

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
12/23/2019 12:23 PM  
BY SUSAN L. CARLSON  
CLERK

Supreme Court No. 97882-4

---

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

---

RICHARD L. FERGUSON,

Petitioner,

v.

BAKER LAW FIRM, P.S., ET AL.

Respondents

On Appeal from the Court of Appeals  
for the State of Washington, Division 1  
No. 78025-5

---

**ANSWER TO PETITION FOR REVIEW**

---

Mark A. Thompson, WSBA No. 29730  
MIX SANDERS THOMPSON, PLLC  
1420 Fifth Avenue, Ste. 2200  
Seattle, WA 98101  
Tel: 206-521-5989  
Fax: 888-521-5980

Email: [mark@mixsanders.com](mailto:mark@mixsanders.com)

*Attorney for Respondents Baker Law Firm, P.S., Bakers, Chavez, and  
Matheson*

**TABLE OF CONTENTS**

	<b>Page</b>
TABLE OF AUTHORITIES.....	iv
INTRODUCTION .....	1
ISSUES PRESENTED FOR REVIEW .....	3
COUNTERSTATEMENT OF THE CASE .....	3
Mr. Ferguson's Employment at Baker Law Firm.....	4
Mr. Ferguson's Amended Complaint .....	5
Relevant Procedural History .....	6
REASONS WHY REVIEW SHOULD BE DENIED .....	9
1. Standard of Review.....	9
2. Mr. Ferguson’s Defamation Claim Was Dismissed Following the Application of Settled Law to Undisputed Facts .....	11
3. Mr. Ferguson’s Petition Does Not Involve Any Issues of Substantial Public Interest.....	14
4. The Decision Does Not Conflict with Prior Decisions of the Washington State Supreme Court or the Court of Appeals .....	16
ATTORNEY’S FEES AND COSTS .....	20
CONCLUSION .....	21
PROOF OF SERVICE .....	22

## TABLE OF AUTHORITIES

<b>Cases</b>	<b>Page</b>
<i>Coggle v. Snow</i> , 56 Wn. App. 499, 784 P.2d 554 (Div. 1 1990).....	16, 18
<i>Davis v. Cox</i> , 180 Wn. App. 514, 540, 325 P.3s 225 (Div. 1 2014), <i>reversed on other grounds</i> , 183 Wn.2d 269 (2015).....	15
<i>Perez-Crisantos v. State Farm Fire &amp; Cas. Co.</i> , 187 Wn.2d 669, 686, 389 P.3d 476 (2017) .....	15
<i>Twelker v. Shannon &amp; Wilson, Inc.</i> , 88 Wn.2d 473, 564 P.2d 1131, 1133 (1977).....	12
<i>Hurst v. Farmer</i> , 40 Wn. App. 116, 697 P.2d 280, <i>review denied</i> , 103 Wn.2d 1038 (1985) .....	12
<i>Phoenix Trading, Inc. v. Loops LLC</i> , 732 F.2d 936, 943 (9th Cir. 2013).....	13
<i>Davis v. Cox</i> , 183 Wn.2d 269, 351 P.2d 862 (2015), <i>abrogated by, Mayton Sand and Gravel, LLC v. Thurston County</i> , 423 P.3d 23 (2018) .....	16, 17, 18
<b>Statutes</b>	
RCW 2.28.010 .....	16
RCW 4.16.100 .....	13
RCW 4.24.525 .....	17
RCW 4.24.510 .....	1, 2, 7, 11, 12, 17, 20
RCW 50.36.030 .....	10, 11
<b>Rules</b>	
CR 11 .....	20
CR 56 .....	2, 8, 15
RAP 13.4 .....	9, 10
RAP 18.1 .....	20, 21

## I. INTRODUCTION

This Petition for Review arises out a lawsuit filed by Richard L. Ferguson in Snohomish County Superior Court in July 2017 alleging nine causes of action against his former employer, Baker Law Firm, P.S., as well as individual employees within the firm. At least eight of Mr. Ferguson's nine claims were premised on his belief that he was denied unemployment benefits due to allegedly false statements by the Baker Defendants while testifying during an administrative hearing before the Employment Security Department.

Defendants Baker Law Firm, P.S., Gary L. Baker, Darcy Baker, Brenda Chavez, Kelly Matheson, and Richard Matheson (Baker Defendants) moved for summary judgment in the trial court on October 10, 2017. The Baker Defendants' primarily based their motion on RCW 4.24.510, which provides them statutory immunity so as to protect the judicial process and witnesses from the very type of claims asserted by Mr. Ferguson. In addition, the Baker Defendants argued that Mr. Ferguson was an 'at will' employee who could be terminated for any reason, or no reason at all, and thus his wrongful termination claim lacked merit.

Mr. Ferguson opposed the Baker Defendants' motion for summary judgment and filed a Motion to Strike portions of the Declaration of Gary Baker submitted in support of the Baker Defendants' Motion for Summary

Judgment as well as a Motion to Continue the Summary Judgments before the court. At no time since filing his lawsuit in July 2017, did Mr. Ferguson serve any discovery on any of the Defendants.

The trial court heard oral argument on all motions on December 22, 2017, and accepted supplemental briefing by the parties. On January 9, 2018, the trial court granted the Baker Defendants' Motion for Summary Judgment while denying Mr. Ferguson's Motions to Strike and to Continue Defendants' Motion for Summary Judgment. In its well-reasoned and thorough Order, the trial court also awarded statutory costs and attorney's fees pursuant to RCW 4.24.510.

The trial court considered supplemental motions for an award of fees and costs and on February 6, 2018 awarded, in part, the Baker Defendants' fees under RCW 4.24.510 as well as fees pursuant to Civil Rule 11. At the same time, the trial court denied Mr. Ferguson's Motion for Reconsideration.

Mr. Ferguson filed a Notice of Appeal with the Superior Court on February 8, 2018. He then filed an Appellant Brief with the Court of Appeals, Division 1 on September 12, 2018, contending that the Superior Court abused its discretion by denying his CR 56(f) Motion to Continue the Summary Judgment and his CR 12(f) Motion to Strike as well in its decision to grant Defendants' Motion for Summary Judgment. Mr. Ferguson also

challenged the Superior Court's award of \$41,253.00 in attorney fees and costs. He subsequently filed two amended briefs before the appellate court. Respondents' briefs were filed on November 14 and 16, 2018. Mr. Ferguson then filed his Reply on December 17, 2018.

On August 19, 2019, the Court of Appeals issued its lengthy and well-reasoned Opinion affirming the Superior Court's decisions regarding Defendants' Motion for Summary Judgment and Mr. Ferguson's Motions to Continue and to Strike. It also affirmed the Superior Court's award of attorney fees and costs.

Mr. Ferguson subsequently filed a Motion for Reconsideration on September 9, 2019. The Court of Appeals denied the motion on October 22, 2019. Mr. Ferguson now files a baseless Petition for Review to this Court hoping to overturn the decisions of the Superior Court as well as the Court of Appeals.

## **II. ISSUES PRESENTED FOR REVIEW**

1. Is there any basis, as required under the Washington Rules of Appellate Procedure ("RAP"), Rule 13.4 (b), for this Court to accept discretionary review of this matter?
2. Are Respondents entitled to an award of attorney's fees and costs incurred in responding to Mr. Ferguson's Petition for Review?

## **III. COUNTERSTATEMENT OF THE CASE**

The following outlines the relevant factual and procedural history of this matter:

**Mr. Ferguson’s Employment at Baker Law Firm**

Mr. Ferguson began working as a paralegal at the Baker Law Firm, P.S. (“Baker Law Firm”) on May 5, 2014. CP 384, CP 669. During his tenure of employment, employees of Baker Law Firm began to notice Mr. Ferguson regularly smelled of old alcohol when he would show up to work. CP 669. Employees were concerned as the odor persisted and interfered with firm operations. CP 669–670.

Gary Baker, the President and owner of Baker Law Firm, had concerns about the effect this had upon Mr. Ferguson’s performance as well as on clients and employees. Mr. Baker discussed these concerns with Mr. Ferguson in November of 2014. CP 669. Mr. Baker again met with Mr. Ferguson regarding this issue on January 21, 2015, and at this time provided Mr. Ferguson with a memorandum detailing the firm’s concerns about Mr. Ferguson’s alcohol consumption, odor, and performance. CP 670, CP 11. This memorandum advised Mr. Ferguson that, if this behavior was not remedied, his employment at Baker Law Firm would be terminated. *Id.*, Evidence before the trial court demonstrated Mr. Ferguson received this memorandum and was aware of its contents. CP 184.

On March 13, 2015, Mr. Baker, on behalf of the Baker Law Firm, terminated Mr. Ferguson's employment. CP 670. At the discharge meeting, Mr. Baker again advised Mr. Ferguson the firm had an issue with his continuing and unresolved alcohol odor. *Id.* Mr. Baker did not issue a separate written notice of termination as this is not required by RCW 50.36.030.

Following his termination, Mr. Ferguson applied for and was denied unemployment benefits. CP 184. Mr. Ferguson appealed this decision and a hearing was conducted before the Office of Administrative Hearings for the Employment Security Department ("ESD"). CP 185. Baker Law Firm employees, Gary Baker, Brenda Chavez, and Kelly Matheson testified at the ESD hearing. Also, attorney Daniel Laurence, who was previously an office share tenant in the building, testified. *Id.* Mr. Ferguson testified at this hearing and cross-examined all testifying witnesses. *Id.*

The Office of Administrative Hearings for the ESD affirmed the denial of benefits on July 21, 2015. *Id.* Mr. Ferguson sought review of this decision, which was again affirmed by the Snohomish County Superior Court on September 11, 2015. *Id.* Mr. Ferguson then appealed the Superior Court's decision to the Court of Appeals, which affirmed the decision to deny benefits. CP 299.

### **Mr. Ferguson's Amended Complaint**



On July 20, 2017, or over two years after Mr. Ferguson's termination from Baker Law Firm, he filed his Complaint with the Snohomish County Superior Court. CP 185. Mr. Ferguson then filed an Amended Complaint on September 15, 2017. *Id.* At no time did he serve discovery requests upon any Defendant. CP 12.

Within his Amended Complaint, Mr. Ferguson alleged the Baker Defendants provided false information to the ESD that lead to the denial of Mr. Ferguson's application for unemployment benefits. Mr. Ferguson also alleged his inability to obtain subsequent employment is due to statements made by the Baker Defendants. CP 730. Mr. Ferguson brought claims for wrongful termination, breach of contract, criminal misconduct, conspiracy to commit criminal misconduct, defamation, unlawful blacklisting, negligent supervision, intentional infliction of emotional distress, and negligent infliction of emotional distress. CP 710–748.

### **Relevant Procedural History**

On October 10, 2017, the Baker Defendants filed a Motion for Summary Judgment seeking dismissal of Mr. Ferguson's claims. CP 667. Mr. Ferguson filed a Motion to Continue this hearing as well as a Motion to Strike the Declaration of Gary Baker and its exhibits. CP 365. Because the parties' respective motions were noted for a court holiday, all Motions were continued until December of 2017. CP 185.

The Baker Defendants re-noted their motion for December 13, 2017. *Id.* This hearing was again pushed back until December 22, 2017. *Id.* At no time did Mr. Ferguson re-note the hearing on his Motion to Continue nor did he serve discovery requests upon Defendants. On January 9, 2018, the Superior Court granted both the Baker Defendants' Motion for Summary Judgment as well as a Motion for Summary Judgment from Co-Defendant's Laurence. CP 182, CP 172. The Superior Court denied Mr. Ferguson's Motion to Continue, finding that he failed to make a sufficient showing a continuance was warranted by identifying the discovery necessary to gather evidence sufficient to create a material issue of fact, and that some of the discovery he complained he needed was readily discoverable by himself. CP 183-184.

The Court also denied Mr. Ferguson's Motion to Strike, and in so doing affirmed that it had only considered evidence admissible under the rules of evidence in reviewing any exhibits to the Declaration of Gary Baker. *Id.*

In addition to dismissing Plaintiff's claims with prejudice, the Court awarded the Baker Defendants' statutory damages pursuant to RCW 4.24.510 in the amount of \$10,000, along with reasonable attorney's fees and costs, to be determined in supplemental proceedings. CP 191.

The Baker Defendants filed their motion for attorneys' fees and costs on January 12, 2018. CP 164. A supplemental memorandum regarding award of attorney fees was filed on January 26, 2018. CP 72.

Meanwhile, Mr. Ferguson filed a Motion for Reconsideration requesting reversal of the Court's order granting Defendants' Motion for Summary Judgment and denying Plaintiff's Motion to Continue. CP 96.

On February 6, 2018, the trial court denied Mr. Ferguson's Motion for Reconsideration. CP. 56. On the same date the trial court granted in part, the Baker Defendants' Motion for Attorney Fees. CP 42.

Mr. Ferguson filed a Notice of Appeal with the Superior Court on February 8, 2018. He then filed an Appellant Brief with the Court of Appeals, Division 1 on September 12, 2018, contending that the Superior Court abused its discretion by denying his CR 56(f) Motion to Continue the Summary Judgment and his CR 12(f) Motion to Strike as well in its decision to grant Defendants' Motion for Summary Judgment. Mr. Ferguson also challenged the Superior Court's award of \$41,253.00 in attorney fees and costs. He subsequently filed two amended briefs before the appellate court. Respondents' briefs were filed on November 14 and 16, 2018. Mr. Ferguson then filed his Reply on December 17, 2018.

On August 19, 2019, the Court of Appeals issued its well-reasoned Opinion affirming the Superior Court's decisions regarding Defendants' Motion for Summary Judgment and Mr. Ferguson's Motions to Continue and to Strike. It also affirmed the Superior Court's award of attorney fees and costs.

Mr. Ferguson subsequently filed a Motion for Reconsideration on September 9, 2019. Reconsideration was denied by the Court of Appeals on October 22, 2019. He now files a baseless Petition for Review to this Court hoping to overturn the decisions of the Superior Court as well as the Court of Appeals.

#### **IV. REASONS WHY REVIEW SHOULD BE DENIED**

##### **A. Standard of Review.**

Pursuant to the Washington Rules of Appellate Procedure, Rule 13.4(b), a petition for review to the Washington Supreme Court is accepted only:

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another 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.

RAP 13.4(b).

Mr. Ferguson contends that review is warranted because of alleged conflicts within Washington law regarding an employee's ability to make a claim against his or her employer and that this matter involves an issue of substantial interest. As discussed further below, Mr. Ferguson is mistaken and review is not warranted under any of the criteria established in RAP 13.4(b).

**B. Mr. Ferguson's Defamation Claim Was Dismissed Following the Application of Settled Law to Undisputed Facts.**

Mr. Ferguson's primary contention within his petition for review is that the Court of Appeals did not resolve a conflict he perceives between his claim of defamation, his allegations of criminal wrongdoing on the part of Defendants, and the immunity accorded to Defendants for their testimony in the administrative law hearing. The Trial Court's dismissal and the Court of Appeal's decision regarding this dismissal involved the straightforward application of settled law to undisputed facts. Mr. Ferguson's argument lacks merit and the Court should decline his Petition for Review.

Mr. Ferguson alleges that Defendants violated RCW 50.36.030 and conspired to violate RCW 50.36.030 in testifying at the administrative hearing determining his unemployment benefits. CP 738-739. This statute provides as follows:

Employing units or agents thereof supplying information to the employment security department pertaining to the cause of a benefit claimant's separation from work, which cause stated to the department is contrary to that given the benefit claimant by such employing unit or agent thereof at the time of his or her separation from the employing unit's employ, shall be guilty of a misdemeanor and shall be punished by a fine of not less than twenty dollars nor more than two hundred and fifty dollars or by imprisonment in the county jail for not more than ninety days.

RCW 50.36.030.

The trial court properly ruled that, as a matter of law, this statute provides no private right of action such that Mr. Ferguson's claim of criminal conduct failed as a matter of law.

Moreover, even *had* this statute provided for a private right of action, Mr. Ferguson could not prevail on this claim as Mr. Baker informed Mr. Ferguson that his continuous stench of alcohol was the reason for his termination. CP 48, CP 575.

Second, Defendants were indeed entitled to immunity for their testimony during the course of the employment hearing to protect them against the very sort of claims Mr. Ferguson made against them following this hearing. RCW 4.24.510 provides for complete immunity from civil liability for claims arising out of communication to a government agency regarding any matter of concern to that agency. It provides in relevant part:

A person who communicates a complaint or information to any branch or agency of federal, state, or local government, . . . is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization. A person prevailing upon the defense provided for in this section is entitled to recover expenses and reasonable attorneys' fees incurred in establishing the defense and in addition shall receive statutory damages of ten thousand dollars. Statutory damages may be denied if the court finds that the complaint or information was communicated in bad faith.

RCW 4.24.510.

Judicial proceedings, such as the hearing that occurred on May 26, 2015 before Administrative Law Judge David Turplesmith, are accorded absolute privilege. *Twelker v. Shannon & Wilson, Inc.*, 88 Wn.2d 473, 475–75, 564 P.2d 1131, 1133 (1977). The purpose of this immunity is to ensure judgments are based upon the full disclosure of facts, unhampered by fear of defamation suits. *Id.* This absolute privilege is also accorded to administrative law hearings. *Hurst v. Farmer*, 40 Wn. App. 116, 117, 697 P.2d 280, *review denied*, 103 Wn.2d 1038 (1985) (“Statements made during the course of and relevant to the proceedings of an administrative agency acting in a quasi-judicial manner are absolutely privileged.”).

The Baker Defendants’ testimony cannot support a defamation claim. It is absolutely privileged and RCW 4.24.510 was enacted to preserve

the immunity witnesses enjoy and to ensure participation in legal proceedings such as the ESD administrative hearing.

Third, Mr. Ferguson's defamation claim was also time barred such that dismissal of this claim was appropriate even had the Superior Court not considered the merits of this claim and Defendants' immunity from it in its decision to grant Defendants' Motion for Summary Judgment.

Washington law requires actions for defamation be brought within two years. RCW 4.16.100. This limitation begins to run on the date the plaintiff knew or should have known all of the essential elements of the cause of action. *Phoenix Trading, Inc. v. Loops LLC*, 732 F.2d 936, 943 (9th Cir. 2013). Mr. Ferguson was present at the May 26, 2015 hearing where the allegedly defamatory statements occurred, so he had immediate knowledge of the allegedly defamatory statements. CP 502. Yet, he did not file his Complaint in the underlying matter until July 20, 2017, or over two years after this hearing took place.

Finally, Mr. Ferguson's claim of defamation failed because the testimony at issue from the Baker Law Firm employees was not false. Mr. Ferguson admitted during the hearing he was aware that his continual alcohol odor was an issue at work. *Id.* Thus, employees testifying to this



fact does not constitute false statements that could give rise to a defamation claim.

Mr. Ferguson's defamation claim was untimely, based upon a statute that did not provide a private right of action, lacked merit, and was barred by the immunity accorded to Defendants during their testimony in the administrative law hearing. His claim failed as a matter of settled law. The Court should decline Mr. Ferguson's petition for review.

**C. Mr. Ferguson's Petition Does Not Involve Any Issues of Substantial Public Interest.**

Mr. Ferguson claims his Petition regards "issues of substantial public interest affecting rights of pro se parties to pursue claims under Washington's Constitution." Yet he fails to provide how the dismissal of his claims against Defendants affects the public whatsoever as well as how this dismissal was in violation of the Washington State Constitution. Indeed, Mr. Ferguson's primary contention seems to be his belief he was treated unfairly by the Superior Court's requirement that he abide by the rules of civil procedure, as is required of all parties in litigation.

The Superior Court properly denied Mr. Ferguson's Motion to Continue as Mr. Ferguson failed to conduct any discovery in this matter despite having filed his original Complaints months prior to Defendants summary judgment filings, failed to provide good cause as to why no

discovery had been done, and failed to demonstrate any genuine issue of material fact regarding his claims despite the fact that many of the facts creating such an issue would have been within his firsthand knowledge of his dismissal regardless of his discovery efforts.

To obtain a continuance pursuant to CR 56(f), the moving party must provide why he was unable to obtain specific facts to demonstrate a genuine issue of material fact. *Davis v. Cox*, 180 Wn. App. 514, 540, 325 P.2d 225 (Div. 1 2014), *reversed on other grounds*, 183 Wn.2d 269 (2015) (citations omitted). Denying a motion for continuance is appropriate when “(1) the requesting party does not have a good reason for the delay in obtaining the evidence, (2) the requesting party does not indicate what evidence would be established by further discovery, or (3) the new evidence would not raise a genuine issue of fact.” *Perez-Crisantos v. State Farm Fire & Cas. Co.*, 187 Wn.2d 669, 686, 389 P.3d 476 (2017).

Mr. Ferguson first filed his Complaint on July 20, 2017. CP 765–800. He did not serve discovery requests upon Defendants at that time. CP 185. Mr. Ferguson then filed an Amended Complaint two months later, on September 15, 2017. CP 710–748. Again, he did not serve discovery requests upon Defendants. CP 185. When Mr. Ferguson sought to continue Defendants’ Motion for Summary Judgment to provide additional time for discovery, he could provide no good reason for his delay in obtaining any

supporting evidence for his claims until that point in the litigation. CP 185. He also could not state what evidence he would obtain from discovery, were his continuance granted, nor how this evidence would create a genuine issue of material fact for any of his claims. CP 186.

Mr. Ferguson also objects to the timing of the Superior Court's hearing on his Motion to Strike. RCW 2.28.010 provides specific powers to every court of justice in the State. It specifically empowers courts "to provide for the orderly conduct of proceedings before it or its officers." *See*, RCW 2.28.010. Accordingly, the Superior Court presiding over Mr. Ferguson's claims had every right to consider motions in whatever order it deemed relevant. Mr. Ferguson cannot demonstrate any prejudice he experienced in the timing of the motions as they were heard.

**D. The Decision Does Not Conflict With Prior Decisions of the Washington State Supreme Court or the Court of Appeals.**

Mr. Ferguson provides only two citations in support of his argument that the Court of Appeals' opinion conflicts with prior decisions by this Court and other appellate decisions. He cites to *Davis v. Cox*, 183 Wn.2d 269, 351 p.3d 862 (2015), and *Coggle v. Snow*, 56 Wn. App. 499, 507, 784 P.2d 554 (1990), but provides no explanation for what is intended by these citations or how the Court of Appeals' decision directly conflicts with them.

It is assumed Mr. Ferguson cites to *Davis v. Cox* for his argument that the Court improperly awarded costs and fees to Defendants following dismissal of Mr. Ferguson's claims against them. *Davis v. Cox* is inapplicable to the present case, however, as that ruling regarded RCW 4.24.525 and the new procedure it created for adjudicating SLAPP claims separate from civil procedure that was not present in previous anti-SLAPP statutes. 183 Wn.2d 269, 276, 351 P.3d 862 (2015), *abrogated by, Mayton Sand and Gravel, LLC v. Thurston County*, 423 P.3d 23 (2018). The Court in *Davis* took issue with the procedure in RCW 4.24.525(4)(b) requiring a trial court to weigh the evidence before it and make a factual determination of a plaintiff's probability of prevailing on his or her SLAPP claim, a determination made by a showing of only a preponderance of the evidence by the moving party, when determining whether to dismiss a matter. *Id.* at 281.

RCW 4.24.510, the statutory authority in support of Defendants' fee award, has no such provision allowing for a means of adjudication separate from summary judgment or jury trial. In this matter, Defendants prevailed in dismissing this claim by bringing a motion for summary judgment and demonstrating there was no genuine issues as to material fact that Mr. Ferguson's claim arose from communications to a government agency protected from liability under RCW 4.24.510. By the plain language of this

statute, the Baker Defendants – as the prevailing parties on the defense afforded by the statute – are entitled to expenses and reasonable attorneys’ fees incurred in defending against Mr. Ferguson’s claim as well as statutory damages in the amount of \$10,000.00 per Defendant. This was the measure of damages accorded by the trial court, properly imposed under constitutional statutory authority.

The Court of Appeals’ decision to uphold this proper award of costs and fees to Defendants following their defense of Mr. Ferguson’s meritless claims is not contradictory to *Davis v. Cox*. There is no basis for this Court’s review.

The Court of Appeal’s decision also does not conflict with *Coggle v. Snow*. 56 Wn. App. 499, 784 P.2d 554 (1990). In *Coggle*, the Court of Appeals reversed the trial court’s denial of the plaintiff’s motion to continue and deemed genuine issues of material fact existed regarding whether the defendant doctor had deviated from the accepted standard of medical care and informed consent. Plaintiff sought to continue the defendant’s summary judgment motion in light of the fact he had recently obtained new counsel and he had valid reasons as to why he was unable to obtain a declaration from one of his treating providers, who was predicted to opine that defendant had breached his duty of care, in time for plaintiff’s response. The Court of Appeals determined the trial court abused its discretion in

denying plaintiff's motion to continue because plaintiff provided good cause for this continuance in light of the valid reasons he was unable to produce his doctor's declaration in time for the summary judgment hearing, his counsel's inability to prepare for summary judgment having filed his notice of association one week after the defendant filed his motion for summary judgment, and because the plaintiff identified the evidence he sought and how it would create a genuine issue of material fact.

*Cogle* is inapplicable to Mr. Ferguson's case. In his Motion to Continue, Mr. Ferguson could not provide a good reason for his delay in obtaining any evidence supporting his claims, he could not state with specificity what evidence would be obtained from discovery, were additional time granted, nor could he provide how this evidence would create a genuine issue of material fact for any of the claims he put forward. CP 186. In asserting his need for additional discovery, Mr. Ferguson provided only vague, conclusory statements regarding what evidence was needed. CP 186. Mr. Ferguson failed to meet the minimum requirements necessary to support his motion to continue the summary judgment hearings.

Moreover, Mr. Ferguson failed to demonstrate a genuine issue of material fact for any of his claims even where certain facts that could have created such an issue should have been within Mr. Ferguson's knowledge

regardless of discovery. Specifically, facts supporting his wrongful termination and breach of contract claims should have been readily available to him as the person who allegedly reached agreement with Baker Law Firm elevating his status from an ‘at will’ employee or forming a contractual relationship with it. However, Mr. Ferguson could provide no such facts even though given ample opportunity and time by the trial court.

Simply put, the Trial Court’s dismissal of Mr. Ferguson’s claims and the Court of Appeal’s affirming of this dismissal were both proper, based in valid Washington law, and should not be reviewed nor reversed by this Court.

#### **V. ATTORNEY’S FEES AND COSTS**

Washington Rules of Appellate Procedure allow for an award of fees where supported by law. RAP 18.1(a). Pursuant to RCW 4.24.510, a person prevailing upon a defense under this statute is entitled to recover expenses, reasonable attorney’s fees, and statutory damages of \$10,000. Further, CR 11 provides that an appropriate sanction may be imposed by the court, either upon motion or upon its own initiative, upon the party who signed a pleading, motion, or legal memorandum that is not well grounded nor warranted by law or is filed for any improper purpose.

Defendants have incurred significant cost and expense of time and resources in defending against Mr. Ferguson’s meritless claims.

Consequently, if this Court denies Mr. Ferguson's Petition, Defendants respectfully request that the Court award reasonable attorney's fees and costs to them pursuant to RAP 18.1(a) for the time spent in preparing an Answer to this Petition.

## VI. CONCLUSION

Appellees Baker Law Firm, P.S., Gary L. Baker, Darcy Baker, Brenda Chavez, Kelly Matheson, and Richard Matheson respectfully request the Court deny Mr. Ferguson's Petition for Review and award all reasonable attorney fees and costs to Defendants pursuant to RAP 18.1.

RESPECTFULLY SUBMITTED this 23<sup>rd</sup> of December, 2019.

/s/ Mark A. Thompson

Mark A. Thompson, WSBA No. 29730

MIX SANDERS THOMPSON, PLLC

1420 Fifth Avenue, Ste. 2200

Seattle, WA 98101

Tel: 206-521-5989

Fax: 888-521-5980

Email: mark@mixsanders.com

*Attorney for Respondents Baker Law Firm,  
P.S., Bakers, Chavez, and Matheson*



## CERTIFICATE OF SERVICE

I hereby declare under the penalty of perjury under the law of the State of Washington that on December 23, 2019, I caused the foregoing ANSWER TO PETITION FOR REVIEW to be e-filed with the Washington State Supreme Court, and a true and correct copy of the following below:

Richard L. Ferguson  
20012 72nd Dr. SE  
Snohomish, WA 98296  
*Pro Se Plaintiff*  
 U.S. Mail  
 E-mail to [ferg099@comcast.net](mailto:ferg099@comcast.net)

Gary L. Baker  
1802 Grove Street  
Marysville, WA 98270-4330  
 E-mail to  
[garybaker@grovestreetlaw.com](mailto:garybaker@grovestreetlaw.com)

Patrick N. Rothwell  
Keith M. Liguori  
Davis Rothwell Earle & Xochihua,  
PC  
520 Pike St., Suite 2500  
Seattle, WA 98101  
*Attorney for Defendant Daniel  
Laurence, Esq.*  
 U.S. Mail  
 E-mail to  
[prothwell@davisrothwell.com](mailto:prothwell@davisrothwell.com)  
[kliguori@davisrothwell.com](mailto:kliguori@davisrothwell.com)

DATED this 23<sup>rd</sup> day of December, 2019, at Seattle, Washington.

/s/ Mark A. Thompson  
Mark A. Thompson, WSBA No. 29730  
MIX SANDERS THOMPSON, PLLC  
1420 Fifth Avenue, Ste. 2200  
Seattle, WA 98101  
Tel: 206-521-5989  
Fax: 888-521-5980  
Email: [mark@mixsanderson.com](mailto:mark@mixsanderson.com)  
*Attorney for Respondents Baker Law Firm,  
P.S., Bakers, Chavez, and Matheson*

**MIX SANDERS THOMPSON, PLLC**

**December 23, 2019 - 12:23 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 97882-4  
**Appellate Court Case Title:** Richard Ferguson v. Baker Law Firm, P.S., et al.  
**Superior Court Case Number:** 17-2-07335-9

**The following documents have been uploaded:**

- 978824\_Answer\_Reply\_20191223122118SC941368\_0048.pdf  
This File Contains:  
Answer/Reply - Answer to Petition for Review  
*The Original File Name was baker SC answer - executed.pdf*

**A copy of the uploaded files will be sent to:**

- ferg099@comcast.net
- garybaker@grovestreetlaw.com
- kliguori@davisrothwell.com
- kmathews@fogartylawgroup.com
- pfogarty@fogartylawgroup.com
- prothwell@davisrothwell.com
- sgriffin@davisrothwell.com
- twhitney@davisrothwell.com

**Comments:**

---

Sender Name: Courtney Levitsky - Email: courtney@mixsanders.com

**Filing on Behalf of:** Mark Augustus Thompson - Email: mark@mixsanders.com (Alternate Email: )

Address:  
1420 Fifth Ave Suite 2200  
Seattle, WA, 98101  
Phone: (206) 521-5989

**Note: The Filing Id is 20191223122118SC941368**