

No. 68763-8-I

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

HOLSEY SATTERWHITE, individually,

Appellant,

v.

STATE OF WASHINGTON, UNIVERSITY OF WASHINGTON,

Respondent,

BRIEF OF APPELLANTS
HOLSEY SATTERWHITE AND THADDEUS P. MARTIN

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 COURT OF APPEALS
 DIVISION I
 SEATTLE, WA

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A. INTRODUCTION

Appellant Holsey Satterwhite, a former contract employee of the University of Washington, seeks review of an April 20, 2012 trial court order granting the University's motion for attorney fees and costs. The trial court imposed fees against Satterwhite as a sanction under CR 11 and RCW 4.84.185 after summarily dismissing his employment discrimination lawsuit against the University. Satterwhite's trial attorney, Thaddeus P. Martin, also seeks review of the order and judgment because the trial court imposed the sanctions jointly and severally.¹

The trial court abused its discretion by awarding attorney fees to the University under CR 11 and RCW 4.84.185 because it failed to issue appropriate findings of fact and conclusions of law to explain the basis for its award under either approach. Meaningful appellate review is not possible given the trial court's failure to "show its work." The Court should vacate the sanction award and remand to the trial court for entry of appropriate findings.

¹ Satterwhite and Martin also appealed the March 9, 2012 order granting summary judgment and dismissing Satterwhite's complaint for employment discrimination. CP 587, 598. But the University moved to dismiss review of that order, claiming the appeal was untimely. This Court's Commissioner ruled on July 10, 2012 that Satterwhite and Martin's appeal was timely only as to April 20, 2012 order awarding attorney fees and limited review accordingly. This appeal thus involves only the trial court's order granting attorney fees and costs to the University.

Even if meaningful review is possible, the trial court abused its discretion by awarding sanctions under CR 11 where Martin made a reasonable inquiry into the law and the facts and the University presented no evidence that Satterwhite's complaint was filed for an improper purpose. The trial court's CR 11 award was not a reasonable exercise of its discretion. The trial court also abused its discretion by awarding sanctions under RCW 4.84.185 where Satterwhite's lawsuit was not frivolous in its entirety or advanced without reasonable cause. That Satterwhite did not prevail on the merits of his claims is not enough to warrant the imposition of sanctions. This Court should reverse.

B. ASSIGNMENTS OF ERROR

(1) Assignments of Error

1. The trial court erred in making finding of fact number 1.²
2. The trial court erred in making finding of fact number 2.
3. The trial court erred by entering an order granting the University's motion for attorney fees and costs under CR 11 and RCW 4.84.185 and by entering a judgment awarding those fees and costs, both of which occurred on April 20, 2012.

² The trial court's order granting the University's motion for fees and its subsequent judgment are in the Appendix.

4. The trial court erred by entering a final judgment on May 11, 2012 awarding the University \$79,253.83 in attorney fees and costs against Satterwhite and Martin, jointly and severally.

(2) Issues Pertaining to Assignments of Error

1. Did the trial court err by ordering a plaintiff and his attorney to pay attorney fees and costs to the defendant under CR 11 and RCW 4.84.185 where it failed to specify in its order the grounds upon which it awarded fees, the sanctionable conduct, and the specific filings it deemed sanctionable, thereby precluding meaningful appellate review? (Assignments of Error Nos. 1-4).

2. Did the trial court err by ordering a plaintiff and his attorney to pay attorney fees and costs to the defendant under CR 11 where the attorney made a reasonable inquiry into the law and the facts, the defendant presented no evidence that the complaint was filed for an improper purpose, and the plaintiff merely failed to prevail at summary judgment on the merits of his claims? (Assignments of Error Nos. 2-4).

3. Did the trial court err by ordering a plaintiff and his attorney to pay attorney fees and costs to the defendant under CR 11 where it failed to limit the fees awarded to the amounts the defendant reasonably expended in responding to the sanctionable conduct or filings? (Assignments of Error Nos. 3-4).

4. Did the trial court err by ordering a plaintiff and his attorney to pay attorney fees and costs to the defendant under RCW 4.84.185 where the plaintiff's lawsuit was not frivolous in its entirety and the trial court acknowledged at least one of the plaintiff's claims, but then determined that the plaintiff failed to prove it on the merits? (Assignments of Error Nos. 1, 3-4).

C. STATEMENT OF THE CASE

The Children's Welfare Teaching Assistance Program ("CWTAP") is a partnership between the State of Washington's Children Administration ("CA") and the University of Washington's School of Social Work ("SSW"). CP 47. Satterwhite was a faculty member assigned to the CWTAP from September 10, 2008 to June 30, 2010. CP 2, 5, 9, 69-70, 278. As a condition of his employment, he was subject to the University's rules and regulations, including the University Faculty Code and University Handbook. CP 70, 126. He is African-American and was the only male employee in the department. CP 312.

Satterwhite instructed and supervised adult graduate students in the SSW seeking a Master's degree in Social Work. CP 48. As part of the program, students receive customized field instruction to prepare them for leadership roles in the public child welfare arena and are given the opportunity to develop practice skills in a child welfare office. CP 47-48.

They receive educational assistance in exchange for agreeing to work for the CA for a period of time roughly commensurate with the amount of time for which they received educational assistance. CP 48.

In 2009, graduate student Tiffany McRae complained to her supervisor, Tammy Inselman, and Zynovia Hetherington, the director of the SSW, that Satterwhite made her feel uncomfortable and alleged that he was sexually harassing her. CP 50, 113-14. McRae was not under Satterwhite's direct supervision. CP 113. McRae claimed that Satterwhite harassed her by inviting her to attend a church banquet where he could introduce her to other members of the African-American community, by inviting her to attend a movie, and by tapping her on the shoulder while other students were present during a training session. CP 3, 113, 116-17. McRae never disclosed to Satterwhite that his conduct made her feel uncomfortable. CP 282, 324, 332-33.

Following the meeting, Hetherington notified Dr. Margaret Spearmon, the SSW Associate Dean, of the substance of McRae's complaints. CP 28. Hetherington and Dr. Spearmon then contacted Satterwhite and asked to meet with him. CP 2-3, 288. He was not informed of the purpose for the meeting. CP 3, 288. When Hetherington and Dr. Spearmon disclosed McRae's allegations, Satterwhite did not necessarily contest the facts. CP 3-4. But he explained that he was trying

to help McRae network within the African-American community and that his conduct was not sexually motivated or intended to harass her. CP 281-84, 289-90, 318-19. Hetherington and Dr. Spearmon stated that the allegations were “low level” and that Satterwhite would not lose his job. CP 293-94, 299. He was placed on home assignment and informed that the University’s Ombudsman could investigate McRae’s allegations, but that the SSW preferred to handle it. CP 4, 292, 294.

Dr. Spearmon, Hetherington, and Carol Donaldson, the CWTAP Associate Director, met with McRae a second time. CP 58. McRae repeated her allegations against Satterwhite. CP 58. Dr. Spearmon concluded that McRae’s allegations suggested that Satterwhite had violated the University’s policies, including those prohibiting sexual harassment. CP 59. Dr. Spearmon and Edwina Uehara, Dean of the SSW, scheduled a formal meeting with Satterwhite to address his perceived violations of the University’s code of conduct. CP 5, 296. He was again advised of the allegations against him and allowed to provide his version of the events. CP 5, 297.

Although Satterwhite does not recall discussing his employment options with the University, the University contends that it presented him with three options to resolve McRae’s claims, which ranged from a formal investigation, to conciliatory proceedings through the University

Ombudsman, to an agreed resolution. CP 302, 346. Regardless, Satterwhite was informed that a decision would be made and that he would remain on home assignment. CP 5. He left the meeting not knowing what was going to happen. CP 299, 302.

On December 17, 2009, Satterwhite received a letter from Dr. Spearmon notifying him for the first time that his contract would not be renewed. CP 5, 62. He was to be reassigned and subjected to an 80% reduction in work and pay to reflect his newly reduced duties. CP 5, 62. Until McRae's allegations, Satterwhite's job performance had been satisfactory and he had never been accused of sexual harassment. CP 306. Satterwhite felt that he had no choice but to accept the demotion and did so involuntarily and under duress. CP 145-56, 149.

On January 4, 2010, Satterwhite reported to his new position and performed his limited duties as directed until his contract expired in June 2010. CP 5.

Satterwhite hired Martin and filed a lawsuit against the University on January 28, 2011, alleging fifteen claims including racial discrimination, hostile work environment, disparate treatment, disparate impact, wrongful discharge, unlawful retaliation, negligent infliction of emotional distress, intentional infliction of emotional distress, outrage, assault, battery, negligence, negligent hiring, negligent supervision, and

negligent retention. CP 1-7. The parties later agreed to dismiss Satterwhite's claims for intentional infliction of emotional distress, outrage, assault, and battery. CP 16-17.

A year later, the University moved to summarily dismiss Satterwhite's complaint while discovery was ongoing, contending there were no disputed issues of fact. CP 20-46. It also sought sanctions under CR 11 and RCW 4.84.185. CP 20-46, 348-53. Satterwhite responded, conceding the University's arguments on his negligence, negligent hiring, negligent retention, and negligent supervision claims, but asking that those claims be dismissed without prejudice because discovery was ongoing and might uncover evidence to support them. CP 255. The trial court granted the University's motion and dismissed all of Satterwhite's remaining claims with prejudice on March 9, 2012. CP 589-90.

The University moved for attorney fees and costs under CR 11 and RCW 4.84.185 on April 6, 2012. CP 391-409. Satterwhite objected. CP 486-518. Martin testified that he must frequently file a lawsuit just to get the necessary discovery he needs to completely flesh-out his clients' claims because the employer rather than the employee controls the key evidence. CP 517-18. The trial court granted the University's motion and entered judgment on April 20, 2012, imposing \$78,968.25 in sanctions

against Satterwhite and Martin jointly and severally. CP 591-93. The trial court entered a subsequent judgment on May 11, 2012. CP 605-06.

Satterwhite and Martin appeal the award of attorney fees and costs to the University under CR 11 and RCW 4.84.185. CP 587-607.

D. SUMMARY OF ARGUMENT

The record presented to this Court to support the trial court's sanction award is insufficient to permit meaningful appellate review. The trial court failed to "show its work" by issuing appropriate findings of fact and conclusions of law. The findings do not identify the conduct or filings the trial court found sanctionable and do not explain its rationale for turning a sanction award into a fee-shifting mechanism. The Court should vacate the fee award and remand for the entry of appropriate findings of fact and conclusions of law, including findings identifying the sanctionable conduct and filings. Remand is also necessary to reduce the amount of sanctions imposed against Satterwhite and Martin, if any such award is even warranted, to an amount the University reasonably expended in responding to the sanctionable conduct or filings.

Even if this Court determines that the record is sufficient to permit meaningful appellate review, the trial court abused its discretion by sanctioning Satterwhite and Martin under CR 11 and RCW 4.84.185.

CR 11 permits the imposition of reasonable attorney fees and costs as a sanction where a bad faith filing of pleadings for an improper purpose or a filing of pleadings not grounded in fact or warranted by law has occurred. This case was not meritless on the facts and the law. RCW 4.84.185 allows for the recovery of attorney fees and costs where the lawsuit is found to be frivolous. An action is frivolous if it cannot be supported by any rational argument on the law or facts. Here, Satterwhite's complaint was not frivolous in its entirety.

That Satterwhite was ultimately unsuccessful in defending against the University's summary judgment motion on the merits does not equate with a complete lack of a factual basis or frivolousness to justify imposing sanctions under CR 11 and RCW 4.84.185.

E. ARGUMENT

(1) Standard of Review

Washington courts retain broad discretion to tailor an appropriate sanction and to determine against whom such a sanction should be imposed. *Miller v. Badgley*, 51 Wn. App. 285, 303, 753 P.2d 530 (1988).

This Court reviews the sanctions imposed under CR 11 for an abuse of discretion, both as to the trial court's decision to impose sanctions and as to the nature of the sanctions imposed. *State ex rel. Quick-Ruben v. Verharen*, 136 Wn.2d 888, 903, 969 P.2d 64 (1998)

(applying abuse of discretion standard to the decision to award fees); *Reid v. Dalton*, 124 Wn. App. 113, 125, 100 P.3d 349 (2004) (applying abuse of discretion standard to determine whether amount of fees was appropriate).

Likewise, the Court reviews the sanctions imposed under RCW 4.84.185 for an abuse of discretion. *Fluke Capital & Mgmt. Servs. Co. v. Richmond*, 106 Wn. 2d 614, 625, 724 P.2d 356 (1986).

(2) The Trial Court Abused Its Discretion by Failing to Enter Appropriate Findings of Fact and Conclusions of Law to Support the Sanction Award

It is firmly settled under Washington law that a trial court must make an adequate record to support its fee award. *Mahler v. Szucs*, 135 Wn.2d 398, 435, 957 P.2d 632 (1998); *Skimming v. Boxer*, 119 Wn. App. 748, 755, 82 P.3d 707, *review denied*, 152 Wn.2d 1016 (2004). “This record must be adequate to permit appellate review.” *Rhinehart v. The Seattle Times, Inc.*, 59 Wn. App. 332, 342, 798 P.2d 1155 (1990). The trial court must issue findings of fact and conclusions of law in support of its fee award to establish an adequate record. *Mahler*, 135 Wn.2d at 652. Cursory findings are insufficient. *In re Marriage of McCausland*, 159 Wn.2d 607, 620, 152 P.3d 1013 (2007) (cursory findings of fact, even when supported by the record, are insufficient); *In re Marriage of Horner*, 151 Wn.2d 884, 896-897, 93 P.3d

124 (2004) (conclusory findings are insufficient because the basis for the trial court's decision is unclear and the appellate courts cannot review it).

It is likewise well-settled that when a trial court imposes sanctions under CR 11, it must explicitly identify the sanctionable conduct and the filings that violate the rule in its order. *Quick-Ruben v.*, 136 Wn.2d at 903-04; *MacDonald v. Korum Ford*, 80 Wn. App. 877, 892, 912 P.2d 1052 (1996). *See also, Blair v. GIM Corp., Inc.*, 88 Wn. App. 475, 483, 945 P.2d 1149 (1997) (remanding for entry of findings to justify imposition of CR 11 sanctions where the record did not explain why the trial court believed the pleading to be groundless); *North Coast Elec. Co. v. Selig*, 136 Wn. App. 636, 649, 151 P.3d 211 (2007) (noting the trial court's sanction award was not sustainable under CR 11 where the court failed to specify why the defendant's counterclaims were baseless). Without relevant findings of fact and conclusions of law, this Court is unable to objectively evaluate the attorney's conduct and the imposition of sanctions under CR 11. *Blair*, 88 Wn. App. at 483

Where, as here, the sanctions imposed are substantial in amount, this Court's review will be inherently more rigorous. *MacDonald*, 80 Wn. App. at 892. "Such sanctions must be quantifiable with some precision. Therefore, justification for the Rule 11 decision in the record must correspond to the amount, type, and effect of the sanctions applied." *Id.*

Here, the trial court's order is deficient according to the foregoing case law. For example, the trial court did not make findings regarding the specific filings it found violated CR 11 or specifically address each claim and explain why it was not well grounded in fact or law. *Blair*, 88 Wn. App. at 483; *North Coast*, 136 Wn. App. at 649. More troubling, the trial court gave no explanation for the amount of sanctions awarded to the University. The court's order is far from sufficiently specific to allow meaningful appellate review, particularly the more rigorous review necessitated by the substantial amount of sanctions the court imposed against Satterwhite and Martin.

Likewise, before a trial court can award attorney fees under RCW 4.84.185, the court must make written findings that the lawsuit in its entirety is frivolous and advanced without reasonable cause. *North Coast*, 136 Wn. App. at 650. Again, the court here summarily found that Satterwhite's claims were frivolous and advanced without reasonable cause. CP 592. But it did not specify *why* his claims were baseless. *Id.* Without some explanation, this Court cannot determine whether the trial court abused its discretion in granting attorney fees under this statute.

Where, as here, the trial court fails to make the requisite findings of fact and conclusions of law to support its award of sanctions under CR 11 and RCW 4.84.185 and the record is therefore insufficient to permit

appellate review of the attorney fee award, remand is appropriate for the entry of findings. *Just Dirt, Inc. v. Knight Excavating, Inc.*, 138 Wn. App. 409, 157 P.3d 431 (2007); *Doe v. Spokane & Inland Empire Blood Bank*, 55 Wn. App. 106, 112, 780 P.2d 853 (1989). It was the University's duty as the prevailing party to procure formal written findings supporting its position; it must "abide the consequences" of its failure to fulfill that duty. *Peoples Nat'l Bank v. Birney's Enters., Inc.*, 54 Wn. App. 668, 670, 775 P.2d 466 (1989). Accordingly, if this Court does not agree that the entire award against Satterwhite and Martin must be reversed because sanctions were not warranted, then the matter must still be remanded for the entry of appropriate findings.

(3) The Trial Court Erred By Imposing Sanctions Under CR 11

Even if this Court determines that the record is sufficient to permit meaningful appellate review, the trial court abused its discretion by sanctioning Satterwhite and Martin under CR 11.

CR 11 permits the imposition of reasonable attorney fees and costs as a sanction where a bad faith filing of pleadings for an improper purpose or a filing of pleadings not grounded in fact or warranted by law has occurred.³ *See, e.g., Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 217,

³ CR 11(a) requires an attorney to sign pleadings, motions, or legal memoranda. The attorney's signature certifies that the attorney believes, after "an inquiry reasonable under the circumstances," that the pleading, motion or legal memorandum is: (1) well-

829 P.2d 1099 (1992) (noting the rule addresses two separate problems: baseless filings and filings made for an improper purpose).

The party moving for sanctions bears the heavy burden to justify the request. *Biggs v. Vail*, 124 Wn. 2d 193, 202, 876 P.2d 448 (1994) (*Biggs II*). That the complaint does not prevail on its merits is not dispositive of the question of the appropriateness of CR 11 sanctions. *Bryant*, 119 Wn.2d at 220. *Accord, Biggs II*, 124 Wn.2d at 196-97 (noting sanctions are reserved for egregious conduct and should not be viewed simply as another weapon in the litigator's arsenal). Likewise, that a party dismissed a claim after discovery, without more, is no basis to impose sanctions. *Tiger Oil Corp. v. Dep't of Licensing*, 88 Wn. App. 925, 946 P.2d 1235 (1997). Instead, the trial court should impose sanctions under CR 11 "only when it is patently clear that a claim has no chance of success," *Skimming*, 119 Wn. App. at 755, and only if all three conditions of the rule are met. *Miller*, 51 Wn. App. at 300.

grounded in fact; (2) warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law; and (3) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. *Id.* (emphasis added).

If an attorney signs a pleading, motion, or legal memorandum in violation of the rule, the court may impose an "appropriate sanction" against the attorney, the represented person, or both. *Id.*

- (a) Martin made a reasonable inquiry into the law and the facts

While CR 11's mandate is ongoing throughout the litigation, sanctions are not appropriate merely because an action's factual basis ultimately proves deficient or a party's view of the law proves incorrect. *Roerber v. Dowty Aerospace Yakima*, 116 Wn. App. 127, 142, 64 P.3d 691 (2003) (determining that the failure to establish prima facie civil rights case did not equate with complete lack of factual basis).

Because there are instances where the imposition of sanctions is inappropriate, this Court must carefully evaluate whether an attorney's inquiry into the law and the facts was reasonable. The Court applies an objective standard and asks whether a reasonable attorney in a like circumstance could believe his or her actions to be factually and legally justified. *Bryant*, 119 Wn.2d at 220. "To avoid the 20/20 hindsight view, the trial court must conclude that the claim clearly has no chance of success before it may impose sanctions under Rule 11 for filing of claim." *In re Cooke*, 93 Wn. App. 526, 529, 969 P.2d 127 (1999).

Here, very little discovery occurred before the University filed its summary judgment motion. CP 506. Satterwhite filed his lawsuit in January 2011. Key witnesses were deposed in November 2011 and January 2012. CP 507. Less than three weeks later, the University filed

its motion to dismiss and shortly thereafter filed its motion for attorney fees and costs. Nonetheless, Satterwhite was able to uncover enough evidence and law to support his claims to prevent the imposition of sanctions even if he did not succeed on the merits of those claims.

For example, Satterwhite presented evidence that the University discriminated against him. To establish a prima facie case of racial discrimination due to disparate treatment, an employee must show (1) he belongs to a protected class, (2) he was treated less favorably in the terms or conditions of his employment, (3) than a similarly situated, nonprotected employee, and (4) he and the nonprotected “comparator” were doing substantially the same work. *Subia v. Riveland*, 104 Wn. App. 105, 112 n.8, 15 P.3d 658 (2001). A protected class includes all persons and any racial groups, whether a minority or a majority. *McDonald v. Santa Fe Train Transp. Co.*, 427 U.S. 273, 96 S. Ct. 2574, 49 L.Ed.2d 493 (1976). Both men and women are protected against discrimination. *Newport News Shipbuilding and Dry Dock Co. v. E.E.O.C.*, 462 U.S. 669, 103 S. Ct. 2622, 77 L.Ed.2d 89 (1983). As an African-American man, Satterwhite fits within a protected class. To establish a prima facie case of racial discrimination due to disparate treatment, Satterwhite was merely required to show that the University treated him less favorably than others

because of his race. *Johnson v. Dep't of Soc. & Health Servs.*, 80 Wn. App. 212, 227, 907 P.2d 1223 (1996).

Here, Satterwhite presented evidence showing that he, an African-American man with an otherwise exemplary record, was scrutinized more closely than other female co-workers. CP 306. In particular, he testified that he and Inselman, a Caucasian woman, were assigned roughly the same number of students but that only he was routinely questioned about the work he performed with his students. CP 306. He also presented evidence that as the only African-American male in the department he felt stereotyped. CP 303, 312. He was uncomfortable being in this position because he was unable to participate in conversations with his female co-workers. CP 303. He presented evidence that he was discriminated against because he was an African American man; a form of discrimination that was carried out even by the African-American women in his department. That he was replaced by an African-American woman was immaterial. *Jefferies v. Harris County Community Action Ass'n*, 615 F.2d 1025 (5th Cir. 1980) (holding that evidence of nondiscriminatory treatment of black males and white females is wholly irrelevant to the question of discrimination against a black female plaintiff claiming bias on both racial and gender grounds).

As another, but no means exclusive, example, Satterwhite also presented evidence that he worked in a hostile work environment. To establish a prima facie case, a plaintiff must show that he suffered harassment that was (1) unwelcome, (2) because he was a member of a protected class, (3) affected the terms and conditions of his employment, and (4) imputable to the employer. *Antonius v. King County*, 153 Wn.2d 256, 261, 103 P.3d 729 (2004) (citation omitted)). A work environment is hostile if an employee has a more difficult time performing his job or taking pride in his work. *Steiner v. Showboat Operating Co.*, 25 F.3d 1459, 1463 (9th Cir. 1994). A hostile work environment does not even require comment made directly to an employee. *Woods v. Graphic Communications*, 925 F.2d 1195, 1202 (9th Cir. 1991).

Satterwhite was the only African-American male among his co-workers and supervisors. CP 312. He felt uncomfortable being the only male because his female co-workers had conversations that he could not participate in. CP 312-13. A female co-worker even said “you know how y’all black men are” when referring to Satterwhite. CP 308. Although he reported the comment, he did not receive any support from his supervisors. CP 308. The trial court acknowledged this offensive remark, but decided that the remark was not enough to constitute a hostile work environment claim. RP 33.

(b) Martin did not file any pleadings for an improper purpose

CR 11 sanctions are appropriate if the pleading is filed for an improper purpose. Nothing in this record suggests that Satterwhite's lawsuit was filed for the purpose of harassment, delay, nuisance, or spite and the University presented no evidence that it was. Satterwhite thought the University's reaction to McRae's allegations was hostile and incriminating. That the trial court dismissed his complaint does not mean that CR 11 sanctions were appropriate.

Satterwhite was ultimately not successful in defending against the University's summary judgment motion on the merits; however, his lack of success does not equate with a complete lack of a factual basis sufficient to impose CR 11 sanctions. *Roeber*, 116 Wn. App. at 142. While his evidence did not establish a prima facie case, it provided something more than the complete lack of a factual basis. *Bryant*, 119 Wn.2d at 220 (that a party's action fails on the merits is by no means dispositive of the question of CR 11 sanctions). Additionally, Martin provided legal authority for recovery, if the facts had supported a prima facie case. Although ultimately unsuccessful, Satterwhite's complaint was not totally without basis in law or fact or brought for an improper purpose. The trial court abused its discretion by imposing sanctions under CR 11.

- (c) The trial court failed to limit the amount of fees awarded to the amount reasonably expended in responding to sanctionable conduct or filings

Only if this Court affirms the trial court order finding that Satterwhite and Martin violated CR 11 should it consider the final CR 11 question; namely, whether the amount of attorney fees the trial court awarded to the University was a reasonable exercise of its discretion.

Although the courts are ready and willing to impose sanctions under CR 11, “the least severe sanctions adequate to serve the purpose should be imposed.” *Bryant*, 119 Wn.2d at 225. Notably, CR 11 sanctions are not designed to be another fee-shifting mechanism. *Id.* at 220; *Biggs II*, 124 Wn.2d at 201. When the trial court awards attorney fees as a sanction, it must limit those fees to the amounts reasonably expended in responding to the improper pleadings. *MacDonald*, 80 Wn. App. at 891. Furthermore, “[a] party resisting a motion that violates CR 11 has a duty to mitigate and may not recover excessive expenditures.” *Miller*, 51 Wn. App. at 303.

The requirement that trial courts specify in the record the specific filings that violate CR 11 is to allow this Court to adequately determine whether the trial court properly limited the amount of fees awarded. *MacDonald*, 80 Wn. App. at 892. The requirement of adequate specification is particularly important in cases such as this one, where the

fee award is substantial. *Id.* Here, because the trial court failed to identify the conduct or filings it deemed sanctionable, it is impossible to determine whether the court properly limited the fees awarded to the amount the University reasonably expended in responding to the conduct or filings the trial court apparently deemed sanctionable. Even without knowing what conduct or filings the trial court deemed sanctionable, it is patently evident that the court failed to properly limit the fees because it awarded the University nearly all of the fees that it requested.

The trial court improperly turned CR 11 into a fee-shifting mechanism, which constitutes an abuse of discretion. Accordingly, if this Court does not reverse the award against Satterwhite and Martin in its entirety, then remand is necessary to reduce the fee award to the amount reasonably expended in responding to the conduct or filings deemed sanctionable.

(4) The Trial Court Erred By Imposing Sanctions Under RCW 4.84.185

RCW 4.84.185 allows for the recovery of attorney fees and costs for the prevailing party where the lawsuit is found to be frivolous and advanced without reasonable cause. *Schmerer v. Darcy*, 80 Wn. App. 499, 509, 910 P.2d 498 (1996) (noting a sanctionable claim must be deemed both meritless *and* interposed for purposes of delay, nuisance,

spite, or harassment).⁴ An action is frivolous if it cannot be supported by any rational argument on the law or facts. *See, e.g., Bill of Rights Legal Found. v. Evergreen State College*, 44 Wn. App. 690, 723 P.2d 483 (1986). The statute applies to “actions which, as a whole, [are] spite, nuisance or harassment suits.” *Biggs v. Vail*, 119 Wn.2d 129, 135, 830 P.2d 350 (1992) (*Biggs I*) (noting a court cannot pick and choose among those aspects of an action which are frivolous and those which are not).

Unlike CR 11, the action must be frivolous in its entirety for the statute to apply. *Quick-Ruben*, 136 Wn.2d at 903-04; *Biggs I*, 119 Wn.2d at 136; *Jeckle v. Crotty*, 120 Wn. App. 374, 85 P.3d 931 (2004). If *any* claim has merit, then the action is not frivolous under RCW 4.84.185. *In re Cooke*, 93 Wn. App. at 530. *See also, Biggs I*, 119 Wn.2d at 136-37.

Here, Satterwhite believed that he was wronged and Martin asserted a variety of legal theories in an attempt to recompense that wrong. While many of Satterwhite’s causes of action might have been tenuous at best, his lawsuit was not frivolous in its entirety and there was no evidence that any of his claims were brought for purposes of delay, nuisance, spite

⁴ RCW 4.84.185 provides:

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

or harassment. *Schmerer*, 80 Wn. App. at 509. *See also, Suarez v. Newquist*, 70 Wn. App. 822, 832-33, 855 P.2d 1200 (1993) (no abuse of discretion by refusing to award sanctions when claim was frivolous but suit was not initiated for purposes of harassment, delay, nuisance, or spite). Furthermore, the trial court acknowledged that Satterwhite was subjected to offensive remarks by his co-workers. RP 32. It simply decided that the remark was not offensive enough to constitute a hostile work environment claim. RP 33. Thus, Satterwhite's complaint was not frivolous in its entirety and the trial court erred by imposing attorney fees and costs as sanction under RCW 4.84.185.

F. CONCLUSION

Assuming *arguendo* that sanctions against Satterwhite and Martin were proper, the trial court erred by failing to issue findings of fact and conclusions of law to support its order. The trial court failed to specify the sanctionable filings, to explain the grounds upon which it imposed sanctions, and to document the way in which it arrived at the amount awarded. The trial court also erred by failing to limit the amount of sanctions awarded to the amount the University expended in responding to the sanctionable filings, whatever they may be, and by turning its sanction award into a fee-shifting mechanism.

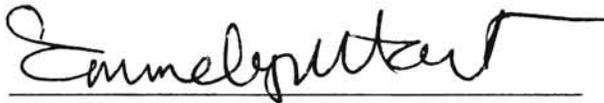
Meaningful appellate review is precluded by the trial court's failure to abide by settled case law requiring explicit findings. The Court should therefore vacate the fee award and remand for entry of appropriate findings of fact and conclusions of law. The trial court should be directed to abide by the principles governing the creation of a record to support a fee award and the principles requiring a limitation of a sanction award to the amount reasonably expended in responding to the sanctionable conduct or filings.

Alternatively, even if meaningful appellate review can be had based on the existing record, sanctions under CR 11 and RCW 4.84.185 were not appropriate. Satterwhite's complaint was based on the law and the facts, was not filed for an improper purpose, and was not frivolous in its entirety.

This Court should reverse the order awarding the University attorney fees and costs under CR 11 and RCW 4.84.185 and vacate the judgment imposed against Satterwhite and Martin jointly and severally. Costs on appeal should be awarded to Satterwhite and Martin.

DATED this 16th day of October, 2012.

Respectfully submitted,



Emmelyn Hart, WSBA #28820
Talmadge/Fitzpatrick
18010 Southcenter Parkway
Tukwila, WA 98188
(206) 574-6661

Thaddeus P. Martin, WSBA #28175
Thaddeus P. Martin & Associates
4928 109th St. S.W.
Lakewood, WA 98499
(253) 682-3420
Attorneys for Appellants
Holsey Satterwhite and Thaddeus P. Martin

Appendix

Appendix

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APR 23 2012

LAW OFFICE OF
THADDEUS P. MARTIN

The Honorable Harry J. Mccarthy
Department 19

Consideration Date: April 20, 2012
Without oral argument

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Court Use only above this line.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

HOLSEY SATTERWHITE, Individually,
Plaintiff,

vs.

STATE OF WASHINGTON, UNIVERSITY
OF WASHINGTON,
Defendant.

NO. 11-2-05111-1 SEA

**ORDER GRANTING DEFENDANT
UNIVERSITY OF WASHINGTON'S
MOTION FOR ATTORNEY FEES AND
COSTS AND [PROPOSED] JUDGMENT**

THIS MATTER having come before the Court on Defendant University of
Washington's Motion for Attorneys' Fees and Costs, and the Court having fully considered the
following:

1. Defendant's Motion for Attorneys' Fees and Costs and declarations and exhibits submitted therewith;
2. Any Response and Reply and accompanying declarations or exhibits thereto;
3. Defendants' Motion for Summary Judgment and the declarations and exhibits submitted therewith;
4. Plaintiff's Opposition to the Defendant's Motion for Summary Judgment and any declarations and exhibits submitted therewith;

ORDER GRANTING DEFENDANT UNIVERSITY OF
WASHINGTON'S MOTION FOR ATTORNEY FEES AND COSTS
AND [PROPOSED] JUDGMENT - 1

GARVEY SCHUBERT BARER
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS
eighteenth floor
1197 second avenue
seattle, washington 98101-2939
(206) 464-3939

1 5. Defendant's Reply in Support of its Motion for Summary Judgment and the
2 declarations and exhibits thereto;

3 6. Plaintiff's Motion to Strike the Defendant's Reply in Support of its Motion for
4 Summary Judgment and any Response or Reply and the declarations and exhibits thereto; and

5 6. The records and files herein;

6 and the Court otherwise being fully advised, it hereby finds that:

7 1. Plaintiff Holsey Satterwhite's claims in this case were not grounded in fact or
8 law, are frivolous, and were advanced without reasonable cause under RCW 4.84.185;

9 2. Plaintiff's counsel Thaddeus Martin failed to make a reasonable inquiry into the
10 law and facts with respect to Plaintiffs' claims in this case as required by CR 11.

11
12 It is therefore hereby ORDERED, ADJUDGED AND DECREED that:

13 1. The University's Motion for Attorneys' Fees and Costs is GRANTED;

14 2. The University is awarded the sum of \$ 78,968.25 against Plaintiff
15 Holsey Satterwhite and Thaddeus Martin, jointly and severally, as the reasonable fees and costs
16 incurred by the Defendant University of Washington in defending this suit, to be paid no later
17 than the 4th day of May, 2012.

18
19 The Plaintiff having been given at least five days' notice of presentation and served
20 with a copy of the proposed judgment, it is furthermore hereby ORDERED, ADJUDGED, and
21 DECREED that the University of Washington is awarded judgment against Holsey Satterwhite
22 and Thaddeus Martin, joint and severally, in the amount of \$ 78,968.25 for attorneys' fees
23 and costs. Post-judgment interest shall accrue on that amount at the rate of twelve percent
24 (12%) from the 1ST day of MAY, 2012, until paid in full.

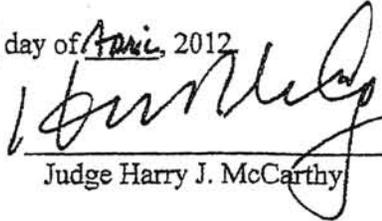
25 There is no just reason for delay, and the aforementioned judgment shall be, and is
26 hereby, entered as final. The Clerk of this Court is directed to enter judgment against

ORDER GRANTING DEFENDANT UNIVERSITY OF
WASHINGTON'S MOTION FOR ATTORNEY FEES AND COSTS
AND [PROPOSED] JUDGMENT - 2

GARVEY SCHUBERT BARER
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS
eighteenth floor
1197 second avenue
seattle, washington 98101-2939
(206) 464-3939

1 Satterwhite and Martin in the amount set forth herein.

2
3 DONE IN OPEN COURT this 20 day of April, 2012

4 
5 Judge Harry J. McCarthy

6
7 Presented by:
8 Special Assistant Attorney General

9
10 By _____
11 Seth J. Berntsen, WSBA #30379
12 Attorney for Defendant University of Washington

13 The fees AND COSTS are calculated
14 as follows:

15 Fees Through April 6, 2012 - \$ 73,609.00
16 deduct some excess
17 and APPMECT duplication - 750.00
18 SUB TOTAL \$ 72,859.00

19 COSTS \$ 4,609.25
20 \$ 77,468.25

21 Fees related to
22 Defendants Reply
23 Memorandum re
24 Attorneys' Fees \$ 1,500.00
25 \$ 78,968.25

26 TOTAL
fees and
costs

ORDER GRANTING DEFENDANT UNIVERSITY OF
WASHINGTON'S MOTION FOR ATTORNEY FEES AND COSTS
AND [PROPOSED] JUDGMENT - 3

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(206) 464-3939

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

HOLSEY SATTERWHITE,

Plaintiff,

v.

STATE OF WASHINGTON, UNIVERSITY
OF WASHINGTON,

Defendant.

NO. 11-2-05111-1 SEA

JUDGMENT

I. JUDGMENT SUMMARY

Judgment Creditor:	University of Washington
Attorney for Judgment Creditor:	Seth J. Berntsen Garvey Schubert Barer 1191 Second Avenue, 18th Floor Seattle, Washington 98101-2939
Judgment Debtors:	Thaddeus Martin Holsey Satterwhite
Principal Judgment:	\$78,968.25
Interest Owed to Date:	\$ 285.58
Total Amount of Judgment:	\$79,253.83
Post-Judgment Interest Rate:	12%

JUDGMENT - 1

SEA_DOCS:1060665.1

ORIGINAL

GARVEY SCHUBERT BARER
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eighteenth floor
1191 second avenue
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206 464 3939

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II. ORDER

THE COURT ORDERS, ADJUDGES, AND DECREES as follows:

1. A judgment is hereby granted against plaintiff Holsey Satterwhite and Thaddeus Martin, jointly and severally, in the amount of \$79,227.87 as the sum of the reasonable number of hours expended by the University in defending against this frivolous action at reasonable hourly rates, plus necessary costs.

2. Defendant is awarded interest as it continues to accrue on the above judgment at the rate of twelve percent (12%) per annum, until paid in full.

3. There is no reason for delay, and upon filing the original of this Order with the Clerk, the aforementioned judgment shall be entered as final, with interest accruing as of May 1st, 2012.

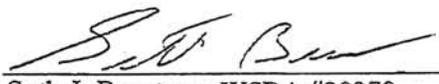
DONE IN OPEN COURT this 11 day of may, 2012.



Judge Harry J. McCarthy

Presented By:

SPECIAL ASSISTANT ATTORNEY
GENERAL

By: 

Seth J. Berntsen, WSBA #30379
Attorney for Defendant University of
Washington

On the issue of the correct rate of interest to be applied, the court has considered Plaintiff's response to Defendant's notice of entry of judgment as well as the reply and revised reply of Defendant.

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CERTIFICATE OF SERVICE

I, Yvonne Szehner, certify under penalty of perjury under the laws of the State of Washington that, on May 3, 2012, I caused to be served the foregoing document,

JUDGMENT, on the persons listed below in the manner shown:

Thaddeus P. Martin, Esq.
Thaddeus P. Martin Associates, LLC
4928 109th Street SW
Lakewood, WA 98499

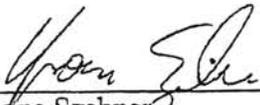
Philip A. Talmadge, Esq.
Talmadge/Fitzpatrick
18010 Southcenter Parkway
Tukwila, WA 98188

Attorneys for Plaintiff

By United States Mail, First Class *By Facsimile*

By Legal Messenger *By Email*
tmartin@thadlaw.com
phil@tal-fitzlaw.com

Dated this 3rd day of May, 2012 at Seattle, Washington.



Yvonne Szehner

DECLARATION OF SERVICE

On this day said forth below, I emailed a courtesy copy and deposited with the U.S. Postal Service for service a true and accurate copy of the Brief of Appellants Holsey Satterwhite and Thaddeus P. Martin in Court of Appeals Cause No. 68763-8-I to the following parties:

Thaddeus P. Martin
Thaddeus P. Martin & Associates
4928 109th Street SW
Lakewood, WA 98499

Seth J. Berntsen
Lesla Olsen
Garvey Schubert Barer
1191 2nd Avenue, 18th Floor
Seattle, WA 98101-2939

Howard M. Goodfriend
Law Offices of Smith Goodfriend, P.S.
1109 First Avenue, Suite 500
Seattle, WA 98101-2988

Original sent by ABC Legal Messengers for filing with:

Court of Appeals, Division I
Clerk's Office
600 University Street
Seattle, WA 98101-1176

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: October 16, 2012, at Tukwila, Washington.



Paula Chapler
Talmadge/Fitzpatrick