IN THE SUPREME COURT OF WASHINGTON
No. 98669-1

ON APPEAL FROM THE WASHINGTON STATE
COURT OF APPEALS, DIVISION I
No. 79874-0-I

FACEBOOK INC, RESPONDENT,

V.

CHRISTOPHER KING, J.D. A/K/A KINGCAST, PETITIONER

Amended PETITION FOR REVIEW

CHRISTOPHER KING, J.D.
ATTORNEY PRO SE

239 Olympic Avenue North
Arlington, Washington 98223
617.543.8085 m
206.299.9333 f

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cited Cases

Statutes

Media and Other Treatises

A. IDENTITY OF PETIONER

Petitioner is Washington resident Christopher King, J.D., a/k/a "KingCast" as alter ego. He is a Writers' Guild screenwriter and independent investigative journalist who has worked for daily and weekly press. He has also won Civil Rights jury trials as a practicing Attorney. He has maintained several blogs since 2005 and he brought the underlying litigation against Respondent Facebook because, up until recently, Facebook had a penchant for removing his posts whenever he complained that someone in society or Facebook was treating him or other blacks on the platform "like niggers" because of Civil Rights abuse. Such removals are contrary to Facebook's own stated policies and they allow whites to refer to themselves as "cracker trash" even when they are not complaining about Civil Rights abuse.

B. COURT OF APPEALS DECISION

The Court of Appeals Decisions of 27 April and 29 May (Denying Reconsideration) Follow at Appendix A.

C. INTRODUCTION AND ISSUES PRESENTED FOR REVIEW

Put simply, Facebook is a global corporate behemoth currently under investigation by 47 State Attorneys General: https://www.cnn.com/2019/10/22/tech/facebook-antitrust-investigation/index.html. Facebook is so toxic to the World that its founding partner Chris Hughes publicly stated in a NYTimes Op-Ed that Facebook is "a threat to our Democracy" and recommended that it must be split: https://www.nytimes.com/2019/05/09/opinion/sunday/chris-hughes-facebook-zuckerberg.html

Facebook has an adhesion clause in a clickwrap user agreement that mandates cases be heard in California. King challenged this clause in the Lower Court as Facebook his placed his account in 30-day "Facebook Jail" because he complained of racism on his page and refused to lift the jail sentence even when King informed Facebook that his mother had passed from this Earth so he was not free to discuss this with his then 2,100 friends.

D. STATEMENT OF THE CASE

This is a very simple case. Respondent Facebook continually bans black users for discussing racial matters as noted in the U.S.A. Today and elsewhere. Their own VP of Diversity Mark Luckie said racism is alive and well in the company and on the platform. This is a Party Admission because he was still employed by Defendant when he publicly wrote it. (CP 20, 184-189).

Facebook banned King for self-referring as a nigger after the white Snohomish County Sheriff ignored his video in which an abusive white male dropped 5 F-Bombs in Petitioner's face after refusing to provide him with the medical and housing records FOR HIS OWN DOGS. (CP 6-9).

Whereupon litigation ensued, with King tendering several Discovery Demands. Respondent moved moved to dismiss the case on the Merits with a Dispositive Motion and on Forum Selection. In so doing, it sought a Protective Order.[1]

King contested the Protective Order and filed a Motion to Compel after a Rule 26 conference at which Counsel for Respondent assured Plaintiff that his client would not provide any Discovery.

---

[1] The Court did not address the merits whatsoever other than to note that it is a compelling issue for review in the Next Court. We are in the 9th Circuit Court of Appeal at present as Facebook was denied summary affirmance in a case on Appeal on First Amendment grounds: *Freedom Watch & Loomer v. Google et al* U.S. Ct. App DC No. 19-730 (August 20, 2019). Plaintiff has briefed that matter with the Court with an eye toward *NAACP v. Thompson*, 648 F.Supp. 195 D.Md.,(1986), *Pruneyard v. Robbins*, 447 U.S. 74 (1980). *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163 (1972).

Plaintiff mistakenly filed his Motion approximately two (2) days early. This fact is determined by the filings set forth by Defendant rather than the Court itself, as the Court only stated "there was no event." (CP 240-241).

Facebook pointed out that it has had the Discovery Requests for quite some time: There were originally unsigned when they were sent the first time, then when sent the second time, Plaintiff made the mistake of filing two days early, but after Counsel for Facebook resolutely stated during a Motion Conference that he was not going to produce any Discovery Responses whatsoever.

The Court sanctioned King for lodestar Attorney Fees from which Petitioner Appeals. Plaintiff issued a Memorandum in Opposition to imposition of fees on or about 8 February 2019. The Court did not recognize the Memorandum and issued an Order on 25 February 2019 Assigning Attorney Fees in the amount of $2,482.00 and costs of $22.49. (CP 314-316, Recon Den. 274-276).

While it is difficult to directly assess its net worth, it has a market cap of anywhere between $359.3B-$527.2B. Plaintiff King's Attached Declaration swears that his net worth is approximately $25,000.00 - $30,000.00 at present. Therefore King's financial portfolio using a Market Cap Figure of $400,000,000,000 is approximately $.0000000000025% of Defendant's.

Against that backdrop the Court has decided to impose a sanction of full attorney fees when King filed a Motion to Compel after Defendant made its Good Faith Rule 26 Statement that it was not going to Provide any substantive Discovery Documents.

King timely appealed to Division One Court of Appeals. The Court denied relief on April 27, 2020 in an unpublished Opinion. King timely filed a Motion for Rule 59 Reconsideration addressing the Court's concerns but the Court denied same without any comment or substantive review on May 29, 2020 (App. A).

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

As noted above, Facebook is one of the most abusive and threatening corporate regimes the World has ever seen, and its Counsel does not arrive at this Court with Clean Hands, a fact that was completely ignored by all lower Courts. A case like this most certainly doest not occur in a vacuum – it occurs in a much larger and very imminent and pressing social culture and this Honorable Court must consider that, as well as the more relevant case law cited by King that the Court of Appeals did not address.

F. ARGUMENT

i. Assignments of Error

I. Persuasive Law from Other Jurisdictions is More Relevant than Facebook's Legal Citations.

II. The Doctrine of Equity Requires Clean Hands.

III. Oral Argument was Wrongfully Denied.

IV. The Discovery sanctions were not balanced against the nature of the discovery violation and the surrounding circumstances.

****

I. Persuasive Law from Other Jurisdictions is More Relevant than Facebook's Legal Citations.

NOW COMES PETITIONER as he would have done at the Oral Argument he was Promised in Division One -- but denied over objection -- to provide the Court and Respondent with this Motion to elucidate the reasons why the Trial Court Sanction was an inappropriate abuse of discretion.

First of all it is common knowledge that Courts routinely cite to cases outside of their own Jurisdiction as persuasive law. As such, the Division One Court's perfunctory dismissal of Petitioner's cited cases was and is, inappropriate.

> Factual similarity is key to choosing among persuasive decisions; if the legal issues are the same, the decision based on the most closely matching factual situations will usually be the stronger persuasive authority. Other factors affecting the degree of persuasiveness of a decision include whether the opinion was particularly well reasoned, the stature of the jurist who authored the opinion, and the level of the court from which the decision came.[2]

With such in mind Petitioner King revisits his Decisional arguments as the Court is certain free to consider Persuasive Federal Law instead of dismissing it out of hand. This is particularly true when the cases presented by King much more clearly address the specific issues at hand as opposed to the general cases that Respondent Facebook presented.

> First of all, the filing of a dispositive motion does not automatically constitute good cause for a stay of discovery. See, e.g., *United Rentals, Inc. v. Chamberlain*, 3:12-CV-1466 CSH, 2013 WL 6230094, at *3 (D. Conn. Dec. 2, 2013); *Hollins v. U.S. Tennis Ass'n*, 469 F. Supp. 2d 67, 78 (E.D.N.Y. 2006). Certainly then, the anticipation of filing a motion to dismiss does not warrant staying the conference and planning required to initiate the discovery process. Accord *Wiremold v. Thomas & Betts*, 3:16-CV-02133 (D. Conn)

As such, we know that the filing of a dispositive motion does not automatically constitute good cause for a stay of discovery. No other case law to the contrary exists in this case. Nonetheless the Court assailed Petitioner's position thusly:

> King argues first that "volumes of [d]ecisional case law do not support an assessment or award of attorney fees or costs" here. He cites no Washington authority to support that proposition.[2]
>
> [2] Instead, King cites two federal cases where the court denied a motion to compel but did not issue sanctions. He also cites a number of federal cases to support the proposition that the filing of a dispositive motion does not automatically constitute good cause for a stay of discovery.
>
> He does not elaborate further on this argument. Nor does he assign error to the trial court's order granting Facebook's motion for a protective order and staying discovery during the pendency of its motion to dismiss. We do not review a claimed error unless the appellant assigns error to it. RAP 10.3(a)(4).

[2] MANDATORY V. PERSUASIVE CASES, winter 2001 by Barbara Bintliff, Director of the Law Library and Associate Professor of Law at the University of Colorado in Boulder. She is also a member of the Perspectives Editorial Board.

> Accordingly, we do not address King's argument regarding the trial court's decision to stay discovery.
>
> ********

First of all there were not two but actually three Federal Cases: *Cipriani v. Buffardi* & *Schenectady County* NDNY 9:06-CV-0889 (2008), *Thomas v. Evans*, ND California Case No. C 06-3581 (2008), *Benavidez v. Sandia National Labs*, Dist New Mexico No. CIV-15-0922 (2017).

Second, Petitioner did not hammer the issue that Dispositive Motions do not guarantee a Stay on Discovery because he does not need to do so in order to prevail in this Court. King's point is simply to state the obvious because Counsel for Defendant implied that his client was automatically entitled to a Stay. If that were indeed the Law then there is a better argument for assessment of Attorney Fees or Costs, or even for a finding of "frivolous motion practice" (as falsely claimed) But of course that is not the only legal or factual material falsity set forth by Defendant and Counsel as noted in Section II, *infra*.[3] A review of Petitioner's arguments is called for at this point:

> Furthermore, Plaintiff informs the Court that volumes of Decisional case law do not support an assessment or award of attorney fees or costs. For example, See *Cipriani v. Buffardi* & *Schenectady County* NDNY 9:06-CV-0889 (2008).
>
> Plaintiff's motion to compel also seeks a response to discovery from defendant Sheriff Buffardi. Dkt. No. 79. However, at the time the motion to compel was filed, this defendant had not been served with process. Accordingly, plaintiff's motion to compel discovery from Sheriff Buffardi is denied as premature.

[3] We all know that "frivolous" is a precise legal term with a precise legal meaning. Petitioner's point here is that his conduct was so far removed from any such notion that it was an abuse of discretion for the Lower Court to award Fees and it is also materially unfair for this Court to look past the Defendant's Unclean Hands and relevant persuasive law from several Federal Jurisdictions.

Once again we have a premature Motion to Compel without sanctions even though the Sheriff had not even been served! In this case not only was there Service, Defendant in this case we recall had EXTRA TIME to consider its decision because Plaintiff did not sign his original Discovery requests, and there was a specific denial as to production coming from the Rule 26 Conference.

> *See also Thomas v. Evans*, ND California Case No. C 06-3581 (2008) in which Plaintiff had a meet and confer in which it appeared that Defendant would actually issue some Discovery responses. Yet through some confusion Plaintiff moved to Compel. ***The Motion was denied yet no Sanctions were issued.***

Again, another Federal Case that speaks for itself: In reality, a Plaintiff should only be sanctioned when an argument is taken in Bad Faith or with Vexatious purpose.[4]

> Furthermore, in *Benavidez v. Sandia National Labs*, Dist New Mexico No. CIV-15- 0922 the Plaintiff failed to hold a proper Meet and Confer and filed a Motion to Compel prematurely yet the Court held ***"The Court, however, will not impose a sanction on these particular facts."***

Once again, another Federal Case directly on point supports Plaintiff's position. This is solid persuasive Law that the Court should not have dismissed. **As such, this directly addresses the mistake made by Plaintiff when the Court writes:**

> He states that he would have been entitled to file the motion "a scant three (3) days later" when Facebook served its objections to his second set of discovery requests. But, he fails to demonstrate the necessity of filing the motion before any of Facebook's discovery responses were due. Under these circumstances, the trial court did not abuse its discretion in determining that King's motion to compel was not substantially justified.

[4] In point of fact, see Section II, infra, noting that it is Defendant and Counsel who come to the table with Unclean Hands.

II. The Doctrine of Equity Requires Clean Hands.

It is of course axiomatic that a person seeking Equitable Relief must come into the event with Clean Hands: "It is well settled that a party with unclean hands cannot recover in equity." *State of Washington v. Zellmer et al., Washington* Ct. App 79393-5-I (March 23, 2020)(unreported) citing *Burt v. Dept of Corr.*, 191 at 210 (emphasis added) (citing *Miller v. Paul M. Wolff Co*., 178 Wn. App. 957, 965, 316 P.3d 1113 (2014)). But in this case we can look high and low yet never find any review of this issue in the Trial or Appellate Courts. On that basis alone Remand is warranted. Facebook and its Counsel do not have Clean Hands. In this case we recall that Defendant went so far on 2 May 2019 as to:

a) Suggest that Petitioner's conduct in the Washington case was "frivolous," and
b) Suggest that Petitioner would have to pay these Court Costs as a necessary prerequisite to filing the Federal Case now on Appeal in the 9th Circuit.[5]

> Dear Mr. King,
>
> It is premature at this time to engage in a Rule 26(f) conference, especially because you still have failed to pay the judgment entered by the King County Superior Court as a sanction for your *frivolous motion practice* in that case. *You should pay the outstanding judgment in Washington before proceeding with a substantially similar case in California(emphasis added)*
>
> Moreover, Facebook intends to file a motion to dismiss that will be dispositive of the entire case and that can be decided without discovery. It would waste party resources to begin discovery before that motion is decided. If you insist once again upon taking premature discovery, Facebook will seek appropriate relief from the Court.

Clearly both of these assertions from Counsel for Facebook were and are, completely baseless and born from raw gamesmanship; specious *at best.* These statements were made without any Good Faith basis in law or fact and for the Court to now award that very Defendant with Attorney Fees over a filing made in Good Faith on Petitioner's part is indeed punitive and unwarranted.

[5] This court noted that it was not particularly concerned about the Federal litigation and Petitioner mentions this only because the Court can take Judicial Notice that our Federal Government Officials continue to question Facebook's integrity at the Mother Ship. But in this case alone, irrespective of all of that, there is enough to see here that the sanctions were not warranted and must be overturned.

Moreover, Counsel for Facebook failed to mitigate any purported harms: If it were absolutely **SO** clear that the Court would not for example, hold the commencement date in two days abeyance owing to the early filing, or that the Court would not consider Plaintiff's Settlement Conference Affidavit as conferring a Right to file a Motion, then all Defendant had to do was to write the Court and state:

King and Facebook engaged in the required Discovery Conference. Defendant maintains its position that we are not providing Discovery. Plaintiff's Motion to Compel is two days early and as such there is no need for us to respond substantively. Should the Court find otherwise we will respond in full to the pending Motion."

There. Simple right? Right. That took all of 90 seconds to type. But that's not what Defendant did. Defendant ran up a tab for $2,500.00 and then also lied about Plaintiff allegedly engaging in "frivolous" motion practice and lied about the purported necessity to pay this tab prior to prosecution of the Federal case. Yet and still this Court has to this point actually rewarded such misconduct.

> When the trial court awards attorney fees as a sanction, it must limit those fees to the amounts reasonably expended in responding to the improper pleadings.80 Furthermore, "[a] party resisting a motion that violates CR 11 has a duty to mitigate and may not recover excessive expenditures."81 Citing *MacDonald v. Korum Ford*, 80 Wash. App. 877, 891, 912 P.2d 1052 (1996) and *Miller v. Badgley*, 51 Wash. App. 285, 303, 753 P.2d 530 (1988). When Counsel Screws Up: The Imposition and Calculation of Attorney Fees as Sanctions, Seattle University Law Review Vol. 33/2. Philip Talmadge† Emmelyn Hart-Biberfeld†† Peter Lohnes†††

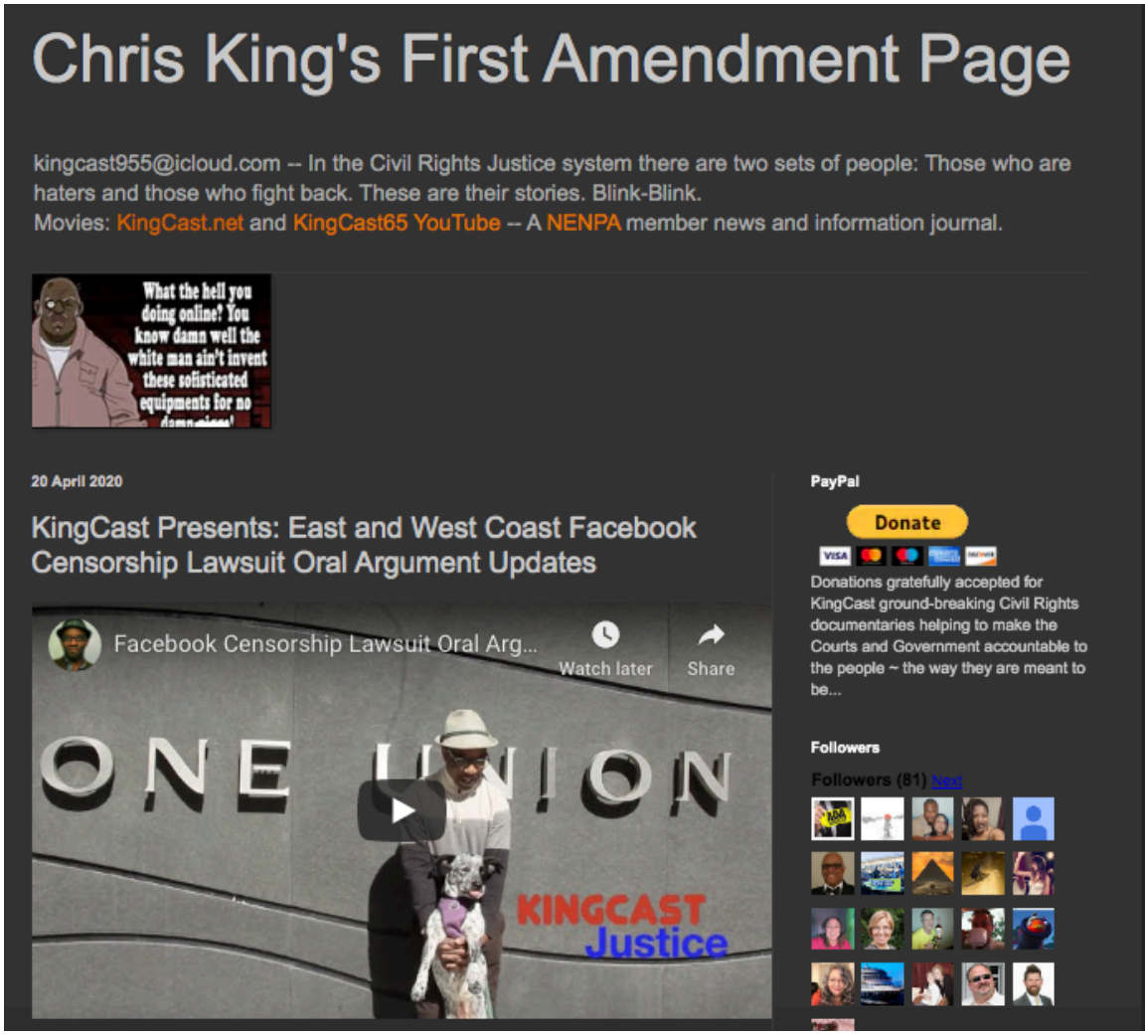
As the quantum of work put in by Counsel was obviously not necessary because King was so obviously wrong, then they failed to mitigate the purported harm, yet another reason why the initial assessment and affirmance are wrong.

III. Oral Arguments was Wrongfully Denied.

These issues could have been countenanced at a proper Oral Argument. As noted on prior occasion Petitioner was informed that he would get a date for Oral Argument. Petitioner has personally shot video of Oral Arguments on many occasions before this Court. Then Petitioner was informed – prior to COVID 19 Lockdown – that there would be no Oral Argument, and moreover the Court would not even entertain a telephonic appearance.

As such, Petitioner was compelled to issue his own Oral Argument in the matter from outside of the Courthouse as a matter of Essential Activity:

https://christopher-king.blogspot.com/2020/04/kingcast-presents-east-and-west-coast.html
https://www.youtube.com/watch?v=eOQNs35-U5Q&feature=youtu.be



IV. The Discovery sanctions were not balanced against the nature of the discovery violation and the surrounding circumstances.

The Court noted at Fn2 (p. 6) in its 27 April 2020 Order that King did not elaborate as to the importance of the fact that a Dispositive Motion does not *ipso facto* terminate Discovery. That is indeed part of the entire picture that must be considered, as noted above.

Specifically, this Court wrote:

> Discovery sanctions should be balanced against the nature of the discovery violation and the surrounding circumstances of the case. *La Rosa v. Northwest Wind Power, LLC* No. 70637-3-I (Division One Sept. 29 2014)(unreported)(citing *Rivers v. Wash. State of Mason Contractors*, 145 Wn.2d 674, 695, 41 P,3d 1175 (2002).

Accord *Loe v. Benson Village Associates*, No. 72946-2-I, Washington Court of Appeals, Div. I (September 26, 2016) (unpublished. For all of the foregoing reasons the Decision of the Lower Court was clearly not based on the entire picture, and while the stakes were much higher in *LaRosa* for an alleged pattern of violations the Principle remains the same: This sanction was not warranted by persuasive law or by the particular facts of this case that also involve a distinct lack of Clean Hands.

https://www.courts.wa.gov/opinions/pdf/706373.pdf

V. Conclusion.

The Lower Court clearly abused its discretion in this matter and this Court has before it enough relevant Law to correct it and to avoid encouragement to Corporate Defendants who proceed with Unclean Hands.

Respondent has no Answer to all of the cases cited by Petitioner holding no award of Attorney Fees in a situation where Parties have filed failed Motions to Compel even without a Rule 26 Conference. This makes the Judgment of the Trial Court and its affirmance beyond all logic in this case. As such, once this Honorable Court runs an analysis of all four sections of this Motion it will indeed discover that the Assessment of Fees must be reversed.

Respectfully submitted,

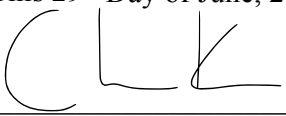
CHRISTOPHER KING, J.D.

CERTIFICATE OF SERVICE

I the undersigned swear that I served a copy of this Petition by email and regular mail to:

Joshua B. Selig, Esq.
Byrnes Keller Cromwell LLP
1000 Second Avenue 38th Floor
Seattle, Washington 98104

This 29th Day of June, 2020



CHRISTOPHER KING, J.D.

APPENDIX A

DIVISION ONE COURT OF APPEALS OPINIONS/ORDERS

FILED
4/27/2020
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CHRISTOPHER KING, J.D. a/k/a KINGCAST Appellant, v. FACEBOOK, INC., Respondent.	No. 79874-0-I DIVISION ONE UNPUBLISHED OPINION

APPELWICK, J. — King sued Facebook for injunctive relief relating to the suspension of his account. He then served Facebook with three sets of discovery requests. Two days before Facebook's first discovery deadline, King filed a motion to compel responses to all of his requests. Facebook opposed the motion. After meeting its first discovery deadline, Facebook filed a motion to dismiss and a motion for a protective order. It asked the trial court to stay discovery pending the resolution of its motion to dismiss. The trial court denied King's motion to compel and granted Facebook's motion for a protective order. It also awarded Facebook reasonable attorney fees and costs for responding to King's motion. King argues that the circumstances of this case do not warrant an assessment of attorney fees. We affirm.

FACTS

On November 7, 2018, Christopher King filed a complaint seeking injunctive relief against Facebook, Inc. He alleged that Facebook violated its terms of service

by suspending his account on two occasions after he posted about his experience dealing with racism. In offering an explanation of the posts that resulted in his suspension, he used the "N word" and described an encounter he had with police. King asserted breach of contract, outrage, and promissory estoppel claims, as well as a claim under 42 U.S.C. § 1981. He sought the immediate reinstatement of his Facebook privileges, a public apology from Facebook, and compensatory and punitive damages.

On November 13, 2018, a process server served the complaint on Facebook's registered agent in California, along with King's first set of discovery requests. The requests consisted of nine interrogatories, nine requests for production, and two requests for admission. Some of the requests sought data about other Facebook users, including how many user accounts had been suspended for using the N word since January 2013. None of King's requests were signed.

King served Facebook with a second set of discovery requests on November 30, 2018. This second set included six additional interrogatories and two additional requests for production. All of the requests were signed. Facebook's responses to King's second set of requests were due on January 2, 2019.

On December 12, 2018, Facebook explained to King over the phone that because his first set of discovery requests were not signed, they did not comply with CR 26(g) and Facebook was not obligated to respond. King agreed to rectify the error by sending signed versions of his first set of requests.

King served Facebook with a signed, revised first set of discovery requests on December 14, 2018. The requests included 19 interrogatories, 19 requests for production, and 5 requests for admission. In addition to seeking data about other Facebook users, the requests sought Facebook's rationale for suspending specific user accounts. Facebook's responses to King's revised first set of requests were due on January 14, 2019.

King served Facebook with a third set of discovery requests on December 18, 2018. This third set consisted of two additional interrogatories and four additional requests for production. Facebook's responses to King's third set of requests were due on January 18, 2019.

On December 27, 2018, about a week before Facebook's first discovery deadline, King e-mailed counsel for Facebook asking if it intended to provide substantive answers to his discovery requests. If so, he asked counsel to "state the extent of [Facebook's] anticipated responses." He also told counsel that if he did not hear back the following day, he would "reasonably assume the answer is in the negative" and "proceed on that basis." Counsel for Facebook responded the next day. He told King that on January 2, Facebook would be providing "objections to the requests that are due (the second set) along with a motion for a protective order." In a separate e-mail, he asked if King would be willing to stay or postpone Facebook's discovery deadlines until its planned motion to dismiss was decided. King responded by stating that he would be filing a motion to compel.

On December 31, 2018, King filed a motion to compel Facebook to respond to all of his discovery requests in full. Facebook opposed the motion. In doing so,

it argued that the motion was "predominantly a preemptive opposition to Facebook's motion for a protective order," and that King's requested relief would strip Facebook of its right to make timely objections to his requests. It argued next that the motion was "substantively defective." It explained that King made "sweeping requests that would require Facebook to scour years' [sic] worth of data and personal information" on other user accounts, but failed to articulate why the requests were relevant or likely to lead to relevant information. Facebook also requested attorney fees under CR 37(a)(4).

On January 2, 2019, Facebook filed a motion to dismiss the case. It also filed a motion for a protective order, asking the trial court to extend the time for it to respond to King's discovery requests until the court ruled on its pending motion to dismiss. Last, it served King with responses and objections to his second set of discovery requests.

The trial court ruled on Facebook's and King's discovery motions on February 1, 2019. First, it granted Facebook's motion for a protective order. It explained that it agreed with Facebook that "neither party will be prejudiced by a brief stay on discovery pending the court's ruling on [Facebook]'s [m]otion to [d]ismiss, which is scheduled for hearing on February 15, 2019."

Second, the trial court denied King's motion to compel. It concluded that King filed his motion "prematurely because [Facebook]'s responses to [King]'s discovery requests were not due on December 31, 2018." It further stated that it was "unable to find that [King]'s motion was 'substantially justified or that other circumstances make an award of expenses unjust.'" (Quoting CR 37(a)(4).) As a

result, it stated that it would award Facebook its reasonable fees and costs under CR 37(a)(4). It directed Facebook to file a motion seeking the fees and costs it incurred in responding to the motion to compel.

A few days later, Facebook filed a motion seeking $2,504.49 in reasonable attorney fees and costs. On February 15, 2019, the trial court granted Facebook's motion to dismiss, dismissing King's complaint without prejudice. Later that month, it granted Facebook's motion for fees and awarded it $2,504.49. King then filed a motion for reconsideration of the fee award, which the court denied.

King appeals the trial court's decision to award Facebook attorney fees.

DISCUSSION

King argues that the trial court's assessment of attorney fees is unwarranted due to the "[t]otality of [c]ircumstances on [l]aw and in [e]quity." Specifically, he contends that he was entitled to file the motion to compel because Facebook told him that it was not going to provide any discovery responses. He also asserts that awarding Facebook attorney fees was "needlessly punitive." Last, he points out that he is a pro se litigant with limited means, while Facebook is a wealthy corporation.[1]

Under 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. A trial court

[1] In a section of his brief titled "Public Policy, Equity and Ongoing Bad Faith," King goes on to assert that Facebook is an abusive and monopolistic entity. He also discusses the merits of his claims against Facebook in a separate federal action. Because these arguments are not relevant to whether the trial court erred in awarding Facebook attorney fees, we do not address them.

has broad discretion to award attorney fees. Dalsing v. Pierce County, 190 Wn. App. 251, 267, 357 P.3d 80 (2015). We will not disturb an award of attorney fees except upon a clear showing that the court abused its discretion. Id.

King argues first that "volumes of [d]ecisional case law do not support an assessment or award of attorney fees or costs" here. He cites no Washington authority to support that proposition.[2] He further asserts that "no sanctions should issue" because he was entitled to file a motion to compel when Facebook "flat out stated in a [CR] 26 [c]onference that it was [not] providing any responses." And, he states that he would have been entitled to file the motion three days later when Facebook "fail[ed] to issue responses."

Facebook did not state that it would not be providing any discovery responses. Rather, in a December 28, 2018 e-mail, counsel for Facebook told King that Facebook would be timely providing objections to the second set of discovery requests due on January 2, along with a motion for a protective order. King responded the same day and told Facebook that he would be filing a motion to compel. He also stated that he would "wait until [January] 2nd to determine the extent of [Facebook]'s response to that set of [d]iscovery [r]esponses" so he would not have to go back and "[a]mend anything." Instead, King filed a motion to compel

[2] Instead, King cites two federal cases where the court denied a motion to compel but did not issue sanctions. He also cites a number of federal cases to support the proposition that the filing of a dispositive motion does not automatically constitute good cause for a stay of discovery. He does not elaborate further on this argument. Nor does he assign error to the trial court's order granting Facebook's motion for a protective order and staying discovery during the pendency of its motion to dismiss. We do not review a claimed error unless the appellant assigns error to it. RAP 10.3(a)(4). Accordingly, we do not address King's argument regarding the trial court's decision to stay discovery.

responses to all of his discovery requests on December 31, two days before Facebook's first discovery deadline. Facebook then timely served King with its first set of responses and objections on January 2. It also filed a motion for a protective order on that date.

Rather than waiting to review Facebook's objections and allowing the court to evaluate the scope of those objections and its motion for a protective order, King filed a motion to compel two days before Facebook's first discovery deadline and weeks before its remaining deadlines. He states that he would have been entitled to file the motion "a scant three (3) days later" when Facebook served its objections to his second set of discovery requests. But, he fails to demonstrate the necessity of filing the motion before any of Facebook's discovery responses were due. Under these circumstances, the trial court did not abuse its discretion in determining that King's motion to compel was not substantially justified.

King argues next that the trial court should not have awarded Facebook attorney fees because they were "needlessly punitive." He cites no authority to support that assertion. Nor does he cite authority that would prevent a trial court from awarding attorney fees where such fees serve a punitive purpose. Where a party fails to cite authority to support a proposition, "the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none." DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962). We hold pro se litigants to the same standard as attorneys. Kelsey v. Kelsey, 179 Wn. App. 360, 368, 317 P.3d 1096 (2014).

CR 37(a)(4) requires a trial court to 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. As established above, the trial court did not abuse its discretion in determining that King's motion was not substantially justified. Thus, without a determination that other circumstances made an award unjust, the court was required to award Facebook attorney fees.

King last points out that he is a pro se litigant with "limited means," while Facebook is a wealthy corporation. His statement implies that awarding Facebook attorney fees under these circumstances would be unjust because he cannot pay them. But, King failed to raise inability to pay as an issue below. He presented no evidence to the trial court to support that he did not have the financial resources to satisfy such a judgment. As a result, we do not consider this argument on appeal. See RAP 2.5(a) ("The appellate court may refuse to review any claim of error which was not raised in the trial court.").

The trial court did not abuse its discretion in awarding Facebook attorney fees under CR 37(a)(4).

We affirm.

Appelwick, J.

WE CONCUR:

Bowman, J.

Dwyer, J.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

CHRISTOPHER KING, J.D. a/k/a KINGCAST Appellant, v. FACEBOOK, INC., Respondent.	No. 79874-0-I ORDER DENYING MOTION FOR RECONSIDERATION

The appellant, Christopher King, filed a motion for reconsideration. The respondent, Facebook Inc. has not filed a response. A majority of the panel has considered the motion pursuant to RAP 12.4 and has determined that the motion should be denied. Now, therefore, it is

ORDERED that the motion for reconsideration is denied.

Appelwick, J.
Judge

CHRISTOPHER KING

July 01, 2020 - 1:59 PM

Filing Petition for Review

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	Case Initiation
Appellate Court Case Title:	Christopher King, JD, A/K/A KingCast, Appellant v. Facebook, Inc., Respondent (798740)

The following documents have been uploaded:

- PRV_Petition_for_Review_20200701135735SC089316_8821.pdf
  This File Contains:
  Petition for Review
  The Original File Name was FB Supreme Court Petition for Review.pdf

A copy of the uploaded files will be sent to:

- jselig@byrneskeller.com
- lyoshinaga@byrneskeller.com

Comments:

Petition for Review by Christopher King, J.D.

Sender Name: Christopher King - Email: kingcast955@icloud.com
Address:
12048 Greenwood Avenue N
SEATTLE, WA, 98133
Phone: (617) 543-8085

Note: The Filing Id is 20200701135735SC089316