IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

ARTHUR WEST, Plaintiff/Appellant, v. DICK MARZANO; PAT JONES; JOE MELROY; PAUL SCHNEIDMILLER; HERB BECK; AMBER HANSON; THE WASHINGTON PUBLIC PORTS ASSOCIATION, Defendants/Respondents, STATE OF WASHINGTON, Defendant.	No. 41497-0-II UNPUBLISHED OPINION

Worswick, C.J. — In this Public Records Act[1] (PRA) and Open Public Meetings Act[2] (OPMA) case, Arthur West brought suit against the Washington Public Ports Association. In his suit, he requested a declaratory judgment finding the Association is a public agency. West also sued for costs and statutory penalties alleging the Association violated the OPMA and the PRA. The trial court summarily dismissed West's lawsuit, finding that (1) West did not have standing

[1] Chapter 42.56 RCW.

[2] Chapter 42.30 RCW.

to assert a cause of action under the Uniform Declaratory Judgments Act,[3] (2) West did not have standing to pursue a claim under the OPMA, and (3) West failed to allege facts to support his claim that the Association violated the PRA. We affirm.[4]

FACTS

West made two PRA requests for documents from the Association, one in 2008 and another in 2009. Although West's present appeal is based on the Association's response to his 2009 PRA request, his 2009 request renewed and expanded his 2008 request. Accordingly, we discuss both West's 2008 and 2009 PRA requests for documents from the Association.

A. *West's June 2008 PRA Request*

West requested records from the Association in June 2008.[5] Specifically, West sought communications between the Association and its legal counsel, Stoel Rives and Goodstein Law Group, dated between January 2005 and June 2008 on "the projects or activities" counsel performed for the Association, including invoices, policy statements, guides, and manuals. The Association timely responded to West's request and informed him that it anticipated having the requested records ready for his review by mid-July.

[3] Chapter 7.24 RCW.

[4] In his reply brief, West argues that we should strike the Association's brief and impose CR 11 sanctions against the Association's counsel for misstating the record. We do not consider these arguments because the Association's brief supports its arguments with accurate citations to the record and we cannot award sanctions under CR 11. *See Kinney v. Cook*, 150 Wn. App. 187, 195, 208 P.3d 1 (2009); RAP 12.2.

[5] West's June 2008 request purports to clarify an earlier request, and one of the Association's written responses states that West's June 2008 request clarified his April 28, 2008 request. But West does not argue that the Association's response to his April 28 request was deficient.

The Association notified West on July 14 and August 25 that the records he requested were available for his review by appointment during the Association's normal business hours. At that time, the Association did not claim that any of the records West requested were exempt from production under the PRA. West did not contact the Association to review the records, so on February 27, 2009, the Association sent West a letter informing him that it was closing his records request.

B. *West's April 2009 PRA Request*

In April 2009, more than a month after the Association closed his June 2008 request, West made another records request to the Association for eight types of records. West specifically requested the following records: (1) "ex parte communications" between the Association and the Washington Supreme Court or any of its justices from October 19, 2008 to present, including the text of any speeches given by any justice at an Association meeting; (2) a copy of a resolution; (3) "[a]ll E-mails sent by the [Association's] Executive Director from January of 2007 to present;" (4) any records related to the Association's record retention and destruction schedule; (5) indexes of all the public records the Association maintains; (6) all records related to the Association's internet server, including its backup and e-mail recovery practices; (7) all records on backup files of the Association's employees' e-mails; and (8) all records relating to the Association's e-mail archiving programs. Clerk's Papers (CP) at 67.

West's April 2009 request for "[a]ll E-mails sent by the [Association's] Executive Director from January of 2007 to present" necessarily included several of the same records he requested in his June 2008 request for communications between the Association and its legal

counsel at Stoel Rives and Goodstein Law Group between January 2005 and June 2008. But West's April 2009 records request was much broader in scope than his June 2008 request.

The Association timely responded to West's request, stating that (1) it would re-collect and update the documents responding to his June 2008 request for communications with its legal counsel at Stoel Rives and Goodstein Law Group and have those records ready for his inspection by May 8, and (2) it would have the additional documents responding to the rest of his broader April 2009 request ready by June 8. On May 26, West inspected the records the Association produced in response to his renewed 2008 request.

Then, on May 29, the Association informed West that it did not have documents responding to his requests for records on its public records index, internet server, backup files for employee e-mail, or e-mail archival program. However, the Association informed West that he could schedule an appointment to inspect and copy the following records it compiled responding to his request:

> (1) [A] copy of a Washington Supreme Court justice's remarks delivered at the Association's November 19, 2008 luncheon;
> (2) a copy of the requested resolution;
> (3) many of its executive director's e-mails from February 2, 2009 to present; and
> (4) a copy of the Association's record retention and destruction policy.

However, regarding West's request for all e-mails sent by its executive director after January 2007, the Association's May 29 letter (1) stated it had only such e-mails dated February 2, 2009 and after and (2) claimed that some of the requested e-mails were exempt from production under the attorney-client privilege. Along with this letter, the Association provided West with a copy of its privilege log.

The Association's privilege log identified that the exempt e-mails were all between its current executive director and its legal counsel at Stoel Rives and Goodstein Law Group and dated between October 2005 and May 2009.[6] The Association further stated in its privilege log that because the listed records "consist of communication between port staff and [the Association]'s attorneys, these documents are exempt pursuant to the Attorney-Client Privilege. *See [Hangartner] v. City of Seattle*, 151 Wn.2d 439, 90 P.3d 26 (2004)." CP at 79. The privilege log also described the privileged documents as e-mails, identified the date of each privileged e-mail, and provided a brief explanation of the documents. In each explanation of how the attorney-client privilege applied to the listed e-mails, the Association identified the matter to which the e-mails pertained. The Association was a party or amicus in each of those cases.

C. *West's Suit*

After West received the Association's privilege log and copies of the produced documents, West filed suit against the Association. In his complaint, West requested a declaratory judgment finding that the Association is a public agency and political subdivision of the State and is therefore subject to the PRA and OPMA. West also claimed that the Association violated the OPMA by holding and taking action during private board meetings on November 19 to 21, 2008 without publication or the opportunity for public participation. Lastly, West alleged

[6] We note that the Association first claimed certain e-mails between it and its legal counsel at Stoel Rives and Goodstein Law Group were exempt from production on May 29, 2009. However, we further note that West neither argues that (1) the Association improperly withheld documents from the set of records it produced on May 8, 2009, in response to his renewed June 2008 request for e-mails between the Association and its legal counsel or (2) the Association must have e-mails dated before February 2, 2009 because its privilege log includes e-mails sent as early as October 2005.

that the Association violated the PRA by providing an inadequate privilege log identifying documents withheld from production and by not retaining e-mails from the Association's former executive director.

In his complaint, West alleged that he had standing to bring these claims because he "is a citizen and a 'person' as defined in [the OPMA] with standing to seek relief . . . . [and he had] also been denied inspection of records." CP at 5. West further alleged that he "is beneficially interested in the acts of the [Association] which creates impacts which affect him personally." CP at 6. In its answer to West's complaint, the Association denied that it was a public agency and thus stated it was not subject to the OPMA or the PRA.

In response to West's interrogatories and requests for production regarding his OPMA claim, the Association produced evidence that its board of trustees met twice yearly and that

> [the Association] publicizes these events with Mailings to [Association] Members, Associate Members, a list maintained by [the Association] of other officials, and to any person or entity that requests notice. [The Association] also publicizes meeting notices with a posting on the [Association's] website, and through invitations to speakers and presenters. [The Association] not only accepts but encourages registrations and attendance from any and all interested persons. No one from the general public is denied attendance.

CP at 95-96. The Association produced evidence that it held an annual meeting November 19 to 21, 2008. The Association also produced evidence that, apparently because of its notice, 245 members and associate members from at least 44 cities and counties across Washington as well as from various industries registered for its November 2008 meeting. The Association produced evidence that at least seven members of the general public were also present at its November 2008 meeting.

D. *Summary Judgment*

The Association moved for partial summary judgment dismissing West's declaratory judgment and OPMA claims; although West responded, he did not submit any evidence to counter the Association's motion. Accordingly, the trial court granted the Association's motion for summary judgment and dismissed West's declaratory judgment and OPMA claims, without ruling on whether the Association was a state agency or the functional equivalent of a state agency for purposes of the OPMA. Then the trial court set a briefing and hearing schedule for a show cause hearing on West's remaining PRA claim. Both West and the Association filed briefs, but West failed to appear at the scheduled show cause hearing. West did not take any action on the case for nine months, so the Association moved for summary judgment on West's PRA claim.

After argument on the Association's motion for summary judgment, the trial court entered a September 27, 2010 order granting summary judgment in favor of the Association and dismissing West's PRA claim.[7] West appeals.

[7] The trial court's order granting summary judgment on West's PRA claim contains 35 findings of fact and 8 conclusions of law. Among these findings and conclusions, the trial court ruled that: (1) the Association was legislatively created, (2) ports are authorized to pay Association dues with public funds, (3) the Association's records are subject to audit, and (4) the Association's purpose is to support port business. Thus, the trial court concluded that, for purposes of the PRA in the context of this case, the Association was a state agency and subject to the PRA. However, these findings and conclusions are superfluous and we do not consider them on appeal. *Westberry v. Interstate Distrib. Co.*, 164 Wn. App. 196, 209, 263 P.3d 1251 (2011), *review denied*, 174 Wn.2d 1013 (2012). Moreover, although the Association states that the trial court disposed of West's PRA claim on a CR 12(b)(6) motion, that statement is inaccurate. The trial court actually disposed of West's PRA claim on summary judgment.

ANALYSIS

I. Summary Dismissal of Declaratory Judgment, OPMA, and PRA Claims

West argues that the trial court erred when it found he did not have standing to assert claims under the Uniform Declaratory Judgments Act or the OPMA and that the trial court erred in dismissing his Uniform Declaratory Judgments Act, OPMA, and PRA claims on summary judgment. We hold that the trial court correctly dismissed West's claims.

A. *Standard of Review*

We review orders granting summary judgment de novo, performing the same inquiry as the trial court. *Gronquist v. Dep't of Corr.*, 159 Wn. App. 576, 582-83, 247 P.3d 436 (2011), *review denied*, 171 Wn.2d 1023 (2011). Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). Where the defendant moving for summary judgment meets its initial burden of showing the absence of a material question of fact, the plaintiff must respond by making a prima facie showing of the essential elements of its claims. *Building Indus. Ass'n of Wash. v. McCarthy*, 152 Wn. App. 720, 735, 218 P.3d 196 (2009) (*BIAW*). The plaintiff cannot rely on his pleadings in making this showing; rather, the plaintiff must demonstrate the existence of a material factual dispute by affidavit or other competent evidence. *BIAW*, 152 Wn. App. at 735.

Although we generally limit review of summary judgment orders to the issues and evidence called to the trial court's attention, we may affirm summary judgment on any ground supported by the record below. RAP 9.12; *Bennett v. Hardy*, 113 Wn.2d 912, 918, 784 P.2d 1258 (1990); *Kinney v. Cook*, 150 Wn. App. 187, 192, 208 P.3d 1 (2009). We also review

challenged agency action under the PRA and interpretation of the OPMA de novo. *Gronquist*, 159 Wn. App. at 582; *Eugster v. City of Spokane*, 110 Wn. App. 212, 222, 39 P.3d 380 (2002). Similarly, whether a party has standing to assert a claim is a question of law that we review de novo. *Sloan v. Horizon Credit Union*, 167 Wn. App. 514, 518, 274 P.3d 386 (2012), *review denied*, 174 Wn.2d 1019 (Aug. 7, 2012).

B. *Declaratory Judgment Claim*

West sought a declaratory judgment that the Association is a state agency or the functional equivalent of a state agency for purposes of the OPMA and the PRA. On appeal, West argues that the trial court erred in finding that he lacked standing to bring his claim for a declaratory judgment and in dismissing that claim on summary judgment. We disagree.[8]

Washington courts may issue declaratory judgments under the Uniform Declaratory Judgments Act to declare the rights of the parties if there is "an actual dispute between opposing parties with a genuine stake in the resolution." *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001). Except under rare circumstances where a declaratory judgment action presents broad issues of great public importance, a court will not issue a declaratory judgment unless the plaintiff establishes that a justiciable controversy exists. *To-Ro*, 144 Wn.2d at 411; *Am. Traffic Solutions, Inc. v. City of Bellingham*, 163 Wn. App. 427, 432, 260 P.3d 245 (2011),

[8] The Association argues that West is attempting to get a "second bite at [the] standing apple" in bringing this claim and appended to its brief our unpublished decision in *West v. Wash. Pub. Ports Ass'n*, noted at 146 Wn. App. 1003, 2008 WL 281146, at *2-4, *review denied*, 165 Wn.2d 1039 (2009). But, because this is a different case in which West alleges different facts and because the Association did not argue that West was collaterally estopped from bringing this claim below, we do not consider this argument.

review denied, 173 Wn.2d 1029 (2012).

A claim is not justiciable, meaning the court does not have jurisdiction to consider the case, unless the plaintiff has standing. *To-Ro*, 144 Wn.2d at 411; *High Tide Seafoods v. State*, 106 Wn.2d 695, 702, 725 P.2d 411 (1986). A plaintiff cannot have standing to bring a claim under the Uniform Declaratory Judgments Act unless he or she demonstrates that (1) he or she is within the "zone of interests to be protected or regulated" and (2) he or she has actually suffered an injury in fact. *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 302-03, 268 P.3d 892 (2011) (quoting *Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 802, 83 P.3d 419 (2004)). In order to meet both prongs of the standing requirement, the plaintiff must allege specific facts. *See Five Corners Family Farmers*, 173 Wn.2d 296 at 302-03; *Am. Legion Post No. 149 v. Dep't of Health*, 164 Wn.2d 570, 594, 192 P.3d 306 (2008). Where a plaintiff lacks standing, our courts do not issue advisory opinions and do not consider the merits of a claim. *To-Ro*, 144 Wn.2d at 416.

Here, West alleged that he "is beneficially interested in the acts of the [Association] which creates impacts which affect him personally." CP at 6. This allegation is exceptionally vague and does not include or receive support from any specific facts. Because West's allegation is so vague, it fails to establish either that (1) West is within the zone of interests to be protected or regulated by the Association or (2) he actually suffered an injury. *See Five Corners Family Farmers*, 173 Wn.2d at 302-03. Because West fails to establish both prongs of the Uniform Declaratory Judgments Act standing test, the trial court did not err in finding that he lacked standing. Because West does not have standing to assert his Uniform Declaratory Judgments Act

claim, we do not address whether the Association is a state agency or the functional equivalent of a state agency.

C. *OPMA Claim*

As noted above, the trial court granted summary judgment on West's OPMA claim. West challenges this grant of summary judgment on appeal. We hold that there is no genuine issue of fact whether West lacks standing to sue under the OPMA and affirm summary judgment on this claim.

In interpreting the OPMA, we first analyze its language. *West v. Wash. Ass'n of County Officials*, 162 Wn. App. 120, 130, 252 P.3d 406 (2011) (*WACO*). If the OPMA's language is unambiguous, we apply its plain meaning. *WACO*, 162 Wn. App. at 130. The OPMA states that "[a]ny *person* may commence an action either by mandamus or injunction for the purpose of stopping violations . . . of [the OPMA] by members of a governing body." RCW 42.30.130 (emphasis added).

Despite the OPMA's broad language, our Supreme Court has recognized that, similar to a party seeking declaratory judgment, a party must assert an injury in order to bring suit under the OPMA. *Kirk v. Pierce County Fire Protection Dist. No. 21*, 95 Wn.2d 769, 772, 630 P.2d 930 (1981). In *Kirk*, the court held that a plaintiff who attended a public meeting was not entitled to sue under the OPMA alleging that a third party had been denied notice of the meeting. 95 Wn.2d at 770, 772. Only the third party who suffered the injury had standing to raise it. 95 Wn.2d at 772.

Kirk comports with well-settled principles of federal standing doctrine that a legislative

grant of standing to the public as a whole is ineffective to confer standing on an individual. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 577, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). Even where Congress purports to confer standing on all members of the public, a plaintiff must demonstrate an injury in fact to his own person, rather than to the public, to show standing. *Lujan*, 504 U.S. at 577-78. And Washington's standing doctrine is drawn from federal law. *See High Tide Seafoods*, 106 Wn.2d at 702 (citing *Allen v. Wright*, 468 U.S. 737, 104 S. Ct. 3315, 82 L. Ed. 2d 556 (1984) and *Craig v. Boren*, 429 U.S. 190, 193-94, 97 S. Ct. 451, 50 L. Ed. 2d 397 (1976)).

Rather than demonstrate an injury, West vaguely asserts that he "is beneficially interested in the acts of the [Association] which creates impacts which affect him personally." CP at 6. He submitted neither an affidavit nor any evidence in support of this assertion. CP at 80-83. As noted above, on summary judgment a plaintiff may not simply rest on the pleadings; the plaintiff must present evidence demonstrating a genuine issue of material fact on the issues on which the moving party is requesting summary judgment. *BIAW*, 152 Wn. App. at 735. Interpreting the OPMA consistently with *Kirk* and with federal law, we hold that West's bare assertion is insufficient to show that he has standing under the OPMA.

We emphasize that West's burden to show standing here was light. The injury needed for West to show standing to sue under the OPMA need not be a severe one—in other contexts, the burden to show injury has been characterized as the burden to show "an identifiable trifle." *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 690 n.14, 93 S. Ct. 2405, 37 L. Ed. 2d 254 (1973) (quoting Kenneth Culp Davis, *Standing:*

Taxpayers and Others, 35 U. Chi. L. Rev. 601, 613 (1968)). But West's showing did not even rise to the level of an identifiable trifle. West submitted no affidavit providing facts to support his allegation that he was "beneficially interested in the acts of the [Association] which creates impacts which affect him personally." CP at 6. West's vague pleadings, standing alone, create no genuine issue of material fact on this point. We affirm summary dismissal of West's OPMA claim on the grounds that there is no genuine issue of material fact that he had standing to sue under the OPMA.

D. *PRA Claim*

West next argues that the trial court erred in summarily dismissing his PRA claim. He argues that the trial court erroneously (1) found that the Association's privilege log and responses to West's requests were timely and adequate, (2) expanded the scope of the attorney-client privilege exemption under the PRA, and (3) allowed the Association to destroy e-mail records without a valid records retention and destruction policy in place. Assuming without deciding that the Association is a state agency or the functional equivalent of a state agency for purposes of the PRA, we disagree.

1. *Privilege Log*

The PRA favors broad disclosure of public records and requires state agencies to disclose and produce public records on request, unless an enumerated exception applies. *Sanders v. State*, 169 Wn.2d 827, 846, 240 P.3d 120 (2010); *West v. Wash. State Dep't of Natural Res.*, 163 Wn. App. 235, 242, 258 P.3d 78 (2011), *review denied*, 173 Wn.2d 1020 (2012) (*DNR*); *see* RCW 42.56.070(1). Where an agency seeks to withhold documents, it bears the burden of proving that

a specific exemption applies. *DNR*, 163 Wn. App. at 242. In satisfying this burden, the agency must identify the records being withheld. *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wn.2d 243, 271, 884 P.2d 592 (1994) (*PAWS*), *review denied*, 174 Wn.2d 1013 (2012).

> The identifying information need not be elaborate, but *should* include the type of record, its date and number of pages, and, *unless otherwise protected*, the author and recipient, or if protected, other means of sufficiently identifying particular records without disclosing protected content.

PAWS, 125 Wn.2d at 271 n.18 (emphasis added).

One method of sufficiently identifying the withheld documents is with a privilege log. *Rental Housing Ass'n of Puget Sound v. City of Des Moines*, 165 Wn.2d 525, 538-39, 199 P.3d 393 (2009); WAC 44-14-04004(4)(b)(ii). Such a privilege log should include the type of information required by *PAWS* (as described above) that would enable a records requester to make a threshold determination of whether the agency properly claimed the privilege. *Rental Housing Ass'n*, 165 Wn.2d at 539; WAC 44-14-04004(4)(b)(ii).

Here, the Association claimed that some of the documents West requested in his expanded April 2009 request were privileged and exempt from production under the PRA. The Association provided a privilege log along with its timely response to West's request. The Association's privilege log identified that each of these records were e-mails, the date of each e-mail, the author and recipient of each e-mail, the general topics of these e-mails, and cited to *Hangartner* as authority for its claimed attorney-client privilege. The Association's privilege log, therefore, contained each type of identifying information recommended in *PAWS* and made each record identifiable. Thus, the Association's privilege log was sufficient to allow West to make a threshold determination of whether the privilege applied and this argument fails.

West further argues that the trial court allowed the Association to silently withhold these privileged documents for over a year because the Association did not produce its privilege log until May 2009. Here, the records the Association actually produced in response to West's 2008

request are not included in the record on appeal. Thus, we cannot identify which records the Association produced responding to West's renewed June 2008 request for general "communications" between the Association and its legal counsel regarding legal services, including invoicing, manuals, opinions, and policy statements since January 2005. *See* CP at 57. Again, the Association did not claim that documents responding to West's June 2008 request were exempt from production.

However, in response to West's April 2009 expanded request for "[a]ll E-mails sent by the [Association's] Executive Director from January of 2007 to present," the Association claimed that several of those messages were exempt from production under the attorney-client privilege. Although the e-mails that the Association alleged were exempt from production are sealed, the trial court reviewed them in camera and they are included in the record on appeal. None of these e-mails include general information on legal services counsel provided the Association, like invoicing, manuals, opinions, or policy statements by legal counsel. Rather, they include specific legal analysis and recommendations for the Association in several cases in which it was involved. Thus, West's expanded April 2009 request for "[a]ll E-mails" asked for a much wider cadre of e-mails than his general June 2008 request for "communications" between the Association and its legal counsel or legal services counsel provided to the Association, including guides, manuals, or policy statements. Therefore, although West argues that the Association silently withheld records without producing a valid privilege log for a year, that argument fails based on the record before us.

2. *Attorney-Client Privilege*

Under the PRA, records are exempt from production if they would not be available to other parties to a controversy under the civil rules for discovery. RCW 42.56.290. Thus, if a record is discoverable, it is subject to production under the PRA. *See* RCW 42.56.290; CR 26. But if a record is not discoverable, then it is exempt from production under the PRA. *See* RCW 42.56.290; CR 26.

The "mental impressions, conclusions, opinions, or legal theories of an attorney . . . of a party concerning . . . litigation" are not discoverable and, thus, not subject to production under the PRA. CR 26(b)(4); *DNR*, 163 Wn. App. at 247. Records also protected from discovery and production under the PRA include "any communication made by the client to his or her [attorney], or [the attorney's] advice given thereon in the course of professional employment." RCW 5.60.060(2)(a); *Hangartner v. City of Seattle*, 151 Wn.2d 439, 452, 90 P.3d 26 (2004); *DNR*, 163 Wn. App. at 247. Therefore, this broad attorney-client privilege protects documents generated by an attorney in response to a client's request for legal counsel and documents generated by clients communicating with their attorneys. *DNR*, 163 Wn. App. at 247.

Here, the Association withheld 65 pages of records from West's April 2009 PRA request, claiming they were exempt from production under the attorney-client privilege. The trial court conducted an in camera review of these documents and agreed with the Association that the documents were exempt from production under the PRA under the attorney-client privilege. These withheld documents consist exclusively of e-mails between the Association and its legal counsel, generated between 2005 and 2009, and addressing active or pending litigation to which the Association was a party or an amicus.[9] In these e-mails, the Association requests legal advice

and its counsel responds with careful analysis, recommendations, and strategies. Because these types of communications fit squarely within the attorney-client privilege, the trial court correctly concluded that they were exempt from production under the PRA. Thus, West's argument fails.

3. *Deleted E-mails*

Next, West argues that the Association violated the PRA by deleting the e-mail correspondence of its past executive director without a valid record retention and destruction policy in place.[10] West states that "his research has failed to uncover any WAC provisions adopted by the [Association] or any duly approved records and retention schedule appropriate for a State Agency." Br. of Appellant at 29. Without argument, analysis, or authority, West declares that the Association "cannot credibly deny that the provisions of [the preservation and destruction of public records statute, chapter 40.14 RCW] apply to it as a public entity." Br. of Appellant at 29. Because West does not support these arguments with authority or analysis, we do not consider them. *See Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

II. Findings and Conclusions

Lastly, West argues that the trial court erred by entering findings of fact that are not

[9] West argues that the Association must disclose the e-mails to and from its counsel for cases in which it appeared as an amicus, but he fails to cite meaningful authority for that proposition. Thus, we do not consider this issue. *See Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

[10] In another section of his brief, West appears to argue that the Association is liable for negligently deleting these e-mails under a res ipsa loquitur theory. But we need not analyze this argument because West fails to support it with meaningful analysis based on precedent. *See Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

supported by substantial evidence and conclusions of law applying an incorrect standard of law. West, therefore, asks us to reverse these findings and conclusions. We decline to do so.

Trial courts need not enter findings of fact and conclusions of law when granting summary judgment. CR 56; *Westberry v. Interstate Distrib. Co.*, 164 Wn. App. 196, 209, 263 P.3d 1251 (2011), *review denied*, 174 Wn.2d 1013, (2012). Where a trial court does enter findings of fact and conclusions of law in an order granting summary judgment, they are superfluous. *Westberry*, 164 Wn. App. at 209. Because we review orders granting summary judgment de novo, we do not consider a trial court's superfluous findings of fact and conclusions of law. *Westberry*, 164 Wn. App. at 204, 209.

Here, the trial court entered two orders granting summary judgment in favor of the Association. In its summary judgment order dismissing West's PRA claim, the trial court entered 35 findings of fact and eight conclusions of law. Because these findings of fact and conclusions of law are superfluous to the summary judgment orders, we do not consider them and we do not address West's argument that these findings are not supported by substantial evidence and that the conclusions applied an incorrect legal standard. Thus, West's argument fails.

ATTORNEY FEES

The Association argues that West's appeal is frivolous and requests attorney fees and costs in accordance with RAP 18.1, RAP 18.9, and RCW 4.84.185 for defending against a frivolous appeal. An appeal is frivolous if it presents no debatable issues and is so meritless that there is no reasonable possibility the appellate court will reverse. *In re Guardianship of Wells*, 150 Wn App. 491, 504, 208 P.3d 1126 (2009). Because West's appeal presented debatable

issues on which reasonable minds could differ we exercise our discretion and decline the Association's request for attorney fees on appeal.

Affirmed.

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.

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Worswick, C.J.

I concur:

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Hunt, J.

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Quinn-Brintnall, J.