NO. 99167-7

SUPREME COURT OF THE STATE OF WASHINGTON

GEORGE CANTU

Petitioner,

v.

PROVIDENCE HOSPITAL and SANJEEV VADERAH, M.D.,
(previously known as Pediatric Associates),

Respondents.

RESPONDENTS' JOINT ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDING PARTY

Respondent Providence Hospital, joined by Respondent Sanjeev Vaderah, M.D.,[1] submits this answer to Mr. George Cantu's "Amended Petition for Discretionary Review."

II. COURT OF APPEALS DECISION

On August 10, 2020, Division I of the Court of Appeals issued its unpublished opinion[2] affirming the trial court's grant of summary judgment dismissing Mr. Cantu's medical malpractice action because he failed to produce the requisite expert medical testimony to support his claims. In that opinion, Division I also affirmed the trial court's denials of Mr. Cantu's fourth motion for continuance of the summary judgment hearing, his motion for reconsideration, and his motion to amend his complaint to add a new defendant that he brought after the grant of summary judgment. Division I also denied Mr. Cantu's request for attorney fees and costs on appeal because he was not the prevailing party and because attorney fees are not available on appeal to a nonlawyer, pro se litigant. A copy of the Slip

[1] Although Mr. Cantu stated in his opening brief in the Court of Appeals that "he is not appealing the dismissal of Dr. Vaderah," his Notice of Appeal indicated that he was appealing not only the order granting Providence's motion for summary judgment, but also the order granting Dr. Vaderah's motion for summary judgment. As a result, and because the Court of Appeals stated in its opinion that it was denying Mr. Cantu's "Motion to Voluntarily Dismiss Dr. Vaderah" from this appeal as moot because its holding resolves all issues in the appeal, *see* Slip Op. at 2 n.1, Dr. Vaderah joins Providence in submitting this answer to Mr. Cantu's Petition for Review.

[2] The opinion was substituted for a June 8, 2020 unpublished opinion, which Division I withdrew on August 10, 2020.

Opinion is attached as Appendix A. It can also be found at *Cantu v. Providence Hosp.*, No. 80229-1-I, 2020 Wash. App. LEXIS 2287 (Ct. App. Aug. 10, 2020). On September 24, 2020, Division I denied Mr. Cantu's motion for reconsideration. A copy of the order denying reconsideration is attached as Appendix B.

III. COUNTERSTATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals properly affirm the trial court's grant of summary judgment where Mr. Cantu failed to produce the requisite expert medical testimony to support his medical malpractice claims?

2. Did the Court of Appeals properly deny Mr. Cantu's fourth motion to continue the summary judgment hearing where Mr. Cantu failed to make the showing needed to justify an additional continuance under CR 56(f)?

3. Did the Court of Appeals properly deny Mr. Cantu's request for attorney fees and costs on appeal because Mr. Cantu was not the prevailing party and because a pro se nonlawyer litigant is not entitled to an award of attorney fees?

IV. COUNTERSTATEMENT OF THE CASE

A. Factual Background.

On March 3, 2015, Dr. Sanjeev Vaderah, a cardiologist, performed a cardiac catheterization procedure on Mr. Cantu to diagnose his complaints

of chest pain. CP 228. Dr. Vaderah recommended an immediate transfer to Providence Everett for coronary artery bypass (CABG) surgery, and Mr. Cantu agreed. CP 228.

On March 6, 2015, Dr. James Brevig, a cardiothoracic surgeon at Providence, performed the CABG surgery on Mr. Cantu. CP 187, 228-29. Before the surgery, however, Mr. Cantu "[s]uffered respiratory arrest in [the] preoperative holding area" and was "initially unresponsive, but recover[ed]." CP 185. After advising Mr. Cantu's family members that the best course was to proceed with the surgery, CP 185, Dr. Brevig then successfully performed the CABG procedure without complication. CP 187, 229.

On July 26, 2018, Mr. Cantu complained to neurologist Dr. Patti Brettell of memory changes following his CABG surgery in 2015, CP 208-16, 229-30, and stated his belief that he had been "given the wrong medications" during the procedure. CP 211. Dr. Brettell recommended neuropsych testing in light of Mr. Cantu's family history and his pre-existing post-traumatic stress disorder and depression, which could also explain his cognitive changes. CP 215.

Clinical neuropsychologist Allan Fitz, Ph.D., evaluated Mr. Cantu on October 15, 2018. CP 143-47. Dr. Fitz found that Mr. Cantu appeared "to be having some cognitive decline from baseline levels although the

cause is not fully clear." CP 146. Dr. Fitz concluded that the cognitive decline was "possibly multifactorial and related to his history of depression of PTSD and history of borderline intellectual functioning with long-standing difficulties for academic activities." *Id.* Noting that "Mr. Cantu feels that his cognitive difficulties increased after going through the CABG procedure in 2015, surgery," Dr. Fitz concluded that "[c]urrent test results do not indicate whether or not current difficulties are the result of this event …." *Id.* Recognizing that his assessment was not a forensic evaluation, Dr. Fitz stated that he could not "indicate any specific probable cause" and would "defer on any other possible medical cause" of Mr. Cantu's cognitive issues to Mr. Cantu's physicians. CP 146-47.

B. Procedural Background – Trial Court

On March 2, 2018, Mr. Cantu filed a two-page, handwritten complaint against Providence and Dr. Vaderah, alleging he received incorrect medication before his CABG surgery, causing oxygen deprivation that resulted in dementia, poor memory, and "changes in personality and behavior." CP 478-79.

On November 30, 2018, Dr. Vaderah filed a motion for summary judgment dismissal, noting it for hearing on December 28, 2018. CP 354-76. Dr. Vaderah argued that he was entitled to summary judgment because Mr. Cantu lacked expert testimony to establish the *prima facie* elements of

either (1) a medical negligence claim under RCW 7.70.040, as to both standard of care and causation; or (2) a claim for failure to obtain informed consent under RCW 7.70.050. CP 371-74. Providence joined in Dr. Vaderah's motion. CP 377-78.

On December 10, 2018, Mr. Cantu filed a motion to continue the summary judgment hearing "until the end of February or March 2019." CP 348-51. Two days later, on December 12, Mr. Cantu filed an amended motion for a continuance. CP 334-47. Instead of confirming the hearing date,[3] Dr. Vaderah's counsel agreed to withdraw and re-note the motion as a courtesy to Mr. Cantu. CP 317, 323-24.

On January 8, 2019, Dr. Vaderah again filed a summary judgment motion, noting it for hearing on February 7, 2019. CP 298-333. In addition to renewing his previous arguments, Dr. Vaderah also argued that the doctrine of *res ipsa loquitur* did not apply to the case as a matter of law, CP 330-32, particularly in light of the fact that Dr. Vaderah was not even involved in the CABG procedure, CP 292, 331. Providence again joined in Dr. Vaderah'smotion. CP 295-97. In response, Mr. Cantu moved to continue the hearing a second time. CP 264-67.

[3] Snohomish County Local Civil Rule (SCLCR) 7(b)(2)(d)(9)(a) requires the moving party to confirm a motion before the hearing date by telephone or online. *See, e.g.*, CP 354-55.

On February 7, 2019, rather than confirming the hearing, Dr. Vaderah re-filed his second summary judgment motion, noting it for hearing on March 8, 2019. CP 205-40. Providence again joined in Dr. Vaderah's motion. CP 198-200.

In response, CP 114-25, Mr. Cantu produced lay witness declarations attesting that his behavior changed after his surgery, CP 131-35, and produced excerpts from his medical records, CP 129, 137-47, 151-59, 185-187, but no expert testimony. Mr. Cantu also sought a third continuance. CP 114, 125, 188-92.

At the hearing on March 8, 2019, the trial court granted Mr. Cantu's third motion for a continuance, CP 100–102, but noted in its order that the parties had agreed to have the motion heard on June 6, 2019, and stated that "[n]o more continuances shall be granted." CP 101.

On May 28, 2019, Mr. Cantu filed a fourth motion to continue the hearing, claiming that summary judgment was premature because discovery was ongoing and a trial date had not yet been set. CP 90-93. Mr. Cantu also sought an order compelling Providence to "comply with all the rules of discovery," CP 92, even though, contrary to his assertions, *Pet. at 6*, Mr. Cantu had never served any discovery requests on Providence, *see* CP 202. He noted his motions for June 4, 2019, but no hearing occurred on that date.

CP 72. On June 5, 2019, Mr. Cantu filed another motion to compel and for a continuance, CP 47-63, noting it for hearing on June 13, 2019. CP 44-46.

At the June 6, 2019 hearing on defendants' motions for summary judgment, the trial court denied Mr. Cantu's request for a continuance and entered orders granting summary judgment dismissal of all claims against all of the defendants. CP 38-43.

On June 14, 2019, Mr. Cantu filed a motion for reconsideration, claiming, among other things, that he had only recently learned that Dr. Nikolay Usoltsev, the anesthesiologist whom Mr. Cantu alleged gave him the wrong medication, was not a Providence employee. CP 9-11. Mr. Cantu also asked the trial court to allow him to amend his complaint to add Dr. Usoltsev as a defendant. CP 16-17. He did not produce any expert testimony for the trial court's review. The trial court denied the motion for reconsideration, CP 1, and Mr. Cantu appealed.

C. Procedural Background – Court of Appeals

Division I of the Court of Appeals affirmed the trial court's rulings in an unpublished opinion. First, the Court of Appeals ruled that the trial court correctly granted summary judgment because Mr. Cantu did not identify any competent expert to testify in support of his claims.[4] Slip Op.

[4] In a footnote, Division I also held that by not addressing the doctrine of res ipsa loquitur in his brief, Mr. Cantu had abandoned the issue. Slip Op. at 4, n.2. In a separate footnote, Division I also held that it could not review Mr. Cantu's claims that the trial court erred by

at 4. Second, the court affirmed the denial of Mr. Cantu's fourth request for a continuance, holding that the trial court was within its discretion because Mr. Cantu had 15 months in which to find an expert, starting from the filing of his complaint up until the summary judgment hearing, and Mr. Cantu was specifically warned 3 months before the hearing that there would be no more continuances. Slip Op. at 5. Third, the Court of Appeals affirmed the trial court's denial of Mr. Cantu's motion for reconsideration, because Mr. Cantu did not disclose any new experts that would justify the trial court's reconsideration. Slip Op. at 6. Fourth, the Court of Appeals held that the trial court did not abuse its discretion by denying leave to amend the complaint, because Mr. Cantu did not seek leave to amend until after summary judgment was granted and more than 15 months after he filed his complaint. Slip Op. at 6-7.

As to Mr. Cantu's contentions that the trial court violated his state and federal due process rights, the Court of Appeals found those contentions insufficient for appellate review because Mr. Cantu did not cite any record evidence or legal authority to support his asserted violations of his due process rights. Slip Op. at 7.

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denying his motions to compel discovery, because the record showed no ruling on such a motion. Slip Op. at 5, n.5.

Finally, the Court of Appeals dispensed with Mr. Cantu's request for fees, because Mr. Cantu was not a prevailing party and, as a nonlawyer pro se litigant, he could not receive attorney's fees in any event. Slip Op. at 7.

V. ARGUMENT WHY REVIEW SHOULD BE DENIED

RAP 13.4(b) sets forth the considerations governing acceptance of review as follows:

> A petition for review will be accepted by the Supreme Court 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 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.

In his petition, Mr. Cantu attempts to invoke all four of RAP 13.4(b)'s considerations governing acceptance of review as he takes issue not only with the Court of Appeals' affirmance of the trial court's grant of summary judgment, denial of his fourth motion for continuance, and denial of his belated motion to amend his complaint to add Dr. Usoltsev as a named defendant, but also with the Court of Appeals' denial of his motion for attorney fees and costs on appeal. Because the Court of Appeals' decision is not in conflict with any decision of this Court or any published decision of the Court of Appeals, does not involve any significant question

of constitutional law, and does not involve any issue of substantial public interest that should be determined by this Court, Mr. Cantu's petition for review should be denied.

A. Review of the Court of Appeals' Decision Affirming the Trial Court's Grant of Summary Judgment and Denial of Mr. Cantu's Fourth Motion for Continuance Is Not Warranted under any of the RAP 13.4(b) Considerations Governing Acceptance of Review.

Claiming that he was not given a reasonable opportunity to conduct discovery before the trial court granted Providence Hospital's motion for summary judgment, Mr. Cantu asserts that the Court of Appeals' affirmance of the summary judgment and the denial of his fourth motion for continuance involves an issue of substantial public interest, involves a significant question of constitutional law, and conflicts with decisions of this Court and of the Court of Appeals. It does not.

1. Division I's decision affirming the summary judgment and the denial of a fourth motion for continuance does not involve an issue of substantial public interest that should be determined by this Court so as to warrant review under RAP 13.4(b)(4).

Division I correctly affirmed the trial court's grant of summary judgment and denial of Mr. Cantu's fourth request for a continuance. A *prima facie* case for medical malpractice requires expert testimony regarding the standard of care and causation. *See Berger v. Sonneland*, 144 Wn.2d 91, 110, 26 P.3d 257 (2001). Yet Mr. Cantu failed to identify any expert who would testify in support of his claims, and summary judgment

was proper on that basis. *Berger*, 144 Wn.2d at 112. None of Mr. Cantu's myriad arguments to the contrary involve any issue of substantial public interest that should be determined by this Court.

Mr. Cantu asserts, *Pet. at 12*, the trial court should have granted his fourth request for a continuance so that he could obtain discovery before being required to produce expert testimony. But Mr. Cantu had 15 months from the filing of his complaint before the summary judgment in which to pursue discovery and obtain an expert, and he had three months' warning before the final June 6, 2019 hearing that there would be no further continuances. Under those circumstances, Division I correctly concluded that the trial court was within its discretion to deny a fourth request for a continuance because Mr. Cantu failed to provide a good reason for his delay in obtaining the requisite evidence. *See Turner v. Kohler*, 54 Wn. App. 688, 693, 775 P.2d 474 (1989).

Although Mr. Cantu also argues, *Pet. at 7-8*, that the trial court should have granted his motion to compel defendants to produce discovery, Division I correctly observed that the trial court never ruled on any motion to compel, leaving no decision to be reviewed on appeal. *See Mayekawa Mfg. Co. v. Sasaki*, 76 Wn. App. 791, 796 n.6, 888 P.2d 183, *rev. denied*, 896 P.2d 63 (1995) (stating that appellate court would not review claimed error in considering a supplemental declaration where trial court stated that

party's objections to it were "noted", but made no specific ruling on those objections).

Nor can Mr. Cantu salvage his lack of expert testimony by reliance on the doctrine of *res ipsa loquitur*. Division I correctly dispensed with the need to examine the doctrine of *res ipsa* loquitur because Mr. Cantu made no assignment of error and presented no argument in his opening brief concerning that doctrine. Slip Op. at 4 n.2. Although Mr. Cantu argues, *Pet. at* 5, that he raised the issue in his reply brief, he ignores that an "issue raised and argued for the first time in a reply brief is too late to warrant consideration." *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). Thus the Court of Appeals was correct when it declined to address Mr. Cantu's untimely and undeveloped *res ipsa loquitur* argument.

Even had Mr. Cantu timely raised it, the doctrine of *res ipsa loquitur* did not apply on the facts of this case. Application of the doctrine "is always a question of law for the trial court to say whether the facts constituting the alleged negligence lie within the general knowledge of laymen, rather than in the realm of medical science." *Nelson v. Murphy*, 42 Wn.2d 737, 739, 258 P.2d 472 (1953). While a layperson may be able to observe an injury, causation of a condition typically requires expert testimony. *Id. at* 740. Here, the cause of Mr. Cantu's alleged neurocognitive changes were well

beyond the ken of a layperson, as even his physicians could not identify the medical cause. *See* CP 146-47, 215.

In summary, Mr. Cantu had ample time in which to find an expert and failed to do so, despite a clear warning that he would receive no further continuances. Division I's unpublished opinion affirming the trial court's grant of summary judgment, denial of a fourth continuance, and denial of reconsideration does not raise any issue of substantial public interest that should be determined by this Court so as to warrant review under RAP 13.4(b)(4).

2. Division I's decision is not in conflict with any decision of this Court or published decision of the Court of Appeals so as to warrant review under RAP 13.4(b)(1) or (2).

Mr. Cantu asserts, *Pet. at* 3-4, that Division I's opinion is in conflict with "numerous cases" of this Court and published decisions of the Court of Appeals, but he does not identify any specific case or cases, or explain how any case is in conflict with Division I's decision. None of the six Washington appellate cases Mr. Cantu cites in his opening brief shows any conflict with Division I's opinion so as to warrant review under RAP 13.4(b)(1) or (2).

Mr. Cantu cites *Tellevik v. 31641 W. Rutherford St.*, 120 Wn.2d 68, 838 P.2d 111 (1992), *Modumetal, Inc. v. Xtalic Corp.*, 4 Wn. App. 2d 810, 425 P.3d 871 (2018), *rev. denied*, 192 Wn.2d 1011, 432 P.3d 793 (2019),

and *Coggle v. Snow*, 56 Wn. App. 499, 784 P.2d 554 (1990), for the grounds on which a trial court may deny a request to continue summary judgment hearing to conduct additional discovery under CR 56(f). All three cases hold that a trial court may deny a continuance, among other reasons, if the moving party fails to offer "a good reason for the delay in obtaining the desired evidence." *See Tellevik*, 120 Wn.2d at 90; *Modumetal, Inc.*, 4 Wn. App. 2d at 832; *Coggle*, 56 Wn. App. at 507. Far from Division I's decision being in conflict with those cases, Division I, citing *Turner v. Kohler*, 54 Wn. App. 688, 693, 775 P.2d 474 (1989), applied the same test, and concluded that the trial court acted within its discretion when it denied Mr. Cantu's fourth motion for continuance, as Mr. Cantu had ample notice and offered no good reason for his delay in obtaining the desired evidence.[5] Slip Op. at 5.

Next, Mr. Cantu argues, *Pet. at* 17, that his request for a continuance of the summary judgment hearing is supported by *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 933 P.2d 1036 (1997) and *Jones v. City of Seattle*, 179 Wn.2d 322, 314 P.3d 380 (2013). But as the Court of Appeals explained, Slip Op. at 4, n.2, *Burnet* and *Jones* are inapplicable because

[5] In a footnote, *Pet. at 12 n.1*,Mr. Cantu also cites *Butler v. Joy*, 116 Wn. App. 291, 65 P.3d 671 (2003), for the proposition that this same test was applied in a medical malpractice case. However, *Butler* dealt with a continuance for a change in counsel, an issue that did not arise in this litigation because Mr. Cantu has consistently proceeded *pro se*.

those cases dealt with sanctions for discovery violations, and the trial court in this case did not impose any discovery sanctions.

Finally, Mr. Cantu's reliance, *Pet. at* 19, on *Hamilton v. Arriola Bros. Custom Farming*, 85 Wn. App. 207, 211, 931 P.2d 925 (1997), is likewise inapt because that decision concerned the discovery rule and its application to the statute of limitations, and no one contended that Mr. Cantu's lawsuit in this case was barred by the statute of limitations. Indeed, there is nothing in the Court of Appeals' decision that addresses any statute of limitations issue that could possibly be in conflict with *Hamilton.*

Because Mr. Cantu has not shown that the Court of Appeals decision is in conflict with any decision of this Court or published decision of the Court of Appeals, review is not warranted under RAP 13.4(b)(1) or (2).

3. Division I's decision does not involve any significant question of constitutional law so as to warrant review under RAP 13.4(b)(3).

Mr. Cantu asserts without citation to authority, *Pet. at* 2, that the trial court violated his constitutional right to due process by denying him discovery. In its opinion, Division I found that Mr. Cantu did not state how the trial court's order violated his due process rights, did not provide any record citations, and did not cite any legal authority to support his contentions. Accordingly, the Court of Appeals found his argument

insufficient for appellate review. Slip Op. at 7 (citing *Cowiche Canyon*, 118 Wn.2d at 809).

In his petition for review, Mr. Cantu still does not explain how the trial court violated his due process rights, does not cite to any relevant portion of the record, and does not cite any legal authority to support his due process contentions. Such "naked castings into the constitutional sea" are "not sufficient to command judicial consideration and discussion." *In re Pers. Restraint of Rhem*, 188 Wn.2d 321, 328, 394 P.3d 367 (2017). Because Division I's decision does not involve any significant question of constitutional law, review is not warranted under RAP 13.4(b)(3).

B. Review of the Court of Appeals' Affirmance of the Trial Court's Denial of Mr. Cantu's Belated Motion to Amend Is Also Not Warranted under any of the RAP 13.4(b) Considerations Governing Acceptance of Review.

Mr. Cantu sought to amend his complaint to add Dr. Nikolay Usoltsev as a defendant after summary judgment had already been entered in favor of all defendants, and 15 months after filing his original complaint. Division I affirmed the trial court's denial of that motion because Mr. Cantu knew of Dr. Usoltsev's identity and relation to the litigation for at least three months before summary judgment.

Presumably challenging this decision, Mr. Cantu argues, *Pet. at* 2-3, 18-19, that the statute of limitations for his claim against Dr. Usoltsev

should have been tolled, that the statute of limitations for medical malpractice is unconstitutional, and that the provisions of RCW 7.70.110 tolling the statute of limitations are unconstitutional. All of these arguments misapprehend the reason for the trial court's denial of Mr. Cantu's motion to amend his complaint and the Court of Appeals' affirmance of that denial. Contrary to Mr. Cantu's arguments, the motion to amend was not denied on statute of limitations grounds. Any issue with the statute of limitations pertains only to Mr. Cantu's separately filed litigation against Dr. Usoltsev. Because the statute of limitations was never at issue in this case, none of Mr. Cantu's arguments about the statute of limitations warrant under RAP 13.4(b).

The Court of Appeals correctly affirmed the trial court's denial, as untimely, of Mr. Cantu's motion to amend his complaint when he not only waited 15 months after he filed his initial complaint, but also waited until after entry of summary judgment in favor of all defendants, to bring the motion to amend. Amendment of a complaint after a grant of summary judgment disrupts the normal course of proceedings, and "the trial court should consider whether the motion could have been timely made earlier." *See Doyle v. Planned Parenthood of Seattle-King Cty.*, 31 Wn. App. 126, 131, 639 P.2d 240 (1982). As Division I noted, the record shows that Mr. Cantu knew of Dr. Usoltsev's identity in the medical records at least

three months before summary judgment. Slip Op. at 6, n.6. Thus, the trial court's denial of the motion to amend was not "manifestly unreasonable," nor was it premised on "on untenable grounds or for untenable reasons." *See Cambridge Townhomes, LLC v. Pac. Star Roofing, Inc.*, 166 Wn.2d 475, 484, 209 P.3d 863 (2009).

Because Division I's affirmance of the trial court's denial of the Mr. Cantu's belated motion to amend is not in conflict with any decision of this Court or any published decision of the Court of Appeals, does not raise a significant question of law of constitutional law, and does not involve any issue of substantial public interest that should be determined by this Court, review is not warranted under RAP 13.4(b).

C. Division I's Denial of Mr. Cantu's Request for Reasonable Attorney Fees and Costs Was Correct and Does Not Warrant Review under RAP 13.4.

Mr. Cantu argues that the Division I's denial of his request for fees and costs presents an issue of substantial public interest and a significant question of constitutional law warranting this Court's review. Mr. Cantu is mistaken.

Division I correctly denied fees and costs. First, such costs may be awarded only to a party that substantially prevails on appeal, *see* RAP 14.2, RAP 18.2, and Mr. Cantu did not prevail on *any* issue before the Court of Appeals. *See* RAP 14.2, 18.2. Second, as Division I correctly concluded,

attorney's fees are not available to a non-lawyer, pro se litigant. *In re Marriage of Brown*, 159 Wn. App. 931, 247 P.3d 466 (2011). While attorneys proceeding pro se may seek fees because they "must take time from their practices to prepare and appear as would any other lawyer," *Leen v. Demopolis*, 62 Wn. App. 473, 487, 815 P.2d 269 (1991), "no Washington case extends this reasoning to a nonlawyer pro se litigant," *Brown*, 159 Wn. App. at 938.

None of the federal cases Mr. Cantu cites by Mr. Cantu, *Pet. at* 20, even discuss whether to award attorney fees to a pro se litigant. Moreover, Mr. Cantu's entire argument is premised on denial of fees to a *prevailing* nonlawyer pro se litigant, and Mr. Cantu did not prevail. Review of the Court of Appeals' denial of Mr. Cantu's request for fees is thus not warranted under any of the considerations governing acceptance of review set forth in RAP 13.4(b).

VI. CONCLUSION

For all these reasons, Mr. Cantu's petition for review should be denied.

RESPECTFULLY SUBMITTED this 17th day of December, 2020.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that under the laws of the State of Washington that on the 17th day of December, 2020, I caused a true and correct copy of the foregoing document, "Respondents' Joint Answer to Petition for Review," to be delivered in the manner indicated below to the following counsel of record:

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DATED this 17th day of December, 2020, at Seattle, Washington.

s/Carrie A. Custer
Carrie A. Custer, Legal Assistant

FAVROS LAW

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