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NO. 46095-5  
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

STATE OF WASHINGTON  
BY GA  
DEPUTY

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Douglas Verdier,

Plaintiff/Appellant,

vs.

Gregory Bost and Laurie Bost,

Defendants/Respondents,

vs.

Todd Verdier,

Counterclaim Defendant/Appellant.

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APPEAL FROM THE SUPERIOR COURT

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HONORABLE BARBARA JOHNSON

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BRIEF OF APPELLANTS

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ASSIGNMENT OF ERROR AND ISSUES PRESENTED

Assignment of Error No. 1: The trial court erred by entering the Order Denying Counterclaim Defendants' Motion to Strike.

Issues Presented:

1. Can a party escape the sanctions allowed by RCW 4.24.510 and RCW 4.24.525, Washington's anti-SLAPP statutes, by amending his or her pleadings after a motion to strike is filed?
2. Are Douglas Verdier and Todd Verdier entitled to an award of attorney's fees on appeal?

Issues on Remand:

1. Are both Douglas Verdier and Todd Verdier entitled to an award of statutory damages and attorney's fees?
2. Must each of the Bosts pay an award of statutory damages to both Douglas Verdier and Todd Verdier?
3. Must statutory damages be assessed for each alleged report to a public agency?

STATEMENT OF THE CASE

This case began as a garden variety boundary line dispute. As the pleadings show, the essence of the dispute is agreed. The parties live on adjoining parcels on the south side of Washougal River Road in rural

Clark County. Plaintiff Douglas Verdier contends that the boundary between the two parcels is fence line that had long been in existence. Gregory Bost and Laurie Bost contend that the boundary line should be based on a survey. Mr. Verdier owns a separate parcel on the north side of Washougal River Road. A well located on that parcel currently serves both the Verdier property and the Bost property. There are also disputes concerning the use and maintenance of that well. Mr. Verdier filed his complaint on January 30, 2013. The issues were joined when the Bosts filed their Answer and Affirmative Defenses on February 20, 2013. (CP 1-7)

By December of 2013, the Bosts obtained new counsel, and filed Defendants' Amended Answer, Affirmative Defenses and Counterclaims. The pleading included the Fifth Counterclaim against Douglas Verdier and Todd Verdier—Douglas Verdier's son—alleging negligent infliction of emotional distress. It contained the following pertinent allegations:

25. The actions of plaintiff and Todd Verdier, who acted in concert or pursuant to a civil conspiracy, negligently inflicted emotional distress upon both defendants.
26. Furthermore, plaintiff and/or Todd Verdier have engaged in additional conduct and the result of which was to negligently inflict emotional distress upon defendants. The conduct includes:

- a. Falsely reporting to the Clark County Department of Health that raw sewage was seeping from defendants' property and entering the Washougal River;
- b. Falsely reporting to the Washougal Fire Department that defendants' campfire in their riverside fire pit was an unmaintained and out of control fire. . .

On February 14, 2014, Todd Verdier moved to strike the allegations in Paragraph 26(a) and 26(b) above based upon Washington's anti-SLAPP statutes, RCW 4.24.510 and RCW 4.24.525. He sought an award of attorney's fees together with statutory damages. Douglas Verdier joined in his son's motion and made his own similar motion on February 21, 2014. (CP 19-26) The Bosts responded by filing Defendants' Second Amended Answer, Affirmative Defenses, and Counterclaims. This pleading was identical to Defendants' Amended Answer, Affirmative Defenses, and Counterclaims except that the allegations concerning reports to the Clark County Health Department and the Washougal Fire Department were omitted. Based on that amendment and on the authority of *Henne v. City of Yakima*, 177 Wn.App. 583, 313 P.3d 1188 (2013), the trial court denied the Verdiers' motion on the basis that it was moot. The Verdiers then appealed. (CP 45-48)

## ARGUMENT

### I. Standard of Review.

The questions presented in this matter are subject to *de novo* review.

A strategic lawsuit against public participation is commonly referred to as a SLAPP suit. Laws of 2010, Chapter 118, Section 1(b). Washington has enacted legislation to curb such claims. This is contained in RCW 4.24.500 *et seq.*, which will be referred to as the anti-SLAPP statute.

As will be discussed in more detail below, the anti-SLAPP statute allows an aggrieved party to bring a motion to strike offending allegations in RCW 4.24.525(4)(a). This is an appeal from an order on such a motion. Such orders are reviewed *de novo*. *City of Longview v. Wallin*, 174 Wn.App. 763, 776, 301 P.3d 45 (2013); *City of Seattle v. Egan*, 179 Wn.App. 333, 337, 317 P.3d 568 (2014).

The issues presented in this case require interpretation of the anti-SLAPP statutes. Those questions are also reviewed *de novo*. *Henne v. City of Yakima*, \_\_\_ Wn.2d \_\_\_\_, 341 P.3d 284, 287 (2015). As the Court stated in that opinion, the goal of statutory interpretation is implementing the legislature's intent. When the language of a statute is unambiguous, the courts must give effect to that plain meaning as an expression of

legislative intent. See also, *Eubanks v. Brown*, 180 Wn.2d 590, 596-597, 327 P.3d 625 (2014). Finally, the plain meaning may be gleaned “from all that the legislature has said in the statute and later statutes which disclose legislative intent about the provision in question.” *Henne v. City of Yakima*, *supra*, 341 P.3d at 287.

II. A Party Cannot Avoid The Sanctions Imposed by RCW 4.24.510 and RCW 4.24.525 by Amending The Pleadings.

Washington’s anti-SLAPP suit statute requires statutory damages and an award of attorney’s fees for its violation. There is nothing in the language of the statute that allows this result to be avoided simply by amending pleadings to eliminate the offending allegations. The legislative policy behind the statute also militates against such a result. That means that a party cannot escape statutory sanctions by amending the pleadings after a motion to strike allegations has been filed. The trial court erred by ruling to the contrary.

Washington addresses anti-SLAPP allegations in two separate statutes. The first of these is RCW 4.24.510. It provides as follows in pertinent part:

A person who communicates a complaint or information to any branch or agency of federal, state, or local government . . . is immune from civil liability for claims based upon the communication to the agency . . . regarding any matter reasonably of concern to that agency. . . A person

prevailing upon the defense provided for in this section is entitled to recover expenses and reasonable attorneys' fees incurred in establishing the defense and in addition shall receive statutory damages of ten thousand dollars. Statutory damages may be denied if the court finds that the complaint or information was communicated in bad faith.

The second statute is RCW 4.24.525. It allows a party to bring a special motion to strike any offending claim and then provides for relief if the moving party prevails. The statute reads as follows in that regard as is pertinent:

(4)(a) A party may bring a special motion to strike any claim that is based on an action involving public participation and petition . . .

(6)(a) The court shall award to a moving party who prevails, in part or in whole, on a special motion to strike made under subsection (4) of this section, without regard to any limits under state law:

(i) Costs of litigation and any reasonable attorneys' fees incurred in connection with each motion on which the moving party prevailed;

(ii) An amount of ten thousand dollars, not including the costs of litigation and attorney fees; and

(iii) Such additional relief, including sanctions upon the responding party and its attorneys or law firms, as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.

There is no language in either statute that allows a party to avoid statutory damages and an award of attorney's fees simply by amending the

offending pleading after a special motion to strike is made. Allowing such a result would require reading into the anti-SLAPP statutes something that is simply not there. That is, of course, impermissible. *Internet Community & Entertainment Corp v. Washington State Gambling Commission*, 169 Wn.2d 687, 695, 238 P.3d 1163 (2010); *Manary v. Anderson*, 164 Wn.App. 569, 574-575, 265 P.3d 163 (2011).

Allowing amendment to eliminate sanctions is also at odds with the way the anti-SLAPP statutes are to be construed. The first anti-SLAPP legislation includes RCW 4.24.500 which reads as follows:

Information provided by citizens concerning potential wrongdoing is vital to effective law enforcement and the efficient operation of government. The legislature finds that the threat of a civil action for damages can act as a deterrent to citizens who wish to report information to federal, state, or local agencies. The costs of defending against such suits can be severely burdensome. The purpose of RCW 4.24.500 through 4.24.520 is to protect individuals who make good-faith reports to appropriate governmental bodies.

When the legislature enacted RCW 4.24.525 in 2010, it included a policy statement contained Laws of 2010, Chapter 118, Section 3 which provides:

This Act shall be applied and construed liberally to effectuate its general purpose of protecting participants in public controversies from an abusive use of the court.

The goal of protecting persons making reports to public agencies as discussed in RCW 4.24.500 is not enhanced—and in fact is frustrated—if a person can avoid paying attorney’s fees and statutory damages by simply amending pleadings to omit offending allegations after a party has gone to the expense of filing a motion to strike. The making of allegations subject to the anti-SLAPP statutes should be deterred. There is no deterrence if a party can first make anti-SLAPP allegations; gamble on whether the adverse party will make a motion to strike; and then avoid all sanctions by amending the pleadings. The liberal construction in favor of persons making reports to public agencies—as required by Laws of 2010, Chapter 118, Section 3—also militates against allowing a party to amend away offending allegations.

Both RCW 4.24.510 and RCW 4.24.525(6)(a) require a moving party to “prevail” before that party can recover statutory damages and an award of attorney’s fees. The term “prevail” is not defined in RCW 4.24.500 *et seq.* In such circumstances, courts look to standard dictionary definitions to determine the plain meaning. *Estate of Haselwood v. Bremerton Ice Arena*, 166 Wn.2d 489, 498, 210 P.3d 308 (2009); *Puget Sound Crab Association v. State*, 174 Wn.App. 572, 579, 300 P.3d 448 (2013). The word “prevail” is defined by Oxford Dictionaries, [http://www.oxforddictionaries.com/us/definition/american\\_english/prevail](http://www.oxforddictionaries.com/us/definition/american_english/prevail)

?searchDictCode=all, as to “be victorious.” *Black’s Law Dictionary* (9<sup>th</sup> Ed. 2009), defines “prevail” in the litigation context to mean “to obtain the relief sought in the action; to win a lawsuit.” Under either definition, the Verdiers prevailed. They moved to strike the impermissible allegations. The Bosts conceded the point by filing an amended counterclaim omitting those allegations. The Verdiers were therefore “victorious” and also obtained the relief they sought.

The Bosts’ amending their counterclaim to eliminate claims based on reports to public agencies is also the equivalent of a voluntary nonsuit of those claims. Generally speaking, the defendant is considered the prevailing party—and entitled to an award of attorney’s fees—when the plaintiff voluntarily dismisses. *Andersen v. Gold Seal Vineyards, Inc.*, 81 Wn.2d 863, 868, 505 P.2d 790 (1973); *Walji v. Candyco, Inc.*, 57 Wn.App. 284, 288-89, 787 P.2d 946 (1990); *Hawk v. Branjes*, 97 Wn.App. 776, 986 P.2d 841 (1999). The Verdiers must be considered prevailing parties for this reason as well.

California has an anti-SLAPP statute similar to Washington’s. Therefore, opinions interpreting the California statute provide persuasive authority for the interpretation of the Washington statute. *City of Longview v. Wallin, supra*, 174 Wn.App. at 776 fn. 11. California does not allow what has been described as “eleventh hour amendments to plead around a

motion to strike.” *Navallier v. Sletten*, 106 Cal.App.4<sup>th</sup> 763, 772-73, 131 Cal.Rptr. 201 (2003). As was stated in the seminal opinion in California on this issue, *Simmons v. Allstate Insurance Co.*, 92 Cal.App.4<sup>th</sup> 1068, 1073, 112 Cal.Rptr. 357 (2001), California’s anti-SLAPP statute makes no provision for amending the complaint and no such right should be implied. *See also, Schaffer v. City and County of San Francisco*, 168 Cal.App. 4<sup>th</sup> 992, 1005, 85 Cal.Rptr.3d 880 (2008).

Division Three of the Court of Appeals addressed this issue in *Henne v. City of Yakima*, 177 Wn.App. 583, 313 P.3d 1188 (2014), reversed on other grounds, \_\_\_ Wn.2d \_\_\_\_, 341 P.3d 284 (2015). In that case, a Yakima police officer sued for alleged retaliatory use of the internal investigation process. His complaint included an allegation that “Defendant by and through its agents harassed and retaliated against plaintiff by subjecting him to numerous unwarranted internal investigations.” The City moved to strike this claim based on RCW 4.24.525. The officer then moved to amend his complaint to remove claims related to internal investigations. The trial court allowed the amendment and denied the City’s motion to strike. The decision was affirmed by a majority of the Court of Appeals on the basis that the amendment rendered the issue moot. The majority opinion stated that the City had not suffered any prejudice since the amendment was made prior

to the parties engaging in discovery. It indicated that a different case would be presented if a party making offending allegations was asked to dismiss them but refused to do so. 177 Wn.App. at 588.

Judge Fearing dissented from the majority decision. He first questioned whether Officer Henne's allegations were prohibited by anti-SLAPP statutes. He took issue with the majority's conclusion that the questions were moot. As he stated:

The key concern of anti-SLAPP laws is to spare the moving party from the expense of defending a lawsuit brought to quell free expression. That purpose is thwarted if the plaintiff can amend his complaint to avoid payment of (attorney's) fees. One can argue that, if the case is quickly dismissed by an anti-SLAPP motion, the fees incurred by the defendant are minimal such that they should not be shifted to the claimant. But the fees will not always be minimal. Preparing the motion involves analysis of facts and claims as well as legal research and writing. Because of the importance of exercising free speech and the worth of a discussion of matters of public concern, the statute considers any fees too high. The one exercising its rights should not bear any costs. Thus, I would allow the city of Yakima to recover the penalty and reasonable attorney fees and costs, if, upon remand, Yakima "prevails" on its motion to strike.

177 Wn.App. at 599.

It is submitted that Judge Fearing's observations are most in keeping with both the language of and the policy behind the anti-SLAPP statutes—protection of persons who are the target of anti-SLAPP allegations—while the decision of the majority is not. Since the goal of

the anti-SLAPP statutes is the protection of persons making reports to public agencies, the statute should not be interpreted to allow a party to escape its sanctions by amending its pleadings to avoid sanctions after a motion to strike has been filed. By then, it is too late—the aggrieved party has already expended attorney’s fees on the motion.

The majority opinion withholds relief from a party against whom an offending allegation is made unless that party has first requested the other party to dismiss that allegation. There is simply no such requirement in the anti-SLAPP statute. This is significant because the legislature has required similar types of notices before a party can take action in other contexts. For example, claimants must file tort claim notices and wait sixty days before suing a governmental agency. RCW 4.92.100; RCW 4.92.110; RCW 4.96.020. A property owner must also give notice to a contractor and wait forty-five days before filing a construction defect action. RCW 64.50.020(1). An insured must send notice to an insurer and wait twenty days before filing suit alleging an unreasonable denial of a claim. RCW 48.30.015(8)(a). If the legislature had wanted to place such a requirement in the anti-SLAPP statutes, it would have done so. The absence of any similar requirement in the anti-SLAPP statutes means that an aggrieved party is not required first to give notice before filing a motion to strike and obtaining relief after prevailing on that motion.

The Bosts will likely argue that their amending their counterclaim minimized the fees that the Verdiers incurred in moving to strike. Judge Fearing's statement refutes that argument. As he said, the goal of the anti-SLAPP statute is insulation of a person making reports to a public agency from incurring any costs at all.

The Supreme Court reversed the Court of Appeals in *Henne v. City of Yakima*, *supra*, on other grounds. It did not resolve the question of whether amendment of the pleadings moots a motion to strike. As it stated:

Yakima and Henne also argue about whether the Court of Appeals erred when it held that Henne's amendment to his complaint cured any possible SLAPP problem. . . Whether voluntary amendment to delete objectionable claims moots an anti-SLAPP motion is thus an issue left for another day.

341 P.3d at 287 fn. 5.

In conclusion, there is nothing in Washington's anti-SLAPP statutes that allows a party to escape having to pay statutory damages and attorney's fees by amending an offending pleading after a motion to strike is filed. Such an interpretation is also at odds with the language that the statutes do contain—that a party prevailing on a motion to strike is entitled to those remedies. Allowing amendment to render moot a motion to strike also conflicts with the policies underlying the statute—protection of

persons who make reports to governmental agencies. For all those reasons, the trial court erred by denying the motions to strike made by the Verdiers on the grounds that they were moot.

III. Issues on Remand.

a. Introduction.

As discussed above, the Verdiers have prevailed on their motions to strike. Therefore, this case must be remanded to the trial court for determination of appropriate sanctions. A number of issues will no doubt arise on remand. The Court should address these now to give guidance to the trial court and to conserve the parties' resources so that another appeal may not be necessary. *City of Sumner v. First Baptist Church of Sumner, Washington*, 97 Wn.2d 1, 10, 639 P.2d 1358 (1982); *Ameriquest Mortgage Co. v. State Attorney General*, 148 Wn.App. 145, 156, 199 P.3d 468 (2009); *Chunyk & Conley/Quad-C v. Bray*, 156 Wn.App. 246, 254, 232 P.3d 564 (2010).

b. The Bosts' Allegations Violated the Anti-SLAPP Statutes.

A party who makes allegations in violation of the anti-SLAPP statutes must pay statutory damages and the aggrieved party's attorney's fees. The Verdiers are entitled to this relief.

There is no doubt that the allegations contained in the Bosts' amended counterclaim violated the anti-SLAPP statutes. In these

allegations, the Bosts sought relief against the Verdiers based on reports made to governmental agencies, namely the Clark County Department of Health and the Washougal Fire Department. The reports to those agencies are “complaints” to a “local government.” The Verdiers are immune from claims based on such reports by the clear language of RCW 4.24.510. They are also immune under RCW 4.24.525. That statute allows a party to move to strike allegations in a complaint in RCW 4.24.525(4)(a) based on public participation and petition in the following terms:

A party may bring a special motion to strike any claim that is based on an action involving public participation and petition...

The term “public participation and petition” is defined in RCW 4.24.525(2)(e) as follows:

Any other lawful conduct. . .in furtherance of the exercise of the constitutional right of petition.

The right of petition contained in the First Amendment to the United States Constitution and Article 1, § 4 of the Washington State Constitution includes any report made to any governmental agency. *Cal Motor Transportation Co. v. Trucking Unlimited*, 404 U.S. 508, 510, 92 S.Ct. 609, 30 L.Ed.2d 642 (1972); *Marriage of Meredith*, 148 Wn.App. 887, 889, 201 P.3d 1056 (2009). Any reports to the Clark County Department of Health and the Washougal Fire Department would therefore be in

furtherance of the constitutional right to petition and subject to being stricken under RCW 4.24.525(4).

c. The Verdiers Are Entitled to An Award of Statutory Damages.

Both Todd Verdier and Douglas Verdier filed separate motions to strike the offending allegations and prevailed on their motions. Therefore, and under both RCW 4.24.510 and RCW 4.24.525(6)(a), both as set out above, the Verdiers are each entitled to the relief that the anti-SLAPP statutes provide.

The two anti-SLAPP statutes diverge somewhat on when such damages can be allowed. Under RCW 4.24.510, “(s)tatutory damages may be denied if the court finds that the complaint or information was communicated in bad faith.” There is no similar limitation in RCW 4.24.525. If a violation is found, the court “shall award to a moving party . . . an amount of ten thousand dollars.” RCW 4.24.525(6)(a)(ii) Since the Bosts violated RCW 4.24.525, and since the Verdiers prevailed on their separate motions to strike, the Verdiers are entitled to statutory damages without any consideration whether any report was or was not made in bad faith.

///

d. Each of the Verdiers Is Entitled to a Separate Award of Statutory Damages.

Both Verdiers are entitled to the same amount of statutory damages under both RCW 4.24.510 and RCW 4.24.525(6). As both statutes say, a “party” who prevails on a motion to strike is entitled to statutory damages. Since each of the Verdiers is a separate party, each is entitled to a separate damage award in the amount required by the statutes. Conversely, the Court cannot make one damage award that the aggrieved parties must divide. *Akrie v. Grant*, 178 Wn.App. 506, 513-14, 315 P.3d 567 (2013); *Davis v. Cox*, 180 Wn.App. 514, 548-49, 325 P.3d 255 (2014).

e. The Bosts Must Pay the Amount of Statutory Damages for Each Allegation.

The Bosts sought damages against the Verdiers for two reports. Each was made to a different agency. Each dealt with a different problem. The Bosts claim that one was made to the Clark County Department of Health and concerned sewage going into the Washougal River. They allege that the other was made to the Washougal Fire Department and involved the Bosts’ having an unmaintained fire in a riverside fire pit. Since these are separate reports made to separate agencies based on separate facts, the Verdiers are entitled to statutory damages for each of the two allegations made against them.

This result is required by RCW 4.24.525(2) which states in pertinent part:

This section applies to any claim, however characterized, that is based on an action involving public participation and petition. . .

(Emphasis added) Each of the two offending allegations made against the Verdiers amounts to a separate claim. A “claim” is an aggregate of operative facts giving rise to a right enforceable by a court. *Black’s Law Dictionary* (9<sup>th</sup> Ed. 2009). Each of the two reports is a separate aggregate of operative facts that the Bosts argued would entitle them to relief. If, for example, one of the reports had not occurred, the Bosts initial counterclaim would still seek relief based on the other. Since the anti-SLAPP statutes refer to “claims” and since each allegation amounts to a separate claim because it is a report to a separate agency based on different facts, the Bosts must pay statutory damages for each of the two allegations made. Since statutory damages are \$10,000.00, the Bosts must pay each of the Verdiers \$20,000.00.

This interpretation must be adopted because it is consistent with the statutory language and advances the legislative policy surrounding the anti-SLAPP statutes as discussed above—liberal construction to protect persons who make reports to public agencies. It will, of course, increase the recovery that each of the Verdiers makes. But,

critically, this maximization of the amount of potential damages also serves a valuable purpose by raising the price for making SLAPP allegations and therefore enhancing the deterrent effect of the anti-SLAPP statutes.

f. Each of the Bosts Must Pay Statutory Damages to Each of the Verdiers.

Each of the Verdiers is entitled to statutory damages from each of the Bosts. The legislature noted in RCW 4.24.500 that the threat of a suit for damages can operate as a deterrent to persons making reports to governmental agencies. By the same token, the remedy of statutory damages operates as a deterrent to persons bringing claims to which the anti-SLAPP suit statutes apply. The legislature has stated that the amount of this deterrent should be \$10,000.00. If more than one person brings an offending claim, each such person's exposure to statutory damages is reduced unless each must pay the \$10,000.00 amount. For example, if the Bosts must only pay a total of \$10,000.00 in statutory damages to each of the Verdiers, then the exposure of each is reduced to \$5,000.00 for each of the Verdiers. Also, if twenty people combine to file an action that violates the anti-SLAPP suit against one person, each of those twenty people would have exposure of \$500.00 only. Such a group might decide that

filing the action was worth the risk if each member of the group would have to pay only \$500.00 in statutory damages rather than \$10,000.00.

Interpreting the anti-SLAPP statutes to require that each Bost pay the set amount of statutory damages is, once again, required by the policy underlying those statutes—protection of persons giving information to public agencies and deterring claims barred by the anti-SLAPP statutes.

g. Each of the Verdiers Is Entitled to an Award of Attorney's Fees.

The Verdiers prevailed on their motion to strike the offending allegations as discussed above. Each was separately represented in the trial court. Each of them is therefore entitled to an award of attorney's fees in the trial court. RCW 4.24.510.;RCW 4.24.525(6)(a)(i) Viewed another way, since each of them is entitled to a separate award of statutory damages, each is certainly entitled to a separate award of attorney's fees. The trial court will have to determine the amount of fees to which is entitled on remand.

h. Each of the Verdiers May Be Entitled to Additional Sanctions.

Finally, the Verdiers may be entitled to additional sanctions to deter repetition of the Bosts' conduct and comparable conduct by others

similarly situated. RCW 4.24.525(6)(a)(iii). On remand, the trial court should determine whether any such additional relief is warranted.

i. Conclusion.

In conclusion, the Verdiers are clearly entitled to relief under both RCW 4.24.510 and RCW 4.24.525. Each is entitled to an award of attorney's fees and statutory damages. The Bosts alleged damages based on two separate reports. Each report triggers an award of statutory damages in the amount of \$10,000.00 for a total of \$20,000.00. Both Douglas Verdier and Todd Verdier must each be awarded statutory damages from each of the Bosts. Therefore, each of the Bosts must pay \$20,000.00 to each of the Verdiers. This Court should so rule and remand for entry of judgment against the Bosts. The matter should also be remanded so that the trial court can determine the award of attorney's fees for trial court activity for each of the Verdiers and whether any further sanctions are warranted pursuant to RCW 4.24.525(6)(a)(iii).

STATEMENT PURSUANT TO RAP 18.1(A)

The Verdiers are each entitled to an award of attorney's fees on appeal. A party who prevails on a motion to strike an offending claim must receive such an award as RCW 4.24.510 and RCW 4.24.525(6)(a)(i) both

state. These statutes authorize an award of attorney's fees on appeal.  
*Davis v. Cox, supra*, 180 Wn.App. at 551.

CONCLUSION

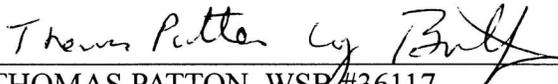
The trial court erred by denying the Verdiers' motions to strike as moot. The matter should be remanded with directions to award statutory damages as discussed above and attorney's fees for work in the trial court and to determine whether any other sanctions are warranted. Each of the Verdiers should also be awarded his attorney's fees on appeal.

DATED this 27 day of MARCH, 2015.



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BEN SHAFTON, WSB #6280  
Of Attorneys for Appellant Douglas Verdier



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THOMAS PATTON, WSB #36117  
Of Attorneys for Appellant Todd Verdier

FILED  
COURT OF APPEALS  
DIVISION II

2015 MAR 30 PM 1:29

STATE OF WASHINGTON

BY   
DEPUTY

NO. 46095-5  
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

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Douglas Verdier,

Plaintiff/Appellant,

vs.

Gregory Bost and Laurie Bost,

Defendants/Respondents,

vs.

Todd Verdier,

Counterclaim Defendant/Appellant.

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APPEAL FROM THE SUPERIOR COURT

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HONORABLE BARBARA JOHNSON

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DECLARATION OF MAILING

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COMES NOW Lorrie Vaughn and declares as follows:

1. My name is LORRIE VAUGHN. I am a citizen of the United States, over the age of eighteen (18) years, a resident of the State of Washington, and am not a party to this action.

2. On March 27, 2015, I deposited in the mails of the United States of America, first class mail with postage prepaid, a copy of BRIEF OF APPELLANTS to the following person(s):

Mr. Stephen Leatham  
Heurlin Potter Jahn Leatham Holtman & Stoker  
PO Box 611  
Vancouver, WA 98666-0611

I DECLARE UNDER PENALTY OF PERJURY AND THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

DATED at Vancouver, Washington, this 27<sup>th</sup> day of March, 2015.

  
LORRIE VAUGHN