

No. 297616

WASHINGTON STATE COURT OF APPEALS
DIVISION III

MONICA WALTERS, a single woman,

Appellant,

vs.

YOUNG WOMEN'S CHRISTIAN ASSOCIATION,
a Washington nonprofit corporation,

Respondent.

BRIEF OF RESPONDENT

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A. Summary of Argument.

Ms. Walters' appeal is built on the faulty premise that she controlled the YWCA Board of Directors, and this confusion led to a power struggle that ultimately ended with Ms. Walters' termination from the organization. In reality, Ms. Walters worked for the Board of Directors who terminated her based upon a litany of performance issues.

Ms. Walters was terminated because the Board discovered that she was not performing her job duties in accordance with her contract and had made numerous misrepresentations to the Board about the financial status of the YWCA and her own performance. Ms. Walters was not terminated because of an alleged disability.

The trial court listened patiently to three weeks of testimony and properly determined that the YWCA did not breach any duty or obligation to Ms. Walters.

B. Counter Statement of Facts.

In the last years of her employment, Ms. Walters exhibited a pattern of negligently or intentionally misrepresenting to the Board of Directors ("Board") the YWCA's financial status, personnel system, and the performance of her job duties as Executive Director. She did this in an attempt to create the misperception that she was adequately performing

her job duties and in an attempt to keep the Board in the dark as to the true status of the YWCA under her management, thereby saving her job.

Historically, the Board relied upon its Executive Director to manage most elements of the YWCA. Virtually all of the information the Board was provided about the YWCA came directly from Ms. Walters. Ms. Walters intentionally tainted that information and made numerous misrepresentations to the Board about the YWCA. In doing so, the Board did not have a complete or accurate picture of what was transpiring and how it related to Ms. Walters.

Contrary to the position taken in the Brief of Appellant, Ms. Walters did not manage the YWCA without any input or oversight from the Board. The Bylaws are clear that the ultimate management of the YWCA is vested in the Board, and that Ms. Walters is "accountable to the Board." (Ex. 1, Article XII, Section 2(c); CP 343)

The relationship between the executive director and the Board is governed by the YWCA Bylaws and Policies. The Bylaws vest ultimate authority for the management of the YWCA in the Board. The YWCA's Bylaws provide in pertinent part:

- The management of the Association is vested in the Board which shall exercise all powers of the Association except those specifically reserved for the voting members at association meetings. (Article IX, Section 3(a))

- The Board of Directors shall be responsible for: Determining and carrying out the policies and programs of the Association and may delegate as needed to the Executive Director. (Article IX, Section 4)
- The Board of Directors shall be responsible for assuming final responsibility for personnel policies and for employment of staff. (Article IX, Section 4)
- The Board of Directors shall be accountable to the Association membership for the management and operations of the Association. (Article IX, Section 7)
- The executive committee shall have general supervision over the affairs of the Association between meetings of the Board of Directors...” (Article X, Section 3)
- The executive director shall be accountable to the Board of Directors through the president. (Article XII, Section 2(c))

(Ex. 1; CP 334)

Generally, the executive director is responsible for the daily operations and management of the YWCA and its staff. The Board has oversight of the organization but is relatively insulated from the daily operations and management of the YWCA and relies upon the executive director to keep the Board informed. The YWCA Policies specifically state:

- The Executive Director shall ensure the Board is informed and supported in its work. Information to the Board will be presented accurately, completely and in a timely manner. (Policy 2.6.2, Ex. 2)

- The Executive Director may not fail to gather and present to the Board as many staff and external points of view, issues and opinions as needed for fully informed Board action. (Policy 2.6.6, Ex. 2)
- The Executive Director may not: ...Prevent staff from presenting their views to the Board. (Policy 2.1.3, Ex. 2)
- The YWCA of Spokane should be operated in an ethically sound and fiscally prudent manner. The Executive Director shall not cause any practice, activity, decision or organizational circumstance that is either unlawful, imprudent, or in violation of the principles and requirements of the Northwest Regional YWCA. (Policy 2.0, Ex. 2)
- Financial Condition Policy. The Executive Director shall not jeopardize the long-term financial strength of the organization or cause or allow a material deviation of actual expenditures from Board priorities established in ENDS policy. (Policy 2.2, Ex. 2)
- The Executive Director may not expend, or commit to expend, more funds than have been received, or are reasonably anticipated to be received, during the fiscal year. (Policy 2.2.1, Ex. 2)
- Financial Planning Policy. The Executive Director shall not allow budgeting for any fiscal year or part thereof to deviate materially from Board priorities, risk fiscal jeopardy, nor fail to show a generally acceptable level of foresight. (Policy 2.3, Ex. 2)
- The Executive Director may not plan the expenditures in any fiscal year of more funds than are conservatively projected to be received in that period. (Policy 2.3.3, Ex. 2)
- The Executive Director shall not allow assets to be unprotected, to be maintained inadequately or unnecessarily risked. (Policy 2.4, Ex. 2)

- The Executive Director may not: Unnecessarily expose the organization, its Board or its staff to claims of liability. (Policy 2.4.3, Ex. 2)
- The Executive Director shall not allow Staff compensation and benefits to deviate materially from market or allow jeopardy to fiscal integrity or public image. (Policy 2.5, Ex. 2)
- The Executive Director may not: Create compensation obligations over a longer term than revenues can be safely projected to cover those obligations and in all events subject to losses in revenues. (Policy 2.5.4, Ex. 2)

As executive director, Ms. Walters was responsible for the YWCA's yearly budget. She had to rely on the Finance Director to prepare the budget. (RPI 157)¹ Ms. Walters' responsibility was to present the budget to the Finance Committee and then to the Board. (RPI 158)

Throughout 2008 and early 2009, the Board, through its finance committee, attempted to obtain information from Ms. Walters regarding the financial status of the YWCA and its projected revenue and expenses for 2009. (Finding No. 6, CP 162) Ms. Walters failed to provide adequate and accurate information to the Board. (RPI 301) During January of

¹ The trial transcript was prepared with chronological numbering for May 18 and 19, 2010. The pagination started at #1 again on May 20, 2010. Accordingly, transcript designations for May 18 and 19, 2010 will be RPI and for subsequent dates as RPII.

2009, Ms. Walters advised the Board that the YWCA did not end the year 2008 with a \$300,000 deficit, despite the fact that this was reflected in the financial statements. (RPI 310, 315) She also advised the Board that the YWCA was not losing \$30,000 per month, despite the fact that it was reflected in the financial statements. (RPI 310)

Ms. Walters misrepresented to the Board that the YWCA's endowment had sufficient funds to cover the YWCA's liabilities. (RPI 311) Ms. Walters repeatedly claimed the YWCA would spend substantially less on maintenance at its new building and that the YWCA would obtain substantial additional revenue from leasing space in the new building. These representations were false and Ms. Walters was aware they were false. (RPI 275, 294)

Ms. Walters discharged Denette Hill, the Finance Director, on December 29, 2008. (Finding No. 5, CP 162) In early January of 2009, Ms. Walters left on a Hawaiian vacation. (Finding No. 20, CP 165)

At trial, Ms. Hill testified that shortly after she was hired, she discovered that a prior Finance Director had been embezzling funds. (RPII 821) She also learned that the YWCA had been billed \$88,000 by Spokane County based upon the YWCA's failure to make its annual filings for property tax exemptions. (RPII 822) She testified that Ms. Walters marginalized, was dismissive of, and demeaning to staff. (RPII 862)

Ms. Hill further testified that the operating deficit at the end of 2008 was \$336,000 (RPII 869), that money from a Community Trade and Economic Development grant that was to be used to establish an operating reserve for the YWCA's homeless shelter was utilized for general operations (RPII-881-82), that \$250,000 from the sale of the YWCA's former building that was to have been placed in trust was not segregated and was absorbed into general operations (RPII 883), that this resulted in the YWCA misrepresenting the amount of available funds by \$250,000 (RPII 934), and that significant proceeds from the Helen Colville Trust that, pursuant to YWCA Policies, were to be placed in the endowment fund, were instead spent for general expenses. (RPII 895)

On January 9, 2009, Director of Development Trish McFarland contacted and met with incoming Board President Cynthia Benzel to express a number of concerns: Ms. McFarland stated her concerns that (1) the YWCA had four finance directors in the past three years, (2) the financial health of the YWCA, (3) Ms. Walter's insular and bullying management style, and (4) Ms. Walter's lack of long range planning for the YWCA. (Finding No. 20, CP 165)

In early January 2009, no longer a YWCA employee, Ms. Hill contacted Board Secretary Virginia Bott and Treasurer Jennifer Senske regarding her concerns and opinions regarding the YWCA's financial

condition and Ms. Walters' mismanagement. (Finding No. 20, CP 165; RPI 171, 178) Ms. Hill explained to Ms. Bott that she was no longer Finance Director because she had serious concerns about financial issues at the YWCA. (RPII 423) Ms. Hill felt what was going on was unethical or illegal and violated her professional principles. Ms. Hill also advised Ms. Bott that Ms. Walters was not taking the property taxes into account in the income projections for the new YWCA building. Ms. Hill further informed Ms. Bott that the YWCA had misapplied funds from a state grant and that \$250,000 in earnest money from the sale of the YWCA building had been spent on current operations instead of being placed in the capital campaign. (RPII 426) The money had been earmarked for the purchase or construction of the YWCA's new building. Ms. Hill reported that \$125,000 the Board had voted to place in the YWCA's endowment had not been properly allocated. (RPII 426-28) In addition, Ms. Hill stated the YWCA had failed to timely file to renew its tax exempt status and had lost its property tax exemption, resulting in an \$88,000 property tax bill. (RPII 425)

Board President Deborah Booth called a series of meetings to discuss the concerns raised by Ms. Hill's departure, Ms. Walters' management of the YWCA, and the YWCA's finances. Ms. Bott, Treasurer Senske, and Ms. Benzel discussed financial concerns and the

information received from Ms. Hill and Ms. McFarland. (Finding No. 20, CP 165) During these meetings, as well as meetings with the Finance Committee and the entire Board, Ms. Walters claimed: (1) the YWCA did not end 2008 with a \$300,000 deficit; (2) the YWCA was not losing \$30,000 per month; (3) the YWCA's domestic violence program did not lose \$16,000 in November 2008; (4) the YWCA had sufficient funds in its endowment to cover all of the YWCA's liabilities; and (5) the YWCA would not have large liabilities in 2009 with insufficient revenues to pay them off. (RPI 309-314) None of these statements were true. (RPII 437-38)

On January 21, 2009, after returning from her vacation, Ms. Walters presented a proposed 2009 budget to Treasurer Senske which she rejected because it was submitted at the last minute and did not adhere to the requested format. (Finding No. 20, CP 166)

On January 21, 2009, the Executive Committee met with Ms. Walters. Based upon the comments from staff members, the committee suggested a staff survey to determine the level of morale. Ms. Walters became angry and refused to conduct the survey. When Ms. Bott presented the survey to her, Ms. Walters threw it back at her across the table. (RPII 432)

At the Executive Committee meeting held on January 21, 2009, there was a discussion concerning Ms. Walters' management and a recommendation that Ms. Hill be rehired as Finance Director. Ms. Walters said she needed 48 hours to consider that option. (Finding No. 20, CP 166, RPII 439) Several Board members heard Ms. Walters say she was going to resign. (RPII 440) (Finding No. 20, CP 166) They met again 48 hours later. Ms. Walters ended that meeting by standing up and walking out, despite requests for her to stay. (RPI 183)

On January 23, 2009 the Executive Committee again met with Ms. Walters and expressed: (1) its desire to fill the Finance Director position so that Ms. Walters would have the financial help she needed to manage the YWCA; (2) its concern that Ms. Walters had failed to prepare the financial information requested by the Board for the January Finance Committee meeting; (3) its concerns about the YWCA's overall finances; and (4) its concerns regarding the inaccuracy of Ms. Walters' statements about the YWCA's finances. Treasurer Jennifer Senske² asked Ms. Walters about the YWCA's cash flow, as the YWCA was then running a \$30,000 per month deficit. Ms. Walters denied this. When the

² Jennifer Senske was Treasurer of the Board of Directors. Article 6, Section 3(d) provides that the Treasurer has responsibility for the financial operations of the YWCA. (RPI 257)

staff survey was brought up, the meeting became contentious. Ms. Walters stated she would not talk with the committee any longer without her attorney present and made a comment about tendering her resignation. Again, Ms. Walters walked out of the meeting. (RPII 108)

That same day, Ms. Walters approved a severance package for Associate Executive Director Amy Kirsch that included six months severance pay and all current benefits, including retirement contributions and 401k membership. (Ex. 127, RPI 333) Ms. Walters and Ms. Kirsch were known to be close friends.³ The YWCA's standard procedure was to provide departing employees two weeks wages, if anything. (RPI 336) The YWCA had never offered another employee a severance package similar to Ms. Kirsch's. (RPI 336) In fact, the YWCA could not legally continue to keep Ms. Kirsch on its dental and life insurance plans or continue to contribute to her retirement account after she no longer worked there. (RPI 339) Ms. Kirsch was aware of this, but nonetheless entered into the agreement. (RPII 559) Ms. Bott was disgusted when she

³ In describing the relationship between Ms. Walters and Ms. Kirsch, the trial court found:

That working relationship required a trust and loyalty, which in turn was perceived by some YWCA employees as a dominating and unresponsive two-person management team. This in turn created a lack of trust and each decision was viewed with skepticism and suspicion. (Finding No. 14, CP 164)

learned of the severance package. She thought it was an excessive gift by Ms. Walters to a friend that the YWCA did not have the money to pay. (RPII 446)

Ms. Walters was aware that the YWCA was running a significant deficit at this time. (RPI 310, 314; RPII 173-77) The YWCA's Policies prohibited Ms. Walters from creating obligations that were greater than the YWCA's expected revenue or from causing the YWCA any fiscal jeopardy. As the Executive Director, Ms. Walters was aware of these Policies and that her actions violated the Policies. (RPII 559) The severance agreement with Ms. Kirsch created an obligation on the part of the YWCA to pay a severance that it did not have the revenue to support, and unnecessarily exposed the YWCA to a claim by Ms. Kirsch when the YWCA could not honor the severance agreement because of its financial situation.

On January 27, 2009, at a regularly scheduled monthly meeting, the entire Board met with Ms. Walters. Ms. Kirsch also attended. Neither Ms. Kirsch nor Ms. Walters informed the Board of Ms. Kirsch's termination or her extravagant severance package. (RPI 334, 445) The YWCA's Policies provide "the Executive Director may not fail to keep the Board members informed of...material...internal changes." Ms. Kirsch's termination as Associate Executive Director and the severance package

authorized by Ms. Walters were material internal changes. (RPI 334) The Board and Executive Committee, after becoming aware of the significant financial condition positions and opinions held by Ms. Hill and Ms. Walters, strongly believed that Ms. Hill's financial expertise and guidance were absolutely necessary in order for the YWCA to properly identify and develop plans and procedures to deal effectively and successfully with its present financial conditions. (Finding No. 7, CP 162-63)

Ms. Bott called Ms. Hill and asked if she would be willing to consider whether she would return as Finance Director if the Board could resolve the conflict between Ms. Hill and Ms. Walters. Ms. Hill agreed. (Finding No. 20, CP 165) At this same meeting on January 27, 2009, Ms. Bott moved that the Board recommend Ms. Hill be rehired. The motion died for lack of a second. (Finding No.20, RPI 330, RPII 443)

At the January 27, 2009 Board meeting, in response to the Executive Committee's request that a survey be conducted of the staff, so that the Executive Committee could determine morale, Ms. Kirsch and Ms. Walters represented that employee morale was high. This was a clear misrepresentation by Ms. Walters based upon a December 19, 2008 meeting between Ms. Walters and her staff, where staff members complained to Ms. Walters that she was abusive toward them, that she

fostered a toxic work environment at the YWCA, and advised her they had serious concerns about her leadership and the manner in which she was operating and managing the YWCA and its finances. (RPII 617, 708)

Ms. Walters did not report for work after Tuesday, January 27, 2009. She had been scheduled to travel to Olympia with the Chamber of Commerce on Wednesday, January 28, 2009. The purpose of the trip was to present the Chamber of Commerce's legislative agenda for Spokane, including the YWCA's capital campaign request. Ms. Walters did not attend, did not attempt to find a replacement, and did not notify the YWCA that she would not be attending. (RPII 124)

On January 28, 2009, Ms. Walters visited a physician's assistant, Robyn Smith. The progress notes from this visit stated Ms. Walters was "having some difficulties at work and is having to see a lawyer in regards to quitting her job and some severance pay," that it was "creating quite a bit of stress in her life," and that Ms. Walters felt a "change of job venue [was] eminent [sic]." Ms. Walters was diagnosed by the physician's assistant with anxiety and depression. (Finding No. 20, CP166)

On the evening of Sunday, February 1, 2009, Ms. Walters notified several staff members by email that she would be on medical leave for two weeks. (Finding No. 20, CP 167) She did not email or call any member of the Board to notify them of her absence. Notice of her leave was finally

provided to the YWCA on February 5, 2009. (Finding No. 20, CP 167) Ms. Walters, through her attorney, sent a letter to Board President Deborah Booth advising that she had taken a two-week medical leave of absence. The trial court found that nothing was specifically requested other than a leave of absence. (Finding No. 17, CP 164) The YWCA received this letter on February 5, 2009, and subsequently granted Ms. Walters' leave. (Finding No. 18, CP 164; RPI 343)

On February 5, 2009, Greg Arpin, Ms. Walters' former attorney, sent a letter to Ms. Booth at Ms. Walters' request. (Finding No. 20, CP 166-67; RPI 341) Mr. Arpin also emailed copies of the letter to all members of the Board and some prospective Board members. The letter stated because of the "irreconcilable fracture in the trust necessary for her to effectively perform her...duties," and because "this matter is taking a toll on her health and well-being," Ms. Walters had determined she should resign from her position. Ms. Walters requested a severance package detailed in the letter. (Ex. 16)

On February 10, 2009, the Board appointed Ms. McFarland as Interim Executive Director. (Finding No. 20, CP 167; RPI 201, 396) Ms. McFarland rehired Ms. Hill as Finance Director. (RPI 206)

In early February, Ms. Senske and Ms. Bott inspected Ms. Walters' and Ms. Kirsch's computers and determined they had been scrubbed, with no information remaining on their hard drives. (RPII 593)

From February 5, 2009 until February 24, 2009, the Board received four unsolicited letters from staff members that were critical of Ms. Walters' management style and her overall management of the YWCA. (RPI 208)

Janeine Knoll, currently the YWCA Director of Operations, (RPII 617), advised the Board that she had issues with Ms. Walters' integrity and leadership; that Ms. Walters' leadership was emotional, unilateral and knee jerk reaction, that Ms. Walters made spur of the moment major decisions and seldom looked at what it would take to accomplish the decision or what the fall-out would be from that decision; that Ms. Walters reminded her "of an abuser who would break you down just to give you that tidbit of praise to keep you in line"; and that the atmosphere and morale of the YWCA was so low that she felt depleted. (Ex. No. 153)

Lance Laurier was the Director of Grants and Contracts for the YWCA. (RPII 650) He wrote to the Board that: Ms. Walters' management style was characterized by an aversion to long-range planning, a propensity to silence dissenting voices, and a lack of attention

to detail; that staff was being double-billed to separate grants; that there were instances of supplanting funds; that there was no infrastructure that would separate the grants; that Ms. Walters' and Ms. Kirsch's "hands-off" approach to management and their unwillingness to act allowed a finance director to remain employed and eventually embezzle money; that Ms. Walters insisted on continuing to use 15-passenger vans even after being told by staff that it was against state law; that staff had been internally separated from the Board and that Ms. Walters had made comments that the Board was a "hindrance." (Ex. 154; RPII 663)

Patricia Stewart had been the Office Manager at the YWCA. (RPII 586) She wrote to the Board that: employees were not treated fairly or equitably; that employee files did not have complete or accurate information; and that Ms. Walters became upset when procedures were becoming more transparent. (Ex. 155, RPII 588)

Trish McFarland was the Interim Executive Director and wrote to the Board that: she was concerned about the Director of Finance change-over during the prior 3 years; that she was concerned about the financial health of the YWCA; that Ms. Walters had an insular management style; that Ms. Walters had a "bullying" style of management and communication; that any employees challenging Ms. Walters or

Ms. Kirsch were terminated; and that the prior Finance Director was shut out of the budget process. (Ex. 152)

On February 10, 2009, the Board of Directors placed Ms. Walters on administrative leave due to performance issues. (RPI 350) Ms. Walters was advised of the administrative leave and that her employment would be discussed at the February 24, 2009 Board of Directors' meeting. (RPI 351)

On February 13, 2009, a second note was written by Ms. Walters' physician's assistant requesting the YWCA to extend Ms. Walters' leave. This second request was provided to the YWCA on February 23, 2009. (Finding No. 20, CP 167)

On February 24, 2009, at a regularly scheduled monthly Board meeting, the Board went into executive session to discuss Ms. Walters' employment. Twenty-one of the Board's twenty-four members were present. Twenty members voted to "release" Ms. Walters from her employment at the YWCA, regardless of whether it was by termination or accepting Ms. Walters' resignation. (RPI 359, 363) Ms. Walters' health condition played no role in that vote. (RPII 454) The trial court found that the Board of Directors, by an excess of a two-thirds majority vote, determined to terminate Ms. Walters' employment. (Finding No. 20, CP 165) The Board released Ms. Walters based upon unsatisfactory job

performance. (Finding No. 20, CP 164) This included unprofessional and inappropriate behavior, ongoing financial situations, performance issues, violations of grants, violations of Labor & Industries laws, and Ms. Kirsch's severance package. (RPI 359-360)

On March 11, 2009, an article appeared in the Spokesman-Review reporting that Board President Deborah Booth said Ms. Walters resigned, citing medical reasons. (Finding No. 19, CP 164)

Following trial, on July 1, 2010, the trial court issued its Findings of Fact and Conclusions of Law. (CP 161) Therein, the trial court concluded that Ms. Walters was an at-will employee, that the Board complied with its requirement of a two-thirds vote of the Board to terminate Ms. Walters, that the YWCA did not violate any obligation or duty to Ms. Walters, that the YWCA did not unlawfully discriminate against Ms. Walters, that the YWCA did not wrongly interfere with any contractual right, that the YWCA did not publish false information or place Ms. Walters in a false light, that the YWCA did not breach any perceived implied covenant of good faith or fair dealing, and that Ms. Walters failed to prove that any of her alleged damages were caused by the YWCA. (CP 161)

C. Argument.

1. The trial court properly ruled that Ms. Walters' termination was governed by the 2008 Bylaws.

Ms. Walters contends that the trial court abused its discretion by failing to factually determine whether the 2006 or the 2008 Bylaws governed her termination. (Assignments of Error 1, 2, 3) This contention lacks merit as the trial court's rulings are based on its conclusion that the 2008 Bylaws govern this matter.

Ms. Walters raised the issue regarding whether the 2006 or 2008 Bylaws were in effect at the time of her termination. (RPI 35) The significance of this issue was that the 2006 version of the Bylaws required notice be given to the Executive Director prior to a vote to release her from employment. (Ex. 33) The 2008 Bylaws did not contain the notice requirement. (Ex. 1)

The Bylaws in effect at the time of Ms. Walters' termination were adopted on December 9, 2008. (RPI 127) Ms. Walters initiated and was involved in the process to amend the Bylaws. (RPI 267; 417)

The Board operated under the 2008 Bylaws which were adopted on December 9, 2008. (RPI , 127, 267) Ms. Walters also operated under the 2008 Bylaws from December of 2008. (RPI 267) The trial court

specifically ruled that the 2008 Bylaws were in effect when Ms. Walters was terminated on February 24, 2009. (Finding No. 20, CP 168; RPI 366)

During trial, Ms. Walters asked the trial court to clarify which Bylaws were in effect as of the date of her termination. (RPII 962) The trial court took the issue under advisement and advised counsel that his ruling "will be incorporated in my findings and conclusions." (RPII 969)

A review of the trial court's ruling discloses that the trial court determined that the 2008 Bylaws governed Ms. Walters' termination.

The trial court ruled that the YWCA "did not violate any obligation or duty to Ms. Walters". (Conclusion No. 6, CP 169) Had the 2006 Bylaws been controlling, the YWCA would have been obligated to give notice prior to a termination vote. Here, the trial court ruled that the Board voted to terminate Ms. Walters without notice. (Finding No. 20, CP 168) This termination could have only been lawful under the 2008 Bylaws. As promised, the trial court incorporated its ruling on the Bylaws into its Findings and Conclusions. The trial court effectively ruled that the 2008 Bylaws controlled.

CR 52(a)(1) provides that in all actions tried upon the facts without a jury, the court shall find the facts specially and state separately its Conclusions of Law. When Findings of Fact and Conclusions of Law are

read with the trial judge's oral rulings, the requirement of this rule is fulfilled. State v. LaRue, 5 Wn.App. 299, 306, 487 P.2d 255 (1971).

The degree of particularity required in Findings of Fact must necessarily be gauged by the case at hand. It is sufficient to indicate the factual basis for the ultimate conclusion. Groff v. Dept. of Labor & Industries, 65 Wn.2d 35, 40, 395 P.2d 633 (1964).

Findings of Fact may be supplemented by a memorandum decision or an oral opinion which shows an understanding of the conflicting contentions in evidence. Groff, 65 Wn.2d at 40.

Appellate courts frequently refer to written memorandum decisions or oral rulings in order to determine the factual basis for trial court decisions. In re Todd, 68 Wn.2d 587, 592, 414 P.2d 605 (1966); Rutter v. Rutter, 59 Wn.2d 781, 784, 370 P.2d 862 (1962).⁴

Ms. Walters claims that the 2006 Bylaws governed because the 2008 Bylaws were not properly enacted. Specifically, Ms. Walters claims the 2006 Bylaws were never effectively amended in 2008 due to the absence of a vote of the YWCA membership. (Brief of Appellant, p. 17) This contention is contrary to the record.

⁴ The remedy for insufficient Findings of Fact is to have the cause remanded with instructions to enter or clarify Findings of Fact on the material issues. Mayes v. Emery, 3 Wn.App. 315, 321-22, 475 P.2d 124 (1970).

The 2006 Bylaws specifically addressed amendments.

Article XVIII provides:

Amendments to these bylaws not affecting the Association's membership in the Young Women's Christian Association of the United States of America may be made by a two-thirds affirmative vote of the members present at a regular or special meeting of the membership provided the following requirements have been met:

a. **General Amendments.** The Bylaws may [sic] be altered, amended or repealed by a two-thirds affirmative vote of the Board of Directors at a regular or special meeting provided that notice to amend, including copies of the proposed amendments, will have been given at a previous regular Board of Directors meeting.

(Ex. 33)

At trial, Board Secretary Virginia Bott testified that at the annual meeting on February 28, 2006, two amendments were passed by the YWCA membership. (RPII 410) The first amendment was the changes to the 2006 Bylaws. (Ex. 33) The second amendment, also passed by the YWCA membership, provided that only the Board of Directors had the authority to amend the Bylaws. (RPII 414-15) This amendment deleted

the requirement that all amendments must be approved by the YWCA membership. (RPII 415)⁵ The 208 Bylaws were properly enacted.

2. The trial court properly ruled that the YWCA complied with the requirement that the decision to terminate Ms. Walters be supported by a two-thirds vote of the Board.

In her appeal, Ms. Walters contends that the Bylaws require the entire Board (every Board member) to have voted on her termination. (Appellant's Brief, p. 20; Assignment of Error No. 3) This contention is based on a misconstrued reading of the Bylaws that was properly rejected by the trial court.

The Bylaws provide that:

"The Board of Directors by a vote of two-thirds majority of the entire board shall have the authority to release the executive director."

(2008 Bylaws, Article XII, Section 1(b); CP 342)

Ms. Walters has taken the position that the entire Board (24 of 24 Board members) must be gathered before any decision can be made. This hypertechnical argument was properly rejected by the trial court on summary judgment prior to trial. (CP 68; CP 121)

⁵ Secretary Bott testified telephonically from a remote location. (RPII 379) While she had a number of exhibits with her, she did not have access to all YWCA records. (RPII 380) Accordingly, a copy of the 2006 amendment that authorized the Board to amend the Bylaws was not admitted. For illustrative purposes only, a copy of that amendment is appended to this brief as Ex. "A".

The same argument was raised again during trial. (RPII 363) At the close of Ms. Walters' case, the YWCA moved for judgment as a matter of law on this issue. (RPII 606) In granting this motion, the trial court stated:

There was some confusion I think at the end of my ruling regarding whether my ruling dismissed the cause of action or denied this motion. I clarified at least what I believe my ruling was and it was my ruling so I knew as much as anybody else about it and allowed that cause of action to continue.

At this particular time I am not satisfied that there has been any evidence to support that cause of action. I am dismissing the cause of action based on the two-thirds vote breach of contract as a cause of action for which relief can be granted at this time.

The way I have read the requirement for the vote and the evidence that I have heard, I believe that the two-thirds issue was not an issue that was breached by the Y. There was a vote. I believe there was a quorum and that was done. That is granted.

(RPII 614-15)

By granting this motion, the trial court ruled as a matter of law that there was not sufficient evidence to support the claim. See, Berndt v. Hammer, 58 Wn.2d 408, 410, 363 P.2d 393 (1961).

Ms. Walters' argument requires a twisted interpretation of the Bylaw that requires a two-thirds majority vote by the Board. The Bylaw is clear that Ms. Walters could be terminated by a vote of two-thirds of the Board. The Bylaws do **not** require that all 24 Board members be physically present at the meeting where the vote was taken to release Ms. Walters from her employment. The Bylaw is short, concise, and states:

The Board of Directors by a vote of two-third majority of the entire Board shall have the authority to release the Executive Director.

While interpreting this provision of the Bylaws, the cardinal rule of interpretation is that its purpose is to ascertain the intention of the parties. Berg v. Hudesman, 115 Wn.2d 657, 663, 801 P.2d 222 (1990). The Bylaws are an integrated agreement and it is unnecessary to consider extrinsic evidence to ascertain the parties' intent; therefore, interpretation of the Bylaws was a question of law to be determined by the court. See, Berg, at 667-68.

Ms. Walters' interpretation of the Bylaws would have this Court read into it a provision that simply does not exist. The language stating: "two-thirds majority of the entire Board" clarifies how many **votes** are required. This provision governs the vote and how many votes are

required to release the executive director, not how many Board members must be physically present at the meeting at which the vote occurs.

The language "majority of the entire Board" clarifies the two-thirds of the total number of Board members must vote to release the executive director, not just two-thirds of the Board members who are present at the meeting. Thus, Ms. Walters could not have been released just because two-thirds of the Board members present at the meeting voted to release her (if this number was less than two-thirds of the total Board members). Two-thirds of the total Board members were required to release Ms. Walters. There were 24 Board members. With 20 of the 24 Board members voting to release Ms. Walters from her employment, there can be no dispute that the YWCA met the two-thirds requirement. This interpretation is consistent with the provision in the Bylaws that provide that a quorum exists if one-third of the Board members are present.⁶ Ms. Walters could not have been released by a vote of two-thirds of a quorum; she could only be released with a vote of two-thirds of the total number of Board members.

⁶ Article IX, Section 6 of the Bylaws provides: "One-third of the members of the Board of Directors shall constitute a quorum." (Ex. 1; CP 340)

If the intent of the parties was to require that all 24 Board members be physically present at the meeting, the Bylaws could have simply so stated. They do not.

It is undisputed that Ms. Walters was released from her employment with the YWCA on February 24, 2009, by a vote of twenty (20) out of the YWCA's twenty-four (24) Board members at the time. Thus, Ms. Walters was released by at least a two-thirds vote of the Board.

3. Ms. Walters' at-will employment status was not modified by the Board Policies or Bylaws.

In her appeal, Ms. Walters contends that she was not an at-will employee, but that the YWCA needed just cause to terminate her employment. (Appellant's Brief p. 26)

The employment at-will relationship may be altered in one of three ways: (1) an express contract limiting termination of the employee only for cause; (2) an implied agreement to that effect; or (3) the employee gives consideration in addition to the contemplated service. See, Thompson v. St. Regis Paper Co., 102 Wn. 2d 219, 223, 685 P.2d 1081 (1984).

Ms. Walters' at-will status was **not** modified by any of these three methods. The parties agreed that Ms. Walters' employment contract was governed by the Bylaws and Policies. These documents do **not** expressly

or impliedly provide that Ms. Walters can only be terminated for cause. Both parties stipulated at trial that neither the Bylaws nor the Policies contain the language "just cause." (RPII 265) Likewise, the court ruled that "neither the Board Policies...or the Bylaws changed or modified Ms. Walter's status as an at-will employee of the YWCA". (Conclusion No. 3; CP 168)

The only limitation on the YWCA's ability to terminate Ms. Walters' at-will employment was the required Board vote, and the Board "complied with that requirement." (Conclusion No. 5; CP 168) YWCA counsel briefed and argued the fact that just because a 2/3 vote was needed to release Ms. Walters from her employment, that does not equate to the requirement of "just cause" to terminate her. (RPII 1053) The Board could terminate Ms. Walters for any reason or no reason, provided 2/3 of the Board members voted to terminate her employment.

Moreover, generally, an employment contract that is indefinite as to duration is terminable at will by either employee or employer. Thompson v. St. Regis Paper Co., 102 Wn.2d 219, 223, 685 P.2d 1081 (1984). The Policies and Bylaws were indefinite as to duration; therefore, the employment was terminable at the will of the YWCA.

As a matter of law, Washington is an "at-will" state, and that doctrine provides that either party may terminate the employment

relationship without liability. Thompson, 102 Wn.2d at 225. This is simply the doctrine in Washington and exists as a "legal given" with no pleading or proof or evidence necessarily propounded by an employer, nor any necessary finding or conclusion by the court. The burden rests with an employee claiming a modification to the at-will doctrine, and this can also be a question of law for the court. Gagliardi v. Denny's Restaurant, 117 Wn.2d 426, 432, 815 P.2d 1362 (1991); George v. Washington Trust Bank, 1998 WL 320911 (Wash.App. 1998) (when an employee fails to meet his burden to establish a modification of the employment at-will status, the court must rule as a matter of law the employee was terminable at-will). Ms. Walters claims that the trial court erred in concluding that her relationship was "at-will." This fails to provide a proper basis for this theory on appeal.

Thus, contrary to Ms. Walters' argument that the YWCA did not allege "at-will" employment as an affirmative defense (Appellant brief p. 24), no such requirement exists. The status of the law is simply assumed in the pleading. A matter which merely negates an element of plaintiff's prima facie case is not an affirmative defense; a defense which demonstrates plaintiff has not met its burden of proof is not an affirmative defense which must be pled. 61A Am.Jur. Pleading §300. Ordinary defenses that are not affirmative defenses include the assertion of a

contractual right to terminate an agreement without cause. Id. at §304. In fact, courts in other jurisdictions have specifically addressed the issue found that the at-will doctrine does not have to be pled as an affirmative defense. See e.g., Rice v. Grant County Board of Commissioners, 472 N.E.2d 213, 214-15 (Ind.Ct.App. 1984); Mackey v. U.P. Enterprises, Inc., No. 12-99-00355-CV, 2005 WL 1798408 at* 3 (Tex.Ct.App. 2005). Here, Ms. Walters had the burden to establish that her at-will status was modified. She did not meet this burden, and the YWCA had no such burden of pleading or persuasion.

Finally, the trial court found that "[t]he YWCA, through its Board of Directors, after a tortured two to three month period in late 2008 and early 2009 determined that their executive Director, Ms. Walters, had not performed her responsibilities satisfactorily, and further determined that they were at a crossroads. The Board of Directors by in excess of a two thirds majority vote determined to terminated Ms. Walters' employment." (Finding No. 20; CP 164) Therefore, in the alternative, the YWCA had just cause to terminate Ms. Walters' employment.

4. **Ms. Walters was not entitled to recover any damages because she not only failed to prove any of her causes of action, she also failed to prove that any of her alleged damages were proximately caused by the YWCA.**

Ms. Walters challenges the trial court's ruling on her failure to prove damages. (Brief of Appellant, page 34) This argument is based on a misstatement of the trial court's ruling and is not supported by the record. The trial court ruled:

Ms. Walters, had she proved any of her causes of action, did not prove that alleged damages were proximately caused by the YWCA's decision to terminate her employment.

(Conclusion No. 7, CP 165)

Ms. Walters has taken his clear ruling and spun it into an argument that the trial court erred "in concluding that plaintiff failed to prove any damages as the result of the termination of her employment..." (Assignment of Error No. 9) and claims that the "...court's conclusion that Ms. Walters failed to prove damages is unsupported by the record." (Appellant's Brief, p. 34)

These damage arguments misstate the trial court's ruling and are also contrary to well-established law.

A breach of contract is actionable only if the contract imposes a duty, the duty is breached, and the breach proximately causes damage to

the plaintiff. NW Indep. Forest Mfrs. v. Dept. of Labor & Industries, 78 Wn.App. 707, 712, 899 P.2d 6 (1995).

Here, the trial court ruled that the YWCA did not breach any obligation or duties owed to Ms. Walters. (Conclusion No. 6, CP 169) Accordingly, Ms. Walters is not entitled to recover any damages and this argument necessarily fails.

Even looking beyond the fatal ruling of the court finding no breach, the trial court took the next step and ruled that even if Ms. Walters had proven a breach, she failed to prove that her alleged damages were **proximately caused** by the YWCA. (Conclusion No. 7, CP 169) (emphasis added)

Proximate cause is the reasonable connection between the act or omission of the defendant and the plaintiff's injury. Hartog, ex rel. S.A.H. v. City of Seattle, 138 Wn.2d 265, 282-84, 979 P.2d 400 (1999).

The question of proximate cause is generally a factual determination. Shah v. Allstate Ins. Co., 130 Wn.App. 74, 80, 121 P.3d 1204 (2005).⁷ Without proof of proximate cause, the plaintiff's cause of

⁷ The trial court expressed this factual determination as a Conclusion of Law. Findings of Fact that are denominated as Conclusions of Law will be treated as Findings of Fact on appeal. See, George E. Miller Lumber Co. v. Holden, 45 Wn.2d 237, 273 P.2d 786 (1954).

action fails. See, Gestson v. Scott, 116 Wn.App. 616, 625, 67 P.3d 496 (2003).

Ms. Walters failed to prove her case and is entitled to recover no damages. Additionally, even assuming she had prevailed on any of her theories, the trial court specifically found that she also failed to prove that any of her alleged damages were proximately caused by the YWCA.

5. The court properly ruled that the YWCA did not breach any contractual rights or duties allegedly owed to Ms. Walters.

During trial, Ms. Walters alleged that the YWCA breached its contractual duty to Ms. Walters by interfering in her management of the YWCA. Ms. Walters alleged that this breach occurred when the YWCA requested that she rehire Ms. Hill, and when treasurer Senske failed to present Ms. Walter's budget to the Board.

In her appeal, Ms. Walters contends that the trial court's conclusion that the YWCA did not interfere with any of Ms. Walters' contractual rights is not supported by the Findings of Fact nor supported by evidence in the record. (Appellant's Brief, p. 27) In fact, this conclusion is clearly supported by the trial court's Findings of Fact, and is equally supported by evidence in the record. As such, the following analysis will outline the obligations owed to Ms. Walters expressed in the Policies and Bylaws of the YWCA, and will identify each Finding that supports the trial court's

conclusion that no obligation or duty was violated and the corresponding evidence for each Finding.

This case was tried to the court rather than a jury. In a judge tried case, the trial court has the opportunity to see the witness and to evaluate their demeanor and credibility.

A finding of fact will not be overturned if it is supported by substantial evidence. Thorndike v. Hesperian Orchards, Inc., 54 Wn.2d 570, 575, 343 P.2d 183 (1959). Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. Bering v. Share, 106 Wn.2d 212, 220, 721 P.2d 918 (1986).

Ms. Walters argues that the YWCA breached a duty owed to her by interfering with her ability to terminate the employment of Ms. Hill and by “ordering her to rehire Ms. Hill.” (Appellant’s Brief p. 10 and 12) While it is true that Article XIII Section 2 of the Bylaws gave Ms. Walters the authority to hire and fire, the Bylaws also provide that the management of the Association is vested in the Board (Ex. 1, Article IX, Section 3(a); CP 339), and that the Board of Directors shall be responsible for assuming **final** responsibility for personnel policies and for employment of staff, (Ex. 1, Article IX, Section 4; CP 339)

Thus, no obligation was violated, as supported by the evidence and the court's Finding that

[t]he Board of Directors and the Executive Committee, after becoming aware of the significant financial condition disagreements, positions and opinions held by Ms. Hill and Ms. Walters, strongly believed that Ms. Hill's financial expertise and guidance were absolutely necessary in order for the YWCA to properly identify and develop plans and procedures to deal effectively and successfully with present financial conditions.

(Finding No. 7; CP 162-163)

The court also properly found that

Ms. Bott made a motion recommending the Ms. Walters rehire Denette Hill as Finance Director. There was no second and the motion was withdrawn.

(Finding No. 20, CP 166) Thus, the Board did not "order" Ms. Walters to rehire Denette Hill, but merely suggested it based upon their final authority for the employment of staff, and their ultimate management authority over the YWCA as provided by the Bylaws. Therefore, no breach occurred.

Ms. Walters argues that she presented a balanced budget to Treasurer Senske on January 27, 2009 to present to the Board, but that Ms. Senske refused to present the budget to the Board in violation of policy. (Appellant's brief p. 11) While Board Policy 3.5 does not allow

committees to exercise authority over staff, the Policies also state that the Executive Director shall present accurate, complete and timely information to the Board (Policy 2.6.2, Ex. 2), shall not jeopardize the long term financial strength of the organization (Policy 2.2, Ex. 2), and shall not deviate materially from Board priorities, risk fiscal jeopardy, nor fail to show a generally acceptable level of foresight (Policy 2.3, Ex. 2). Furthermore, the Bylaws provide that the Treasurer has responsibility for the financial operations of the YWCA. (RPI 257) Thus, the court properly ruled that no obligation owed to Ms. Walters was violated.

To establish her breach of contract claim, Ms. Walters was required to show (1) the existence of a valid contract, (2) the contract imposes a duty, (3) the duty was breached, and (4) the breach proximately caused damages. N.W. Indep. Forest Mfg., 78 Wn. App. at 712. The parties agreed that the YWCA's Policies and Bylaws constitute a valid contract. (Appellant Brief's p. 6; CP 1-7, 162) The question before the court was whether the YWCA breached a specific duty imposed by the contracts, and whether damages resulted.

The trial court properly found, and such findings are supported by substantial evidence, that the YWCA did not breach any contractual right or duty owed to Ms. Walters.

6. The YWCA did not breach any perceived covenant of good faith and fair dealing.

A claim for the breach of a covenant of good faith and fair dealing must be supported by “egregious circumstances” and supported by facts other than those which support the plaintiff’s breach of contract claim. Trimble v. Wash. State Univ., 140 Wn.2d 88, 97, 993 P.2d 259 (2000).

As plaintiff, Ms. Walters failed to present any evidence of "egregious circumstances," and failed to present facts other than those which supported her claim for a breach of contract. Thus, the court's finding that the YWCA did not breach any implied covenant of good faith and fair dealing was supported by the failure of Ms. Walters to support such facts at trial. (CP 169)

7. The YWCA did not violate the Washington Law Against Discrimination by failing to accommodate Ms. Walters’ alleged disability.

Ms. Walters presented her disability discrimination claim under Washington's Law Against Discrimination (WLAD) theory of failure to accommodate. To establish this claim, Ms. Walters had to prove that she was disabled within the meaning of the WLAD, and that the employer failed to provide the employee with a reasonable accommodation. Delaplaine v. United Airlines, Inc., 518 F. Supp.2d 1275, 1277 (W.D. Wash. 2007).

For the purpose of qualifying for a reasonable accommodation, the employee has a duty to notify the employer of the disability, "and the employee seeking an accommodation must explain his or her disability and qualifications." Wurzbach v. City of Tacoma, 104 Wn. App. 894, 900, 17 P.3d 707 (2001); see also, Holland v. America West Airlines, 416 F.Supp.2d 1028, 1033 (W.D. Wash. 2006) (noting that employee must prove he "gave the employer notice of the abnormality and its accompanying substantial limitations").

At trial, Ms. Walters failed to prove that she notified the YWCA of her disability. In fact, the evidence supported that Ms. Walters never informed the YWCA that she had a disability, but simply that she needed to take a leave of absence. (Finding No. 20; CP 167; RPII 342) The YWCA provided this leave as requested. (CP 167; RPII 343)

Even after the duty to accommodate has been triggered by notification, the scope of an employer's duty to accommodate an employee's condition "is limited to those steps reasonably necessary to enable employee to perform her job," and is limited to "removing sensory, mental or physical impediments to the employee's ability to perform his or her job." Doe v. Boeing Co., 121 Wn.2d 8, 18-21, 849 P.2d 531 (1993); see also, Riehl v. Foodmaker, Inc., 152 Wn.2d 138, 146, 94 P.3d 930 (2004). Where an employee's job performance is unchanged by her

condition, the employer is **not** required to accommodate. See, Doe, 121 Wn.2d at 21, 849 P.2d 531.

More specifically, stress associated with supervisors, co-workers, and performance reviews is common in the workplace and should not be considered an abnormality, as is required to qualify as a disability under the WLAD. See, Snyder v. Med. Serv. Corp. of E. Wash., 98 Wn. App. 315, 318, 326, 988 P.2d 1023 (1999) (citing Gaul v. Lucent Tech., Inc., 134 F.3d 576, 581 (3rd Cir. 1998)); Siemon v. AT&T Corp., 117 F.3d 1173, 1176 (10th Cir. 1997); Weiler v. Household Fin. Corp., 101 F.3d 519, 524-25 (7th Cir. 1996).⁸

The evidence established that Ms. Walters requested a medical leave after she had multiple heated meetings with the YWCA Board, failed to provide accurate information to the Board, failed to produce a balanced budget, after she told her medical provider that she was "having some difficulties at work and is having to see a lawyer in regards to quitting her job and some severance pay," that it was "creating quite a bit of stress in her life," and that Ms. Walters felt a "change of job venue [was] eminent [sic]." (RPI 183, 301, RPII 108, Finding No. 20, CP 166)

⁸ Washington courts may look to the federal courts for guidance because Washington's disability discrimination law parallels federal law. Goodman v. Boeing Co., 75 Wn. App. 60, 77, 877 P.2d 703 (1994).

Such evidence establishes that there is no basis to support Ms. Walters' claim of failure to accommodate or reverse the trial court's decision.

First, Ms. Walters was provided the medical leave that she requested. Second, Ms. Walters never requested any other accommodation that would have enabled her to perform her job, and requested no removal of a "sensory, mental or physical impediment." Finally, her alleged disability was simply stress associated with the Board, co-workers, and performance expectations; thus, failing to meet the requirement of a disability that needs to be accommodated.

8. The trial court properly rejected Ms. Walters' claims that the YWCA published false information or placed her in a false light.

The trial court ruled that the YWCA did not violate any obligation or duty to Ms. Walters by publishing false information or placing her in a false light. (Conclusion No. 6, CP 169) Because Ms. Walters failed to establish a prima facie case in support of either of these claims, the trial court properly dismissed them as a matter of law. (Conclusion No. 6, CP 169)

On February 5, 2009, Ms. Walters' attorney sent a letter to the YWCA stating:

To be sure, Ms. Walters has concluded that what has transpired to date in this matter has created an irreconcilable fracture in the trust necessary for her to effectively perform her executive director duties. In addition, this matter is taking a toll on her health and well being. As a result, Ms. Walters has determined that, for the mutual benefit of both the Association and herself, she should resign from her position as executive director.

(Ex. 16) This letter was sent by Mr. Arpin to all Board members as well as prospective Board members. (Finding No. 20; CP 166-67)

On February 1, 2009, Ms. Walters sent an email to eight YWCA employees announcing:

I am sending this from my home email, as I am currently on a medical leave for two weeks.

(Ex. 147)

On April 13, 2009, Ms. Walters filed the present lawsuit and asserted a disability discrimination claim, amongst other claims. Her Complaint alleges:

The YWCA's pattern of interfering with the ability of Monica Walters to carry out her job responsibilities as Executive Director of the YWCA caused Ms. Walters to suffer severe, medically diagnosable stress, mental anguish and emotional distress. Her health condition was a disability under RCW 49.60.040(25).

(CP 3; Walters' Complaint, ¶3.2)

The trial court found that "...following Ms. Walters' termination, there was an article in the Spokesman-Review, March 11, 2009 ed., referencing "Deborah Booth, President of the YWCA Board, said Walters resigned citing medical reasons..." (Finding of Fact No. 19, CP 164)

. While the trial court found that the Spokesman-Review had reported Ms. Walters' resignation, the plaintiff failed to present any evidence, nor did the trial court find, that Deborah Booth had made these statements to the Spokesman-Review reporter.

The plaintiff also presented a newsletter that referenced the Spokesman-Review article. (Ex. 26) Plaintiff failed to present any evidence that the newsletter was distributed by the YWCA. In fact, evidence was presented that the newsletter was distributed by the YMCA-YWCA Campaign, which is a separate Limited Liability Corporation, different from the YWCA. (RPII 455)

An invasion of privacy claim is generally held to apply to four different types of invasions: (1) an unwarranted intrusion by the defendant into plaintiff's private activities, affairs or seclusion; (2) appropriation by the defendant of a plaintiff's name, likeness or personality; (3) public disclosure of private facts; and (4) placing another in a false light. 16A Wash. Prac. Tort Law, §20.2; Eastwood v. Cascade Broadcasting Co., 106 Wn.2d 466, 469, 722 P.2d 1295 (1986); Mark v. Seattle Times,

96 Wn.2d 473, 497, 635 P.2d 1081 (1981); Restatement (Second) of Torts, §652A (1977). The only arguable basis Ms. Walters had for an invasion of privacy claim would be public disclosure of private facts and/or placing her in a false light.

To establish a claim for invasion of privacy based upon public disclosure of private facts, a plaintiff must establish: (1) the defendant gave publicity to a matter concerning the private life of plaintiff; and (2) the matter publicized is a kind that (a) would be highly offensive to a reasonable person, and (b) is not a legitimate concern to the public. White v. Township of Winthrop, 128 Wn.App. 588, 594, 116 P.3d 1034 (2005) (quoting Restatement (Second) of Torts, §652D); Fisher v. State ex rel. Department of Health, 125 Wn.App. 869, 879, 106 P.3d 836 (2005); 16A Wash. Prac. §20.5.

Ms. Walters failed to prove that the YWCA disclosed false facts about her to the public. To establish a claim for public disclosure of private facts, the plaintiff must establish: (1) Defendant publicized a matter; (2) that placed plaintiff in a false light; (3) the false light would be highly offensive to a reasonable person; and (4) the defendant knew of, or recklessly disregarded, the falsity of the publication or the false light in which plaintiff would be placed. Eastwood, 106 Wn.2d at 470-471; Restatement (Second) of Torts, §652E.

The truth is a defense to placing another in a false light. 16A Wash. Prac. §20.21. Ms. Walters did not establish that the YWCA's alleged statement that she had resigned citing medical reasons was false or placed her in a false light. In Mr. Arpin's February 5, 2009 letter written on her behalf, it is clear that Ms. Walters resigned from the YWCA citing the toll on her health and well being. (Ex. 16) Ms. Walters, herself, advised the YWCA staff on February 1, 2009 that she was on a medical leave. (Ex. 147) The Complaint filed on behalf of Ms. Walters describes her health issues in detail. (CP 3) Accordingly, the YWCA's alleged publication that Ms. Walters resigned citing medical reasons was not false, nor did it place Ms. Walters in a false light. Her claim was properly dismissed.

Further, Ms. Walters did not establish that the information published about her health concerned her private life or that it was highly offensive. Ms. Walters herself published more detailed information about her health in the email she sent to staff members regarding her health condition, the letter she sent to the Board and numerous other individuals, and in the pleadings she filed with the court. The alleged publication merely stated that Ms. Walters resigned citing medical reasons. However, the email and letter sent by Ms. Walters to the Board, staff members, and other individuals stated that she had health issues. Additionally, she filed

a Complaint with the court, which is a public record, stating she suffers from "severe, medically diagnosable stress, mental anguish and emotional stress." It was not the YWCA that gave publicity to her health condition, it was Ms. Walters. Thus, Ms. Walters did not establish that the YWCA gave publicity to a matter concerning her private life, a necessary element of her claim.

Ms. Walters waived her right to privacy by disclosing her health condition to numerous staff members, the entirety of the YWCA Board, and numerous individuals unrelated to the YWCA. Ms. Walters also waived her right of privacy and her health condition by filing a lawsuit outlining the details of her health condition, claiming she was disabled, and seeking damages for disability discrimination.

A person's right of privacy may be waived. Jeffers v. City of Seattle, 23 Wn.App. 301, 311, 597 P.2d 899 (1979). A waiver of an individual's right of privacy bars any claim for damages. 16A Wash. Prac. §20.21. Washington courts have adopted Restatement (Second) of Torts, §652D that provides, "thus, there is no liability for giving publicity to facts about the plaintiff's life that are matters of public record, such as...the pleadings that he has filed in a lawsuit." Restatement (Second) of Torts, §652D, cmt. b.

Ms. Walters was also unable to establish that any of the alleged damages she claims were the result of the disclosure of private information by the YWCA's publication rather than her own publication. (Conclusion No. 7, CP 169)

It is undisputed that Ms. Walters published detailed information about her health condition when she sent emails to YWCA staff and when filed the present lawsuit on April 13, 2009. Ms. Walters was unable to show that her alleged damage was the result of the disclosure of information about her health. Moreover, any alleged damages were caused by her own publication and not by the YWCA's publication.

Faced with this evidence, the trial court properly concluded that the YWCA did not violate any obligation or duty to Ms. Walters by publishing false information or placing her in a false light. (Conclusion of Law No. 6, CP 169) The trial court properly rejected these claims.

D. CONCLUSION

The YWCA requests that this Court affirm the rulings of the Superior Court.

DATED this 14th day of March, 2012.



KAMMI M. SMITH

CARL E. HUEBER

WINSTON & CASHATT, LAWYERS

Attorneys for Respondent

DECLARATION OF SERVICE

Cheryl Hansen declares under penalty of perjury under the laws of the State of Washington as follows: That on March 14, 2012, I served the foregoing document on counsel for appellate by causing a true and correct copy of said document to be delivered to him at the address shown below in the manner indicated:

Paul J. Burns	VIA REGULAR MAIL	<input type="checkbox"/>
One Rock Pointe	VIA CERTIFIED MAIL	<input type="checkbox"/>
1212 N. Washington, Suite 116	HAND DELIVERED	<input checked="" type="checkbox"/>
Spokane, WA 99201	BY FACSIMILE	<input type="checkbox"/>
	VIA FEDERAL EXPRESS	<input type="checkbox"/>

DATED at Spokane, Washington, on March 14, 2012.

Cheryl Hansen

288010



YWCA Annual Meeting

Tuesday, February 28, 2006

YWCA Comstock Room

829 W Broadway

Refreshments & Social from 4:30-5:00

Annual Meeting 5:00-6:00

What if we took the very best of who we are now and who we have ever been and combined it with our dreams of who we want to be?

And what if we could involve every single person in the YWCA in that conversation? We encourage all voting YWCA members to attend the YWCA Annual Meeting so you can be a voice in the conversation.

We will be voting on the following Board Members/Nominees:

Anne Marie Axworthy – 2nd Term

Cynthia Benzel – 2nd Term

Virginia Bott – 2nd Term

Carolyn Fairbanks – 2nd Term

Deborah McDonald – 2nd Term

Jaimie Vanos – 1st Term

Joyce Cameron – 1st Term

Irene Gonzales – 1st Term

Joy Moore – 1st Term

Nicole Sherman – 1st Term

Jennifer Stark – 1st Term

Shannon Verschueren – Student One Year Term

Proposed Amendment changes to the YWCA of Spokane Bylaws:

- Article 10 Section 2 add the following:

The retiring Board President will automatically serve one additional year on the Board with vote.

- Article 18 changed to the following:

a. **General Amendments.** The Bylaws may be altered, amended or repealed by a two-thirds affirmative vote of the Board of Directors at a regular or special meeting provided that notice to amend, including copies of the proposed amendments, will have been given at a previous regular Board of Directors meeting.

b. **Amendments Affecting Affiliation with the National Association.** If an amendment should be presented which would alter these Bylaws in such a way as to affect affiliation with the YWCA of the USA, the required procedures for general amendments must be met and, in addition, the amendment must be passed by a two-thirds affirmative vote of the general membership.

c. Copies of the amendment, or amendments, will be made available to the voting members at least two weeks in advance of the meeting.

Current copies of the YWCA of Spokane Bylaws are available at the Front Desk of the YWCA.

- Displays will be set up for our Alternatives to Domestic Violence, Child & Youth Services, Fitness, and Development Programs. **Come and see what we are doing!!**
- **Company of Women Luncheon** is scheduled for April 12, 2006 in the YWCA Comstock Room. Please call Candice @ 326-1190 x154 for reservations. Dr. Stacie Bering will be the speaker.
- This year's **Women of Achievement Luncheon will be held on Monday, October 30, 2006** at the Convention Center. The speaker is Linda Armstrong Kelly, mother of Lance Armstrong. Please contact us if you would like to be a Table Leader or just join us at the luncheon. The cost is the same as last year, \$100 per person. Contact Jenni @ 326-1190 x156 for reservations or table packets.

See our web site www.ywca.org/spokane for more detailed information of upcoming events!



YWCA of Spokane Annual Members Meeting

MINUTES

2/28/06

5:00-5:40PM

YWCA – COMSTOCK ROOM

MEETING CALLED BY	YWCA Board of Directors
TYPE OF MEETING	Annual Member Meeting
FACILITATOR	Patricia Elzey – Board of Director President
NOTE TAKER	Jenni Knoll, YWCA Office Manager
NEXT MEETING	Date: Tuesday, February 27, 2007 Location: YWCA – Comstock Room

Agenda topics

WELCOME

PATRICIA ELZEY

DISCUSSION	<ul style="list-style-type: none"> Welcome to all of the Members, Staff, and Board Members who are in attendance. Introduction of Jeanne Schmitz-Uphus, YWCA Director of Finance presenting the 2005 Financial Report for the Board Treasurer, Carolyn Fairbanks, who was unable to attend.
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2005 FINANCIAL REPORT

JEANNE SCHMITZ-UPHUS

DISCUSSION	<p>The YWCA operated on a \$2.4M budget. Expenses were lean and salaries were frozen. We knew that we would have a short fall and we have been working to overcome it.</p> <ul style="list-style-type: none"> July we got a \$250K grant for the Alternatives to Domestic Violence Program for Civil Legal In October we were experiencing a \$45K loss due to the pool expenses, by closing the pool we have saved \$3-4K a month on utility bills. Loss for 2005 was estimated at \$150K The YWCA received \$500K in federal funds which makes up 26% of the budget. Because we were over \$500K in federal funds, we will need to have a special audit under the A133 rules. 70% of revenues are from government funding and 30% are from private donations, United Way, events, and misc.
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PROGRAM REPORT

MONICA WALTERS

DISCUSSION	<p>It is an exciting time in the history of the YWCA as we are embarking on the sale of the building and plans to build a new facility in a community collaboration with the YMCA.</p> <ul style="list-style-type: none"> Introduction of Trish McFarland, YWCA Director of Development & Capital Campaign. Trish is very happy to be at the YWCA and is excited about the job ahead of her. Her background includes Executive Director of the Ronald McDonald House, Director of Development at Gonzaga Prep, and most recently, Director of Major Gifts at Eastern Washington University. Introduction of Amy Kirsch, YWCA Associate Executive Director. Introduction of Sheri Barnard, YWCA Volunteer Coordinator and Opportunity Center Patty Wheeler, YWCA Director of Alternatives to Domestic Violence Program. Last year the program was very busy with projects at the shelter, counseling, advocacy, and family law. We expanded our transitional housing from 2 to 8 units. The Teen Dating Violence Program was funded by Women Helping Women and Group Health Foundation; 1 in 5 young women will experience domestic violence or teen dating violence in High School. Patty is also a Board Member on the Washington State Domestic Violence Coalition Board of Directors. Introduction of Natalie Kenney, YWCA Director of Child and Youth Services. The four major programs in her area are: Child Family Care Program (CFCP), Early Childhood Education Assistance Program (ECEAP), Homeless Education and Resource Team and After School Program (HEART) and the YWCA Opportunity Center. CFCP is a fee for service program sponsored by DSHS and provides visitation and parent education to families where children have been removed. This is a very difficult environment for staff and we have the best! ECEAP is a low income pre-school that is currently serving 52 families with free services at the YWCA and Airway Heights facilities. This program allows children of low income families to get a good start on their education for later life. Teachers have been on staff for many years at the YWCA. The HEART program currently serves 26 children at the YWCA in the after school program. The children are given special attention and a chance to participate in social interaction with the community. BUBBLES is a program in HEART that is for junior and high school students. They make, market and sell their products; soap, lotion, and lip gloss. The Opportunity Center opened in February and we still have no funding! We were able to procure some computers, volunteers, and curriculum. We currently have 6 students and are trying to get grants for a job development program. Our Sister's Closet is moving under the CYS umbrella, this is where women can get clothes and necessities to find a job. Monica talked about partnerships being very important to our future. The YW has a very important role in the community. We can and do make a difference.
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THANK YOU AND ACKNOWLEDGEMENTS

PATRICIA ELZEY

DISCUSSION	<ul style="list-style-type: none"> • Thank you to Monica and her staff for all that they do. • Acknowledgement of current Board Members. • Acknowledgement of retiring Board Members: <ul style="list-style-type: none"> - Janice Marich - Kristin Goff - Theresa Gee – Past President of Board of Directors
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ASSOCIATION BUSINESS

PATRICIA ELZEY

DISCUSSION	<ul style="list-style-type: none"> • 2nd Term Candidates for another 3 year term: Anne Marie Axworthy, Cynthia Benzel, Virginia Bott, Carolyn Fairbanks, Deborah McDonald • Motion from Theresa Gee to accept the 2nd Term Candidates. • Motion Seconded from Margot Hamstra-Havermann • All were in favor • Motion Passed • 1st Term Candidates for a 3 year term: Jamie Vanos, Joyce Cameron, Irene Gonzales, Joy Moore, Nicole Sherman, Jennifer Stark, and student Shannon Verschueren for one year • Motion from Theresa Gee to accept the 1st Term Candidates. • Motion Seconded from Margot Hamstra-Havermann • All were in favor • Motion Passed • Proposed Amendment to Article 10 Section 2 of the YWCA Bylaws: The retiring Board President may serve one additional year on the Board with vote. • Motion from Janice Marich to accept the Amendment to Article 10 • Motion Seconded from Virginia Bott • All were in favor • Motion Passed • Proposed Amendment to Article 18 of the YWCA Bylaws: <ol style="list-style-type: none"> a. General Amendments. The Bylaws may be altered, amended or repealed by a two-thirds affirmative vote of the Board of Directors at a regular or special meeting provided that notice to amend, including copies of the proposed amendments, will have been given at a previous regular Board of Directors meeting. b. Amendments Affecting Affiliation with the National Association. If an amendment should be presented which would alter these Bylaws in such a way as to affect affiliation with the YWCA of the USA, the required procedures for general amendments must be met and, in addition, the amendment must be passed by a two-thirds affirmative vote of the general membership. c. Copies of the amendment, or amendments, will be made available to the voting members at least two weeks in advance of the meeting. • Motion from Anne Marie Axworthy to accept the Amendments to Article 18 • Motion Seconded by Verna Eucker • All were in favor • Motion Passed
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NOTE FROM MONICA

MONICA WALTERS

DISCUSSION	Monica wanted everyone present to know that the web site would be kept up-to-date on our progress with the building and capital campaign. Also information about upcoming events is regularly updated on the web site.
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MEETING CLOSURE

PATRICIA ELZEY

DISCUSSION	The meeting was adjourned at 5:40pm
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