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**No. 51996-8-II**

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

IN THE COURT OF APPEALS  
STATE OF WASHINGTON

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JAY WRIGHT

Appellant,

v.

MATTHEW DAVID FERGUSON

Respondent.

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BRIEF OF RESPONDENT

MATTHEW FERGUSON

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Kathleen E. Pierce, WSBA #12631  
Morton McGoldrick, P.S.  
Attorneys for Respondent  
Matthew Ferguson  
820 "A" Street, Suite 600  
Tacoma, WA 98402  
253-627-8131

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## I. INTRODUCTION

Respondent, Matthew Ferguson, was a resident of Pierce County Washington at the time he filed suit against his employer, Silverbow Honey Company, a Washington corporation, and its controlling officers for breach of contract, unlawful withholding of wages and wrongful termination in violation of public policy. He was awarded summary judgment against his employer for breach of contract and unlawful withholding of wages because it failed to provide the required notice and opportunity to cure. The total amount unlawfully withheld was 90-days' worth of wages he would have received during the notice period and 4 months of severance for a total of \$70,000. Ferguson has never received any payment because the company and its other corporate Director/Officer, David Sackler, filed bankruptcy.

Ferguson pursued Wright, a Director and Officer of the Washington corporation, who he alleged was liable for the corporation's unlawful withholding. Although the employment contract drafted by the employer provided for arbitration, Wright (a non-signer of the contract) refused to arbitrate. The Court order Ferguson to proceed against the corporate employer in arbitration and stayed the superior court action against the officers. Just prior to the scheduled arbitration, Silverbow filed bankruptcy. Upon Ferguson's motion, the stay was lifted and the claims against the officers proceeded in Pierce County Superior Court without objection. The

employment contract specifies that Washington law applies to all claims relating to Ferguson's employment and that the proper forum for litigation was Washington. Ferguson lived and worked in Washington for a Washington corporation headquartered in Washington. He was fired in Washington upon receipt of a letter of termination.

Wright vigorously defended the case using three different law firms, racking up over \$400,000 in fees not including this appeal. His attorneys filed repeated motions to dismiss, for summary judgment, for reconsideration, for "revision" of the order denying summary judgment and even for discretionary review, all of which were denied. Because Wright provided absolutely no evidence that the attorneys fees he would have incurred in Maryland to defend a case governed entirely by Washington law would have been less, the court properly decided that attorneys' fees were not properly awarded under the long arm statute. Having failed to submit any such evidence, the trial court properly exercised its discretion to deny fees and the appeal of that discretionary decision is completely frivolous, entitling the Respondent to its attorneys' fees on appeal.

## **II. ISSUES PERTAINING TO DECISION**

Did the trial court properly exercise its discretion to deny an award of attorneys' fees under the long arm statute where the appellant, a Director and Officer of a Washington corporation that breached its employment

contract with the Respondent, a Washington resident, presented no evidence that he incurred more in attorneys fees because the case was tried in Washington rather than his home state of Maryland?

Did the trial court properly exercise its discretion when it determined that there was no CR 11 violation for filing a claim of wrongful discharge in violation of public policy, where the court repeatedly found that there were genuine issues of material fact regarding whether the Appellant, Jay Wright, terminated the respondent as a result of his objection to David Sackler's directive that he violate honey labeling laws in filling orders for Silverbow Honey Company?

Did the trial court properly exercise its discretion in finding there was no CR 11 violation for filing and pursuing a claim of unlawful withholding of wages against Wright, a director and officer of Silverbow, where there were genuine issues of material fact regarding whether he had sufficient authority and control over the decision to refuse to pay Ferguson's wages such that he could be liable under RCW 49.52.070?

### **III. STATEMENT OF THE CASE**

#### **A. Procedural Matters**

Appellant failed to assign error to any of the findings of fact made by the trial court in support of the Order Denying Attorneys' Fees. He has simply challenged the denial of fees based upon those facts as an abuse of

discretion. Unchallenged findings are treated as verities on appeal.<sup>1</sup> Appellant also designated over 1600 pages of clerk's papers in this case but cited to only 99 pages in support of its argument. Nearly every citation in appellant's brief to the Clerk's Papers is not to evidence in the record (such as declarations, exhibits, deposition testimony or pleadings containing admissions) but is to arguments or allegations made in briefs filed in support of repeated motions.<sup>2</sup> Self-serving statements in an appellate brief that are unsupported in the record are not considered on appeal.<sup>3</sup> In addition, there are repeated instances of facts being asserted without any citation to the record at all.<sup>4</sup> Consequently, the appellant has uniformly failed to support his allegations with any actual evidence in the record.

#### B. Statement of Facts

Matthew Ferguson was a resident of Pierce County when he filed suit against his employer and its three corporate officers, David Sackler, Jay

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<sup>1</sup> *Courchaine v. Commonwealth Land Title Ins. Co.*, 174 Wash. App. 27, 34, 296 P.3d 913, 917 (2012)

<sup>2</sup> See for example, Appellant's Brief, pg. 6, entire first paragraph; pg. 8, 2<sup>nd</sup> paragraph; pg. 11, first full paragraph, first two sentences and ftnt.; pg. 12, all cites; pg. 14 cite for last sentence on pg. is not to any "findings" but only questions by the Judge during oral argument; pg. 16, both citations; pg. 17, 1<sup>st</sup> sentence under Section (iii); pg. 18, all citations; pg. 21, all citations; pg. 23, all citations except the last one.

<sup>3</sup> *Hous. Auth. of Grant Cty. v. Newbigging*, 105 Wash. App. 178, 19 P.3d 1081 (2001)

<sup>4</sup> See, for example, Appellant's Brief, pg. 7, Para. 2, first six sentences; pg. 8, lines 4-5 & 12-15; pg. 11 line 11; pg. 12, lines 4-5; pg. 13, Para. 2 sentences 1, 2, 4, 5, 6 and 7; pg. 17, last paragraph; pg. 24, paragraph 1, sentences 2 & 3.

Wright and Doug Scott.<sup>5</sup> He was employed as the President and COO of Silverbow Honey Company under a written employment contract.<sup>6</sup> Sackler and Wright interviewed and hired him in Washington in the fall of 2014.<sup>7</sup> Silverbow was a wholly owned subsidiary of Nutrognics, Inc.<sup>8</sup>

Appellant Wright is a resident of Maryland.<sup>9</sup> He is an attorney.<sup>10</sup> Wright and Sackler held the controlling interest in Nutrognics, Inc., a publicly traded Delaware corporation.<sup>11</sup> Disclosures filed with the OTC<sup>12</sup> on behalf of Nutrognics, Inc.<sup>13</sup> and signed by Sackler and Scott state:

Our preferred stock is owned by Jay Wright, chairman, and David Sackler, CEO.

**Our preferred stock gives control of our company to these two individuals.** Therefore, these two individuals have discretion over the direction and actions of the company, regardless of the views of the common stockholders. As such, should a conflict of interest arise in the future between Mr. Wright, Mr. Sackler, and the common stockholders, the common stockholders would have limited influence on the direction of the company.

Wright was the Chairman of the Board of Nutrognics<sup>14</sup> and had sole

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<sup>5</sup> CP 1794

<sup>6</sup> CP 237; CP 250-258

<sup>7</sup> CP 237

<sup>8</sup> CP 215

<sup>9</sup> CP 86; CP 1649, Finding of Fact No. 1

<sup>10</sup> CP 88

<sup>11</sup> CP 112

<sup>12</sup> The OTC (Over The Counter Market) is a decentralized market (as opposed to an exchange market) where geographically dispersed dealers are linked by telephones and computers. The market is for securities not listed on a stock or derivatives exchange. <http://www.nasdaq.com/investing/glossary>

<sup>13</sup> CP 120; CP 154-174

<sup>14</sup> CP 86

signatory authority on its bank account.<sup>15</sup> Sackler was its CEO.<sup>16</sup>

In addition to serving as sole Directors of Silverbow, Wright and Sackler also served as its officers.<sup>17</sup> Sackler was its President and CEO, and Wright was designated as holding the offices of Secretary and Treasurer.<sup>18</sup> The Bylaws of Silverbow provide that its directors (Wright and Sackler) elect the officers and that “the salaries of all officers and agents of the corporation shall be fixed by the board of directors.”<sup>19</sup>

Sackler admitted that Wright was both Secretary and Treasurer of Silverbow, that his responsibilities as such were “the standard responsibilities associated with that position” and that he was “involved in corporate decision making.”<sup>20</sup> The Bylaws further provided that Wright, as Silverbow’s Treasurer, had “the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the board of directors”<sup>21</sup> and further that the treasurer “shall disburse the funds of the corporation as may be ordered by the board

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<sup>15</sup> CP 119

<sup>16</sup> CP 85

<sup>17</sup> CP 268-277; CP 85; CP 86

<sup>18</sup> *Id.*

<sup>19</sup> CP 131-139-Ex 1 Bylaws, Article IX, sec 4

<sup>20</sup> CP 86

<sup>21</sup> CP 131-139- Bylaws, Art IX, Sec. 11

of directors.”<sup>22</sup>

With complete control over the parent shareholder, Wright and Sackler had control over the election of Silverbow’s directors, electing themselves as such, and thereby also controlled its officers, electing themselves and hiring plaintiff as its President.

Summary Judgment: willful withholding of wages due under contract.

Ferguson had an employment contract. It provided that if he was terminated “otherwise than for Cause,” he was entitled to 90 days’ written notice and a four month severance payment.<sup>23</sup> If he was terminated “for Cause,” the company had to provide written notice and an opportunity to cure.<sup>24</sup> Plaintiff was granted summary judgment finding that his employer had breached his employment contract as a matter of law because it failed to provide the required notice and opportunity to cure.<sup>25</sup> That order has not been challenged.

Unlawful Directives by Sackler supported Wrongful Termination Claim.

Plaintiff submitted evidence in support of his claim for wrongful termination. In November 2015 Sackler traveled to Moses Lake to meet with Ferguson.<sup>26</sup> During a private meeting, Ferguson and Sackler met to discuss

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<sup>22</sup> *Id* at Section 12

<sup>23</sup> CP 512 lines 19-23; CP 522-0531 ¶4(f) and 5(a)(i).

<sup>24</sup> *Id.* at ¶4(c)

<sup>25</sup> CP 1764-1766

<sup>26</sup> CP 240 line 21 – CP 242 line 20.

issues related to the financial needs of the company and concerns that Ferguson had regarding proper labeling of honey. *Id.* He advised Sackler that the law in Washington requires that honey labeled as having a specific floral source, such as clover, must be made entirely with that type of source. *Id.* At that time Silverbow was running low on the bulk Clover sourced honey to make Clover Honey. *Id.* Ferguson informed Sackler of the law and the low inventory and explained that if Silverbow received another order for Clover Honey it would not be able to be filled. *Id.* He explained that there were insufficient funds to purchase more of this expensive type of honey. *Id.* Sackler became upset, stated that there would be no money put into Silverbow and that any order for Clover Honey would need to be filled and that Ferguson should use whatever was on hand to make it. *Id.* Ferguson refused to violate the law. *Id.* He told Sackler that if an order came in, he would instead tell the buyer that the order could not be filled. *Id.* He made it clear to Sackler that he was not going to be violating labeling laws that applied to honey. *Id.* Sackler was very upset about the pushback from Ferguson. *Id.* Following that visit to the plant, Sackler simply refused to communicate with Ferguson. *Id.* He ignored phone calls, emails and text messages. *Id.*

By December, Ferguson told Scott that he felt as if he had a “target”

on his back and Scott concurred that Sackler's behavior was odd.<sup>27</sup> Wright was aware of Sackler's non-communication with Ferguson.<sup>28</sup> Based upon Sackler's testimony that Wright was in on the decision to terminate Ferguson and that no decision of that magnitude would be made without his participation and Scott's testimony that Wright directed the termination<sup>29</sup>, a reasonable trier of fact could have found that Wright was aware of Sackler's fight with Ferguson about the honey labeling laws and his refusal to fill the orders in violation of that law. While there was no admission by Sackler or Wright that they had discussed Ferguson's refusal, there certainly was some evidence to support bringing and pursuing the wrongful termination claim. Wright's subsequent denial simply meant that there was an issue of credibility to be determined by the jury. The trial court denied Wright's motion to dismiss the wrongful discharge claim.<sup>30</sup>

#### Amendment of Answer to remove Wrongful Termination Claim

It is significant to point out that Wright refused to participate in the arbitration mandated by the contract.<sup>31</sup> Although plaintiff challenged the arbitration clause as substantively unfair, the Court ordered arbitration against the employer corporation and stayed the action in Pierce County Superior

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<sup>27</sup> CP 128 line 4-12; CP 129; CP 194-196

<sup>28</sup> CP 128

<sup>29</sup> CP 121-22

<sup>30</sup> CP 640-41; CP 1043-44;

<sup>31</sup> CP 1672-1677; CP 1756

Court against its officers.<sup>32</sup> Silverbow filed bankruptcy just before arbitration and the automatic stay stopped the arbitration.<sup>33</sup> Upon Ferguson's motion, the Court lifted the stay issued in the Pierce County action to proceed against the officers.<sup>34</sup> Before any discovery could be conducted, Wright made a motion to dismiss, a motion for summary judgment, a motion for reconsideration, and a motion for discretionary review.<sup>35</sup> All were denied.<sup>36</sup> After 17 months of litigation, Wright finally propounded discovery for the production of Ferguson's health care and other personal records.<sup>37</sup> Ferguson, at that point, moved to amend his complaint to remove the wrongful discharge claim (that would allow for an award of damages for emotional distress) and focus solely on the wage claim.<sup>38</sup> Wright filed yet another motion to summarily dismiss the remaining claim against him<sup>39</sup>, a repeat of previous motions, thereby unnecessarily increasing the cost of the litigation. It too was denied.<sup>40</sup> Ultimately, at trial, the jury found that Wright did not have sufficient control over Ferguson's wages to be held liable for the unlawful withholding of his wages by Silverbow.<sup>41</sup>

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<sup>32</sup> CP 1690-1691

<sup>33</sup> CP 1692-93, Ex.

<sup>34</sup> CP 1759-60

<sup>35</sup> CP 2-18; CP 0644-0657; CP 01769-01773; CP 1066-1078

<sup>36</sup> CP 640-41;1043-44; CP 01774-01790.

<sup>37</sup> CP 1489 lines 24-28

<sup>38</sup> CP 1046-52

<sup>39</sup> CP 1466-1478

<sup>40</sup> CP 1450-51

<sup>41</sup> CP 1486

## IV. ARGUMENT

### A. Standard of Review.

Appellate review of a trial court's decision to deny an award of attorneys' is based on an abuse of discretion standard.<sup>42</sup> A trial court abuses its discretion when its decision or order is manifestly unreasonable, exercised on untenable grounds, or exercised for untenable reasons.<sup>43</sup> Discretion is abused only where no reasonable man would take the view adopted by the trial court.<sup>44</sup> If reasonable men could differ as to the propriety of the action taken by the trial court, then it cannot be said that the trial court abused its discretion.<sup>45</sup> A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.<sup>46</sup> In this case, the Appellant did not assigned error to any of the findings of fact made by the court and did not provide any transcript showing what evidence was introduced at trial in

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<sup>42</sup> *Scott Fetzer Co. v. Weeks*, 122 Wash. 2d 141, 148, 859 P.2d 1210, 1215 (1993)

<sup>43</sup> *Anfinson v. FedEx Grd Package Sys., Inc.*, 174 Wn. 2d 851, 860, 281 P.3d 289 (2012)

<sup>44</sup> *Jankelson v. Cisel*, 3 Wash. App. 139, 142, 473 P.2d 202, 205 (1970)

<sup>45</sup> *Id.*

<sup>46</sup> *Fowler v. Johnson*, 167 Wash. App. 596, 604, 273 P.3d 1042, 1047 (2012).

order to challenge them as not supported by the evidence. Thus, the findings are verities on appeal.<sup>47</sup>

**B. The Trial Court properly exercised its discretion in not awarding attorney’s fees to Wright under the Long Arm Statute.**

Washington's long-arm statute is discretionary and provides as follows:

In the event the defendant is personally served outside the state on causes of action enumerated in this section, and prevails in the action, there **may** be taxed and allowed to the defendant **as part of the costs** of defending the action a reasonable amount to be fixed by the court as attorneys' fees.

RCW 4.28.185(5)(*emphasis added*). Thus, this statute only allows for an award of **fees** as part of or in addition to taxable costs otherwise allowed to the defendant. In the case at bar, the appellant filed no Cost Bill. He also failed to assign error to any of the trial Court’s findings of fact, all of which supported the denial of attorneys’ fees under the long arm statute.

- i. Travel expenses are not awardable under RCW 4.28.185 or RCW 4.84.010.

The only basis for an award of “costs” to Wright is RCW 4.84.010, which limits those awardable to a party in whose favor a Judgment is entered, to taxable costs awarded by the clerk.<sup>48</sup> The statute itemizes

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<sup>47</sup> *Courchaine v. Commonwealth Land Title Ins. Co.*, 174 Wash. App. 27, 34, 296 P.3d 913, 917 (2012)

<sup>48</sup> RCW 4.84.010

taxable costs and specifically does not include travel expenses.<sup>49</sup> The long arm statute does not provide for any “costs” other than a reasonable attorneys’ fee.<sup>50</sup> Under the long arm statute, fees are limited to attorneys’ fees in excess of what would have been incurred in Wright’s home state. Where the cost of defending the suit is not more expensive than in the state of the defendant’s domicile, no fees are warranted.<sup>51</sup> The Appellant submitted no evidence that the attorneys’ fees for litigation in his domicile would have been less than what he incurred in Washington.

Unlike many fee shifting statutes which attempt only to punish frivolous litigation or encourage meritorious litigation, RCW 4.28.185(5) balances the dual purposes of recompensing an out-of-state defendant for its reasonable efforts while also encouraging the full exercise of state jurisdiction.<sup>52</sup> Limiting such fees serves to ensure that otherwise valid claims are not abandoned merely out of fear of the possibility of fee shifting.<sup>53</sup> “To not so limit such fees would thwart the legislative intent to allow full exercise of state jurisdiction to the extent allowed by due process.”<sup>54</sup> A prevailing defendant should not recover more than an amount

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<sup>49</sup> *Id.*

<sup>50</sup> RCW 4.28.185

<sup>51</sup> *Scott Fetzer Co., Kirby Co. Div. v. Weeks*, 114 Wash. 2d 109, 120, 786 P.2d 265, 267 (1990).

<sup>52</sup> *Id.* at 149.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

necessary to compensate him for the added litigative burdens resulting from the plaintiff's use of the long-arm statute.<sup>55</sup> In *State v. O'Connell*, 84 Wn. 2d 602, 528 P.2d 988 (1974) the court denied a request under RCW 4.28.185(5) for fees incurred because assertion of long-arm jurisdiction had not subjected the defendants to added litigation expenses or burdens. The court reasoned:

There can be no question but that the Aliotos have been subjected to a lengthy and expensive litigation; but there is nothing to indicate that these factors were affected by the location of the forum. Had the trial been conducted in the Aliotos' domicile, the expense may well have been greater, since most of the witnesses resided in Washington and the evidence was located here. There is actually no serious contention that the defense of the suit was more expensive in the state of Washington than it would have been in California.

*O'Connell*, *supra* at 606–07. In this case, many witnesses resided in Washington and it was plaintiff's home when he was fired. The contract required that suit for its breach be filed in Washington. Ferguson had no contact whatsoever with Maryland and had no claims whatsoever under Maryland law. Having worked in Washington for a Washington corporation and having been fired in Washington, his claims all arose under Washington law. Wright was properly the subject of this court's jurisdiction because he was an officer and director of a Washington

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<sup>55</sup> *Id.* At 120

corporation and had come to the state to hire Plaintiff. He refused and resisted arbitration. Ferguson, a Washington resident, properly sued his employer (a Washington corporation) and its officers in the state where he lived and work, where the company operated its business, where he was hired by its officers and where many witnesses resided.

In order to sue in Maryland, Ferguson would have had to find a Maryland attorney with knowledge of Washington wage law, someone who would have accepted his case on a contingent fee basis and who would have agreed to sharing said fee with Plaintiff's Washington attorney, who had already spent considerable time on the matter before bankruptcy resulted in the case moving forward in Pierce County against the officers and agents of the corporation.

Most importantly, Wright submitted no evidence of the hourly rate for attorneys' in Maryland. An award of fees under the long arm statute is discretionary and is limited to the amount necessary to compensate a foreign defendant for the additional attorneys fees incurred as a result of litigating in Washington.<sup>56</sup> Since Washington law undisputedly applied to the claims that went to trial: the unlawful withholding of wage claim under RCW 49.52 based upon the breach of contract determined as a matter of law, counsel in

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<sup>56</sup> *Payne v. Saberhagen Holdings, Inc.*, 147 Wash. App. 17, 36, 190 P.3d 102, 113 (2008)

Maryland would not likely have been familiar with such law and would have spent time educating themselves on it or hiring counsel in Washington to advise them or provide research on it. This would most likely have increased the fees. Without any evidence of the amount of fees that would have been incurred had the case been tried by an attorney in Wright's home state, the trial court clearly did not abuse its discretion in denying fees. The decision was clearly within the range of acceptable choices and, therefore, was not manifestly unreasonable. The decision was not based on untenable grounds because the unchallenged factual findings clearly support it and were supported by the limited record available on appeal (which included none of the evidence introduced at trial). Further, the trial court's decision was not based on untenable reasons because the unchallenged findings of fact, when applied to the long arm statute, support the denial of an award that is completely discretionary under the law.

- ii. Wright never raised the "choice of law" argument to the trial court and cannot do so now.

For the first time in its appellate brief, Wright argues that Maryland law applied to plaintiff's wrongful discharge in violation of public policy claim. Where the trial court has no opportunity to address the issue, the

Court of Appeals will not consider it.<sup>57</sup> Wright's first attorney, James Baker moved for summary judgment to compel arbitration, object to the claims against Wright being arbitrated and asked for a stay of the action against him.<sup>58</sup> Wright Never asked for dismissal based upon choice of law for all or even one claim.

Wright's second attorney, Stephanie Bloomfield, filed a motion to dismiss, focusing ONLY on Washington law for all claims: including wrongful discharge.<sup>59</sup> Wright never raised the issue of choice of law as a basis for dismissing any claims, including wrongful discharge against the individual. Even when Ferguson amended his complaint to remove the claim for wrongful discharge in violation of public policy, Wright objected and requested fees but never raised any issue about choice of law.

When Wright's third attorney filed a third request for summary judgment, attempting to disguise it as one for "reconsideration", asking for dismissal of all claims and an award of fees under the long arm statute, he too never raised the issue that Maryland law applied. The claim cannot be raised on appeal.

iii. Maryland law does not apply to Ferguson's claim.

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<sup>57</sup> RAP 2.5; *Sorrel v. Eagle Healthcare, Inc.*, 110 Wash. App. 290, 299, 38 P.3d 1024, 1029 (2002)

<sup>58</sup> CP 1672-1677

<sup>59</sup> CP 2-18

When parties dispute the application of different states' law, the initial issue is whether there is an actual conflict in the laws.<sup>60</sup> If an actual conflict exists, a court must determine which state has the “most significant relationship” to the particular issue.<sup>61</sup> In a tort case, Washington courts examine the following contacts to determine which state has the most significant relationship:

- a) the place where the injury occurred,
- b) the place where the conduct causing the injury occurred,
- c) the domicile, residence, nationality, place of incorporation and place of business of the parties, and
- d) the place where the relationship, if any, between the parties is centered.<sup>62</sup>

In this case, Ferguson lived in Washington, was hired in Washington and work for a Washington corporation headquartered in Washington. Wright was a director and officer of a Washington corporation and took action as an officer thereof to terminate Ferguson by directing that a letter be sent to his home in Washington. Upon receipt, Ferguson was fired at his home in Pierce County, Washington. All of Silverbow’s employees resided in Washington. Ferguson had no contact with Maryland. His employment contract stated Washington law governed his employment relationship. His wage claim and his claim for wrongful termination arose under Washington

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<sup>60</sup> *Seizer v. Sessions*, 132 Wash.2d 642, 648–49, 940 P.2d 261 (1997).

<sup>61</sup> *Johnson v. Spider Staging Corp.*, 87 Wash.2d 577, 580, 555 P.2d 997 (1976).

<sup>62</sup> *Korlund v. Dyncorp Tri-Cities Servs., Inc.*, 121 Wash. App. 295, 334–35, 88 P.3d 966, 985–86 (2004), *aff'd*, 156 Wash. 2d 168, 125 P.3d 119 (2005)

law. The public policy supporting his wrongful discharge claim was expressed in the *Washington State* Honey Act: to prevent fraud and deception in labeling.<sup>63</sup> The law requires that any honey which is a blend of two or more floral types of honey shall not be labeled as a honey product from any one particular floral source alone.<sup>64</sup> Consequently, if the product is labeled as “Clover Honey” it must contain only honey from that floral source: clover. The label is considered “false and misleading” when the honey to which it refers does not conform in every respect to such statement.<sup>65</sup> Mislabeling honey is a criminal offense under Washington State law.<sup>66</sup> Clearly, Washington state had the most significant relationship to Ferguson’s wrongful termination.

iv. Maryland law does allow tort claims for wrongful discharge to be brought against a corporate officer personally.

Even if Maryland law did apply, Maryland recognizes a claim for wrongful discharge in violation of public policy against an individual.<sup>67</sup> In Maryland, an “officer” of a corporation who plays a dominant role in the affairs of the corporate employer and who primarily formulates the

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<sup>63</sup> 1939 Session Laws, Ch. 199. An Act to regulate the sale, transportation, loading, packing, marketing and disposal of honey; to prevent fraud and deception therein; giving authority to the Director to establish standards for honey; providing for a Washington state honey seal and its use; providing means of enforcement; and providing penalties.

<sup>64</sup> RCW 69.28.120

<sup>65</sup> RCW 69.28.290

<sup>66</sup> RCW 69.28.185

<sup>67</sup> *Bleich V. Florence Crittenton Services of Baltimore, Inc.* 98 Md. App. 123,

corporation's decision to fire a particular employee is not permitted to take refuge behind the corporate veil in order to insulate himself from liability for his own wrongful conduct.<sup>68</sup> Specifically, in Maryland, firing an employee for refusing to commit a wrongful act in contravention of a clear mandate of public policy constitutes wrongful discharge.<sup>69</sup> Here Ferguson alleged he was terminated following his refusal to fill honey orders in violation of the Washington State Honey Act and that Wright (as an officer and director of Silverbow and as a controlling shareholder of its parent company) participated with Sackler in deciding to fire him, knowing of Ferguson's refusal to violate the law, when he directed Scott to issue the termination letter. It was reasonable to assert that Wright knew of the dispute between Ferguson and Sackler over the labeling laws when Sackler testified that Wright was involved in the decision to fire him.<sup>70</sup> Thus, even under Maryland law, Ferguson would have had the same claim against Wright.

When parties dispute choice of law, there must be an actual conflict between the laws or interests of Washington and the laws or interests of another state before Washington courts will engage in a conflict of laws

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<sup>68</sup> *Monidodis v. Cook*, 64 Md.App. 1, 14, 494 A.2d 212, cert. denied, 304 Md. 631, 500 A.2d 649 (1985); *Bleich v. Florence Crittenton Servs. of Baltimore, Inc.*, 98 Md. App. 123, 145-46, 632 A.2d 463, 474 (1993)

<sup>69</sup> *Kessler v. Equity Mgmt., Inc.*, 82 Md. App. 577, 590, 572 A.2d 1144, 1151 (1990)

<sup>70</sup> CP 90-91

analysis.<sup>71</sup> If the result for a particular issue is different under the law of the two states, there is a “real” conflict.<sup>72</sup> Where laws or interests of concerned states do not conflict, the situation presents a “false” conflict and the presumptive local law is applied.<sup>73</sup> Because both Maryland and Washington recognize that a individual officer of a corporation can be personally liable for the tort of wrongful discharge in violation of public policy, the presumptive local law, Washington’s, applies here.

Wright mistakenly relies upon *Wholely v. Sears*, 370 Md. 38, 803 A.2d 482 (2002) which involved a claim of wrongful discharge in violation of public policy by an employee whistleblower. The court held that in order to qualify for the tort, the employee had to report the suspected criminal activity to law enforcement or judicial official, not merely investigate suspected wrong-doing and discuss the matter internally.<sup>74</sup>

In contrast, Ferguson was not a whistle blower. He did not allege that any criminal activity had taken place. There was no unlawful conduct to report because he refused to allow it to take place. He alleged only that he refused to undertake any unlawful activity to fill orders contrary to the labeling laws and that, as a result of that refusal, he was fired. Thus, the

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<sup>71</sup> *Erwin v. Cotter Health Centers*, 161 Wash. 2d 676, 692, 167 P.3d 1112, 1120 (2007)

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Wholey v. Sears Roebuck*, 370 Md. 38, 62, 803 A.2d 482, 496 (2002)

*Sears* case is inapplicable even if Maryland law applied.

- v. Wright misstates Maryland law regarding motions for summary judgment.

Wright's allegation, that his repeated motions for summary to dismiss the claims against him, including unlawful withholding of wages under the Washington wage statute, would have been granted in Maryland, is pure speculation. Under Maryland law, a trial judge has the discretion 1) to deny or 2) simply to defer the granting of summary judgment even when there is no genuine dispute of a material fact and even when all of the technical requirements for the entry of such a judgment have been met.<sup>75</sup> No party is entitled to a summary judgment as a matter of law.<sup>76</sup> It is within the discretion of the judge hearing the motion, if he finds no uncontroverted material facts, to grant summary judgment or to require a trial on the merits.<sup>77</sup> It is not reversible to deny the motion and require a trial.<sup>78</sup> Summary judgment is generally inappropriate when matters such as knowledge, intent, and motive are at issue.<sup>79</sup> If the facts are susceptible of more than one inference, the trial court must resolve all inferences

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<sup>75</sup> *Commercial Union Ins. Co. v. Porter Hayden Co.*, 116 Md. App. 605, 630, 698 A.2d 1167, 1179 (1997); *Metropolitan Mortgage Fund v. Basiliko*, 288 Md. 25, 415 A.2d 582 (1980),

<sup>76</sup> *Dashiell v. Meeks*, 396 Md. 149, 164–65, 913 A.2d 10, 19 (2006)

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Hines v. French*, 157 Md. App. 536, 556–57, 852 A.2d 1047, 1059 (2004)

against the party moving for summary judgment.<sup>80</sup>

The facts Ferguson submitted to defend against dismissal showed that Wright was an officer and director of Silverbow, was the controlling shareholder of its parent company, participated in the decision to fire Ferguson, directed Scott to write the termination letter without notice or an opportunity to cure and failed to take any action to reinstate him or pay him severance after receiving the demand letter regarding unlawful withholding of wages<sup>81</sup>. It is pure speculation to say that a Maryland court would have dismissed ALL of Ferguson's claims on summary judgment eliminating the attorneys' fees incurred for trial.

- vi. Wright is not licensed to practice law in Maryland and has submitted no evidence that the litigation would have been less costly in Maryland, whether he was represented or acted pro se.

Wright is an attorney, licensed only in Illinois who resides in Maryland.<sup>82</sup> The unchallenged finding of the Court was that Wright provided no factual evidence to support the position that a Washington lawsuit was more costly for him than a Maryland lawsuit might have been.<sup>83</sup> At attorney licensed in Illinois can represent himself pro se in Washington in the same manner he could in Maryland. Because all motions can be heard

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<sup>80</sup> *Kletz v. Nuway Distributors, Inc.*, 62 Md. App. 158, 161, 488 A.2d 978, 980 (1985)

<sup>81</sup> CP 1349

<sup>82</sup> CP 1649, Finding of Fact 2

<sup>83</sup> CP 1649, Finding of Fact 3

using the “Court Call” service, Wright had no reason to travel to Washington to handle motions, had he been representing himself. In fact, a 9 AM motion calendar would have been heard at noon on the East Coast, allowing for the hearings to be conducted over the lunch hour. Wright argues, without any citation to evidence in the record, that he could have “talked with local lawyers he knows to give him tips on handling the litigation”<sup>84</sup>. He could have similarly consulted lawyers here in Washington on a “limited representation” or “advisory basis” but he chose not to do so. Wright did not even travel to Washington for his deposition: it was taken via skype in Rockville, Maryland.<sup>85</sup> Wright did not have to hire three different attorneys in Washington to represent him; he clearly could have represented himself in any jurisdiction. Hiring three different lawyers, which most likely necessitated significant additional duplicative expense for each new attorney to familiarize him or herself with the extensive pleadings and rulings of the court, was his choice. Specifically, Wright’s decision to replace Pierce County counsel with King County counsel, who incurred travel and hotel expenditures that local counsel would not have,<sup>86</sup> unnecessarily increased his unrecoverable costs. Wright deliberately drove up the cost of this litigation and spent hundreds of thousands of dollars on

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<sup>84</sup> Appellant’s Brief, page 17.

<sup>85</sup> CP 1213

<sup>86</sup> CP 1547-1578 (King County Counsel); CP 1501-06 (Pierce County Counsel)

a case where the corporation, for which he served as a Director and Officer, had breached Plaintiff's employment contract and owed him \$30,000 of wages and \$40,000 of severance as a matter of law.<sup>87</sup>

Defendant Wright has submitted no evidence whatsoever to this court regarding what lawyers would have charged in Maryland or what filing fees would have been in Maryland, but even if he had, the biggest problem with his argument about commencing this case in Maryland is that Plaintiff had absolutely no basis for suing his employer, Silverbow Honey Company, Inc., in Maryland.

Wright raises a constitutional argument regarding acting pro se in this matter for the first time on appeal.<sup>88</sup> The Court does not consider constitutional due process arguments raised for the first time on appeal.<sup>89</sup> In spite of Wright's assertions to the contrary, there is no evidence in the record of any prejudice by virtue of appearing in court by phone, no evidence of interference with his employment and homelife or any other inconvenience or cost. Such evidence would not justify an award of fees under the long arm statute.

Wright *argues* that it would have cost 10-15% of the amount he spent on attorneys' fees here in Washington had he hired lawyers in

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<sup>87</sup> CP 1764-1766

<sup>88</sup> See Appellant's Brief page 18.

<sup>89</sup> *Joy v. Dep't of Labor & Indus.*, 170 Wn. App. 614, 629-30, 285 P.3d 187, 194 (2012)

Maryland<sup>90</sup>, however, there is no evidence to support this argument. There is no declaration or affidavit from any lawyer in Maryland nor is there even a declaration of Wright himself. The only citation in the record is to CP 1487-1494 which is nothing more than unsupported legal argument in a brief he submitted in support of his motion for fees. Consequently, as the trial court correctly found, Wright provided no factual evidence to support the position that a Washington lawsuit was more costly for him than a Maryland lawsuit might have been.<sup>91</sup>

Wright's argument about the reasonableness of spending over \$445,000 in attorneys' fees to defend against this wage claim, after the wrongful discharge claim was dismissed, by using an inadmissible settlement offer<sup>92</sup> is not supported by any evidence. The cost of the litigation was driven by Wright's repetitive motions filed by his three counsel. The argument that he needed to spend hundreds of thousands of dollars because he was at risk for a criminal conviction<sup>93</sup> is completely unfounded. No prosecuting attorney brought criminal charges against Wright. There was no possibility that the civil trial for unlawfully withheld wages could have resulted in a criminal conviction. Suggesting otherwise

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<sup>90</sup> Appellant's Brief, pg 21.

<sup>91</sup> CP 1649, Finding of Fact No. 3

<sup>92</sup> CP 1643

<sup>93</sup> See Appellant's Brief, pg. 20.

as a justification for hiring three different lawyers, making repeated motions for the same relief, filing a motion for discretionary review and generally making the case extremely expensive does not justify an award of fees in this case. The bottom line is that Wright submitted absolutely no evidence that of cost of hiring attorneys in Maryland to defend this case would have been less than he incurred in Washington<sup>94</sup> and the Court's finding that "there is no evidence that the cost of litigation was affected by the location of the forum"<sup>95</sup> remains unchallenged.

**C. Attorney's fees are not proper under CR 11 where the pleadings signed were well grounded in facts and law.**

CR 11 provides no basis to award fees at the end of trial. It allows for sanctions when pleadings are signed in violation of the rule. Attorney fees under either CR 11 are discretionary with the trial judge.<sup>96</sup> The inquiry is "whether the court's conclusion was the product of an exercise of discretion that was manifestly unreasonable or based on untenable grounds

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<sup>94</sup> Whether Wright chose to hire an attorney in Maryland to represent him or whether he simply hired a lawyer for limited representation to assist him in defending himself, he had the same choices in Washington: to hire an attorney to defend him or to hire someone here to assist him in acting pro se. There was no evidence submitted regarding the cost of hiring attorneys in Maryland in either capacity. The significant difference is that a Maryland attorney would have had to have familiarity with or conduct significant research on the Washington wage laws and its wrongful discharge tort. Such additional work would mostly likely have resulted in increased attorneys' fees.

<sup>95</sup> CP 1650, Finding of Fact No. 8

<sup>96</sup> *Tiger Oil Corp. v. Dep't of Licensing*, 88 Wn. App. 925, 937–38, 946 P.2d 1235 (1997).

or reasons.”<sup>97</sup> CR 11 permits reasonable attorney fees and costs incurred because of a bad faith filing of pleadings for an improper purpose or by filing pleadings that are not grounded in fact or warranted by law.<sup>98</sup>The court applies an objective standard to determine whether sanctions are merited.<sup>99</sup> The question is whether a reasonable attorney in a like circumstance could believe his or her actions to be factually and legally justified.<sup>100</sup> The purpose of the rule is to deter baseless filings and curb abuses of the judicial system.<sup>101</sup> And a filing is baseless if it is not well grounded in fact, or not warranted by existing law or a good faith argument for altering existing law.<sup>102</sup> The burden is on the movant to justify the request for sanctions.<sup>103</sup> Because CR 11 sanctions have a potential chilling effect, a trial court should impose sanctions only when it is patently clear that a claim has absolutely no chance of success.<sup>104</sup> The fact that a complaint does not prevail on its merits is not enough.<sup>105</sup> Courts “must strive to avoid the wisdom of hindsight in determining whether a pleading was valid when

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<sup>97</sup> *Id.* at 938

<sup>98</sup> *Skimming v. Boxer*, 119 Wash. App. 748, 754–55, 82 P.3d 707, 710–11 (2004)

<sup>99</sup> *Id.*

<sup>100</sup> *Bryant v. Joseph Tree, Inc.*, 119 Wash.2d 210, 220, 829 P.2d 1099 (1992).

<sup>101</sup> *Biggs v. Vail*, 124 Wash.2d 193, 197, 876 P.2d 448 (1994).

<sup>102</sup> *Blair v. GIM Corp.*, 88 Wn. App. 475, 482–83, 945 P.2d 1149 (1997).

<sup>103</sup> *Biggs*, *supra* at 202.

<sup>104</sup> *In re Cooke*, 93 Wn. App. 526, 529, 969 P.2d 127 (1999).

<sup>105</sup> *Skimming v. Boxer*, 119 Wash. App. 748, 754–55, 82 P.3d 707, 710–11 (2004)

signed, and any and all doubts must be resolved in favor of the signer.”<sup>106</sup>

There is nothing in the record supporting Defendant’s bold assertion that the wrongful termination claim against Wright “had no chance of success” or that it is “not well-grounded in fact”. Despite Defendant’s assertion to the contrary, there is absolutely no evidence whatsoever that Plaintiff has confirmed or conceded that there is no evidence to support this claim. In fact, the evidence is to the contrary. Plaintiff successfully defeated a motion to dismiss/motion for summary judgment, and motion for reconsideration on the wrongful termination claim<sup>107</sup>. The one reference that Wright makes to counsel’s statement at oral argument that it would be unlikely to ever obtain an admission from Wright that he knew of Ferguson’s dispute with Sackler over the regulations relating to honey labeling<sup>108</sup> was clearly not an admission that there was no evidence to support the claim. It was simply an acknowledgement that although no admission was likely to be made, there was other circumstantial evidence that suggested that Wright, given his position in the company, his close relationship with Sackler, his participation in the decision to fire Ferguson and his directive to Scott to write the termination letter, did know of

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<sup>106</sup> *Saldivar v. Momah*, 145 Wn. App. 365, 404, 186 P.3d 1117, 1138 (2008), as amended (July 15, 2008).

<sup>107</sup> CP 640-641; CP 1043-44;

<sup>108</sup> CP 1524-1525

Ferguson's refusal to engage in unlawful activity and terminated him, at least in part, for that resistance.

That being said, in spite of an attorney's success on legal claims and in making legal arguments and confidence in the evidence, the client/party can always make decisions about proceeding with claims based upon many other concerns and considerations having nothing to do with the relative merits of the claim, including the expense associated with pursuing it, changes in circumstances over time since filing suit, the waiver of privileges required to pursue the claim, the length of the trial required to include it, and other personal issues that have no bearing whatsoever on the merits of the claim. A client's personal decision to amend his complaint to withdraw one claim does not mean that CR 11 was violated when the claim was pled or was repeatedly successfully defended.

Wright did not challenge the trial court's finding that the claims against him were meritorious<sup>109</sup>. The claims were all well-grounded in law and fact. Ferguson repeatedly successfully defeated Wright's motions for summary judgment to dismiss the wrongful discharge claim as well as the claim for unlawful withholding of wages as an officer and controlling person for Silverbow Honey Company, a subsidiary of a corporation that he

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<sup>109</sup> CP 1648-50, Finding of Fact, No.7

controlled. Plaintiff alleged that when Sackler came to the Silverbow facility in November of 2015, he had a disagreement with Sackler about honey labeling regulations that required “clover honey” actually be made from 100% clover sourced honey.<sup>110</sup> Sackler instructed Ferguson to fill the orders for Clover Honey but to simply use whatever they had on hand, ignoring the regulations.<sup>111</sup> If Ferguson filled such an order with honey not properly sourced, it would be illegal.<sup>112</sup> After that disagreement, communication broke down with Sackler.<sup>113</sup> Ferguson did not report the directive to Wright or Scott because, until an order came in, he was not put in the position of having to violate the law or quit.<sup>114</sup> Additionally, Sackler testified that he and the other two officers (Wright and Scott) spoke “continuously” about everything.<sup>115</sup> Thus, there was good reason to believe that Sackler shared his directive and his disagreement with Ferguson with Scott and Wright. While Wright denied knowing of Sackler’s illegal directive, a jury may have chosen not to believe him, especially given the sheer number of phone calls between Wright and Sackler from November of 2015 to January of 2016<sup>116</sup>, and the self-interest in distancing himself

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<sup>110</sup> CP 240-241

<sup>111</sup> *Id.*

<sup>112</sup> RCW 69.28.185

<sup>113</sup> CP 241

<sup>114</sup> CP 797

<sup>115</sup> CP 1602.

<sup>116</sup> CP 1602

from a wrongful discharge in violation of public policy claim.

**D. Any award of attorneys' fees whether made under the long-arm statute or as a sanction under CR 11 should be remanded to the trial court for determination.**

Because the trial court did not award attorneys' fees at all, it made no determination regarding the reasonableness of the amount of fees claimed by Wright. Ferguson objected to the fees submitted as not reasonable and necessary and requested that if the Court determined that fees would be awarded, that he be provided additional opportunity to challenge the time records and claims of Wright.<sup>117</sup> Consequently, in the event this court determines that the trial court abused its discretion in denying an award of fees under CR 11 or the long arm statute, the case should be remanded for a determination of the reasonableness of any such award.

**E. Wright is not entitled to attorneys' fees on appeal because he failed to comply with RAP 18.1.**

A request for appellate attorney fees requires a party to include a separate section in her or his brief devoted to the request.<sup>118</sup> This requirement is mandatory.<sup>119</sup> The rule requires more than a bald request for attorney fees on appeal.<sup>120</sup> Argument and citation to authority are required

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<sup>117</sup> CP 1596

<sup>118</sup> RAP 18.1(b)

<sup>119</sup> *Phillips Bldg. Co. v. An*, 81 Wash.App. 696, 705, 915 P.2d 1146 (1996).

<sup>120</sup> *Thweatt v. Hommel*, 67 Wn. App. 135, 148, 834 P.2d 1058, review denied, 120 Wn. 2d 1016, 844 P.2d 436 (1992).

under the rule to advise the court of the appropriate grounds for an award of attorney fees as costs.<sup>121</sup> Wright's one line mention of a request for fees on appeal<sup>122</sup> does not meet the requirements of RAP 18.1. Mere inclusion of a request for fees and costs in the last line of the conclusion in a brief is not sufficient under RAP 18.1(b).<sup>123</sup> Wright's request for fees on appeal is inadequate and should be denied.

#### **V. FERGUSON IS ENTITLED TO AN AWARD OF ATTORNEY FEES INCURRED IN THIS APPEAL**

The rules of appellate procedure permit an award of attorney fees to a prevailing respondent in a frivolous appeal.<sup>124</sup> An appeal is frivolous when there are no debatable issues upon which reasonable minds could differ and when the appeal is so totally devoid of merit that there was no reasonable possibility of reversal.<sup>125</sup>

Wright made the motion for fees under the long arm statute several times.<sup>126</sup> Ferguson pointed out that in order for the court to exercise discretion to award such, there must be evidence that the cost of defense would have been less in defendant's home forum.<sup>127</sup> In spite of knowing of

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<sup>121</sup> *Stiles v. Kearney*, 168 Wn. App. 250, 267, 277 P.3d 9, 17 (2012)

<sup>122</sup> See Appellant's Brief page 21.

<sup>123</sup> *Johnson v. Cash Store*, 116 Wn. App. 833, 851, 68 P.3d 1099, 1109 (2003)

<sup>124</sup> *Mahoney v. Shinpoch*, 107 Wn. 2d 679, 691-92, 732 P.2d 510 (1987); RAP 18.9(a)

<sup>125</sup> *Id.*

<sup>126</sup> CP 16; CP 570; CP 1057-58; CP 1487-1495

<sup>127</sup> CP 979

this legal requirement, Wright brought a post-trial motion requesting fees with no specific evidence of the increased cost other than to say that in Maryland he would not have incurred the attorneys' fees that he did because he could have acted "pro se" (since he is an attorney licensed only in Illinois) ignoring the obvious fact that he could also have acted "pro se" in Washington.<sup>128</sup> Even on appeal, Wright has failed to assign error to any of the trial court's findings and argues only that, having made such findings, the court abused its discretion in denying the motion for fees under a statute that makes such an award completely discretionary. Wright's appeal is frivolous because the errors in his brief and all of his arguments could not possibly have resulted in a reversal. The frivolousness of the appeal is clearly evidenced by the following:

- Wright assigned no errors to any of the trial court's findings of fact that support the order denying fees.
- Citations to the Clerk's papers did not refer to evidence but rather to assertions and argument.
- Many factual assertions contained no citation to the record at all.
- Wright identified over 1600 pages as its Clerk's Papers but referred to only 99 pages in its brief.
- Wright raised two legal arguments for the first time on appeal and, consequently, they could not be considered.
- Wright incorrectly argued that Maryland law applies to this case, ignoring Washington law with respect to choice and conflict of laws.

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<sup>128</sup> CP 1487-1495

- Wright incorrectly argued that Maryland does not recognize individual liability for the tort of wrongful discharge in violation of public policy.
- Wright argued that the trial court's decision was not supported by evidence at trial but did not identify which findings were not supported and did not submit a transcript of the trial or any part thereof to establish what evidence was introduced at trial.
- The long arm statute, upon which Wright's claim for fees is based, is completely discretionary and although it requires that the out of state defendant show that the attorneys' fees incurred to defend the case in his home state would have been less than defending in Washington, he failed to submit any such evidence in support of his motion.
- Having successfully defeated 4 attempts to have the claims dismissed on summary judgment, in front of two judges<sup>129</sup> and this court on a motion for discretionary review, the argument that Ferguson's claims had no basis in law or fact and that they constituted a CR 11 violation was completely devoid of merit.

In *Stiles v. Kearney*<sup>130</sup> the court awarded fees for a frivolous appeal where all of the appellant's arguments could not possibly have resulted in a reversal because they either lacked merit, relied on a misunderstanding of the record, required a consideration of evidence outside the record, or were not adequately briefed.<sup>131</sup> Because Wright's arguments, record and briefing are all similarly defective, his appeal is frivolous and justifies an award of fees under RAP 18.9(a).

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<sup>129</sup> CP 641, CP 1044 (Judge Bryon Cushcoff); CP 1450 (Judge Susan K. Serko)

<sup>130</sup> 168 Wn. App. 250, 267–68, 277 P.3d 9, 17 (2012)

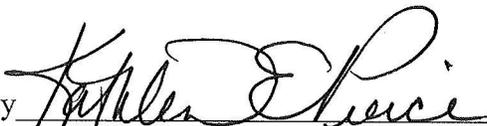
<sup>131</sup> *Id.*

## VI. CONCLUSION

The Court should uphold the trial court's denial of an award of fees to Wright under RCW 4.28.185 and CR 11 based upon its unchallenged findings of fact which are verities on appeal and find that the denial was a proper exercise of the court's discretion. The Court should award Ferguson his attorneys' fees on appeal under RAP 18.9 finding that Wright's appeal was frivolous.

DATED this 13th day of November, 2018.

Respectfully submitted,  
MORTON McGOLDRICK, P.S.  
Kathleen E. Pierce, WSBA No. 12631  
kepierce@bvmm.com

By   
Attorneys for Respondent

**CERTIFICATE OF SERVICE**

I declare under penalty of perjury under the laws of the state of Washington that the following is true and correct:

I am employed by the law firm of Morton McGoldrick, P.S.

At all times hereinafter mentioned, I was and am a citizen of the United States of America, a resident of the state of Washington, over the age of eighteen (18) years, not a party to the above entitled action, and competent to be a witness herein.

On, I served in the manner noted the document(s) entitled: on the following person(s):

Darren A. Feider  
Sebris Busto James  
14205 S.E. 36th St, Ste. 325  
Bellevue, WA 98006

U.S. Mail  
 Facsimile  
 Messenger  
 E-Mail

DATED this 13 day of November at Tacoma, Washington.

MORTON MCGOLDRICK, P.S.

  
Virginia Ales, Paralegal

**MORTON MCGOLDRICK**

**November 13, 2018 - 4:03 PM**

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Sender Name: Susan Toma - Email: sktoma@bvmm.com

**Filing on Behalf of:** Kathleen Ebert Pierce - Email: kepierce@bvmm.com (Alternate Email: )

Address:  
820 A Street, Suite 600  
Tacoma, WA, 98402  
Phone: (253) 627-8131 EXT 332

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