

FILED

MAR 13 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,

vs.

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

Respondents.

Appeal from the Superior Court of Ferry County

BRIEF OF RESPONDENT

PAUL L. KIRKPATRICK, WSBA # 16491
TIMOTHY J. NAULT, WSBA # 47931
KIRKPATRICK & STARTZEL, P.S.
1717 South Rustle, Suite 102
Spokane, WA 99224
(509) 455-3647
Attorneys for Respondents Kim Gillen;
Forget Me Not Animal Shelter

TABLE OF CONTENTS

I. INTRODUCTION1

II. ASSIGNMENTS OF ERROR.....2

III. STATEMENT OF THE CASE3

IV. SUMMARY OF ARGUMENT6

V. ARGUMENT7

 A. Standard of Review8

 B. Ms. Dehlin’s conversion claim must fail because she cannot establish a property right in the dogs or that Forget Me Not deprived her of possession without lawful justification.....9

 C. Ms. Dehlin’s trespass to personal property claim must fail for the same reasons as her conversion claim14

 D. Ms. Dehlin failed to establish a prima facie case of conspiracy.....15

 E. The trial court did not abuse its discretion in imposing sanctions against Ms. Dehlin’s attorney under CR 1119

 F. This Court should impose sanctions on appeal pursuant to RAP 18.9(a).....23

VI. CONCLUSION25

TABLE OF AUTHORITIES

State Cases

<i>All Star Gas, Inc. v. Bechard</i> , 100 Wn. App. 732, 998 P.2d 367 (Div. III 2000)	15
<i>Consulting Overseas Mgmt., Ltd. v. Shtikel</i> , 105 Wn. App. 80, 18 P.3d 1144 (2001)	8
<i>Davenport v. Washington Educ. Ass'n</i> , 147 Wn. App. 704, 197 P.3d 686 (2008)	9
<i>Eugster v. City of Spokane</i> , 110 Wn. App. 212, 39 P.3d 380 (Div. III 2002)	9, 19, 23
<i>Gardner v. Loomis Armored Inc.</i> , 128 Wn. 2d 931, 913 P.2d 377 (1996)	13
<i>Gaspar v. Peshastin Hi-Up Growers</i> , 131 Wn. App. 630, 128 P.3d 627 (Div. III 2006)	13
<i>Harrington v. Pailthorp</i> , 67 Wn. App. 901, 841 P.2d 1258 (1992)	8, 22
<i>In re Recall of Piper</i> , 184 Wn. 2d 780, 364 P.3d 113 (2015)	20
<i>Judkins v. Sadler-Mac Neil</i> , 61 Wn. 2d 1, 376 P.2d 837 (1962)	14
<i>LaMon v. Butler</i> , 112 Wn. 193, 770 P.2d 1027 (1989)	8
<i>Lowe v. Rowe</i> , 173 Wn. App. 253, 294 P.3d 6 (Div. III 2012)	9, 16-17
<i>Mahoney v. Shinpoch</i> , 107 Wn. 2d 679, 732 P.2d 510 (1987)	23, 24
<i>Miller v. Badgley</i> , 51 Wn. App. 285, 753 P.2d 530 (1988)	23
<i>Seven Gables Corp. v. MGM/UA Ent. Co.</i> , 106 Wn. 2d 1, 721 P.2d 1 (1986)	8
<i>Stiles v. Kearney</i> , 168 Wn. App. 250, 277 P.3d 9 (2012)	20, 23
<i>Trujillo v. Northwest Trustee Svcs., Inc.</i> , 183 Wn. 2d 820, 355 P.3d 1100 (2015)	20
<i>Woody v. Stapp</i> , 146 Wn. App. 16, 189 P.3d 807 (Div. III 2008)	15

TABLE OF AUTHORITIES (Continued)

Statutes

RCW 4.24.50016

RCW 4.24.5107, 16

RCW 7.69.01012

RCW 9.01.05512

RCW 9A.76.020.....12

RCW 9A.76.030.....12

Rules

CR 11 passim

CR 12(b)(6).....20

Rule of Appellate Procedure 18.9.....2, 23, 24

Other Authorities

David K. DeWolf, Keller W. Allen, 16 Wash. Prac.,
Tort Law & Practice § 14:15 (4th ed 2016)14

Restatement (Second) of Torts § 217.....14

I. INTRODUCTION

In September of 2012, Respondent Forget Me Not Animal Shelter received a complaint from a person indicating that there may be dogs in poor condition at an address belonging to Appellant Darla Dehlin. Forget Me Not forwarded the complaint on to the Ferry County Sheriff's Office. The sheriff's office obtained a warrant and asked Forget Me Not volunteers to accompany it to the property because it did not have the manpower or vehicles to transport the animals it intended to seize pursuant to the warrant. The sheriff's office seized the animals and retained responsibility for the animals' care. Forget Me Not transported the dogs to its own shelter and other locations where the animals were housed and cared for. After being informed that Ms. Dehlin was going to relinquish her rights to the dogs in exchange for no criminal charges brought against her and no liability imposed for the care of the animals, Forget Me Not began transporting the dogs to adoption homes and rescue shelters pursuant to the directions of the Poodle Club of America Rescue.

Ms. Dehlin then sued Forget Me Not, its volunteer executive director Kim Gillen, and various unidentified volunteers, claiming that they had stolen her poodles. Summary judgment was properly granted in favor of Forget Me Not and sanctions were properly entered by the trial court. On

appeal, Ms. Dehlin persists in her claims against Forget Me Not despite the fact that 1) Forget Me Not did not seize the animals -- the sheriff's office did; 2) Forget Me Not merely accompanied the sheriff's office after being informed that it had obtained a warrant; and 3) Ms. Dehlin later relinquished all rights to the animals. Ms. Dehlin's appeal should be rejected, the trial court affirmed, and sanctions should be ordered by the Court pursuant to Rule of Appellate Procedure 18.9.

II. ASSIGNMENTS OF ERROR

Forget Me Not assigns no error to the trial court's rulings. The following issues pertain to Ms. Dehlin's assignments of error:

1. Did the trial court err in finding that Ms. Dehlin failed to support her claim for conspiracy with clear, cogent, and convincing evidence at summary judgment?
2. Did the trial court err in granting summary judgment on Ms. Dehlin's claims for conversion and trespass to personal property?
3. Did the trial court abuse its discretion in entering CR 11 sanctions against Ms. Dehlin's counsel for bringing claims that were not well grounded in fact or warranted by law?

III. STATEMENT OF THE CASE

Forget Me Not is a private nonprofit animal shelter located in Republic, Washington. CP at 115. Forget Me Not is staffed by volunteers and is not an investigative humane society. CP at 34. Forget Me Not does not have the ability to perform welfare checks. *Id.* The shelter forwards any complaints of animal abuse or neglect that it receives on to the Ferry County Sheriff's Office. *Id.*

On September 17, 2012, the shelter received a complaint via email, indicating concern for the welfare of a number of poodles at Ms. Dehlin's address. CP at 33. Respondent Kim Gillen, the volunteer Executive Director of Forget Me Not, forwarded the complaint on to Ferry County Sheriff Pete Warner with a request that the sheriff's office look into it. CP at 33-34, 115.

On September 18, 2012, the sheriff's office informed Forget Me Not that it had obtained a warrant to remove all of the dogs from Ms. Dehlin's property. CP at 34. Forget Me Not was informed that there were at least 27 dogs on site. *Id.*

Because the sheriff's office did not have enough personnel or vehicles to safely transport the dogs, the sheriff asked that Forget Me Not volunteers and vehicles accompany the sheriff's office in executing the warrant. *Id.* The shelter arranged for available volunteers to meet and

accompany the sheriff to the site. *Id.* At the site, the volunteers waited for the sheriff's office to clear the scene and then proceeded down the driveway to gather the dogs the sheriff's office was removing pursuant to the warrant. *Id.*

The sheriff's office then had the dogs transported to the Forget Me Not building and other facilities and foster homes. *Id.* Each of the dogs received a subsequent veterinarian visit from Dr. Doris Bacon of All Creatures Veterinary Services. *Id.* The sheriff's office retained responsibility for the dogs' medical care and boarding fees during the time of impound. *Id.*

On October 20, 2012, the Ferry County Prosecutor notified Forget Me Not and the Poodle Club of America Rescue ("PCAR") that Ms. Dehlin had agreed to relinquish the poodles in exchange for no criminal action being taken, and so preparations could begin to transfer the poodles to more appropriate housing. CP at 34-35. Ms. Dehlin executed this agreement relinquishing her rights to the animals on October 29, 2012. CP at 35, 37-38. In the agreement, Ms. Dehlin agreed to "relinquish any and all ownership interest in the dogs that were taken from my property in [sic] September 2012 to the Poodle Club of America Rescue." CP at 38. In exchange, the Prosecutor's Office agreed to take no action against Ms.

Dehlin, and Ms. Dehlin was relieved of liability for costs associated with the dogs. *Id.*

PCAR then began assigning the dogs to rescues and individuals. CP at 35. PCAR directed Forget Me Not to assign several dogs to individuals who had already submitted applications for the animals. *Id.* PCAR assigned the remaining dogs to poodle rescues in Nevada and Arizona and arranged for the dogs to be picked up by commercial transporter. *Id.* Forget Me Not incurred costs of \$17,981.86 in boarding and caring for the dogs. CP at 64-65.

Ms. Dehlin then brought suit against Forget Me Not Animal Shelter, Kim Gillen, and unidentified volunteers at the shelter. CP at 3. The Complaint acknowledged that Forget Me Not was asked to accompany the sheriff's office to Ms. Dehlin's property pursuant to a search warrant. CP at 4. The sheriff's office was not named in the Complaint although Ms. Dehlin sued that entity in a separate action. CP at 124, 128-133. Ms. Dehlin's Complaint in this action appeared to state a claim for conversion, trespass to personal property, intentional infliction of emotional distress, negligent infliction of emotional distress, conspiracy, and assault. CP at 3-7.

Forget Me Not and Ms. Gillen (collectively "Forget Me Not") moved for summary judgment on all claims asserted in the Complaint. The Court granted summary judgment in favor of Forget Me Not and further

ordered sanctions against Ms. Dehlin for filing frivolous claims under CR 11. CP at 154-156, 249-53.¹

IV. SUMMARY OF ARGUMENT

Ms. Dehlin almost exclusively focuses her arguments on the claimed invalidity of 1) the warrant which the Ferry County Sheriff's Office obtained to seize her animals, and 2) the relinquishment of rights in the dogs which the Ferry County prosecutor obtained from her. But these arguments are improperly directed towards Forget Me Not. If the warrant was invalid or the relinquishment inappropriately obtained, those claims should be directed towards the appropriate entity. Forget Me Not did nothing wrong in relying on the purported authority of the sheriff's office and prosecutor's office in assisting law enforcement in transporting and finding a home for the dogs at issue. Washington law expresses a strong public policy in favor of this type of assistance and Ms. Dehlin has not shown how providing this assistance is actionable against Forget Me Not under the law.

Thus, Ms. Dehlin's claims for conversion and trespass to chattels must fail because Forget Me Not acted with lawful justification and Ms. Dehlin had no property interest in, or had abandoned, the animals at issue.

¹ Ms. Dehlin failed to include an additional order from the trial court setting the actual amount of sanctions. Forget Me Not is separately moving for the transmittal of additional clerk's papers to supplement the record.

Ms. Dehlin's claim for civil conspiracy must fail for these same reasons and because any claim based on Forget Me Not forwarding complaints of animal abuse or neglect to law the sheriff's office is barred by RCW 4.24.510, which confers immunity for such actions. In addition, Ms. Dehlin failed to establish a prima facie case of conspiracy at summary judgment. Ms. Dehlin abandoned her claim for assault before the trial court and has apparently abandoned her claims for negligent and intentional infliction of emotional distress on appeal. CP at 10; *Brief of Appellant*. The trial court properly entered summary judgment in favor of Forget Me Not and did not abuse its discretion in issuing sanctions against Ms. Dehlin's counsel under CR 11. Finally, this Court should enter sanctions against Ms. Dehlin under RAP 18.9 for pursuing a frivolous appeal.

V. ARGUMENT

Ms. Dehlin's claim for civil conspiracy is subject to a heightened standard at summary judgment and requires that Ms. Dehlin establish an issue for trial by clear, cogent, and convincing evidence. Similarly, Ms. Dehlin claim that CR 11 sanctions were improperly imposed is subject to an abuse of discretion standard. Ms. Dehlin cannot meet these standards and has further failed to establish a genuine issue of material fact on her claims for conversion and trespass to personal property.

A. Standard of Review

The appellate court engages in the same inquiry as the trial court at summary judgment, and may affirm an order granting summary judgment where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Consulting Overseas Mgmt., Ltd. v. Shtikel*, 105 Wn. App. 80, 83, 18 P.3d 1144 (2001). All facts and inferences are considered in the light most favorable to the nonmoving party. *Id.* On review, the Court may affirm the trial court's grant of summary judgment if it is supported by any grounds in the record. *LaMon v. Butler*, 112 Wn. 193, 200-01, 770 P.2d 1027 (1989).

A party opposing summary judgment “must set forth specific facts showing there is a genuine issue for trial” and “may not rely on speculation, argumentative assertions that unresolved factual issues remain, or in having its affidavits considered at face value.” *Seven Gables Corp. v. MGM/UA Ent. Co.*, 106 Wn. 2d 1, 12-13, 721 P.2d 1 (1986). The purpose of summary judgment is to “avoid a useless trial” where appropriate. *Id.* at 12.

The trial court's determination to award attorney's fees under CR 11 is subject to abuse of discretion on appeal. *Harrington v. Pailthorp*, 67 Wn. App. 901, 910, 841 P.2d 1258 (1992). Under this standard, deference is properly afforded to the trial judge who is in a better position than the appellate court to decide the issue. *Eugster v. City of Spokane*, 110 Wn.

App. 212, 231, 39 P.3d 380 (Div. III 2002) (citing *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn. 2d 299, 339, 858 P.2d 1054 (1993)). A trial court “does not abuse its discretion unless its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons.” *Id.*

B. Ms. Dehlin’s conversion claim must fail because she cannot establish a property right in the dogs or that Forget Me Not deprived her of possession without lawful justification

Conversion is “the willful interference with another’s property without lawful justification, resulting in the deprivation of the owner’s right to possession.” *Lowe v. Rowe*, 173 Wn. App. 253, 263, 294 P.3d 6 (Div. III 2012). Conversion occurs only where the plaintiff has a possessory interest in the chattel. *Davenport v. Washington Educ. Ass’n*, 147 Wn. App. 704, 721-22, 197 P.3d 686 (2008). Absent a property interest, “an action for conversion will not lie.” *Id.* at 722. Similarly, abandonment of property constitutes a “complete defense” to the tort of conversion. *Lowe*, 173 Wn. App. at 263.

The undisputed facts of this case make clear that Ms. Dehlin had no property interest in the dogs or affirmatively abandoned any interest when she signed the relinquishment. CP at 38. Ms. Dehlin claims that the Ferry County Prosecutor’s Office improperly procured the relinquishment, but that is an issue between her and the prosecutor’s office. Forget Me Not certainly

had a right to rely on this relinquishment as communicated to it, regardless of whether Ms. Dehlin now feels that the relinquishment was improvidently signed. CP at 34-35.

Ms. Dehlin alleges that the prosecutor committed misconduct in procuring the agreement, including by not ensuring that she had more than “limited” representation in the matter. But Ms. Dehlin has not, and cannot, establish that the Forget Me Not owed her any sort of duty vis-à-vis the negotiation and signing of the relinquishment. Moreover, Ms. Dehlin complains that the prosecutor and an individual from PCAR worked together on the relinquishment but demonstrates no involvement by Forget Me Not. Ms. Dehlin also claims that she revoked the agreement in an email to PCAR, but there is no indication that this revocation attempt was effective, and Ms. Dehlin specifically asked that her communication with PCAR be kept “confidential.” CP 67. Unsurprisingly, there is no indication that this alleged revocation attempt was ever communicated to Forget Me Not.

Ms. Dehlin also claims that she relinquished the dogs to PCAR and not Forget Me Not. However, PCAR adopted out the dogs, not Forget Me Not. Moreover, this distinction is immaterial because no matter who it was that had rightful ownership of the dogs, it was no longer Ms. Dehlin. Finally, Ms. Dehlin casts the relinquishment as an issue of “good faith,”

which she claims is not a defense to conversion. But the issue with the relinquishment is not good faith, it's that Ms. Dehlin has no property right in the animals to vindicate through a lawsuit and that Forget Me Not acted with lawful justification at all times.

Even apart from the relinquishment, Ms. Dehlin failed to undertake remedies that were available to her to get back the dogs seized by the sheriff's office. Criminal Rule 2.3(e) allows a person to move the court for return of property that was improperly seized. RCW 16.52.085(5) allows a party to seek return of animals removed for feeding and care. Ms. Dehlin took no such action available to her under the law. Ms. Dehlin states that she was given no notice of these options and was not afforded an attorney earlier on in the process, but has failed to show that Forget Me Not had any duty to give her such notice or to provide her with an attorney.

But even assuming, arguendo, that Ms. Dehlin had a possessory interest in the dogs which she did not abandon, Forget Me Not undertook all actions with lawful justification. It was the sheriff's office that actually obtained the warrant and seized the dogs pursuant to that warrant. CP at 128-133. Forget Me Not simply assisted in transporting the dogs and housing and caring for some of them pursuant to the sheriff's request. Forget Me Not was told that the sheriff's office had obtained a warrant and indeed it had. CP at 34, 82-89.

Ms. Dehlin now claims that the warrant was illegally obtained, but Forget Me Not had no duty to determine whether the warrant was properly granted prior to complying with the sheriff's request for assistance. Forget Me Not is not in a position to defend and uphold a warrant which they did not even obtain. Forget Me Not is not a law enforcement agency or a prosecutor's office. Ms. Dehlin is litigating that issue in a separate action against the sheriff's office, which is the proper party for any claim that the warrant was illegally obtained.

Forget Me Not's actions in assisting the sheriff's office at its request cannot be actionable under Washington law. Legislative enactments clearly support a policy of encouraging citizens to provide assistance to law enforcement when requested, and in some circumstances even require that assistance be provided. *See* RCW 7.69.010 (declaring that victims and witnesses to crime have a "civic and moral duty . . . to fully and voluntarily cooperate with law enforcement and prosecutorial agencies" and recognizing the "continuing importance of such citizen cooperation to state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this state"); RCW 9.01.055 (citizens who aid police officers are granted the same civil and criminal immunity as the officers); RCW 9A.76.020 (obstructing a law enforcement officer is a gross misdemeanor); RCW 9A.76.030 (refusing to summon aid for a peace

officer is a misdemeanor). These statutes “support a public policy encouraging citizens to cooperate with law enforcement when requested or clearly required by law.” *Gardner v. Loomis Armored Inc.*, 128 Wn. 2d 931, 942, 913 P.2d 377 (1996); *see also Gaspar v. Peshastin Hi-Up Growers*, 131 Wn. App. 630, 637-38, 128 P.3d 627 (Div. III 2006) (describing public policy to assist law enforcement as “fundamental”). Thus, in *Gaspar* this Court held that the trial court had improperly dismissed an employee’s claim that he was discharged in violation of clear public policy by assisting a police investigation at his work place. 131 Wn. App. 630. It would contravene this public policy to hold Forget Me Not liable for complying in the sheriff’s office request to transport animals that it was seizing pursuant to a warrant, regardless of Ms. Dehlin could now show that the warrant was improvidently granted.

Thus, Ms. Dehlin’s conversion claim must fail because she had no property right to the dogs or abandoned any property rights when she signed the relinquishment, and because Forget Me Not acted with lawful justification in transporting and housing the dogs at the request of the sheriff’s office, which had obtained a warrant to seize the animals. It is immaterial to any claim against Forget Me Not that the warrant and relinquishment are now argued to be invalid. The trial court properly

granted summary judgment in favor of Forget Me Not on Ms. Dehlin's claim for conversion.

C. Ms. Dehlin's trespass to personal property claim must fail for the same reasons as her conversion claim

Ms. Dehlin treats her claim of trespass to personal property as duplicative of her claim for conversion. *Brief of Appellant* at 26-27. Forget Me Not agrees, and this claim must fail for the same reasons as the conversion claim.

Trespass to personal property is "something less than a conversion." David K. DeWolf & Keller W. Allen, 16 Wash. Prac., *Tort Law & Prac.* § 14:15 (4th ed 2016) (citing Restatement (Second) of Torts § 217). It is the intentional interference with a party's personal property without justification that deprives the owner of possession or use. *Judkins v. Sadler-Mac Neil*, 61 Wn. 2d 1, 4, 376 P.2d 837 (1962); Restatement (Second) of Torts § 217.

Here again, Ms. Dehlin cannot establish a claim for trespass to personal property because 1) she had no property interest in the animals or had abandoned that interest; 2) it was the sheriff's office, and not Forget Me Not, that actually seized the animals pursuant to the warrant; 3) Forget Me Not simply assisted at law enforcement's request as protected under public policy; and, 4) insofar as Forget Me Not could be said to have interfered with a property right held by Ms. Dehlin, it was justified in doing so because

the sheriff's office had purported to have a warrant for its actions and did in fact have a warrant. Whether or not Ms. Dehlin could establish in a separate action against the sheriff's office that the warrant was improvidently granted is immaterial to her action against Forget Me Not. The trial court properly entered summary judgment in favor of Forget Me Not on Ms. Dehlin's claim for trespass to personal property.

D. Ms. Dehlin failed to establish a prima facie case of conspiracy

To establish a claim for conspiracy, a plaintiff must establish that “(1) two or more people combined to accomplish an unlawful purpose, or combined to accomplish a lawful purpose by unlawful means; and (2) the conspirators entered into an agreement to accomplish the conspiracy.” *Woody v. Stapp*, 146 Wn. App. 16, 22, 189 P.3d 807 (Div. III 2008) (quoting *All Star Gas, Inc. v. Bechard*, 100 Wn. App. 732, 740, 998 P.2d 367 (Div. III 2000)). A “mere suspicion or commonality of interests is insufficient to prove a conspiracy.” *Id.* When the facts relied upon to establish a conspiracy are “as consistent with a lawful or honest purpose as with an unlawful undertaking, they are insufficient.” *All Star Gas*, 100 Wn. App. at 740 (quoting *Lewis Pacific Dairymen's Ass'n v. Turner*, 50 Wn. 2d 762, 772, 314 P.2d 625 (1957)).

Both elements of the claim must be proven by clear, cogent and convincing evidence. *Woody*, 146 Wn. App. at 22. On review, the Court

“must view the evidence presented through the prism of the substantive evidentiary burden.” *Id.* (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986)). Thus, the Court must “determine whether, viewing the evidence in the light most favorable to the nonmoving party, a rational trier of fact could find that the nonmoving party supported his or her claim with clear, cogent, and convincing evidence.” *Id.* To overcome this presumption on summary judgment, a plaintiff must establish a prima facie case supporting the claim. *Id.* at 22-23. Ms. Dehlin’s claim that this heightened standard applies only at trial is incorrect.

To the extent that Ms. Dehlin bases her conspiracy claim on Forget Me Not’s report to the sheriff’s office, that claim is barred by Washington law. RCW 4.24.510 provides immunity to “[a] person who communicates a complaint or information to any breach or agency of federal, state, or local government . . . regarding any matter reasonably of concern to that agency or organization.” This statute grants broad immunity as long as the complaint or information regards “any matter reasonably of concern” to the agency. *Lowe*, 173 Wn. App. at 260-62. Good faith need not be shown for immunity to apply. *Id.* The policy behind this statute is that the threat of civil litigation may deter citizens from making reports to appropriate governmental bodies. *See Id.* at 259; RCW 4.24.500.

Here, there is no doubt that the enforcement of animal welfare laws is a matter of concern for the Ferry County Sheriff's Office. *See Lowe*, 173 Wn. App. at 260. Forget Me Not's report to the sheriff, asking the sheriff to look into possible neglect or mistreatment of animals at Ms. Dehlin's property, was clearly a matter within the concerns of that agency. *See id.* Therefore, Forget Me Not is immune from liability for its communications to the sheriff's office. *Id.*

Other than Forget Me Not's act of passing on concerns of animal welfare, Ms. Dehlin primarily focuses on the allegedly illegal activities of the sheriff's office in obtaining the warrant. However, there is no indication that Forget Me Not was involved in this activity and Forget Me Not has no authority to obtain a warrant or otherwise engage in law enforcement activities. Ms. Dehlin has not alleged, and has made no showing, that Forget Me Not is subject to the Fourth Amendment.² And again, Forget Me Not had no duty to independently determine whether a warrant signed by a judge was in fact valid and rightfully granted.

Ms. Dehlin claims that Forget Me Not engaged in a conspiracy to enrich itself through the \$15,558.39 the shelter obtained in donations and fees from housing the poodles. Yet it is undisputed that Forget Me Not also

² Ms. Dehlin also claims that Forget Me Not did not afford her due process without establishing that Forget Me Not owed her any process under the law.

spent \$17,981.86 in connection with boarding, caring for, and transporting the dogs. CP at 64-65. There is no direct evidence that Forget Me Not engaged in a conspiracy to become rich through selling the poodles, and the fact that the shelter actually lost money in housing, caring for and transporting the animals certainly cannot establish a civil conspiracy. Far from showing some plan to enrich the animal shelter at Ms. Dehlin's expense, the actual undisputed evidence in the record is that these circumstances imposed only financial hardship upon Forget Me Not.

Finally, there is no evidence that the alleged conspirators entered into any sort of agreement to accomplish the claimed conspiracy. Mere speculation may not suffice, especially on a claim for conspiracy which requires proof by clear, cogent and convincing evidence. Ms. Dehlin's stated "belief" that there was a conspiracy and an agreement to that end is insufficient to defeat summary judgment. Ms. Dehlin relies on mere speculation and conclusory statements and has failed to establish a prima facie case for conspiracy. Thus, the trial court properly entered summary judgment in Forget Me Not's favor.³

³ Ms. Dehlin claims, without basis, that additional depositions would have provided more support of her conspiracy claim. But Ms. Dehlin did not move the trial court for a continuance at summary judgment. Forget Me Not agreed to move the hearing date on its motion for summary judgment so that Ms. Dehlin could take the deposition of its executive director, Kim Gillen. However, Ms. Dehlin never moved for a CR 56(f) continuance to take additional discovery and cannot now claim that some ill-defined additional discovery may have established a claim for conspiracy.

E. The trial court did not abuse its discretion in imposing sanctions against Ms. Dehlin's attorney under CR 11

Following summary judgment in favor of Forget Me Not, the Court issued sanctions against counsel for Ms. Dehlin pursuant to CR 11. CP at 249-53. The matter was extensively briefed, and the court held two hearings on the issue. The court found that Ms. Dehlin's claims for assault, intentional infliction of emotional distress, and negligent infliction of emotional distress were asserted in violation of CR 11. *Id.*

CR 11 provides that an attorney's signature on a pleading, motion or legal memorandum constitutes the attorney's certification "that to the best of the . . . attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances," the proceeding or motion is "well grounded in fact" and 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." If the rule is violated, CR 11 authorizes the court to impose "an appropriate sanction," including attorneys' fees, on the attorney who signed the pleading or motion, the represented party, or both. The purpose behind CR 11 "is to deter baseless filings and to curb abuses of the judicial system." *Eugster*, 110 Wn. App. at 231 (quoting *Bryant v. Joseph Tree, Inc.*, 119 Wn. 2d 210, 219, 829 P.2d 1099 (1992)).

On appeal, Ms. Dehlin claims that she was not provided notice of alleged Rule 11 violations. But the Answer asserted that Forget Me Not was entitled to sanctions under CR 11 and further requested an award of attorneys' fees. CP at 18-19. Forget Me Not put Ms. Dehlin and her attorney on notice that the Complaint itself was an improper pleading under CR 11 and that Forget Me Not believed the lawsuit was frivolous. A violation of CR 11 is complete upon the filing of the offending paper – in this case, the Complaint. *See, e.g., In re Recall of Piper*, 184 Wn. 2d 780, 788, 364 P.3d 113 (2015). Including a request for CR 11 sanctions in the answer constitutes sufficient notice to a plaintiff under the law. *Stiles v. Kearney*, 168 Wn. App. 250, 264, 277 P.3d 9 (2012).

Ms. Dehlin next claims that Forget Me Not did not move to dismiss the lawsuit early enough. Ms. Dehlin suggests that Forget Me Not could have moved for dismissal under CR 12 instead of CR 56. But a motion to dismiss under CR 12(b)(6) requires the court to assume that all facts alleged in the complaint are true, and the court may even consider hypothetical facts. *E.g., Trujillo v. Northwest Trustee Svcs., Inc.*, 183 Wn. 2d 820, 830, 355 P.3d 1100 (2015). For example, the court in this case would have been required to assume 1) that Forget Me Not “seized” the dogs when it was the sheriff’s office that did so; 2) that a volunteer from Forget Me Not “struck Darla K. Dehlin on the arm during the seizure” when Ms. Dehlin introduced

no facts to support this claim at summary judgment; and 3) that Forget Me Not negligently inflicted emotional distress on Ms. Dehlin when Ms. Dehlin had no facts to support this claim and abandoned it at summary judgment. CP at 4-6. One can only imagine the “hypothetical facts” Ms. Dehlin might have posed in support of her conspiracy claims. There was also no allegation that Ms. Dehlin had relinquished any interest in her animals, thus requiring Forget Me Not to bring that fact before the Court at summary judgment.

For these reasons, Forget Me Not determined that a motion for summary judgment was the more appropriate vehicle to seek dismissal of the suit and brought that motion in an expeditious manner. Ms. Dehlin’s contention that Forget Me Not ran up defense costs is all the more absurd because Ms. Dehlin insisted on taking the deposition of Respondent Kim Gillen after Forget Me Not moved for summary judgment, thereby delaying resolution of the case and increasing costs to everyone. CP at 214, 231-32. Furthermore, it is ironic for Ms. Dehlin to offer an argument that her claims were so clearly beyond the pale that Forget Me Not was dilatory as a matter of law in not having them thrown out of court sooner. This assertion only supports the trial court’s determination that Ms. Dehlin’s claims were frivolous under CR 11. Forget Me Not also notes that it was awarded only a fraction of its attorneys’ fees.

Finally, Ms. Dehlin claims that the trial court made no findings that counsel failed to engage in reasonable inquiry. However, the trial court specifically found that “[Ms. Dehlin] and her counsel did not have knowledge, information or belief based on a reasonable inquiry” that Ms. Dehlin’s claims for assault, negligent infliction of emotional distress, and intentional infliction of emotional distress were well grounded in fact and warranted by law. CP at 251. The trial court further found that Ms. Dehlin’s counsel “knew or reasonably should have known” that the causes of action were not well grounded in fact or warranted by law. CP at 252. *See Harrington v. Pailthorp*, 67 Wn. App. 901, 913, 841 P.2d 1258 (1992) (such finding is equivalent to statement that no reasonable inquiry was conducted). Ms. Dehlin has asserted no error as to these findings of fact on appeal.

Although Ms. Dehlin asserted no error, Ms. Dehlin’s counsel now claims that it engaged in reasonable inquiry because it relied on the facts set forth in Ms. Dehlin’s declaration. But Ms. Dehlin’s declaration was signed many months after filing of the Complaint and there is nothing in the record to indicate that Ms. Dehlin’s counsel relied on these factual allegations when filing the Complaint. CP at 62. Moreover, Ms. Dehlin’s declaration failed to establish a factual basis for any of her claims. In addition, an attorney’s “blind reliance” on a client’s statement of facts “will seldom

constitute a reasonable inquiry.” *Miller v. Badgley*, 51 Wn. App. 285, 301-02, 753 P.2d 530 (1988). Finally, the Declaration does not establish that Ms. Dehlin’s claims were well grounded in law.

The trial court was in the best position to assess the propriety of a fees award under CR 11 and Ms. Dehlin has not shown that the court abused its discretion in awarding a fraction of Forget Me Not’s fees incurred in defense of this frivolous suit. Therefore, the trial court’s award of CR 11 sanctions should be affirmed.

F. This Court should impose sanctions on appeal pursuant to RAP 18.9(a)

RAP 18.9 permits an award of attorneys’ fees to a prevailing respondent in a frivolous appeal. *Stiles*, 168 Wn. App. at 267. An appellant’s pursuit of a frivolous appeal “justifies the imposition of terms and compensatory damages.” *Eugster*, 139 Wn. App. at 34. An appeal is “frivolous” where it “presents no debatable issues on which reasonable minds could differ and is so lacking in merit that there is no possibility of reversal.” *Stiles*, 168 Wn. App. at 267 (citing *Mahoney v. Shinpoch*, 107 Wn. 2d 679, 691, 732 P.2d 510 (1987)).

In this case, Ms. Dehlin has failed to establish any merit to her appeal of the trial court’s sanctions under an abuse of discretion standard. *See Stiles*, 168 Wn. App. at 268. Moreover, Ms. Dehlin has failed to

establish any merit to appealing the civil conspiracy claim under a standard of clear, cogent and convincing evidence. Ms. Dehlin's claims on appeal are also entirely erroneous because she has made no attempt to explain how 1) the alleged invalidity of a warrant signed by a judge has any bearing on a claim against a private entity which did not and could not have obtained the warrant; 2) the alleged invalidity of Ms. Dehlin's relinquishment of rights in her animals, in exchange for avoiding prosecution by the prosecutor's office, has any bearing on a claim against a private entity which did not negotiate the relinquishment and has no power to prosecute Ms. Dehlin; and 3) Ms. Dehlin's claims are not further barred by public policy in favor of assisting law enforcement and statutory immunity for those who make complaints to law enforcement.

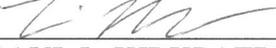
Even if this Court were to accept Ms. Dehlin's contentions that the warrant and the relinquishment should be declared invalid, it would have no bearing on her claims against Forget Me Not. This case is thus similar to *Mahoney v. Shinpoch*, where the Washington Supreme Court found the award of attorneys' fees appropriate under RAP 18.9 when the appellant's assertions, even if accepted, would offer no basis for relief on appeal. 107 Wn. 2d at 692. The Court should similarly award fees to Forget Me Not in this case.

VI. CONCLUSION

Forget Me Not respectfully requests that the Court affirm the trial court's rulings on summary judgment and in issuing sanctions against Ms. Dehlin. Forget Me Not further requests that the Court issue appropriate sanctions on appeal pursuant to RAP 18.9.

Respectfully submitted this 13th day of March, 2017.

KIRKPATRICK & STARTZEL, P.S.

By: 

PAUL L. KIRKPATRICK, WSBA # 16491
TIMOTHY J. NAULT, WSBA #47931
Attorneys for Defendants, Forget Me Not
Animal Shelter and Kim Gillen

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of March, 2017, I caused to be served a true and correct copy of the preceding document to the following attorney of record as follows:

Attorney for Appellant:

Douglas D. Phelps
Phelps and Associates, P.S.
2903 N. Stout Road
Spokane, WA 99206

Fax: 921-0802

Email: phelps@phelpslaw1.com

- Hand Delivery
- U.S. Mail
- By Legal Messenger
- Fax Transmission
- Email



Debby Glatt
Of Kirkpatrick & Startzel, P.S.