

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
8/5/2020 2:49 PM  
BY SUSAN L. CARLSON  
CLERK

No. 98699-1

---

IN THE SUPREME COURT OF WASHINGTON

---

CHRISTOPHER KING, JD a/k/a KINGCAST,

Petitioner,

v.

FACEBOOK, INC.,

Respondent.

---

ANSWER TO PETITION FOR REVIEW

---

BYRNES KELLER CROMWELL LLP  
Joshua B. Selig, WSBA #39628  
1000 Second Avenue, 38th Floor  
Seattle, Washington 98104  
(206) 622-2000  
jselig@byrneskeller.com

*Attorneys for Respondent*

**TABLE OF CONTENTS**

I. INTRODUCTION .....1

II. STATEMENT OF THE CASE.....2

    A. Plaintiff King Filed His Lawsuit and Immediately  
    Blitzed Facebook With Serial, Sweeping Discovery  
    Requests .....2

    B. Facebook Notifies King That It Intends to Seek a  
    Protective Order, but Rather Than Wait to Respond  
    to That Motion, King Immediately Files a Motion  
    to Compel.....4

    C. The Trial Court Denies King’s Motion to Compel,  
    Grants Facebook’s Protective Order, and Finds That  
    Facebook Is Entitled to an Award of Fees Pursuant  
    to CR 37(a)(4).....7

    D. The Court of Appeals Affirms the Trial Court’s  
    Decision .....8

III. ARGUMENT .....9

    A. The Court of Appeals Plainly Followed Governing  
    Law: There is No Conflict With a Decision of This  
    Court or With a Published Decision of the Court  
    of Appeals .....9

    B. There Is No Significant Question of Law Under the  
    Washington Constitution or United States  
    Constitution.....11

    C. An Attorneys’ Fees Award Under CR 37(a)(4) Is  
    Not an Issue of Substantial Public Interest .....12

IV. CONCLUSION.....13

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

*Dalsing v. Pierce County*,  
190 Wn. App. 251, 357 P.3d 80 (2015) ..... 8

*Rhodes v. Barnett & Assoc., P.S.*,  
2020 WL 1814945 (Wn. Ct. App. Apr. 9, 2020) ..... 11

**Statutes**

RCW 4.28.180 ..... 3

**Rules**

RAP 2.5(a) ..... 12 n.2

RAP 13.4(b) ..... Passim

CR12(a)(3) ..... 3

CR 33(a) ..... .6, 11

CR 34(b) ..... .6, 11

CR 37(a) ..... Passim

## **I. INTRODUCTION**

King's Petition for Review (the "Petition") does not attempt to demonstrate that any of the four criteria for review in RAP 13.4(b) are satisfied and, any such attempt would be futile.<sup>1</sup> There is no conflict between the Court of Appeals' decision in this case and any decision of this Court or any other Court of Appeals. RAP 13.4(b)(1)-(2). Nor does the Petition raise a significant constitutional question or an issue of substantial public interest. RAP 13.4(b)(3)-(4). To the contrary, the Court of Appeals' unpublished decision, and its recognition of the trial court's exercise of discretionary authority to award attorneys' fees pursuant to CR 37(a)(4), is an unnoteworthy application of governing Washington law. The Petition is frivolous.

King's appeal challenged a straightforward and non-controversial application of the Civil Rules. Rule 37(a)(4) requires ("the court shall") that the non-moving party (Facebook) be awarded its fees if a motion to compel is denied unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust. Here, the trial court correctly found that King's motion was not substantially justified. The motion was filed prematurely, thus

---

<sup>1</sup> See Pet. for Review at 4 (arguing that review should be accepted because "Facebook is one of the most abusive and threatening corporate regimes the World [sic] has ever seen[.]").

denying Facebook its rights under the Civil Rules to serve written objections. And it was done to try to preempt the motion for a protective order that Facebook had informed King that it intended to seek. Accordingly, the trial court reasonably and correctly concluded that King's motion was not substantially justified and that no circumstances made an award of expenses unjust.

In an unpublished opinion, and with a detailed factual recitation of the history of the dispute, the Court of Appeals affirmed the trial court's ruling. Now, in this Petition, King once again offers an inaccurate and incomplete recasting of the facts in an effort to try to excuse what the trial court reasonably concluded was not substantially justified conduct and to suggest that the Court of Appeals erred. But, King's liberties with the record only serve to further demonstrate the folly of this Petition.

The Court of Appeals' decision is sound and fully consistent with Washington law. The Petition should be denied.

## **II. STATEMENT OF THE CASE**

### **A. Plaintiff King Filed His Lawsuit and Immediately Blitzed Facebook With Serial, Sweeping Discovery Requests.**

On November 7, 2018, King filed his complaint asserting four causes of action against Facebook: (i) violation of 42 U.S.C. § 1981; (ii) breach of common law contract; (iii) outrage; and (iv) promissory

estoppel. CP 3-16. The thrust of King's claims was that Facebook violated its Terms of Service by temporarily suspending his user privileges for 30 days. On November 13, 2018, King caused the complaint to be served on Facebook's registered agent in California. CP 75. Pursuant to RCW 4.28.180 and CR 12(a)(3), Facebook had 60 days from service to file a responsive pleading, *i.e.*, until January 14, 2019.

The service of King's complaint was accompanied by a set of unsigned discovery requests. CP 75. The requests consisted of nine interrogatories, nine document requests, and two requests for admissions. CP 80-88. Many of those requests went far beyond King's claims, instead attempting to delve into years' worth of data and personal information on countless other Facebook users. For example, King sought information about how many Facebook users had been suspended for the use of the n-word, "cracker," or "honky" since January 1, 2013. CP 81.

After acknowledging the requests were improper because they were unsigned, King subsequently served a revised first set of requests on December 14. CP 75-76 ¶¶ 2-3. The "revised first set" expanded to include 19 interrogatories, 19 document requests, and five requests for admissions. CP 90-112. In addition to aggregate data that would need to be culled from tens of millions of Facebook users, the interrogatories sought private information regarding specific users other than King. *See,*

*e.g.*, CP 92-93 (Interrogatories 9-13). Facebook's responses to that set of requests were due on January 14, 2019.

Meanwhile, on November 30, King propounded his second set of discovery requests on Facebook comprising of six additional interrogatories and two additional requests for production. Facebook's responses were due on January 2, 2019. CP 76 ¶¶ 4, 114-118.

On December 18, King served yet another set of discovery requests with two additional interrogatories and four additional requests for production. CP 76 ¶ 5, 120-23. Like its predecessors, these requests were disproportionately overbroad in seeking information relating to communications between Facebook and third parties unrelated to King. CP 122. Facebook's responses to that third set were due on January 18, 2019.

All told, prior to the deadline for Facebook to respond to the complaint, King had served three separate sets of discovery requests totaling 27 interrogatories, 25 document requests, and five requests for admissions, many of which were sweeping in their scope.

**B. Facebook Notifies King That It Intends to Seek a Protective Order, but Rather Than Wait to Respond to That Motion, King Immediately Files a Motion to Compel.**

Nearly a week before Facebook's first discovery responses were due (and three weeks before subsequent responses were due), King

demanded advanced notice on how Facebook intended to respond. CP 254 (“Does your client intend on providing any substantive answers to any of my pending discovery and if so, please state the extent of its anticipated responses. ... If I do not hear back from you by COB tomorrow, 28 December 2018 I will reasonably assume the answer is in the negative and I will proceed on that basis.”).

King had no basis to insist that Facebook provide guidance on its responses before the 30-day deadline. Nonetheless, the following day, Facebook informed him that on January 2, 2019, when its first responses were due, Facebook would be responding by providing its objections to those requests along with a motion for a protective order. CP 256. Facebook followed shortly thereafter with a request to meet and confer regarding Facebook’s anticipated protective order motion seeking to stay discovery until its planned motion to dismiss was adjudicated. CP 250, 258.

The parties met and conferred, and when King would not agree to stay discovery responses, Facebook confirmed that it would seek a protective order along with the service of its first discovery responses. CP 76 ¶ 7, 250. However, rather than wait to see the nature of Facebook’s objections or the arguments made in Facebook’s motion, on December 31, 2018, King took the preemptive step of filing his own motion to compel



responses to all of his then-issued (but not yet due) discovery requests. *See* CP 27 (asking the trial court to “review [all] the attached Discovery Requests and COMPEL [Facebook] to respond to them in full”).

In opposing King’s motion to compel, Facebook noted that in addition to being a preemptive opposition to Facebook’s motion for a protective order, the requested relief would strip Facebook of the protections afforded by CR 34(b)(3) and CR 33(a) in allowing a party to provide written responses, including objections, to document requests and interrogatories. CP 242-43. Facebook’s opposition also argued that King’s motion failed facially because it failed to offer any argument for why his sweeping requests were relevant to his claims, likely to lead to relevant information, or proportional to the needs of the case. CP 243. Finally, Facebook asked for an award of attorneys’ fees pursuant to CR 37(a)(4). CP 243.

On January 2, 2019, Facebook filed its motion to dismiss, its motion for a protective order, and, as promised, timely served King with responses and objections to the discovery requests that were due on that day. *See* CP 64-74, 250, 262-270.

C. **The Trial Court Denies King’s Motion to Compel, Grants Facebook’s Protective Order, and Finds That Facebook Is Entitled to an Award of Fees Pursuant to CR 37(a)(4).**

On February 1, 2019, the trial court ruled on the two discovery motions. First, it granted Facebook’s motion for a protective order upon concluding there would be no prejudice by a brief stay on discovery pending the court’s ruling on the motion to dismiss. CP 280-282.

Second, the trial court denied King’s motion to compel “conclud[ing] that the Plaintiff filed his motion to compel prematurely because the Defendant’s responses to the Plaintiff’s discovery requests were not due on December 31, 2018, when the Plaintiff filed his motion to compel.” CP 278:1-4. The trial court added that it was “unable to find that the Plaintiff’s motion was ‘substantially justified or that other circumstances make an award of expenses unjust.’” CP 278:13-15. Accordingly, the trial court awarded Facebook its reasonable fees and costs in responding to King’s motion. CP 278:19-22.

Facebook subsequently moved for an award of reasonable attorneys’ fees and the trial court awarded it \$2,504.49 in attorneys’ fees and costs. CP 338-48, CP 314-17.

On February 15, 2019, the trial court granted Facebook’s attorneys’ fees request and then dismissed the litigation without prejudice. CP 314-317.

King did not appeal the dismissal of his suit or the trial court's order granting Facebook's motion for a protective order. He also did not appeal the trial court's order denying his motion to compel or the quantum of attorneys' fees awarded. Rather, King's appeal was limited to whether the trial court erred in awarding attorneys' fees to Facebook pursuant to CR 37(a)(4) as part of its order denying his motion to compel. *See Op.* at 1, 6 n.2 (Appx. A to Pet. for Review).

**D. The Court of Appeals Affirms the Trial Court's Decision.**

On April 27, 2020, the Court of Appeals issued its unpublished opinion affirming the trial court's assessment of attorneys' fees. *See Appx. A to Pet. for Review.* After meticulously recounting how the discovery dispute unfolded (*Op.* at 1-5), the Court correctly applied the governing law. First, it properly recognized that “[u]nder CR 37(a)(4), a trial court shall award attorney fees to a party who successfully opposes a motion to compel, unless the motion was substantially justified or other circumstances make an award of expenses unjust.” *Op.* at 5. Under CR 37(a)(4), a trial court has broad discretion to award fees, and an appellate court does “not disturb an award of attorney fees except upon a clear showing that the court abused its discretion.” *Id.* at 5-6 (citing *Dalsing v. Pierce County*, 190 Wn. App. 251, 267, 357 P.3d 80 (2015)). It then applied that test to conclude that “[u]nder these circumstances, the trial

court did not abuse its discretion in determining that King’s motion to compel was not substantially justified.” *Id.* at 7, 8.

### **III. ARGUMENT**

The Petition for Review falls well short of meeting any of the required standards for this Court to accept review.

**A. The Court of Appeals Plainly Followed Governing Law: There Is No Conflict With a Decision of This Court or With a Published Decision of the Court of Appeals.**

A Petition for Review may be accepted if the at-issue Court of Appeals’ decision is in conflict with a decision of this Court or with a published decision of the Court of Appeals. RAP 13.4(b)(1)-(2). The Petition points to no such conflict and none exists here.

Instead, the best King can muster is an argument that the trial court’s decision conflicts with three unpublished federal district court decisions. Setting aside the fact that King’s argument provides no basis for this Court’s review, the argument widely misses its mark. In the three unreported district court cases, the trial court denied a motion to compel but did not issue sanctions. That fact alone, however, does not create a conflict between the trial court decisions (and the Court of Appeals’ affirmance) and the federal district court’s decision. Rather, the award of attorneys’ fees is an exercise of the trial court’s discretion. Undoubtedly, one could find hundreds of decisions where the trial court awarded fees as

a part of order granting or denying a motion to compel and hundreds of decisions in which the court denied an award of fees. Those decisions do not give rise to a conflict, much less one that requires this Court's attention to resolve. Just as the Court of Appeals noted, King has failed to show any authority under Washington law that contradicts the trial court's order (or the Court of Appeals' decision). Op. at 6.

Instead, King continues to falsely assert that he "mistakenly filed his Motion approximately two (2) days early" and only "after Counsel for Facebook resolutely stated during a Motion Conference that he was not going to produce any Discovery Responses whatsoever[.]" to suggest that the trial court's award of fees was an abuse of discretion. Pet. at 3. However, as detailed above and as found by the Court of Appeals, "Facebook did not state that it would not be providing any discovery responses. Rather, ... counsel for Facebook told King that Facebook would be timely providing objections[.]" Op. at 6. Likewise, the Court of Appeals correctly noted that King moved to compel responses to all of his discovery requests "two days before Facebook's first discovery deadline and weeks before its remaining deadlines." *Id.* at 7.

The trial court acted within its broad discretion to find that King's motion was not substantially justified and the Court of Appeals properly affirmed that decision. A motion to compel filed before the answers are

due is not substantially justified because litigants have a right to use their 30 days to respond and object to the requests under the Civil Rules. CR 33(a), CR 34(b)(3). As one recent appellate decision explained, “[King’s] right to obtain discovery was not more important than [Facebook’s] right to object that he was exceeding its proper scope or that the intrusive nature of the discovery warranted protection under CR 26(c).” *Rhodes v. Barnett & Assoc., P.S.*, No. 35920-4-III, 2020 WL 1814945, at \*11 (Wn. Ct. App. Apr. 9, 2020) (unpublished). By the very nature of the premature motion, King unjustifiably attempted to strip Facebook of its rights under the Civil Rules, and also improperly asked the trial court to prejudge the reasonableness of the parties’ positions, because it did not yet have Facebook’s written position on King’s vastly overbroad, burdensome, and largely irrelevant requests.

The Court of Appeals did not err in stating or applying the law, and in finding that the trial court’s decision was not manifestly unreasonable. There is no conflict between its decision and any decision of this Court or published decisions of the Court of Appeals.

**B. There Is No Significant Question of Law Under the Washington Constitution or United States Constitution.**

King’s Petition for Review of an opinion affirming the award of attorneys’ fees pursuant to CR 37(a)(4) does not raise a significant

question of law under either the Washington Constitution or United States Constitution. RAP 13.4(b)(3) does not apply.

C. **An Attorneys' Fees Award Under CR 37(a)(4) Is Not an Issue of Substantial Public Interest.**

Much of the Petition is spent railing against Facebook. *See, e.g.*, Pet. at 1 (Facebook is “so toxic to the World [sic] ... is ‘a threat to our Democracy.’”); *id.* at 4 (“Facebook is one of the most abusive and threatening corporate regimes the World [sic] has ever seen[.]”). None of the bombast has any relevance to the single issue raised in King’s appeal. This is an appeal of a trial court’s award of attorneys’ fees pursuant to CR 37(a)(4), nothing more.<sup>2</sup> Regardless of how King feels about Facebook’s policies, a trial court’s award of \$2,504.49 in attorneys’ fees for an unjustified motion to compel does not give rise to an “issue of substantial public interest.” RAP 13.4(b)(4).

---

<sup>2</sup> King did not appeal the trial court’s orders: (i) dismissing his lawsuit without prejudice; (ii) granting Facebook’s motion for a protective order; or (iii) establishing the quantum of attorneys’ fees awarded. Nor did he argue or present any evidence to the trial court regarding his inability to pay the fees. The Court of Appeals did not err in declining to consider that argument. Op. at 8 (citing RAP 2.5(a)). Regardless, when a *pro se* plaintiff with a law degree and an intimate familiarity with civil procedure and trial practice causes an adverse party (and the court) to engage in unnecessary and cumulative motion practice, it is entirely reasonable and justified for the court to find that the plaintiff should be responsible for the additional legal expense he causes his adversary to incur.

**IV. CONCLUSION**

For all the foregoing reasons, King's Petition for Review should be denied.

DATED this 5th day of August, 2020.

BYRNES KELLER CROMWELL LLP

By /s/ Joshua B. Selig  
Joshua B. Selig, WSBA #39628  
*Attorneys for Respondent Facebook, Inc.*



**CERTIFICATE OF SERVICE**

The undersigned attorney certifies that on the 5th day of August, 2020, a true copy of the foregoing was served on each and every party of record herein via email and U.S. Mail:

Christopher King  
12048 Greenwood Avenue North  
Seattle, Washington 98133  
Email: kingcast955@icloud.com

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED in Seattle, Washington, this 5th day of August, 2020.

/s/ Joshua B. Selig  
Joshua B. Selig  
Byrnes Keller Cromwell LLP  
1000 Second Avenue, 38th Floor  
Seattle, Washington 98104  
Telephone: (206) 622-2000  
Facsimile: (206) 622-2522

**BYRNES KELLER CROMWELL LLP**

**August 05, 2020 - 2:49 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 98699-1  
**Appellate Court Case Title:** Christopher King, JD a/k/a KingCast v. Facebook, Inc.

**The following documents have been uploaded:**

- 986991\_Answer\_Reply\_20200805144557SC914434\_2887.pdf  
This File Contains:  
Answer/Reply - Answer to Petition for Review  
*The Original File Name was Respondent's Answer to Pet for Review.pdf*

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

- kingcast955@icloud.com
- suefacebook007@gmail.com

**Comments:**

---

Sender Name: Kim Wolf - Email: kwolf@byrneskeller.com

**Filing on Behalf of:** Joshua Bacon Selig - Email: jselig@byrneskeller.com (Alternate Email: kwolf@byrneskeller.com)

Address:  
1000 Second Avenue  
38th Floor  
Seattle, WA, 98104  
Phone: (206) 622-2000

**Note: The Filing Id is 20200805144557SC914434**