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STATE OF WASHINGTON
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NO. 34741-5

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

KRISTI SOLT,

Plaintiff,

vs.

ANNIE WRIGHT SCHOOL, and STANLEY CUMMINGS and JANE DOE CUMMINGS, and the marital community thereof; PAUL MANNING and JANE DOE MANNING, and the marital community thereof; and DOES 1-5, inclusive.

Defendants.

BRIEF OF RESPONDENT MANNING

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ORIGINAL

TABLE OF CONTENTS

I. Assignment of Error 6

II. Statement of the Case 6

A. Plaintiff's Statement of the Case 6

B. Standard of review 7

C. Statement of Facts 7

1. Pre-1999: Early history of the relationships 7

2. Fall 1999: the break-up of Solt and Selleck.....8

3. Fall 1999: Manning responds immediately to plaintiff's first request for help with Selleck.....9

4. June 2000: Manning responds immediately to plaintiff's second request for help with Selleck ...10

5. August 2000: Manning does not "over-scrutinize" a two-week visit from Solt's first same-sex partner, Schlieffer, when students are not present. 11

6. July 13, 2001: Solt gets a restraining order against Selleck, and Manning speaks to Selleck about his conduct. 12

7. August 2001: as soon as Manning and the school learn that Selleck violated the restraining order, they agree that Selleck must be terminated.....13

8. Fall 2001: Manning controls his frustration with the situation and continues to treat Solt professionally. 14

9. Fall 2001: The students return, and Manning voices his concerns about Solt's guest, strictly within the chain-of-command. 16

10. Winter 2002: Plaintiff objects to Manning's "monitoring," Manning responds, and again limits his response to the parties involved.....19

11. Early 2002: Solt moves off-campus, and has no further complaints about Manning's conduct.....20

12. Early 2004: Solt is terminated for budgetary reasons. 23

13. August 2004: this litigation begins.....24

III. Argument

A. Sections of Plaintiff's/Appellant's Brief should be stricken, and sanctions imposed under RAP 10.3.....24

B. Summary Judgment was appropriate on all claims.....25

1. The statute of limitations bars the factual basis of much of plaintiff's claims.....25

2. Retaliatory termination: there is no legal basis for co-worker liability, and no evidence that Manning was involved.....27

3. Hostile Work Environment: the record does not contain evidence of a hostile work environment. 29

a. Proving the conduct, plus the four-pronged legal test 29

b. Plaintiff cannot "prove the conduct complained of." 30

c. "Because of sex"--Manning's reports to Cummings about the truck were not "because of sex"--they were "because of security." 35

i. the conduct itself is not inherently sex-driven. 37

ii. Plaintiff's attempted inference from the different treatment of Selleck's cohabitation is unreasonable. 38

iii. the incidental fact of plaintiff's homosexual orientation does not make this into "gender discrimination." 40

iv. Solt herself has already disclaimed any sex-based motivation.....42

d. The conduct was not "severe and pervasive." 43

4. Negligent Supervision: the record does not contain evidence from which a fact-finder could find Manning liable for negligent supervision. 45

a. The statute of limitations bars any claims that Manning negligently supervised Selleck...45

b. Plaintiff has not established that Manning was negligent in his supervision of Selleck. 45

c. Manning cannot negligently supervise himself. 47

IV. Conclusion 48

Table of Authorities

CASES

Doe v. State Dept. of Transp.,, 85 Wash.App. 143, 149, 931 P.2d 196 (1997) 34
Glasgow v. Georgia-Pacific Corp., 103 Wash.2d 401, 406, 693 P.2d 708 (1985) 34
Grimwood v. University of Puget Sound, Inc., 110 Wash.2d 355, 359-60, 753 P.2d 517 (1988) 41
Henningsen v. Worldcom, Inc., 102 Wn.App. 828, 9 P.3d 948 (2000) 35
Herried v. Pierce County Public Transp. Ben. Authority Corp., 90 Wn. App. 468, 957 P.2d 767 (1998) 35
Kahn v. Salerno, 90 Wn.App. 110, 951 P.2d 321, *review denied* 136 Wash 2d 1016 (1998) 34
Lewis v. Lockheed, 36 Wn.App. 607, 611, 676 P2d 545 (1984) 26
Litho Color, Inc., v Pacific Employers Ins. Co., 98 Wn.App. 286, 991 P.2d 638 (1999). 7
Malo v. Alaska Trawl Fisheries, Inc., 92 Wn.App. 927, 965 P.2d 1124 (1998) 29
Marquis v. City of Spokane, 130 Wash.2d 97, 105, 922 P.2d 43 (1996) 41
Marshall v. AC & S Inc., 56 Wash. App. 181, 782 P.2d 1107 (1989). 37
McClarty v. Totem Electric, 119 Wn.App. 453, 81 P.3d 901 (2003), *reversed on other grounds* 2006 WL 1891845 (2006) 7
Miller v. Aluminum Co. of Am., 679 F.Supp. 495, 502 (W.D.Pa.1988) 36
Nichols v. Azteca, 256 F.3d 864 (9th Cir. 2001) 39
Rene v. MGM Grand Hotel, 305 F3d 1061 (9th Cir. 2002). 38
Schonauer v. DCR Entertainment, Inc., 79 Wn.App. 808, 905 P.2d 392 (1995), *review denied* 129 Wash. 2d 1014 (1996) 30
Scott v. Blanchet High School, 50 Wn. App. 37, 747 P.2d 1124 (1987). 37
Rhinevault v. Rhinevault, 91 Wn.App. 688, 692 , 959 P.2d 687 (1998) 25
State v. Drumhiller, 36 Wash.App. 592, 595, 675 P.2d 631, *review denied*, 101 Wash.2d 1012 (1984) 42
State v. Hastings, 119 Wash.2d 229, 232, 830 P.2d 658 (1992). 42
State v. Jackson, 111 Wn. App. 660, 46 P.3d 257 (2002) 42
W. Telepage, Inc. v. City of Tacoma Dep't of Fin., 140 Wash.2d 599, 607, 998 P.2d 884 (2000) 8

STATUTES

RCW 4.16.080 26
RCW 4.16.080(2) 26
RCW 49.60.210(1) 29

RULES

RAP 10.3(a)(4) 7, 8
RAP 10.3(a). 25
RAP 10.7 7

I. Assignment of Error

Defendant Manning agrees with the plaintiff's statements of the assignments of error, but objects to plaintiff's statements of "Issues Pertaining to Assignments of Error," as argumentative.

II. Statement of the Case

A. Plaintiff's Statement of the Case

Defendant Manning objects to plaintiff's failure to comply with RAP 10.3(a)(4) in her Statement of the Case. Plaintiff's statement of the case is argumentative, and fails to include reference to the record for each factual statement. *See, e.g., Litho Color, Inc., v Pacific Employers Ins. Co.*, 98 Wn.App. 286, 991 P.2d 638 (1999); *McClarty v. Totem Electric*, 119 Wn.App. 453, 81 P.3d 901 (2003), *reversed on other grounds* 2006 WL 1891845 (2006).

Further, this court should impose sanctions "for the heavy and unwarranted toll" that plaintiff's failure causes. *Litho Color, Inc.*, 98 Wn.App. at 306. Sanctions under RAP 10.7 "may well be appropriate for counsel who neglect to meet the requirements of RAP 10.3." *Id.* at 306. Sanctions are especially appropriate where "it was necessary for the court and for opposing counsel to track numerous factual statements through the

massive record and to review all of the legal authority cited, as to all issues on appeal." *Id.*

This case involves 1,024 pages of clerk's papers, more than ¾ of which were designated by the plaintiff. Nonetheless, plaintiff only provides citations when she *quotes* materials from the record--she does not provide citations for "each factual statement," as RAP 10.3(a)(4) requires. Furthermore, when plaintiff/appellant does use citations, she does not cite to the evidence directly; instead, she cites to her own prior memoranda and arguments, causing counsel and the court to cross-reference the citations therein. This court should strike the non-compliant sections, and impose sanctions based on the plaintiff's disregard for this court's rules.

B. Standard of review

Defendant Manning agrees with the plaintiff's statement regarding the *de novo* standard of review, and joins in Defendant Annie Wright School's argument regarding the standards applied to summary judgment motions in discrimination cases (Respondent's Brief of Annie Wright School, at p. 18-20).

C. Statement of Facts

1. Pre-1999: Early history of the relationships

Kristi Solt ("Solt") was the former Dean of Students of the upper

school at Annie Wright School, a private residential school in Pierce County. Solt's job initially required her to live in an apartment within the all-girls, high school dormitory, to be available to the female, high-school aged boarding students of Annie Wright. CP 255.

Shortly after Solt was hired, in 1996, she married Stuart Selleck, who also worked at Annie Wright in the maintenance department. CP 256. While Selleck worked at the school, he initially lived in the dormitory apartment with Solt. CP 256. His supervisor was defendant Paul Manning ("Manning"), who was the school's Director of Maintenance and Security. CP 940.

Prior to 1999, Manning, Selleck, and Solt worked together successfully on a professional level. Manning and Selleck also became friends. Solt had no complaints about the way that Manning performed his maintenance and security role at the school. CP 64.

2. Fall 1999: the break-up of Solt and Selleck

Then, in year three of the Solt/Selleck marriage (1999), that relationship soured. CP 287, 265. Solt attended a conference on the East Coast, apparently had a lesbian encounter with a woman named Margaret Schleifer, and came back to Washington State with questions about her sexual preference. CP 265. Other issues were apparently affecting the

marriage as well, including financial stresses, and Selleck's alcohol abuse. CP 65. Solt and Selleck began to argue frequently.

3. Fall 1999: Manning responds immediately to plaintiff's first request for help with Selleck.

In Fall 1999, Solt had an argument with Selleck which allegedly did not involve domestic violence - it was a "verbal argument" only. CP 946, CP 258. During the heat of the argument, plaintiff called Manning, *at Manning's home*, after work hours. CP 258. And, when she called, she asked Mr. Manning to come to her apartment to help calm Selleck down. Manning came right away. Manning stayed at the apartment with plaintiff and Selleck, while plaintiff got some things together to leave. There was nothing else she requested or needed Manning to help with at that time.

Solt admitted in her deposition that there was never any physical altercation with her ex-husband, Selleck, at any time when either was employed by the school. CP 691.

In approximately December 1999, Selleck moved out of the dormitory apartment he had formerly shared with Solt. CP 259, 321-322. He continued to work for the school, however. And, for one year, Selleck and Solt maintained a civil, if strained, separation. CP 264, 266-67. The couple remained married. Selleck's daughter, Jennifer, continued to live *with Solt* in the dorm while Jennifer attended Annie Wright school. CP

184.

4. June 2000: Manning responds immediately to plaintiff's second request for help with her husband.

On June 2, 2000, Solt disclosed to Manning, apparently in a discussion in the mail room, that Selleck had a probable alcohol problem, and that she believed Selleck had been entering her apartment when she was gone. CP 66-67. When Solt told Manning about her husband's drinking, Manning responded immediately. CP 272-73. He wrote a letter to Solt, offering his full assistance in dealing with Selleck. CP 128, 190. Manning mentioned getting "qualified people involved" to deal with Selleck's alcohol abuse, and making Solt's apartment completely off limits to Selleck, by changing locks or taking necessary steps to ensure her safety. CP 190. Manning assured Solt that "if you have concerns for your privacy, safety and security in this building, then some level of action is warranted." CP 190. He encouraged Solt "not to downplay your fears with the intent of avoiding unpleasantness." CP 128. However, when Solt saw how seriously Manning was, about addressing her concerns, she specifically asked him to disregard her previous request. CP 67-69. In fact, she sent him a letter, telling him that she did not want him to take any action:

> I appreciated your follow-up letter, however, at this point, I am asking you to disregard our previous conversation....No new locks are necessary and I will handle anything that needs to be dealt with from this point forward. Thank you for your discretion and concern.

CP 129.

5. August 2000: Manning does not "over-scrutinize" a two-week visit from Solt's first same-sex partner, Schlieffer, because the students are gone.

In August 2000, Solt had a two week visit from Margaret Schleifer, who was another of Solt's female sexual partners. CP 70, 261-62, 702. Schleifer stayed in the dormitory for a few weeks during the summer, when students were not present. CP 71. According to Solt, Manning did not do anything objectionable in response to that visit; he did not criticize Solt, make any allegations about her, or voice any disapproval of her relationship with Schleifer in any manner. CP 72.

In May 2001, Solt began a lesbian relationship with Angie Morrison. CP 73. At that time, Selleck's daughter, Jennifer, was still living with Solt. CP 184. Selleck apparently learned of the lesbian relationship, and became angry at the thought of Solt's perceived conduct taking place in front of his daughter, in the girl's dorm where they lived. CP 915-917, CP 270. Thus, Solt alleges that Selleck began to "harass" her, beginning in

the Spring of 2001 by making numerous angry and harassing telephone calls. CP 184.

If Solt was receiving harassing phone calls from her husband during the Spring of 2001, she was not reporting them to the Director of security, Mr. Manning. In fact, Solt admits that *she did not discuss on incident of Selleck's alleged harassment with Manning from the June 2000 mail room conversation (and her follow-up letter) until July 2001*, when she received the temporary order of protection against Selleck. CP 78, 272-72.

6. July 13, 2001: Solt gets a restraining order against Selleck, and Manning speaks to Selleck about his conduct.

Solt occasionally took her complaints about Selleck's conduct to her friend and supervisor, Susan Bauska. CP 74, 293. She then decided to involve the Tacoma Police Department. On July 13, 2001, Solt applied for, and eventually received, a restraining order against Selleck. CP 205-07. The order prohibited contact between Selleck and Solt, and restricted Selleck to work-related duties on the Annie Wright campus. CP 130-133.

Soon after Solt got the restraining order, she gave a copy to Cummings and to Manning. She also wrote to Manning on July 30, 2001, attaching a copy of the order. CP 134. She asked Manning to speak to

Selleck, both as his supervisor and friend. CP 75. Manning agreed to do so, saying that he had not heard Selleck make any comments about Solt, but that he would speak to Selleck. CP 75. Solt did not expect Manning to do anything more than simply tell Selleck to stop contacting her. CP 76-77.

Solt did not have any conversations with Manning in which she asked him to do anything with respect to her husband between June 2000 (the mailroom discussion) and July 27, 2001, when she gave him the restraining order. CP 78. When Solt gave him a copy of the restraining order, she asked Manning and the school, very generally, to support her in enforcing the order. CP 134.

7. August 2001: as soon as Manning and the school learn that Selleck violated the restraining order, they agree that Selleck must be terminated.

In mid-August 2001, plaintiff's relationship with Morrison, and Morrison's overnight stays on campus, continued to occur. And, Solt received another harassing telephone call from Selleck. She initiated an arrest of Selleck for violation of the restraining order, and she then reported the arrest and Selleck's underlying unlawful contact to Cummings. During the course of their conversation, Cummings discovered that the unlawful contact--a cellular telephone call--had been made from a phone owned by Annie Wright

School. Cummings decided to fire Selleck. CP 101.

Even then, after having Selleck arrested, *Solt* tried to discourage Cummings from firing Selleck. CP 79, 291-92. Cummings was not swayed. He told Manning he intended to offer Selleck the chance to resign or be terminated, and he asked Manning if Manning agreed with that decision (though it was solely Cummings' decision to make). CP 102. Manning agreed that Selleck should either be terminated or allowed to resign. Shortly thereafter, Selleck was asked to submit his resignation. He did so a few days later. CP 340-41. The decision regarding Selleck came just days after the school learned of the violation of the order of protection. CP 419,521.

8. Fall 2001: Manning controls his frustration with the situation and continues to treat Solt professionally.

It is uncontroverted that Manning voiced his agreement with Cummings' decision that Selleck should be terminated. CP 103, 340-41. However, Manning was frustrated with the *process* by which his employee had been let go. CP 319. He did not approve of or condone the actions of Selleck at all, and agreed Selleck should be fired, CP 104, but he was frustrated that he lost a key member of his staff, and that, in his view, the school had not treated Solt's failure to comply with the school's policy of

reporting overnight visitors to security personnel, with the attention that her conduct warranted. CP 103, 126.

Despite his personal feelings about the situation, Manning had never failed or resisted doing any maintenance, repairs, or security enforcement on behalf of Solt. CP 80. She had never been singled out or experienced any trouble getting the help she needed from his department. In fact, she had no issues whatsoever with Manning's performance of his work-related duties. CP 81.

Once the students returned to school in the fall, and moved into the dorm, Ms. Morrison's overnight visits to the girls' dorm became an increasing source of concern to Manning. Morrison, with whom Solt had a sexual relationship, would come to the school, park on a side street, and walk onto campus. CP 225, 335-339, CP 296-97, CP 360. Solt would then meet her at the secured door of the girls' dormitory and admit her into the dorm. Ms. Morrison stayed overnight in Solt's apartment, in the girls' dorm, on at least 20-30 occasions. CP 82. Manning had never been formally introduced to Morrison, nor had she been "screened" in any way as a potential safety risk. CP 83. Manning knew that Solt was ignoring a long-standing, informal but well-understood policy that staff members should report their overnight guests to the director of security, or at least

someone in the security department. CP 956-57l. And, Solt had abided by the policy in the past, with her other guests, so her failure to do so in this instance, while completely denying she was having overnight guests in the dorm, raised some concern.

9. Fall 2001: The students return, and Manning voices his concerns about Solt's guest, strictly within the chain-of-command.

Once school was in session for the fall semester, Manning began to voice these concerns to his supervisor, Dr. Cummings, as well as his concerns about varying aspects of the Solt/Selleck/Morrison situation. CP 106. They had a specific conversation about the cause of the Selleck termination. CP 106. There were some philosophical conversations about Manning's perceptions of the unfairness of the Selleck termination, because Manning believed that Selleck was treated more harshly than Solt, whose conduct had also contributed to the marital break-up. CP 106. And, Manning informed Cummings about his suspicion that Solt was having unreported overnight guests, despite Solt's denial to Dr. Cummings and her own supervisor, Susan Bauska. CP 107. *At no time did Manning discuss these issues with anyone other than his and Solt's mutual supervisor at AWS--Dr. Cummings.*

When Manning reported to Cummings about Solt's overnight

guests, he did not report any concerns other than the fact of Ms. Morrison's car being frequently parked on the side street, and her overnight visits. CP 107, CP 116. Specifically, he did not make any allegations about Solt's finances, her divorce settlement, her sexual preferences, or inappropriate conduct with other women. CP 104, CP 116. Instead, Manning simply reported to Cummings that Ms. Morrison's vehicle was frequently parked on 10th Street near the school on an overnight basis, and that he believed the person was staying overnight with [Solt,] and the frequency was "quite a bit." CP 109. Cummings was aware that the security department was routinely watching the campus, "24-7," that they had come to know all the faculty and visitor cars by sight, and that the additional visitor was unknown so "they watched it." CP 109.

Cummings has testified that Manning was acting completely within his professional role as Director of Security, in trying to ensure the integrity and safety of the high school girls' dormitory. According to the Head of School, it was completely appropriate for the Director of Maintenance and Security to investigate who was entering the girls' dormitories. CP 110. The reason is that "we have a girls' dorm, and the security of those girls are very much up to [Manning], so the frequency of comings and goings of people" was completely within Manning's job

purview. CP 111. According to Cummings, it was even within Manning's responsibilities to try to determine whether the visitor was being brought into the dorm as a "lover," as opposed to merely a female friend, because "you don't have [unmarried] men or women or lovers running around the girls' dormitory" (although it must be noted that Manning has never made such a determination). CP 111. In fact, there was a clear understanding among faculty members as to appropriate conduct in the context of adult sexuality in the girls dormitory, and it included being "beyond reproach in any way." CP 118.

To remove some of the informality of the security department's reportings, Cummings asked Manning to "tighten up" some kind of a formal, written system by which Manning could monitor overnight visitors to campus--not just for Solt, but for all visitors. The purpose of his request was to provide safety to the residents by knowing who was in the dorm "after hours." CP 110.

Bauska had been included in a meeting or two in which Manning shared his concerns with Cummings. And, she was a friend to Solt. So, sometime around December 7, 2001, Bauska asked Solt about her unreported overnight guest. CP 361; CP 297, 912. Bauska told her that Manning had mentioned the unreported overnight guest. This infuriated

Solt, who then denied that the truck's owner ever spent the night. CP 361-362. And Bauska believed her.[1] Based on Solt's misrepresentation, Bauska then occasionally played an "advocate" role for Solt in meetings with Cummings. CP 120.

10. Winter 2002: Plaintiff objects to Manning's "monitoring," Manning responds, and again limits his response to the parties involved.

After hearing from Bauska that Manning had concerns about her unreported overnight guest, Solt wrote a three-page letter to Cummings, indicating that she objected to being "monitored" by Manning. CP 135. As a result, Cummings met with Solt. He heard her concerns, and promised to speak to Manning. CP 227.

Cummings then arranged for a meeting with Manning. When Manning came to the meeting, he had written a letter to Cummings, which he then gave to Cummings. CP 881-82. The letter contained Manning's perceptions of the Selleck firing, including the fact that Manning perceived some inequality between the treatment of administrators and "blue collar" employees at Annie Wright. CP 224-225. The letter also reflected Manning's view that the conduct that resulted in Selleck's termination was

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1 Bauska has since testified that Solt was omitting important information when Bauska repeatedly asked about Solt's overnight guest. CP 120. Bauska advocated for Solt because Solt convinced her that Ms. Morrison was not staying overnight, or if she was, it was not as a sexual partner. Bauska would not have approved of Solt's use of the

misuse of a school telephone, and that Solt was similarly misusing school property by having unreported overnight guests in the dormitory. The letter contained expressions of frustration, by Manning, that Selleck (a "blue collar" employee) had been terminated, and Solt (an administrator) was not even considered for discipline at all. CP 224-25.

Cummings spoke to Manning, and recognized Manning's ongoing frustration at the perceived injustice of Selleck's firing. After Manning left the meeting with Cummings, he sent a copy of his letter to his former employee, Selleck, and also to Solt, as the draft of his letter said he would do. CP 127, 334. Although Cummings did not approve of Manning copying the letter to the individuals referenced in the letter (Solt and Selleck), he did not instruct Manning not to send the letter, prior to it being sent. CR 113.

11. Early 2002: Solt requests to move off-campus, and has no further complaints about Manning's conduct.

In January 2002, Solt petitioned the school for permission to alter the requirements of her job, and to let her reside off-campus. CP 140. At the time she made her request, she had two stated reasons for wanting to live off-campus. First, as she stated in her written request to the administration, she

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dormitory apartment for a sexual relationship with Morrison. CP 118.

had lived on campuses for many years, and wanted a break from the rigors of that life. CP 140. Second, she was trying to develop a "clearer distinction" between her personal and her academic life. CP 122.The school supported her in both regards. Further, although Solt said nothing about it, she wanted to move in with her female partner. The school agreed with the stated reasons, and granted Solt permission to move off campus. Thus, in June 2002, Solt's job description was changed, she was *given a raise*, and she moved into an off-campus apartment, which she shared with Ms. Morrison. CP 370, 301-02.

From the time that Solt moved off campus in June 2002 until the time she left Annie Wright School, *she had no further complaints about Manning*, and they continued to work together at AWS. CP 84-85. Solt is not alleging any episodes of "harassment" by Manning after this date. CP 85. She was able to work with him professionally on all of the occasions that she had a security or maintenance concern. She had no complaints about his professional performance. CP 86. In fact, she thought "he did a fine job" of keeping the building secure and the students safe." CP 87-88.

It is important to note that Solt is not alleging that Manning has <u>ever</u> said anything to Solt directly that would constitute harassment. CP 89. She has <u>never</u> overheard Manning say anything that expressed dislike of homosexuals or women. CP 90. And, she <u>never</u> saw Manning, or his

department employees, watching her or Ms. Morrison. CP 91. *There was not one occasion during the entire time Solt lived in the dorm that she noticed Manning or anyone in security department watching her, stalking her, or directly scrutinizing her at all.* The only way that she became aware of Manning's alleged "surveillance" of her was through Manning's written correspondence with, and his oral communications to, Cummings, which were allegedly reported to Solt by her supervisor, Bauska. CP 92.

In terms of explaining "why" Manning might have singled her out, Solt believes that Manning had a problem with her because of the fact that she "aggressively pursued a course of action against his top maintenance man at an inconvenient time when the workload was heavy." CP 93. She also believes Manning "had problems generated from his inability to separate his friendship with Selleck and his role as the Director of Maintenance and Security." CP 93. Finally, she believes Manning did not approve of her homosexual relationship. CP 93.

Neither Cummings nor Bauska believed Manning had homophobic feelings or misogynist beliefs. CP 123-124. Neither did Solt--she never heard of, or overheard, Manning express dislike for women or homosexuals. CP 94-95.

In fact, Solt was asked three times at her deposition what the

motivation was for Manning's alleged harassment. She testified that there were *two* reasons Mr. Manning allegedly harassed her: (1) he did not like her role in the termination of his employee; and (2) he did not approve of her having a female sexual partner in the dorms. Those are the only two reasons. She has testified that she does not have any opinions or complaints about Manning's views toward women. She does not have any understanding of Manning's belief toward homosexuality. She never overheard Manning "say anything inappropriate or in the form of harassment," to her or anyone else. And, although she subjectively believed that Manning was part of a "good old boys club" at the school, she did not believe that women received unfair treatment in any way at the school because of the "good old boys club." CP 272, 276-278.

12. Early 2004: Solt's position is eliminated and she is terminated for budgetary reasons.

After almost two years of no complaints relating to harassment, Solt's position (along with other employee's positions) were eliminated in January 2004, due to budget downsizing. CP 386-87, 392. After this, the school re-hired her for a summer position. CP 248. After the summer position concluded, she filed her lawsuit, on August 24, 2004.

13. August 2004: this litigation begins

Plaintiff's initial action styled her claims against Manning in six counts (there are eight total counts against the various defendants):

- Creation of a hostile work environment, in violation of Washington's Law Against Discrimination;
- Retaliatory termination, in violation of Washington's Law against Discrimination;
- Negligent Supervision;
- Negligent infliction of emotional distress;
- Intentional infliction of emotional distress; and
- Defamation.

During the litigation, then, Solt voluntarily dismissed her claims based on negligent and intentional infliction of emotional distress, and defamation.

As to the three remaining claims, the trial court ruled that the plaintiff's discharge by Annie Wright School was not retaliatory. It also ruled that there was no evidence to create a genuine issue of fact as to gender discrimination. It ruled that there was insufficient evidence of negligent supervision. Finally, it ruled that there was insufficient evidence to create an issue of fact as to a hostile work environment being driven by gender. It dismissed all remaining claims; plaintiff's appeal followed.

III. Argument

A. Sections of Plaintiff's/Appellant's Brief should be stricken, and sanctions imposed under RAP 10.3.

As discussed in the Statement of the Case, above, plaintiff's brief

fails to comply with RAP 10.3(a). Defendant Manning asks this court to disregard or strike the non-complying sections. *See, e.g., Rhinevault v. Rhinevault*, 91 Wn.App. 688, 692 , 959 P.2d 687 (1998) ("Moreover, the RAP mandate strict requirements for content, style, and form for all briefs filed with the appellate court. For example, every factual statement included in an appellant's brief must be supported by citation to the record. If a party submits a brief failing to comply with this rule, the appellate court may return it for correction, strike it with leave to file a replacement, or accept the brief. Sanctions ordinarily adhere for such inadequate briefing.")

B. Summary Judgment was appropriate on all claims.

1. The statute of limitations bars the factual basis of much of plaintiff's claims.

As to defendant Manning, Solt continues to assert three causes of action. Their respective limitation periods are referenced:

- Creation of a hostile work environment, in violation of Washington's Law Against Discrimination - 3 years, RCW 4.16.080; *Lewis v. Lockheed*, 36 Wn.App. 607, 611, 676 P2d 545 (1984).
- Retaliation, in violation of Washington's Law against Discrimination - 3 years, RCW 4.16.080; *Lewis v. Lockheed*, 36 Wn.App. 607, 611, 676 P2d 545 (1984).
- Negligent Supervision - 3 years, RCW 4.16.080(2);

As an initial matter, this court must carefully excise any portions of

Solt's complaint that are barred by the applicable statutes of limitation, and must affirm the grant summary judgment on those portions of the claims.

First, as to **all claims**, no conduct occurring before August 24, 2001 is actionable, because the period of limitations is three years. And, the status of this case, as of August 24, 2001, was that: Selleck had already moved out, and allegedly begun his harassment of Solt; Solt had asked Manning for help in the mailroom conversation and then had backed out of her request; Solt had circulated copies of her restraining order and Manning had spoken to Selleck about his conduct; Selleck had violated the restraining order; and the school and Manning agreed he had to be fired (as of August 15, 2001). That had all happened well before August 24, 2001. Therefore, none of that conduct, or any failure to take other action during that time period, is actionable, under any legal theory that has been pled. Said differently, nothing that occurred during Selleck's tenure at the school can be considered by this court in reviewing plaintiff's claims.

Therefore, what remains of Solt's case against Manning, after application of the appropriate statutes of limitations, are (1) any instances of actual discrimination occurring after August 24, 2001, (2) any actual negligent supervision occurring after August 24, 2001; and (3) her termination, occurring in 2004.

2. <u>Retaliatory termination:</u> there is no legal basis for co-worker liability, and no evidence that Manning was involved.

Plaintiff's complaint alleges that her ultimate termination from employment, more than18 months after the events complained of,[2] was "retaliatory." This claim could not survive summary judgment, given the passage of 18 months between the alleged events and her termination, her performance issues during that year, the departure of the involved headmaster, Dr. Cummings, and assumption of leadership by the sympathetic Dr. Ghosh, and the legitimate budgetary constraints that caused the elimination of her position (and others). But, even if there *was* some issue as to retaliatory motive, it does not extend to defendant Manning--a co-worker with no authority or input into plaintiff's allegedly <u>retaliatory discharge.</u>

Plaintiff's termination from employment turns on a decision made by the new Head of School, Dr. Ghosh, in conjunction with the Board of Directors of the school. Specifically, in 2003, Dr. Ghosh developed a budget for 2003-2004, based on enrollment of 425 students. That budget would have allowed the school to retain the Dean of Students position.

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2 The last "harassing" event occurred, according to plaintiff, no later than July 2002. The decision regarding eliminating the Dean of Students position did not occur

However, enrollment for the 2003-2004 school year did not meet expectations, leaving the school with a budget shortfall of approximately $100,000. CP 382-84, 389. This was caused by the lack of enrollment of residential ninth graders in the Upper School. CP 382, 385.

Therefore, Ghosh met with all administrators and sought input from her division heads. Those meetings resulted in the observation that the Upper School enrolled the least number of students, but had the largest staff. CP 390. So, Dr. Ghosh eliminated certain functions, combined several other positions, and converted some positions into part-time positions. She also cut the Dean of Students position.

Plaintiff has not alleged that defendant Manning had any input into, or any control over, that decision. Factually, therefore, there is no basis for her claim of retaliatory discharge against Manning.

Further, and more importantly, Washington law simply does not recognize a "retaliatory discharge" claim against a co-worker. The courts have already held that RCW 49.60.210(1), "read as a whole, is directed at entities functionally similar to employers who discriminate by engaging in conduct similar to discharging or expelling a person who has opposed practices forbidden by RCW 49.60." Therefore, it cannot be the source of

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until, at the earliest, January or February 2004. The decision to discharge was therefore

a claim against a co-worker who has no supervisory or employment authority over the plaintiff. *See, e.g., Malo v. Alaska Trawl Fisheries, Inc.*, 92 Wn.App. 927, 965 P.2d 1124 (1998) ("Campbell did not employ, manage or supervise Malo. He was not in a position to discharge Malo or to expel him from membership in any organization. Because RCW 49.60.210 does not create personal and individual liability for co-workers, the trial court did not err in dismissing Malo's claim against Campbell under that statute.")

Here, because Manning was merely a co-worker with no decision-making authority to terminate plaintiff, it was proper for the trial court to dismiss the "retaliatory discharge" claim as to defendant Manning.

3. <u>Hostile Work Environment:</u> the record does not contain evidence of a hostile work environment.

a. Proving the conduct, and the four-prong legal test

As stated by the court in *Schonauer v. DCR Entertainment, Inc.*, 79 Wn.App. 808, 905 P.2d 392 (1995), *review denied* 129 Wash. 2d 1014 (1996):

> To establish a claim for hostile work environment sexual harassment, an employee *must initially identify and prove the conduct complained of.* Then, the employee must prove four

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made about 18 months after the last possible "protected" activity by Solt.

> elements, plus damages.
>
> First, the employee must prove the conduct was unwelcome. Conduct is unwelcome if the employee does not solicit or incite it, and regards it as undesirable or offensive.
>
> Second, the employee must prove the conduct was because of sex. Conduct is because of sex if it would not have occurred had the employee been of a different sex.
>
> Third, the employee must prove the conduct affected his or her terms or conditions of employment. Conduct affects the terms or conditions of employment if it is "sufficiently pervasive so as to alter the conditions of employment and create an abusive working environment." Whether conduct rises to this level depends on the totality of the circumstances, "includ[ing] the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance."
>
> Fourth, the employee must prove that the conduct is imputable to the employer. Conduct is imputable to the employer if it is the conduct of an owner, manager, partner, or corporate officer, or, alternatively, if it is the conduct of a supervisor which the employer authorized, knew of, or should have known of, and the employer "failed to take reasonably prompt and adequate corrective action.

Id. at 820-821 (emphasis added; internal citations omitted).

b. Plaintiff cannot "prove the conduct complained of."

In order of analysis, before the court even reaches the four elements, it must determine whether Solt has "initially identif[ied] and prove[d] the conduct complained of." *Schonauer*, 79 Wash. App. at 820

("employee must initially identify and prove the conduct complained of.").

Here, there are two types of evidence in the record that Solt claims are actionable. First, there is Solt's evidence that Manning paid attention to, and then reported to Cummings about, the frequency and duration of Ms. Morrison's truck being parked on 10th Street. Solt does not have to prove those facts--they are admitted. Manning did take note of the frequent overnight parking of Ms. Morrison on a side street adjacent to Annie Wright School, and then had discussions with Cummings, the Head of School, about the truck, and his concerns of knowing who was in the building after-hours.

Second, there is the allegation that Manning shared intimate personal information about Solt with Cummings, during the spring 2002 meetings. Solt has not "prove[d] the conduct complained of," as to those allegations. Solt, who <u>was not present</u> at any of those meetings, has alleged that (1) Bauska was present; (2) *Bauska* heard Manning make comments about her finances, her divorce settlement, her "orgies," and her "inappropriate behavior;" and (3) Bauska then told Solt about Manning's comments.

In her brief, Solt alleges the following:

> According to Susan Bauska, Mr. Manning repeatedly made comments to her and accusations of improprieties about Ms. Solt,

> including supposed details from her divorce, her debts, her sexual orientation, and what he deemed inappropriate behavior including having "orgies with other women" in her apartment. CP 421.

In a vacuum, Solt's testimony might create an issue of fact as to what Manning said at those meetings. But here, all three of the people who were actually present at the meeting (Cummings, Bauska, and Manning) have testified under oath as to the contents of their discussions. And, even disregarding Manning's arguably self-interested testimony that he never talked about Solt's private affairs with Cummings, *both Cummings and Bauska have testified unequivocally that Manning never mentioned (1) Solt's finances; CP 104, 123; (2) Solt's divorce settlement; CP 104, 123; or (3) Solt's sexual relationships. CP 104, 123.* Specifically, Cummings testified:

> Q. Well, when Paul Manning reported his concerns, did he report any other concerns other than the car and the overnight visitor?
>
> A. No.

CP 104. Similarly, Bauska testified:

> Q. I want to talk about your specific conversations with Paul Manning and with Dr. Cummings. And, first of all, did you ever have any conversations directly with Paul Manning about Kristi Solt?
>
> A. I don't believe I did.
>
> Q. I think you stated earlier all the conversations you would

have had about [Solt] would have taken place in this meeting with Dr. Cummings?

A. Yes.

Q. All right. So, let's discuss those meetings. At any time in those meetings with Dr. Cummings and Mr. Manning, did you hear Mr. Manning discuss the terms of Kristi and Stu's divorce?

A. Kristi and Stu's divorce? No, never.

Q. at any time during the meetings, did you ever hear Mr. Manning discuss the finances of Kristi or Stu?

A. Never.

Q. Am I correct then that you would not have told Kristi Solt that Mr. Manning would have said something about either the divorce or the finances in these meetings?

A. Right.

Q. During these meetings, did you ever hear Mr. Manning discuss Kristi Solt's sexual relationships?

A. Never.

Q. And again, you wouldn't have told Kristi that you heard Paul Manning say something about that?

A. No.

Q. Is that correct?

A. That is correct.

Q. In fact, if I heard your earlier testimony correctly, you didn't even know that Angie and Kristi were lovers until Kristi had moved out of the dorm, is that right?

A. That's right.

* * * * *

Q. Did you ever hear Mr. Manning state that Kristi was acting inappropriately with other women?

A. Never.

Q. So you wouldn't have told Kristi that, obviously?

A. I would not have.

Q. Did you ever heard Mr. Manning report that Kristi was having orgies in her room with other women?

A. No.

Q. Have you ever heard Mr. Manning use that word?

A. No.

Q. Did you ever hear Mr. Manning say that Kristi was leaving Stu with tax debt?

A. No.

Q. Did you ever tell Kristi Solt that Mr. Manning was making false and discriminatory accusations against her?

A. No.

Q. Did you ever hear Mr. Manning say that Kristi had moved a female lover into her apartment?

A. Never.

CP 116-117.

There is no evidence whatsoever, except Solt's unsupported claims that she thinks Manning must have talked about those things.

This is not a case where the variances in the testimony create an issue of fact; this is a case where Solt is making an allegation based on no first-hand knowledge, which is directly refuted by the testimony of everyone who does have first-hand knowledge.[3] As far as Manning making any comments to Cummings, other than comments on the Morrison vehicle being parked nearby, Solt has failed to present one shred of evidence, let alone to "prove the conduct complained of." *Schonauer*, 79 Wash. App. at 820.

c. "Because of sex"--Manning's reports to Cummings about the truck were not "because of sex"--they were "because of security."

Again, the conduct that has been proved is that Manning noticed and then made reports to Cummings about the presence of, and duration of, the Morrison vehicle being parked near campus. Having identified the conduct, the court must then apply the four WLAD inquiries to those facts.

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3 The plaintiff's "evidence" on this point is akin to an attorney swearing out an affidavit in which she asserts that one of the judges of this court made a particular comment during private, in-chambers discussion of a case. If the judges of the court know that the attorney was not present in chambers, and not privy to the discussion, then nothing about the attorney's affidavit creates a true issue of fact about what was actually said during in-chambers discussions--the affidavit would be mere speculation without first hand knowledge.

This is where the court should make "quick work" of Solt's claims. Clearly, the first factor is met, in that Solt *subjectively* found Manning's conduct to be offensive or unwelcome. But, beyond that first factor, her claim fails at multiple levels, beginning with the "because of sex" prong.

"Conduct is *because of sex* if it would not have occurred had the employee been of a different sex." *Glasgow v. Georgia-Pacific Corp.*, 103 Wash.2d 401, 406, 693 P.2d 708 (1985). To defeat a summary judgment motion, Solt must produce competent evidence that supports a reasonable inference that Manning's behavior occurred *because she was female*, i.e., that her sex was the motivating factor for the harassing conduct. *Doe v. State Dept. of Transp.,*, 85 Wash.App. 143, 149, 931 P.2d 196 (1997); *Kahn v. Salerno*, 90 Wn.App. 110, 951 P.2d 321, *review denied* 136 Wash 2d 1016 (1998). To meet the second criteria, Solt would have to prove that Manning monitored Ms. Morrison's vehicle on 10th Street because Solt was a female.

The evidence has already established why Manning monitored the frequent visits of the Morrison vehicle. He did so because he was the Director of Security. He did so because his job duties included ensuring the security of the young girls living in a dormitory, and because he believed that an unknown visitor to the school was parking on a side street, entering campus, and being admitted for overnight visits into an otherwise-secure, all girls'

dormitory. Solt cannot possibly overcome that evidence with proof of a sex-based motive. Her own testimony is that Manning was motivated by the loss of a key employee and his friendship with Selleck.

i. the conduct itself is not inherently sex-driven.

There is nothing about Manning's conduct in and of itself (watching an unknown truck that is frequently parked in close proximity to a high school dormitory), that is inherently related to sex. *Cf. Henningsen v. Worldcom, Inc.*, 102 Wn.App. 828, 9 P.3d 948 (2000) (no dispute that a defendant's conduct occurred "because of sex," when the conduct was repeatedly telling Henningsen he was sexually attracted to her, having sexual relations with her on the job site, and then promoting her.); *Schonauer*, 79 Wn.App. at 920 (conduct was clearly "because of sex" where the conduct was male supervisors soliciting a waitress to perform live nude dancing for a strip bar). Manning's alleged "monitoring" cannot be presented as a case of sexually-motivated "voyeurism," for example.

Further, there is *no circumstantial evidence* tending to establish that Manning was motivated by Solt's sex. There is no evidence that Manning ever made sexist comments; displayed pornography, or in other

ways "devalued" women in the workplace;[4] no evidence that he shared an animus toward women generally; and no evidence that his monitoring conduct would have been different if a male had been escorting an unknown visitor into the girls' dormitory.[5] Instead, if Manning's conduct was inappropriate at all (which is in no way conceded), it was motivated by his correct understanding of his job functions. CP 110-111. *See also Adams v. Able Bldg. Supply, Inc.,* 114 Wn.App. 291, 57 P.3d 280 (2002) (the plaintiff failed to establish that offensive conduct was motivated by animus toward women, when the evidence showed that the alleged harasser was merely "unpleasant, unreasonable, and rude" to *all* employees).

ii. Solt's attempted inference from the different treatment of Selleck's cohabitation is unreasonable.

The only argument Solt even attempts, in this regard, is the fact that Manning took no notice when Selleck, a male, cohabited with Solt,

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4 *See, e.g., Herried v. Pierce County Public Transp. Ben. Authority Corp.*, 90 Wn. App. 468, 957 P.2d 767 (1998) (holding that it was significant that no one saw or heard the alleged harasser "tell dirty jokes, or say or do anything sexually suggestive.")

5 *See, e.g., Herried*, 90 Wn.App. at 473 ("Furthermore, other employees never saw Washington do anything sexual in nature. An employee's conduct that is hostile and intimidating, without more, is not actionable as *sexual* harassment. *See e.g. Miller v. Aluminum Co. of Am.*, 679 F.Supp. 495, 502 (W.D.Pa.1988) ("Hostile behavior that does not bespeak an unlawful motive cannot support a hostile work environment claim."), *aff'd. without opinion*, 856 F.2d 184 (3d Cir.1988).).

but was scrupulous about keeping track of Solt's female partners. In that way, she attempts to argue an inference that Manning monitored Solt differently based on the gender of her overnight guests, and that somehow, that equates with gender discrimination. However, that is an absolutely unreasonable inference, for two reasons.

First, when Selleck cohabited with Solt, he was already a school employee, working daily under Manning's control. Selleck already had access to the school by virtue of his employment, and openly lived with Solt, *within shouting distance* of Manning's own home. There was no reason for Manning to scrutinize Selleck's comings-and-goings--Manning knew him well, and knew that Selleck was already bound, by virtue of his employment with the school, to behave "above reproach."

Second, the inference is refuted by the evidence showing that Manning was only concerned about Solt's female partners during periods of time when their presence could directly affect students. Specifically, there was another period of several weeks' duration, when Solt had a different female sexual partner, Schlieffer, residing with her in the dorm. That occurred, however, during summer vacation, when no students were present. And, Manning did not engage in any sort of "overzealous scrutiny" of that cohabitation, despite the fact that it was another female

staying with Solt.

In short, only "reasonable inferences" can be the basis of denying summary judgment. See also *Marshall v. AC & S Inc.,* 56 Wash. App. 181, 782 P.2d 1107 (1989); and *Scott v. Blanchet High School*, 50 Wn. App. 37, 747 P.2d 1124 (1987). The fact that Manning did not monitor *Selleck's* comings-and-goings from Solt's apartment is not a fact capable of supporting the inference that plaintiff seeks. And, without that inference, plaintiff is left with no evidence of a gender-based motive for Manning's conduct.

iii. the incidental fact of plaintiff's homosexual orientation does not make this into "gender discrimination."

Plaintiff seems to believe that, just because she has had a lesbian relationship, and asserts the completely unsupported conclusion that Manning may not have approved of a same-sex relationship, she has established the requisite proof. She has not. In the very case cited by plaintiff, the Ninth Circuit said:

> We would hold that an employee's *sexual orientation is irrelevant* for purposes of Title VII. It *neither provides nor precludes* a cause of action for sexual harassment. *That the harasser is, or may be, motivated by hostility based on sexual orientation is similarly irrelevant*, and neither provides nor precludes a cause of action.

Rene v. MGM Grand Hotel, 305 F3d 1061 (9th Cir. 2002). Instead, the

harasser must have engaged in severe or pervasive unwelcome physical *conduct of a sexual nature*. *Id.* [6] Said differently, a sexual motive is not enough--it must be expressed through sexualized conduct. And, in every case plaintiff cites, there was extreme conduct of a sexual nature.[7]

Here, Solt infers that Manning's conduct *may* have been motivated by "homophobia", an assertion which is completely refuted and unsupported by any evidence. But assuming for argument that it was, the conduct itself was not at all "of a sexual nature." Manning did not "act out" this alleged homophobia by calling plaintiff sexualized names, making lewd or obscene gestures, or otherwise touching or injuring her--in fact, he did not interact with her over this issue at all. His conduct was

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6 In that case, the conduct itself was clearly sexual. It included,

"whistling and blowing kisses at Rene, calling him "sweetheart" and "muñeca" (Spanish for "doll"), telling crude jokes and giving sexually oriented "joke" gifts, and forcing Rene to look at pictures of naked men having sex. On "more times than [Rene said he] could possibly count," the harassment involved offensive physical conduct of a sexual nature. Rene gave deposition testimony that he was caressed and hugged and that his coworkers would "touch [his] body like they would to a woman." On numerous occasions, he said, they grabbed him in the crotch and poked their fingers in his anus."

Rene, 305 F.3d at 1065

7 In *Nichols v. Azteca*, 256 F.3d 864 (9th Cir. 2001):

"Male co-workers and a supervisor repeatedly referred to Sanchez in Spanish and English as "she" and "her." Male coworkers mocked Sanchez for walking and carrying his serving tray "like a woman," and taunted him in Spanish and English as, among other things, a "faggot" and a "fucking female whore." The remarks were not stray or isolated. Rather, the abuse occurred at least once a week and often several times a day."

simply reporting, to his boss, the comings-and-goings of visitors to campus, as was part of his job description. Whatever the *motive* may have been, the conduct was far from *conduct of a sexual nature*.

iv. Solt herself has already disclaimed any sex-based motivation.

Finally, Solt herself has testified about why Manning engaged in his conduct. Even she has attributed the reason, or motivation for his conduct, to "taking sides" in Solt's divorce, and Manning's admitted displeasure at the administrative process surrounding the forced resignation of one of his key employees.[8] She testified:

> Q. So you believe you were being harassed for two reasons: first, Mr. Manning was upset about losing a key employee, and he blamed you, and second, Mr. Manning did not approve of a homosecxual relationship that you were having; is that correct?
>
> A. That's what I believe, yes.

CP 595. Solt's own testimony contradicts any assertion that Manning's conduct was "because of gender." For that reason, Solt's "hostile work environment" claim under RCW 49.60.030 must fail.[9]

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8 *See also Herried.*, 90 Wn. App. 468 ("*Herried herself* never perceived any of Washington's actions to be sexual in nature. For example, she did not hear him tell dirty jokes, or say or do anything sexually suggestive.")

9 At one point in her deposition, Solt testified without any elaboration whatsoever that she believed Manning's conduct toward her was motivated by her gender. But, "In

d. The conduct was not severe and pervasive.

Further, Manning's conduct was not severe and pervasive. To meet this prong, Solt would need to establish "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Schonauer,* 79 Wn.App. at 820-21. She has established none of that. Solt herself has testified that she never heard Manning say anything about her; she never overheard Manning engage in harassment of her or anyone else; and that she ***never saw Manning watching her*** or her partners, or the truck. She only learned of it much later.

There is a large body of case law that is helpful in understanding why this "monitoring" conduct was not a "severe and pervasive" invasion of plaintiff's rights. In *State v. Jackson,* 111 Wn. App. 660, 46 P.3d 257 (2002), the court held, "it is fundamental in Washington constitutional

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order for a plaintiff alleging discrimination in the workplace to overcome a motion for summary judgment, the worker must do more than express an opinion or make conclusory statements." *Marquis v. City of Spokane*, 130 Wash.2d 97, 105, 922 P.2d 43 (1996) (citing *Grimwood v. University of Puget Sound, Inc.,* 110 Wash.2d 355, 359-60, 753 P.2d 517 (1988)). To defeat summary judgment, the employee must establish specific and material facts to support each element of his or her prima facie case. Id. *See also Kahn,* 90 Wash.App. at 117.

case law that 'what is voluntarily exposed to the general public and observable * * * from an unprotected area is not considered part of a person's private affairs.'" Instead, there is no intrusion on a person's privacy rights when a person observes only "what might easily be seen from a lawful vantage point." *Id. See also State v. Drumhiller,* 36 Wash.App. 592, 595, 675 P.2d 631, *review denied,* 101 Wash.2d 1012 (1984) (a person has no reasonable expectation of privacy when consuming illegal drugs in front of a picture window, visible to any passerby); *State v. Hastings*, 119 Wash.2d 229, 232, 830 P.2d 658 (1992) (a person cannot expect privacy when dealing with the public on the streets and in the cars of strangers.) In other words, our society does not guarantee privacy for those activities which we carry out in broad daylight.

In this case, Mr. Manning was the campus security office. His occasional sightings of a certain vehicle, parked on a public street, and reports to his supervisor about the same, were not pervasive or severe conduct, especially given that he was the director of campus security.

In short, Solt has not proved any conduct, except that Manning, as director of security, "watched" the existence of the truck, and then reported it, through his chain of command, as his supervisor encouraged him to do. That is not sex-driven conduct, nor sexually-objectionable. It

did not create a severe and pervasive, sexually-charged environment. Solt's claims of hostile work environment therefore must fail.

4. Negligent Supervision: the record does not contain evidence from which a fact-finder could find negligent supervision.

a. The statute of limitations bars any claims that Manning negligently supervised Selleck.

As discussed above, the statute of limitations on a negligent supervision claim is three years. More than three years before Solt filed her first amended complaint (on August 24, 2004), Manning and Cummings had already fired Selleck (as of August 15, 2001). The employee-supervisor relationship had ended, and any legal duty imposed by that relationship had also ended. Therefore, there is no basis in law or fact for plaintiff's claim that Manning is liable for negligent supervision of Selleck.

b. Even without the statute of limitations, Solt has not established that Manning was negligent in his supervision of Selleck.

The complaint alleges that Manning failed to respond adequately to Solt's complaints about her ex-husband's behavior. Solt alleges that Manning "failed to investigate," "did not follow up to investigate," "failed to consider it domestic violence," and treated Solt's allegations "as an

inconsequential matter." CP 629-648.

The problem with these allegations (besides the decisive statute of limitations problem, addressed above) is that *Solt herself* has testified that Manning did respond, exactly as she wanted him to, on every occasion described. For instance, as explained previously, in Fall 1999, Solt had an argument with Selleck which allegedly did not involve domestic violence - it was a "verbal argument" only. Solt called Manning, *at Manning's home*, after work hours. And, when she called, she asked Mr. Manning to come to her apartment to assist. Manning came right away, and stayed at the apartment with Solt and Selleck, while Solt got some things together to leave. There was nothing else she requested or needed Manning to help with at that time.

Then, when Solt asked Manning in the mailroom for help with Selleck's apparent drinking problem, Manning responded immediately. He wrote to her that very day, outlining an action plan, and offering his full support. Manning stood ready and willing to help, but Solt insisted that Manning not act upon her request. Instead she wrote to Manning and said "I appreciated your follow up letter. However, I am asking you to disregard our previous conversation. No new locks are necessary and I will handle anything that needs to be dealt with from this point forward."

Further, when Solt told Manning about the harassing phone calls, in July 2001, and played them for Manning, she still did not want him to do anything that would cause Selleck to be fired. What she did want "was that he would tell Mr. Selleck that he had to follow the restraining order," but that "she did not want him fired." There was nothing else she wanted Manning to do at that time. And, Manning did promise to, and then did, actually speak to Selleck about the calls. Even when Solt played the final harassing cell phone calls to Cummings, she made it clear that she still did not want Selleck to be fired. But, as has previously been briefed, the school fired Selleck a few days later.

In summary, Solt's attorney's allegations about Manning's motivation and his lack of response are directly contradictory to Solt's own testimony and the evidentiary record in this case, and therefore do not create an issue of fact.

c. Manning cannot negligently supervise himself.

Finally, Solt apparently is alleging that Manning can somehow be liable for negligent *supervision of himself*, because he is an "employer." Appellant's Brief at 27. However, clearly, when Manning is the employee that was allegedly being "negligently supervised," he cannot also be liable for "negligent supervision." This cause of action, if it proceeds at all, can

only proceed against someone with supervisory authority *over* Manning, not against Manning himself. For that reason, it must be dismissed.

IV. Conclusion

Solt's briefs to the trial court, as well as to this court, contain very flamboyant, inflammatory, and emotion-laden descriptions of how Solt perceived her time at Annie Wright School. Unfortunately for her, those perceptions are not based on the factual record, established after extensive discovery. Despite the rhetoric, and her likening of this case to legitimately horrific stories of domestic violence and harassment, the record simply does not bear that out, in any way.

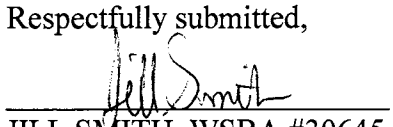
Solt never saw or heard any evidence, or believed, that Manning was acting against her based on her gender. She never saw Manning watching her too closely, nor was she adversely affected in any way by any comments Manning allegedly made to Dr. Cummings. Instead, Manning did as she asked, on every occasion, with regard to Selleck. And, Solt was promoted, given leave to move off campus, and supported by both Dr. Cummings and Dr. Ghosh.

Solt has established, <u>at most</u>, that Manning disliked her for her role in the termination of Selleck's employment, and that he also monitored her

admission of overnight guests into the dorms. But that is, simply put, not gender discrimination. Therefore, when this court engages in *de novo* review of the facts of the case, it should determine that there is no evidence, and no reasonable inference, that any of Manning's alleged conduct violated the WLAD. All other claims are either time-barred, or baseless. This court should affirm the trial court's grant of summary judgment as to all claims against defendant Manning.

DATED this 2 day of October, 2006.

Respectfully submitted,



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STATE OF WASHINGTON
BY DEPUTY

NO. 34741-5

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

KRISTI SOLT,

Plaintiff,

vs.

ANNIE WRIGHT SCHOOL, and STANLEY CUMMINGS and JANE DOE CUMMINGS, and the marital community thereof; PAUL MANNING and JANE DOE MANNING, and the marital community thereof; and DOES 1-5, inclusive.

Defendants.

DECLARATION OF MAILING

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ORIGINAL

JEFFREY BROWN, hereby declares:

On October 2, 2006, I mailed via U.S. Postal Service and sent e-mail a true and correct copy of the following documents: Brief of Respondent Manning and this Declaration of Mailing addressed to:

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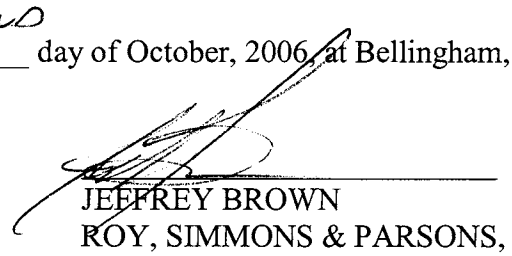
I declare under penalty of perjury pursuant to the laws of the State of Washington that the foregoing statement is true and correct.

Dated this 2ND day of October, 2006, at Bellingham, Washington



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