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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

NO. 344070-III

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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DARLA K. DEHLIN, Appellant,

v.

FORGET ME NOT ANIMAL SHELTER, KIM GILLEN, JOHN DOE(S),  
Respondents.

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BRIEF OF APPELLANT

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### ASSIGNMENTS OF ERROR

1. The trial court erred in granting the defendants' motion for summary judgment.
2. The trial court erred in imposing CR 11 sanctions.

### ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the Superior Court err in granting summary judgment as to the claims of conversion, conspiracy, and trespass to personal property?
2. Did the Superior Court err in imposing CR 11 sanctions?

### STATEMENT OF THE CASE

On September 15, 2015, Plaintiff filed the Summons and Complaint in Ferry County Superior Court. CP 3-7. Defendants filed a Notice of Appearance on October 12, 2015. CP 8-10. On January 14, 2016, Defendants filed an Answer. CP 11-19. This included a brief assertion that they were entitled to CR 11 sanctions. CP 18. Defendants filed a Motion for Summary Judgment with supporting Affidavit on March 9, 2016. CP 20-32, 33-38. Plaintiff filed a Response to the Motion on April 11, 2016 with supporting Declarations. CP 42-54, 55-79, 80-123. On April 19, 2016, Defendants filed a Reply in Support of the Motion for

Summary Judgment along with supporting Affidavit. CP 134-139, 124-133. Plaintiff filed a Supplemental Declaration in Support of the Response to Motion for Summary Judgment on April 21, 2016. CP 140-153. The Motion for Summary Judgment was heard and granted on April 22, 2016. CP 154-156. Defendants filed a Motion for Attorney Fees and Costs with supporting Memorandum and Declaration on May 2, 2016. CP 157-159, 160-168, 169-171. Plaintiff filed a Notice of Appeal on May 12, 2016. CP 175-176. Plaintiff filed a Response to the Motion for Attorney Fees on June 9, 2016. CP 177-184. Defendants objected to Plaintiff's Response. CP 185-188. Defendants filed a Motion for Determination of Sanctions, with Memorandum and Declaration in Support. CP 204-206, 207-212, 213-229. Plaintiff filed a Response in Opposition. CP 189-203. Defendants filed a Reply. CP 230-235. Proposed Orders and Findings were filed by both parties. CP 236-238, 239-242, 243-248. The Order granting the Motion was filed. CP 249-253.

The factual situation follows. Emails were sent in November of 2011 by an individual named Laura Bernier to Kim Gillen, executive director of the Forget Me Not shelter in Republic, Washington. CP 114, 144-45. These emails evidently discussed secondhand information from another woman named Denise Spotila. *Id.* Kim Gillen then emailed

Sheriff Pete Warner about it. *Id.* Sheriff Warner responded that he would get a search warrant if he got verifiable information. *Id.*

Nearly a year later, on September 17, 2012, Ms. Bernier emailed Ms. Gillen again, still with only secondhand information and an incorrect address. CP 33, 110-111. All the emails from Laura Bernier originated with disagreements between Denise Spotila and Ms. Dehlin. CP 56. Neither Laura Bernier nor Denise Spotila had any firsthand information as to the conditions Ms. Dehlin's dogs lived in, as they had never been to Ms. Dehlin's home. *Id.* Nevertheless, Ms. Gillen then emailed Sheriff Warner, copying Laura Bernier, Denise Spotila, and Cindy Crawley from Poodle Club of America Rescue (PCAR), and asked for a "welfare check". CP 34, 110-111. Ms. Gillen had told Ms. Dehlin in the months leading up to the seizure that she was going to take her dogs from her. CP 58. Forget Me Not is not a humane society, nor is it animal control. CP 34.

Ms. Dehlin lived in a remote area and her dogs lived on a part of the property not visible from the roadway. CP 57. Any welfare check would have required full access to the property, as all food and water were located in the dog enclosures, in water buckets and lidded bulk feeders. *Id.* Her property had a gate with clear "No Trespassing" signs. CP 57, 63. The driveway was also barricaded with items to further discourage trespassing. CP 57. Ms. Dehlin was not contacted by law enforcement

prior to any welfare check, nor prior to the seizure. CP 58. Ms. Dehlin was in compliance with all statutory animal welfare requirements. *Id.*

Deputy Rainer entered onto Ms. Dehlin's property without a warrant on September 18, 2012. CP 83. He did not enter the dog enclosures. CP 83-84. He sought and was granted a search warrant. CP 82-89. The warrant only permitted law enforcement officers to seize evidence, and ordered them to "safely keep the property seized." CP 86, 88. On September 18, 2012, Ms. Gillen and volunteers from Forget Me Not entered onto Plaintiff's property accompanying law enforcement officers to seize Plaintiff's dogs. CP 34.

No notice was posted or given to Ms. Dehlin regarding her legal rights upon seizure of an animal. CP 60. Days to weeks after the dogs were seized, they were seen by a veterinarian for the purpose of vaccinations and surgical alterations, specifically spays and neuters. CP 34, 95-109. However, no wellness check was done. *Id.* On September 26, 2012, news media reported that PCAR stated all the dogs were healthy. CP 62, 69. Dogs were transferred to other parties shortly after the seizure rather than being held as evidence, including a dog transferred to Tacoma on October 27, 2012. CP 61.

Ms. Dehlin was not charged, though she was threatened with charges. CP 58. Ms. Dehlin was terrified of any criminal prosecution and

was receiving threats from strangers as well. CP 61. On October 20, 2012, prosecutor Mike Sandona informed Forget Me Not and PCAR that an agreement to relinquish the dogs was “imminent.” CP 34-35. Cindy Crawley, of PCAR, had threatened Ms. Dehlin with “serious problems” if she ever bred another litter of puppies. CP 56, 72. Cindy Crawley also held herself out as negotiating with the prosecutor regarding any deals. CP 60, 66-67.

On October 29, 2012, a document was signed by Plaintiff purportedly relinquishing her interest in the dogs. CP 35. That document specifically states that any interest went to PCAR, not to Forget Me Not. CP 38. It also states that it is in exchange for no charges being filed. *Id.* The only signer on the document is Ms. Dehlin. *Id.* Ms. Dehlin is adamant that her signature on the document was the result of coercion and duress. CP 61.

Forget Me Not Animal Shelter had adopters sign contracts on October 27, October 30, November 5, and November 8, 2012. CP 90-94. On October 31, 2012, Ms. Dehlin revoked any relinquishment. CP 67. Forget Me Not Animal Shelter ultimately received over \$15,000 as a result of the seizure. CP 60, 64-65, 122. Forget Me Not is funded primarily by donations and adoption fees. CP 152.

## ARGUMENT

### **Standard of Review**

A summary judgment order is reviewed de novo. *Davies v. Holy Family Hosp.*, 144 Wn.App. 483, 491, 183 P.3d 283 (2008). Summary judgment is only appropriate where the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” CR 56(c). All facts and inferences are viewed in the light most favorable to the nonmoving party. *Coggle v. Snow*, 56 Wn.App. 499, 509, 784 P.2d 554 (1990). Where there are competing inferences drawn from the evidence, triers of fact must resolve the differences, not a trial judge via summary judgment. *Hudesman v. Foleyman v. Foley*, 73 Wn.2d 880, 441 P.2d 532 (1968).

A trial court’s decision to award or deny sanctions under CR 11 is reviewed for abuse of discretion. *West v. Wash. Ass’n of County Officials*, 162 Wn.App. 120, 135, 252 P.3d 406 (2011). That discretion is abused where the decision is based on untenable grounds or is manifestly unreasonable. *Id.* at 135.

**I. The trial court erred in determining that there was no genuine issue of material fact and granting summary judgment.**

**A. The court erred in granting summary judgment as to the conversion claim.**

“A conversion is a willful interference with a chattel without lawful justification, whereby a person entitled thereto is deprived of the possession of it.” *Olin v. Goehler*, 39 Wn.App. 688, 693, 694 P.2d 1129, rev. denied, 103 Wn.2d 1036 (1985).

Here, Plaintiff’s dogs were wrongfully and illegally seized. As will be argued below, there was no lawful warrant to permit seizure of the dogs. The Defendants cannot use that as a basis for the seizure. However, even if the initial seizure were lawful, the Defendants further converted Plaintiff’s property by holding them out for adoption, actually adopting them out, and surgically altering them by spaying and neutering them, all without Plaintiff’s permission.

Defendants argued that Plaintiff relinquished the animals. However, the relinquishment document, dated October 29, 2012, was signed well after the dogs were already held out for adoption and after several had been in fact adopted and transferred. Moreover, many animals had been surgically altered with spay and neuter procedures. At no point prior to October 29, 2012 can

Defendants claim they had a right to sell, transfer, or alter any of the dogs. Two days later, on October 31, 2012, Plaintiff rescinded any relinquishment.

The relinquishment itself was invalid. There was no signed agreement from the prosecutor providing any promise that Plaintiff would be free from prosecution. Mr. Sandona and Cindy Crawley held themselves out as negotiating plea deals with Ms. Dehlin. No charges were filed at any time, so Plaintiff was not apprised of her right to counsel. It would be highly improper for Mr. Sandona, the prosecutor at the time of this incident, to make any deals in his prosecutorial capacity with Plaintiff without first complying with Washington's RPC 3.8(b) by making "reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel."

Because the threat of prosecution can be so fear-inducing, the need for an attorney before making any agreements is all the more apparent as otherwise coercion and duress are significant concerns. Ms. Dehlin did not have an attorney for preparation or review of the relinquishment document, nor does it bear an attorney's signature. Furthermore, Ms. Dehlin did not have an

attorney at the crucial time for making a claim for return of her property, because she had not been charged. When there exists fraud, coercion, or deceit, an individual can repudiate her own signature which would otherwise have been voluntarily and knowingly upon an instrument. *Skagit State Bank v. Rasmussen*, 109 Wn.2d 377, 381, 745 P.2d 37 (1987) (citing *Nat'l Bank of Wash. V. Equity Investors*, 81 Wn.2d 886, 913, 506 P.2d 20 (1973)). Here, with limited representation and a threat of prosecution hanging over her head, a reasonable person could very well conclude that Plaintiff's signature was coerced. Moreover, Plaintiff herself has indicated that she was particularly terrified and felt forced to sign.

The relinquishment document has been held out by the Defendants as acting like a contract. However, basic contract principles reveal that the document is a unilateral and illusory contract. "A unilateral contract is a promise by one party – an offer by him to do a certain thing in the event the other party performs a certain act." *Cook v. Johnson*, 37 Wn.2d 19, 23, 221 P.2d 525 (1950). This is the case here. Plaintiff signed the document stating that she would relinquish the animals on the condition that no charges be filed. However, "the performance by

the other party constitutes an acceptance of the offer and the contract then becomes executed.” *Id.*

There is no way in this situation to have performance, other than to allow the statute of limitations to run its course with no charges being filed. Had that occurred, only then would Plaintiff have been obligated to relinquish her property rights in the dogs. Importantly, “until acceptance by performance, the offer may be revoked either by communication to the offeree or by acts inconsistent with the offer, knowledge of which has been conveyed to the offeree.” *Id.* Here, Plaintiff did in fact revoke the offer, and would have been able to revoke it up until performance occurred on the part of the offeree. This never occurred. Clearly this situation would not oblige Prosecutor Sandona to uphold his supposed end of the bargain. Where this occurs, the contract is illusory and unenforceable. *Interchange Associates v. Interchange, Inc.*, 16 Wn.App. 359, 360-61, 557 P.2d 357 (Div. I 1976).

Defendants have argued that they were told they could adopt out the dogs. However, “good faith cannot be shown as a defense to conversion.” *Paris American Corp. v. McCausland*, 52 Wn.App. 434, 443, 759 P.2d 1210 (Div. II 1988) (citing *Clapp v. Johnson*, 186 Wn. 327, 57 P.2d 1235 (1936)). The alleged

relinquishment furthermore did not release any animals to Forget Me Not. It, had it been a valid relinquishment, would only have released animals to Poodle Club of America Rescue. Forget Me Not at no point had any authority to convert this property, yet it did. Furthermore, this argument is inaccurate in the first place. They were only advised that an agreement was “imminent”. CP 34-35. They nevertheless began adopting out animals and had already surgically altered them with spay and neuter procedures. CP 34, 61, 95-109.

No statutory provisions relating to seizure of animals were followed in this case. Forget Me Not is not a humane society or animal control agency within the meaning of RCW 16.52.015 as there is no contract between the county and Forget Me Not. Furthermore, no volunteer from Forget Me Not has been appropriately designated an animal control officer under RCW 16.52.025, which provides that any such appointments be in writing and authorized by the county Superior Court. Forget Me Not does not have the authority to execute search warrants with law enforcement under RCW 16.52.015(3)(d). Despite this lack of authority, Forget Me Not acts as the de facto animal control arm of law enforcement in Ferry County.

The Revised Code further has several requirements when conducting animal seizures. First, law enforcement may only seize animals after allowing a veterinarian to examine them to determine the extent, if any, of neglect or abuse. RCW 16.52.085. That was not done here. Eventually, the dogs were sent to a veterinarian for the purpose of vaccinations and spay/neuter surgical alterations. However, there is no evidence that they were at any point examined in the manner that the Revised Code requires.

Moreover, “any owner whose domestic animal is removed pursuant to this chapter shall be given written notice of the circumstances of the removal and notice of legal remedies available to the owner.” RCW 16.52.085(3). This was not done. Even more important, “in making the decision to remove an animal pursuant to this chapter, the officer shall make a good faith effort to contact the animal’s owner before removal.” *Id.* This also was not done.

The dogs were seized by law enforcement in conjunction with Forget Me Not, and, without any examination whatsoever, steps were taken to adopt the animals out, hence removing them from Plaintiff entirely without due process. RCW 16.52.085(5) provides that if “no criminal case is filed within fourteen business

days of the animal's removal, the owner may petition the district court of the county where the animal was removed for the animal's return." Here, Plaintiff was given no notice that this was an option and did not have an attorney until well after fourteen days had elapsed. This further reinforces the conversion claim.

Effectively, Forget Me Not is acting as animal control without being properly designated as animal control and without abiding by the rules promulgated by the legislature to regulate animal control, allowing them to become enriched by improper animal seizures.

**B. The court erred in granting summary judgment as to the conspiracy claim.**

First and foremost, the warrant obtained to enter onto Plaintiff's property and seize her dogs was not obtained legally. It was based on a "tip" sent to Forget Me Not by an individual named Laura Bernier, about second hand information from yet another individual named Denise Spotila.

Under the Fourth Amendment, factual inaccuracies or omissions in a warrant affidavit may invalidate the warrant if the defendant establishes that they are (a) material and (b) made in reckless disregard for the truth. *Franks v. Delaware*, 438 U.S. 154, 155-56 (1978); *State v. Cord*, 103

Wn.2d 361, 366-67, 693 P.2d 81 (1985). The informant's information was inherently unreliable as it was not from her own personal knowledge and it also included an incorrect address.

Washington uses the Aguilar-Spinelli test when evaluating the existence of probable cause when information is given by an informant. *State v. Atchley*, 142 Wn.App. 147, 142 Wn.App. 147 (Wash.App. Div. III 2007). This test requires two prongs, veracity or credibility of the informant, and the informant's basis of knowledge. *Id.* They are independent, and both need to be established in the affidavit. *Id.* For an informant's tip in an affidavit to be sufficient to support probable cause for a search warrant, "the officer's affidavit must set forth some of the underlying circumstances from which the informant drew his conclusion so that a magistrate can independently evaluate the reliability of the manner in which the informant acquired his information, and the affidavit must set forth some of the underlying circumstances from which the officer concluded that the informant was credible or his information reliable." *Id.* at 162. Furthermore, "Washington requires a heightened showing of credibility for citizen informants whose identity is known to police but not disclosed to the magistrate . . . To address concerns that the confidential citizen informant is not an anonymous troublemaker, the

affidavit must contain background facts to support a reasonable inference that the information is credible and without motive to falsify.” *Id.* at 162.

There was no independent information acquired by law enforcement here, and the only information obtained separate and distinct from the informant’s tip was an unlawful entrance onto Plaintiff’s property by Deputy Rainer of the Ferry County Sheriff’s Office, which is currently being litigated in a parallel case entitled *Dehlin v. Ferry County, et al.*, United States District Court, Eastern District of Washington, Case No. 2:15-CV-00343-SMJ.

Forget Me Not’s use of a tip from an unreliable informant, to have law enforcement seize Plaintiff’s dogs worth over \$30,000.00, provides a strong basis for challenging the validity of the search warrant.

Any information obtained by law enforcement and used to apply for the search warrant was obtained illegally, as Plaintiff’s dogs were in a location that could not have been observed in plain view. Independent verification of the allegations contained in the email to Forget Me Not and forwarded to the Ferry County Sheriff would have required a deputy of the Ferry County Sheriff to actually enter onto the property through a closed gate, posted with “No Trespassing” signs, in order to view the location where the dogs were at. In fact, Deputy Rainer in his Affidavit for Search Warrant states that he opened a gate to traverse onto the property and

moved Plaintiff's trash receptacles in order to drive further onto the property. Plaintiff purposely placed belongings and trash at the gate on the driveway to prevent trespassers from coming onto the property, and Deputy Rainier's removal of her devices to protect against intruders violated her right to be free from warrantless searches of her property. It is important to note that the no trespassing signs Plaintiff had posted advised law enforcement that a warrant was required to enter the property and cited to the 4<sup>th</sup> Amendment.

The Fourth Amendment to the United States Constitution provides protection against unreasonable searches and seizures. This has been interpreted to mean that the Fourth Amendment protects only against *unreasonable* searches and does not prohibit *reasonable* warrantless searches. *Illinois v. Rodriguez*, 497 U.S. 177, 187, 110 S.Ct. 2793, 111 L.Ed.2d 148 (1990). However, Article 1, section 7 of the Washington State Constitution provides greater protections and does not delineate between the reasonableness or unreasonableness of a search; rather, it instead "requires a warrant before any search, reasonable or not." *State v. Einfeldt*, 163 Wn.2d 628, 185 P.3d 580 (Wash. 2008). Absent an exception to the warrant requirement, any search must be accompanied by a warrant. *State v. Johnson*, 128 Wash.2d 431, 909 P.2d 293 (1996).

An officer's investigative entry onto curtilage of a property, such as occurred in this case, is a warrantless search and is unlawful. *State v. Ridgway*, 790 P.2d 1263, 57 Wn.App. 915 (Wash.App. Div. 2 1990). Any view of the dog kennels on Plaintiff's property would have required entry onto the curtilage of the property, or the property itself, in order to view the dogs. A house that is located in an isolated setting, hidden from the road and from neighbors, with a long driveway blocked by a closed gate, demonstrates a subjective expectation of privacy in the area beyond the gate. *Ridgway*, 57 Wn.App.915 at 918; *State v. Daugherty*, 94 Wash.2d 263, 269, 616 P.2d 649 (1980), cert. denied, 450 U.S. 958, 101 S.Ct. 1417, 67 L.Ed.2d 382 (1981). The factors described here resemble the exact same facts as in this case.

On property very similar and in fact on a neighboring road to Ms. Dehlin's, an entry by law enforcement that then led to a search warrant was determined to be an unlawful entry when there was a driveway with a closed gate off a primitive, rural road, and the gate was marked with clear "No Trespassing" signs. *State v. Jessen*, 142 Wn.App. 852, 855-56, 177 P.3d 139 (Div. III 2008) (rev. denied, 164 Wn.2d 1016 (2008)). The court determined that "the closed gate, the primitive road, the secluded location of the home in addition to the posted signs" were sufficient to determine that a reasonable, respectful citizen would not believe he could enter the

property. *Id.* at 859. Therefore, exigent circumstances would be necessary for law enforcement to enter the property. *Id.* at 860. No exigent circumstances exist here.

A warrant is not invalidated because of inclusion of illegally obtained information in an affidavit so long as “other competent evidence is presented that establishes probable cause to issue the warrant.” *Ridgway*, 57 Wn.App.915 at 919 (citing *State v. Coates*, 107 Wash.2d 882, 888, 735 P.2d 64 (1987)). However, no such other competent evidence existed here. All the Sheriff had was a concern from an unreliable informant living on the East Coast with a personal vendetta against Plaintiff providing secondhand information and incorrect address information of the property. There was no evidence that the informant had ever been to Plaintiff’s real property, or seen in person Plaintiff’s dogs. In fact, the sheriff himself, provided with this information, advised the informant and Forget Me Not that he needed more and verifiable information in order to get a search warrant. This indicates that everyone involved knew that there should have been more information to acquire a search warrant.

RCW 16.52.085 governs removal of animals for feeding and care if the animals are suspected by law enforcement of being neglected. However, a warrant is required to seize, or even examine, the animal.

Washington law specifically “does not condone illegal entry onto private property” to examine an alleged neglected or abused animal. RCW 16.52.085(2). There is no instance where Deputy Rainier’s investigative search would be lawful under Washington law or Article I, Section 7. Thus, the subsequent warrant was invalid as fruits of the poisonous tree, the subsequent entry onto the property was unlawful and Forget Me Not’s volunteers were trespassers.

Via Article I, section 7 of the Washington State Constitution, people in Washington are afforded greater privacy protections than those granted by the Fourth Amendment. It provides, among other things, that any exceptions to the warrant requirement be “jealously guarded.” *State v. Hendrickson*, 129 Wn.2d 61, 72, 917 P.2d 563 (1996); see also, *State v. Morse*, 156 Wn.2d 1, 123 P.3d 832 (2005) (consent search); *State v. Kull*, 155 Wn.2d 80, 118 P.3d 307 (2005) (plain view); *State v. O’Neill*, 148 Wn.2d 564, 62 P.3d 489 (2003) (search incident to arrest); *State v. Ladson*, 138 Wn.2d 343, 979 P.2d 833 (1999) (pretextual traffic stops), *State v. Ferrier*, 136 Wn.2d 103, 960 P.2d 927 (1998) (consent search); *City of Seattle v. Mesiani*, 110 Wn.2d 454, 755 P.2d 775 (1988) (investigatory road blocks); *State v. Ringer*, 100 Wn.2d 686, 674 P.2d 1240 (1983) (search incident to arrest), partially overruled by *State v. Stroud*, 106 Wn.2d 144, 720 P.2d 436 (1986) (search incident to arrest);

*State v. Chrisman*, 100 Wn.2d 814, 676 P.2d 419 (1984) (exigent circumstances). None of these exceptions existed in this case, meaning that in order to enter upon Plaintiff's property, law enforcement and Forget Me Not would require a valid warrant to do so, which did not exist here.

Defendants may argue that an intrusion onto Plaintiff's property was valid pursuant to the community caretaking exception to the warrant requirement. The community caretaking exception allows for officers to "perform routine checks on an individual's health and safety. *State v. Kinzy*, 141 Wn.2d 373, 286-388, 5 P.3d 668 (2000). "Individual" is the operative word. Here, law enforcement was checking on the welfare of Plaintiff's dogs, which are her property. That does not invoke the community caretaking exception, especially when the central focus of law enforcement in the instant case was to determine whether or not there was probable cause to seize the dogs. What occurred on Plaintiff's property was a criminal investigative function and is not covered by the community caretaking exception. *Id.* at 385 (community caretaking function is "totally divorced from a criminal investigation"). Plaintiff never had the opportunity to dispute the warrant's validity in a criminal case because one was never charged. Therefore, there was no due process provided to

her in challenging the entry onto her land and the seizure of her property thereby.

A civil conspiracy is actionable where “two or more persons combine to accomplish an unlawful purpose or combine to accomplish an unlawful purpose or combine to accomplish some purpose not in itself unlawful by unlawful means.” *Corbit v. J.I. Case Co.*, 70 Wn.2d 522, 424 P.2d 290 (Wash. 1967). Ms. Dehlin is required, at the time of trial, to establish through clear, cogent and convincing evidence that the coconspirators “entered into an Agreement to accomplish the object of the conspiracy.” *Corbit*, 70 Wn.2d 522 at 528. In furtherance of her establishing that a civil conspiracy existed, Plaintiff would introduce evidence relating to the cooperation between the Ferry County Prosecutor, Mike Sandona, PCAR’s representative Cindy Crawley and Forget Me Not’s Executive Director Kim Gillen which converted her property for the benefit of the Forget Me Not Animal Shelter and Kim Gillen. There are emails and testimony from Plaintiff indicating statements made to her and between the parties that evidence cooperation towards removal of Plaintiff’s property without affording her due process.

Information was submitted prior to the summary judgment hearing that at the very least leads to an inference that Ms. Crawley and Mr. Sandona were working together to convince Ms. Dehlin to sign over her

dogs (again, important to note, these dogs were worth over \$30,000.00 and reflect significant income/profit to Forget Me Not and PCAR). Continued depositions would have provided additional evidence.

Plaintiff's civil conspiracy claims do not fail as a matter of law. The search and seizure was unlawful. There is evidence of an illegal act by two or more individuals; namely, that Kim Gillen at Forget Me Not, Laura Bernier, Denise Spotila, Cindy Crawley, Pete Warner and Prosecutor Mike Sandona conspired to deprive Ms. Dehlin of her dogs and bring substantial profit to Forget Me Not. Plaintiff had no burden to prove this full set of facts at summary judgment. She did show that these are issues of material fact, that these issues are disputed, and that reasonable minds can differ on conclusions relating to the evidence presented, and that difference of opinion constitutes a bar to summary judgment. *Haubry v. Snow*, 106 Wash.App. 666, 670, 31 P.3d 1186 (2001). Further, the Court must construe all facts and inferences in favor of Ms. Dehlin at summary judgment. *Ranger Ins. Co. v. Pierce County*, 164 Wash.2d 545, 552, 192 P.3d 886 (2008).

**C. The trial court erred in granting summary judgment as to the trespass to personal property claim.**

Trespass to personal property or trespass to chattels is an intentional interference with a party's personal property which deprives

the owner of possession or use without justification, and is less severe than a conversion. *Judkins v. Sadler-MacNeil*, 61 Wn.2d 1, 4, 376 P.2d 837 (1962). Here, the same arguments as detailed above regarding conversion apply. Defendants entered onto Plaintiff's property, removed her animals, had spay/neuter surgical alterations done on them and adopted them out, all without permission or legal justification.

**II. The trial court's decision to award CR 11 sanctions was manifestly unreasonable and based on untenable grounds.**

When signing a pleading, an attorney is certifying that the pleading is well grounded in fact, is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law or the establishment of new law, and that it is not interposed for any improper purpose such as to harass or cause unnecessary delay or needless increase in the cost of litigation. CR 11(a)(1), (2), and (3). Importantly, the rule is not intended to be a mechanism for fee shifting nor to chill attorney enthusiasm or creativity in pursuant of factual and legal theories. *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 219, 829 P.2d 1099 (1992). It is intended specifically and solely to curb abuses of the judicial system and to deter baseless filings, not those filings which may have merit. *Id.* This means that claims effectively just need to have a basis in fact and a

potential legal remedy. A court may not impose CR 11 sanctions for a baseless filing unless it determines both that 1) the claim lacked a factual or legal basis, and 2) the attorney who signed the filing failed to perform a reasonable investigation into the claim's factual and legal basis. *West*, 162 Wn.App. at 135.

Firstly, in this case the Defendants were not timely in their filing of the motion for CR 11 sanctions. Absent prompt notice of a potential violation of the rule, the offending party is afforded no opportunity to mitigate the sanction by amending or withdrawing the offending pleading. *Biggs v. Vail*, 124 Wn.2d 193, 198, 876 P.2d 448 (1994). Moreover, Rule 11 sanctions must be brought as soon as possible to avoid waste and delay. *Id.* Specifically, "a party should move for CR 11 sanctions as soon as it becomes aware they are warranted." *N. Coast Elec. Co. v. Selig*, 136 Wash. App. 636,649, 151 P.3d 211 (2007). Without such notice, CR 11 sanctions are unwarranted. *Biggs*, 124 Wn.2d at 198. Here, Defendants included a boilerplate Rule 11 notice in their Answer but then engaged in discovery and depositions before filing a motion for summary judgment. If Defendants had a genuine belief that Plaintiff's lawsuit was frivolous, they ought to have filed a CR 12 motion and motion for CR 11 sanctions at the outset in order to avoid waste and delay. They actually had prepared a summary judgment motion a full two months prior to filing it.

Their conduct indicates that they did not find the suit frivolous on its face at all. Where that is the case, CR 11 sanctions are, as noted above, not warranted.

Even had Defendants' motion for CR 11 sanctions been timely, sanctions were unwarranted in this case. The first inquiry is whether any of plaintiff's claims had a factual or legal basis at the outset. *Bryant*, 119 Wn.2d at 220. If that is the case, then CR 11 sanctions are not appropriate. If the claims did not have a factual or legal basis, the court then moves to a second inquiry: whether the attorney made a reasonable inquiry into the factual and legal basis of the claim. *Id.* The existence or lack thereof of a reasonable inquiry is "evaluated by an objective standard." *Miller v. Badgley*, 51 Wn.App. 285, 299-300, 753 P.2d 530, rev. denied, 111 Wn.2d 1007 (1988).

In looking at whether a filing has factual or legal bases, the analysis is what was known to Plaintiff and her counsel at the time of filing, not what additional information may have become available by the time of a summary judgment motion. *State ex rel. Quick-Ruben v. Verharen*, 136 Wn.2d 888, 904, 969 P.2d 64 (1998). Here, Ms. Dehlin filed a lengthy declaration with the Court at summary judgment, detailing the factual bases for the various claims. This information was known to

counsel at the time of filing of the complaint and served as the basis of the claims. In fact, when the assault claim did not appear to be a viable claim to continue pursuing, Plaintiff and her counsel agreed not to pursue it. The purpose of notice pleading and discovery is to allow time to do further investigation to support claims. However, at the time of filing, there simply has to be a legal or factual basis. The documents filed reveal that there was indeed, at the time of filing, a factual basis for each claim and potential legal remedies as well. Furthermore, as the court here did find that the conspiracy claim, the conversion claim, and the trespass to personal property claim had merit, the complaint was not baseless and CR 11 sanctions are inappropriate. See, e.g., *Bryant*, 119 Wn.2d at 219.

Finally, the trial court, having decided that some claims in the pleading were without basis, should have proceeded to the second inquiry: that of counsel's inquiry into the factual basis of the claim prior to filing. Here, the court made no such inquiry and indeed made no findings that there was a lack of reasonable inquiry on the part of counsel. That failure by the court necessarily invalidates its determination of CR 11 sanctions.

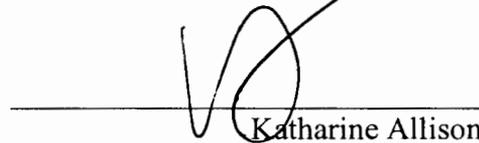
CONCLUSION

Based on the above, Ms. Dehlin respectfully requests that this Court reverse the decision of the Superior Court below, and remand for trial.

DATED this 7<sup>m</sup> day of February, 2016



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