059.

Wright opposed the voluntary dismissal requesting that the trial court dismiss the claim with prejudice and award Wright legal fees for defending this claim since Ferguson, at least twice, on the record admitted there was no evidence to support this claim. CP 1053-1059. Wright's requests were denied. On November 22, 2017, Wright attempted one more time to resolve the matter prior to trial. CP 640-641. He requested Revision and Relief of the prior order denying his Motion to Dismiss. *Id.* This, too, was denied. *Id.* The case proceeded to trial.

During trial, Ferguson admitted to deleting information from his mobile devices after he retained counsel and was prepared to initiate this lawsuit. 3/21 RP 6:1-13. Wright filed a Motion for Sanctions for Spoliation of Evidence. It was denied. 3/21 RP 9:3-10:20. Despite all these adverse rulings, the 12-member jury found that Wright was not liable to Ferguson for anything.

After trial, on April 11, 2018, Wright filed a motion for his attorneys' fees pursuant to the Washington Long-Arm Statute, RCW 4.28.185(5), and Civil Rule 11. CP 1487-1494. Again, Wright's request was denied by the trial court. CP 1648-1650. At every step in this case Wright's request for relief has been denied by the trial court thereby substantially increasing the costs for an out-of-state defendant to defend himself in Washington. The trial court failed to acknowledge the costs

associated with defending a personal liability claim over 2,000 miles from home and abused its discretion when it denied Wright his reasonable legal fees.

VI. ANALYSIS

The award of attorney fees pursuant to statute is a matter of discretion with the trial court and is reviewed for an abuse of that discretion. *Fluke Capital & Management Servs. Co. v. Richmond*, 106 Wn.2d 614, 625, 724 P.2d 356 (1986). The standard of appellate review for Civil Rule 11 sanctions is the abuse of discretion standard. *Biggs v. Vail*, 124 Wn.2d 193, 196-197, 876 P.2d 448 (1994). “A trial court abuses its discretion when its decision is manifestly unreasonable or is exercised on untenable grounds or for untenable reasons.” *State v. Agustin*, 1 Wn. App. 2d 911, 916, 407 P.3d 1155 (2018), citing *State v. Bible*, 77 Wn. App. 470, 471, 892 P.2d 116 (1995). A court’s decision is “based on untenable grounds if the factual findings are unsupported by the record.” *In Re Marriage of Horner*, 151 Wn.2d 884, 894, 93 P.3d 124 (2004). Additionally, “misapplying the law constitutes an abuse of discretion.” *Agustin*, 1 Wn. App. 2d at 916 (citing *State v. Neal*, 144 Wn.2d 600, 609, 30 P.3d 1255 (2001)). The trial court misapplied the law in this case and therefore abused its discretion as a matter of law. See *State v. Sisouvanh*, 175 Wn.2d 607, 623, 290 P.3d 942 (2012).

The trial court abused its discretion in not awarding legal fees to Wright pursuant to RCW 4.28.185(5) and Civil Rule 11 when it made factual findings unsupported by the record and misapplied the law.

A. The Trial Court Abused Its Discretion Denying Wright's Motion for Fees Pursuant to RCW 4.28.185(5).

RCW 4.28.185(5) authorizes an award of legal fees to a defendant who, having been forced to defend himself in a Washington court under the Long-Arm Statute, prevails in the action. RCW 4.28.185. The Long-Arm Statute allows a plaintiff to sue an out-of-state individual in Washington but recognizes that such defendants are entitled to protection to offset the costs and added burden that inevitably occurs when defending against a lawsuit in another state. *Id.*, *Scott Fetzer Co. v. Weeks*, 114 Wn.2d 109, 112, 786 P.2d 265 (1990). Thus, an out-of-state prevailing defendant is entitled to reasonable legal fees which are incremental to what he would have incurred had he been sued in his home state and defended the case there. RCW 4.28.185; *Scott Fetzer Co.*, 114 Wn.2d at 112; *Scott Fetzer Co. v. Weeks*, 122 Wn.2d 141, 149, 859 P.2d 1210 (1993).

Wright is the prevailing party in the entire action brought against him by Ferguson. Thus, the only issue before the trial court was what portion of Wright's legal fees as a resident of Maryland were incurred as a result of having to defend himself in a Washington court. In the at-issue

order, the trial court asserted that “there is no evidence to suggest that the cost of litigation was affected by the location of the forum.” CP 1650:5-8. That blanket assertion is not supported by the record. The record of this case and relevant law clearly establishes otherwise.

i. Wright incurred incremental costs and fees solely based on travel.

While relatively inconsequential relative to the substantial legal fees incurred, Wright was forced to travel from one coast to the other for trial, stay in a hotel in Washington for the entire two weeks, and miss work.³ CP 1493:1-8. The trial court failed to take this common-sense point into consideration when presented with this evidence in Wright’s opening brief. CP 1492-1494. The travel and hotel bills ran into the thousands of dollars. This does not even factor in the emotional toll on Mr. Wright and his family of the two-year ordeal. The trial court did not take this into consideration and instead stated that, “If this litigation had been conducted in Maryland, the expense may well have been greater since most of the witnesses resided in Washington, and with few exceptions, the evidence was located in Washington.” CP 1650:4-8. That point is speculative and fails to take into consideration what occurred at the trial: not a single non-party witness

³ Wright is a self-employed consultant and part-time professor. His livelihood depends on his ability to be present at his job. CP 1493:1-8.

appeared for trial as they were all outside the court's subpoena power. Instead, their deposition testimony was laboriously read into the record – for purposes of evidence, it did not matter where the trial took place. CP 1493:12-15. Further, “but for” electronic evidence, there was no other evidence in this case. In fact, all three individual defendants resided on the east coast. CP 1488:16-18. Even Ferguson lives on the east coast. *Id.* In other words, having the trial in Pierce County cost everyone more money.

It is undisputed that Wright incurred an increased amount in costs and fees defending against this action in Washington due to his travel. For the trial court to summarily conclude otherwise is to ignore the evidence in the record. Wright requests that this Court reverse the trial court's ruling and award him the costs he incurred for travel to Washington for purposes of this litigation.

- ii. Wright incurred substantial additional costs and fees because the wrongful discharge claim brought against him in Washington could not have been brought in Maryland and because the wage withholding claim would have been disposed of on summary judgment in Maryland.**

Next, Ferguson would not even have been able to bring the claim of wrongful discharge in violation of public policy against Wright in Maryland, which would have saved Wright a substantial amount of

attorney's fees and costs in defending this claim.⁴ Maryland's choice of law for torts (such as wrongful discharge) is *lex loci delicti* or the place of the tort. *Hauch v Connor*, 295 Md. 120, 124-125, 453 A.2d 1207 (1983). Under *lex loci delicti*, where damage may occur or where notice of the tort's occurrence is given is irrelevant. *Id.* at 125. The applicable tort law is that where the incidents of the act giving rise to the injury occur. *Id.* Thus, where the tort allegedly occurred determines the substantive law of the case. *Id.*, *See also White v. King*, 244 Md. 348, 352, 223 A.2d 763 (1966).

Ferguson chose strategically to sue Wright for wrongful termination in violation of public policy even though Wright was not his employer. Silverbow was. To make his claim, Ferguson alleged that Wright was the tortfeasor as he supposedly directed that Ferguson be let go and a letter stating the same be drafted and sent. CP 282:19-20; CP 282:19-283:4. It is undisputed that the alleged tortfeasor, Wright, was in Maryland at all relevant times. His alleged "tort" happened in Maryland. And the trial court explicitly prohibited evidence of events occurring after the time that former defendant and acting Silverbow CFO, Doug Scott, sent the termination letter from Maryland via UPS to Ferguson. Thus, the event, the alleged

⁴ Ferguson dismissed this claim in August 2017, shortly before the case was to go to trial. CP 1046-1049. Mr. Wright had already incurred tens of thousands of dollars defending a claim that was unsupported by any evidence and could not be brought in Maryland. CP 1547-1584; CP 1501-1506.

wrongful discharge tort, occurred in Maryland based on Ferguson's storyline. As a result, Maryland law would apply in a Maryland court.

Under Maryland law, Ferguson could not have maintained the wrongful discharge claim against Wright. Maryland law allows such a cause of action only against someone or some entity that can be said to have discharged the former employee – i.e. the employer. *Adler v. Am. Standard Corp.*, 291 Md. 31, 47, 432 A.2d 464 (1981). Wright was not Ferguson's employer. CP 3:13-20. Silverbow was. Wright was not even his supervisor. *Id.* Defendant CEO Sackler was. Wright was not a proper defendant under Maryland law and would therefore have avoided substantial legal expense related to the wrongful discharge claim.

Importantly, even if Wright had been a proper defendant, Maryland law would also require that a plaintiff report alleged misconduct to the appropriate law enforcement authorities to maintain a claim for wrongful discharge, even against an employer. *Wholey v. Sears, Roebuck & Co.*, 370 Md. 38, 63, 803 A.2d 482 (2002). Ferguson did not do that. In fact, during the hearing on Wright's Motion to Dismiss, the trial court found that there was *no evidence* that Ferguson reported this alleged misconduct to any external authority or even internally to Wright. CP 1524:16-1525:4; CP 1630:16-21.

In Maryland, a mere allegation of employer violation of a consumer protection statute is an insufficient basis on which to find a violation of public policy. *Parks v. Alpharma, Inc.*, 421 Md. 59, 85, 25 A.3d 200 (2011). Thus, under Maryland law, Wright could not, based on Ferguson's allegations, have possibly wrongfully terminated him in violation of public policy. As a result, the claim would have been disposed of at the latest in January 2017 upon hearing of Wright's Motion to Dismiss and Wright would not have incurred additional legal fees defending this claim.

Plaintiff's other claim, for breach of the wage withholding statute, RCW 49.52.050; RCW 49.52.070 would also fail in Maryland. If a Maryland court applied Washington law to Ferguson's wage withholding claim, a Maryland court, applying Washington substantive law and Maryland procedural law, would have summarily disposed of the claims. In Maryland, "mere formal denials or general allegations which do not show the facts in detail and with precision are insufficient to prevent the award of summary judgment." *Frush v. Brooks*, 204 Md. 315, 321, 104 A.2d 624 (1953). In this case, in Washington, the trial court denied Wright's Motion to Dismiss/Summary Judgment based solely on a hypothetical set of facts not supported by the evidence. In fact, upon then counsel's argument that Ferguson's own admissions and lack of real evidence required a dismissal of the case, the trial court ruled that what Ferguson said did not matter – that

hypothetically something else could have happened – but such evidence never existed. CP 564:21-565:1.

Under Maryland procedural law, a judge may only consider actual submitted evidence, affidavits and other facts in the record, when ruling on a motion for summary judgment. Maryland Civil Rule 2-501(a). Thus, relying on facts actually in evidence, not a hypothetical situation, there was no genuine issue of material fact that CEO Sackler terminated Ferguson’s employment and made the relevant wage decision.⁵ Thus, in Maryland, with the facts in evidence submitted by Ferguson, that, “Sackler voiced his position that no wages would be paid...” Wright would have succeeded on a motion for summary judgment. CP 284:8-10.

Unlike in Maryland, Washington’s summary judgment standard allows a party leniency to survive a motion for summary judgment. *See Klinke v. Famous Recipe Fried Chicken, Inc.*, 94 Wn.2d 255, 256-57, 616 P.2d 644 (1980) (summary judgment is not appropriate when reasonable minds might reach different conclusions); *see also Rounds v. Union Bankers Ins. Co.*, 22 Wn. App. 613, 617, 590 P.2d 1286 (1979) (if there is

⁵ In order for an individual to be held liable for withheld wages, a two-pronged test must be satisfied showing that the individual exercised control over the direct payment of the funds and that the individual acted pursuant to that authority. *Ellerman v. Centerpoint Prepress, Inc.*, 143 Wn.2d 514, 521-22, 22 P.3d 795 (2001).

a genuine issue of credibility, summary judgment should be denied). But for Respondent filing suit in Washington and being provided leniency to survive summary judgment, Wright would not have incurred the substantial legal fees defending the wage withholding claim through trial.

Wright incurred a substantial amount of fees in defending against both the wrongful discharge claim and the wage withholding claim in Washington which he would not have incurred in Maryland and therefore, the trial court erred in rejecting Wright's motion for legal fees for defending these claims. This court should reverse and award Wright reasonable costs and fees for defending these claims.

iii. Wright incurred additional costs and fees because he could not have reasonably represented himself pro se in Washington but could have in Maryland.

Wright presented evidence showing that he would have been able to represent himself pro se in Maryland. CP 1493:1-8. The trial court erred in ignoring all this evidence and ruling that Wright could have similarly represented himself pro se in Washington.

Wright is a 24-year member of the bar. His lawyer status was repeatedly brought up by plaintiff at trial even though Wright attempted to preclude such evidence as irrelevant and unfairly prejudicial. In his home state of Maryland, he would not have to travel great distances and could talk with local lawyers he knows to give him tips on handling the litigation. CP

1492:23-28. In Washington such an opportunity was unavailable. With no Washington lawyer connections and time consuming local family and business obligations (Wright has multiple jobs including serving as a professor at a local university which requires his physical presence) in the Maryland area, the thought that he could represent himself in Washington, over 2,000 miles from home, in a city, Tacoma, that he had never even visited, is not required under Washington law. CP 1493:1-8. The idea that Wright, solely because he is an attorney, should be forced to defend himself in Washington or lose the protection of RCW 4.28.185(5) is a clear Constitutional violation of the United States and Washington State equal protection clauses. U.S. Constitution Amendment XIV; Washington Constitution Article I, Section 12.

Wright would have been substantially prejudiced if he appeared for hearings via telephone as suggested by Ferguson. 4/20 RP 17:6-7. The trial court repeatedly ruled against Wright. As an example, at trial, Ferguson admitted to deleting evidence, but the trial court refused to enter an order granting Wright's motion for sanctions for spoliation or present evidence that Ferguson had deleted information from his work supplied computer. 3/21 RP 9:3-10:15. The idea that this would not have been even worse if Wright were only "present" in the courtroom by phone with no lawyer in the room on his behalf is at best speculative and in fact is contradicted by

how the trial court ruled even when, as required by Washington law, Wright was present at trial. All of this goes to show that Wright's decision to hire Washington counsel was rational and the trial court arbitrarily ruled that Wright did not incur any additional fees by having to hire counsel in Washington when he could have represented himself pro se in Maryland.⁶

To support its reasoning of not awarding fees, the trial court sought to diminish the importance of the claims brought against Wright and determined that the amount in controversy was only \$70,000 and thus Wright either could have represented himself pro se or could have not incurred the fees he incurred in defending himself. CP 1649:24-25. Further, if the amount in controversy was only \$70,000, Wright would be limited in his recovery of fees because the amount in controversy is relevant to the analysis of the amount of fees to award. *Scott Fetzer Co.*, 122 Wn.2d at 149-150. Reality is quite different. Ferguson first demanded \$246,300, not \$70,000, in February 2016. CP 1643. This included both compensatory damages for the wrongful discharge tort, double damages (as allowed under the statute RCW 49.52.070), and legal fees. That amount does not include the potential for hundreds of thousands of dollars of Ferguson's legal fees,

⁶ The trial court admitted that Mr. Wright's legal fees were reasonable and not excessive by stating that "while not submitted, the Court suspects that Plaintiff's attorneys' fees were similar to those incurred by Defendant." CP 1649:22-23.

higher compensatory damages than initially demanded, and a potential multiplier on attorneys' fees as permitted under Washington law. *See Morgan v. Kingen*, 141 Wn. App. 143, 165-166, 169 P.3d 487 (2007). If Wright had lost at trial, he would have faced a potential \$1 million judgment and an incalculably large loss to his business reputation as an honest, law-abiding professional. Faced with this potentially ruinous exposure over 2,000 miles from home in a town he had never even visited, Wright was reasonable in incurring the costs he did by seeking representation by Washington counsel.

Financial risk aside, Wright was facing a potential guilty verdict (RCW 49.52.050 is a criminal misdemeanor) which he would have to potentially report in future bar reports, FINRA filings, and other regulatory filings to which he as a lawyer and investment banker is required to comply with. He had no real choice but to hire counsel in a city with which he was unfamiliar. Thus, Ferguson's strategic choices – *e.g.*, asserting individual liability claims for wrongful termination and for unpaid wages – set the stage for protracted litigation and unfairly increased the costs for an out-of-state resident.

The only question is whether there is a difference between what Wright would have paid to defend himself in Maryland versus what he was forced to pay to defend himself in Washington. Wright argued below that

he would have incurred at most 10-15% of the fees in Maryland representing himself that he did in Washington.⁷ CP 1487-1494. This calculation would have provided a budget of \$40,000-60,000 to pay local lawyers that Wright knows in Maryland to give advice on procedural matters in Maryland. There is no exact number that can be provided to the court for how much defense of these claims would have cost in Maryland – the claims were not litigated there. Thus, the trial court should have, and this Court now should use a reasonableness test (as required by *Fetzer*) to calculate this number. Wright argued below and submits that using a 15% number as a deduction for the amount of fees he would have incurred in Maryland is reasonable and therefore requests \$380,431.92 of fees plus the costs of this appeal pursuant to Rule 18.1. CP 1493:18-20.

B. The Trial Court Abused Its Discretion Denying Wright's Motion for Fees Pursuant to Civil Rule 11.

Ferguson brought and maintained a claim of wrongful discharge against Wright with no evidence to support such claim. The purpose behind Civil Rule 11 (“CR 11”) is to deter baseless filings and to curb abuses of the judicial system. *Biggs*, 124 Wn.2d at 197. Courts should employ an objective standard in evaluating the baselessness of a claim (not a subjective

⁷ Ferguson did not dispute that estimate below, instead arguing that Wright should have been forced to represent himself in Washington and phone it in to the numerous hearings in order to keep legal fees down. CP 1585-1596; 4/20 RP 17:1-12.

standard based on error) or an attorney's conduct, and the appropriate level of pre-filing investigation is to be tested by "inquiring what was reasonable at the time the pleading, motion or legal memorandum was submitted." *Id.*

Under CR 11, the court may impose an appropriate sanction on the violating party, which may include reasonable attorney fees and expenses. *Just Dirt, Inc. v. Knight Excavating, Inc.*, 138 Wn. App. 409, 417, 157 P.3d 431 (2007). A court should impose sanctions when it is patently clear that a claim has absolutely no chance of success. *Lee v. Jasman*, 183 Wn. App. 27, 71, 332 P.3d 1106 (2014). Sanctions are appropriate when a plaintiff pursues litigation with no factual justification. *See MacDonald v. Korum Ford*, 80 Wn. App. 877, 884-885, 912 P.2d 1052 (1996) (holding that sanctions are proper when a claim is pursued despite lack of a factual basis).

Even if Washington law applied to the wrongful discharge claim and there was a common law cause of action for the tort of wrongful discharge against an individual in Washington, Ferguson never had any evidence implicating Wright in the wrongful discharge claim and therefore no chance of success on the merits.⁸

⁸ The only reported Washington decision addressing the issue of individual liability for a wrongful discharge claim held that an individual officer could not be liable and affirmed the dismissal of the public policy claim against the officer. *Havens v. C&D Plastics, Inc.*, 68 Wn. App. 159, 174-175, 842 P.2d 975 (1992) *rev'd in part on other grounds*, 124 Wn.2d 158, 876 P.2d 435 (1994). Wright argued this point below but again the trial court ruled against him.

Ferguson admitted that there can only be individual liability for a tort committed by a corporation if the individual took part in the commission of the tort, specifically directed the particular act to be done, or participated, or co-operated therein. CP 285:16-23. However, Ferguson provided zero evidence to show that Wright fired him, knew of the alleged public policy violation, or much less any evidence that if he had such knowledge, it motivated his alleged decision. CP 562:18-20. The trial court's finding supported this. CP 1524:16-1525:4; CP 1525:16-21. Ferguson only avoided summary judgment because of a subjective, hypothetical scenario not in the record, not real, objective evidence. That is insufficient to avoid sanctions under CR 11.

Ferguson admitted that defendant Sackler, not Wright, fired him. CP 1489:10-12. Ferguson admitted at oral argument that there was no evidence to support his claim and further stated he did not believe that there would ever be any evidence tying Wright to the allegation. CP 1524:16-1525:4; CP 1525:16-21. Even during his deposition, Ferguson admitted there was no evidence to support the claim of wrongful discharge against Wright. CP 1535:8-15. The claim was made solely to inflate the amount in controversy, create leverage, and hold Wright hostage here in Washington.

The underlying public policy of CR 11 is to protect defendants from meritless claims and protect the judicial system from needlessly expending its resources. Here, Ferguson knew that there was no evidence to support the wrongful termination claim brought against Wright. He testified to this. Yet he maintained the claim requiring Wright to defend it and wasted judicial resources only to dismiss the claim.⁹ The purpose behind CR 11 should be upheld thereby reversing the trial court's decision to not grant Wright legal fees for defending the wrongful termination claim.

Appellant Wright respectfully requests that this Court reverse the trial court's ruling denying Wright's request for fees and costs pursuant to CR 11.

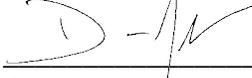
VII. CONCLUSION

For the foregoing reasons, Wright requests that this court reverse the trial court's order denying his legal fees and award \$380,431.92 for legal fees and costs pursuant to RCW 4.28.185 and Civil Rule 11.

Dated this 11th day of October, 2018.

⁹ Wright requested attorneys' fees at the time that Ferguson dismissed the wrongful termination claim. Ferguson then argued that Wright was not the prevailing party in the "entire" action as there was a claim for withheld wages still pending. CP 1585-1596. However, Wright is now the prevailing party in the entire action and is entitled fees for defending against this frivolous action. CP 1613-1618.

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