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SUPREME COURT NO. 95446-1
COURT OF APPEALS NO. 75176-0-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

MUFFIN FAYE ANDERSON,

Petitioner,

v.

COMCAST CENTER XFINITY HOME SECURITY,

Respondent.

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. STATEMENT OF THE CASE.....	2
III. ARGUMENT	4
A. The Petition is Untimely Under RAP 13.4(a).....	4
B. The Petition Fails to Present Any Issue Under RAP 13.4(b)	4
IV. CONCLUSION.....	7

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Davis v. Cox</i> , 183 Wn.2d 269 (2015)	6
<i>Pederson v. Potter</i> , 103 Wn. App. 62 (2000)	6
<i>U.S. Bank Nat. Ass’n v. Lissak</i> , 188 Wn. App. 1043 (2015)	6
Other Authorities	
Rules of Appellate Procedure	
13.4(a)	2, 4
13.4(b)	2, 4, 5, 7
18.9(c)	3
U.S. Constitution amendment XIV	5

I. INTRODUCTION

In recent years, Petitioner Muffin Faye Anderson failed to provide sufficient payment for the services Comcast provided. Anderson often paid Comcast \$79.81 per month despite the fact that her bills were considerably higher than this amount. Even though Anderson asked Comcast in October 2013 to add home security services to her account, Anderson believed Comcast should never increase her monthly service rates of \$79.81, regardless of the additional services that Anderson ordered and Comcast provided. On April 14, 2015, Comcast terminated Ms. Anderson's services based upon her failure to pay.

Thus began a three year saga of duplicative, untimely, and frivolous motions. As discussed more fully below, Anderson lost her small claims trial against Comcast and then proceeded to file a litany of motions in King County Superior Court. Judge Douglass North ultimately enjoined Anderson from filing additional motions in this matter. Anderson ignored this injunction. She filed yet another motion with the trial court, and then began submitting a number of appellate briefs to the Court of Appeals, each of which were found to be either untimely or frivolous.

Anderson now seeks to relitigate her various motions and appeals before the Washington Supreme Court. The Court should deny the

Petition as it is untimely under RAP 13.4(a) and because Anderson fails to present any issue that satisfies the standard for discretionary review under RAP 13.4(b).

II. STATEMENT OF THE CASE

Anderson is a former customer of Respondent Comcast Broadband Security, LLC (“Comcast”), sued as “Comcast Center/Xfinity Home Security.” Prior to filing this action, Anderson brought a small claims suit in King County District Court seeking \$5,000 in damages against Comcast, alleging problems with her Comcast service. Following a trial on the merits, the District Court dismissed the claim with prejudice on May 29, 2015.

Anderson failed to appeal that judgment. Instead, on June 26, 2015, Anderson filed the present lawsuit in King County Superior Court based on the same factual allegations as her small claims action. On October 30, 2015, Judge Douglass North dismissed Anderson’s case with prejudice, finding that the doctrine of *res judicata* barred Anderson’s claims because they had been or should have been adjudicated in the small claims action.

Anderson failed to appeal this second judgment as well. Instead, Anderson has filed a litany of duplicative motions seeking to vacate or otherwise invalidate the Superior Court’s dismissal. Judge North

dismissed or declined to hear each of these motions, eventually enjoining Anderson from making further duplicative filings. On April 21, 2016, Anderson filed her seventh duplicative motion, and Judge North issued \$500 in sanctions for Anderson's failure to heed the Court's injunction.

On April 19, 2016, Anderson appealed a number of orders to the Court of Appeals, including A) the October 30, 2015 dismissal of her case, B) a February 16, 2016 order denying her motion to "vacate prior proceeding and stay case," and C) two April 8, 2016 orders denying her motion for a "new trial" and denying her motion to seal medical records. The Court of Appeals found that the appeals of the October 30, 2015 and February 16, 2016 orders were untimely and thus declined to hear either matter. Instead, the Court of Appeals confined its analysis to Anderson's appeal of the April 8, 2016 order denying her motion for a "new trial" and order denying her motion to seal medical records. On November 20, 2017, the Court of Appeals held that Anderson's appeal of both orders was frivolous under RAP 18.9(c). On the same day, Anderson filed a motion for reconsideration and motion to publish the opinion. The Court of Appeals denied both motions on January 8, 2018.

On March 25, 2018, Anderson filed a petition for review. Through her Petition, Ms. Anderson essentially seeks to relitigate the litany of dismissed motions she filed with the Superior Court and Court of Appeals.

Yet the only opinion ripe for review is the Court of Appeals' November 20, 2017 opinion affirming the Superior Court's dismissal of Anderson's motion for a "new trial" and order denying her motion to seal medical records. The Court should deny the Petition because A) the Petition is untimely under RAP 13.4(a); and B) Anderson fails to present any issue that satisfies the standard for discretionary review under RAP 13.4(b).

III. ARGUMENT

A. The Petition is Untimely Under RAP 13.4(a)

RAP 13.4(a) provides that:

[i]f no motion to publish or motion to reconsider all or part of the Court of Appeals decision is timely made, a petition for review must be filed within 30 days after the decision is filed. If such a motion is made, the petition for review must be filed within 30 days after an order is filed denying a timely motion for reconsideration or determining a timely motion to publish.

Here, the Court of Appeals denied Anderson's motion for reconsideration and motion to publish opinion on January 8, 2018. Anderson was therefore required to file her Petition by February 7, 2018. Anderson failed to do so, and her Petition is therefore untimely and should be denied.

B. The Petition Fails to Present Any Issue Under RAP 13.4(b)

RAP 13.4(b) states that the Washington Supreme Court will only accept a petition for review if one of the following conditions is met:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Anderson attempts to create an issue for discretionary review under RAP 13.4(b)(3). At base, Anderson's claim is that the Superior Court violated her constitutional rights by dismissing her claims as a matter of law instead of allowing her case to proceed to trial. Specifically, Anderson argues that the Superior Court violated the due process clause of the Fourteenth Amendment and the Washington State Constitution and that it infringed her right to trial by jury. Anderson's arguments, however, do not establish a basis for review under RAP 13.4(b)(3).

First, Anderson was *already afforded a trial on the merits*. The King County District Court heard the merits of Anderson's small claims suit and dismissed her case against Comcast. The King County Superior

Court dismissed her subsequently filed action on the basis of *res judicata* specifically because the District Court had already adjudicated the matter.¹

Second, even if Anderson had not previously been afforded a trial on the merits (which she has), the Superior Court's dismissal of her case would not violate her constitutional rights. Washington courts may dismiss actions as a matter of law without violating a party's right to trial by jury or due process rights. *See, e.g., Davis v. Cox*, 183 Wn.2d 269, 289 (2015) ("it is well established that '[w]hen there is no genuine issue of material fact ... summary judgment proceedings do not infringe upon a litigant's constitutional right to a jury trial.") (citations omitted); *U.S. Bank Nat. Ass'n v. Lissak*, 188 Wn. App. 1043, at *3 (2015) (affirming that trial court's order granting motion to dismiss did not violate the plaintiff's right to trial by jury); *Pederson v. Potter*, 103 Wn. App. 62, 74 n.1 (2000) (holding that "[a]pplication of *res judicata* ... does not deprive the [plaintiffs] of their due process rights."). The Superior Court's orders do not curtail Anderson's right to trial by jury simply because they dismissed Anderson's claims against Comcast as a matter of law.

Anderson had her opportunity to litigate her claims against Comcast in the

¹ Note that Anderson's appeal of the Superior Court's October 30, 2015 order dismissing her claims was not timely appealed to the Court of Appeals, and therefore is not ripe for adjudication by the Washington Supreme Court. Comcast addresses the dismissal order only for purposes of disputing Anderson's constitutional claims.

District Court, and the Superior Court properly rejected her efforts to relitigate the same claims.

Anderson's Petition falls far short of meeting any of the conditions upon which the Court should accept discretionary review under RAP 13.4(b). The Court should deny the Petition.

IV. CONCLUSION

For the foregoing reasons, Comcast respectfully requests that the Court deny Anderson's Petition.

RESPECTFULLY SUBMITTED this 27th day of April, 2018.

Davis Wright Tremaine LLP
Attorneys for Respondent
Comcast Broadband Security, LLC

By *s/ Jordan A. Clark* _____

Jordan A. Clark
WSBA # 49659

CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2018, I electronically filed the foregoing Respondent's Answer to Petition for Review using the Washington Supreme Court's Portal and which will serve any counsel of record. I also served the Petitioner by United Parcel Service.

Muffin Faye Anderson
3503 S. Hudson Street
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Executed this 27th day of April, 2018.

s/ Jordan Clark

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