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6 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
7 **IN AND FOR THE COUNTY OF WHATCOM**

8 **JENNIFER LEIGH DUBROW,**

9 Petitioner,

10 vs.

11 **APOLLO JAMES SCOTT,**

12 Respondent.

Case No.: 21-2-00824-37

PETITIONER'S BRIEF ON CR 11

13 **I. RELIEF REQUESTED AND EVIDENCE RELIED UPON**

14 Petitioner **JENNIFER LEIGH DUBROW**, through counsel **ADAM P. KARP** of
15 **ANIMAL LAW OFFICES**, opposes Respondent **APOLLO JAMES SCOTT**'s request for
16 attorney's fees under CR 11 and RCW 4.84.185. Rather, she seeks her own under RCW
17 10.14.090(2) and RCW 7.92.100(2)(f).

18 **II. STATEMENT OF FACTS**

19 Dubrow filed an antiharassment/antistalking protection order petition against Scott on
20 8.13.21. On 8.16.21, Commissioner Angela A. Cuevas denied the temporary emergency
21 component to the petition but *set it for hearing* on 8.26.21 – unlike the petition filed the day after
22 Scott was served with Dubrow's petition (service 8.17.21; Scott's petition filed 8.18.21), which
23 Commissioner Anthony Parise dismissed in its entirety *without a hearing* on 8.20.21. *Scott v.*
24 *Dubrow*, WDCD AH21-149. At the 8.26.21 hearing, Scott and his mother appeared unrepresented.
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PETITIONER'S BRIEF ON CR 11 - 1

ANIMAL LAW OFFICES OF
ADAM P. KARP, ESQ.
114 W. Magnolia St., Ste. 400-104 • Bellingham, WA 98225
(888) 430-0001 • Facsimile: (833) 878-6835
adam@animal-lawyer.com

1 The court granted a continuance for them to obtain counsel and entered a no-contact/no-trespass
2 order in the interim. At the next hearing on 9.9.21, the court took testimony but the matter did not
3 finish, so it was continued to 9.23.21. At the conclusion of the second day, during closing
4 argument, Scott’s counsel sought attorney’s fees, citing CR 11 and Ch. 4.84 RCW, without
5 specifying a statutory provision. There was no time for a reply, so Karp requested leave of court
6 to furnish one, which the court authorized. Meanwhile, the court kept the no-contact/no-trespass
7 order in effect.

8 **III. AUTHORITY**

9 **A. CR 11 and RCW 4.84.185 Sanctions.**

10 “About half of the practice of a decent lawyer is telling would be clients that they are
11 damned fools and should stop.” *Watson v. Maier*, 64 Wash.App. 889, 891 (1992) (quoting Elihu
12 Root, U.S. Secretary of State (1905-1919) in the context of CR 11). Such admonition does not
13 apply to Dubrow or Karp.

14 **1. CR 11.**

15 CR 11(a)(1)(factual basis), CR 11(a)(2)(legal basis), and CR 11(a)(3) (improper purpose
16 to harass, delay, increase cost of litigation) apply to identifiable pleadings, which Scott did not
17 specify. If the *Petition* itself, CR 11 has no bearing, as it was signed by Dubrow personally, not
18 Karp. If the *Memorandum in Support of Petition*, executed by Karp, it sets forth a surfeit of
19 argument supported by references to the record then submitted (i.e., 8.13.21). CR 11 does not apply
20 to offered (or admitted) exhibits [all exhibits offered by Dubrow were admitted, many over
21 objection], nor to oral argument. Accordingly, CR 11 has precious little upon which to operate
22 even assuming *arguendo* such pleadings lacked factual or legal basis which, as explained below,
23 is assuredly not the case.
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1 The legal standard of frivolity asks the trial court “[t]o avoid the 20/20 hindsight view,”
2 and instead “conclude that the claim clearly has no chance of success,” *In re Cooke*, 93 Wash.App.
3 526, 529 (III, 1999). Putting aside that the court has not ruled against Dubrow, making such request
4 at the very least prematurely presumptuous, if the case clearly had no chance of success,
5 Commissioner Cuevas never would have set it for hearing, in contrast to Commissioner Parise’s
6 refusal to grant same to Scott’s petition. Further, aside from abundant circumstantial evidence
7 present prior to hearing, trial testimony adduced yet more to preponderate in favor of the view that
8 Scott engaged in unlawful harassment/stalking directly and/or in concert with Reuben Sanchez.

9 **2. RCW 4.84.185.**

10 Though not cited by Scott, as only one section in the entire Ch. 4.84 RCW provides for
11 reasonable attorney’s fees based on alleged frivolity, one assumes RCW 4.84.185 has been
12 invoked. Only if the entire petition is deemed frivolous and advanced without reasonable cause
13 does the statute apply, however. *Biggs v. Vail*, 119 Wn.2d 129, 137 (1992); *Ahmad v. Town of*
14 *Springdale*, 178 Wash.App. 333, 344 (2013). “A frivolous action has been defined as one that
15 cannot be supported by any rational argument on the law or facts.” *Hanna v. Margitan*, 193
16 Wash.App. 596 (2016). RCW 4.84.185 discourages abuses of the legal system by providing an
17 award of expenses and legal fees to any party forced to defend against meritless claims advanced
18 for harassment, delay, nuisance, or spite. *Suarez v. Newquist*, 70 Wash.App. 827, 832-33 (1993).
19 RCW 4.84.185 states:
20

21 In any civil action, the court having jurisdiction may, upon written findings by the
22 judge that the action, counterclaim, cross-claim, third party claim, or defense was
23 frivolous and advanced without reasonable cause, require the nonprevailing party
24 to pay the prevailing party the reasonable expenses, including fees of attorneys,
25 incurred in opposing such action, counterclaim, cross-claim, third party claim, or
defense. This determination shall be made upon motion by the prevailing party after
a voluntary or involuntary order of dismissal, order on summary judgment, final
judgment after trial, or other final order terminating the action as to the prevailing

1 party. The judge shall consider all evidence presented at the time of the motion to
2 determine whether the position of the nonprevailing party was frivolous and
advanced without reasonable cause. In no event may such motion be filed more
than thirty days after entry of the order.

3 The provisions of this section apply unless otherwise specifically provided by
4 statute.

5 First, one questions whether RCW 4.84.185 even applies to such petitions. *Emmerson v.*
6 *Weilep*, 126 Wash.App. 930 (2005) held that a petition for a temporary protection order “is not a
7 civil action for damages” under RCW 4.24.500 and 4.24.510, and, thus, declined to award fees
8 thereunder. It also refused to equitably grant fees, reasoning that:

9 Allowing an award of attorney fees to those who successfully defend against a
10 permanent order of protection would deter private parties from seeking temporary
and immediate relief from harassment. This is contrary to the legislature’s
11 expressed intent to prevent unlawful harassment.

12 *Id.*, 941. It should also be considered that RCW 10.14.090(2) only provides fees to the prevailing
13 *petitioner*, not respondent. While this is understandably not a civil action “for damages,” but is a
14 “civil action,” there is no published case of which counsel is aware that extends RCW 4.84.185 to
15 protection order petitions. As explained below, not only is Dubrow’s petition not frivolous nor
16 advanced without reasonable cause, but there is no evidence she pursued the matter for spite or
17 with ill will. Rather, she has only sought to achieve peace at the home she bought in June 2020
18 and at which she has suffered relentless trespasses, cruel omens, and ongoing malicious mischief
19 ever since January 2021, when she firmly told Scott to cease traipsing across her property.

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21 **3. Evidentiary Basis to Oppose Any Accusation of Frivolity.**

22 WPIC 5.01 advises juries as to the distinction between direct and circumstantial evidence:

23 **The evidence that has been presented to you may be either direct or**
24 **circumstantial. The term “direct evidence” refers to evidence that is given by**
25 **a witness who has directly perceived something at issue in this case. The term**
“circumstantial evidence” refers to evidence from which, based on your

1 **common sense and experience, you may reasonably infer something that is at**
2 **issue in this case.**

3 **The law does not distinguish between direct and circumstantial evidence in**
4 **terms of their weight or value in finding the facts in this case. One is not**
5 **necessarily more or less valuable than the other.**

6 Despite this rudimentary notion, Scott maintains that the action is frivolous because Dubrow has
7 no “direct evidence,” even though she testified to seeing him trespass and work in precisely the
8 areas associated with the Godfatheresque-messages left. The following bulleted list sets forth
9 direct and circumstantial evidence presented at trial that amply resists any sanction request.

10 1. Dubrow has been a vegan for decades, meaning she tries to minimize, as much as
11 humanly possible, any harm to nonhumans. Of this Scott knew, and that this was a way to terrorize
12 and harass her.

13 2. Scott was hired in December 2020 to work on Dubrow’s premises shoring up
14 eroding root systems by covering same with yards of soil. Scott was the only young man who
15 worked in the precise area on the hillside where Dubrow found the bagged opossum on or about
16 5.17.21 and where she found her “No Trespass” signs torn down and tossed aside.

17 3. Initially after he completed the job, in January 2021, Dubrow told Scott repeatedly,
18 in person, to cease trespassing across her premises at a breakneck pace that would undo all the
19 work she paid handsomely for, but also endanger Scott and his friends. Motivating her contact was
20 Dubrow also observing him trying to run down her beloved cat, her only companion. When she
21 caught him on her baby monitor surreptitiously approaching the boundary, casting furtive glances,
22 and then making a run for it, she withdrew any license for him to enter and remain on her premises
23 and told him to stop. He did not, causing her to post signs in late February 2021, which were then
24 taken down and thrown on the ground over the precise period of 12-1 when Dubrow saw Scott
25 walking directly by her premises. Exh. 7.

1 4. Text messages with Scott and Winter confirm that Winter admonished Scott to
2 cease trespassing but that he recalcitrantly refused. Winter even told Dubrow that Scott told him,
3 about Dubrow, “She can’t tell me what to do!” and “She’ll never know!” In his texts to Dubrow,
4 Scott admits he stopped trespassing once he saw the signs – which went up over a month after she
5 told him to cease his incursions. Exh. 2.

6 5. Tania Scott contacted Dubrow only after law enforcement was engaged on 3.4.21
7 and 3.14.21 (Exhs. 4, 5). When confronted with accusations of her son’s trespassing and
8 criminality, instead of denying or defending, Mrs. Scott said she “understood [her] concern” and
9 would be in contact “soon.” Exh. 3. Yet Mrs. Scott never made further contact.

10 6. Unnerved by the mistreatment she had been experiencing, Dubrow filed a small
11 claims action. The parents of Scott (not Scott himself) were named and served on 4.7.21. The very
12 next morning, Dubrow’s car suffered a slashed tire and a tortured chicken was left by her driver’s
13 side door. Exh. 8. About six months prior, Scott was contacted by law enforcement at about 1:30
14 a.m. in the company of Alec and Jeremy Byeman due to shots fired. Deputies did not make any
15 contact with parents but, instead, Jeremy admitted to shooting at raccoons ostensibly going after
16 chickens, while alcohol was present – and, of course, Scott. Exhs. 18-19. A chicken could have
17 been readily sourced from Byeman’s family.

18 7. Over the following weeks pending the small claims hearing, further trespasses,
19 vandalism, and mischief occurred, per the signature methods utilized admittedly by Scott in 2018
20 when he caused significant damage to the community tractor, resulting from stuffing hard objects
21 and pouring sand in crevices and joints, much like a potato and silicone caulking gumming up
22 Dubrow’s exhaust pipe. Exh. 8.

1 8. Three days before the small claims hearing of 5.20.21, on or about 5.17.21, Dubrow
2 found a skinned possum in a black garbage bag staged precisely in the root area worked on only
3 by Scott and told to cease trampling on by Dubrow on 1.29.21. Exhs. 9-10.

4 9. Up through the small claims hearing, Sanchez was giving Scott rides past Dubrow's
5 home and, when he was not, his girlfriend Danielle Brocker chauffeured. As recently as one week
6 prior to the 9.23.21 hearing of this matter, Scott was speaking to Brocker, who, by his own
7 evidentiary proffer, trespassed on Dubrow's property on 8.2.21, refused to leave, and caused
8 enough havoc to prompt yet another law enforcement contact. Exh. 28. That Brocker has
9 maintained a friendship with Scott, and has seen fit to advocate rather aggressively for "these
10 minors" she "stand[s] up for," along with Sanchez's desire to "mentor" Scott, supports the view
11 that a conspiracy exists whereby Scott has solicited the aid of a known ex-con with a history of
12 DV, stalking, and criminal trespass (Sanchez) and his unhinged partner (Brocker). Incidentally,
13 Tania Scott acknowledged being friends with Brocker.

14 10. If Sanchez does have experience in taxidermy, that would explain where Scott
15 acquired the possum to place on Dubrow's premises, yet Sanchez would have no reason to be the
16 one responsible for Sanchez had never interacted with Dubrow prior to 5.23.21, the day WCSO
17 contacted him about his strained "alibi" for Scott (see Exh. 10). On 5.23.21, he pulled up by
18 Dubrow's home and spoke to a man named Gabe Nelson, refusing to leave when asked by Dubrow
19 and Nelson and resulting in his also being trespassed. Thereafter, Sanchez repeatedly stalked
20 Dubrow and was recently charged with criminal trespass on her premises. See Exh. 28 (addendum
21 of 9.9.21).¹

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25 ¹ Sanchez failed to appear at his 9.24.21 arraignment and a bench warrant is out for his arrest.

1 11. Sanchez’s “alibi” maintains that at about 2 a.m. or 3 a.m. he saw three young men
2 walking down his street and that one of them appeared in the darkness to be Scott, which alone
3 supports the position that Scott placed the possum on her premises early that morning. That he
4 then purportedly accosted Scott by putting his hands on his shoulders but said it did not “feel like”
5 Scott, aside from being, frankly, strange, does not inspire confidence that Scott was not the culprit.
6 Rather, the fact Scott admitted in court that he was upset with Sanchez for not testifying on 5.20.21
7 at the small claims hearing – when Tania Scott could have purportedly testified that the alarm
8 system was active and her son never left, making Sanchez’s testimony cumulative – endorses the
9 view that because Sanchez *refused to* testify in court under oath, and that his refusal caused Scott
10 and Sanchez *to fight* (Dubrow overheard him say he would “never forgive him” if he did not show),
11 that in fact Scott was the responsible party and no alibi exists.

12 12. In late June 2021, another tire was flattened with a large bolt no doubt scattered on
13 Dubrow’s premises. And the morning of the hearing of 9.9.21, Dubrow awakened to another flat
14 tire, making it impossible for her to drive to court. She later found hundreds of roofing nails strewn
15 across her driveway, which she recovered with a metal detector, only to find more, day after day,
16 even through the continued hearing of 9.23.21. Exhs. 23. It should be noted that Scott testified his
17 father worked in construction and no doubt had access to such instrumentalities of mischief. The
18 timing of the trespassory mischief is keyed to dates seeking to adjudicate matters pertaining to
19 Scott – (1) the day after the Scotts were served [chicken/tire]; (2) three days before the small claims
20 hearing [possum]; (3) the morning of the first day of trial in this matter where live testimony would
21 be taken [roofing nails]; and (4) each day through the morning of the second day of trial in this
22 matter [roofing nails].
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1 13. Scott’s history warrants consideration as a form of propensity evidence that
2 contradicts the character evidence offered in his favor. Taking into account the affidavits of Becky
3 Dodd (Glenhaven Community manager) and Beverly Crouter (neighbor who positively identified
4 Scott as one of 3-4 boys on the Scott deck shooting a pellet rifle at her home); and the four incidents
5 logged with WCSO, the likelihood that Scott is to blame is far more probable than not:

6 a. July 2018 [tractor vandalization and pushing picnic table into lake] (Exhs. 16-17);

7 b. 10.3.20 [Byeman brothers and Scott, gunfire, alcohol, chickens, raccoon suffering
8 from untreated wounds and causing deputy to euthanize by gunshot] (Exhs. 18-19);

9 c. 12.13.20 [Byeman and Scott trespassing at elementary school, along with Dixie
10 cups holding back door open, janitor closet raided, and property TP’d, where cups were removed
11 and door closed as Scott and Byeman left – proving they were the ones who did precisely as alleged
12 (“Todd said he suspected [Alec] and Apollo had TP’d the grounds because the door had been
13 propped open with the Dixie cups, but shortly after he ran [Alec] and Apollo off the Dixie cup
14 door stop was also gone. Todd said he suspected they took it to cover their tracks after being
15 confronted.”)] (Exh. 24); and
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17 d. 12.31.20 [reckless endangerment of Crouter and harm to her residence, sighting
18 Scott, who no doubt fled before the deputy arrived] (Exh. 22).

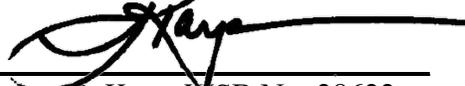
19 14. It is also important to note that both Scott and his mother never mentioned the
20 Harmony Elementary incident despite being asked about other criminal investigations under oath,
21 that Tania Scott initially did not recall speaking to a deputy and being told her son was criminally
22 trespassed (although the report proves otherwise); and that Scott himself said he did not recall his
23 mother telling him what the deputy said (although she said she would). All of this goes to
24 credibility, shows a pattern of scofflawing in the vein of trespass, vandalism, animal cruelty, and
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1 malicious mischief, and maternal blindness to a son's deprecations – precisely the issues presented
2 in this matter.

3 Given the above, and far more presented at hearing, the evidence soundly indicts Scott as
4 a harasser and stalker. Not only should the motion for sanctions by Scott be denied, but the petition
5 granted along with fees per a fee petition Karp will provide if the court grants same.

6 Respectfully submitted this 9.28.21,

7 ANIMAL LAW OFFICES

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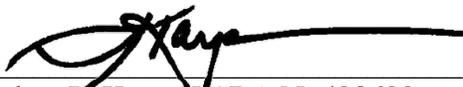
9 _____
Adam P. Karp, WSB No. 28622
Attorney for Petitioner

10
11 **CERTIFICATE OF SERVICE**

12 I certify that I served the foregoing the following individuals in said manner:

13 **On 9.28.21, by email, per custom:**

14 Steven Phillips
15 Jay Carey Law
16 420 N. McLeod
17 PO Box 190
18 Arlington, WA 98223
19 360.435.5707
20 steve@jaycareylaw.com
21 mayal@jaycareylaw.com

22 

23 _____
Adam P. Karp, WSB No. 28622
Attorney for Petitioner