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No. 1031157

(Court of Appeals No. 57847-II)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CELESTE RYAN,

Plaintiff/Appellant,

vs.

JEFF TIMMERMAN and SILVERDALE PLUMBING &
HEATING, INC.

Defendants/Respondents.

RESPONDENT TIMMERMAN et al.
ANSWER TO PETITION FOR REVIEW

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I. STATEMENT OF THE CASE

The Petition here involves Division II’s opinion resolving this matter on February 27, 2024. *See Celeste Ryan v. Jeff Timmerman et al*, No. 57847-6-II, 2024 WL 800259 (Wash. Ct. App. Feb. 27, 2024) (Hereinafter “Opinion”).

Unlike the Statement of the Case in Ryan’s petition, the recitation of the facts in Division II’s opinion is a fair and accurate description of the relevant, supported evidence. *See* Opinion at 3- 11, incorporated by reference herein.

In summary, this matter arises out of a December 2002 motor vehicle accident where Defendant Timmerman, driving a Silverdale Plumbing van, rear-ended a car where six-year-old Ryan was a passenger. Matthew Ryan, Ryan’s father, was a chiropractor who eventually diagnosed Ryan with dysautonomia (a nervous system disorder). In 2016, when Ryan was 20, she sued Timmerman and Silverdale Plumbing, seeking \$12 million in damages for injuries she believed she had incurred during that accident, including her “dysautonomia.” *Id.*

During the litigation, Ryan and Matthew Ryan repeatedly sought out direct contact with the defendants. Matthew showed up at Timmerman's house several times, speaking with his mother and his wife, telling them he was trying to speak with Timmerman and that the insurance companies were lying to the family. His family found the visits upsetting. CP at 31.

The defense lawyer sent letters to Ryan stating that his clients did not want Ryan or her representatives to contact them, and when ignored, sought an order from the trial court prohibiting Ryan and her representatives from having direct contact with defendants. CP at 11. Defendant also asked the trial court to order Ryan comply with RPC 4.2, which prohibits lawyers from contacting a represented party.

In response, Ryan insisted that she had the right to try and settle with the defendants directly, without their counsel, and that the rules applicable to attorneys did not apply to her, so would continue to try and contact defendants directly despite their attorney's direction not to. She also claimed that she hadn't asked her father to contact defendants. The trial court granted

Defendants' motion. Verbatim Rep. of Proc. (VRP) (Nov. 17, 2017) at 3. The order issued provided that Ryan "and any of her representatives shall comply with RPC 4.2 and not have any direct or indirect contact [with] the Defendants in this matter. [Ryan] shall direct all of her communications to the Defendants' counsel of record." CP at 752.

After this order, Matthew Ryan *continued* to try and contact Defendant directly. Timmerman moved to sanction Ryan for violating the order. After the motion for sanctions, Matthew Ryan contacted defendant's brother *again*, this time accusing the husband of committing perjury. Opinion at 8. Timmerman moved to dismiss the case or exclude Matthew Ryan as a witness at trial because he was "intimately involved" in the case and "repeatedly attempted to improperly interject himself" in violation of the court's order, and also because with Ryan already owing thousands in sanctions and attorney fees, further monetary sanctions would be an inadequate deterrent. CP at 731.

Ryan insisted that Matthew was not acting as her representative and she sought sanctions against Timmerman's

attorney. She also contended that there was no bad faith because Matthew had “no ulterior motive” except to warn the defendants they were “being defrauded.” VRP (Sept. 13, 2019) at 14, 18. She also **insisted she would not be deterred by additional sanctions, saying the court could sanction her “a billion dollars.”** CP at 837.

The trial court found the “intent” of Matthew Ryan’s message” was to reach Silverdale Plumbing’s owner, which constituted trying to contact a defendant directly. VRP (Sept. 13, 2019) at 17. And because the communications were intended to settle the case, Matthew *was* acting as Ryan’s representative and issuing threats that violated the court order. *Id.* at 25. The trial court found that Ryan, through Matthew, violated the prior order in bad faith, that the sanctions authorized by chapter 7.21 RCW did “not adequately apply under the circumstances” and therefore instead excluded Matthew from testifying at trial. CP at 938.

In October 2019, Defendant Timmerman moved to limit Ryan’s claims for general damages to the three months after the accident on the basis of the partial summary judgment ruling that

“no treatment after March 2003 was reasonable.” CP at 915. Defendant acknowledged if the motion were granted, he would call no experts or witnesses at trial. CP 916.

In response, Ryan argued that she should be permitted to cross-examine the medical experts. VRP (Oct. 11, 2019) at 6. The trial court granted the motion to limit general damages because Ryan failed to challenge the motion “on a legal basis” and did not offer opposing medical expert testimony. *Id.*

In November 2019, Ryan moved for a subpoena directing the doctors who had conducted the CR 35 exam to testify at trial. However, because Ryan could not explain how the experts’ testimony was relevant to the issues remaining for trial, the trial court denied subpoena. Opinion at 10.

Trial was set for March 2020 when the COVID-19 pandemic closures began. Trial eventually occurred in December 2022. The delay was partially because the superior court prioritized clearing the backlog of criminal cases once restrictions loosened enough to conduct trials again. Opinion at 22. Ryan herself requested several continuances. *Id.* Once civil

trials resumed, Timmerman suggested a bench trial to speed the process but Ryan refused. Ryan was the only witness at trial. The sole issue was general damages between December 2002 and March 2003 (as Defendants had agreed \$3,289 in medical bills were reasonable). In addition to her special damages in the amount of her medical bills, Ryan sought \$1,400,950 for pain and loss of enjoyment. The jury awarded Ryan \$3,289 in medical bills and nothing in general damages. This award was offset by prior sanctions awards and attorney fees, resulting in a judgment in favor of Defendants for \$8,914.75.

Ryan subsequently appealed. The issues Ryan brought to the Court of Appeals, Division II concerned: **1)** the trial court's Order Requiring Ryan and her representatives to refrain from contacting Defendants directly (Opinion at 11-12), and the trial court's sanctions against Ryan for violating that order (Opinion at 13); **2)** the trial court's partial summary judgment order, which found Ryan had failed to make a prima facie showing of an essential element of her claim (causation), and dismissed her

claims related to dysautonomia and medical bills beyond those incurred three months after the accident (Opinion at 15-19);

4) the trial court's denial of Ryan's motion to exclude defense medical experts on the basis that they were allegedly "pre-meditated" and "fraudulent" (Opinion at 19-20); 5) the trial court's order in favor of Defendant Timmerman, to limit general damages to three months after the accident (Opinion at 20-21);

6) the trial court's denial of Ryan's motion to subpoena Timmerman's medical experts to trial (Opinion at 21). Division II also addressed Ryan's vague allegations that the trial court violated her constitutional rights by continuing the trial. (Opinion at 21-23).

Ryan now seeks to have further review by this Court, and rehashes all of the same arguments presented to the Court of Appeals. What Ryan does *not* address, is how her Petition meets any of the criteria under RAP 13.4 for Acceptance of Review. Plaintiff does not explain how any decision by the Court of Appeals in this matter conflicts with any decision of the Supreme Court, or with a published decision of the Court of Appeals. Nor

does Ryan identify any “significant question of law” under the Constitution of the State of Washington or the United States - other than to allege conclusively that the trial court decisions and opinion by the Court of Appeals, “violates her constitutional rights.” Petition at p. 3, 29, 30. Nor does Ryan identify any issue of substantial public interest that should be determined by the Supreme Court. Therefore, review is not merited. RAP 13.4(b).

II. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. Ryan Fails To Identify Any Standard of Review Under Which Her Petition Could be Accepted

RAP 13.4(b) provides the “Considerations Governing Acceptance of Review” by the Washington Supreme Court. The Rule provides :

(b) Considerations Governing Acceptance of Review. 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.

Ryan does not identify the basis under which she seeks review. Her petition lacks all indicia of a serious effort to seek Supreme Court review. Instead of identifying and setting forth an explanation satisfying any of the criteria under RAP 13.4(b), she asserts “objections and counter arguments” to the Court of Appeals analysis and opinions. Petition at 11. These arguments consist entirely of unsupported, unfounded accusations of “corruption” and violation of “legal justice and due process” without even a single legal argument or citation to the record. As such, review is not merited. RAP 13.4(b).

B. Division II Correctly Applied Washington Precedent And Affirmed Each of the Trial Court Decisions At Issue.

1. Trial Court Order Requiring Ryan and her Representatives To Refrain From Contacting Defendants And the Sanctions for Violating That Order

Ryan argues that she violated no rule, because the first order did not reference Matthew Ryan specifically, and so his conduct could not have violated the order. Petition at 13-14. Ryan also makes various incoherent arguments about insurance

companies and bad faith, which are entirely irrelevant. Petition at 15.

Division II explained that while the “RPCs do not inherently apply to nonlawyers, the trial court has discretion to make trial management decisions including preventing harassment of the parties. Importantly, the trial court acknowledged that the parties could talk to each other if they wanted to, but here, the defendants clearly did not want to be contacted. As such, the trial court was not necessarily applying RPC 4.2, but was instead ordering Ryan and Matthew to follow the parameters of the rule due to their prior actions, even though they would not normally be subject to the rule. Thus, we hold that the trial court did not abuse its discretion by ordering Ryan and her representatives to comply with in RPC 4.2 and contact the defendants only through counsel.” Opinion p. 11-12.

Division II also rejected Ryan’s argument that she could not be sanctioned for her or her father’s conduct:

... But “separate from sanctions under the contempt statute, a trial court may ‘fashion and impose appropriate sanctions under its inherent authority to control litigation.’

(internal citation omitted). The court’s inherent power to sanction is vested in the court to ensure it can dispose of cases in an orderly and expeditious manner. *(citation omitted)* A court has “inherent authority to sanction lawyers for improper conduct during the course of litigation” if it finds the conduct was in bad faith. *(citation omitted)*. And a court may sanction a pro se litigant as it would an attorney for their litigation conduct. *(citation omitted)*

...

Here, the trial court’s order directed that Ryan and “her representatives shall comply with RPC 4.2 and not have any direct or indirect contact with the Defendants” and “shall direct all of her communications to the Defendants’ counsel.” CP at 752. After the order, Matthew tried several times to contact Silverdale Plumbing’s owner through her husband and brother-in-law...The trial court found that the communications were intended to settle the case and the messages were “veiled threats.” VRP (Sept. 13, 2019) at 25. It also found that the sanctions authorized by chapter

7.21 RCW did “not adequately apply under the circumstances” and therefore excluded Matthew from testifying rather than any remedial sanction. CP at 938.

Opinion at 14-15.

Division II concluded it was “not untenable to construe the prohibition against indirect contact with the defendants to include the husband and brother-in-law of Silverdale Plumbing’s owner when clearly intended to reach the owner. Nor was it unreasonable to find that Matthew acted as Ryan’s representative when he encouraged the opposing party to engage in settlement negotiations, find a different lawyer, and amend filings. Thus, there was substantial evidence to support the conclusion that Matthew and Ryan violated the court’s prior order in bad faith. There was also substantial evidence to support the finding that chapter 7.21 RCW sanctions were insufficient.

Accordingly, Division II correctly found that the trial court did not abuse its discretion by excluding Matthew’s testimony at trial as a sanction for violating the court’s order prohibiting contact with the defendants, and that the trial court did not err by

declining to sanction Timmerman for filing a meritorious sanctions motion. Review is not merited. RAP 13.4(b).

2. Division II Correctly Affirmed the Trial Court's Order Granting Partial Summary Judgment

Ryan argues (with no citation to any record) that “the record” was sufficient to create a genuine issue of fact, and that the defense relied on a CR 35 report, which she alleges was “fraudulent.” Petition, p. 19.

However, as set forth in Division II’s opinion, during her appeal, Ryan had argued that because she produced a “summary report” by Matthew Ryan that states her dysautonomia was caused by the accident, this precluded summary judgment. Opinion p. 15. Division II noted that this report was not a sworn statement, and when deposed, Matthew Ryan had refused to provide any expert opinions because he was not licensed. Opinion p. 17-18. Division II cited to the relevant Washington case law which establishes that expert testimony is generally necessary to establish most aspects of causation in a personal injury case involving “obscure medical factors. Opinion p. 17. Division II also noted that it was not until the day before the

summary judgment hearing, after the discovery cutoff and after the deadline for submitting responsive evidence, that Ryan filed a surreply with Matthew Ryan's new sworn declaration asserting that the accident caused her condition, after having sought no continuance or reopening of discovery. *Id.* at 18.

Division II noted that after the trial court set aside Ryan's late materials, Ryan had no admissible evidence to support her claim because she lacked sworn expert testimony to support a causal link between the accident and her complaints. Further, the late provided "summary" from Matthew Ryan was not authenticated, nor did it explain how he was qualified to testify as to neurological symptoms. Thus, the only admissible medical expert evidence before the trial court at summary judgment was Timmerman's CR 35 report challenging both the injury and causation elements of Ryan's negligence claim. *Opinion* at 18. Accordingly, Division II found that the trial court did not err by concluding that Ryan had failed to make a *prima facie* showing of an essential element of her claim, causation, and it affirmed the trial court's dismissal of Ryan's claims related to

dysautonomia and her claims for past medical bills beyond \$3,289.00, the amount she incurred in the three months after the accident. Review is not merited. RAP 13.4(b).

3. Division II Correctly Affirmed the Trial Court's Denial of Ryan's Motion to Exclude Defense Medical Experts

The CR 35(a)(1) allows a party to seek “a physical examination by a physician” when the opposing party’s “physical condition . . . is in controversy,” resulting in a report. Ryan argues that the trial court abused its discretion by denying her motion to exclude Timmerman’s medical experts and their CR 35 report, and the Court of Appeals violated her constitutional rights by affirming this decision. She argued on appeal, and continues to argue, (again with no support) that the expert conclusions were “pre-meditated” and “fraudulent.” Br. of Appellant at 44, Petition at 19-20.

Division II disagreed, explaining that “ER 702 allows the admission of expert testimony and reports if ‘specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue.’” Opinion at 19. Division II cited

to controlling Washington Case law requiring that a party claiming unfair bias, “must produce sufficient evidence demonstrating bias . . . mere speculation is not enough.” Opinion at 20 (citations omitted).

Division II found that the defense medical experts had produced a report made under oath, which explained the tests conducted and the conclusions reached. Ryan produced no evidence these experts were not qualified, using invalid theories or methods, or that their conclusions were not relevant. Opinion at 20 (internal citations omitted). Except for Matthew’s untimely declaration, which the trial court declined to consider, Ryan relied entirely on her own assertions about the experts. In this petition, Ryan makes similar unfounded unqualified allegations that the experts were “unreliable.” Petition at 23.

Division II found that the trial court did not abuse its discretion by concluding that Ryan was challenging the experts’ credibility, not the admissibility of their testimony or reports; and the trial court did not err by denying the motion to exclude the experts. Review is not merited. RAP 13.4(b).

4. Division II Correctly Affirmed the Trial Court's Order in Favor of Defendant to Limit General Damages to Three Months After the Accident

Ryan argues now, as she argued in her appeal, that the trial court improperly weighed the evidence when it granted Defendants' motion to limit general damages to the three months after the accident. Petition at 23.

However, the trial court's ruling on partial summary judgment had effectively limited Ryan's claim for general damages to three months after the accident. And as this ruling was proper, the order limiting Ryan's claim to the three month time period was likewise proper. Opinion at 21. Review is not merited. RAP 13.4(b).

5. Division II Correctly Affirmed the Trial Court's Denial of Ryan's Motion to Subpoena Defendants' Medical Experts to Trial.

The doctors Ryan sought to depose were Defendants CR 35 examining experts. However, once the pretrial orders limited the only issue at trial to plaintiff's general damages from December 12, 2002 to March 31, 2003, Defendants elected not to call the experts at trial.

Ryan also admitted that her sole purpose in seeking the depositions was to re-litigate prior orders granting partial summary judgment. Now she argues at length about her “constitutional right” to “confront the witnesses against her” under the Sixth Amendment and the Fourteenth Amendment. Petition, p. 27. This argument is ridiculous and unsupported.

As set forth by Division II, the partial summary judgment ruling was proper, “so the trial court was correct to conclude that any testimony about Ryan’s condition at the time of the CR 35 examination would have been outside the scope of issues on trial. The jury did not hear any testimony or receive any evidence about the CR 35 examination, so impeaching the experts about the exam would not have yielded any probative evidence regarding any issue that was on trial.” Opinion, p. 21. Division II properly held that the trial court did not err by denying Ryan’s motion to subpoena Timmerman’s medical experts because their testimony was not relevant to the issue on trial. Review of this decision is not merited. RAP 13.4(b).

IV. CONCLUSION

Division II's thoughtful opinion applied this Court's precedent and correctly affirmed each of the Superior Court's orders on appeal. Defendants respectfully request that this Court DENY Ryan's Petition for Review. RAP 13.4(b).

Certificate of Compliance pursuant to RAP 18.17(b): I certify this Brief of Respondents contains 3,260 words.

DATED this 10th day of July, 2024.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I electronically filed the attached document with the Clerk of the Court via the Washington State Appellate Courts' Portal which caused service of same on all counsel of record.

DATED this 10th day of July, 2024, at Seattle,
Washington.

s/ Traci Jay

Traci Jay, Legal Secretary

WILSON SMITH COCHRAN DICKERSON

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