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Court of Appeals No. 58844-7-II

Case #: 1042329

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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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SARA HUTCHINSON,

Petitioner,

and

ED PUTKA,

Respondent.

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PETITION FOR REVIEW

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## I. INTRODUCTION

This case arises from a real estate transaction in which a disabled veteran faced escalating threats and pressure after disclosing her protected status. Petitioner Sara Hutchinson respectfully petitions the Washington Supreme Court for review of the Court of Appeals Division II's unpublished decision affirming summary judgment in favor of Respondent Ed Putka. This case presents compelling legal and factual questions under Washington's Law Against Discrimination (WLAD), RCW 49.60, including whether the appellate court misapplied established discrimination precedent, overlooked material evidence, and improperly resolved factual inferences in Respondent's favor on summary judgment, thereby dismissing a WLAD claim that had previously been allowed to proceed to trial.

Equally important, this petition raises an issue of first impression: to Petitioner's knowledge, no Washington appellate court has issued a published decision interpreting

RCW 49.60.2235 (the WLAD provision prohibiting coercion and intimidation in real estate transactions)<sup>1</sup>. WLAD claims arising in real estate contexts are exceedingly rare, and none prior to this case involved a disabled veteran allegedly coerced into rescinding a home purchase. The absence of any guiding precedent on this question presents a significant issue of statewide importance, warranting this Court's review to provide much-needed guidance.

## II. IDENTITY OF PETITIONER

Petitioner Sara Hutchinson seeks review.

## III. COURT OF APPEALS DECISION

Division II filed its Unpublished-opinion on April 29, 2025 and denied the petitioners appeal. *See* Appendix A 1-20 (pages 34-54).

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<sup>1</sup> As of this filing, no known published Washington appellate opinion interprets RCW 49.60.2235. Hutchinson's case thus appears to be a rare (if not the first) instance of a disabled veteran alleging coercion-based housing discrimination under that statute, underscoring the novel nature of the legal issue.

#### IV. ISSUES PRESENTED FOR REVIEW

1. Narrowing of WLAD Claim: Did the Court of Appeals err by narrowly interpreting Hutchinson's WLAD claim as limited only to RCW 49.60.2235 (coercion-based real estate discrimination), despite her pleadings and briefing citing additional applicable provisions such as RCW 49.60.030 (civil rights and protected class status) and RCW 49.60.222 (unfair real estate practices)?

2. Disregard of Evidence of Intent: Did the appellate court improperly weigh or disregard material facts and circumstantial evidence supporting discriminatory intent, contrary to the standards set in *Mikkelsen v. PUD No. 1*, 189 Wn.2d 516 (2017) and *Scrivener v. Clark Coll.*, 181 Wn.2d 439 (2014)?

3. VA Loan Discrimination Evidence: Did the appellate court err in concluding there was "no evidence" that the backup buyer did not use a VA loan, despite record references to withheld documents?

4. Misapplication of RAP 2.5 and 9.12: Did the court misapply RAP 2.5 and RAP 9.12 by mischaracterizing factual arguments as newly raised claims?

5. Reversal of Initial summary Judgment Ruling: Did the trial court err by reversing its prior ruling and granting summary judgment on Hutchinson's WLAD claim without new material evidence, and did the appellate court err by affirming that reversal?

6. Disregard of reconsideration Evidence: Did the trial court and appellate court improperly disregard the procedural and substantive importance of witness testimony and evidence sought in the motion for reconsideration?

## V. STATEMENT OF THE CASE

Sara Hutchinson, a disabled veteran, entered into a purchase and sale agreement with Ed Putka to buy a home while continuing to lease a commercial space from him. After learning of Hutchinson's PTSD, veteran status, use of VA loan benefits, monetary compensation, and a lapse in her massage



therapy license, Putka's behavior changed sharply - but only after learning of her disabilities, veteran status, and the monetary benefits she received as a result. He issued escalating threats, including evicting her from the leased space, reporting her to the Department of Health, and disparaging her publicly in a local newspaper and the community.

Although Hutchinson ultimately completed the home purchase, she did so under extreme duress. She later filed suit under RCW 49.60, asserting that Putka's conduct constituted unlawful discrimination and coercion in real estate transactions.

The trial court initially denied summary judgment in part, allowing Hutchinson's WLAD claim to proceed to trial. However, just months later—based on a record that was substantially the same—the same trial judge reversed themselves and granted summary judgment in Putka's favor. The Court of Appeals affirmed, despite key evidence of discriminatory motive, misapplication of summary judgment standards, and improperly excluded testimony and emotional harm evidence.

## VI. ARGUMENT IN SUPPORT OF REVIEW

### A. Review Is Warranted Because the Court Improperly Narrowed the WLAD Claim

The trial court and appellate court improperly narrowed Hutchinson's WLAD claim to only RCW 49.60.2235 (coercion in real estate), ignoring other applicable provisions such as RCW 49.60.222 and RCW 49.60.030. Hutchinson's amended complaint and summary judgment briefing made clear that her claim encompassed unfair treatment in real estate transactions (RCW 49.60.222) and discrimination based on protected class status (RCW 49.60.030). These claims involved both the sale and the lease.

The trial court never entered a ruling restricting her claim to RCW 49.60.2235. In fact, the first summary judgment ruling allowed her WLAD claim to proceed, and it was not confined to one statutory basis. Her filings throughout litigation consistently referenced RCW 49.60.030 and 49.60.222, and her declarations and briefing outlined discrimination that occurred

both in the course of the home purchase and through retaliation under her ongoing lease.

RCW 49.60.040 provides the definitions that govern the scope of WLAD, including what constitutes a “real estate transaction,” as well as who qualifies for protection based on “disability” and “veteran or military status.” These definitions apply across all provisions of RCW 49.60 and support Hutchinson’s claims under both RCW 49.60.222 and 49.60.030, in addition to 49.60.2235.

Hutchinson cited these protections throughout the trial and appellate proceedings. Her Amended Complaint, Opposition to Summary Judgements, and appellate briefs all referenced multiple statutory sections beyond RCW 49.60.2235. The Court of Appeals’ refusal to address them misstates the record and improperly narrows WLAD's scope. As confirmed in *Xieng v. Peoples Nat. Bank*, 120 Wn.2d 512, 530 (1993), WLAD must be construed liberally to fulfill its purpose

The appellate court erroneously refused to consider these other statutory bases, asserting they were not preserved. That conclusion was incorrect. Hutchinson raised these WLAD protections throughout the trial court proceedings, and the Court of Appeals' narrow view improperly restricted the remedial scope of Washington's anti-discrimination law. The WLAD is to be construed liberally to achieve its purpose. Limiting a valid claim to a single subsection—despite consistent citations to multiple provisions—undermines that legislative mandate.

The Supreme Court's review is warranted to reaffirm that threatening a disabled veteran with eviction and financial harm unless she gives up a home purchase is not only morally repugnant – it is unlawful housing discrimination under Washington law. Such conduct implicates the core of WLAD's purpose: to ensure that persons in protected classes can partake in real estate transactions on an equal footing, free from intimidation, disparate terms, or retaliatory conditions. The

Court should recognize that Hutchinson's claim was properly grounded in these broad protections and reverse the erroneous narrowing of her WLAD cause of action.

B. The Court Erred in Its Pretext Analysis Under McDonnell

*Douglas, Mikkelsen, and Scrivener*

Hutchinson's claim follows the *McDonnell Douglas* burden-shifting framework. The trial judge on the first summary judgment motion recognized that she established a prima facie case, finding that discriminatory intent was a triable issue. However, the same judge (on the renewed motion) and the Court of Appeals failed to properly apply the third step — i.e. to determine whether Putka's stated reason was *pretext* or whether discrimination was a substantial motivating factor for his actions. Her evidence of VA loan bias, comments about being a neighbor, the VFW sign, and timing support pretext under Mikkelsen and Scrivener. Summary judgment was improper. Instead, the appellate court effectively required Hutchinson to provide direct proof of bias or to disprove

Putka's explanation entirely (Unpublished Op. 17), contrary to Washington law. For example, the Court of Appeals faulted Hutchinson for submitting "no evidence" that Putka's proffered reasons (the expired license and her dishonesty) were not his true reasons. This approach contravenes *Scrivener* and *Mikkelsen*, which hold that a plaintiff's burden at summary judgment is one of production, not persuasion, and that discrimination can be shown through indirect and circumstantial evidence. A plaintiff "need not disprove each of the employer's articulated reasons" to survive summary judgment; she need only produce evidence that, viewed in the light most favorable to her, creates a reasonable inference of discriminatory motive.

Here, Hutchinson presented ample circumstantial evidence of pretext and discriminatory intent: almost immediately after learning of her specific disabilities and VA benefits, Putka's demeanor and actions shifted dramatically; he made comments suggesting hostility toward having her as a

neighbor and using a VA loan with no down payment; he demanded rescission of the sale under coercive conditions; and he had previously objected to a Veterans of Foreign Wars (VFW) sign on her premises. Under *Mikkelsen* and *Scrivener*, such evidence should be weighed by a jury, not resolved on summary judgment. The appellate court nonetheless discounted the timing and context by analogizing this case to *Mackey v. Home Depot*, where the plaintiff's only evidence was temporal proximity. That analogy is misplaced. Unlike in *Mackey*, Hutchinson's evidence goes well beyond timing – it includes explicit threats and actions closely tied to her protected status. Summary judgment is rarely appropriate in discrimination cases with such indicia of pretext (*Scrivener*, 181 Wn.2d at 445-46), and the lower courts' departure from that principle warrants this Court's review.

Hutchinson's evidence supporting pretext includes:

- Putka's sudden shift in demeanor after learning of her VA loan benefits and PTSD, and monetary compensation,
- His comparison of a VFW support plaque to a political sign, (CP 436, Putka's deposition)
- His solicitation of a backup buyer after discovering her license, loan information and veterans benefits,
- And the timing of his threats, which closely followed disclosure of her protected class status.

Putka admitted to soliciting backup offers after learning about Hutchinson's expired license and VA loan benefits and compensation. The second page of the backup offer, which may have shown financing type, was never produced. The appellate court penalized Hutchinson for this absence, even though the gap stemmed from the other side's incomplete discovery.

Taken together, these facts provide sufficient circumstantial evidence for a jury to reasonably infer discriminatory intent.

*Under Mikkelsen*, 189 Wn.2d at 528, and *Scrivener*, 181 Wn.2d



at 446–47, when reasonable but competing inferences of discrimination exist, summary judgment is inappropriate, and the matter must be resolved by a jury.

C. The Court Erred in Concluding There Was No Evidence Regarding VA Loan Discrimination

The Court of Appeals stated that there was “no evidence on this record” that the backup buyer did not use a VA loan or that Putka was seeking a buyer without VA financing. In reaching that conclusion, the court ignored Hutchinson’s showing that only the first page of the backup offer was produced in discovery, obscuring the critical detail of the buyer’s financing. Hutchinson informed the trial court that the missing second page of the offer would have revealed the type of financing – i.e., whether the backup buyer was using a VA loan or not. By failing to compel or consider the complete document, Putka effectively prevented Hutchinson from obtaining direct evidence on this point. The Court of Appeals’

pronouncement of “no evidence” thus penalized Hutchinson for Putka’s own discovery failure. This is both a factual and procedural error. A defendant should not benefit from withholding evidence that could prove discriminatory intent. At the very least, the gap in the record regarding the backup offer’s financing gives rise to an inference in Hutchinson’s favor – one that should have precluded summary judgment. Under *Scrivener* and *Mikkelsen*, all reasonable inferences must be drawn for the non-movant, especially in discrimination cases. Hutchinson’s testimony and argument on this issue were before the trial court (CP 298), preserving it for review. The appellate court’s failure to acknowledge the evidentiary gap and the inference it supports is a reversible error.

The **record** shows:

- CP 298 (Exhibit C) included only the first page of the backup offer.

- Hutchinson argued in both her opening and reply briefs that additional pages existed, and those pages would demonstrate the buyer **was** not using a VA loan.
- She also explained that Putka’s actions — seeking a backup buyer immediately after learning of her VA loan benefits and PTSD and her monetary compensation — form a pattern of discrimination, and support a pretext inference.

Additionally, Putka’s own deposition (CP 421) and statements admit he sought a backup buyer “in case [Hutchinson] backs out,” and that it followed discussions about her PTSD and financial status.

Therefore, the appellate court’s conclusion lacked a proper view of the record and ignored the significance of discovery misconduct. Under *Scrivener* and *Mikkelsen*, circumstantial evidence, including timing, demeanor changes, and incomplete discovery, must be weighed by a jury — not decided on summary judgment.

D. The Appellate Court Misapplied RAP 2.5 and 9.12

The Court of Appeals concluded that Hutchinson had raised new claims on appeal related to Putka's threats (contacting the Department of Health, evicting her, and exposing her in the media). In fact, these facts were raised in her amended complaint, in Hutchinson's declaration (CP 114–127), and in her summary judgment opposition briefings (CP 250-263, 381-394) as part of the *evidence* of discriminatory coercion and pattern of retaliatory conduct supporting her WLAD claim. They were never presented as standalone causes of action. Under RAP 2.5 and RAP 9.12, these factual grounds were properly before the trial court and thus could be argued on appeal as part of Hutchinson's WLAD claim.

The court's treatment of this factual pattern as “new claims” misapplies RAP 2.5 and RAP 9.12, which restrict new legal theories or claims, not factual support already presented in the record. As confirmed in *Cornwell v. Microsoft Corp.*, 192 Wn.2d 403 (2018), courts must assess the totality of the

circumstances when evaluating intent in discrimination cases — including how patterns of conduct evolve in response to protected class disclosures.<sup>2</sup>

Hutchinson’s Reply Brief below underscored that she was not asserting any new legal theory, but rather elaborating on the same facts that had underpinned her WLAD claim from the start. The Court erred when determining that Hutchinson didn’t argue the actions of Putka post-sale, even though the trial court already ruled that the state of mind prior to closing of the home would have be argued in order for permission to be given to bring in the post-sale actions into evidence. By refusing to consider this contextually relevant evidence, the Court of

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<sup>2</sup> Washington courts recognize that discriminatory intent may be inferred from circumstantial evidence, including patterns of conduct and the totality of circumstances. See *Scrivener v. Clark Coll.*, 181 Wn.2d 439, 446 (2014); *Mikkelsen v. PUD No. 1*, 189 Wn.2d 516, 534–35 (2017). The appellate court’s mischaracterization of factual arguments as “new claims” improperly limited Hutchinson’s ability to present such evidence.

Appeals limited Hutchinson's ability to present a full picture of discriminatory coercion. This error undermines the jury's fact-finding role and contradicts the guidance in *Scrivener*, *Mikkelsen*, and *Cornwell* – all of which instruct that where circumstantial evidence permits conflicting inferences of motive, those inferences must be resolved by the jury, not by the court on summary judgment.

E. The Court Improperly Dismissed Key Evidence: Live Witness Testimony and Mischaracterized Emotional Harm

Hutchinson moved for reconsideration to allow live testimony from Tanaja Gravina, a witness who could show a pattern of discriminatory conduct. Gravina, another veteran who had a similar experience - was subpoenaed but refused to sign a declaration due to fear of job retaliation. This circumstance was explained in CP 391 and reiterated in Hutchinson's Reply Briefing. The trial court nevertheless excluded Gravina's testimony outright, without considering the context for her absence in declaration form. Under *Mikkelsen*,

even late-discovered evidence of discriminatory pattern must be considered at summary judgment rather than excluded on procedural technicalities. The refusal to hear from Gravina (or to accommodate the evidence she could provide) prejudiced Hutchinson's ability to support her WLAD claim, especially given that Putka admitted in his deposition to knowing who Gravina was and the substance of her expected testimony (CP 289-290). By disallowing this corroborating evidence, the court deprived the fact-finder of relevant pattern proof that could strengthen the inference of intent.

Additionally, the appellate court mischaracterized Hutchinson's emotional harm and its causes. The Court of Appeals' opinion suggested that Hutchinson's hospitalization was due solely to the stress of her lapsed massage license, with no connection to Putka's conduct (see Unpublished Op. at 6). In reality, the record tells a very different story. Hutchinson's declaration and supporting evidence (CP 117-125) make clear that her emotional distress escalated *only after* Putka began his

campaign of threats following disclosure of her disabilities and veteran status and monetary benefits. The timeline is undisputed: Putka's coercive conduct – including threats of eviction, reporting to the Department of Health, and public shaming – immediately preceded Hutchinson's mental health crisis. Her declaration explicitly states that these actions by Putka contributed directly to her emotional breakdown, far beyond any anxiety about the license issue.<sup>3</sup> By downplaying or ignoring the role of Putka's discriminatory retaliation in

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<sup>3</sup> The trial court dismissed Hutchinson's separate claims for intentional and negligent infliction of emotional distress in its first summary judgment ruling. However, that dismissal did not preclude Hutchinson from presenting evidence of emotional harm as part of her WLAD claim or as circumstantial evidence of coercion. The court's later suggestion, during motions in limine, that such evidence was wholly excluded misstated the scope of its own prior ruling. Emotional distress damages are compensable under RCW 49.60. See *Dean v. Municipality of Metro. Seattle*, 104 Wn.2d 627, 638 (1985) ("Damages for emotional distress are recoverable in an action under RCW 49.60"); *Xieng v. Peoples Nat. Bank of Wash.*, 120 Wn.2d 512, 530 (1993).



causing Hutchinson's distress, the courts below failed to view the facts in the light most favorable to her, and they minimized an important element of damages and motive. The Appellate court erred by saying that Putka sent a default notice after closing of the house on Jul 15, 2021(Unpublished Op. 6), the date he notified Hutchinson of the default notice being sent was July 10. The appellate court errors in not mentioning the threats Putka made against her when considering their decisions.(Unp. Op. 16-18) They specifically only mention Putka learning of her mental health disabilities without mentioning the coercive threats that are proven within the record.

When viewed in totality, the exclusion of live testimony and the court's failure to consider evidence of emotional harm in the WLAD context were legal errors that merit review. These evidentiary issues go to the heart of Hutchinson's claim: her case for discriminatory coercion hinged on showing a pattern of

hostile conduct and its impact on her – matters that a jury should be allowed to hear and evaluate.

F. The Trial Court Improperly Allowed Relitigation in the Second Summary Judgment

The trial court's handling of summary judgment raises a fundamental procedural concern. In ruling on the first summary judgment motion, the court denied dismissal of Hutchinson's WLAD claim, finding that genuine disputes of material fact existed. That denial reflected proper application of *Scrivener v. Clark College*, which in turn is heavily grounded in the *McDonnell Douglas* burden-shifting framework. The *Scrivener* standard recognizes that a plaintiff may survive summary judgment by offering circumstantial evidence supporting an inference of discriminatory intent and allowing the factfinder to evaluate credibility and motive — particularly where inferences of both discrimination and non-discrimination are reasonable. Here, Hutchinson's evidence supported precisely that kind of jury question: the rapid escalation of coercive conduct

following disclosure of protected status, evidence of hostility toward veteran affiliation (such as the VFW sign incident), the VA loan issue, threats of eviction and professional harm, and Putka's shifting justifications.

Months later, however, Respondent returned to court and reargued these same facts under the same *McDonnell Douglas* framework, this time persuading the same judge to reverse the earlier denial — not based on new material evidence, but by effectively re-litigating the legal standard and inviting a different result. The only additions were a new self-serving declaration and a deposition that largely reiterated existing defenses that did not materially change the record. The Court of Appeals acknowledged the record was substantially unchanged (Unpublished Op. at 9), yet affirmed the trial court's reversal without addressing the procedural impropriety.

This do-over was functionally a motion for reconsideration in disguise and violated the standards of CR 56 and the jury's role in assessing motive and credibility. As this Court emphasized in

*White v. State*, 131 Wn.2d 1, 929 P.2d 396 (1997), repeated summary judgment motions are inappropriate absent new facts or clear legal justification.

The trial court offered no explanation for its reversal. Instead, it resolved disputed facts on the same record it had previously found triable. This shift undermined Hutchinson's right to present her WLAD claim to a jury and signaled a departure from the standards governing summary judgment review. The appellate court compounded the error by affirming the second ruling without addressing the procedural irregularity or explaining how unchanged facts could suddenly fail to support a trial-worthy claim.

To the extent the second ruling focused more heavily on the cause and relevance of Hutchinson's emotional harm, that was not the basis of the WLAD claim, but rather supporting evidence of intent and impact. Hutchinson's emotional distress was one piece of a broader circumstantial case — not the claim itself. Emotional harm is compensable under RCW 49.60 and

can strengthen an inference of coercion or discriminatory motive. The summary judgment framework does not permit courts to reweigh evidence or resolve inferences — especially when the record, if anything, had grown stronger.

This departure from CR 56 standards warrants this Court’s review. Trial courts should not be permitted to reverse their own summary judgment rulings absent new law or fact, and appellate courts should not affirm such reversals without closely scrutinizing the record. The procedural and substantive flaws here deprived Hutchinson of the jury trial to which she was entitled

G. Review Is Warranted to Clarify RCW 49.60.2235 in the  
Absence of Appellate Precedent

The lack of any appellate precedent interpreting RCW 49.60.2235 – the WLAD provision prohibiting coercion, intimidation, threats, or interference with fair housing rights – is itself an important ground for Supreme Court review. No known published Washington decision has defined the scope or

elements of this coercion-based discrimination claim, leaving trial courts and litigants without guidance on a statute meant to protect fundamental civil rights. This presents a classic issue of first impression warranting review under RAP 13.4(b)(4), which authorizes review for questions of substantial public interest. An authoritative decision from this Court is needed to settle the meaning of RCW 49.60.2235 and provide guidance for future cases statewide.

Washington courts affirms that clarifying an unsettled area of law is a key role of the Supreme Court, especially where a statute has never been construed by the appellate courts which in turn doesn't allow *Stare Decisis*. Indeed, this Court has recognized that "the need to clarify [a] statutory scheme...is a matter of continuing and substantial public interest" *LaBelle*, 107 Wn.2d 196, 200, 728 P.2d 138 (1986) Statutory interpretation of a civil rights law is an issue of broad public importance, as it affects not just the parties here but all Washington residents who rely on the law's protections.

Significantly, the WLAD reflects a fundamental public policy: the Legislature declared that discrimination in housing based on protected characteristics “threatens not only the rights and proper privileges of [our] inhabitants but menaces the institutions and foundation of a free democratic state” RCW 49.60.010. Given this strong public interest, the absence of appellate guidance on RCW 49.60.2235 justifies this Court’s review to ensure uniform and faithful enforcement of Washington’s antidiscrimination laws. In short, only a decision by this Court can conclusively resolve the novel question presented and confirm the scope of this important WLAD provision for the benefit of courts, litigants, and the public.

#### V. CONCLUSION

The petition raises substantial issues of public importance regarding procedural fairness and the right to be free from discrimination in real estate transactions under RCW 49.60. To Petitioner’s knowledge, no published Washington appellate decision has yet interpreted RCW 49.60.2235 – the statutory

provision at the heart of this case – underscoring the novelty of this question and the need for the Court’s guidance. Review is necessary to resolve the conflict between the decision below and the standards articulated in *Scrivener*, *Mikkelsen*, and *McDonnell Douglas*, and to prevent improper short-circuiting of WLAD claims through summary judgment before a jury has the opportunity to weigh intent. Notably, the Court of Appeals affirmed summary judgment despite genuine disputes of material fact regarding Putka’s motive, the coercive nature of his conduct, and the resulting harm – issues that are quintessentially for a jury to decide. Allowing the decision to stand would effectively permit a roadmap for evading trial in discrimination cases, contrary to this Court’s clear precedent that such cases often turn on inference and credibility and should not be prematurely dismissed.

For the foregoing reasons, Petitioner respectfully asks this Court to accept review, reverse the summary judgment, and remand this case for a jury trial.



# APPENDIX

April 29, 2025

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

SARA HUTCHINSON, an individual,  
  
Appellant,

v.

ED PUTKA, an individual,  
  
Respondent.

No. 58844-7-II

UNPUBLISHED OPINION

GLASGOW, J.—Ed Putka leased a commercial space to Sara Hutchinson, a disabled veteran, for her massage therapy business. Years later, Putka put his house up for sale, Hutchinson wanted to purchase the home, and Putka signed a purchase and sale agreement with Hutchinson. Putka then learned that Hutchinson’s massage therapy license was expired and that she suffered from mental health disabilities. Soon after, Putka told Hutchinson that he would not evict her from the commercial lease nor take any other adverse actions if she rescinded the purchase and sale agreement. Despite Putka’s threats, Hutchinson closed on the house and Putka evicted her from the commercial building.

Hutchinson brought several claims against Putka and, relevant to this appeal, the trial court dismissed Hutchinson’s claim for discriminatory coercion or intimidation related to a real estate transaction under the Washington Law Against Discrimination, ch. 49.60 RCW, based on her disability and veteran status.

Among other procedural issues, Hutchinson argues that the trial court erred by dismissing her statutory discrimination claim because there was a genuine dispute of material fact about

whether Putka's cited reasons for asking Hutchinson to rescind the house sale, his concerns that she had practiced without a license, were pretextual. We conclude that Hutchinson fails to present sufficient evidence to create a genuine dispute of material fact that discriminatory intent against veterans or disabled people was a substantial motivating factor for Putka's actions. Although Putka attempted to persuade Hutchinson to rescind the purchase and sale agreement by threatening eviction from the commercial lease, there is no evidence of pretext other than the timing of his efforts and his dislike for her, which have typically not been enough to avoid summary judgment. We affirm the trial court's summary judgment for Putka. We decline to grant attorney fees.

## FACTS

### I. BACKGROUND

Because this is an appeal of a summary judgment order, we recite the facts as alleged by and in the light most favorable to Hutchinson as the nonmoving party. *Mikkelsen v. Pub. Util. Dist. No. 1 of Kittitas County*, 189 Wn.2d 516, 526, 404 P.3d 464 (2017).

Hutchinson is a disabled veteran who suffers from posttraumatic stress disorder (PTSD), depression, and anxiety. Hutchinson's massage therapy license lapsed in 2011. In 2019, Putka leased a commercial space to Hutchinson. Despite her lapsed license, Hutchinson ran a massage therapy business in that space. The lease required that Hutchinson abide by all state and local laws related to her business. Hutchinson was aware that she lacked a license while practicing in Putka's commercial building.

Hutchinson alleged that soon after moving her business into Putka's commercial building in 2019, she put a Veterans of Foreign Wars (VFW) sign in the window, and Putka asked her to take it down or place it somewhere not visible from the windows. Putka explained that he asked

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Hutchinson to remove the VFW sign because it violated the building rules, which prohibited the placement of signs without the owner's consent. Hutchinson claimed that she had previously put signs up in the window and Putka did not protest. Putka clarified that political signs, specifically, were not allowed in the commercial building. Except for discussing the VFW sign, Putka and Hutchinson interacted very little before the events in this case.

On May 13, 2021, Hutchinson learned that Putka and his wife were selling their house. They had built a house next door and were moving there. Hutchinson submitted a full price offer and Putka accepted. Both parties agree that Putka knew Hutchinson was the buyer. On May 15, the parties signed a binding purchase and sale agreement. Documents attached to the agreement indicated that Hutchinson was using a Veterans Affairs (VA) loan.

Hutchinson texted Putka and his wife thanking them and Putka replied, "We look forward to closing and having a purchaser who appreciates the house" Clerk's Papers (CP) at 283. Hutchinson also wrote a letter to Putka that stated she was a disabled veteran. Putka asserted that at the time, he assumed Hutchinson's "military disability had to do with either being wounded or hurt during her service and had no idea it may have been psychological." CP at 52.

Before the official closing date on July 15, Putka completed \$10,000 worth of repairs on the house, offered to give Hutchinson an upright piano and a set of patio furniture, and drafted a water easement for the property.

At this time, Hutchinson was running for city council. Both Putka and his wife were very involved in local politics and had previously served on the city council. They were supporting the incumbent, who was Hutchinson's opponent.

On July 8, Putka texted Hutchinson asking her to meet in the commercial building. When they met, Putka told Hutchinson that he had learned her massage therapy license had lapsed. Hutchinson confirmed that her license was expired. Putka asked if Hutchinson had submitted the paperwork to renew her license, and Hutchinson told him she had, even though she had not. When pressed, Hutchinson admitted to Putka that she had not submitted the renewal paperwork. Putka told Hutchinson that she could not continue to perform massages on the property before renewing her license and she agreed. Putka also told Hutchinson that she should call her realtor because Hutchinson's "employment ha[d] changed, and [she would not] qualify for financing anymore." CP at 117. Hutchinson expressed that she did not want to call her realtor because he was a client. Putka later texted Hutchinson stating that he could not find her state business license. Hutchinson learned that her business license was also expired and renewed it that day, sending a picture to Putka to confirm the renewal.

The next day, July 9, Hutchinson asked Putka to talk. They met and Hutchinson apologized for her lapsed licenses. When Putka asked why Hutchinson let her massage therapy license lapse, Hutchinson told him that she had "a disability with depression, anxiety and PTSD" and she "struggle[d] taking care of things." CP at 118. Hutchinson asserts this is the first time that Putka became aware that she suffered from these specific disabilities.

Hutchinson stated that during this conversation, Putka asked how he and his wife were supposed to feel with Hutchinson as their neighbor. Putka then asked, "[W]hat will you say when the papers call you?", referring to Hutchinson's city council candidacy. CP at 118. Putka then began to ask Hutchinson questions about her finances, inquiring if she knew how much the upkeep of the house would cost. Hutchinson alleges that Putka asked whether she currently paid rent, and

when she replied that she rented from her parents, he laughed. Putka asked about Hutchinson's income, and he asked how much Hutchinson paid for a down payment on the house. Hutchinson told Putka that she did not have a down payment because she received a VA loan. Putka shook his head and said, "You know why lenders like using VA loans?" and "You didn't even have to do a down payment." CP at 119. At the end of this conversation, Putka said he accepted Hutchinson's apology.

The following day, July 10, Putka asked Hutchinson to meet again. At the meeting, Putka told Hutchinson that he and his wife no longer wanted to sell their house to Hutchinson. When Hutchinson asked why, Putka replied, "[H]onestly Sara we don't trust you and we don't want to be neighbors with you." CP at 120. Putka then told Hutchinson, "We are willing to work with you to stay in the [commercial] building . . . [i]f you back out of the house sale." *Id.* Hutchinson also alleges that Putka said he would not speak negatively about Hutchinson if she rescinded the house sale. Hutchinson asked if she could think about Putka's offer for a couple of days and Putka said that he wanted an answer right away. When Hutchinson stated that she could give Putka an answer by the afternoon, he said, "What's the difference between then or now, it's an easy answer, you either have a place to work or you don't." *Id.* Putka eventually agreed that Hutchinson could get back to him that afternoon.

At some point after this conversation, Putka sought backup offers on the house. He received a backup offer, and it is unclear on this record whether the potential buyer was a veteran or planned to use a VA loan.

Immediately after her conversation with Putka, Hutchinson called her realtor who told her that Putka could not force her to back out of the purchase and sale agreement because the parties

had both signed the agreement. Hutchinson texted Putka that afternoon telling him that she needed to consult a lawyer. Putka told Hutchinson that he had mailed her a notice of default for her commercial lease. After exchanging several text messages, Putka ultimately stated,

I remain open to working out a global deal involving both the house and you staying in the building. The notice I sent is to protect my interests in case we can't work it out. You have already broken the lease agreement by operating illegally. It doesn't matter what the nature of your business is going forward. We have plenty of grounds to legally evict you now, but are still willing to discuss settling this in a way for you to remain in the building.

CP at 122. Putka also talked with Hutchinson's lawyer at the time.

Several days later, on July 13, after several messages from Putka asking about Hutchinson's decision, Hutchinson replied that her massage therapist license was being expedited and that she would not talk about the house sale: "that needs to be done through the [r]ealtors." CP at 123. When Hutchinson told Putka that she believed his actions were unfair because he was "holding something over [her] head to get [her] to do something else," Putka replied, "No, no, no, I feel that the house and commercial space are connected and one deal." *Id.* Putka then stated, "You know the state can take comments and how would they feel finding out that you've been practicing for so long without a license." *Id.*

At some point during this process, Hutchinson went to the hospital because of the anxiety resolving her lapsed license was causing and her declining mental health.

The house sale closed on July 15 and Hutchinson took possession of the keys. After closing, Putka sent a notice of default and notice of eviction for Hutchinson's commercial lease and she moved out of the building. Putka reached out to a local publication, informing a reporter that Hutchinson had worked with an expired massage therapy license. Putka made a complaint about Hutchinson to the Washington State Department of Health. Putka also filed a case in small claims



court against Hutchinson to retain her security deposit. In addition, Hutchinson claims that Putka spoke negatively about her to several people in the community. Putka responded that this was not the first time he had publicly challenged city council candidates.

## II. PROCEDURAL HISTORY

In December 2022, Hutchinson brought a suit against Putka, claiming intentional infliction of emotional distress; negligent infliction of emotional distress; tortious interference with business expectancy; unlawful harassment; and discrimination under RCW 49.60.030, which prohibits discrimination in real estate transactions, and RCW 49.60.2235, which prohibits coercion and intimidation in real estate transactions due to disability or veteran status among other characteristics. Only the claim for discrimination under RCW 49.60 is the subject of this appeal.

Putka brought a motion for summary judgment, and the trial court dismissed all of Hutchinson's claims except the one for statutory discrimination. During the hearing, the trial court orally stated that it would not dismiss the discrimination claim because,

[W]e have action that was taken that was negative to [Hutchinson] in the form of her lease, in the form of complaints to the State. And what motivated that action, whether it was a good faith action to evict someone for having an unlawful business in a building; or, if that was motivated because of the status of the mental disability . . . that would seem to be more of a question for . . . a trier of fact.

Verbatim Rep. of Proc (VRP) at 38.

Putka then filed a motion in limine asking the trial court to limit Hutchinson from presenting at trial any evidence of events that occurred after the closing of the house sale on July 15, or events that Hutchinson only knew about after closing. Putka argued that this evidence would not be relevant to Hutchinson's statutory real estate discrimination claim because Putka's actions after Hutchinson closed on the house could not have intimidated Hutchinson or coerced her into



rescinding the sale. The trial court ruled that the parties could only present evidence about actions taken after July 15, 2021, to the jury after demonstrating to the court that the evidence established a “link to the state of mind of [Putka] [presale] of the home.” VRP at 58.

After this ruling and further discovery, including a second deposition of Hutchinson, Putka brought a second motion for summary judgment to dismiss the remaining discrimination claim. The motion included a new declaration from Putka and the new Hutchinson deposition. Putka argued that he did not ask Hutchinson to rescind the house sale because of her veteran status or disability; he asked her to rescind because Hutchinson was dishonest about her massage therapy license, so Putka did not trust her and did not want to be her neighbor. In her opposition to Putka’s summary judgment motion, Hutchinson included several exhibits, including her own declarations and first deposition, which are consistent with the facts described above. In these documents, Hutchinson described her interactions with Putka regarding the house sale and Putka’s reaction to a VFW sign in her business window. Hutchinson also attached a declaration from her lawyer stating that in his discussions with Putka about the purchase and sale agreement, Putka never mentioned Hutchinson’s license and Putka’s motivations seemed to be dislike or disgust for Hutchinson. The trial court granted Putka’s motion for summary judgment, thereby dismissing the case.

After the oral ruling, Hutchinson again mentioned the VFW sign interaction, and the trial court concluded that this interaction was not sufficient to show that Putka’s cited reason for asking Hutchinson to rescind—his distrust of her after finding about her expired license—was pretext for discrimination. The trial court concluded that the VFW sign interaction occurred in 2019, and the relationship between the parties continued without incident for years after. The trial court further

noted that the VFW sign indicated to Putka that Hutchinson may be a veteran, or at least supported veterans, and Putka still initially agreed to sell Hutchinson the house with that knowledge.

Hutchinson filed a motion for reconsideration of the trial court's order. As part of this motion for reconsideration, Hutchinson claimed that the trial court should consider new evidence in the form of live testimony from a new witness. According to Hutchinson, this proposed witness, who is also a disabled veteran and who ran against Putka's wife in a local election, would testify that Putka confronted the witness outside of city council chambers and threatened to expose her previous DUI if she did not drop out of the city council race. Hutchinson acknowledged that Putka said he confronted the witness because he "believed she wasn't qualified, and the public had the right to know her criminal history." CP at 392. However, Hutchinson claimed this reasoning was pretext for discrimination. Hutchinson did not present a signed declaration from the new witness; Hutchinson merely described what she believed the witness's testimony would be.

The trial court denied Hutchinson's motion for reconsideration without allowing testimony from the new witness. Hutchinson appeals this denial.

## ANALYSIS

### I. SECOND SUMMARY JUDGMENT MOTION

Hutchinson argues that the trial court erred by considering Putka's second summary judgment motion because the motion did not present any new facts. However, Putka did present new evidence. In his second summary judgment motion, Putka included a new declaration and a deposition of Hutchinson taken after his first summary judgment motion. The trial court did not err by considering Putka's second summary judgment motion.

## II. CLAIMS UNDER RCW 49.60

Hutchinson argues that she brought claims under the entire RCW 49.60 chapter, not just RCW 49.60.2235. Specifically, Hutchinson argues that the trial court should have also considered RCW 49.60.030, 49.60.040, and 49.60.222.

Under RCW 49.60.2235, it is “an unlawful practice to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of [them] having exercised or enjoyed . . . rights regarding real estate transactions secured by RCW 49.60.030, 49.60.040, and 49.60.222 through 49.60.224.” RCW 49.60.030(1)(c) outlines the general “right to be free from discrimination” because of “honorably discharged veteran or military status” or “the presence of any sensory, mental, or physical disability” when engaging in real estate transactions. RCW 49.60.040 provides definitions for the chapter. Notably, the definition for “real estate transaction” includes purchases and leases of real property. RCW 49.60.040(22). And RCW 49.60.222 provides other more specific claims for unfair practices regarding discrimination in real estate transactions.

Hutchinson’s amended complaint lists only RCW 49.60.030 and RCW 49.60.2235. Regarding Putka’s actions, the complaint states that he “attempted to coerce and intimidate [Hutchinson] into backing out of the sale of [Putka’s residential property] after [Hutchinson] had already fulfilled [her] obligations under the [purchase and sale agreement] due to [her] veteran status, disabilities, and/or personal affairs.” CP at 25. Hutchinson’s opposition to Putka’s first summary judgment motion again cites RCW 49.60.2235 and specifically states that Putka “coerced, intimidated, and interfered with” Hutchinson’s purchase of Putka’s house. CP at 111. Hutchinson’s opposition to Putka’s second summary judgment motion repeats the same language and also does not cite any additional provisions of RCW 49.60.

Under RAP 2.5(a), an appellate court may refuse to review errors that are brought for the first time on appeal. At the trial court level, Hutchinson only substantively argued that Putka violated RCW 49.60.2235 and RCW 49.60.030 by discriminating against her in a real estate transaction, and no other sections of RCW 49.60.<sup>1</sup> Because Hutchinson mentions other sections of RCW 49.60 only on appeal, the trial court did not err by only analyzing Hutchinson's claim as one for real estate discrimination under RCW 49.60.030 and RCW 49.60.2235. Especially in light of the limited nature of the discrimination claim brought in Hutchinson's amended complaint, we need not analyze her claims under other sections of RCW 49.60, nor do we need to address any claim other than the one for real estate discrimination.

### III. CONSIDERATION OF EVIDENCE AFTER HOUSE SALE CLOSING

Putka argues that Hutchinson's complaint only referenced discrimination during the sale of Putka's house and not the commercial lease agreement between Putka and Hutchinson. Putka thus contends that, applying the trial court's order in limine, any events that occurred after the closing of the house sale should not be considered because they could not have been coercive or intimidating regarding the house sale.

Putka mischaracterizes the trial court's order in limine regarding evidence of actions after July 15. The trial court stated that the parties must get the trial court's approval before presenting evidence about actions taken after July 15. Specifically, the parties were required to demonstrate to the trial court that the post-July 15 actions were somehow linked to Putka's state of mind before the closing of the house sale.

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<sup>1</sup> Because the definitions outlined in RCW 49.60.040 apply to the whole chapter and aid us in applying RCW 49.60.030 and RCW 49.60.2235, we consider them even if Hutchinson did not cite them below.

Under RAP 9.12 we consider only evidence and issues brought to the attention of the trial court. But there is nothing in the record that suggests the trial court did not consider the totality of the facts—including those from after July 15—when ruling on Putka’s second summary judgment motion. Putka himself insisted the sale of the Putka’s residential home and the ongoing commercial lease were transactions he wanted to resolve collectively. Thus, Putka’s actions regarding the commercial lease agreement, as they are tied to his allegedly coercive comments telling Hutchinson to rescind the house sale, can be considered on appeal.

Finally, Hutchinson seems to argue on appeal that Putka’s actions evicting her from the commercial building, reporting her lapsed license to the Department of Health, and discussing her lapsed license with a local newspaper reporter were themselves discriminatory actions. As discussed above, in Hutchinson’s amended complaint and in her arguments to the court below, she focused on Putka’s attempts to get her to rescind the purchase and sale agreement for the house as the basis for her real estate discrimination claim. These other actions were not sufficiently argued below as independent bases for her discrimination and, although we can consider evidence relating to these allegations, we decline to address them as a separate basis for Hutchinson’s discrimination claim. RAP 2.5; RAP 9.12 (limiting issues to be considered on appeal to those issues that the trial court considered).

#### IV. DISCRIMINATION IN A REAL ESTATE TRANSACTION

Hutchinson argues that the trial court erred by granting summary judgment to Putka on her statutory real estate discrimination claim. Hutchinson contends that there is a genuine issue of material fact as to whether Putka coerced and intimidated Hutchinson during the house sale



because of her disabled veteran status. Hutchinson asserts that the trial court made improper inferences about whether Putka's actions were discriminatory that should have been left to a jury.

We review a trial court's dismissal on summary judgment de novo. *Mikkelsen*, 189 Wn.2d at 526. Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* (citing CR 56(c)). When reviewing a grant of summary judgment, we consider all facts and make all reasonable inferences in the light most favorable to the nonmoving party. *Id.* A genuine issue of material fact exists when reasonable minds could disagree on the facts controlling the outcome of the case. *Mackey v. Home Depot USA, Inc.*, 12 Wn. App. 2d 557, 569, 459 P.3d 371 (2020).

"The party moving for summary judgment 'has the initial burden to show there is no genuine issue of material fact.'" *Mackey*, 12 Wn. App. 2d at 569 (quoting *Zonnebloem, LLC v. Blue Bay Holdings, LLC*, 200 Wn. App. 178, 183, 401 P.3d 468 (2017)). "A moving defendant can meet this burden by establishing that there is a lack of evidence to support the plaintiff's claim." *Id.* If the defendant makes such a showing, "the burden shifts to the plaintiff to present specific facts that show a genuine issue of material fact." *Id.* We will grant summary judgment where a plaintiff does not present sufficient evidence to establish a question of fact about an essential element of their claim. *Id.*

Under RCW 49.60.2235, a person may not "coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of [them] having exercised or enjoyed . . . rights regarding real estate transactions." Similarly, under RCW 49.60.030(1)(c) a person has a right to be free from discrimination in real estate transactions. Where there is not an established standard for establishing discrimination in a certain context, we will often rely on the standards

from employment discrimination cases. *Tafoya v. Wash. State Hum. Rts. Comm'n*, 177 Wn. App. 216, 224, 311 P.3d 70 (2013).

Direct evidence of discriminatory intent is rare, so “plaintiffs may rely on circumstantial, indirect, and inferential evidence to establish discriminatory action.” *Mikkelsen*, 189 Wn.2d at 526. Because intentional discrimination is difficult to prove, Washington has adopted the three step evidentiary burden-shifting framework from *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). *Mackey*, 12 Wn. App. 2d at 571.

First, the plaintiff must make a prima facie case of discrimination, which creates a rebuttable presumption of discrimination. *Id.*

Second, the burden shifts to the defendant, who must “articulate a legitimate, nondiscriminatory reason” for their alleged actions. *Id.* (internal quotation marks omitted) (quoting *Mikkelsen*, 189 Wn.2d at 527). The defendant “is not required to persuade the court that it actually was motivated by the nondiscriminatory reason,” only that the defendant’s evidence, “if taken as true would permit the conclusion that there was a nondiscriminatory reason.” *Id.* at 571-72. In other words, this is a burden of production, not a burden of persuasion. *Id.*

Third, if the defendant meets this burden, the plaintiff must produce sufficient evidence showing that the defendant’s alleged nondiscriminatory reason was a “pretext.” *Id.* at 572. This prong may be satisfied “by offering sufficient evidence to create a genuine issue of material fact either (1) that the defendant’s reason is pretextual or (2) that although the [defendant’s] stated reason is legitimate, discrimination nevertheless was a substantial factor motivating the [defendant].” *Mikkelsen*, 189 Wn.2d at 527 (quoting *Scrivener v. Clark Coll.*, 181 Wn.2d 439, 446-47, 334 P.3d 541 (2014)).

Because it is difficult to prove discriminatory motivation, summary judgment is rarely appropriate in discrimination cases. *Mackey*, 12 Wn. App. 2d at 572. ““When the record contains reasonable but competing inferences of both discrimination and nondiscrimination, the trier of fact must determine the true motivation.”” *Id.* (internal quotation marks omitted) (quoting *Mikkelsen*, 189 Wn.2d at 528). To overcome summary judgment, the plaintiff must “show only that a reasonable jury could find that discrimination was a substantial factor in the [defendant’s] adverse employment action.” *Mikkelsen*, 189 Wn.2d at 528. However, a plaintiff alleging discrimination must do more than express an opinion or make conclusory statements. *Crabtree v. Jefferson County Pub. Hosp. Dist. No. 2*, 20 Wn. App. 2d 493, 510, 500 P.3d 203 (2021). “Instead, the facts must be specific and material.” *Id.*

A. Prima Facie Case

First, Hutchinson must present a prima facie case of discriminatory coercion or intimidation related to a real estate transaction under RCW 49.60.2235. The parties concede that Hutchinson is part of a statutorily protected class as a disabled veteran. The parties also agree that a violation of RCW 49.60.2235 does not require a discriminatory outcome, so Putka need not have succeeded in blocking the sale of the house to Hutchinson.

Putka argues that he did not coerce or intimidate Hutchinson and instead attempted to negotiate with her by proposing a “global deal” for Hutchinson to stay in the commercial building if she rescinded the agreement for the house sale. Br. of Resp’t at 25. Taking all facts in the light most favorable to Hutchinson, Hutchinson presents a prima facie case that Putka attempted to coerce or intimidate her into rescinding the house sale. Putka threatened Hutchinson’s commercial



lease and threatened to expose her license status to the public if she did not back out of the purchase and sale agreement for the house.

Hutchinson also presents a prima facie case that this alleged coercion was discriminatory. Putka asked Hutchinson to rescind the house sale soon after he learned about her specific disabilities, anxiety, depression, and PTSD. This temporal connection is enough to meet Hutchinson's initial burden to show discriminatory intent. *See Cornwell v. Microsoft Corp.*, 192 Wn.2d 403, 415-16, 430 P.3d 229 (2018) (discussing a similar analysis in a retaliation context).

B. Legitimate, Nondiscriminatory Reason

Because Hutchinson has presented a prima facie case of discrimination, the burden shifts to Putka, who must articulate a legitimate, nondiscriminatory reason for asking Hutchinson to rescind the house sale.

Putka claims that he did not discriminate against Hutchinson because of her disability or veteran status. Putka instead contends that he asked Hutchinson to rescind the house sale because he did not trust her after learning that she practiced in his commercial building without a valid massage therapy license, and she lied to him when he asked her about it.

Here, Putka has met his burden to present a legitimate, non-discriminatory reason for his actions. Putka knew that Hutchinson was a disabled veteran at least a month before he confronted her about the massage therapy license on July 8. Before that date, Putka did not exhibit discriminatory behaviors toward Hutchinson regarding the sale of the house. Putka said that he and his wife were excited to have Hutchinson as a buyer. Putka also signed the purchase and sale agreement, and he offered to include a piano and patio furniture in the sale. Putka's behavior toward Hutchinson changed sharply upon finding out about the expired massage therapy license

on July 8, and he asked Hutchinson to rescind the house sale only two days later. Although Putka also learned about Hutchinson's specific disability during this time, his stated reasons meet the burden of production.

C. Pretext and Discrimination as Substantial Factor

The burden then shifts to Hutchinson to offer evidence creating a genuine issue of material fact: either that Putka's proffered reasons are pretextual or that even if Putka's reason is legitimate, discrimination was a substantial factor motivating his actions regarding the house sale. *Mikkelsen*, 189 Wn.2d at 527.

Hutchinson does not present direct evidence that discrimination was *the* reason for Putka's attempts to coerce her into backing out of the purchase and sale agreement. Hutchinson does not deny that she had an expired massage therapy license or that she initially lied to Putka about submitting the license renewal paperwork. She submits no evidence showing that the expired massage therapy license and subsequent dishonesty were not reasons for Putka's actions regarding the house sale.

Even if Hutchinson cannot show that Putka's reasons for asking her to rescind the house sale were pretextual, she can still satisfy her burden under the third step of the *McDonnell Douglas* framework by showing that discrimination was nevertheless a substantial motivating factor for his actions. *See Mikkelsen*, 189 Wn.2d at 527.

On the one hand, Putka learned about the specific nature of Hutchinson's disabilities on July 9, and he asked her to rescind the house sale on July 10, a day later. Putka did not ask Hutchinson to rescind the house sale on either July 8, when he first spoke to Hutchinson about the expired lease, or July 9, before he knew about her mental illnesses. This establishes at minimum a

temporal relationship between Putka's knowledge of Hutchinson's specific disability and his coercive actions regarding the house sale. Hutchinson also submitted a declaration from her attorney at the time who explained that Putka did not raise the issue of her lapsed license, but rather conveyed his dislike and disgust for Hutchinson as his reason for trying to convince her not to go through with the home sale.

On the other hand, Putka's comments and actions on and after July 9 were consistent with his explanation that he asked Hutchinson to rescind the house sale because he did not trust her after finding out that she lacked a valid massage therapy license and, thus, he did not want to be her neighbor. And his actions after July 15 exposing her dishonesty are partially explained by his support for Hutchinson's opponent in the city council election.

In *Mackey*, this court upheld a dismissal on summary judgment where the defendant offered a legitimate, nondiscriminatory reason for the plaintiff's employment discharge, and the plaintiff failed to present any evidence of discrimination except a temporal relationship between the discharge and a complaint about a coworker's comments regarding her disabilities. 12 Wn. App. 2d at 583-85. The mere fact that Putka asked Hutchinson to rescind the house sale soon after learning about her specific disabilities, given that this timeline also aligns with Putka's proffered nondiscriminatory reasons, is not sufficient to create a genuine dispute of material fact about Putka's discriminatory purpose on its own under *Mackey*.

Hutchinson also relies on her attorney's conversation with Putka about rescinding the purchase and sale agreement and Putka's failure to mention Hutchinson's lapsed license. But the declaration merely reflected that Putka disliked Hutchinson, perhaps strongly, which is also consistent with his explanation of his motivations.

Hutchinson presents evidence that Putka asked her to remove a VFW sign from her business's window in 2019, and she argues that this demonstrates a pattern of discrimination. She also contends that Hutchinson denigrated her VA loan. But as the trial court noted, the VFW sign may have signaled to Putka that Hutchinson was a veteran and Putka still agreed to sell his house to Hutchinson. And Hutchinson acknowledges that Putka knew she was a disabled veteran and that she was using a VA loan, but did not exhibit discriminatory behavior regarding the house sale until July 9. Even taken in the light most favorable to Hutchinson, this evidence does not create a genuine issue of material fact about Putka's discriminatory intent regarding the real estate transaction at issue here.

Hutchinson also argues that before the closing of the house sale, Putka sought back up offers from buyers not using VA loans, which demonstrates discriminatory intent. Putka concedes that he sought backup offers on the house after he learned about Hutchinson's expired license, but there is no evidence on this record that the buyer he found did not use a VA loan or that he only sought buyers without VA loans.

Hutchinson produces no other specific evidence of Putka's discrimination against veterans or disabled people, only conclusory claims about Putka's intentions. We therefore affirm the trial court's summary judgment for Putka.

#### V. NEW EVIDENCE AT RECONSIDERATION

Hutchinson contends that the trial court erred by not allowing live testimony from a new witness who allegedly could demonstrate a pattern of discrimination to support her motion for reconsideration. But Hutchinson provided no declaration or deposition testimony from the alleged witness, and the mere assurance that a witness could testify in a certain way is not enough to

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support reconsideration or create a genuine issue of material fact. Thus, the trial court did not err when considering and denying reconsideration.

#### ATTORNEY FEES

Putka requests attorney fees under RAP 18.1(a), which allows us to grant attorney fees on appeal if “applicable law grants to a party the right to recover reasonable attorney fees or expenses on review.” RCW 49.60.340(6) states that in a civil action under RCW 49.60.225, a court may, in its discretion, grant reasonable attorney fees to the prevailing party.

We decline to award attorney fees in this appeal.

#### CONCLUSION

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
GLASGOW, J.

We concur:

  
MAXA, J.

  
VELJAČIĆ, A.C.J.

### Rebuttal Summary Table

Respondent's Argument	Petitioner's Rebuttal	Supporting Authority / Record
There's no evidence of VA loan discrimination.	The second page of the backup offer showing financing was withheld. Discovery failure caused the evidentiary gap. The timeline and circumstances support an inference that the backup offer was sought to avoid a VA loan.	CP 298; <i>Scrivener</i> , 181 Wn.2d at 446 (circumstantial evidence must be considered); <i>Mikkelsen</i> , 189 Wn.2d at 534 (same)
Emotional harm was irrelevant after tort claims were dismissed.	Emotional distress is compensable under WLAD, and evidence of Hutchinson's emotional harm remained relevant to her discrimination claim. The trial court misstated the effect of its prior ruling – the dismissal of the tort claims did not bar evidence of emotional harm under WLAD.	<i>Dean v. Mun. of Metro Seattle</i> , 104 Wn.2d 627, 638 (1985) (damages for emotional distress recoverable under WLAD); <i>Xieng v. Peoples Nat. Bank</i> , 120 Wn.2d 512, 530 (1993); CP 119, 122–124

<p>“The VFW sign wasn’t discriminatory; Putka continued to lease to Hutchinson.”</p>	<p>The VFW plaque incident was treated by Putka as akin to an impermissible political sign and is part of a broader pattern of hostility toward veteran affiliation. That Putka allowed her to remain a tenant for a time does not erase the significance of his demand to remove a veterans support sign as context for his later actions.</p>	<p>Hutchinson Decl. (CP 121–123, 436) (describing Putka’s demand to remove VFW sign and Putka comparing it to a political sign)</p>
<p>“Putka’s conduct was legitimate business negotiation, not coercion.”</p>	<p>The pressure on Hutchinson escalated almost immediately after she disclosed her protected status, belying the notion of a routine “negotiation.” Within days, Putka threatened her with eviction, DOH reporting and public exposure if she didn’t back out of the sale. Such tactics crossed the line</p>	<p><i>Scrivener</i>, 181 Wn.2d at 446 (timing and context can give rise to an inference of discriminatory motive); <i>Mikkelsen</i>, 189 Wn.2d at 534–35; CP 114–127 (Hutchinson declaration detailing threats following disclosure) Hutchinson’s opening brief</p>

	from hard bargaining into unlawful coercion tied to her status.	
“The appellate court properly excluded Hutchinson’s ‘new’ factual arguments.”	The so-called “new” facts (e.g., the DOH threat, eviction notice, and negative publicity) were not new at all – they appeared in Hutchinson’s amended complaint, declaration, and summary judgment filings. Mischaracterizing these facts as new claims prevented the full context of Putka’s conduct from being considered.	CP 17-26, 114–127 (Amended Complaint and Hutchinson Decl. recounting threats); CP 102-112, (Opp. MSJ discussing these facts); RAP 2.5; RAP 9.12 (issues argued below are preserved for review)
“Threats of eviction, going to the press, and reporting to DOH weren’t discriminatory acts.”	The timing and nature of these actions strongly suggest they were motivated by Hutchinson’s protected status. All of these threats occurred almost immediately after Hutchinson disclosed her	CP 114–127, 102-112 (Hutchinson Decl. and Opp. MSJ describing sequence of threats); <i>Cornwell v. Microsoft Corp.</i> , 192 Wn.2d 403, 412–13 (2018) (totality of circumstances, including pattern



	disabilities and veteran status, and they were aimed at pressuring her to abandon the purchase. Their close temporal proximity to the disclosure, and the extreme measures involved (public shaming and legal threats), support an inference of discriminatory coercion, not just personal animosity.	and timing of conduct, can indicate discriminatory intent)
“Gravina’s testimony was properly excluded because she didn’t provide a declaration.”	Gravina was a subpoenaed witness who was prepared to testify live to support Hutchinson’s claims of a pattern of behavior. She declined to sign a written declaration due to fear of retaliation by her employer – a fact documented in Hutchinson’s motion for reconsideration (CP 391) and known to	CP 289–290 (Putka Deposition, acknowledging knowledge of Gravina); CP 391 (Motion for Reconsideration explaining Gravina’s fear); <i>Mikkelsen</i> , 189 Wn.2d at 534–35 (all evidence, even late-arriving, should be considered at summary judgment when it could influence the

	Putka. Rigidly requiring a declaration under these circumstances elevated form over substance. Given that Putka was aware of Gravina's likely testimony (he was asked about her in deposition, CP 289–290), excluding her evidence was unfair.	outcome); Hutchinson Reply Br. (reiterating importance of Gravina's testimony)
"Summary judgment was proper because Putka offered a non-discriminatory reason for his actions."	Pretext evidence (VA loan comment, rescission timing, VFW sign, backup offer) supports a jury question under Scrivener.	Mikkelsen, Scrivener; CP 421,436
Hutchinson did not properly plead claims under RCW 49.60.030 or 222.	Hutchinson's evidence raises a strong triable issue that Putka's stated reason was pretextual or that discrimination was nonetheless a substantial factor. His sudden demand for rescission came on the heels of learning details of her disabilities and	<i>Mikkelsen</i> , 189 Wn.2d at 527, 533–35 (plaintiff can survive summary judgment by showing either pretext or that discrimination was a substantial factor; burden of production is minimal); <i>Scrivener</i> , 181 Wn.2d at 445–47

	<p>benefits, and he made telling remarks (about not wanting to be her neighbor under these circumstances and demeaning her VA benefits). The combination of the VA loan comment, the timing of the rescission demand, the VFW sign incident, and the incomplete disclosure of the backup offer's financing all support a reasonable inference of discriminatory motive. Under <i>Scrivener</i>, such evidence should be weighed by a jury, not by the court on summary judgment.</p>	<p>(summary judgment inappropriate if reasonable jury could find discrimination was a factor); CP 118-125 (Hutchinson Decl. detailing Putka's comments and behavior changes)</p>
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### CERTIFICAT OF COMPLIANCE

Undersigned hereby certifies, pursuant to RAP 10.4, this PETITION FOR REVIEW pursuant to RAP 18.7(c)(2) has a word count of approximately 4184.

May 28, 2025

Respectfully submitted

A handwritten signature in blue ink, reading "Sara L. Hutchinson", is written over a horizontal line.

Sara Hutchinson PRO SE

### CERTIFICATE OF SERVICE

I Declare under penalty of perjury, according to the laws of Washington state, that on the date written, I emailed a true and correct copy of this Citation and Declaration of delivery to the following person at the following email address.

Meredith A Long

meredith@longview-law.com

Dated this 28<sup>th</sup> Day of May 2025

A handwritten signature in blue ink, reading "Sara L. Hutchinson", is written over a horizontal line.

Sara Hutchinson – PRO SE

**SARA HUTCHINSON - FILING PRO SE**

**May 28, 2025 - 10:58 PM**

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**Superior Court Case Number:** 21-2-00932-5

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