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No. 68763-8-I

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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HOSLEY SATTERWHITE, individually,

Appellant,

vs.

STATE OF WASHINGTON, UNIVERSITY OF WASHINGTON,

Respondent.

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APPEAL FROM THE SUPERIOR COURT  
FOR KING COUNTY  
THE HONORABLE HARRY J. MCCARTHY

---

BRIEF OF RESPONDENT

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## I. RESTATEMENT OF THE ISSUES

Plaintiff Holsey Satterwhite chose to resign from the University of Washington School of Social Work, rather than contest a charge of sexual harassment. He then sued the University alleging fifteen separate claims, ranging from assault to racial discrimination. Satterwhite agreed to voluntarily dismiss four of his claims and on summary judgment conceded that four more were frivolous. In an order unchallenged on appeal, the trial court granted summary judgment to the University dismissing the balance of his complaint. It then awarded sanctions under CR 11 and RCW 4.84.185 against Satterwhite and his counsel for pursuing claims that were “were not grounded in fact or law, are frivolous, and were advanced without reasonable cause.”

1. Did trial court adequately support its decision to award fees under CR 11 and RCW 4.84.185 by finding that the plaintiff’s “claims in this case were not grounded in fact or law, are frivolous, and were advanced without reasonable cause,” that plaintiff’s counsel “failed to make a reasonable inquiry into the law and facts with respect to Plaintiffs’ claims in this case,” and by

explaining in detail why the plaintiff's claims were baseless in its oral summary judgment ruling?

2. Are the trial court's findings awarding the University fees based on the "reasonable number of hours expended . . . defending against this frivolous action at reasonable hourly rates," reduced for "excess and apparent duplication," sufficient for appellate review?

## II. RESTATEMENT OF THE CASE

### A. **Satterwhite Does Not Challenge The Trial Court's Summary Judgment Order, Which Is Based Upon Uncontested Facts Supporting Its Award Of Sanctions.**

Satterwhite failed to timely appeal the trial court's summary judgment order dismissing his claims with prejudice and appeals only the trial court's order awarding the University's attorney's fees. (Comm. Ruling, July 10, 2012) The trial court's uncontested order granting summary judgment is the law of the case. "A grant of summary judgment is a final judgment on the merits with the same preclusive effect as a full trial." *DeYoung v. Cenex Ltd.*, 100 Wn. App. 885, 892, 1 P.3d 587 (2000), *rev. denied*, 146 Wn.2d 1016 (2002). *See also King Aircraft Sales, Inc. v. Lane*, 68 Wn. App. 706, 716, 846 P.2d 550 (1993) ("An unchallenged conclusion of law becomes the law of the case."). The University's restatement of the

case is based on the unchallenged and undisputed facts relied on by the trial court in dismissing Satterwhite's claims:

**B. After Hiring Satterwhite As A Teaching Assistant The University Received Complaints That Satterwhite Sexually Harassed A Student And Ultimately Chose Not To Renew Satterwhite's Contract.**

The University of Washington partnered with the State of Washington's Children Administration to form the Children's Welfare Teaching Assistance Program ("CWTAP"). (CP 47) The CWTAP provides a specialized Master's of Social Work degree focused on child welfare to graduate students enrolled in the University's School of Social Work. (CP 47-48)

In May 2008, appellant Holsey Satterwhite applied for a position as a CWTAP Teaching Associate. (CP 48) Satterwhite is an African-American male. (CP 2) Teaching Associates instruct, train, and supervise CWTAP students and implement the CWTAP training syllabus. (CP 48, 125) CWTAP Director Zynovia Hetherington interviewed Satterwhite and recommended he be hired. (CP 48) Associate Dean of the School of Social Work, Dr. Margaret Spearmon, and the Dean of the School of Social Work, Dr. Edwina Uehara, agreed. (CP 57-58, 65) Hetherington and

Spearmon are African-American women and Uehara is a Japanese-American woman. (CP 52, 60, 67)

Satterwhite accepted the University's offer of employment in September 2008. (CP 70) As a condition of his employment, Satterwhite agreed to be bound by the University's Faculty Code and University Handbook. (CP 70, 126-28)

In the fall of 2009, Tammy Inselman, a fellow Teaching Associate, received complaints from Tiffany McRae, a female CWTAP student, that Satterwhite had sexually harassed McRae. (CP 50, 54-55, 113-14) McRae alleged that Satterwhite repeatedly asked her about her personal life, invited her to attend non-school social events, and inappropriately touched her during a training session. (CP 50, 55, 113-14, 116-17) On November 24, 2009, Inselman and CWTAP Director Hetherington met with McRae and McRae repeated her complaints about Satterwhite's behavior. (CP 55, 114)

Hetherington relayed McRae's complaints to Associate Dean Spearmon. (CP 50, 58) On November 25, 2009, Hetherington and Spearmon met with Satterwhite and informed him of McRae's complaints. (CP 50, 58, 288) Satterwhite did not deny that he

invited McRae to attend social events or that he touched McRae during a training session, disputing only McRae's characterization of his actions as sexual. (CP 58, 138-39, 281-82, 318-19, 342) Spearmon explained to Satterwhite that the University would investigate the matter further and that he had the option of engaging the University's Ombudsman's Office. (CP 58, 150, 292) Satterwhite stated that he did not wish to engage the Ombudsman's Office and would rather resolve the matter internally. (CP 58, 150) After the meeting, Hetherington placed Satterwhite on home assignment until further notice. (CP 50)

Spearmon and Dean Uehara concluded that McRae's complaint alleged a violation of University policies, including those that prohibit sexual harassment. (CP 59, 65) Spearmon and Uehara requested to meet with Satterwhite again to discuss the allegations pursuant to the provision of the University Faculty Code that required that a faculty member alleged to have violated University policies be informed of the nature and specific content of the alleged violation. (CP 59, 66, 83) Spearmon reiterated McRae's allegations and allowed Satterwhite the opportunity to

respond. (CP 59) Satterwhite again did not deny his actions, but explained that he was trying to help McRae. (CP 59, 66)

Spearmon explained to Satterwhite that the Faculty Code gave Satterwhite the option to request conciliatory proceedings with the University's Ombudsman's Office, an investigation of the allegations by the University Complaint And Resolution Office, or to seek an agreed resolution. (CP 59, 346) Satterwhite stated that he did not want to involve the Ombudsman's Office and wanted to avoid a formal investigation. (CP 59)

After the meeting, Spearmon asked Hetherington to come up with other CWTAP duties that Satterwhite could perform through the end of his appointment that did not involve one-on-one contact with students, including McRae. (CP 51, 59, 346) Hetherington proposed a series of CWTAP assignments that provided Satterwhite with eighty percent full-time equivalent work. (CP 51) Uehara, Spearmon, and Hetherington agreed that this unique position would not be renewed at the end of its term. (CP 51, 59, 66)

Spearmon memorialized this proposal in a written letter to Satterwhite on December 17, 2009. (CP 62-63) The letter expressly provided that the position "will not be renewed" and

asked Satterwhite to sign the letter to “signify your voluntary agreement with all of the above terms.” (CP 62-63) Directly above the signature line the letter stated, “I AGREE TO AND ACCEPT ALL OF THE FOREGOING TERMS.” (CP 63) Satterwhite accepted the proposal, signed, and returned the letter on January 28, 2010. (CP 51, 62-63)

Satterwhite worked the full-term of his new position, which expired on June 30, 2010. (CP 62, 303) The University did not renew his position. In the summer of 2010 the University hired a new CWTAP Teaching Associate to fill the teaching position previously held by Satterwhite. (CP 52) This employee was an African-American female. (CP 52)

**C. Satterwhite Filed A Complaint Against The University Alleging Fifteen Different Claims, Including Claims For Assault, Battery, Negligent Supervision, And Retaliation.**

Satterwhite filed suit against the University alleging 15 separate claims: (1) Racial Discrimination, (2) Hostile Work Environment, (3) Disparate Treatment, (4) Disparate Impact, (5) Wrongful Discharge, (6) Unlawful Retaliation, (7) Negligence, (8) Negligent Infliction Of Emotional Distress, (9) Negligent Hiring, (10) Negligent Retention, (11) Negligent Supervision, (12) Intentional

Infliction Of Emotional Distress, (13) Outrage, (14) Assault, and (15) Battery. (CP 6)

In response to the University's interrogatories and requests for admissions, Satterwhite admitted that he was not assaulted or battered. (CP 189-90, 210) Satterwhite also admitted that he had not engaged in any protected activity under RCW ch. 49.60 that would support his retaliation claim. (CP 182) Satterwhite further admitted that his claim of negligent supervision was based on the University's failure to adequately supervise him. (CP 185)

After receiving Satterwhite's discovery responses the University's counsel, Seth Berntsen, wrote to Satterwhite's counsel, Thaddeus Martin, expressing his belief that all of Satterwhite's claims were frivolous and stating that the University intended to recover its fees if forced to file a motion for summary judgment. (CP 246) Martin agreed to dismiss Satterwhite's intentional infliction of emotional distress, outrage, assault, and battery claims, but refused to dismiss the remainder of Satterwhite's claims. (CP 16-17) Berntsen then reiterated to Martin his belief that Satterwhite's "entire case is meritless." (CP 252)

**D. The Trial Court Granted The University's Motion For Summary Judgment Stating That Satterwhite's Claims "Have No Substance Of Fact To Them And Appear To Be Frivolous."**

The University filed a motion for summary judgment on Satterwhite's remaining claims. (CP 18-46; *see also* CP 255-73, 347-53) Satterwhite asserts that "very little discovery" had occurred before the University filed its summary judgment motion (App. Br. 16), but in fact the University's motion was heard only two months before the discovery cutoff and four months before trial. (CP 609-615) During the twelve months that the case had been pending, the University had deposed Satterwhite, Satterwhite had deposed Hetherington, Uehara, and Spearmon (CP 122, 315, 327, 339), and had also answered the University's interrogatories, requests for production, and requests for admissions. (CP 119) Satterwhite did not move for a continuance of the summary judgment hearing under CR 56(f).

In his response to the University's summary judgment motion, Satterwhite conceded that his claims for negligence, negligent hiring, negligent retention, and negligent supervision were baseless. (CP 255) After hearing argument, King County Superior Court Judge Harry J. McCarthy ("the trial court") granted the

University's motion for summary judgment on all of Satterwhite's claims. (RP 34) Judge McCarthy explained that Satterwhite's evidence fell far short of creating a genuine issue of material fact on his discrimination claim:

The [U]niversity declarations and evidence that has been submitted convincingly show that the employment action taken was based on well-justified facts in response to the allegations that were being made. The actions taken were reasonable. There is no evidence that the Court has found that they were motivated by race, that they were racially disparate, or that they were illegal under any statute dealing with employment action.

(RP 33) Judge McCarthy similarly explained that Satterwhite failed to submit any evidence supporting his assertion that he agreed to his reduced position under duress. (RP 32) ("There is no evidence in the record that I could find [that] indicates that he was coerced into this agreement in any way")

Judge McCarthy likewise rejected Satterwhite's assertion that he suffered a hostile work environment because he could not participate in conversations with his female coworkers and because a coworker made an isolated comment regarding his race and gender. (CP 264) Judge McCarthy explained that Satterwhite's claim "falls far short . . . of amounting to a hostile work

environment. The case law indicates that it has to be a continuous pattern of hostile circumstances in an environment that a person is subjected to and far greater than the allegations made here by him.” (RP 32)

Judge McCarthy concluded by stating that “considering all the evidence that has been presented by the plaintiff in this case that in the Court’s opinions have no substance of fact to them and appear to be frivolous.” (RP 34) Judge McCarthy entered a written order dismissing all of Satterwhite’s claims with prejudice, (CP 389-90), and invited the University to file a motion seeking an award of attorney’s fees. (RP 34)

**E. The Trial Court Awarded The University Its Attorney’s Fees, Finding That Satterwhite’s Claims Were Frivolous And That His Counsel Violated CR 11 By Failing To Make A Reasonable Inquiry Into The Law And Facts Underlying Satterwhite’s Claims.**

After considering the summary judgment record and the University’s motion (CP 391-403; *see also* CP 486-500, 519-25), Judge McCarthy assessed fees and costs against Satterwhite and his trial counsel under CR 11 and RCW 4.84.185. (CP 552-54) In written findings that supported the award of sanctions, Judge McCarthy found that “Plaintiff Holsey Satterwhite’s claims in this

case were not grounded in fact or law, are frivolous, and were advanced without reasonable cause under RCW 4.84.185.” (FF 1, CP 553) Judge McCarthy further found that “Plaintiff’s counsel Thaddeus Martin failed to make a reasonable inquiry into the law and facts with respect to Plaintiffs’ claims in this case as required by CR 11.” (FF 2, CP 553)

Judge McCarthy reviewed the University’s fee request and supporting documentation (CP 404-09, 454-85, 526), and found that the University incurred \$78,968.25 as “the reasonable fees and costs . . . in defending this suit.” (CP 553) Judge McCarthy included in the order his calculation of attorney’s fees and reduced the University’s request for fees to account for “excess and apparent duplication.” (CP 554)

Judge McCarthy entered a \$78,968.25 principal judgment against Satterwhite and Martin jointly and severally. (CP 594-96) The judgment amount represents “the reasonable number of hours expended by the University in defending against this frivolous action at reasonable hourly rates, plus necessary costs.” (CP 595)

Satterwhite and his counsel attempted to appeal both the order of dismissal as well as Judge McCarthy’s award of fees to the

University under CR 11 and RCW 4.84.185. (CP 587-88) This court's commissioner dismissed Satterwhite's appeal of the judgment of dismissal as untimely. (Comm. Ruling, July 10, 2012)

### III. ARGUMENT

#### A. **Giving Deference To The Trial Court's Sanctions Award, This Court Reviews An Award Of Fees Under CR 11 And RCW 4.84.185 For Manifest Abuse Of Discretion.**

This court reviews a trial court's decision to award fees under CR 11 and RCW 4.84.185 for an abuse of discretion. ***State ex rel. Quick-Ruben v. Verharen***, 136 Wn.2d 888, 903, 969 P.2d 64 (1998) (App. Br. 10). This "deference accounts for the trial judge's personal and sometimes exhaustive contact with the case." ***Skimming v. Boxer***, 119 Wn. App. 748, 754, 82 P.3d 707, *rev. denied*, 152 Wn.2d 1016 (2004) (App. Br. 11). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or reasons. ***Reid v. Dalton***, 124 Wn. App. 113, 125, 100 P.3d 349 (2004), *rev. denied*, 155 Wn.2d 1005 (2005) (App. Br. 11). This court also reviews the amount of a trial court's attorney's fee award for an abuse of discretion. 124 Wn. App. at 127.

**B. The Trial Court Did Not Abuse Its Discretion By Awarding The University Its Fees Under CR 11 Because All Of Satterwhite's Claims Were Baseless And Because His Counsel Failed To Conduct A Reasonable Inquiry Into The Facts And Law Underlying Satterwhite's Claims.**

Judge McCarthy properly exercised his discretion in awarding fees incurred by the University in defending Satterwhite's frivolous claims. Appellants concede that all but two of Satterwhite's fifteen claims were baseless. Appellants rely on the doctrine that a complaint must be frivolous as a whole to challenge the trial court's sanctions award. However, Satterwhite's discrimination and hostile work environment claims – the only claims Satterwhite and his counsel now attempt to defend – were devoid of any legal or factual support. This court should affirm Judge McCarthy's discretionary decision to award the University its fees.

The Supreme Court adopted CR 11 “to deter baseless filings and to curb abuses of the judicial system.” *In re Marriage of Rich*, 80 Wn. App. 252, 258, 907 P.2d 1234 (citing *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 219, 829 P.2d 1099 (1992)), *rev. denied*, 129 Wn.2d 1031 (1996). CR 11 thus requires an attorney

to certify that every pleading is well grounded in fact and warranted by law, and not filed for an improper purpose:

The signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion, or legal memorandum, and that to the best of the party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact ; (2) it 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; (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation . . . .

CR 11 authorizes a court to impose on an attorney, on a represented party, or both "an appropriate sanction, which may include an order to pay . . . a reasonable attorney fee."

A court may award fees under CR 11 where a filing is "not well grounded in fact and warranted by law" and the signing person failed to conduct a reasonable inquiry, or where a filing is "interposed for any improper purpose." *Harrington v. Pailthorp*, 67 Wn. App. 901, 912, 841 P.2d 1258 (1992) (internal quotations and alterations omitted), *rev. denied*, 121 Wn.2d 1018 (1993); see also *King County Water Dist. No. 90 v. City of Renton*, 88 Wn. App. 214, 230, 944 P.2d 1067 (1997) (CR 11 "prohibits filings that

lack legal or factual bases, and those that are interposed for an improper purpose”). A court “uses an objective standard to determine whether a reasonable attorney in like circumstances could believe his or her actions to be factually and legally justified.” **Madden v. Foley**, 83 Wn. App. 385, 390, 922 P.2d 1364 (1996) (quotation removed).

Because of the deference given to the trial court’s first hand familiarity with the conduct of litigation, Washington courts routinely affirm fee awards under CR 11 where, as here, the trial court found that a reasonable inquiry would have revealed that a filing is not well grounded in fact or law. **Madden**, 83 Wn. App. at 390 (affirming fee award under CR 11 where “ cursory review” would have revealed that claim was premature); **Manteufel v. Safeco Ins. Co. of Am.**, 117 Wn. App. 168, 176, 68 P.3d 1093 (2003) (affirming fee award where inquiry would have revealed that plaintiff’s claim was factually impossible), *rev. denied*, 150 Wn.2d 1021; **Harrington**, 67 Wn. App. at 911 (“exhaustive research” of law review articles did not constitute reasonable inquiry).

Judge McCarthy did not abuse his discretion by finding that Satterwhite’s claims were not grounded in fact or law and that

Martin failed to conduct a reasonable inquiry into Satterwhite's claims. (FF 1-2, CP 553) Satterwhite's complaint alleged fifteen claims, including assault, battery, outrage, intentional infliction of emotional distress, retaliation, and negligent supervision. Satterwhite argues on appeal only that his claims for discrimination and a hostile work environment did not violate CR 11 (App. Br. 17-19) and thus concedes that his remaining claims violated CR 11. *See Collins v. Clark County Fire Dist. No. 5*, 155 Wn. App. 48, 95-96, ¶109, 231 P.3d 1211 (2010) ("Under the Rules of Appellate Procedure, an appellant's brief must include arguments supporting the issues presented for review and citations to legal authority.") (quotation removed).

Indeed, Satterwhite conceded below that he had no evidence to support the vast majority of his claims. (CP 182 (conceding that Satterwhite did not engage in a protected activity that would support his retaliation claim), CP 189-90 (conceding Satterwhite was not assaulted or battered), CP 210 (same)) Satterwhite conceded in his response to the University's motion for summary judgment that all of his negligence-based claims were

baseless. (CP 255)<sup>1</sup> At argument on the University's summary judgment motion, Satterwhite's counsel further admitted that Satterwhite's "claim of disparate impact is a weak claim" and that "there are some claims that probably should go away." (RP 23-24; see also App. Br. 23 ("many of Satterwhite's causes of action might have been tenuous at best"))

The University repeatedly warned Satterwhite's counsel that Satterwhite's claims lacked a legal and factual basis, but Satterwhite dismissed only those claims that were the most patently baseless. (CP 16-17, 246, 252) But even Satterwhite's remaining claims lacked a legal and factual basis, and the decision to continue pressing them more than justified Judge McCarthy's award of attorney's fees. *Manteufel*, 117 Wn. App. at 177 (affirming fee award where defendant warned plaintiff that his

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<sup>1</sup> Even a cursory review of legal authority would have revealed that Satterwhite's negligent hiring, retention, and supervision claims should have never been brought in the first place because they were based on the University's allegedly negligent supervision of Satterwhite. (CP 185-86) See *Lynn v. Labor Ready, Inc.*, 136 Wn. App. 295, 306-07 n.9, ¶26, 151 P.3d 201 (2006) (negligent hiring and retention claims require plaintiff to prove injury caused by employee other than plaintiff); *Steinbock v. Ferry County Pub. Util. Dist. No. 1*, 165 Wn. App. 479, 490-91, ¶22, 269 P.3d 275 (2011) (negligent supervision is "a negligent act or omission that presents an unreasonable risk of harm to another through the foreseeable action of a *third party*") (emphasis added).

claims lacked a legal or factual basis but plaintiff persisted in pursuing claims).

**1. A Reasonable Inquiry Would Have Revealed That Satterwhite's Race Discrimination Claim Lacked A Factual And Legal Basis On Numerous Accounts.**

Satterwhite's discrimination claim lacked a legal and factual basis for at least three separate reasons: Satterwhite failed to allege that he suffered an adverse employment action, Satterwhite failed to present any evidence to overcome the "same actor" inference, and Satterwhite failed to present any evidence that the University's reasons for its actions were pretextual. Judge McCarthy did not abuse his discretion in concluding that Satterwhite's discrimination claim violated CR 11.

**a. Satterwhite's Resignation Was Not An Adverse Employment Action.**

To establish a prima facie case of discrimination due to disparate treatment under RCW 49.60.180 a plaintiff must show that (1) he is in a protected class; (2) suffered an adverse employment action; (3) was doing satisfactory work; and (4) was treated differently than someone not in the protected class. *Kirby v. City of Tacoma*, 124 Wn. App. 454, 468, 98 P.3d 827 (2004), *rev. denied*, 154 Wn.2d 1007 (2005). Here, a reasonable inquiry

would have revealed that Satterwhite's decision to voluntarily resign his position was not an adverse employment action as a matter of law. *Travis v. Tacoma Pub. Sch. Dist.*, 120 Wn. App. 542, 551, 85 P.3d 959 (2004) ("An employee's resignation is presumed voluntary and the employee bears the burden of rebutting this presumption."); *Townsend v. Walla Walla Sch. Dist.*, 147 Wn. App. 620, 628, ¶18, 196 P.3d 748 (2008) ("[A]n undesirable work situation does not, in itself, obviate the voluntariness of a resignation.").

As Judge McCarthy explained, "There is no evidence in the record that . . . indicates that [Satterwhite] was coerced into this agreement in any way." (RP 32) Satterwhite does not and cannot dispute on appeal that he voluntarily signed the agreement. Satterwhite voluntarily resigned his position in order to forego a formal investigation and possible termination for cause, and to ensure his continued employment for six months.

Satterwhite's assertion of being "uncomfortable" in a mostly female office because he could not participate in certain conversations fails to establish any basis for asserting that the University took adverse action against him because of his race or

gender. (App. Br. 18) Even if true, this allegation would not constitute “a change in employment conditions.” **Kirby**, 124 Wn. App. at 465; RCW 49.60.190(3) (employer may not discriminate in “terms or conditions of employment”). “Adverse employment action means a tangible change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.” **Crownover v. State ex rel. Dept. of Transp.**, 165 Wn. App. 131, 148, ¶40, 265 P.3d 971 (2011), *rev. denied*, 173 Wn.2d 1030 (2012).

No court has ever held that an employee’s inability to participate in conversations held by coworkers qualifies as an adverse action and, indeed, courts have held just the opposite. **Manatt v. Bank of America, NA**, 339 F.3d 792, 803 (9th Cir. 2003) (no adverse action where supervisor “allowed [plaintiff]’s coworkers to be mean to her”); **Brooks v. City of San Mateo**, 229 F.3d 917, 929 (9th Cir. 2000) (“Because an employer cannot force employees to socialize with one another, ostracism suffered at the hands of coworkers cannot constitute an adverse employment action.”). Satterwhite’s claim of feeling “uncomfortable” falls far

short of the type of truly abusive, intimidating, and severe conduct for which the law provides a remedy.

Satterwhite's claim that he was "scrutinized more closely" than his female co-workers, even if true, also fails to establish an adverse action. (App. Br. 18) According to Satterwhite, his supervisors asked him "tedious questions," but failed to ask the same questions of his female counterparts. (CP 306) Being subjected to additional questions is at most an "inconvenience" and again falls far short of a change in pay, benefits, responsibilities, or other adverse action that would constitute an actionable change in the conditions of employment. *Kirby*, 124 Wn. App. at 465.

Satterwhite's claim that a female co-worker was not asked "tedious questions" fails for the additional reason that he bases it entirely on his own inadmissible hearsay account of statements allegedly made by that female coworker. (CP 306; CP 349 n.4) Such evidence cannot support a discrimination claim. *Payne v. Children's Home Soc. of Washington, Inc.*, 77 Wn. App. 507, 515, 892 P.2d 1102 (1995) (affirming summary judgment dismissal of plaintiff's discrimination claim because plaintiff's "own statements regarding the treatment of other employees were conclusory and

constituted inadmissible hearsay”), *rev. denied*, 127 Wn.2d 1012. Without any evidence of an adverse action, Satterwhite's claim had no basis in fact or law. ***MacDonald v. Korum Ford***, 80 Wn. App. 877, 888, 912 P.2d 1052 (1996) (trial court did not abuse its discretion in concluding that attorney violated CR 11 by continuing to pursue discrimination claims after plaintiff's deposition revealed that claims could not be established) (App. Br. 12, 21).

**b. Satterwhite Did Not Present Any Evidence To Overcome The “Same Actor” Inference.**

Satterwhite's discrimination claim lacked a legal basis because he could not rebut the “same actor inference.” “When someone is both hired and fired by the same decisionmakers within a relatively short period of time, there is a strong inference that he or she was not discharged because of any attribute the decisionmakers were aware of at the time of hiring.” ***Hill v. BCTI Income Fund-I***, 144 Wn.2d 172, 189, 23 P.3d 440 (2001), *overruled on other grounds by McClarty v. Totem Elec.*, 157 Wn.2d 214, 137 P.3d 844 (2006).

The same parties Satterwhite accused of discriminating against him based on his gender and race were the same parties that hired him. (CP 48, 57, 65) Satterwhite presented no evidence

to challenge, let alone overcome, this strong inference. Nor has Satterwhite ever offered an explanation for why University employees who were also African-American would discriminate against him on the basis of his race or how the University racially discriminated against him when the person who replaced him is an African-American. **MacDonald**, 80 Wn. App. at 890 (discrimination claim lacked a factual basis where plaintiff was not replaced with someone outside protected class).

**c. Satterwhite Failed To Present Any Evidence That The University's Reasons For Its Actions Were Pretextual.**

Satterwhite presented no evidence demonstrating that the University's reasons for not renewing his position were pretextual. **Domingo v. Boeing Employees' Credit Union**, 124 Wn. App. 71, 87, 98 P.3d 1222 (2004) (employee's discrimination claim failed because employee presented no evidence that employer's stated reasons for termination were "unworthy of belief or mere pretext"). The University acted reasonably in deciding not to renew Satterwhite's position based on allegations that Satterwhite had sexually harassed a student. 124 Wn. App. at 87 ("harassing behavior is a legitimate reason for termination").

Satterwhite could demonstrate pretext only by presenting evidence that the University did not believe in good faith that Satterwhite engaged in inappropriate conduct. 124 Wn. App. at 89 (rejecting employee's claim of pretext where employee did not dispute that coworkers complained about the employee's conduct, but rather complained "that management did not listen to her side of the story"); see also *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1063 (9th Cir. 2002) ("courts only require that an employer honestly believed its reason for its actions, even if its reason is foolish or trivial or even baseless.") (internal quotations and citation omitted). Satterwhite has never denied that he engaged in the conduct underlying the student's allegations of sexual harassment nor presented any evidence that the University did not believe in good faith that he engaged in inappropriate conduct. His trial counsel either ignored or was ignorant of this well-established law when he repeatedly argued that Satterwhite's claims should survive summary judgment because there was an issue of fact regarding whether Satterwhite actually committed sexual harassment. (RP 16-20; CP 256-57, 496)

Any reasonable inquiry would have revealed that Satterwhite's discrimination claim lacked a factual and legal basis. Yet, Martin and Satterwhite persisted in pressing the claim even after the University's counsel informed them that the claim was baseless. Far from abusing his discretion, Judge McCarthy appropriately awarded the University the fees it incurred in defending Satterwhite's discrimination claim.

**2. Satterwhite's Hostile Work Environment Claim Lacked Any Factual Or Legal Basis Because The Allegedly Hostile Conduct Fell Far Short Of Affecting The Terms Or Conditions Of His Employment.**

Satterwhite's assertion that he felt "uncomfortable" being unable to participate in conversations with his female coworkers and that a coworker made a single comment about his race and gender cannot – as a matter of law – establish a hostile work environment. Martin and Satterwhite pursued this claim even in the face of the University's warning that it was baseless. Judge McCarthy did not abuse his discretion in finding that Satterwhite's hostile work environment claim violated CR 11.

"To establish a hostile work environment claim, an employee must allege facts proving that harassment (1) was unwelcome, (2)

was because he is a member of a protected class, (3) affected the terms and conditions of his employment, and (4) was imputable to his employer.” ***Davis v. Fred’s Appliance, Inc.***, \_\_ Wn. App. \_\_, ¶¶25, 287 P.3d 51, 2012 WL 5208505 (2012). “Casual, isolated or trivial manifestations of a discriminatory environment do not affect the terms or conditions of employment to a sufficiently significant degree to violate the law.” ***Washington v. Boeing Co.***, 105 Wn. App. 1, 10, 19 P.3d 1041 (2000); ***Davis***, \_\_ Wn. App. at ¶¶32-33 (offensive reference made three times in one week did not alter terms of employment); ***MacDonald v. Korum Ford***, 80 Wn. App. 877, 886, 912 P.2d 1052 (1996) (“isolated indiscretion cannot support a hostile environment claim”; fee award under CR 11 was proper where plaintiff’s hostile work environment claim was based on isolated incidents) (App. Br. 12, 21); ***Manatt v. Bank of America, NA***, 339 F.3d 792, 798-99 (9th Cir. 2003) (isolated incidents of “racially insensitive” humor did not create hostile work environment).

The only conduct that Satterwhite alleges created a hostile work environment is that he felt “uncomfortable” because he could not participate in conversations with his female coworkers and that

an unnamed female co-worker said “you know how y’all black men are” during a training session. (App. Br. 19 (citing CP 308, 312-13)) The fact that Satterwhite could not participate in all conversations held by his female coworkers falls far short of affecting the terms or conditions of his employment. Likewise, one isolated comment by a coworker that Satterwhite admitted was never repeated (CP 163) cannot create a hostile work environment as a matter of law. **Washington**, 105 Wn. App. at 10.

Had Martin conducted a reasonable investigation he would have discovered that Satterwhite’s hostile work environment claim lacked a legal and factual basis. Judge McCarthy did not abuse his discretion in concluding that Satterwhite’s hostile work environment claim violated CR 11.

**C. Judge McCarthy Did Not Abuse His Discretion In Finding That Satterwhite’s Action Was Frivolous Under RCW 4.84.185.**

Judge McCarthy also did not abuse his discretion in finding that Satterwhite’s claims were “frivolous and advanced without reasonable cause” under RCW 4.84.185. (FF 1, CP 553) RCW 4.84.185 vests in the trial court discretion to require a party who brings a frivolous suit to pay the opposing party’s attorney fees:

In any civil action, the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense. . . .

“The purpose of RCW 4.84.185 is to discourage frivolous lawsuits and to compensate the targets of such lawsuits for fees and expenses incurred in fighting meritless cases.” **Kearney v. Kearney**, 95 Wn. App. 405, 416, 974 P.2d 872 (1999) (quotation removed), *rev. denied*, 138 Wn.2d 1022. An action is frivolous if it “cannot be supported by any rational argument on the law or facts.” **Layne v. Hyde**, 54 Wn. App. 125, 135, 773 P.2d 83 (1989). RCW 4.84.185 applies to actions that are frivolous as a whole. **State ex rel. Quick-Ruben v. Verharen**, 136 Wn.2d 888, 903, 969 P.2d 64 (1998) (App. Br. 10, 12, 23).

Satterwhite’s assertion that a court cannot award fees under RCW 4.84.185 unless it finds that an action is “both meritless *and* interposed for purposes of delay, nuisance, spite, or harassment” (App. Br. 22-23) (emphasis in original), is unsupported by law. “Nothing in the statute requires a court to find that the action was

brought in bad faith or for purposes of delay or harassment.” *Highland Sch. Dist. No. 203 v. Racy*, 149 Wn. App. 307, 311, ¶7, 202 P.3d 1024 (2009).

All of Satterwhite’s claims lacked a legal and factual basis and thus could not be supported by “any rational argument on the law or facts.” *Quick-Ruben*, 136 Wn.2d at 905 (affirming award of fees under CR 11 and RCW 4.84.185); *Layne*, 54 Wn. App. at 135 (same); *Harrington v. Pailthorp*, 67 Wn. App. 901, 911, 841 P.2d 1258 (1992) (same). Judge McCarthy did not abuse his discretion in determining that Satterwhite’s action against the University was frivolous and warranted the imposition of fees under RCW 4.84.185.

**D. Judge McCarthy’s Findings And His Oral Decision Support His Decision To Award The University Its Fees Incurred In Defending Against Satterwhite’s Baseless Lawsuit.**

Judge McCarthy found that Satterwhite’s claims violated CR 11 and RCW 4.84.185 because they “were not grounded in fact or law” and that “Martin failed to make a reasonable inquiry into the law and facts.” (FF 1-2, CP 553) These findings are all the law requires. Judge McCarthy appropriately exercised his discretion in setting the amount of the fee award and reduced the fees sought by

the University based on a finding that some of the fees were the result of “excess and apparent duplication.” (CP 554) Judge McCarthy’s written findings and his oral summary judgment ruling fully support his decision to award the University its attorney’s fees.

Where a trial court imposes sanctions under CR 11, “[t]he court must make a finding that either the claim is not grounded in fact or law and the attorney or party failed to make a reasonable inquiry into the law or facts, or the paper was filed for an improper purpose.” *McNeil v. Powers*, 123 Wn. App. 577, 591, 97 P.3d 760 (2004) (quoting *Biggs v. Vail*, 124 Wn.2d 193, 201, 876 P.2d 448 (1994)). Likewise, RCW 4.84.185 requires “written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause.”

Here, Judge McCarthy adequately documented the basis for his decision to award the University its fees under CR 11 and RCW 4.84.185. Judge McCarthy expressly found that “Plaintiff Holsey Satterwhite’s claims in this case were not grounded in fact or law, are frivolous, and were advanced without reasonable cause under RCW 4.84.185.” (FF 1, CP 553) Judge McCarthy further found that “Plaintiff’s counsel Thaddeus Martin failed to make a

reasonable inquiry into the law and facts with respect to Plaintiffs' claims in this case as required by CR 11." (FF 2, CP 553)

These findings that Satterwhite's claims were baseless and frivolous, and that Martin failed to conduct a reasonable inquiry, are all that CR 11 and RCW 4.84.185 require. See **McNeil**, 123 Wn. App. at 591 (affirming fee award based on trial court's finding that the "complaint, drafted and signed by Mr. Caruso, was a frivolous and vexatious action . . . without basis in law or fact and solely for the purpose of harassing these moving defendants"); **Madden v. Foley**, 83 Wn. App. 385, 389, 922 P.2d 1364 (1996) (affirming fee award despite trial court's failure to enter specific findings because the "order dismissing the complaint indicate the basis upon which the court imposed sanctions under the rule (baseless filing)").

Satterwhite ignores that Judge McCarthy *did* explain why he believed Satterwhite's discrimination and hostile work environment claims – the only claims he argues were not baseless – lacked a

legal or factual basis in his summary judgment ruling.<sup>2</sup> See **Gay v. Cornwall**, 6 Wn. App. 595, 599, 494 P.2d 1371 (1972) (“an appellate court may look to the trial court’s oral opinion and, if consistent with the written findings, hold that the trial court determined the issue”); **In re Marriage of Croley**, 91 Wn.2d 288, 292, 588 P.2d 738 (1978) (affirming because “[t]he trial judge’s oral opinion and the factual findings clearly indicate that the statutory factors were weighed” in determining child custody).

Judge McCarthy rejected Satterwhite's discrimination claim because Satterwhite failed to present any evidence that his voluntary resignation was an adverse action or that the University's reasons for its actions were pretextual. (RP 32 (“There is no

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<sup>2</sup> This case is thus distinguishable from the cases cited by Satterwhite. (See App. Br. 11-14) Further, in **N. Coast Elec. Co. v. Selig**, 136 Wn. App. 636, 649, ¶31, 151 P.3d 211 (2007), unlike here, the party moving for fees under CR 11 waited over a year to notify the opposing party that it believed its claims warranted sanctions. In **Blair v. GIM Corp., Inc.**, 88 Wn. App. 475, 945 P.2d 1149 (1997), the court remanded for additional findings because it could not “determine from this record that the trial court conducted any inquiry into the reasonableness of Mr. Blair’s actions,” whereas here the trial court expressly found that “Plaintiff’s counsel Thaddeus Martin failed to make a reasonable inquiry into the law and facts.” Compare CP 553 with 88 Wn. App. at 482. **McCausland v. McCausland**, 159 Wn.2d 607, 152 P.3d 1013 (2007), and **In re Marriage of Horner**, 151 Wn.2d 884, 93 P.3d 124 (2004), did not concern fee awards, but rather remanded for additional findings because the trial court did not consider all required statutory factors when calculating a child support award and considering child relocation. **McCausland**, 159 Wn.2d at 620, ¶¶28-29; **Horner**, 151 Wn.2d at 896-97.

evidence in the record that I could find [that] indicates that he was coerced into this agreement in any way”), 33 (“[t]here is no evidence that . . . [the University’s actions] were motivated by race, that they were racially disparate, or that they were illegal under any statute dealing with employment action.”)

Judge McCarthy found that Satterwhite’s hostile work environment claim fell “far short” because “[t]he case law indicates that it has to be a continuous pattern of hostile circumstances in an environment that a person is subjected to and far greater than the allegations made here by him.” (RP 32) Judge McCarthy correctly concluded that Satterwhite’s allegations of feeling “uncomfortable” failed to establish a hostile work environment as a matter of law. See § III.A.2.

Judge McCarthy did not abuse his discretion in setting the amount of fees. Contrary to Satterwhite’s assertion that Judge McCarthy “gave no explanation for the amount of sanctions” (App. Br. 13), Judge McCarthy showed how he arrived at the fee award based on the University’s documented fee request, including a reduction in fees to account for “excess and apparent duplication.” (CP 554; *see also* CP 404-09, 454-85, 526 (documenting in detail

time expended and fees incurred responding to Satterwhite's claims))<sup>3</sup>

This court will not remand a case for further findings where, as here, a remand would be useless and only cause further delay. **McNeil**, 123 Wn. App. at 591; **Madden**, 83 Wn. App. at 389; **Steele v. Lundgren**, 96 Wn. App. 773, 781-82, 982 P.2d 619 (1999) (affirming fee award even though “the trial court’s findings and

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<sup>3</sup> The cases cited by Satterwhite further illustrate why Judge McCarthy appropriately exercised his discretion in setting the amount of the fee award. In **Mahler v. Szucs**, 135 Wn.2d 398, 957 P.2d 632 (1998) (App. Br. 11), the Court remanded for additional findings because the Court could not “discern from the record if the trial court thought the services of four different sets of attorneys were reasonable or essential to the successful outcome” or “if the trial court considered if there were any duplicative or unnecessary services.” 135 Wn.2d at 435. Here, however, Judge McCarthy explicitly found that the hours expended by the University and counsel's hourly rates were reasonable, and reduced the fee award to account for duplicative fees. (CP 553-54, 595) In **MacDonald v. Korum Ford**, 80 Wn. App. 877, 912 P.2d 1052 (1996) (App. Br. 12), the court remanded for additional findings because the trial court appeared to have awarded duplicative fees generated by a second attorney and because the moving party failed to notify the opposing party that she believed continued pursuit of the case violated CR 11. 80 Wn. App. at 892-93. Here, Judge McCarthy reduced the amount of the award to account for duplicative fees and the University notified Satterwhite from the outset that it believed his claims were frivolous. (CP 246, 252, 554) In **Just Dirt, Inc. v. Knight Excavating, Inc.**, 138 Wn. App. 409, 157 P.3d 431 (2007) (App. Br. 14), the court remanded because the trial court failed to limit its award to the fees generated by the sanctionable conduct. 138 Wn. App. at 418, ¶36. Here, Judge McCarthy found Satterwhite's action was frivolous as a whole and that the fees awarded were “the sum of the reasonable number of hours expended by the University in defending against this frivolous action at reasonable hourly rates.” (CP 595; see also CP 553)

conclusions could have been more thorough” because “it is clear that the court was satisfied with the evidence Steele presented in support of her petition”), *rev. denied*, 139 Wn.2d 1026 (2000); **King County Water Dist. No. 90 v. City of Renton**, 88 Wn. App. 214, 232, 944 P.2d 1067 (1997) (affirming award of sanctions because trial court’s award of sanctions in amount less than requested was “an implicit finding that that amount was reasonable”). See also **Little v. King**, 160 Wn.2d 696, 707, ¶25, 161 P.3d 345 (2007) (trial court’s implied findings regarding damages were sufficient to allow appellate review and support default judgment).

Courts are even more hesitant to remand for additional findings where, as here, the material facts are undisputed. **State v. Mecca Twin Theater & Film Exch., Inc.**, 82 Wn.2d 87, 93, 507 P.2d 1165 (1973) (“Where there is no dispute of fact, the remanding of a case for formal findings is a useless and unnecessary act in which this court will not engage.”); **Unifund CCR Partners v. Sunde**, 163 Wn. App. 473, 484-85, ¶24, 260 P.3d 915 (2011) (affirming award of attorney’s fees despite failure to enter formal findings because appellant did not contest any facts); **LaHue v. Keystone Inv. Co.**, 6 Wn. App. 765, 775-76, 496 P.2d

343 (1972) (“it is unnecessary to remand the case for the purpose of making findings on the undisputed facts when we ourselves can do so”), *rev. denied*, 81 Wn.2d 1003; ***Marsh v. Merrick***, 28 Wn. App. 156, 160-61, 622 P.2d 878 (1981) (affirming trial court’s dismissal of suit for laches despite absence of finding regarding injury because the record “contain[ed] undisputed evidence that . . . [was] sufficient to establish injury as a matter of law”). This court should refuse to prolong this frivolous litigation by remanding for further findings where the trial court clearly explained its conclusion that all of Satterwhite’s claims warranted an award of attorney’s fees.

**E. The University Is Entitled To Its Fees On Appeal.**

Satterwhite and his counsel pursued on appeal Satterwhite’s baseless claims until they were dismissed by this court. CR 11 and RCW 4.84.185 authorize an award of attorney’s fees incurred on appeal where a party successfully defends a fee award entered by the trial court. ***Reid v. Dalton***, 124 Wn. App. 113, 128, 100 P.3d 349 (2004) (appeal of fee award under RCW 4.84.185 warranted fees on appeal because, the litigant “pursued the meritless claim through this appeal despite the prevailing party’s attempts to alert

him to the defects in his case early in the proceedings”) (App. Br. 11); ***Manteufel v. Safeco Ins. Co. of Am.***, 117 Wn. App. 168, 178, 68 P.3d 1093 (2003) (appeal of fee award under CR 11 warranted award of “additional legal fees and costs in defending against this frivolous lawsuit on appeal”); ***Harrington v. Pailthorp***, 67 Wn. App. 901, 913, 841 P.2d 1258 (1992) (same); *see also* RAP 18.9(a). “An appeal is frivolous if there are no debatable issues upon which reasonable minds might differ and it is so totally devoid of merit that there was no reasonable possibility of reversal.” ***Reid***, 124 Wn. App. at 128.

Despite repeated warnings that his claims were frivolous, despite summary dismissal of his claims, and despite findings that his claims were both baseless and advanced without reasonable investigation, Satterwhite continues to argue that he was justified in bringing his claims against the University by challenging the fee award. This court should grant the University its fees incurred on appeal in continuing to defend against this frivolous litigation.

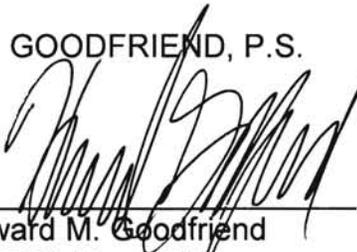
**IV. CONCLUSION**

This court should affirm the trial court's award of fees to the University and should award the University its fees on appeal.

Dated this 15<sup>th</sup> day of November, 2012.

SMITH GOODFRIEND, P.S.

GARVEY SCHUBERT BARER

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### DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on November 16, 2012, I arranged for service of the foregoing Brief of Respondent, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division I One Union Square 600 University Street Seattle, WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> E-Mail
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**DATED** at Seattle, Washington this 16<sup>th</sup> day of November, 2012.

  
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Victoria K. Isaksen