

73456-3

FILED
December 18, 2015
Court of Appeals
Division I
State of Washington

73456-3

NO. 73456-3-I

**COURT OF APPEALS, DIVISION I,
OF THE STATE OF WASHINGTON**

JIMMY C. FLETCHER,

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT OF CORRECTIONS,

Respondent.

BRIEF OF RESPONDENT

ROBERT W. FERGUSON
Attorney General

PAUL J. TRIESCH
Assistant Attorney General
WSBA #17445
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7352; OID#91019

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I. COUNTERSTATEMENT OF THE CASE

A. Nature Of The Case

This is an appeal from an award of attorney fees under CR 11. Jimmy Fletcher alleged twenty-one claims against the Department of Corrections (DOC), nineteen of which were legally and/or factually unsupported. After discovery concluded, the DOC requested that Fletcher dismiss his claims. Fletcher withdrew five claims, but re-alleged the remaining claims. The trial court dismissed all but two of those claims on summary judgment. Those two claims were tried to a defense jury verdict. The trial court then awarded a portion of the DOC's fees under CR 11.¹

B. Standard Of Review

A decision to impose sanctions under CR 11 is reviewed for an abuse of discretion. *Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 338-339, 858 P.2d 1054 (1993). A trial court abuses its discretion when its decision is manifestly unreasonable or based upon untenable grounds or reasons. *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 668-69, 230 P.3d 583 (2010) (quoting *State v. Stenson*, 132

¹ The DOC sought 90.5% of the fees and costs incurred (the ratio of 19 of 21 claims) up to the July 25, 2014 summary judgment, in the amount of \$54,793.23 in fees and \$2,574.00 in costs. CP 269-76, 230-38. The trial court instead awarded fees on four claims that were "frivolous from the outset until summary judgment," in the amount of \$11,532.38, and 60% of the fees incurred between the January 24, 2014 amended complaint and the summary judgment, in the amount of \$8,649.30. CP 37-46. The total fees awarded were \$20,181.68. CP 44-45. No costs were awarded. CP 37-46.

Wn.2d 668, 701, 940 P.2d 1239 (1997)). An appellate court reviews factual findings for substantial evidence. *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000). An appellate court reviews conclusions of law by determining whether they are supported by the findings of fact. *Petters v. Williamson & Associates, Inc.*, 151 Wn. App. 154, 164, 210 P.3d 1048 (2009).

C. Summary Of The Argument

The trial court properly exercised its discretion in concluding that Fletcher brought numerous claims that were legally and/or factually unsupported. The record contains substantial evidence informing the court's finding and the conclusions of law are supported by that evidence.

Fletcher is a male Caucasian correctional sergeant who has been continuously employed by the DOC since November 1, 2000. CP 1233, 1245-46. He alleged twenty-one legal claims against the DOC after he was not promoted to lieutenant over a female Caucasian and a male Latino. CP 538-45. When discovery concluded, the DOC requested that Fletcher voluntarily dismiss his claims, pursuant to CR 11. CP 238. Fletcher withdrew five claims, but filed an amended complaint re-alleging the balance of his original claims. CP 553-54, 1232-39.

The DOC moved for summary judgment. CP 406-12, 1401-19. The trial court dismissed all claims except retaliation and disparate

treatment discrimination, which were tried to a defense jury verdict. CP 18-19, 402-03, 217-18. The DOC then moved for reimbursement of a portion of its attorney's fees, pursuant to CR 11. CP 227-401, 48-52. Fletcher cross-moved for sanctions under GR 14.1, because the DOC's motion for fees referenced an unreported decision in which Fletcher's counsel was sanctioned for alleging unsupported claims.² CP 269-76. The DOC did not appeal that sanction and it is not at issue in this appeal.

The trial court awarded a portion of the DOC's fees, finding Fletcher "violated CR 11 when alleging some claims from the outset and some claims after defendant's counsel's CR 11 notice." CP 37-46. Fletcher appeals that order. CP 1-2. He does not appeal the order granting summary judgment of dismissal, which is a final judgment on the merits regarding those dismissed claims. CP 1-2, 37-46; *DeYoung v. Cenex Ltd.*, 100 Wn. App. 885, 892, 1 P.3d 587 (2000), *review denied*, 146 Wn.2d 1016 (2002); *King Aircraft Sales, Inc., v. Lane*, 68 Wn. App. 706, 716, 846 P.2d 550 (1993) (unchallenged conclusion of law is law of the case).

D. Counterstatement Of The Issues On Review

The only issue is whether the trial court abused its discretion in awarding the DOC a portion of its fees. Fletcher's opening brief includes

² *Satterwhite v. State of Washington*, 177 Wn. App. 1019 (2013). This unreported decision is cited here only to provide the court with context for the trial court's GR 14.1 ruling. It is not cited as authority.

extensive discussion of the trial court's sanctions against the DOC for referencing *Satterwhite*, but the DOC did not appeal those sanctions.

E. Counterstatement Of The Facts

Though this appeal concerns the trial court's exercise of discretion in awarding the DOC a portion of its fees, the lack of facts and legal merit underlying Fletcher's dismissed claims warrants some discussion to provide context for the trial court's CR 11 ruling.

1. Fletcher's DOC Work History

The DOC hired Fletcher as a correctional officer on November 1, 2000. CP 1245-46. In June 2005, he promoted to correctional sergeant. CP 1245-46. The DOC has never terminated, laid off, or demoted Fletcher, and he has never experienced an adverse transfer. CP 1245-46.

2. Fletcher's Conflict with Annie Williams

In August 2007, Fletcher was working as a shift sergeant at the Minimum Security Unit (MSU) of the Monroe Correctional Complex (MCC) when he confronted Correctional Program Manager Annie Williams about her use of the MSU's back gate. CP 1300-13. Williams had the authority to travel throughout the MCC and she told Fletcher that the Superintendent confirmed her right to use the back gate to enter the MSU. CP 1306-07. The next day, Williams approached Fletcher about their interaction. CP 1306-07. Fletcher had his back turned toward

Williams, so she poked him between his shoulders to get his attention. CP 1273-75. Fletcher reported this contact to his lieutenant and the MCC superintendent as “workplace violence” and harassment. CP 1273-75.

The DOC investigated Fletcher’s complaint. CP 1309-13. As a result, the superintendent issued Williams a letter of reprimand for “failure to meet the expectations” for DOC employees. CP 1315-18.

3. Fletcher Unsuccessfully Seeks Promotion

On January 21, 2009, the MCC posted a position announcement for a correctional lieutenant. CP 1343-46. Fletcher was among the eleven candidates who interviewed for that position. CP 1348, 1264.

At the conclusion of the hiring process, the superintendent selected Ina McNeese, who possessed the best qualifications of the eleven candidates, scored the highest of those participating in the process, and was recommended by the interview panel. CP 1348, 1289-91. Fletcher scored tenth out of the eleven applicants, achieving the second to lowest score. CP 1348. McNeese is a female Caucasian. CP 1289-91, 1265.

On May 17, 2009, Fletcher had a loud and profane confrontation with Paula Chandler, a female correctional captain. CP 1350-55. He disagreed with Chandler’s resolution of an offender infraction and he yelled and swore at her. CP 1350-55, 1357-58, 1360, 1362.

On January 8, 2010, the superintendent issued Fletcher a letter of concern regarding an October 24, 2009 incident where Fletcher's vehicle was stopped by a Snohomish County Sheriff's Deputy for driving under the influence of alcohol. CP 1364-65. The deputy ultimately lowered the charge to negligent driving in the first degree. CP 1364-65. In his letter, the superintendent admonished Fletcher to use good judgment in the future and to obey all laws, both on and off duty. CP 1364-65.

Fletcher objected to the letter remaining in his personnel file because, though he admitted he had consumed two beers, he was not cited for driving under the influence and was just "text messaging while driving." CP 1367, 1298-91. The superintendent agreed to remove the letter of concern from Fletcher's personnel file. CP 1367.

On March 4, 2010, the MCC announced the need for an acting correctional lieutenant. CP 1392. Fourteen applicants submitted letters of interest, including Fletcher. CP 1394. The superintendent selected a male Latino to temporarily fill the position, concluding that he was the best qualified candidate. CP 1289-91, 1265.

On April 1, 2010, the superintendent issued Fletcher a letter of reprimand for "unethical and unprofessional behavior while attending training." CP 1369-71. Fletcher signed a class roster for a training he did not attend and signed a class roster for a training he only partially

attended. CP 1369-71, 1373-75, 1377-79, 1381-83, 1385. Fletcher claimed he signed them by “oversight and clerical error.” CP 1389-90.

On June 21, 2010, the MCC posted a correctional lieutenant position announcement. CP 1296. Fletcher did not apply. CP 1296.

4. Fletcher Alleges 21 Legal Theories Against the DOC

On August 30, 2011, Fletcher sued the DOC, alleging twenty-one legal theories, including wrongful discharge, constructive discharge, assault, battery, defamation, false light, invasion of privacy, tortious interference with contractual relations, tortious interference with business expectancy, hostile work environment, disparate treatment race and gender discrimination, retaliation, negligence, negligent hiring, training and supervision, negligent infliction of emotional distress, and intentional infliction of emotional distress. CP 538-45. On October 10, 2011, the DOC filed an answer in which it denied Fletcher’s claims and sought “costs and reasonable attorney fees pursuant to RCW 4.84.185 and Washington law.” CP 1429-34.

5. The DOC Provides a CR 11 Mitigation Notice

On October 23, 2013, after Fletcher completed discovery, the DOC took Fletcher’s deposition and concluded that he did not possess admissible evidence to support his claims. CP 238, 38. On January 2,

2014, the DOC's counsel requested in writing that Fletcher's counsel voluntarily dismiss his claims, pursuant to CR 11. CP 238, 39.

In response, Fletcher dismissed five claims: disparate impact discrimination, wrongful discharge, constructive discharge, tortious interference with contractual relations, and tortious interference with business expectancy. CP 238, 258-60. On March 19, 2014, he filed an amended complaint re-stating all his other claims. CP 258-60, 562-69, 39.

6. The Trial Court Dismisses all Claims Except Disparate Treatment Discrimination and Retaliation, Which the DOC Tries to a Defense Jury Verdict

The DOC moved for summary judgment. CP 1401-21, 1228-1399, 406-12. Fletcher's sixty-four page response did not provide admissible evidence to support his claims. CP 1164-1227. Rather, it contained boilerplate case law and conclusory statements, argued that summary judgment could not be granted in employment discrimination cases and attempted to add two new legal theories. CP 1164-1227. On July 25, 2014, the trial court dismissed all claims except disparate treatment discrimination and retaliation, which were then tried to a defense jury verdict. CP 402-03, 217-18, 39.

7. The DOC Seeks and is Awarded Attorney's Fees

The DOC sought a portion of the attorney fees incurred in defending Fletcher's withdrawn and dismissed claims. CP 230-401. The

trial court granted the DOC a percentage of those requested fees, finding Fletcher's counsel "violated CR 11 when alleging some claims from the outset and some claims after the (DOC's) CR 11 notice." CP 37-46.

II. ARGUMENT

A. The Trial Court Did Not Abuse Its Discretion

The trial court's award of fees was a reasoned decision grounded in the facts before the court. *See* CR 37-46. The court noted that Fletcher alleged his original claims on August 31, 2011, that the parties completed discovery on October 23, 2013, and that the DOC provided Fletcher a CR 11 mitigation letter on January 2, 2014, seeking voluntary dismissal of his claims. CP 38-39. The court further noted that Fletcher voluntarily dismissed five claims on January 24, 2014, filed an amended complaint re-alleging the balance of his claims on March 19, 2014, and that on July 25, 2014, the court dismissed on summary judgment all claims, except retaliation and disparate treatment discrimination. CP 39.

The trial court further noted that defense counsel "spent 147.5 hours working during the time it received notice that plaintiff would only dismiss five claims (1/24/14) and the end of summary judgment (7/25/14)," amounting to 60% of the total hours the DOC's counsel worked in preparing for summary judgment. CP 39. The court found that

Fletcher “violated CR 11 when alleging some claims from the outset and some claims after (the DOC’s) CR 11 notice.” CP 41.

The trial court concluded that a reasonable inquiry would have revealed that four of Fletcher’s claims (assault, battery, defamation and false light) were frivolous from the original August 11, 2011, filing, warranting full fees. CP 41-44. The court concluded that fees for the voluntarily dismissed claims would not be awarded, but that fees for five additional claims (discrimination, hostile work environment, negligent infliction of emotional distress, intentional infliction of emotional distress and common law negligence) that were re-alleged after the January 24, 2014 dismissal of claims should be awarded. CP 41-44.

The trial court stated:

Defendant worked exactly 60% of its total billable hours from 1/24-7/25/14. This factor reflects that the intensity of (defendant’s counsel) work litigating for his client increased dramatically between 1/24/14 and 7/25/14—the same time which (the defendant) was forced to litigate and respond to frivolous claims that should have been voluntarily dismissed at best, after discovery closed, and at worst, after (the defendant’s) CR 11 notice letter. While the court finds voluntary dismissal to be an appropriate remedial action that mitigates sanctions, plaintiff’s response to defendant’s CR 11 notice was deficient. Defendant’s hiatus in hours worked is reasonably due to the expectation that plaintiff would dismiss frivolous claims after discovery pursuant to CR 11 requirements. Plaintiff did not dismiss, defendant notifies plaintiff that dismissal is appropriate, waits, and receives news that only 5 claims will be voluntarily dismissed. As a result, defendant has to work with an increased intensity to respond to the claims plaintiff did not dismiss. The court finds plaintiff’s deficient action to be sanctionable under CR 11, and finds that this

sanctionable conduct increased defendant's workload. Defendant works 60% of its hours between plaintiff's deficient response on 1/24/14 and summary judgment on 7/25/14. Thus, the court found it reasonable to reduce the per-claim value by 0.60 to reflect that these claims were only sanctionable after plaintiff's counsel notified defendant's counsel that he would only dismiss some claims.

CP 44-45. The court's conclusion was fully supported by the facts.

CR 11 authorizes sanctions for "baseless filings" or filings made for an improper purpose. *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 219-20, 829 P.2d 1099 (1992). "A filing is 'baseless' when it is '(a) not well grounded in fact, or (b) not warranted by (i) existing law or (ii) a good faith argument for the alteration of existing law.'" *MacDonald v. Korum Ford*, 80 Wn. App. 877, 883-84, 912 P.2d 1052 (1996) (quoting *Hicks v. Edwards*, 75 Wn. App. 156, 163, 876 P.2d 953 (1994)). Here, nineteen of Fletcher's twenty-one legal claims were unsupported by admissible evidence and/or unwarranted by the law, leading Fletcher to withdraw five claims and the trial court to dismiss fourteen claims.

1. Prior to Filing his Complaint, it was Clear That Fletcher had no Chance of Success on his Voluntarily Dismissed Claims

Fletcher argues that "sanctions should not be awarded for his voluntarily dismissed claims" of disparate impact discrimination, wrongful discharge, constructive discharge, tortious interference with contractual relations and tortious interference with business expectancy, but the trial

court did not award fees for work performed by the DOC's counsel on those five claims. CP 42-43. To the contrary, the court exercised its discretion and declined to reimburse those fees. CP 42-43.

2. Prior to Filing his Amended Complaint, it was Clear That Fletcher had no Chance of Success on his Numerous Additional Claims

Fletcher argues "there was no basis for awarding sanctions in this case," but he does not present any evidence to show that the trial court was incorrect in finding that every dismissed claim was legally and/or factually unsupported. CP 37-46. To that point, he did not appeal the court's order granting summary judgment, which is the law of the case establishing these claims were unsupported by admissible facts.

In support of his argument on appeal, Fletcher states that he "incorporates all trial pleadings in this case as if fully set forth." Br. Appellant at 8. However, this Court need not address arguments given passing treatment or those which are purportedly supported by "incorporated" trial briefs. *Habitat Watch v. Skagit County*, 155 Wn.2d 397, 416, 120 P.3d 56 (2005); *Holland v. City of Tacoma*, 90 Wn. App. 533, 538, 954 P.2d 290 (1998). An appellate court need not search through the record for evidence relevant to a litigant's arguments. *Mills v. Park*, 67 Wn.2d 717, 721, 409 P.2d 646 (1966).

The trial court properly exercised its discretion in finding each dismissed claim to be legally and/or factually unsupported and in awarding reimbursement of a portion of the DOC's incurred fees.

a. Assault and Battery.

Fletcher grounded his assault and battery claims on his August 24, 2007 encounter with Williams, during which she poked him in the back to get his attention. CP 1274. The statute of limitations for assault and battery claims is two years. RCW 4.16.100; *Heckart v. City of Yakima*, 42 Wn. App. 38, 39, 708 P.2d 407 (1985). Fletcher commenced this action on August 30, 2011, over a year beyond expiration of the applicable statute of limitations. CP 538. Moreover, assault and battery are intentional torts. The evidence was that Williams acted outside the scope of her employment in poking Fletcher, prompting a letter of reprimand admonishing her to adhere to DOC job expectations. CP 1315-18, 1406.

b. Defamation and False Light

Fletcher grounded his defamation and false light claims in statements allegedly made by five MCC employees. CP 1251. The statute of limitations for defamation and false light claims is two years. RCW 4.16.100; *Eastwood v. Cascade Broad. Co.*, 106 Wn.2d 466, 474, 722 P.2d 1295 (1986). Every alleged employee statement was time-barred. CP 1406-11. Moreover, Fletcher failed to supply evidence to prove the

elements of either defamation or false light. CP 1406-11.

c. Invasion of Privacy

Fletcher's invasion of privacy claim was grounded in his claim that he received a letter from the DOC at his home address, though he had not provided it to the DOC. A privacy claim, too, is governed by a two-year statute of limitations. RCW 4.16.100; *Eastwood*, 106 Wn.2d at 474. Thus, his invasion of privacy claim was time-barred. Fletcher also failed to supply evidence to prove an invasion of privacy claim. CP 1411.

d. Hostile Work Environment

Fletcher did not allege any facts that established a *prima facie* hostile work environment. CP 1270-73, 1411-12. He just made the claim.

e. Negligent Infliction of Emotional Distress

Fletcher's negligent infliction of emotional distress (NIED) claim arose out of the way in which the DOC received and responded to his complaints about Williams and the superintendent's disciplinary actions against him. CP 1241-84. Though an NIED claim can exist in an employment context under certain circumstances,³ it cannot exist where it involves a resolution of disputes. *Bishop v. State*, 77 Wn. App. 228, 234-35, 889 P.2d 959 (1995) (note omitted); *Johnson v. Dep't of Soc. and*

³ See *Chea v. Men's Wearhouse, Inc.*, 85 Wn. App. 405, 412, 932 P.2d 1261, 971 P.2d 520 (1997), *review denied*, 134 Wn.2d 1002 (1998).

Health Servs., 80 Wn. App. 212, 230, 907 P.2d 1223 (1996). Fletcher failed to state an NIED claim. CP 1416; *Robel v. Roundup Corp.*, 103 Wn. App. 75, 91, 10 P.3d 1104 (2000) (claim not cognizable “when the only factual basis for the emotional distress [is] the discrimination claim”); *Dean v. Mun. of Metro. Seattle*, 104 Wn.2d 627, 708 P.2d 393 (1985).

f. Intentional Infliction of Emotional Distress

To prove intentional infliction of emotional distress (outrage), a plaintiff must show (1) extreme and outrageous conduct, (2) intentional or reckless infliction of emotional distress, and (3) severe emotional distress on the part of the plaintiff. *Dicomes v. State*, 113 Wn.2d 612, 630, 782 P.2d 1002 (1989) (citing *Rice v. Janovich*, 109 Wn.2d 48, 61, 742 P.2d 1230 (1987)). Fletcher supplied no evidence to prove outrage. CP 1417.

g. Common Law Negligence

Fletcher could not allege a common law negligence claim against the DOC as a matter of law, because employee lawsuits against employers and co-workers for injuries suffered in the workplace are barred by the Industrial Insurance Act, RCW 51.04.010. *Vallandigham v. Clover Park Sch. Dist.*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005); *Folsom v. Burger King*, 135 Wn.2d 658, 664, 958 P.2d 301 (1998); RCW 51.04.010.

h. Vicarious Liability Claims

Fletcher’s numerous vicarious liability claims of negligent hiring,

training, supervision and retention were frivolous, because those theories establish an employer's vicarious liability for the *ultra vires* acts of an employee. *Herried v. Pierce Cnty Pub. Transp.*, 90 Wn. App. 468, 475 957 P.2d 767 (1998) (citing *Thompson v. Everett Clinic*, 71 Wn. App. 548, 555, 860 P.2d 1054 (1993), *review denied*, 123 Wn.2d 1027, 877 P.2d 694 (1994)); *Peck v. Siau*, 65 Wn. App. 285, 827 P.2d 1108, *review denied*, 120 Wn.2d 1005, 838 P.2d 1142 (1992). There was no evidence that any DOC employee physically injured Fletcher or presented a risk of harm of which the DOC knew or should have known.

3. The DOC's Motion for Fees was Timely

Fletcher argues that the DOC's CR 11 motion was untimely and that he had no notice of that claim, citing *Biggs v. Vail*, 124 Wn.2d 193, 876 P.2d 448 (1994). But the DOC indisputably notified Fletcher of the impropriety of his conduct, both by correspondence and by pleadings. CP 1429-34, 1423-28. The DOC brought its motion for fees on November 24, 2014, within six months of the July 25, 2014 order granting summary judgment and within two months of the defense jury verdict. CP 269.

B. The Trial Court's Findings And Conclusions Support Fees

CR 11 provides that an attorney who files a document with the court certifies that to the best of the party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the document is well grounded in fact and warranted by

existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law. The duty created by CR 11 is ongoing; once reasonable inquiry reveals that an action is not justified, the attorney's signature on subsequent pleadings is a violation of CR 11. *McDonald*, 80 Wn. App. 877. If an attorney violates CR 11, the court may impose a sanction, including attorney's fees. *Eller v. East Sprague Motors & R.V.'s, Inc.*, 159 Wn. App. 180, 244 P.3d 447 (2010).

A filing that is not well-grounded in fact or warranted by existing law or a good faith argument for the alteration of existing law is "baseless" and warrants the imposition of sanctions. *McDonald*, 80 Wn. App. at 883. It is not necessary that the action be brought for an improper purpose. *Eller*, 159 Wn. App. at 192. CR 11 provides for sanctions where an attorney pursues a claim when the plaintiff's testimony does not support the cause of action and there is no other factual basis for the claim. *McDonald*, 80 Wn. App. at 890 ("reliance on his client as his only witness to the discriminatory acts was not warranted . . ."). CR 11 also prohibits claims that have no legal basis, particularly where opposing counsel has specifically so indicated. *Eller*, 159 Wn. App. at 190.

The determination of an award of attorneys' fees and costs is left to the trial court's discretion. *Hulbert v. Port of Everett*, 159 Wn. App. 389, 407, 245 P.3d 779 (2011); *Skimming v. Boxer*, 119 Wn. App. 748, 754, 82

P.3d 707 (2004). In determining whether an attorney has failed to conduct a reasonable inquiry, the court uses an objective standard and should impose sanctions unless a reasonable attorney in like circumstances could believe his or her actions to be factually and legally justified. *MacDonald*, 80 Wn. App. 877. The court must give consideration both to the purpose of deterring baseless claims and the potential chilling effect CR 11 may have on those seeking to advance meritorious claims. *Bryant*, 119 Wn.2d at 219. Here, there is no evidence the trial court abused this discretion.

Fletcher's counsel is an experienced attorney who clearly knows that the filing of factually and/or legally unsubstantiated claims is improper. This is precisely why the DOC referenced *Satterwhite*--not as authority, but as evidence of counsel's similar past conduct and awareness of the CR 11 standards. Counsel's conduct in this case was a disservice to the DOC, which expended significant resources to conduct discovery and file a motion to dismiss his numerous unwarranted claims, a disservice to the court, which must address each case on its docket, even where the underlying claims have no factual or legal support, and a disservice to plaintiffs generally, because such filings detract from meritorious claims.

Fletcher continued to pursue his unwarranted claims without regard for his obligations under CR 11. *See MacDonald*, 80 Wn. App. 877 (attorney sanctioned for relying on plaintiff's account of events without

more evidence when even plaintiff's own testimony revealed that there had been no discrimination); *Manteufel v. Safeco Ins. Co.*, 117 Wn. App. 168, 177 68 P.3d 1093 (2003) (sanctions were appropriate under CR 11 when counsel did not make a reasonable inquiry into the facts before filing a case, ignored opposing counsel's warning that his arguments had no legal or factual basis, and when "the frivolousness of [plaintiff's] suit would have been clear to [him] had he simply read the cases [defendant] provided."). In doing so, Fletcher wasted the time and the resources of the trial court and of the DOC. This is precisely the conduct that CR11 seeks to prevent. The court did not abuse its discretion in granting fees.

III. ATTORNEY'S FEES ARE WARRANTED ON APPEAL

The DOC requests an award of attorney's fees and costs on appeal, pursuant to RAP 18.1, RAP 18.9(a) and CR 11. CR 11 authorizes an award of attorney's fees incurred on appeal where a party successfully defends a fee award entered by the trial court. *Manteufel*, 117 Wn. App. at 178 (appeal of fee award under CR 11 warranted additional legal fees and costs in defending against this frivolous lawsuit on appeal). Despite the DOC's warning that his claims were frivolous, the summary dismissal of his claims, and the trial court's findings that his claims were both baseless and advanced without reasonable investigation, Fletcher continues to

argue that his actions were justified. This Court should therefore grant the DOC's attorney's fees incurred for defending this appeal.

IV. CONCLUSION

The DOC respectfully requests that this Court affirm the trial court's award of fees to the DOC and award the DOC its fees on appeal.

SUBMITTED this 9th day of December, 2015.

ROBERT W. FERGUSON
Attorney General



PAUL J. TRIESCH, WSBA #17445
OID#91019
Assistant Attorney General
Attorneys for Respondent

CERTIFICATE OF SERVICE

I certify under penalty of perjury in accordance with the laws of the State of Washington that the preceding Brief of Respondent was filed via Washington Courts' Electronic Filing for the Court of Appeals (COA), to:

Court of Appeals, Division I

That a copy of the preceding Brief of Respondent was served by Electronic Mail and Legal Messenger on counsel for appellant at the address below:

Thaddeus P. Martin – Tmartin@thadlaw.com
4928 109th St. SW
Lakewood, WA 98499

DATED this 18th day of December 2015 at Seattle, Washington.



VALERIE TUCKER
Legal Assistant