

FILED

MAY 26 2017

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 344070-III

COURT OF APPEALS

DIVISION III

OF

THE STATE OF WASHINGTON

Darla K. Dehlin,
Appellant

v.

Forget Me Not Animal Shelter, Kim Gillen, John Doe(s),
Respondents

Appeal from the Superior Court of Ferry County

REPLY BRIEF OF APPELLANT

Attorney for Appellant:
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I. ISSUES ON REPLY

1. The trial court's rulings on conversion and trespass to personal property were erroneous.
2. The trial court's ruling on conspiracy was erroneous.
3. The trial court's imposition of sanctions was erroneous.
4. Sanctions on appeal are not appropriate.

II. ARGUMENT ON REPLY

1. The trial court's rulings on conversion and trespass to personal property were erroneous.

Forget Me Not alleges that it never deprived Ms. Dehlin of her dogs without lawful justification and that Ms. Dehlin abandoned the dogs in any case.

Forget Me Not argues first and foremost that Ms. Dehlin had abandoned her interest in the dogs. However, it does not respond to the undisputed fact that the information provided to the agency was only that an agreement for relinquishment was imminent. The agency was not informed that one had been completed. Yet the agency went forth, well before the purported relinquishment was signed, and held out dogs for adoption as well as spaying and neutering them. Dogs were even actually adopted out and shipped prior to the date on the alleged relinquishment.

Forget Me Not repeatedly states that all the blame must rest on the sheriff's department, or the prosecutor, or PCAR. However, the impetus for the illegal search by law enforcement was two emails sent almost a year apart by Kim Gillen, the director of Forget Me Not. These animals were in the care of Forget Me Not from the moment of seizure until they were transported after adoption.

Forget Me Not does not address the utter failure to provide due process to Ms. Dehlin other than stating that Ms. Dehlin did not undertake available remedies for return of her dogs. However, notice must be provided to those from whom animals are seized. This was not done here.

Forget Me Not goes on to claim that it was merely acting as a private citizen in assisting the sheriff's department with executing the search warrant. It is Ms. Dehlin's position that Forget Me Not cannot have it both ways. They cannot act as a quasi-governmental agency and the de facto arm of animal control in Ferry County and also claim to be acting as private citizens. Forget Me Not initiated the illegal welfare check and search and prepared to travel to Ms. Dehlin's property to seize the dogs before a warrant had been granted.

Even if the conversion claim regarding the initial seizure were not valid, the actions taken to adopt out the animals and to spay and neuter them before any confirmation was made that a relinquishment had been

signed constitutes a conversion in itself and the trial court's decision should be reversed.

These arguments also apply to the claim for trespass to personal property. Ms. Dehlin's dogs were removed from her custody and were spayed and neutered without her permission, and ultimately adopted out to other individuals without a valid relinquishment.

2. The trial court's ruling on the conspiracy claim was erroneous.

Ms. Dehlin provided ample evidence that over the course of several months in 2011, discussions were had between Kim Gillen, Sheriff Warner, and Laura Bernier regarding seizure of her dogs. CP 140-153. The Sheriff specifically stated that he needed additional information in order to seek a search warrant. CP 144. No additional information was ever given, though a year later Ms. Gillen and Ms. Bernier queried him again in order to initiate a search.

Moreover, the evidence in the emails contrasted with Ms. Gillen's deposition testimony indicates that Ms. Gillen has been untruthful regarding this incident. CP 140-153. Ms. Dehlin has maintained that Ms. Gillen had threatened to take away her dogs in the past. CP 58.

Ms. Gillen's untruthfulness, Ms. Dehlin's testimony, and the emails sent between Laura Bernier, Ms. Gillen, and Sheriff Warner evidence an intent to collude to take Ms. Dehlin's dogs. The trial court's ruling should be reversed.

3. The trial court's imposition of sanctions was erroneous.

The trial court imposed CR 11 sanctions, signing an order drafted by Appellees granting them. However, the court did not, contrary to Appellee's assertion, engage in any inquiry regarding the investigation that took place prior to filing the Complaint in this matter. There must be an actual inquiry into the investigation, not simply a conclusory statement that the claims did not have a factual or legal basis so there must have been no reasonable inquiry. *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 220, 829 P.2d 1099 (1992). It is a two-pronged inquiry and the satisfaction of one prong cannot satisfy the other prong in and of itself.

Forget Me Not misunderstands the argument regarding timely filing for CR 11 sanctions. In no way is Ms. Dehlin suggesting that "her claims were so clearly beyond the pale." Rather, the issue is that Forget Me Not was required to move for sanctions as soon as it believed they were warranted in order for those sanctions to in fact be warranted. *N. Coast Elec. Co. v. Selig*, 136 Wash.App. 636, 649, 151 P.3d 211 (2007).

They claim to have believed that sanctions were warranted at the outset; therefore a motion should have been made at the outset.

Ms. Dehlin respectfully requests that the order imposing CR 11 sanctions be reversed.

4. Imposing sanctions on appeal would be inappropriate.

“An appeal is frivolous if there are no debatable issues on which reasonable minds can differ and is so totally devoid of merit that there was no reasonable possibility of reversal.” *Dave Johnson Ins., Inc. v. Wright*, 167 Wn.App. 758, 788, 275 P.3d 339 (2012) (citing *In re: Recall of City of Concrete Mayor Robin Feetham*, 149 Wn.2d 860, 872, 72 P.3d 741 (2003)). “All doubts as to whether the appeal is frivolous should be resolved in favor of the appellant.” *Hanna v. Margitan*, 193 Wn.App. 596, 373 P.3d 300 (Div. III 2016) (citing *Advocates for Responsible Dev. v. W.Wash. Growth Mgmt. Hr'gs Bd.*, 170 Wn.2d 577, 580, 245 P.3d 764 (2010)).

Ms. Dehlin contends that she has brought issues with a reasonable possibility of reversal to the Court. Even if this Court were to affirm the trial court's rulings, sanctions under RAP 18.9 would still only be appropriate if none of the issues brought forth were debatable. Therefore,

Ms. Dehlin respectfully requests that this Court deny the request for RAP 18.9 sanctions.

III. CONCLUSION

Ms. Dehlin respectfully requests that the dismissal on summary judgment of her claims for conversion, trespass to personal property, and conspiracy be reversed and remanded to the trial court for further proceedings. She further requests that the order imposing CR 11 sanctions be reversed and that sanctions be denied on appeal.

Respectfully submitted this 26th day of May, 2017.



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ORIGINAL

**COURT OF APPEALS DIVISION III
OF THE STATE OF WASHINGTON**

DARLA K. DEHLIN,)	
Appellant)	Cause No. 344070-III
)	Cause No. 15-02-00080-6
v.)	
)	DECLARATION OF SERVICE
FORGET ME NOT ANIMAL)	
SHELTER, KIM GILLEN,)	
JOHN DOE(S),)	
Respondent)	
_____)	

I, Patricia L. Snyder, declare as follows:

That I am over the age of eighteen (18) years, not a party to this action, and competent to be a witness herein. That I, as a legal assistant in the office of Phelps & Associates, PS, served in the manner indicated below, the original of the Reply Brief of Appellant on May 26, 2017.

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500 N. CEDAR
SPOKANE, WA 99201

Legal Messenger
 U.S. Regular Mail

I further declare that I served in the manner indicated below a true and correct copy the Brief of Appellant on February 8, 2017.

FERRY COUNTY SUPERIOR COURT
350 E. DELAWARE AVENUE, #4
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 U.S. Regular Mail

I further declare that I served in the manner indicated below a true and correct copy the Reply Brief of Appellant on May 26, 2017.

KIRKPATRICK & STARTZEL, P.S.
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SPOKANE, WA 99224

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Signed at Spokane, WA on this 26 day of May 26, 2017



PATRICIA SNYDER
Legal Assistant