No. 1040822 and No. 1040831

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

M.G., SAMANTHA GERLACH and SUZANNE GERLACH,

Petitioners,

v.

BAINBRIDGE ISLAND SCHOOL DISTRICT #303, WASHINGTON STATE HOSA, NASZYA BRADSHAW, AND ELEANOR WILSON,

Respondents.

RESPONDENT ELEANOR WILSON'S RESPONSE TO PETITIONS FOR REVIEW

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I. INTRODUCTION

Defendant/Respondent Eleanor Wilson hereby respectfully submits this combined Answer to Petitioners' two petitions for review, Case No. 1040822 and Case No. 1040831. Undersigned counsel apologizes for the oversight of not realizing the two cases were on different schedules, and requests leave of court to submit the arguments herein in answer to both Petitions. Wilson also joins the Answer filed by Naszya Bradshaw, who is similarly situated in most respects to Wilson.

First and foremost, as to both petitions for review, Petitioners fail to address the applicable grounds for accepting discretionary review under RAP 13.4(b) and presents no issue in a concise and intelligible manner as required by that Rule. Second, Petitioners' constitutional arguments have been waived as they did not raise them before the trial court a timely or adequate manner. Third, there is no basis for review of the Court of Appeals' affirmance of the CR 11 sanctions orders

against Petitioners' attorney, Marcus Gerlach. Finally, the Court of Appeals properly rejected Petitioners' assertions of bias and requests for recusal, and there is no basis for granting review of this issue. The Court should deny the petitions, and award Wilson her attorney's fees and costs expended in drafting and filing this Answer.

II. IDENTITY OF RESPONDENT

Defendant/Respondent in the lower court proceedings, Eleanor Wilson, respectfully requests this Court deny discretionary review for both petitions: Case No. 1040822 and Case No. 1040831.

III. STATEMENT OF FACTS

A. The Petitioners file their defamation related lawsuit.

In January 2023, M.G., his sister, and their mother ("Petitioners"), represented by their father and husband respectively (Attorney Marcus Gerlach), filed suit against M.G.'s high school ("Bainbridge Island School District"), his school club Health Occupation Students of America ("HOSA"), two former Bainbridge Island high school students (Eleanor

Wilson and Naszya Bradshaw), and DOES #1-100. *M.G. v. Bainbridge Island Sch. Dist. #303 et. al.*, No. 86846-2-I, 566 P.3d 132, Slip Op. at 2 (Ct. App. Mar. 24, 2025).

M.G. was a Bainbridge Island high school student between 2018 and 2021. *Id.* at 4. Wilson and Bradshaw also attended the same high school but graduated before M.G. and never interacted with him. *Id.*

While in high school, Wilson was "a victim of sexual harassment and the school handled it poorly." *Id.* In 2017, Wilson "attended a Women's March advocating for women to have the right to speak freely about their experiences as victims of sexual harassment/assaults." *Id.* In January 2021, she "noticed a 'huge uptick' in social media posts from women who felt unheard by BHS," and who "posted the names of 'perpetrators,'" including M.G. *Id.* After seeing these posts, Wilson "offered on social media to document the stories of victims of sexual assault/harassment." *Id.* In her post, she stated in full:

@all the girls who are, or have been victims of [M.G.] in any way: If you guys want, I will take your stories and compose a letter to the school with your demands. I will be your Alexander Hamilton.

Anything y'all need. I don't have much to offer except my writing skills, and maybe a few connections. But I'm here for you and I want to help you. You can message me on my insta, @blacksmithshenanigans.

I'd want ALL of your input on what I write, so if y'all could all talk to each other that'd be greatly appreciated.

No detail spared. No grievance unaired. If you want, I will write it for you. I will represent you. I am not a lawyer, but I am a writer, and a survivor myself. I am here for you.

BELIEVE WOMEN.

BELIEVE SURVIVORS.

Id. at 4-5.

M.G. and his sister, Samantha Gerlach, saw Wilson's post and posts from Bradshaw, which they "characterize…as 'false, malicious and defamatory,'" but "never assert what the [Bradshaw] posts actually said." *Id.* at 5.

The Petitioners cited this post for all their claims against Wilson, alleging she "made defamatory claims and offered to write contrived stories about male Section 504 students and then make demands on the school." *Id*.

B. The trial court proceedings.

1. Petitioners' motions for recusal.

The Petitioners moved to recuse more than one trial judge in this case. In January 2023, before the case was removed to federal court,[1] Petitioners "exercised their statutory right to peremptory removal of a different judge." *Id.* at 36. Then, in February 2023, Judge Jennifer Forbes was "pre-assigned" to the case as the next judge in the rotation. *Id.* at 36.

When Petitioners brought their first motion before Judge Forbes on February 17, 2023, they raised no concern with her presiding over this litigation. *Id.* at 35. Only after she issued unfavorable orders to Petitioners did they file "a motion for reconsideration arguing that this "judge, while in private practice, had previously represented the City of Bainbridge in the

[1] In March 2023, after the case was removed to the U.S. District Court for the Western District of Washington, the Petitioners filed a motion to recuse Federal Court District Judge Benjamin Settle, which Judge Settle denied. No. 86846-2-I, CP 49. Honorable Chief Judge Estudillo affirmed Judge Settle's denial of the motion before the case was remanded to state court. *Id.*

litigation involving a permit application 10 years prior." *Id.* at 35-36.

In June 2023, though Petitioners "did not raise this concern or object to the court hearing their motion for evidence on February 17," the trial court still considered the motion to recuse. *Id.* at 36. In denying the motion, the trial court explained: "that the case was preassigned in the ordinary course," (*id.*), that although "she was familiar with Attorney Gerlach's name…that was not unusual in the small jurisdiction," (*id.*), and that having been on the bench for ten years and practicing for more than sixteen years, she had "no memory of any prior interactions with attorney Gerlach…and after reviewing his Motion, [had] only a very vague memory of the case he cites." *Id.* at 36. The trial court denied Petitioners' motion concluding nothing in the materials caused her "to feel any personal bias toward attorney Gerlach or his family." *Id.* While Petitioners did not appeal the trial court's June 23, 2023 ruling on this matter, they raised the issue of Judge

Forbes' failure to recuse herself in their first appeal (COA No. 86846-2-I).

Petitioners brought another motion for disqualification in December 2023, requesting as a remedy that "the trial judge vacate all its orders." *M.G. v. Bainbridge Island Sch. Dist. #303 et. al.*, No. 87083-1-I, Slip Op. at 5 (Ct. App. Mar. 24, 2025). At the hearing, the trial court observed "that it had previously denied a similar motion on June 23, 2023." *Id.* at 4. While the trial court declined to revisit "arguments it had previously rejected," it "did address what it believed were some 'new' arguments or allegations," before denying the motion. *Id.* at 5.

The trial court's denial of Petitioners' motion for disqualification became an issue in their second appeal (COA No. 87083-1-I).

2. Wilson and Bradshaw's joint UPEPA motion.

When the case was remanded to state court, Wilson and Bradshaw refiled their joint motion for expedited relief under Washington State's Anti-SLAPP statute, RCW 4.105.020, (also

known as the Uniform Public Expression Act or "UPEPA). *See M.G.*, No. 86846-2-I, Slip Op. at 8.

In their opposition to the joint UPEPA motion, Petitioners "did not assert the application of any of the statutory exceptions to UPEPA under RCW 4.105.010(3) *Id.* at 9.

On June 12, 2023, the trial court held a hearing on several motions including the joint UPEPA motion. *Id.* After the hearing and before the trial court issued any rulings on the UPEPA motion, Wilson and Bradshaw "filed a joint supplemental memorandum with attached exhibits," including exhibits "previously submitted by the plaintiffs…and copies of local newspaper articles." *Id.* On June 26, Petitioners filed a motion to strike this supplemental memorandum where, for the first time, they "asserted the application of the UPEPA exceptions." *Id.*

The trial court granted Wilson and Bradshaw's UPEPA motion and awarded them both attorney fees under RCW 4.105.090. *Id.* at 10. The trial court's rulings on Wilson and

Bradshaw's UPEPA motion became an issue in Petitioners' first appeal (COA No. No. 86846-2-I).

3. Wilson's first CR 11 motion.

In Petitioners' June 26 the motion to strike, Attorney Gerlach wrote two statements that "formed the basis of Wilson's motion for CR 11 sanctions." *Id.* at 9. First, he wrote that, "Wilson ***wanted*** a rape culture on Bainbridge Island to support her fantasies of sexual assault and 'a hotbed of attempted youth social justice.'" Second, Attorney Gerlach also stated,

> The intent and purpose of the false, malicious and defamatory statements was to coerce the boys into suicide, like a 2017 student.

Id. at 30.

After Wilson's counsel "notified Attorney Gerlach that he had violated CR 11," and demanded he remove the statements, he re-filed the motion "labeling it an 'ERRATA FILING' without any further explanation." *Id.* at 30. The "Errata" pleading left the statement regarding coercing boys into suicide largely

unedited[2] and changed the other statement to: "A student ***desired*** a rape culture on Bainbridge Island. This could support fantasies of sexual assault and 'hotbed of attempted youth social justice.'" *Id.* at 30.

Based on Attorney Gerlach's two statements the trial court granted Wilson's CR 11 motion, awarded her attorney fees, and denied the Petitioners' cross-motion for CR 11 sanctions. *Id.* at 10. In imposing CR 11 sanctions, the trial court "held that Attorney Gerlach did not provide any factual basis for the statements he made," nor was there any "evidence to support an assertion that any student 'desired' or 'wanted' rape culture, or that Wilson coerced any boys into suicide." *Id.* at 32.

The trial court's ruling on Wilson's first CR 11 motion became an issue in Petitioners' first appeal (COA No. 86846-2-I).

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[2] Attorney Gerlach changed the words "intent and purpose" to "[t]he alleged purpose." No. 86846-2-I, CP 282. The statement in the June 29, 2023 filing read: "The alleged purpose of the false, malicious and defamatory statements was to coerce the boys into suicide, like a 2017 student."

4. Wilson's Second CR 11 Motion.

After the trial court granted Wilson's first motion for CR 11 sanctions against Attorney Gerlach, the Petitioners filed a notice of payment pleading in which Attorney Gerlach included one sentence that provided notice of payment. *M.G.*, No. 87083-1-I, Slip Op. at 3. The rest of the pleading took issue with the trial court's ruling on the CR 11 sanctions where Attorney Gerlach again asserted that "[a] reasonable conclusion was that Defendant Eleanor Wilson wanted a rape culture on Bainbridge Island to support the January 30, 2021 March/Rally." *Id.* at 3-4. This statement prompted Wilson to file a second motion for CR 11 sanctions. *Id.* at 4. In response, Petitioners filed their second motion for CR 11 sanctions against Wilson. *Id.* at 4.

In its ruling on Wilson's second CR 11 motion, the trial court entered several findings of fact including that in this notice of payment, "attorney Gerlach continued to make the same or very similar assertions for which he was previously sanctioned," (*id.* at 11-12), and that he had "provided no factual basis for the

statements at issue in this motion, nor did he explain what kind of investigation he did prior to making those statements," (*id.* at 12).

The trial court granted Wilson's second CR 11 motion, denied Petitioners' CR 11 motion against her, awarded Wilson's attorney fees, and imposed a "$1,000.00 punitive sanction against plaintiffs to be paid to the court registry…until further court order." *Id.* at 4.

The trial court's ruling on Wilson's second CR 11 motion became an issue in Petitioners' second appeal (COA No. 87083-1-I).

C. <u>The Court of Appeals' Holdings.</u>

Petitioners filed two appeals, under COA Case No. 86846-2-I and COA Case No. 87083-1-I, [3] seeking review of several orders issued by the trial court. On March 24, 2025, the

[3] Both Court of Appeal's Slip Opinions in COA Case No. 86846-2-I and COA Case No. 87083-1-I are attached as Appendix A and Appendix B respectively.

Court of Appeals issued two companion opinions regarding these appeals.

1. Petitioners' first appeal: COA No. 86846-2-I.

First, the Court of Appeals affirmed "the dismissal of all claims against Wilson and Bradshaw, and the award of CR 11 sanctions against Attorney Gerlach." *M.G.*, No. 86846-2-I, Slip Op. at 3.

In affirming the trial court's ruling on the UPEPA motion and the dismissal of Petitioners' claims against Wilson and Bradshaw the Court of Appeals held that their statements, fell "within the definition of a 'matter of public concern,'" (*id.* at 23), because their "speech was made in the context of an on-going concern about sexual assault of young women on Bainbridge Island and [Bainbridge Island High Schools']s response to reports of such assaults," (*id.*, at 21). The Court of Appeals held that UPEPA did apply to Wilson's statements because "[i]t was with this backdrop that Bradshaw and Wilson exercised their First Amendment right to speak out." *Id.*

The Court of Appeals rejected Petitioner's defamation claims, concluding they, "fail[ed] to establish a statement made by Bradshaw or Wilson that is provably false." *Id.* at 23. The Court also rejected Petitioners' asserted exceptions to UPEPA under RCW 4.105.010(3) holding that first, Petitioners "fail to cite to any substantive evidence anywhere in the record to support this claim that M.G. was the victim of cyber harassment specifically by Bradshaw and Wilson," (*id.* at 25), second, that Petitioners "cite nothing in the record to support their claim of fraud," (*id.*), and third, that Petitioners did not assert any "facts in the record to show how Bradshaw or Wilson committed a WLAD violation," (*id.* at 26). Finally, the Court of Appeals held that Petitioners also made "no attempt to substantively argue step three of the UPEPA analysis." *Id.* at 27. Therefore, the Court affirmed, holding that Petitioners, "failed to establish that the trial erred in dismissing the claims against Bradshaw and Wilson under UPEPA." *Id.* at 27.

As to the imposition of CR 11 sanctions, the Court of Appeals held that the trial court "did not abuse its discretion in imposing CR 11 sanctions," because

> [t]he record supports the trial court's findings that the assertions made that were subject to the CR 11 sanctions were done so without factual or legal basis, and that Attorney Gerlach did not conduct a reasonable inquiry into the factual basis of the claims."

Id. at 33.

As to Petitioners' recusal arguments, the Court of Appeals held that the Petitioners "waived any argument that the trial court should have recused itself for an alleged conflict of interest but nonetheless conclude that the plaintiffs fail to demonstrate that the trial court was biased." *Id.* The Court of Appeals specifically identified that a "claim of actual prejudice or bias," is not supported by the record, because first, the trial judge "explained that she was next in the rotation and that is why she assigned the case to herself," (*id.* at 37), second, that the trial court "continued to allow Attorney Gerlach to argue after directing him to stay on topic," (*id.* at 38), and third, that the record did not "support

plaintiffs' claims that the court was mocking Attorney Gerlach." *Id.* at 38-39.

2. Petitioners' second appeal: COA No. 87083-1-I.

While the first appeal was pending, Petitioners filed a second appeal concerning the second set of "CR 11 sanctions imposed against them," as well as "the trial court's denial of their motion for disqualification, and the court's denial of [their] motion for reconsideration." *M.G.*, No. 87083-1-I, Slip Op. at 1.

Noting that Petitioners' arguments in their motion for disqualification were mostly the same as the ones previously raised and rejected in *M.G.*, No. 86846-2-I, the Court of Appeals held that the trial court did not abuse its discretion in denying the motion for disqualification, finding that the "facts presented by plaintiffs do not establish a circumstance where the trial judges' impartiality might reasonably be questioned." *Id.* at 9.

As for Petitioners' argument that the second imposition of CR 11 sanctions was improper, the Court of Appeals held that "[u]pon review of the trial court's findings, and after reviewing

the entire record before us, we conclude that the trial court did not abuse its discretion in imposing CR 11 sanctions because doing so was manifestly reasonable and based on tenable grounds." *Id.* at 13.

3. Petitioners file two petitions for review.

Petitioners now seek review of both of the Court of Appeal's companion decisions. This answer addresses Petitioners' arguments presented in both petitions for review.

IV. ARGUMENT

A. Legal standard for review under RAP 13.4.

RAP 13.4(b) outlines the standard for discretionary review by the Washington Supreme Court and the *only* circumstances under which review will be accepted:

> Considerations Governing Acceptance of Review. A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Additionally, RAP 13.4(c) states that a Petitioner should provide "a concise statement of the issues presented for review," (RAP 13.4(c)(5)), and "a direct and concise statement of the reason why review should be accepted under one or more of the tests established in section (b), with argument," (RAP 13.4(c)(7)). The Washington Supreme Court has also "required that the petition for review state the issues with specificity." *State v. Collins*, 121 Wn.2d 168, 178, 847 P.2d 919 (1993).

In both petitions for review, Petitioners fail to present, cite, or argue any provision of RAP 13.4, let alone with specificity. *See id.* And none of their arguments provide a "concise statement of the issues," or reasons why this Court should accept review as outlined in RAP 13.4(c). *See Collins*, 121 Wn.2d at 178 (citing *Clam Shacks of Am., Inc. v. Skagit Cy.*, 109 Wn.2d 91, 98, 743 P.2d 265 (1987)) (holding that the "proper method for raising an issue in a petition for review is described in RAP 13.4(c)(5).").

Petitioners' failure to invoke *any* basis for review under the Rules of Appellate Procedure alone should preclude this Court's discretionary review of both petitions.

B. There is no basis for review of the Court of Appeal's ruling on Wilson and Bradshaw's joint UPEPA motion.

1. Petitioners waived their challenges to the constitutionality of UPEPA.

This Court should not grant discretionary review where an issue was not properly raised below or preserved for appeal. In their Petition for Review (Case No. 1040822), Petitioners' argument about the constitutionality of UPEPA ignores the Court of Appeals' actual holding that Petitioners "have waived their constitutional claims." *M.G.*, No. 86846-2-I, Slip Op. at 17. The Court of Appeals held that Petitioners, raising the constitutionality argument for the first time on appeal, made "no attempt to establish the alleged error was manifest or make any attempt to satisfy RAP 2.5(a)(3)." *Id.* Unless a party "can show the presence of a 'manifest error affecting a constitutional right,'" the party "must raise an issue," in the trial court below,

"to preserve the issue for appeal." *See* RAP 2.5(a)(3); *State v. Robinson*, 171 Wn.2d 292, 304, 253 P.3d (2011). An appellate court "may refuse to review any claim of error which was not raised in the trial court." RAP 2.5(a); *State v. Strine*, 176 Wn.2d 742, 749, 293 P.3d 1177 (2013).

In their Petition for Review (Case No. 1040822), Petitioners assert a different version of their previous constitutionality arguments in which they now contend UPEPA violates Article I, section 5 of the Washington State Constitution. *See* Petition, No. 86846-2-I, at 13. To support this argument, Petitioners make a series of conclusory statements including, in part that "[f]alsehoods, misstatements and lies are abuses," and that "NASZYA, WILSON and DOES #1-30 conspired to publish false rape claims…then sought protection under RCW 4.105." *Id.* (emphasis in original). But Petitioners provide no specific or material facts to support these statements about Wilson or Bradshaw. *See LaMon v. Butler*, 112 Wn.2d 193,197, 770 P.2d

1027 (1987) (finding that a prima facie case must consist of specific, material facts, rather than conclusory statements.).

Instead, Petitioners continue by outlining a confusing list of contentions about other entities such as, "BISD," BISD's "Student Association Against Sexual Assault," and "DOES #1-30," but fail to provide any explanation as to how these statements relate to Petitioners' unsupported conclusion about Wilson or Bradshaw. *See* Petition, No. 86846-2-I, at 14. Moreover, the Court of Appeals already concluded that Petitioners had "failed to establish a statement made by Bradshaw or Wilson that is provably false." *Id.* at 23.

This Court should not accept discretionary review where an issue was not preserved for appeal, nor should the Court grant review of Petitioners' conclusory arguments that are unsupported by the record.

2. The Court of Appeals correctly followed the three-step statutory framework.

Again, without any citation to RAP 13.4, Petitioners also request review of the Court of Appeal's holding affirming the

trial court's rulings on Wilson and Bradshaw's UPEPA motion. In its analysis, the Court of Appeals properly followed the three-step statutory framework under RCW 4.105 and case law. This Court should not grant discretionary review over Petitioners' disagreements with this case-specific holding.

Petitioners first cite to case law from California state court for their argument that the Court of Appeals erred in its holding affirming the trial court's ruling that Wilson and Bradshaw's speech *did* fall "within the definition of a 'matter of public concern,'" (*M.G.*, No. 86846-2-I, Slip Op. at 23), because their "speech was made in the context of an on-going concern about sexual assault of young women on Bainbridge Island and [Bainbridge Island High Schools']s response to reports of such assaults," (*id.*, at 21). Other states' case law does not warrant discretionary review from this Court.

Petitioners then cite *Alaska Structures, Inc. v. Hedlund* 180 Wn. App. 591, 603, 323 P.3d 1082, 1087 (2014), for the proposition that "private grievances" are not a matter of public

concern. No. 86846-2-I, Petition at 17. But that case did not involve the current anti-SLAPP statute in Washington, and it also involved an entirely different set of facts.

In *Alaska*, a former employee had "voluntarily limited his right to speak freely by signing a confidentiality agreement," and breached this agreement when he posted comments about his former employer on a jobsite. 180 Wn. App. at 603. The court in *Alaska* determined this was a "simple contract issue." *Id.* Here, Wilson was not an employee, nor did she have a contract or confidentiality agreement with anyone, let alone with M.G. Any reliance on this case is misplaced and there is no conflict at issue between the decision in *Alaska* and the decision here. Therefore, the Court should not grant review of this issue.

C. There is no basis for review of the Court of Appeal's rulings on CR 11 sanctions.

In their first Petition for Review (Case No. 1040822), Petitioners provide one short paragraph on the issue of CR 11 sanctions contending the Court of Appeals intentionally

misquoted them and that "[Judge] Forbes also misquoted the standards of CR 11, confirming allegations that [Judge] FORBES was an unfair, partial and biased judge." No. 86846-2-I, Petition at 23.

Then, in their second Petition for Review (Case No. 1040831), Petitioners doubled down on their factually unsupported assertions stating in part, "Petitioners still provided evidence of conspiracy 'want[ing]' to establish a rape culture on Bainbridge Island to satisfy a personal 'grievance,'" and that "Petitioners established clear personal and obvious financial motivations to manufacture fictional/fantasies of a non-existent rape culture on Bainbridge Island." No. 87083-1-I Petition, at 14.

In repeating many of the same arguments that Petitioners brought before the Court of Appeals (such as using Wilson's use of the word "want" as the basis for these statements about *wanting* a "rape culture,"), Petitioners ignore that the Court of Appeals, in their review of "the entire record," affirmed the trial

court's holding that Attorney Gerlach had "no factual basis for" these statement, nor did he provide any explanation for "what kind of investigation he did prior to making those statements. *M.G.*, No. 87083-1-I, Slip Op. at 12-13. Petitioners bring no other viable arguments to this Court now. This Court should therefore deny discretionary review on this issue.

Petitioners argument about the lower courts' intentional misquoting is also misguided. When Wilson's counsel provided notice of CR 11 sanctions, Attorney Gerlach changed only one word in his statement about coercing boys to commit suicide from "intent and purpose" to "[t]he alleged purpose." *See* No. 87083-1-I, CP 282. The sentiment of the Attorney Gerlach's factually unsupported statement in the June 29, 2023 "errata" pleading remained entirely the same; it was still a statement about coercing boys to commit suicide. *Id.* This does not change either of the Court of Appeal's decisions which both held that "the trial court did not abuse its discretion in imposing CR 11 sanctions." *M.G.*, No. 86846-2-I Slip Op. at 33; *M.G.*, No.

87083-1-I, Slip Op. at 13 (same holding). This issue does not warrant discretionary review under any provision of RAP 13.4.

In their second Petition for Review (Case No. 1040831), Petitioners also contend that the trial court improperly cited to *Watness v. City of Seattle*, 11 Wash. App. 2d 722, 457 P.3d 1177 (2019) which is "distinguishable" because the Plaintiff in *Watness* was able to "conduct[] discovery." No. 87083-1-I, Petition at 15. Here, the issue of discovery is not relevant to the CR 11 sanctions imposed, a fact that Petitioners themselves admit when they assert: "Even without discovery, Petitioners' statements were factually accurate." *Id.* This also does not warrant discretionary review under RAP 13.4.

In their second Petition (Case No. 1040831), Petitioners contend that the trial court miscited CR 11 but ignore that the Court of Appeals determined that the trial court "expressly stated that 'even if sanctions were not mandatory the Court finds that they are appropriate in this case,'" which "plainly indicated that

it would exercise its discretion," so the Court found no "basis that warrants reversal." *M.G.*, No. 87083-1-I, Slip Op. at 18.

There are no issues related to the Court of Appeal's holding on CR 11 sanctions that warrant discretionary review by this Court. Nor do Petitioners argue as such under any provision of RAP 13.4.

D. There is no basis for review of the Court of Appeal's rulings on recusal or disqualification.

Petitioners raise largely the same arguments about recusal in both Petitions for Review, arguing the Court of Appeals erred in holding that first, Petitioners not only "waived any argument that the trial court should have recused itself," but also that "a claim of actual prejudice or bias," is not supported by the record, (*M.G.*, No. 86846-2-I, Slip Op. at 37-39), and second, in a companion opinion, the Court of Appeals (again) held that the "facts presented by plaintiffs do not establish a circumstance where the trial judges' impartiality might reasonably be questioned," (*M.G.*, No. 87083-1-I, Slip Op. at 9).

In both cases, the Court of Appeals followed established precedent for the appearance of fairness doctrine in *State v. Gamble*, 168 Wn.2d 161, 187, 225 P.3d 973 (2010). *See M.G.*, No. 86846-2-I, Slip Op. at 34; *M.G.*, No. 87083-1-I, Slip Op. at 9 (citing same precedent). It also followed established precedent for evaluating a motion for disqualification under *State v. Chamberlin*, 161 Wn.2d 30, 37, 162 P.3d 389 (2007). *See M.G.*, No. 87083-1-I, Slip Op. at 8.

Petitioner's argument that *Buckley v. Snapper Power Equip. Co.*, 61 Wn. App. 932, 939, 813 P.2d 125 (1991) was "inapplicable," is also wrong. The Court of Appeals cited *Buckley* for the proposition that,

> A litigant who proceeds to a trial or hearing before a judge despite knowing of a reason for potential disqualification of the judge waives the objection and cannot challenge the court's qualifications on appeal.

61 Wn. App. at 939. As the Court of Appeals stated, Petitioners "raised no issues or concerns with the court until after they were

dissatisfied with a decision that had been issued…" *M.G.*, No. 87083-1-I, Slip Op. at 7. So, *Buckley* is applicable.

Overall, Petitioners fail to show how the Court of Appeal's decisions on recusal and the motion for disqualification conflict with any Washington State precedent or how any other provision of RAP 13.4 would apply here. This Court should deny discretionary review of these case-specific rulings.

E. This Court should award Wilson her reasonable attorney fees under RAP 18.1.

RAP 18.1(j) permits this Court to award attorney fees and expenses, "to the party who prevailed in the Court of Appeals…if a petition for review to the Supreme Court is subsequently denied." Because Wilson prevailed in both cases before the Court of Appeals, (*see M.G.*, No. 86846-2-I, Slip Op. at 39; *M.G.*, No. 87083-1-I, Slip Op. at 18-19), this Court should deny both petitions for review and award her attorney's fees and expenses pursuant to RCW 4.105.090, CR 11, and RAP 18.1(j).

Petitioners improperly contend that they should be awarded attorney fees based on the Court of Appeal's decision

on the case caption issue. But RAP 14.2 only permits an award of costs to the *substantially* prevailing party and Petitioners did not substantially prevail on appeal against Wilson or Bradshaw on the UPEPA motion to dismiss or on the issue of CR 11 sanctions in any of the proceedings or appeals below. The Court should deny discretionary review of this issue; it is not warranted under RAP 13.4(b).

V. CONCLUSION

For the foregoing reasons, Respondent Wilson requests this Court deny both petitions for review in this case and award Wilson her reasonable attorney's fees and expenses under RAP 18.1(j).

This document was produced by word processing software and consists of 4,986 words subject to RAP 18.17(c).

Dated this 28th day of May, 2025.

Respectfully submitted,

/s/Julia Bladin

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CERTIFICATE OF SERVICE

I, Chris Bascom, certify under penalty of perjury under the laws of the State of Washington that on the 28th day of May, 2025, I electronically filed the foregoing with the Clerk of Court using the Washington State Appellate Courts' Portal.

I certify that all participants in the case are registered Washington State Appellate Courts' Portal users, and that service will be accomplished by the Washington State Appellate Courts Portal system.

/s/*Chris Bascom*
Chris Bascom, Legal Assistant

Appendix A

FILED
3/24/2025
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

M.G., SAMANTHA GERLACH and SUZANNE GERLACH,

Appellants,

v.

BAINBRIDGE ISLAND SCHOOL DISTRICT #303, a municipal corporation, WASHINGTON STATE HOSA, a nonprofit corporation, NASZYA BRADSHAW an individual, ELEANOR WILSON an individual AND DOES 1-100,

Respondents.

No. 86846-2-I

DIVISION ONE

OPINION PUBLISHED IN PART

COBURN, J. — Washington State's Uniform Public Expression Protection Act (UPEPA) is a type of law designed to combat the problem of strategic lawsuits against public participation (anti-SLAPP law). Thurman v. Cowles Co., No. 102791-5, 2025 WL 338065 (Wash. Jan. 30, 2025), https://www.courts.wa.gov/opinions/pdf/1027915.pdf. The law, ch. 4.105 RCW, is designed "to protect important public speech from frivolous litigation by providing a procedural scheme that disposes of such cases early and swiftly in the litigation life cycle." Id. at 1. Plaintiffs appeal, among other orders, the trial court's granting of Eleanor Wilson's and Naszya Bradshaw's joint UPEPA motion and dismissing all claims against them with prejudice.

Central in this case is what occurred in the Bainbridge Island community in the

fall of 2020 and early 2021. As reported by the Bainbridge Island Review, in the fall of 2020, a rally was held to encourage girls to talk about sexual assault. Attendees were invited to tell their stories and learn about "Let's Talk," a service through Bainbridge Youth Services (BYS) which offers group, one-on-one and small group peer support. In January 2021, several women posted allegations of sexual assault and harassment, on social media, perpetrated by named male Bainbridge High School (BHS) students and criticism of how BHS responded to such complaints. One of the named male students was M.G.

In January 2023, M.G., his sibling Samantha Gerlach, and his mother Suzanne Gerlach,[1] sued the Bainbridge Island School District (BISD), Health Occupation Students of America (HOSA)[2], Wilson, Bradshaw, and Does #1-100. The plaintiffs are represented by Marcus Gerlach.[3] Wilson's speech, that is the subject of this suit, is her social media post "@ all the girls who are, or have been victims of [M.G.[4]] in any way" and offering to take their "stories and compose a letter to the school with your demands." Plaintiffs never assert what it is that Bradshaw communicated other than a colorful, defiant social media post in response to being confronted with a possible defamation lawsuit.

In the plaintiffs' first amended complaint,[5] they allege defamation, conspiracy to

[1] Despite identifying M.G. only by initials, plaintiffs disclose in their complaint and declarations how they are related to one another.

[2] HOSA is an afterschool club at Bainbridge High School. Plaintiffs identify HOSA as a Washington State non-profit corporation.

[3] Because of shared surnames, we refer to Samantha and Suzanne by their first name for clarity and to Marcus Gerlach as Attorney Gerlach.

[4] In the record, M.G.'s name is redacted, except for his initials. But it is undisputed that the post used M.G.'s first and last name.

[5] Hereinafter referred to as "complaint."

commit defamation, fraud, cyberstalking, violations of the Washington Law Against Discrimination (WLAD), and loss of consortium. They separately also allege negligence claims against BISD and HOSA.[6] In addition to the granting of the UPEPA motion, the plaintiffs appeal the trial court's (1) granting of defendants' motion to amend the case caption to reflect M.G.'s full name; (2) declining to recuse itself; (3) award of CR 11 sanctions against Attorney Gerlach; (4) denial of the plaintiffs' cross-motion for CR 11 sanctions; and (5) dismissal, under CR 12(b)(6), of all claims against HOSA.[7]

We affirm the dismissal of all claims against Wilson and Bradshaw, and the award of CR 11 sanctions against Attorney Gerlach. Plaintiffs waived any argument that the trial court should have recused itself for an alleged conflict of interest, but nonetheless conclude that the plaintiffs fail to demonstrate that the trial court was biased. However, because the trial court did not apply the correct legal analysis as further discussed below, we reverse the trial court's order amending the case caption and remand for further proceedings.[8] As to all remaining claims, plaintiffs either fail to assign error or fail to sufficiently present argument and citations to the record to warrant review.

[6] The plaintiffs also initially alleged claims under federal law, but later amended the complaint by withdrawing their federal claims.

[7] BISD had joined HOSA's second CR 12(b)(6) motion, requesting partial dismissal of plaintiffs' claims against BISD. The trial court granted BISD's motion dismissing claims for defamation, fraud, civil conspiracy, cyberstalking, and loss of consortium by Samantha. Plaintiffs do not appeal this order. Thus, the only issue in this appeal that relates to BISD is the motion to amend the case caption for which BISD joined.

[8] Because we reverse the trial court's order amending the case caption, this opinion reflects the case caption as it existed prior to the court's August 7, 2023 order. RAP 3.4.

FACTS

M.G. attended BHS from 2018 to 2021. Samantha graduated from BHS in June 2019. Both participated in HOSA while at BHS. At BHS, M.G. received accommodations under Section 504 of the Rehabilitation Act of 1973. Wilson and Bradshaw also attended BHS and graduated in 2020. M.G. never had any interaction with either of them during high school.

According to Wilson, while in high school, she had been a victim of sexual harassment and the school handled it poorly. In 2017, she was one of many Bainbridge Islanders who attended a Women's March advocating for women to have the right to speak freely about their experiences as victims of sexual harassment/assaults. She recalled that "[a]t that time, I remember Bainbridge Island being a hotbed of attempted youth social justice action." While attending BHS, she recalled seeing on social media, allegations of sexual assault and harassment perpetrated by male BHS students and reading criticism of how the school handled such incidents. In January 2021, Wilson noticed a "huge uptick" in social media posts from women who felt unheard by BHS and posted the names of "perpetrators," including, but not limited to M.G. Wilson recalled seeing posts from eight different women, some of whom Wilson knew from when she attended BHS. After seeing the posts, Wilson offered on social media to document the stories of victims of sexual assault/harassment. Her post stated:

> @ all the girls who are, or have been victims of M.G. in any way:
>
> if you guys want, I will take your stories and compose a letter to the school with your demands. I will be your Alexander Hamilton.
>
> Anything y'all need. I don't have much to offer except my writing skills, and maybe a few connections. But I'm here for you and I want to help you. You can message me on my insta, @blacksmithshenanigans.

> I'd want ALL of your input on what I write, so if y'all could all talk to each other that'd be greatly appreciated.
>
> No detail spared. No grievance unaired. If you want, I will write it for you. I will represent you. I am not a lawyer, but I am a writer, and a survivor myself. I am here for you.
>
> BELIEVE WOMEN.
> BELIEVE SURVIVORS.

M.G. and Samantha saw Wilson's post. That same month, M.G. attended an in-person meeting with BISD staff to discuss what he characterized as cyber-harassment/sexual harassment against him. M.G. reports being told that BISD could not do anything to prevent cyber-bullying that was outside of school.

M.G. and Samantha also saw postings from Bradshaw on her Instagram account. They aver that the postings were viewable from 2021 through 2023 and characterize the postings as "false, malicious and defamatory comments about [M.G.] on the internet." They never assert what the posts actually said.

Plaintiffs filed their initial complaint in January 2023. They claim Wilson, on or about January 23, 2021, "made defamatory claims and offered to write contrived stories about male Section 504 students and then make demands on the School." As to Bradshaw, the plaintiffs claimed she

> posted false defamatory and malicious stories about M.G. which were designed to impugn his name and reputation in the community. [Bradshaw] acted with disregard for the truth, based in part upon the false stories manufactured by [Wilson].

The complaint did not assert any specific factual allegations related to Bradshaw.

As to HOSA, plaintiffs claim various ways a HOSA advisor mishandled several incidents: (1) failed to discipline a HOSA student who in March 2019 sent through a

school's internal email "remind" account that "underclassmen bullying underclassmen will result in someone's ass getting kicked by another underclassmen"; (2) only required HOSA/School female students to write an apology letter to the advisor, and not to M.G., after admitting in October 2019 to creating a false social media post depicting M.G. as calling another female student fat; (3) failed to collect evidence, conduct a formal investigation or discipline female HOSA/School students when in December 2019, the advisor saw false, malicious and defamatory statements created by Does #1 and #2.

We summarize the plaintiffs' various claims in their complaint as follows.

A. Violation of WLAD

Under former RCW 49.60.215(14) (2020)[9], the "School/HOSA/Does # 1-30" (1) failed to protect a minor, male, Section 504 student; and (2) directly, or indirectly, caused a person of a particular sex or class to be treated as "not welcome, accepted, or desired." The "School/HOSA/Defendants' conduct was extreme and outrageous" and that "the Defendants' conduct intentionally or recklessly caused emotional distress to M.G."

D. Negligence

The school had a special relationship with a Section 504 student, M.G., and that the School and HOSA had a duty to enforce their policies and procedures to protect a male Section 504 student, that they breached that duty, and that the "Defendants' negligence allowed the girls to circumvent [policies and procedures] … and prevented M.G. from succeeding and obtaining an education under FAPE."

[9] Subsection "(14)" does not exist in former RCW 49.60.215. The statute was amended on June 6, 2024, after plaintiffs filed their complaint. LAWS OF 2024, ch. 161, § 3. The new statute also has no subsection "(14)."

E. Defamation

The "Defendants" "falsely accused M.G. of rape." They allege that the "School/HOSA/[Wilson]/[Bradshaw]/Does #1-30" (1) made false statements about M.G. which were unprivileged communications; (2) knew the statements were false or acted with disregard for the truth; and (3) caused permanent physical, mental, emotional and psychological harm to the plaintiffs.

F. Fraud

The "Defendants devised a scheme to defraud M.G. out of money paid to the university, junior college and HOSA. The scheme was to manufacture false, defamatory and malicious claims about M.G., calling M.G. 'Fuck-Boy,' 'Slut-Boy,' 'Rapist,' 'Abuser' with the purpose and intent of defrauding M.G. out of non-refundable monies paid to his university." Washington State University had offered admission to M.G. in December 2020, but later rescinded its offer.

G. Civil Conspiracy

"Defendants" conspired to engage in the schemes alleged, including accomplishing "defamation per se," and that they "knew that their predicate acts were in furtherance of the scheme and part of a pattern targeting a student protected under WLAD."

H. Consortium (RCW 4.24.010) and Emotional Distress

As a direct and proximate cause of the "Defendants' actions," M.G. was prevented from

> 1) Competing in round two HOSA 2021 testing; 2) Attending "Grad's Night Out"; 3) Participating in the School's prom; 4) Attending the School's 2021 graduation ceremony; 5) Personally receiving his scholarship at the School's award's ceremony; 6) Attending church; 7) Depriving M.G. of

> attending his accepted university; 8) removal from M.G.'s senior yearbook. M.G. was ostracized and harassed in the community because of the School's Google Drive, which contained false, defamatory and malicious accusations of rape.

PROCEDURAL HISTORY

In response to plaintiffs' complaint, Wilson and Bradshaw filed a joint motion for expedited relief under UPEPA.[10] RCW 4.105.020. Plaintiffs filed an opposition to the motion and attached declarations from Attorney Gerlach and all the plaintiffs. Both Attorney Gerlach, M.G. and Samantha stated that when Bradshaw was confronted about possible lawsuits from "victims," Bradshaw responded via social media with the following post that M.G. and Samantha both personally saw:[11]

> [f]irst of all: idgaf bout any threats of defamation suits. It's not defamation if you've committed these heinous actions on camera. Dumbass hoe.
>
> Second: idgaf if the abuser is your homie, sister, brother, whateva. They're an abuser. They can learn or rot. I'm not ruining lives, they ruined their own. Eat my black ass.

In the opposition motion, plaintiffs did not assert the application of any of the statutory exceptions to UPEPA under RCW 4.105.010(3). See RCW 4.105.060(1)(b).

[10] This occurred in the United States District Court for the Western District of Washington where BISD had moved the case. A prior notice of intent to file the motion triggered a 14-day window within which plaintiffs could either withdraw or amend their complaint. RCW 4.105.020(1). Plaintiffs chose to amend the original complaint by withdrawing any reference to federal claims. After the amendment, the district court declined to exercise its supplemental jurisdiction and remanded the matter back to State court, where Bradshaw and Wilson refiled their UPEPA motion. Other than the removal of federal claims, there was no substantive change to the Plaintiffs' complaint.

[11] It is unclear as to how Attorney Gerlach, M.G. and Samantha have personal knowledge that Bradshaw was confronted about possible lawsuits and who did the confronting, as plaintiffs did not include that information in the record. Despite the fact that Bradshaw's post did not include any names, M.G. stated he believed "Bradshaw targeted me-a white, male Section 504 student because of Naszya Bradshaw's alleged black privilege."

HOSA responded to the plaintiffs' complaint by filing a second CR 12(b)(6) motion to dismiss.[12] Plaintiffs responded by filing an opposition to the motion. Attached to the motion were multiple exhibits untethered to any declaration establishing personal knowledge of the exhibits' content.[13]

The court held a hearing on June 12 on all the motions, including plaintiffs' motion for reconsideration, which was correctly treated as a motion to recuse. The court denied the motion to recuse during the hearing and later issued a written order on June 23, 2023. The court requested all parties submit proposed orders related to the UPEPA motion for the court's consideration.

More than two weeks after oral argument, but before the court issued any rulings, Wilson submitted a declaration. Wilson and Bradshaw filed a joint supplemental memorandum with attached exhibits. Many of the exhibits were exhibits previously submitted by the plaintiffs. Other exhibits included copies of local newspaper articles, and what appears to be an undated social media post by the superintendent of BISD that was untethered to any declaration.

Plaintiffs filed a June 26 motion to strike the supplemental pleadings as untimely. It was in this motion to strike that plaintiffs first asserted the application of UPEPA exceptions. Attorney Gerlach's statements in this pleading and his subsequent errata filing formed the basis of Wilson's motion for CR 11 sanctions, which the court later

[12] It appears HOSA identifies this as its "second" CR 12(b)(6) motion because it previously filed this motion in federal court when the case was temporarily moved there. The federal court did not rule on the motion before remanding the matter back to Kitsap County Superior Court.

[13] Attorney Gerlach, in the opposition pleading, describes one of the exhibits as the notes of the investigator hired by BISD to conduct an investigation related to social media posts, while also accusing the investigator of being biased. Attorney Gerlach did not attach the actual final report of the investigator.

granted and awarded attorney fees. The court also denied the plaintiffs' cross-motion for CR 11 sanctions.

The trial court denied plaintiffs' motion to strike, granted the UPEPA motion and awarded Bradshaw and Wilson attorney fees under RCW 4.105.090. The trial court also granted HOSA's second CR 12(b)(6) motion dismissing the claims for negligence, defamation, civil conspiracy, and fraud. The court denied plaintiff's motion for reconsideration. The court later granted HOSA's third CR 12(b)(6) motion to dismiss the remaining claims against HOSA.[14] Plaintiffs did not file an objection to the motion. Prior to the court granting the UPEPA motion, Bradshaw and Wilson moved to amend the case caption to identify M.G. by his full name and requested leave of the court to identify M.G. by his full name. BISD and HOSA joined the motion. The court granted the motion.

Plaintiffs appeal. More facts are discussed below where relevant.

DISCUSSION

Case Caption

In its initial complaint and throughout its pleadings, plaintiffs identify M.G. only by initials. Bradshaw and Wilson first noted their objection only as a footnote in their joint UPEPA motion. They wrote:

> "M.G." is *not* a minor, and there is no basis in the record for allowing "M.G." to proceed incognito. While counsel has respected the designation in this pleading, the Court should *sua sponte* order amendment of the Complaint to specifically identify "M.G." just like any other adult seeking relief in this public forum.

[14] The remaining claims were cyberstalking, loss of consortium, and emotional distress.

During the June 12, 2023 UPEPA motion hearing, Wilson's counsel observed that it was improper for the plaintiffs to initiate this case using M.G.'s initials, but said, "That's a side issue, we've raised that in a couple of our briefs." The court responded that it had seen that but was not going to address it, explaining that it should be brought as a motion for the court to "address it, if necessary."

Bradshaw and Wilson filed a joint motion on July 7, 2023, to amend the case caption and for leave from the court to use M.G.'s full name. BISD and HOSA joined the motion. The motion stated,

> The Court first decides whether a proposed redaction implicates Article I, Section 10; once that determination has been made, the trial court must consider either a set of constitutional factors under *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640[ ]P.2d 716 (1982), or the factors under GR 15. *State v. S.J.C.*, 183 Wn.2d 408, 412, 352 P.3d 749 (2015); *John Doe G v. Dep't of Corr.*, 190 Wn.2d 185, 191, 410 P.3d 1156 (2018). This is because the public has a right of access to court records, which includes the full names of litigants.

The motion was made while the UPEPA motion was still pending, but the hearing was not held until after the trial court granted the UPEPA motion and dismissed all claims against Bradshaw and Wilson. Plaintiffs' opposition motion focused on lack of notice.

At the hearing, counsel for Bradshaw and Wilson argued that in order for M.G. to litigate in pseudonym or by initials, he needs to seek leave of court ahead of time and show a compelling reason. BISD, which joined the motion but did not submit separate briefing, argued that there needs to be a showing under Ishikawa "that there will be serious and imminent threat to MG – to some interests of MG if his full name is used. And that was not done here." Attorney Gerlach argued as follows:

> When the allegations are plainly false, the public, as a rule, has no legitimate interest in finding out names of people who have been falsely

> accused, that's the Bellevue John Does 1 through 11 v. Bellevue School District case.[15]
> ….
> There is no ambiguity there. In cases involving sexual harassment, as the Court indicated, or sexual assault, and there was assault on this case, as well as sexual harassment, the plaintiff can pursue the case through the use of initials.
> So the idea that somehow, because this started when he was a minor and continued after he was no longer a minor, and somehow that eliminates the initial causes of action and claims, is false.
> So with respect to that, I think the Court was correct. The plaintiff can pursue an action, they can use initials. Case law is clear on that. There's no procedural issue that's mandating, unless the Court would require it, we'd be happy to file a petition to proceed under initials.

The court recognized that M.G.'s privacy concerns are not without merit and acknowledged that it took his privacy and safety concerns seriously, but in deciding whether someone can proceed under their initials, the court must follow the procedures and factors from Ishikawa.[16] In doing so, the court determined that plaintiffs failed to show a "serious and imminent threat to some other important interest" as he sought to protect a right other than the right to a fair trial. The court ruled that the plaintiffs failed to articulate a serious and imminent threat to an important interest if M.G. is forced to use his full name in this action, and any interest here is outweighed by the public's interest in the open administration of justice. The court granted the motion and ordered that "the

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[15] Bellevue John Does 1-11 v. Bellevue Sch. Dist. No. 405, 164 Wn.2d 199, 205, 189 P.3d 139 (2008) (determining that when allegations of misconduct are "unsubstantiated," disclosure of a teacher's identity violates their right to privacy, and enjoining release under the former public disclosure act).

[16] Under Ishikawa,

> (1) the proponent of closure must make a showing of compelling need, (2) any person present when the motion is made must be given an opportunity to object, (3) the means of curtailing open access must be the least restrictive means available for protecting the threatened interests, (4) the court must weigh the competing interests of the public and of the closure, and (5) the order must be no broader in application or duration than necessary.

John Doe 1 v. Prosecuting Att'y, 192 Wn. App. 612, 617, 369 P.3d 166 (2016) (citing Ishikawa, 97 Wn.2d at 37-39, 640 P.2d 716 (1982)).

case caption shall be amended to include "M.G."s full name. All parties have leave to refer to M.G. by his full name in all future pleadings."

Plaintiffs challenge the court's ruling. They argue that while article I, section 10 of the Washington constitution requires that "[j]ustice in all cases shall be administered openly," "it is equally clear that the public's right to access is not absolute and may be limited to protect other interests." In essence, plaintiffs argue that M.G. was falsely accused of sexual assault and the public has no legitimate interest in finding out the names of people who have been falsely accused. Defendants did not address this issue in their response briefs.

We review a trial court's decision to allow plaintiffs to proceed under pseudonyms for an abuse of discretion. Doe AA v. King County, 15 Wn. App. 2d 710, 717, 476 P.3d 1055 (2020). "A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons." In re Marriage of Muhammad, 153 Wn.2d 795, 803, 108 P.3d 779 (2005) (quoting In re Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997)). A trial court's discretionary decision is based on untenable grounds or made for untenable reasons if it rests on facts unsupported in the record or was reached by applying the wrong legal standard. T.S. v. Boy Scouts of Am., 157 Wn.2d 416, 423-24, 138 P.3d 1053 (2006).

"In the complaint the title of the action shall include the names of all the parties…" CR 10(a)(1).

> Article 1, section 10 of the Washington State Constitution requires courts conduct judicial proceedings openly and without delay. This means court proceedings and court documents are presumptively open to the public, and any exception is appropriate "only in the most unusual of circumstances." Although openness is presumed, it is not absolute. "The

> public's right of access may be limited to protect other significant and fundamental rights, such as a defendant's right to a fair trial."

Doe AA, 15 Wn. App. 2d at 718-19 (internal citations omitted).

"Whether an Ishikawa analysis is necessary depends on whether article I, section 10 applies." S.J.C., 183 Wn.2d at 412. "Whether article I, section 10 applies depends on application of the experience and logic test." Id. A court must determine whether experience and logic support a party's desire to proceed in pseudonym. Doe G., 190 Wn.2d at 199. The experience prong examines "'whether the place and process have historically been open to the press and general public.'" Id. The logic prong examines "'whether public access plays a significant positive role in the functioning of the particular process in question.'" Id.;[17] see Bellevue John Does 1-11, 164 Wn.2d at 217 (holding that experience and logic show that allowing plaintiffs to proceed under pseudonyms does not implicate article 1, section 10 where the public's interest in the plaintiffs' names is minimal and use of those names would chill their ability to seek relief).

[17] The Washington Supreme Court recently stated that "We have held that names in court pleadings are subject to article I, Section 10 and GR 15." John Does v. Seattle Police Dep't et al, No. 102182-8 slip op. at 38 (Wash. February 13, 2025) (unpublished), https://www.courts.wa.gov/opinions/pdf/1021828.opn.pdf. (citing Doe G., 190 Wn.2d at 201). The court then went on to discuss the five-step framework in Ishikawa without any mention of the experience and logic test. Does, slip op. at 38. However, the Supreme Court in Doe G. followed its holding in S.J.C., 183 Wn.2d at 412, and first applied the experience and logic test to determine if article I, Section 10 applied. Doe G., 190 Wn.2d at 199. In doing so, the court concluded that "names of people convicted of criminal offenses, including sex offenders, have historically been open to the public" and observed that "[u]nlike convicted sex offenders, parties who have not been convicted of any crime may have a legitimate privacy interest because there is no public record associating them with the subject of their litigation." Id. at 200. Doe G. involved whether special sex offender sentencing alternative evaluations are exempt from disclosure under the Public Records Act, chapter 42.56 RCW, and whether pseudonymous litigation was proper in the action. Id. at 189. Doe G. did not categorically hold that all names in pleadings are necessarily subject to an Ishikawa analysis. The Supreme Court in John Does, did not disavow or overrule S.J.C. or Doe G. We continue to follow and apply S.J.C. and Doe G.

Courts must analyze a motion to redact or seal, using both GR 15[18] and Ishikawa factors. Doe AA, 15 Wn. App. 2d at 719 (citing Hundtofte v. Encarnacion, 181 Wn.2d 1, 7, 330 P.3d 168 (2014)). A trial court must justify redaction of names in pleadings under GR 15. Doe G., 190 Wn.2d at 198. GR 15(c)(2) authorizes the redaction of names when "justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record."

In the instant case, counsel for Bradshaw and Wilson correctly indicated in their motion that the court must first decide whether Article I, Section 10 applied, and even cited S.J.C., 183 Wn.2d 408 and Doe G., 190 Wn.2d 185. Both cases explain that "whether an Ishikawa analysis is necessary depends on whether article I, section 10 applies," and "whether article I, section 10 applies depends on application of the experience and logic test." Doe G., 190 Wn.2d at 199 (quoting S.J.C., 183 Wn.2d at 412). However, none of the parties at oral argument mention the experience and logic test. In fact, counsel for BISD simply argued that M.G. failed to meet the requirements under Ishikawa. The trial court followed that argument.

While the trial court had reason to admonish plaintiffs for not first seeking to proceed using only M.G.'s initials, the court, nonetheless, was faced with such a request, albeit by way of a hearing brought by defendants. The court proceeded to determine whether M.G. would be permitted to continue to proceed by initials. In doing so, the court was required to apply the correct legal standard.[19] We decline to engage in

[18] GR 15 sets forth a uniform procedure for the destruction, sealing, and redaction of court records. GR 15(a).

[19] Following oral argument, Bradshaw filed a statement of "Supplemental Authorities" that were previously available at the time Bradshaw filed her response brief. RAP 10.8 allows a party to file a statement of additional authorities. "We view this rule as being intended to provide parties an opportunity to cite authority decided after the completion of briefing. We do not view it

our own experience and logic analysis, and instead reverse the trial court's order and remand for further proceedings.[20]

UPEPA Motion

Plaintiffs challenge the trial court's decision to grant the UPEPA motion. They contend the act is unconstitutional, and, in the alternative, that the trial court erred in concluding the speech in question was one of public concern, and that UPEPA exceptions did not apply. Finding no error, we affirm the trial court.

UPEPA, chapter 4.105 RCW, is designed to provide an expedited process for dismissing lawsuits that target activities protected by the First Amendment, such as freedom of speech, press, assembly, petition, and association on matters of public concern. Thurman, slip op. at 1-2. RCW 4.105.903 provides: "This chapter applies to a civil action filed or cause of action asserted in a civil action on or after July 25, 2021." The UPEPA allows a defendant to file a special motion for expedited relief within 60 days of being served with a pleading asserting a covered cause of action. Id. Relevant to this case, chapter 4.105 RCW applies to any claim asserted "against a person based on the person's … [e]xercise of the right of freedom of speech or of the press, the right to assemble or petition, or the right of association, guaranteed by the United States Constitution or Washington state Constitution, on a matter of public concern."

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as being intended to permit parties to submit to the court cases that they failed to timely identify when preparing their briefs." O'Neil v. City of Shoreline, 183 Wn. App. 15, 23, 332 P.3d 1099 (2014). Moreover, Bradshaw also raises arguments she could have, but failed to raise in her response brief. Thus, we grant plaintiffs' motion to strike Bradshaw's supplemental pleading.

[20] Though all claims against Bradshaw, Wilson and HOSA have been dismissed, the record before us does not establish that all claims against Does 1-100 and BISD have been dismissed. We recognize that based on the trial court's ruling, pleadings were filed that used M.G.'s full name. Our holding addresses the issue before the trial court of whether M.G. may proceed without using his full name. It does not address motions to redact or seal court records under GR 15.

RCW 4.105.010(2)(c). Certain exceptions to this rule are enumerated in RCW 4.105.010(3)(a).

Plaintiffs assert for the first time on appeal that RCW 4.105.010(3) is facially unconstitutional and as applied because it violates the right to a jury trial, is too vague, and violated plaintiffs' right to due process.

Constitutional challenges are subject to de novo review. Portugal v. Franklin County, 1 Wn.3d 629, 647, 530 P.3d 994 (2023) ("We presume statutes are constitutional, and the party challenging constitutionality bears the burden of proving otherwise."). Additionally, an appellate court "may refuse to review any claim of error which was not raised in the trial court." RAP 2.5(a); State v. Strine, 176 Wn.2d 742, 749, 293 P.3d 1177 (2013). A party must raise an issue at trial in order to preserve the issue for appeal, unless the party can show the presence of a "'manifest error affecting a constitutional right.'" RAP 2.5(a)(3); State v. Robinson, 171 Wn.2d 292, 304, 253 P.3d 84 (2011).

Plaintiffs only mentioned the constitutionality of UPEPA below when they opposed Bradshaw's motion for attorney fees and costs under RCW 4.105. In that motion, plaintiffs asserted that Wilson's law firm made statements, in 2020, that challenged UPEPA's constitutionality regarding the application of attorney fees and costs. That is plainly distinct from the claim they assert on appeal. In addition, they make no attempt to establish that the alleged error was manifest or make any attempt to satisfy RAP 2.5(a)(3). The plaintiffs have waived their constitutional claims.

They next argue that the trial court erroneously applied RCW 4.105.060. We disagree.

Our Court reviews issues of statutory interpretation de novo. Pub. Util. Dist. No. 2 of Pac. County v. Comcast of Wash. IV, Inc., 8 Wn. App. 2d 418, 449, 438 P.3d 1212 (2019). "In assessing whether the trial court erred by denying [a] UPEPA motion, we engage in the three-step analysis dictated by RCW 4.105.060(1)." Jha v. Khan, 24 Wn. App. 2d 377, 388, 520 P.3d 470 (2022). First, it is the moving party's burden to establish that UPEPA applies to the cause of action. RCW 4.105.060(1)(a); Id. Second, once the moving party has satisfied this requirement, the burden shifts to the responding party to establish that a statutory exception applies under RCW 4.105.060(1)(b). Jha, 24 Wn. App. 2d at 387. And third, if the responding party fails to demonstrate that an exception applies, the trial court must dismiss the action if either:

> (i) The responding party fails to establish a prima facie case as to each essential element of the cause of action; or
> (ii) The moving party establishes that:
> (A) The responding party failed to state a cause of action upon which relief can be granted; or
> (B) There is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the cause of action or part of the cause of action.

RCW 4.105.060(1)(c). The court must dismiss the cause of action or part of the cause of action if three conditions are met. Thurman v. Cowles Co., 29 Wn. App. 2d 230, 238, 541 P.3d 403 (2024), rev'd, on other grounds, 562 P.3d 777 (Wash. 2025).

> In ruling on a motion under RCW 4.105.020, the court shall consider the pleadings, the motion, any reply or response to the motion, and any evidence that could be considered in ruling on a motion for summary judgment under superior court civil rule 56.

RCW 4.105.050.

A. UPEPA Application

Under the first step of the UPEPA analysis, Bradshaw and Wilson both maintain that UPEPA applies because plaintiffs' cause of action against them is based on the exercise of their right of freedom of speech, and that their statements were a matter of public concern. Plaintiffs argues otherwise.

UPEPA applies when a complaint is based on the individual's "[e]xercise of the right of freedom of speech or of the press, the right to assemble or petition, or the right of association, guaranteed by the United States Constitution or Washington state Constitution, on a matter of public concern." RCW 4.105.010(2)(c). Whether speech is a matter of public concern is a question of law, which courts must determine "'by the content, form, and context of a given statement, as revealed by the whole record.'" Billings v. Town of Steilacoom, 2 Wn. App. 2d 1, 31, 408 P.3d 1123 (2017) (quoting Connick v. Myers, 461 U.S. 138, 147-48, 148 n.7, 103 S. Ct. 1684, 75 L. Ed. 2d 708 (1983)). Speech involves matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community. Jha, 24 Wn. App. 2d at 389.

We first analyze the "content, form, and context" of the target of the plaintiffs' claims against Bradshaw and Wilson. It is undisputed that those claims attack Bradshaw's and Wilson's speech, and that speech consisted of public social media posts. Wilson's speech targeted "all the girls who are, or have been victims of M.G. in any way." Wilson offered to compile their stories and compose a letter to the school with their demands. Plaintiffs never disclosed what Bradshaw actually said in her posts that they describe as "false defamatory and malicious stories" about M.G. Plaintiffs also

challenge Bradshaw's social media post after having been confronted about possible defamation lawsuits. Her response was colorfully direct:

> "[f]irst of all: idgaf bout any threats of defamation suits. It's not defamation if you've committed these heinous actions on camera. Dumbass hoe.
>
> Second: idgaf if the abuser is your homie, sister, brother, whateva. They're an abuser. They can learn or rot. I'm not ruining lives, they ruined their own. Eat my black ass."

The "inappropriate or controversial character of a statement is irrelevant to the question whether it deals with a matter of public concern." Snyder v. Phelps, 562 U.S. 443, 453, 131 S. Ct. 1207, 179 L. Ed. 2d 172 (2011) (quoting Rankin v. McPherson, 483 U.S. 378, 387, 107 S. Ct. 2891, 97 L. Ed. 2d 315 (1987)).

Plaintiffs next argue that UPEPA does not apply because the speech at issue was defamatory, false and not matter of public concern.

Plaintiffs rely on Jha, 24 Wn. App. 2d 377, and Spratt v. Toft, 180 Wn. App. 620, 632, 324 P.3d 707 (2014), to argue that UPEPA only applies to public figures or public campaigns. Spratt involved statements made by a person who was in the middle of a political campaign against a private citizen. 180 Wn. App. at 627. Jha involved statements written by one political candidate about another in an article published online. 24 Wn. App. 2d at 390. Though these cases involved political campaigns, their holding did not mandate that speech does not equate to a public concern unless it was political speech. Plaintiffs ignore the actual legal test in determining whether speech is a matter of public concern. It is a question of law, which courts must determine "'by the content, form, and context of a given statement, as revealed by the whole record.'" Billings, 2 Wn. App. 2d at 31 (quoting Connick, 461 U.S. at 147-48). Moreover, as this court stated in Jha, speech relating to political, social, or other concern to the

community involves matters of public concern. 24 Wn. App. 2d at 389. Under the statute, our legislature requires us to broadly construe whether speech is a matter of public concern. Id. at 390; RCW 4.105.901.

In the instant case, Bradshaw's and Wilson's speech was made in the context of an on-going concern about sexual assault of young women on Bainbridge Island and BHS' response to reports of such assaults.

Bradshaw and Wilson submitted, as exhibits, local newspaper articles and other publications that documented community effort between 2017 and 2023 to address the issue of sexual assault. The Bainbridge Island Review reported many people heading from the island to Seattle in 2017, to participate in a women's march. In 2018, the local paper ran an opinion column about the #MeToo movement. In fall 2020, the paper reported on a rally to encourage girls to talk about sexual assault. Attendees were invited to tell their stories and learn about "Let's Talk," a service through BYS which offers one-on-one and small group peer support. BYS organized a march that began at BHS "To End Sexual Assault and Rape Culture on Bainbridge Island" in 2021. Another newspaper article, in January 2023, discussed how three agencies on the island, including BHS, worked to give power back to victims of sexual assault. It was with this backdrop that Bradshaw and Wilson exercised their First Amendment right to speak out. Wilson offered to provide victims advocacy by bringing their experiences to the attention of the Bainbridge Island School District. Bradshaw's statement could be seen as a public pronouncement that one need not be fearful to speak out if you speak the truth, even when facing threats of litigation.

Though plaintiffs argue that the speech that is the subject of their complaint is "false," false speech is protected speech as long as it is not incitement, obscenity, defamation, speech integral to criminal conduct, fighting words, pornography, fraud or true threats. United States v. Alvarez, 567 U.S. 709, 717, 132 S. Ct. 2537, 183 L. Ed. 2d 574 (2012). Plaintiffs argue that UPEPA does not apply because the speech at issue was defamatory. "Under the UPEPA, provable defamation claims survive the expedited dismissal process and are not dismissed unless and until a trier of fact finds that defamation has not been proved. However, claims against protected expression are covered by the UPEPA notwithstanding a plaintiff characterizing that expression as defamation." Thurman, 29 Wn. App. 2d at 241. Here, the plaintiffs simply do not present a prima facie case of defamation towards M.G.

To establish a prima facie defamation claim, the claimant must show (1) that the defendant's statement was false, (2) that the statement was unprivileged, (3) that the defendant was at fault, and (4) that the statement proximately caused damages. Caruso v. Loc. Union No. 690, 107 Wn.2d 524, 529, 730 P.2d 1299 (1987). In a defamation case, the plaintiff has the burden of establishing a prima facie case on all four elements of defamation. LaMon v. Butler, 112 Wn.2d 193, 197, 770 P.2d 1027 (1989). "The prima facie case must consist of specific, material facts, rather than conclusory statements, that would allow a jury to find that each element of defamation exists." Id.

Wilson's solicitation of stories from "girls who are, or have been victims of M.G." is not an offer to write "contrived stories about male Section 504 students" as alleged by plaintiffs. Samantha's and M.G.'s assertion that Bradshaw posted "false, malicious and defamatory" comments or allegations about M.G. are conclusory statements and do not

assert specific, material facts. And Bradshaw's social media post after being confronted with a possible defamation lawsuit did not assert M.G., let alone any named individual, had committed sexual assault. In short, plaintiffs fail to establish a statement made by Bradshaw or Wilson that is provably false.

We agree with the trial court that Bradshaw and Wilson's statements fall within the definition of a "matter of public concern" and UPEPA applies.

B. Statutory Exceptions

Once the moving party has established that UPEPA applies, the burden shifts to the responding party to establish that a statutory exception under RCW 4.105.010(3) applies. RCW 4.105.060(1)(b); Jha, 24 Wn. App. 2d.at 388. RCW 4.105.010(3)(a) provides 12 exceptions that fall outside the scope of the act.

Plaintiffs assert that three exceptions apply. (1) RCW 4.105.010(3)(a)(iv)[21] (claims "against a person named in a civil suit brought by a victim of a crime against a perpetrator."); (2) RCW 4.105.010(3)(a)(viii) (claims "based on a common law fraud claim."); (3) RCW 4.105.010(3)(a)(x) (claims "brought under Title 49 RCW.").

Under the second step of the UPEPA analysis, we review whether plaintiffs met their burden to establish that a statutory exception applies.

Wilson contends that plaintiffs waived the ability to raise any exceptions under the UPEPA statute because they did not raise exceptions in their filed opposition.

After Wilson and Bradshaw filed their joint UPEPA motion, plaintiffs responded by filing an opposition to the motion, but did not assert in the pleading the application of any exception under RCW 4.105.010(3). Later, after Wilson and Bradshaw filed a

[21] Plaintiffs appear to inadvertently omit "(a)" in its citations to RCW 4.105.010(3) exceptions.

supplemental memorandum, plaintiffs filed a motion to strike the supplemental brief. In that motion to strike, plaintiffs asserted the same three exceptions under RCW 4.105.010(3)(a) that they raise on appeal. The court, in its consideration of the UPEPA motion, denied plaintiffs' motion to strike and considered all of the submitted pleadings by all parties. Though Attorney Gerlach did not expressly cite to RCW 4.105.010(3) during oral argument at the June 12, 2023 hearing, he did argue, "We can't dismiss [WLAD], defamation, fraud or cyber acts in place because of the conspiracy by the co[-]defendants." Thus, plaintiffs did assert the application of exceptions below that was considered by the trial court. We now turn to each of the asserted exceptions.

(i) RCW 4.105.010(3)(a)(iv)

The first exception is RCW 4.105.010(3)(a)(iv) that provides for a cause of action "against a person named in a civil suit brought by a victim of a crime against a perpetrator." Plaintiffs assert that M.G. is a victim of cyber harassment[22] by Bradshaw and Wilson, and that plaintiffs brought a civil suit against them.

[22] RCW 9A.90.120 defines cyber harassment:
(1) A person is guilty of cyber harassment if the person, with intent to harass or intimidate any other person, and under circumstances not constituting telephone harassment, makes an electronic communication to that person or a third party and the communication:
(a)(i) Uses any lewd, lascivious, indecent, or obscene words, images, or language, or suggests the commission of any lewd or lascivious act;
(ii) Is made anonymously or repeatedly;
(iii) Contains a threat to inflict bodily injury immediately or in the future on the person threatened or to any other person; or
(iv) Contains a threat to damage, immediately or in the future, the property of the person threatened or of any other person; and
(b) With respect to any offense committed under the circumstances identified in (a)(iii) or (iv) of this subsection:
(i) Would cause a reasonable person, with knowledge of the sender's history, to suffer emotional distress or to fear for the safety of the person threatened; or
(ii) Reasonably caused the threatened person to suffer emotional distress or fear for the threatened person's safety.

Plaintiffs fail to cite to any substantive evidence anywhere in the record to support this claim that M.G. was the victim of cyber harassment specifically by Bradshaw and Wilson. In the complaint, plaintiffs characterize the unnamed student who uploaded the link to the dossier in the school's Google Drive as a cyber-stalker.

(ii) RCW 4.105.010(3)(a)(viii)

The next exception, RCW 4.105.010(3)(a)(viii), provides for a cause of action "based on a common law fraud claim." Plaintiffs cite to their complaint, in which they allege "Defendants devised a scheme to defraud M.G. out of money paid to the university, junior college and HOSA." The facts asserted under his claim for fraud include that the uploaded dossier described M.G.'s attendance at community college, that he attends BHS and goes to Olympic College for Running Start, and that he was in a leadership position in HOSA the previous year.

Common law fraud consists of nine essential elements[23] which must be proven by clear, cogent and convincing evidence.

Plaintiffs cite to nothing in the record to support their claim of fraud or attempt to address how they relied on any facts represented by Bradshaw or Wilson to their detriment.

[23] The nine essential elements are:
(1) A representation of an existing fact;
(2) Its materiality;
(3) Its falsity;
(4) The speaker's knowledge of its falsity or ignorance of its truth;
(5) His intent that it should be acted on by the person to whom it is made;
(6) Ignorance of its falsity on the part of the person to whom it is made;
(7) The latter's reliance on the truth of the representation;
(8) His right to rely upon it;
(9) His consequent damage.
Sigman v. Stevens-Norton, Inc., 70 Wn.2d 915, 920, 425 P.2d 891 (1967).

(iii) RCW 4.105.010(3)(a)(x)

The last exception asserted by plaintiffs is RCW 4.105.010(3)(x) that provides for a cause of action "brought under Title 49 RCW." Plaintiffs merely state that "M.G. alleged violations under RCW 49.60 Washington's Law Against Discrimination ('WLAD')" and cite to their complaint. Plaintiffs simply list a cause of action in their first amended complaint without citing to any asserted facts in the record to show how Bradshaw or Wilson committed a WLAD violation. In fact, the claim of a WLAD violation in the complaint lists BISD, HOSA and Does #1-30, not Bradshaw or Wilson.

In summation, plaintiffs fail to satisfy RAP 10.3(a)(6) (requiring an appellant's brief to provide "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record"); see also Jackson v. Quality Loan Serv. Corp., 186 Wn. App. 838, 845, 347 P.3d 487 (2015). It follows that plaintiffs have not met their burden to demonstrate that any exceptions under RCW 4.105.010 apply to establish that their claims against Bradshaw and Wilson fall outside the reaches of UPEPA.

B. Prima Facie Case

Under the third step of the UPEPA analysis, dismissal with prejudice of a cause of action or part of a cause of action must occur if either:

> (i) The responding party fails to establish a prima facie case as to each essential element of the cause of action; or
> (ii) The moving party establishes that:
> (A) The responding party failed to state a cause of action upon which relief can be granted; or
> (B) There is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the cause of action or part of the cause of action.

RCW 4.105.060(1)(c). Plaintiffs make no attempt to substantively argue step three of the UPEPA analysis. See RAP 10.3(a)(6) (requiring appellant's brief to include "argument in support of the issues presented for review"); see also Smith v. King, 106 Wn.2d 443, 451-52, 722 P.2d 796 (1986) (assignment of error is waived if unsupported by argument or authority).

In conclusion, we hold that plaintiffs failed to establish that the trial court erred in dismissing the claims against Bradshaw and Wilson under UPEPA.[24] We affirm.

The remainder of this opinion has no precedential value. Therefore, it will be filed for public record in accordance with the rules governing unpublish opinions. See RCW 2.06.040.

CR 12(b)(6)

Gerlach next challenges the trial court's CR 12(b)(6) dismissal of all claims against HOSA.[25]

We review a trial court's ruling to dismiss a claim under CR 12(b)(6) de novo. West v. Stahley, 155 Wn. App. 691, 696, 229 P.3d 943 (2010). Dismissal is warranted only if the court concludes, beyond a reasonable doubt, the plaintiff cannot prove "any set of facts which would justify recovery." Tenore v. AT&T Wireless Servs., 136 Wn.2d 322, 329-30, 962 P.2d 104 (1998). The court presumes all facts alleged in the plaintiff's

[24] We need not address plaintiffs' challenge of the award of attorney fees under RCW 4.105.010(3) because their only challenge was based on their argument that the UPEPA motion should not have been granted.

[25] HOSA contends that plaintiffs introduced six new facts in their opening brief that are not in the record. To the extent that these facts constitute new evidence that was not presented to the trial court, we do not consider it. See Spokane Airports v. RMA, Inc., 149 Wn. App. 930, 936, 206 P.3d 364 (2009) (stating "[g]enerally, we will not accept additional evidence on appeal …").

complaint are true and may consider hypothetical facts supporting the plaintiff's claims. Id.

On appeal, plaintiffs argue that the trial court erred in dismissing its WLAD claim against HOSA because it is subject to WLAD for discrimination, including intentional sexual misconduct, physical abuse and assault. While this court presumes all facts alleged in the plaintiffs' complaint as true, they do not cite to any facts in their complaint or present any meaningful argument. Instead, they simply say "[s]ufficient facts established liability by HOSA's sponsors, officers and members." "We are not required to search the record for applicable portions thereof in support of the plaintiffs' arguments." Mills v. Park, 67 Wn.2d 717, 721, 409 P.2d 646 (1966). As to the other causes of action dismissed against HOSA, plaintiffs summarily state that the trial court dismissed them based on misreading the case law. Instead of citing to relevant parts of the record, plaintiffs merely cite to their own pleadings below. "[I]t is improper to attempt to 'incorporate by reference' into a party's merits brief arguments made in other pleadings. State v. I.N.A., 9 Wn. App. 2d 422, 426, 446 P.3d 175 (2019); See Diversified Wood Recycling, Inc. v. Johnson, 161 Wn. App. 859, 890, 251 P.3d 293 (2011) ("We do not permit litigants to use incorporation by reference as a means to argue on appeal or to escape the page limits for briefs set forth in RAP 10.4(b)."); Kaplan v. Nw. Mut. Life Ins. Co., 115 Wn. App. 791, 800 n.5, 65 P.3d 16 (2003).

Plaintiffs do not present sufficient argument to warrant review as to the trial court's granting of HOSA's second CR 12(b)(6) motion. See RAP 10.3(a)(6) (requiring an appellant's brief to provide "argument in support of the issues presented for review,

together with citations to legal authority and references to relevant parts of the record"); see also Jackson,186 Wn. App. at 845.

Because plaintiffs did not respond to HOSA's third CR 12(b)(6) motion, plaintiffs have waived any error as to the trial court's granting of that motion. See RAP 2.5(a); Ryder v. Port of Seattle, 50 Wn. App. 144, 150, 748 P.2d 243 (1987) (An issue, theory, or argument not presented to the trial court will not be considered on appeal.).

Motion for Reconsideration

Plaintiffs filed a motion for reconsideration of the court's July 19, 2023 orders granting HOSA's second CR 12(b)(6) motion and granting Bradshaw's and Wilson's UPEPA motion. The court denied the motion for reconsideration.

We review the denial of a motion for reconsideration for an abuse of discretion. McCoy v. Kent Nursery, Inc., 163 Wn. App. 744, 758, 260 P.3d 967 (2011). Generally, a trial court abuses its discretion if its decision is "manifestly unreasonable or exercised on untenable grounds or for untenable reasons." Id. "Under CR 59(a)(4), reconsideration is warranted if the moving party presents new and material evidence that it could not have discovered and produced at trial." Wagner Dev., Inc. v. Fid. & Deposit Co. of Maryland, 95 Wn. App. 896, 906, 977 P.2d 639 (1999).

Plaintiffs merely state that they provided "new facts and evidence to support the request for reconsideration, including controlling case law." This is not sufficient to warrant review. RAP 10.3(a)(6) (requiring an appellant's brief to provide "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record"); see also Jackson, 186 Wn. App. at 845.

CR 11

Plaintiffs next contend that the trial court improperly awarded CR 11 sanctions for Wilson, while denying their request for cross-sanctions. We disagree.

In plaintiffs' motion to strike Bradshaw and Wilson's supplemental briefing, Attorney Gerlach wrote that "Wilson ***wanted*** a rape culture on Bainbridge Island to support her fantasies of sexual assault and 'a hotbed of attempted youth social justice.'" He also wrote:

> The intent and purpose of the false, malicious and defamatory statements was to coerce the boys into suicide, like a 2017 student. Wilson's supplemental brief referenced a 2017 rally. In 2017 a student committed suicide in Wilson's class. The police failed to fully investigate all contributing factors to the death of a student, who would have graduated with Wilson in 2020.

Wilson's counsel notified Attorney Gerlach that he had violated CR 11 and demanded the statements relating to wanting a rape culture and coercing boys into suicide be removed. The notice informed Attorney Gerlach that if he did not file a corrected brief with the statements removed, a motion for sanctions would follow. Attorney Gerlach re-filed its June 26 motion labeling it an "ERRATA FILING" without any further explanation. The statement relating to rape culture was changed to:

> *A student* ***desired*** a rape culture on Bainbridge Island. This could support fantasies of sexual assault and "a hotbed of attempted youth social justice."

The statements relating to coercing suicide remained the same. The "errata filing" did not request removal of the original pleading, did not move to seal it, and did not identify what had been changed from the original. The court granted Wilson's CR 11 motion and denied plaintiffs' cross-motion for CR 11 sanctions. The court awarded Wilson $6,445 in attorney fees.

We review a trial court's imposition of CR 11 sanctions for an abuse of discretion. Biggs v. Vail, 124 Wn.2d 193, 197, 876 P.2d 448 (1994). Under an abuse of discretion standard, a trial court's sanction decisions are reversed "only if the [trial court's] decisions only are manifestly unreasonable or based on untenable grounds." Stiles v. Kearney, 168 Wn. App. 250, 263, 277 P.3d 9 (2012).

CR 11 requires every pleading to be signed by an attorney or party. That signature "constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion, or legal memorandum, and that to the best of the party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact..." CR 11.

CR 11 deals with two types of filings: "baseless filings and filings made for improper purposes." Stiles, 168 Wn. App. at 261. To impose sanctions for a baseless filing, the trial court must find not only that the claim was without factual or legal basis, but also that the attorney who signed the filing did not conduct a reasonable inquiry into the factual basis of the claim. Bryant v. Joseph Tree, Inc., 119 Wn.2d 210, 217, 829 P.2d 1099 (1992). Additionally, "the trial court must make findings specifying the actionable conduct." Stiles, 168 Wn. App. at 262 (citations omitted).

A. CR 11 Sanctions Granted

In granting the CR 11 motion against Attorney Gerlach, the trial court issued detailed written findings of fact and conclusions of law.

The court found that Attorney Gerlach failed to revise the statement about suicide in his previous brief. His errata filing did not request the removal of the original pleading or request that it be sealed. The court held that Attorney Gerlach did not provide any

factual basis for the statements he made. Moreover, the trial court found that there was no evidence to support an assertion that any student "desired" or "wanted" rape culture, or that Wilson coerced any boys into suicide.

On appeal, Attorney Gerlach continues to maintain that his pleadings were "factually accurate." Regarding his assertion that Wilson "wanted a rape culture," Attorney Gerlach argues that "Wilson actually used the word, 'want' four times in her targeted attack on M.G. and stated, 'no detail spared' and 'no grievance unaired.'" He cites to Wilson's posting where she wrote:

> If you guys want, I will take your stories and compose a letter to the school with your demands. …I want to help you. …I'd want ALL of your input on what I write … If you want, I will write it for you.

(Emphasis added.) He argues, without citing the record, that the "fraudulent 'rape culture' allegedly occurred during COVID when school was remote and public events shut down." He argues, citing to his own pleadings, that "Defendants claimed a new 'rape culture' formed on Bainbridge Island" without any evidence of proof. He also maintains that Samantha was correct when she stated, "I am not sure if Eleanor Wilson had something to do with that girls' suicide." He further claims that "[i]f Plaintiffs had been provided responses to discovery requests, Samantha could have stated with evidence whether Eleanor Wilson had something to do with that girls' suicide." Lastly, he cites to evidence, that was submitted with a later motion for reconsideration, to support his errata filing that "a student desired a rape culture." This evidence was in the form of a 2021 tax return document for the non-profit Kitsap Support Advocacy and Counseling (KSAC) organization, that indicated it had received contributions and grants totaling $818,888. It also included an unsupported assertion that BISD student Z.P. was

a board member of KSAC. Even if we were to consider the KSAC evidence, none of this supports a reasonable factual basis for the assertions that "a student desired a rape culture" or that the intent of the statements plaintiffs characterize as false, malicious and defamatory was to coerce boys into suicide.

The record supports the trial court's findings that the assertions made that were subject to the CR 11 sanctions were done so without factual or legal basis, and that Attorney Gerlach did not conduct a reasonable inquiry into the factual basis of the claims. The trial court did not abuse its discretion in imposing CR 11 sanctions.[26]

B. CR 11 Sanction Denied

Plaintiffs appear to appeal the denial of their cross-motion for CR 11 sanctions. After Wilson filed her motion for sanctions against Attorney Gerlach, plaintiffs filed a cross-motion for sanctions for a variety of reasons. On appeal, plaintiffs simply state, without any citation to the record, "[p]laintiffs filed a CR 11 cross-motion after Defendants' falsely accused Plaintiffs of being "white supremist." Plaintiffs do not sufficiently present argument or citations to the record to warrant review. RAP 10.3(a)(6). Plaintiffs also raise a new basis for CR 11 sanctions against Wilson's attorney that was not raised below. We decline to review a new argument on appeal that was not presented below. RAP 2.5(a). This court generally declines to review any claim of error not raised before the trial court. Plaintiffs do not argue that any exceptions to this rule apply. See Mullor v. Renaissance Ridge Homeowners' Ass'n, 22 Wn. App. 2d 905, 919, 516 P.3d 812 (2022).

[26] We need not address whether the court erred in determining Attorney Gerlach's statements were made for an improper purpose.

Recusal

Plaintiffs also assert that the trial court should have recused itself because about 10 years earlier, while the judge was in private practice, she represented the City of Bainbridge Island in an acrimonious dispute with Suzanne and Attorney Gerlach, who, as property owners, applied for a city permit. Plaintiffs argue that despite repeated requests by Attorney Gerlach for the trial court to recuse itself, it refused.

"Under the appearance of fairness doctrine, a judicial proceeding is valid only if a reasonably prudent, disinterested observer would conclude that the parties received a fair, impartial and neutral hearing." State v. Gamble, 168 Wn.2d 161, 187, 225 P.3d 973 (2010). "Evidence of a judge's actual or potential bias must be shown before an appearance of fairness claim will succeed." State v. Chamberlin, 161 Wn.2d 30, 37, 162 P.3d 389 (2007). Under the Code of Judicial Conduct, designed to provide guidance for judges, "'[j]udges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned.'" Gamble, 168 Wn.2d at 188 (alteration in original) (quoting CJC Canon 3(D)(1)). Recusal is within the sound discretion of the trial court. In re Parentage of J. H., 112 Wn. App. 486, 496, 49 P.3d 154 (2002). This court reviews trial judges' decisions whether to recuse themselves to determine if the decision was manifestly unreasonable or based on untenable reasons or grounds. Kok v. Tacoma Sch. Dist. No. 10, 179 Wn. App. 10, 23-24, 317 P.3d 481 (2013). A litigant who proceeds to a trial or hearing before a judge despite knowing of a reason for potential disqualification of the judge waives the objection and cannot challenge the court's qualifications on appeal. Buckley v. Snapper Power Equip. Co., 61 Wn. App. 932, 939, 813 P.2d 125 (1991).

Disqualification of a single judge without a showing of prejudice is a right granted to parties by statute. Harbor Enters., Inc. v. Gudjonsson, 116 Wn.2d 283, 285, 803 P.2d 798 (1991); see RCW 4.12.050. After exercising the statutory right to peremptory removal of one judge, a party may not disqualify a second judge for prejudice by simply filing a second motion and affidavit under RCW 4.12.050. State v. Dominguez, 81 Wn. App. 325, 328, 914 P.2d 141 (1996). A party claiming bias or prejudice must support the claim; prejudice is not presumed as it is under statutory right to peremptory removal. Id. at 328-39.

Even assuming that a sufficient basis may have existed to warrant recusal, Attorney Gerlach waived such a challenge because he was aware of the basis of his challenge before asking the court to grant his proposed order on a motion for evidence on February 17, 2023.

The trial court, as presiding judge, heard the plaintiffs' February 17 motion. Attorney Gerlach requested the presiding judge to sign orders directing social media companies to produce records. The court denied the request. Later in the hearing, counsel for BISD asked if the court was considering whether to assign the case to a particular judge. The court responded that it would be doing that later that day. It observed and stated "I'm next up on the rotation, so I think I'm probably next up, so it will probably be me." At no time did Attorney Gerlach ask the trial court to recuse itself or articulate a concern that the trial court could not be fair. The presiding judge later signed an order assigning the case to herself. A week later, plaintiffs filed a motion for reconsideration of the court's February 17 order denying its request for motions for evidence. The basis of the motion was that the judge, while in private practice, had

previously represented the City of Bainbridge in the litigation involving a permit application 10 years prior.

Despite the fact plaintiffs did not raise this concern or object to the court hearing their motion for evidence on February 17, the court considered the motion to recuse. The court explained that the case was preassigned in the ordinary course and that the court was the next judge in the rotation. The judge explained that though she was familiar with Attorney Gerlach's name prior to the February 17 hearing, that was not unusual in the small jurisdiction for an attorney's name to sound familiar. The court explained, "I have been on the bench for over 10 years, and prior to that, handled hundreds of cases as a practicing attorney for more than 16 years. I have no memory of any prior interactions with attorney Gerlach personally, and after reviewing his Motion, have only a very vague memory of the case he cites." The court further stated that "[a]fter a thorough review of attorney Gerlach's materials there is nothing about the prior case that causes me to feel any personal bias toward attorney Gerlach or his family." The court denied the motion and issued its order on June 23, 2023. Plaintiffs do not appeal that June 23 order.

At oral argument, Attorney Gerlach asserted that the reason plaintiffs did not request the trial judge to recuse itself on February 17 was because they had already exercised their statutory right to peremptory removal of a different judge. Wash. Court of Appeals oral argument, M.G. v. Bainbridge Island Sch. Dist., No. 86846-2-I (Jan. 22, 2025), at 21 min., 30 sec. through 21 min., 41 sec., *video recording by* TVW, Washington State's Public Affairs Network, https://tvw.org/video/division-1-court-of-appeals-2025011480/.

However, if the party shows actual prejudice on the part of a judge, the court must consider a motion for disqualification even if the statutory right has been exhausted. State v. Detrick, 90 Wn. App. 939, 942-43, 954 P.2d 949 (1998). Here the judge, who had been on the bench more than 10 years and had previously handled hundreds of cases as a practicing attorney, said she had no memory of any prior interactions with attorney Gerlach personally, and after reviewing his motion, only had a very vague memory of the case he cited. This is similar to the situation in Gamble, where our Supreme Court affirmed this court's holding that the remoteness of the representation of opposing party and the fact the judge did not recall it led to a conclusion that the moving party had not established an appearance of unfairness. 168 Wn.2d at 189.

Plaintiffs nevertheless contend that the trial court displayed bias and prejudice toward Attorney Gerlach throughout the entire proceeding. We disagree.

First, plaintiffs point to the fact that during the February 17 proceeding the trial court judge assigned the case to herself. The judge explained that she was next in the rotation and that is why she assigned the case to herself. That does not support a claim of actual prejudice or bias.

Second, plaintiffs assert that the trial judge cut Attorney Gerlach off from making an argument during the February 17 hearing. In arguing why the plaintiffs were seeking the orders for evidence, Attorney Gerlach stated, "[v]ictims in other cases are taking their own lives as a result of some of the school's failures to protect - -" The court interrupted and said,

> I'm going to ask you just to kind of stick to the - - the issues here, please. I - - I - - I'm not going to be making decisions in this based on, like, equity

> and policy. This is about kind of the rules and - - so I appreciate context in terms of your case for understanding the intent of identifying particular people and how that might be relevant, but in terms of talking about the greater public good or ill from these things, I don't think that's really important for today.

Trial judges have wide discretion to manage their courtrooms and conduct trials fairly, expeditiously, and impartially. State v. Johnson, 77 Wn.2d 423, 426, 462 P.2d 933 (1969). We, therefore, review a trial judge's courtroom management decisions for abuse of discretion. Peluso v. Barton Auto Dealerships, Inc., 138 Wn. App. 65, 69, 155 P.3d 978 (2007). Attorney Gerlach began making conclusory allegations supposedly related to "other cases" and unrelated to the claims in their complaint. The court continued to allow Attorney Gerlach to argue after directing him to stay on topic. The court did not abuse its discretion in doing so and this does not demonstrate actual bias or prejudice.

Third, plaintiffs also argue that during the February 17 hearing, the trial judge mocked Attorney Gerlach by saying, "Can I just ask you a question?" "As a – you are a lawyer right?" Plaintiffs quote the court out of context. Attorney Gerlach was asking the court to sign orders to assist plaintiffs in obtaining records from social media companies. The court then asked

> Can I just ask you a question? … You're a licensed lawyer. So why do you need the Court to issue a CR 45 subpoena? Because you have the legal authority to do it yourself, and - - and so why does the Court need to - - to assist you with that?

There is nothing unreasonable about this question. Given the fact Attorney Gerlach shared the same surname with at least some of the plaintiffs, it was not unusual for the judge to first confirm that Attorney Gerlach was an attorney before following up with more questions asking why he needed the court order since he had the authority to sign subpoenas as an attorney. The record does not support plaintiffs' claim that the court

was mocking Attorney Gerlach and it does not support a claim of actual bias or prejudice.

Lastly, plaintiffs contend that the trial court's UPEPA and CR 11 rulings are clear evidence of bias. However, "[j]udicial rulings alone almost never constitute a valid showing of bias." In re Pers. Restraint of Davis, 152 Wn.2d 647, 692, 101 P.3d 1 (2004). As discussed above, the trial courts UPEPA and CR 11 rulings were proper.

Plaintiffs have not met their burden to establish actual prejudice by the trial judge.

Attorney Fees on Appeal

Bradshaw, Wilson, and plaintiffs all request attorney fees on appeal under RAP 18.1. We award fees to Bradshaw and Wilson and deny plaintiffs' request for fees.

RAP 18.1 authorizes an award of attorney fees if allowed by "applicable law." RAP 18.1(a) "A party is entitled to attorney fees on appeal if a contract, statute, or recognized ground of equity permits recovery of attorney fees at trial and the party is the substantially prevailing party." Hwang v. McMahill, 103 Wn. App. 945, 954, 15 P.3d 172 (2000). If a trial court "awards attorney fees pursuant to a statute... attorney fees are awardable on appeal as well." SEIU Healthcare Nw. Training P'ship v. Evergreen Freedom Found., 5 Wn. App. 2d 496, 515, 427 P.3d 688 (2018). Attorney fees on appeal "are awardable in the court's discretion," and subject to the party's compliance with RAP 18.1. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 825, 828 P.2d 549 (1992).

RCW 4.105.090 provides that on a motion under RCW 4.105.020, the court shall award court costs, reasonable attorneys' fees, and reasonable litigation expenses related to the motion: (1) To the moving party if the moving party prevails on the motion;

or (2) To the responding party if the responding party prevails on the motion and the court finds that the motion was not substantially justified or filed solely with intent to delay the proceeding.

Bradshaw and Wilson prevail on their UPEPA motion and are entitled to an award fee related to that motion under RCW 4.105.090(1) and RAP 18.1. We grant their request for fees and deny plaintiffs' request for fees.

RAP 18.9(a)

HOSA also requests an award of attorney fees and costs from defending this appeal as sanctions for plaintiffs' frivolous appeal under RAP 18.9.

HOSA cites to Kinney v. Cook, 150 Wn. App. 187, 195, 208 P.3d 1 (2009), in support of their argument, which provides that appropriate sanctions for a frivolous appeal can include an award of attorney fees and costs to the opposing party.

RAP 18.9(a) authorizes the appellate court, on its own initiative or on motion of a party, to order a party or counsel who files a frivolous appeal "to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court." RAP 18.9(a). "Appropriate sanctions may include, as compensatory damages, an award of attorney fees and costs to the opposing party." Yurtis v. Phipps, 143 Wn. App. 680, 696, 181 P.3d 849 (2008) (citing Rhinehart v. Seattle Times, Inc., 59 Wn. App. 332, 342, 798 P.2d 1155 (1990)). "An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ and that it is so devoid of merit that there is no possibility of reversal." Lutz Tile, Inc. v. Krech, 136 Wn. App. 899, 906, 151 P.3d 219 (2007). Further, all doubts as to whether an

appeal is frivolous are resolved in favor of the appellant. Id. The fact that we reverse and remand as to the issue of the case caption shows that the appeal is not frivolous. We decline to award attorney fees to HOSA.

CONCLUSION

We reverse the trial court's order amending the case caption to use M.G.'s full name because the court did not apply the correct legal standard, and remand for further proceedings on that issue. We affirm the court's dismissal of all claims against Bradshaw and Wilson under UPEPA, as well as the CR 11 sanctions imposed against Attorney Gerlach. We hold that plaintiffs waived their claim that the trial court improperly refused to recuse itself because of an alleged conflict, and conclude that plaintiffs fail to otherwise demonstrate that the court was biased against plaintiffs. They did not present sufficient argument and citations to the record to warrant review as to their remaining claims.

Coburn, J.

WE CONCUR:

Appendix B

FILED
3/24/2025
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

M.G., SAMANTHA GERLACH and SUZANNE GERLACH, Appellants, v. BAINBRIDGE ISLAND SCHOOL DISTRICT #303, a municipal corporation, WASHINGTON STATE HOSA, a non-profit corporation, NASZYA BRADSHAW an individual, ELEANOR WILSON an individual AND DOES 1-100, Respondents.	No. 87083-1-I DIVISION ONE UNPUBLISHED OPINION

COBURN, J. — Plaintiffs appeal CR 11 sanctions imposed against them, the trial court's denial of their motion for disqualification, and the court's denial of plaintiffs' motion for reconsideration. The rulings challenged in this appeal occurred while another appeal was pending in this same matter, but are now resolved in companion case M.G.,[1] v. Bainbridge Island School District, No. 86846-2-I (Wash. Mar. 24, 2025).

We affirm.

[1] In the companion case we reversed the trial court's order amending the case caption to use M.G.'s full name. M.G., slip op. at 15-16. The case's caption, thus, reverts to the initial case caption, which we follow in this opinion. RAP 3.4.

FACTS

The facts underlying this case can be found in M.G., slip op. at 4-10. We repeat those facts and procedural history necessary to address issues presented in this appeal. In M.G., we affirmed CR 11 sanctions against Attorney Marcus Gerlach, who represents plaintiffs M.G., Samantha Gerlach and Suzanne Gerlach.[2] M.G., slip op. at 31. We also held that plaintiffs waived any claim that the trial judge should have recused because of an apparent conflict of interest, and also rejected plaintiffs' argument that the judge was biased as none of their arguments established actual prejudice on the part the judge. M.G., slip op. at 39.

In M.G., we upheld the trial court's dismissal of all claims against Eleanor Wilson under Washington State's Uniform Public Expression Protection Act (UPEPA), which is designed to combat the problem of strategic lawsuits against public participation (anti-SLAPP law). Thurman v. Cowles Co., No. 102791-5, slip op. at 6, 2025 WL 338065 (Wash. Jan. 30, 2025), https://www.courts.wa.gov/opinions/pdf/1027915.pdf. The CR 11 sanctions we upheld in M.G. were based on assertions made in plaintiffs' motion to strike Wilson's declaration and supplemental memorandum in support of her UPEPA motion. M.G., slip op. at 9.

In the plaintiffs' motion to strike, "Attorney Gerlach wrote that 'Wilson ***wanted*** a rape culture on Bainbridge Island to support her fantasies of sexual assault and 'a hotbed of attempted youth social justice.'" M.G., slip op. at 30. After Wilson's counsel notified Attorney Gerlach that he had violated CR 11 and demanded that the statement,

[2] We refer to Marcus Gerlach as Attorney Gerlach for clarity because he shares the same last name with Samantha Gerlach and Suzanne Gerlach.

among others, relating to wanting a rape culture be removed and if he did not file a corrected brief a motion for sanctions would follow. M.G., slip op. at 30.

Attorney Gerlach re-filed its motion labeling it an "ERRATA FILING" without any further explanation. The statement relating to rape culture was changed to:

> *A student **desired*** a rape culture on Bainbridge Island. This could support fantasies of sexual assault and "a hotbed of attempted youth social justice."

M.G., slip op. at 30. Attorney Gerlach did not move to remove or seal the original pleading and did not identify what had been changed from the original. M.G., slip op. at 30. As a sanction, the court awarded Wilson attorney fees against Attorney Gerlach, but reserved on a request to impose punitive sanctions against plaintiffs. We concluded that the record supported the trial court's findings that Attorney Gerlach made the assertion without factual or legal bases, and that he did not conduct a reasonable inquiry into the factual basis of the claims. M.G., slip op. at 33. We held that the trial court did not abuse its discretion in imposing the CR 11 sanction. After sanctioning Attorney Gerlach, the trial court ordered him to file notice of compliance with this award within 30 days of the order.

Plaintiffs appealed the court's order granting CR 11 sanctions and awarding attorney fees. Later, the next month, plaintiffs filed a "NOTICE OF PAYMENT OF COURT'S IMPROPER AWARD OF FEES' ORDER OF SEPTEMBER 6, 2023 TO DISMISSED PARTY." The five-page pleading included one sentence on page 2 that provided notice of payment. The rest of the pleading takes issue with the trial court's CR 11 findings of fact and conclusions of law that formed the very basis of why the court ordered plaintiffs to file a notice of payment. In defense of their previous assertion that

was subject of the CR 11 sanction, plaintiffs asserted: "A reasonable conclusion was that Defendant Eleanor Wilson wanted a rape culture on Bainbridge Island to support the January 30, 2021 March/Rally." This prompted Wilson to file a second motion for CR 11 sanctions.

The same day Wilson filed her motion, plaintiffs filed a motion for disqualification of the trial judge and recession of orders. Plaintiffs previously requested the trial judge recuse herself by way of a motion for reconsideration that was denied on June 23, 2023. As we observed in M.G., plaintiffs could have but did not appeal that order. M.G., slip op. at 36. HOSA filed an opposition to plaintiffs' motion for disqualification and recession of orders.

Plaintiffs also filed a second motion for CR 11 sanctions against Wilson asserting that her CR 11 motion is not warranted under law, not well grounded in fact and not based upon a reasonable inquiry.[3]

The court held a hearing to consider all the motions. The court, observing that it had previously denied a similar motion on June 23, 2023, again denied plaintiffs' motion for disqualification. The court also issued written findings of fact and conclusions of law, and granted Wilson's CR 11 motion and denied plaintiffs' CR 11 motion. The court awarded Wilson attorney fees and also imposed a $1,000 punitive sanction against plaintiffs to be paid to the court registry, where the funds would remain until further court order.

Plaintiffs appeal.

[3] Plaintiffs, in M.G., appealed the denial of their first cross-motion for CR 11 sanctions, but failed to properly brief the issue for consideration. M.G., slip op. at 34.

DISCUSSION

Judicial Disqualification

Plaintiffs assign error to the trial court's denial of their motion for disqualification, arguing that the trial judge was required to recuse herself. As a remedy, they requested below that the trial judge vacate all its orders. On appeal, plaintiffs ask this court to reverse the order denying disqualification, the CR 11 sanction, and the award of attorney fees and costs.

The arguments plaintiffs raise in their motion for disqualification are mostly the same arguments previously raised and rejected in M.G., slip op. at 33. The trial court declined revisiting arguments it had previously rejected. But it did address what it believed were some "new" arguments or allegations.

In M.G., plaintiffs had argued that the "trial court should have recused itself because about 10 years earlier, while the judge was in private practice, she represented the City of Bainbridge Island in an acrimonious dispute with Suzanne and [Marcus] Gerlach, who applied for a city permit." M.G., slip op. at 34-35. In this motion, plaintiffs submitted a declaration from Suzanne Gerlach with an exhibit that previously had not been presented relating to the City's denial of an application for a buoy permit by Suzanne and Marcus Gerlach (the Gerlachs).

Plaintiffs contend that the trial judge's impartiality in the instant matter can be reasonably questioned because of her actions when she represented the City in the permit dispute. This exhibit is a pre-hearing brief dated June 22, 2011, signed by the trial judge (then attorney). The trial judge (then attorney) was hired to represent the City after the Gerlachs appealed a city staff's decision to deny them a buoy permit. The brief

quotes a Bainbridge Island City Code that defines the construction limit line for Eagle Harbor that restricts how far a buoy may be located off shore. The brief said the construction line limit is defined on a U.S. Army Corps Engineers 1939 drawing approved by the Secretary of War. The Gerlachs administratively appealed the denial of the permit and produced evidence that "the official" 1939 map did not include a construction line limit. The parties settled prior to a scheduled hearing before a hearing examiner and the Gerlachs' application for permit was granted through another process. According to the plaintiffs, the Gerlachs then sued the City and the city's planner, which a judge dismissed based in part on a March 2012 declaration of the trial judge (then attorney in the permit matter). The declaration stated:

> Particularly at the outset, there were significant concerns about the construction limit line, the impacts the proposed buoy would have on navigation, and the depth of the proposed location. There were also concerns about the proposed buoy swinging onto the neighbors' tidelands. For all of these reasons, the City denied the Gerlachs' permit application. I saw no evidence that this was done in bad faith or with improper motive.
> ….
> Had their appeal gone to the Hearing Examiner, based upon the evidence and my experience with such matters, I believe that the City would have prevailed–and been affirmed upon judicial review.

Plaintiffs contend that the combination of the pre-hearing brief and the declaration somehow establishes that the trial judge (then attorney) "signed a declaration claiming a false [construction limit line]" because the 2011 pre-hearing brief states that the "evidence will show that the proposed Gerlach buoy would be located well beyond this line." Suzanne Gerlach asserts that "I was required to spend approximately $100,000.00 for a case that was improperly dismissed based upon what appeared to be a false and misleading declaration." Suzanne Gerlach claims that because of this, "I do not believe that I can receive a fair, impartial and unbiased trial."

A litigant who proceeds to a trial or hearing before a judge despite knowing of a reason for potential disqualification of the judge waives the objection and cannot challenge the court's qualifications on appeal. Buckley v. Snapper Power Equip. Co., 61 Wn. App. 932, 939, 813 P.2d 125 (1991). As we stated in M.G.,

> The trial court, as presiding judge, heard the plaintiffs' February 17, 2023, motion. Attorney Gerlach requested the presiding judge to sign orders directing social media companies to produce records. The court denied the request. Later in the hearing, counsel for BISD asked if the court was considering whether to assign the case to a particular judge. The court responded that it would be doing that later that day. It observed and stated "I'm next up on the rotation, so I think I'm probably next up, so it will probably be me." At no time did Attorney Gerlach ask the trial court to recuse itself or articulate a concern that the trial court could not be fair.

M.G., slip op. at 35. In the instant case, the trial court found that plaintiffs raised no issues or concerns with the court until after they were dissatisfied with a decision that had been issued, and denied the motion. Even assuming that a sufficient basis may have existed to warrant recusal, which is not demonstrated by the record, we agree with the trial court that plaintiffs waived such a challenge because they were aware of the basis of this challenge before asking the court to grant his proposed order on a motion for evidence on February 17, 2023.

We need not address plaintiffs' remaining arguments that were previously addressed in M.G. Most of these arguments were raised in the prior motion for recusal that were denied in the June 23, 2023 order that plaintiffs did not appeal in M.G. slip op. at 36. For example, plaintiffs cite to exhibits of court records that show the trial judge in 2017 made a ruling in a criminal case where witnesses were officers with the Bainbridge Island Police Department. These exhibits were submitted as part of plaintiffs' motion for reconsideration that the trial court rejected in its June 23 order. Plaintiffs also cite to an

exhibit of a court record where the trial judge in 2023 granted a City of Bainbridge Island motion to dismiss claims that were time-barred under the statute of limitations. Plaintiffs had submitted this exhibit as part of its motion for reconsideration of the court's dismissal of claims against HOSA under CR 12(b)(6). The denial of that motion was part of the appeal in M.G., slip op. at 29.

The law of the case doctrine generally precludes this court from reviewing issues that a party raised, or could have raised, in a prior appeal from the same case. State v. Worl, 129 Wn.2d 416, 424-25, 918 P.2d 905 (1996). "The doctrine serves to 'promote[ ] the finality and efficiency of the judicial process by protecting against the agitation of settled issues.'" State v. Harrison, 148 Wn.2d 550, 562, 61 P.3d 1104 (2003) (alteration in original) (internal quotation marks omitted) (quoting Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 816, 108 S. Ct. 2166, 100 L. Ed. 2d 811 (1988)). Application of the doctrine is discretionary, not mandatory. Folsom v. County of Spokane, 111 Wn.2d 256, 264, 759 P.2d 1196 (1988). We will reconsider an identical legal issue in a subsequent appeal of the same case when the holding of the prior appeal is clearly erroneous and the application of the doctrine would result in manifest injustice. Id. We do not find that to be the case here.

In any event, in order to prevail on its motion for disqualification, plaintiffs were required to demonstrate the trial judge's actual or potential bias before an appearance of fairness claim will succeed. State v. Chamberlin, 161 Wn.2d 30, 37, 162 P.3d 389 (2007). As we explained in M.G., plaintiffs had exercised their statutory right to remove a different judge before appearing before the trial judge on February 17, 2023. M.G. slip op. at 36.

This court reviews trial judges' decisions whether to recuse themselves to determine if the decision was manifestly unreasonable or based on untenable reasons or grounds. Kok v. Tacoma Sch. Dist. No. 10, 179 Wn. App. 10, 23-24, 317 P.3d 481 (2013).

Disqualification of a single judge without a showing of prejudice is a right granted to parties by statute. Harbor Enters., Inc. v. Gudjonsson, 116 Wn.2d 283, 285, 803 P.2d 798 (1991); see RCW 4.12.050. After exercising the statutory right to peremptory removal of one judge, a party may not disqualify a second judge for prejudice by simply filing a second motion and affidavit under RCW 4.12.050. State v. Dominguez, 81 Wn. App. 325, 328, 914 P.2d 141 (1996). A party claiming bias or prejudice must support the claim; prejudice is not presumed as it is under statutory right to peremptory removal. Id. at 328-29. If the party shows actual prejudice on the part of a judge, the court must consider a motion for disqualification even if the statutory right has been exhausted. State v. Detrick, 90 Wn. App. 939, 942-43, 954 P.2d 949 (1998).

Even considering the fact that the trial judge presided over matters involving the City of Bainbridge Island after having represented the city in the land use matter about 10 years prior, plaintiffs do not show how this demonstrates prejudice on the part of the trial judge in this matter. Under the Code of Judicial Conduct, designed to provide guidance for judges, "[j]udges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned." State v. Gamble, 168 Wn.2d 161, 188, 225 P.3d 973 (2010) (citing CJC Canon 3(D)(1)) (internal quotation marks omitted) (citation omitted). The facts presented by plaintiffs do not establish a circumstance where the trial judges' impartiality might reasonably be questioned.

We acknowledge that plaintiffs do appear to raise a new argument in passing: that the trial court "admitted to 'community involvement' regarding SAVIS[sic]-female victims assault nonprofit,'" and claiming, without any support in the record, that this evidence was not previously available. First, plaintiffs do not explain what "SAVIS" [4] [sic] is, do not cite to the record, and do not present any substantive argument. Second, plaintiffs did not raise this argument in its motion for disqualification. They raised it in their motion for reconsideration, which was denied. The court denied the motion for reconsideration because plaintiffs did not establish that the "new" evidence was not previously available. Though plaintiffs assign error to the denial of their motion for reconsideration, they fail to present any substantive argument on appeal as to why the court erred in denying its motion for reconsideration. If an appellant's brief does not include argument or authority to support its assignment of error, the assignment of error is waived. Smith v. King, 106 Wn.2d 443, 451-52, 722 P.2d 796 (1986).

The trial court did not abuse its discretion in denying the motion for disqualification.

CR 11

Plaintiffs make several arguments on appeal as to why the court's imposition of CR 11 sanctions was improper. We address each in turn.

We leave the decision to impose CR 11 sanctions to the sound discretion of the trial court. Harrington v. Pailthorp, 67 Wn. App. 901, 910, 841 P.2d 1258 (1992). We will

[4] SAIVS appears to stand for an organization called Special Assault Investigation and Victim's Services. Plaintiffs presented an online bio of the trial judge when she was a practicing attorney where "Friends of SAIVS" was listed under "Community Involvement." And that SAIVS' website listed multiple contact information for victim support resources, including Kitsap Sexual Assault Center. But neither SAIVS or the Kitsap Sexual Assault Center is a party in this case.

not overturn CR 11 sanctions absent an abuse of discretion. Id. "A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds or reasons." In re Guardianship of Lasky, 54 Wn. App. 841, 854, 776 P.2d 695 (1989).

Our Supreme Court has previously held that "[t]he purpose behind CR 11 is to deter baseless filings and to curb abuses of the judicial system." Bryant v. Joseph Tree, Inc., 119 Wn.2d 210, 219, 829 P.2d 1099 (1992) (emphasis omitted). CR 11 imposes three duties on attorneys: (1) the duty to conduct a reasonable inquiry into the facts supporting the document; (2) the duty to conduct a reasonable inquiry into the law, such that the document embodies existing legal principles or a good faith argument for the extension, modification, or reversal of existing law; and (3) the duty not to interpose the document for purposes of delay, harassment, or increasing the costs of litigation. Watson v. Maier, 64 Wn. App. 889, 896, 827 P.2d 311 (1992). CR 11 deals with two types of filings: baseless filings and filings made for improper purposes. MacDonald v. Korum Ford, 80 Wn. App. 877, 883, 912 P.2d 1052 (1996). A filing is "'baseless"' when it is "'(a) not well grounded in fact, or (b) not warranted by (i) existing law or (ii) a good faith argument for the alteration of existing law.'" Id. at 883-84. A trial court uses an objective standard to evaluate the reasonableness of an attorney's inquiry. Bryant, 119 Wn.2d at 220. "[A] trial court must make findings specifying the actionable conduct." Stiles v. Kearney, 168 Wn. App. 250, 262, 277 P.3d 9 (2012).

In the instant case, the trial court entered several findings of fact to which plaintiffs do not assign error. Unchallenged findings of fact are verities on appeal. Fed. Fin. Co., Inc. v. Solomon, 7 Wn. App. 626, 629, 501 P.2d 627 (1972). The court found that in the notice of payment, "attorney Gerlach continued to make the same or very

similar assertions for which he was previously sanctioned." As the trial court found, plaintiffs turn to Wilson's use of the word "'want' in an email and in a social media post (e.g., "I want to help" and "I'd want ALL of your input…')" to argue that "[a] reasonable conclusion was that Defendant Elanor Wilson wanted a rape culture on Bainbridge Island to support the January 30[,] 2021 March/Rally." The court found that "no facts are offered to support this conclusion that a person who 'wants to help' actually wants a 'rape culture' to 'support [their] fantasies of sexual assault.'" On appeal, plaintiffs cite to the same record and evidence that was before us in M.G., slip op. at 32.

The trial court found that Attorney Gerlach "provided no factual basis for the statements at issue in this motion, nor did he explain what kind of investigation he did prior to making those statements." This finding is unchallenged. The trial court also found that these "statements were completely unnecessary to fulfill the Court's order requiring 'notice of compliance' and served no legitimate purpose." This finding is unchallenged. Plaintiffs did assign error to the trial court conclusion that plaintiffs could not make "reasonable conclusions" by reciting "Wilson's own words." But that is a mischaracterization of the court's findings and conclusions.

The court found that Attorney Gerlach asserted that "Wilson 'wanted a rape culture' because Ms. Wilson used the word 'want' in an email and in a social media post (e.g., "I want to help" and "I'd want ALL of your input …).'" Plaintiffs previously made the same unpersuasive argument in M.G.—that Wilson "actually used the word, 'want' four times in her targeted attack on M.G." M.G., slip op. at 32. Wilson's statements were in conjunction of expressing a desire to help victims of sexual assault to tell their stories. M.G., slip op. at 21-22. It is in discussing how Wilson actually used the word "want" that

the court found

> From this attorney Gerlach argues that "[a] reasonable conclusion was that Defendant Eleanor Wilson wanted a rape culture on Bainbridge Island to the support the January 30 2021 March/Rally." The "reasonable conclusion" Attorney Gerlach offers is not persuasive–no facts are offered to support this conclusion that a person who "wants to help" actually wants a "rape culture" to "support [their] fantasies of sexual assault."

Upon review of the trial court's findings, and after reviewing the entire record before us, we conclude that the trial court did not abuse its discretion in imposing CR 11 sanctions because doing so was manifestly reasonable and based on tenable grounds.

Plaintiffs also raise some procedural arguments by way of its motion seeking CR 11 sanctions against Wilson. Plaintiffs first contend that Wilson failed to provide proper notice before filing her second CR 11 motion. Setting aside the question of whether lack of proper notice could even be a basis as to plaintiffs' own CR 11 sanction against Wilson, we address the substantive merits of the argument.

Under Washington's CR 11, attorneys and judges who perceive a possible violation of CR 11 must bring it to the offending party's attention as soon as possible. Biggs v. Vail, 124 Wn.2d 193, 198, 876 P.2d 448 (1994). Without timely notice, CR 11 sanctions are unwarranted. Id. The purpose of this requirement is to give the offending party an opportunity to mitigate the sanction by amending or withdrawing the baseless filing. Id. Another reason is to deter the offending party from submitting additional baseless filings. Id. "[W]e find that notice in general that sanctions are contemplated is sufficient for the later imposition of CR 11 sanctions." Id. at 199.

Here, as we discussed in M.G., slip op. at 30, Wilson first notified Attorney Gerlach of potential CR 11 sanctions due to statements asserting Wilson wanting a rape culture. The notice advised Attorney Gerlach that by failing to file a corrected brief with

the statements removed, a motion for sanctions would follow. M.G., slip op. at 30-31. Plaintiffs were given an opportunity to amend or withdraw their offending pleading. Plaintiffs were well aware at the time they filed their "Notice of Payment" of the attorney fee award for the first CR 11 sanction asserting that Wilson wanted a rape culture without a factual basis or reasonable investigation had been found by the trial court to be improper. Nevertheless, plaintiffs continued to argue that the first CR 11 sanction was wrong and asserted that "[a] reasonable conclusion was that Defendant Eleanor Wilson wanted a rape culture on Bainbridge Island to Support the January 30[,] 2021 March/Rally."

Wilson's first notice to plaintiffs of a potential CR 11 sanction served the purpose giving the offending party an opportunity to mitigate the sanction by amending or withdrawing the baseless filing. The fact that it did not successfully deter the offending party from submitting additional baseless filings, does not mean plaintiffs did not receive proper "notice" as contemplated for CR 11 sanctions. See Biggs, 124 Wn.2d at 199. The trial court did not err in rejecting plaintiffs notice argument.

The second procedural argument plaintiffs raise is that Wilson's CR 11 motion is not well grounded in fact, not based upon a reasonable inquiry and not warranted by existing law because Wilson was dismissed from this case on July 19, 2023, the day the court granted the UPEPA motion. Again, setting aside the question of whether this would be a basis for a CR 11 sanction against Wilson, we address the merits of the argument that Wilson could not bring a CR 11 motion as a dismissed party.

Plaintiffs first argue that the trial court's ruling violated RCW 4.105.030, which provides, in relevant parts:

> (3) Except as otherwise provided in subsections (5), (6), and (7) of this section, if a party appeals from an order ruling on a motion under RCW 4.105.020, all proceedings between all parties in the action are stayed. The stay remains in effect until the conclusion of the appeal.
> ….
>
> (7) During a stay under this section, the court for good cause may hear and rule on:
> (a) A motion unrelated to the motion under RCW 4.105.020;

The CR 11 motion is a motion unrelated to the UPEPA motion under RCW 4.105.020. The record establishes that the trial court had good cause to rule on the motion. Also, a trial court has authority to hear and determine post-judgment motions authorized by the civil rules. RAP 7.2(e)(1). Here, the court's CR 11 sanctions do not constitute a "judgment on the merits of an action. 'Rather, it requires the determination of a *collateral issue*: whether the attorney has abused the judicial process, and, if so, what sanction would be appropriate.'" See Biggs, 124 Wn.2d at 198 (quoting Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 396, 110 S. Ct. 2447, 110 L. Ed. 2d 359 (1990)).

Because the court's decision to rule on and issue CR 11 sanctions does not have any effect on the prior decision on appeal, the motion and ruling were permissible. Moreover, under RAP 7.2(c), the trial court's previous ruling on and issuance of CR 11 sanctions permits the court to maintain authority in enforcing its previous rulings. This includes re-sanctioning Attorney Gerlach for restating the same baseless assertions that led to his original CR 11 sanction.

On appeal, plaintiffs generally cite caselaw regarding mootness without ever applying the law to the facts of this case to explain how Wilson's CR 11 motion was moot. Failure to present any substantive argument is not sufficient to warrant review. See RAP 10.3(a)(6) (requiring an appellant's brief to provide "argument in support of the

issues presented for review, together with citations to legal authority and references to relevant parts of the record").

Next, plaintiffs maintain on appeal that Wilson did not have "standing" to bring her CR 11 motion. This is another argument plaintiffs raised below as part of their motion for CR 11 sanctions against Wilson. "Standing refers generally to a party's right to bring a legal claim," and it is "not intended to be a 'high bar' to overcome." Wash. Bankers Ass'n v. Dep't of Revenue, 198 Wn.2d 418, 455, 495 P.3d 808 (2021) (citing Wash. State Hous. Fin. Comm'n v. Nat'l Homebuyers Fund, Inc., 193 Wn.2d 704, 711-12, 445 P.3d 533 (2019)). CR 11 is not a basis for a cause of action to bring a legal claim. It is not altogether clear if plaintiffs use the term "standing" in the traditional legal sense.

Plaintiffs' reliance on State ex rel. Quick-Ruben v. Verharen, 136 Wn.2d 888, 969 P.2d 64 (1998) is misplaced. Plaintiffs' reliance suggests that if a party does not have standing to bring a claim, they cannot "assert a lawful interest under CR 11." In Quick-Ruben, a losing candidate for election to superior court brought a private quo warranto action asserting entitlement to the constitutional office as opposed to the election winner. Id. at 891. The winning candidate filed an answer raising affirmative defenses including lack of standing. Id. at 892. The trial court agreed that the losing candidate brought his claim prematurely by commencing action before the winner was sworn in for the term of office to which he had been elected. The court dismissed the case and awarded attorney fees under CR 11 to the winning candidate after all claims against him were dismissed. Id.

In the instant case, Wilson responded to plaintiffs' suit, but successfully motioned

for the court to dismiss all claims under UPEPA. Wilson moved for CR 11 sanctions prior to the court issuing its dismissal order, but the court did not grant the order until after claims against Wilson had been dismissed. Regardless, Quick-Ruben does not hold that there must be an active pending action at the time a court may award CR 11 sanctions. Nothing in the language of CR 11 requires such a reading. The rule provides that

> [i]f a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee.

CR 11(a)(4). A reading of the plain language of the rule indicates that a CR 11 motion is not necessarily tied to the timing of when claims are dismissed, as suggested by plaintiffs. The two other cases plaintiffs cite are unrelated to CR 11 sanctions.[5] Plaintiffs fail to cite any authority to support that Wilson could not motion for CR 11 sanctions against plaintiffs. Where a party fails to cite to relevant authority, we generally presume that the party found none. State Constr., Inc. v. City of Sammamish, 11 Wn. App. 2d 892, 906, 457 P.3d 1194 (2020) (citing Edmonds Shopping Ctr. Assocs. v. City of Edmonds, 117 Wn. App. 34, 353, 71 P.3d 233 (2003)).

Plaintiffs do not, otherwise, present any argument as to why the trial court erred in denying their motion for CR 11 sanctions against Wilson.

Lastly, plaintiffs argue that the trial court erred in applying the wrong legal standard concluding that "[o]nce a court determines that CR 11 has been violated, the

[5] Bloome v. Haverly, 154 Wn. App. 129, 140, 225 P.3d 330 (2010); Osborn v. Grant County, 130 Wn.2d 615, 631, 926 P.2d 911 (1996).

imposition of sanctions is mandatory." Thus, plaintiffs argue, the court did not apply CR 11 as written. Plaintiffs are correct that the applicable version of CR 11 makes the imposition of sanctions permissive. See Biggs, 124 Wn.2d at 199 (explaining that former CR 11 stated that upon violation of the rule "the court ... shall impose ... an appropriate sanction"). However, the trial court in the instant case expressly stated that "even if sanctions were not mandatory the Court finds that they are appropriate in this case." Given the fact the court plainly indicated that it would exercise its discretion and impose the sanctions, we do not find this to be a basis that warrants reversal.

Attorney Fees

Plaintiffs and Wilson request attorney fees on appeal under RAP 18.1.

RAP 18.1(a) authorizes an award of attorney fees if allowed by "applicable law." "A party is entitled to attorney fees on appeal if a contract, statute, or recognized ground of equity permits recovery of attorney fees at trial and the party is the substantially prevailing party." Hwang v. Mahill, 103 Wn. App. 945, 954, 15 P.3d 172 (2000). Attorney fees on appeal "are awardable in the court's discretion," and subject to the party's compliance with RAP 18.1. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 825, 828 P.2d 549 (1992).

CR 11 provides:

> If a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee.

Because Wilson is the prevailing party on her CR 11 motion, we order Attorney

Gerlach to pay Wilson her reasonable attorney fees, subject to her further compliance with RAP 18.1(d).

HOSA also requests an award of attorney fees and costs from defending this appeal as sanctions for Gerlach's frivolous appeal under RAP 18.9. HOSA cites to Kinney v. Cook, 150 Wn. App. 187, 195, 208 P.3d (2009), in support of its argument, which provides that appropriate sanctions can include an award of attorney fees and costs to the opposing party.

RAP 18.9(a) authorizes the appellate court, on its own initiative or on motion of a party, to order a party or counsel who files a frivolous appeal "to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court." RAP 18.9(a). "Appropriate sanctions may include, as compensatory damages, an award of attorney fees and costs to the opposing party." Yurtis v. Phipps, 143 Wn. App. 680, 696, 181 P.3d 849 (2008) (citing Rhinehart v. Seattle Times, Inc., 59 Wn. App. 332, 342, 798 P.2d 1155 (1990)). "An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ and that it is so devoid of merit that there is no possibility of reversal." Lutz Tile, Inc. v. Krech, 136 Wn. App. 899, 906, 151 P.3d 219 (2007). Furthermore, all doubts as to whether an appeal is frivolous are resolved in favor of the appellant. Id.

Despite the fact all claims against HOSA had been dismissed at the time plaintiffs filed their second motion for disqualification, their motion requested the court to vacate all its orders. This included the order dismissing all claims against HOSA. It is in this circumstance that HOSA filed a brief opposing plaintiffs' February 13, 2024, motion

for disqualification.

Plaintiffs were aware at the time they filed their motion for disqualification that they had already previously made the same arguments to the trial court. Though the trial court declined to revisit the same arguments and allegations previously made, the trial court acknowledged there were some "new" arguments or allegations. As discussed above, plaintiffs submitted a new exhibit to support its motion. It follows that plaintiffs could believe appealing the denial of the motion of disqualification was sufficiently different than its previous appeal. Also, plaintiffs did not have the benefit of our ruling in M.G., slip op. at 41, prior to filing its notice of appeal in this matter. Because all doubts as to whether an appeal is frivolous are resolved in favor of the appellant, we decline to award HOSA reasonable attorney fees and costs under RAP 18.9(a).

We affirm.

Coburn, J.

WE CONCUR:

Bowman, J.

Hazelrigg, ACJ

MACDONALD HOAGUE & BAYLESS

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Transmittal Information

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