No. 57847-6-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO.

CELESTE RYAN ,

Appellant,

v.

JEFFERY TIMMERMAN and SILVERDALE PLUMBING & HEATING INC.,

Respondent.

PETITION FOR REVIEW

Celeste Ryan

Appellant Pro Per

435 Shadowtree Dr.

Oceanside, CA, 92058

Celeste_ryan@yahoo.com

(253)-391-8335

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I. INTRODUCTION

Pursuant to clear precedent established by this Court, published Decisions of the Court of Appeals, the United States Constitution, and the Fundamental Principles of Fair practice and equal treatment under the law, this case must be reviewed by the Supreme Court for what the petitioner claims to be at least Judicial error, and at most, Judicial corruption. Plaintiff will include citations in the appendix, as her word count in this petition is limited.

Plaintiff Celeste Ryan(Ryan) brought a negligence claim against Mr. Jeffery Timmerman for a car accident which occurred in 2002. Mr. Timmerman was acting under the employment of Silverdale Plumbing & Heating Inc., at the time of the accident, who were therefore vicariously liable. Ryan named both Timmerman and Silverdale as defendants in her complaint filed in November 2016. Ryan claimed permanent spinal injuries and a mild traumatic brain injury as a result of the accident. Ryan claims that the trial court manipulated the

issues and evidence to be brought before the jury in favor of the defendants through the use of pretrial motions, which violated her both State and Federally Constitutionally protected rights and has acted in contradiction to case precedent as well as statutory law. Ryan seeks review of the Appellate court decision which condoned every action of the trial court.

II. IDENTITY OF PETITIONER

Celeste Ryan, the plaintiff, seeks review of the decision of the Court of Appeals identified in Part III below.

III. ASSIGNMENT OF ERROR

The following are issues presented to the court of appeals, all of which were affirmed by the appellate court, all of which are petitioned for review now by this Washington State Supreme court:

1. Trial court order prohibiting contact between the parties, and The trial court order for sanctions against the plaintiff violating the plaintiffs constitutional rights.[1]

[1] Appendix section 1

2. The trial court order granting Partial summary judgment for past medical bills in the amount of $3,289.00, and the dismissal of plaintiffs' claims of Dysautonomia as caused by the subject accident, and The trial court order denying the exclusion of the defense expert witnesses on the basis of fraud upon the court, violating the plaintiffs constitutional rights [2].
3. The trial court order which capped plaintiffs' damages to damages incurred within three months post-accident violating the plaintiffs constitutional rights[3].
4. The trial court order which denied the plaintiffs request to subpoena the defense expert witnesses to trial violating the plaintiffs constitutional rights[4].
5. Judicial immunity, judicial discretion and Summary judgment proceedings violate constitutional rights[5].

[2] Appendix section 2
[3] Appendix section 3
[4] Appendix section 4
[5] Appendix section 5

Plaintiff contends that these orders violate her Constitutionally protected rights to a fair trial, to equal treatment under the law, to remedy for her injuries, her freedom of speech and her right to represent herself in a court of law. Plaintiff further contends that the privileges allowed to licensed attorneys violate the constitutional requirements of equal treatment under the law, and plaintiff alleges that this is discrimination based upon a class of persons (Pro Per litigants). The entire appellate court opinion reads more like a tabloid than a judicial analysis. Plaintiff claims the trial court used unnecessary delay in order to attempt to settle the case or give up her rights to remedy in some manner, for the purpose of avoiding a jury trial. Plaintiff claims that the use of precedent case law in lieu of statutory law violates litigants rights to due process. Plaintiff claims judicial immunity, discretion and the use of Summary judgment proceedings, while these practices are argued by the courts to be necessary, the use of each

practice, in conjunction with each other, and without any citizen oversight or practical remedy for violations, are unconstitutional as well as unnecessary, and only act as a grab for power by the courts.

IV. FACTS OF CASE

The following claims of fact are present and supported in plaintiffs' pre-trial motions. At six years old, the Plaintiff was struck in a car accident by Defendant Timmerman. The Plaintiff waited to pursue legal action until reaching adulthood, as allowed by statutory limitations, to fully understand the impact of her injuries.

The Plaintiff offered to settle her claim, but the defense insurer refused. This refusal invoked the legal doctrine of bad faith, which holds an insurer liable for all damages if it rejects a reasonable settlement within policy limits and a judgment exceeds those limits. The Plaintiff's father had also demanded

policy limits shortly after the incident, when plaintiff was still a child.

The Plaintiff later found that the Defendants had a $5 million commercial policy, which would be voided if the Defendants committed fraud. The Plaintiff sued for injuries, including a mild traumatic brain injury leading to a dysfunctional autonomic nervous system (dysautonomia) and cervical instability.

During discovery, the Plaintiff provided multiple imaging studies, treatment notes spanning two decades, autonomic testing results supporting her father's findings (a chiropractor), pre-accident medical records, school and work records showing her inability to be gainfully employed and agreed to a CR 35 examination with professional videotaping.

During discovery, the Plaintiff learned through interrogatory answers that the Defendants had destroyed the vehicle involved in the accident after retaining defense counsel

in 2016, violating RCW 9A.72.150 (tampering with evidence). Additionally, the defense attempted to falsify repair estimates to show the vehicle was operational, but this was exposed when the Plaintiff demanded proof of payment.

The Plaintiff offered to meet with the Defendants and their attorney to address these issues and possibly reach a settlement, suspecting the defense attorney, representing the insurance company, might be attempting to void the insurance contract by committing fraud on behalf of the defendants. The Plaintiff made no attempt to contact the Defendants directly, nor without their attorney present.

The defense attorney responded that the Plaintiff lacked settlement authority. The Plaintiff then requested proof that the Defendants were informed of her offer and had rejected it, but no such proof was provided, and under what authority the defense attorney was citing that only the insurance carrier had authority to settle, as her research proved otherwise.

The Plaintiff spent months drafting a motion to exclude the defense expert report due to clear factual inconsistencies between the expert's testimony and the videotaped examination of the Plaintiff. Meanwhile, the defense filed a motion for partial summary judgment, arguing that the Plaintiff could not prove additional past medical bills beyond the $3,200 estimated by their experts. Plaintiff claimed about $18,000 in past medical bills total. The defense also contended that the Plaintiff could not present evidence of causation for her dysautonomia without expert testimony from a licensed expert specifically retained for litigation.

The Plaintiff opposed summary judgment with evidence of her injuries and their permanency. The trial court, requiring licensed expert testimony, accepted the defense's report, granted the motion for summary judgment, excluded $14,800 in additional past medical bills, and dismissed the Plaintiff's dysautonomia claims.

The trial court denied the plaintiffs motion to exclude because the expert witness testimony needed to be weighed by the jury to determine if it was credible. (while simultaneously accepting it as credible for summary judgment purposes).

Plaintiff later moved for a continuance, which was granted under the condition that plaintiff pay the defense expert fees to attend trial at a later date, to testify about the remaining issues.

After several trial continuances, pressure for a settlement over a jury trial mounted on the Plaintiff from both the defense and the trial judge. It was becoming apparent that the trial court and the defense may not allow the case to ever reach a jury. After personally witnessing this inappropriate behavior, the Plaintiff's father contacted an acquaintance related to the Defendant's family to ensure that they were in fact informed of all the facts of the case, and the way in which litigation was accompanied by possible malfeasance by their attorney. As a

result, of Mathew Ryan exercising his rights, the Plaintiff was sanctioned, and her primary medical witness was removed from the trial.

Following this, the defense reinterpreted the summary judgment to dismiss not only past medical bills and dysautonomia claims but also future medical costs, loss of employment opportunities, loss of income, and other related claims. The trial court agreed, effectively converting the partial summary judgment into essentially a full dismissal of the Plaintiff's case.

The defense also opposed their own experts testifying at trial, because they had successfully used that testimony for summary judgement, without the need to determine the credibility of it, had removed the plaintiffs expert witness because he exercised his rights, and converted the partial summary judgment into effectively full summary judgment with the help of the trial court, arguing that the defense experts

were irrelevant the whole time, due to the partial summary judgment order, which occurred prior to the court ruling that the defense experts would need to be cross examined at trial and that the plaintiff must pay for them to be there in order to grant the continuance.

At trial, the Plaintiff was heavily restricted: she couldn't name her conditions, discuss her treatment, or explain the absence of her physicians and other witnesses. She was only allowed to describe the pain she felt for three months post-accident. Nevertheless, the jury saw through these restrictions and asked the very same questions plaintiff had been arguing were in fact left for the jury to determine but was prevented from any sense of a fair trial due to the courts obvious purposeful interference.

V. OBJECTIONS AND COUNTER ARGUMENTS TO APPELLATE COURT ANALYSIS

1. Prohibition on directly contacting the defendants and order for sanctions.

The facts here are that the plaintiff made no attempts to contact the defendants directly, there is nothing in the record to conclude that the defendants had made ANY notion themselves that they did not wish to meet, nor that they had even been informed that there was an offer to meet, and circumstances in this case warranted reasonable suspicion that the defense attorney was in fact corrupt. Therefore, the trial court was without authority to impose any order on the plaintiff to begin with. The principle that a court cannot regulate the conduct of a party without there being a violation of a rule, law, or statute is rooted in the fundamental tenets of legal justice and due process. This argument hinges on the premise that judicial authority is circumscribed by the framework of established laws and that arbitrary or extra-legal actions by the judiciary undermine the rule of law. The appellate court's acknowledgment that no law or rule was broken by the plaintiff and then turn around and enforce the same standards under the guise of

general conductorial control is enforcing the rule de facto and without due process. Courts derive their authority from the Constitution, statutes, and established common law. This authority is limited to interpreting and applying these laws to the cases before them. Without a specific rule, law, or statute being violated, the court lacks a legitimate basis to regulate or sanction the conduct of a party. Judicial overreach into areas not governed by existing legal frameworks erodes the predictability and stability of the legal system. The principle of legality, which is fundamental to democratic governance, dictates that individuals can only be penalized or restrained under clear and pre-existing laws. This principle protects against arbitrary governance and ensures that individuals have the freedom to act without fear of retroactive sanctions or unforeseen judicial interventions. In this context, if no law or rule has been broken by the plaintiff, the court does not have the legal grounds to regulate their conduct, even under a general regulatory claim of authority. The appellate

court's role is to ensure that the law has been correctly applied and that due process has been observed. When an appellate court acknowledges that no law or rule was violated by the plaintiff, it effectively affirms that the lower court's intervention lacked a legal basis. Courts must refrain from regulating conduct unless it is clearly within their jurisdiction as defined by existing legal norms. Allowing courts to act without a legal violation disrupts this balance and risks the judiciary encroaching on legislative functions. A court that acts without identifying a legal violation sets a dangerous precedent, leading to unpredictability and potentially arbitrary justice.

Furthermore, Matthew Ryan was SPECIFICALLY and EXPLICITLY excluded from the order, for the exact reason that the court did not have the authority to include his action in the already unauthorized prescription of conduct regulation,

which in itself means that the later sanctions order is without authority.

The authority of the insurance company to settle is irrelevant here, but for the sake of argument, this is also a factually and legally false assertion by the appellate court, and is made without reference to any case law, rule or statute that supports the idea that a 3rd party indemnity insurer is the only "party" with authority to settle. In fact, as plaintiff has argued from day one, it is well within the authority of an insured to bypass their insurance obligations to allow the insurer to settle, should there be a finding of bad faith. Bad faith can amount to either the failure to properly adjudicate a claim, and exposing the insureds to unnecessary risk or, where in the circumstances of this case present an argument for intentional bad faith due to the willful criminal acts of the defendant and their insurance appointed attorney. These acts, ignored at every instance by the courts include spoliation of evidence, tampering with evidence and violations of safety standards for commercial entities. These are

willful criminal acts, brought to the attention of the court (again) at the sanctions hearing and were of course ignored. Given these factual occurrences, it was well within reason to believe that the defendants were one, ignorant of these occurrences and their repercussions, and the two that settlement could be made between the parties without the interference or "permission" of the insurance company. The court cites *Arden v. Forsberg & Umlauf, P.S.*, 193 Wn. App. 731, 752, 373 P.3d 320 (2016), making the defense attorneys argument for him, which is not at issue here of whether insurance companies have general settlement authority. What was argued in the correspondence between defense counsel and plaintiff, and not addressed by the appellate court here, is whether a third-party insurance company is the ONLY authority regarding settlement, not the parties to a lawsuit. Especially, when there are allegations of bad faith.

The appellate court here ignores the primary request for sanctions against the defense attorney at the time of his sanction

motion was because of the comparison between the behavior of the plaintiff, which at every turn is claimed to be within the court authority to control even when it cannot be shown to have violated any statute, law or rule, and yet, the defense who have literally committed criminal violations such as perjury, spoliation, and evidence tapering is ignored completely by the trial court and now this appellate court. The defense has never even denied the allegations made by the plaintiff. Any reasonable person would come to a different conclusion as to the facts of this case and who is the party responsible for inappropriate behavior and that is by definition an abuse of discretion by this court.

The intent behind Mathew Ryan's message to reach the Defendants directly is irrelevant because he has the right to do so. The trial court, defense, and Appellate court can only bring this issue under their authority by framing the messages as settlement-related, making Matthew a representative of the Plaintiff. However, there is no record supporting that any

settlement was offered, and therefore this court has trafficked Mathew Ryan into a new capacity; the plaintiffs representative.

The Appellate court's assertions are unfounded, reflecting a pattern where the Defendants' claims are accepted without scrutiny, while the Plaintiff faces sanctions and ridicule for similar contentions. The Plaintiff's legitimate claims of bad faith by the defense attorney were ignored, indicating bias. The court has a duty to consider all legitimate claims, and failure to do so undermines judicial impartiality.

The original order prohibiting communication, as well as the later sanctions order for "violating" the no contact order must be reversed.

2. Partial Summary Judgment and Motion to Exclude

The major points here are that 1. The plaintiff was entitled to present evidence other than sworn expert testimony to defeat summary judgment, 2. That the expert report should have been excluded under rule 702 and 3. That at the least, neither motion

should have been granted under the circumstances to safeguard the right to a fully informed jury.

The Plaintiff provided extensive medical records showing her uninjured condition before the accident, diagnoses immediately after, and evidence that her conditions persisted for 16 years. She also submitted a vehicle repair estimate to demonstrate the significant forces involved and a report from a percipient expert witness linking her conditions to the accident. In contrast, the defense relied solely on a CR 35 examiner's report, which the Plaintiff moved to exclude as fraudulent.

For the court to claim that the only admissible evidence which can defeat summary judgment is expert testimony, then the courts are barring litigants without the financial resources from asserting claims of injury. Requiring that the only evidence permissible to defeat summary judgment be expert testimony, which often costs thousands of dollars, is both unfair and improper for several key reasons. This practice undermines the

principles of justice, access to the courts, and equality before the law.

The high expense of obtaining expert witnesses creates a financial barrier that disproportionately impacts low-income litigants. Justice should not be contingent upon one's financial resources; every individual deserves an equal opportunity to present their case and have it heard fairly.

The Plaintiff's records created a material fact issue, supported by the very records the defense expert used. The court's reliance on the defense expert's opinion over the Plaintiff's treating physician was an unfair judgment. The Plaintiff met all disclosure and report requirements, and her evidence raised reasonable questions of material fact.

The jury's skepticism of the defense's narrative—that the Plaintiff's injuries resolved in three months—supports the Plaintiff's position that the trial court failed to favor the non-moving party's evidence as required. For summary judgment to

be proper, there can be but one conclusion that can be drawn from the evidence. The fact that the jury was not convinced of the defense narrative, even when it was the only narrative offered proves plaintiffs' theory that her opposition to the summary judgment motions was sufficient to defeat it. The appellate courts acknowledgment that the Summary report offered may have been admissible, yet still dismisses it, also shows their failure to view evidence in the light most favorable to the non-moving party.

The appellate court mentioned Matthew Ryan's deposition but ignored its improper form and circumstances, favoring the defense and trial court. The defense initially subpoenaed Ryan as an expert witness but canceled when they deemed his fees too high. They then re-subpoenaed him as a fact witness and records custodian. Ryan appeared as a records custodian, refusing to give expert testimony, and directed the defense to the records for factual occurrences.

Next this appellate court appears to argue that chiropractors are not qualified to make neurological diagnoses. Chiropractors are highly trained specialist physicians in manual 'medicine'. Chiropractors are primary 'portal of entry' healthcare providers and do not need referral or supervision in their health care practice. Chiropractors are trained to use specialized imaging and testing just like all other physicians are trained to use and to interpret findings related to their specific field of healthcare. It is vitally necessary for chiropractors to diagnose all health conditions in order to safely create appropriate treatment plans for patients.

Plaintiffs treating physician did not meet the requirements of a retained expert but, as a treating physician, organically arrived at conclusions during treatment, exempting him from needing to provide a formal expert report.

The summary judgment motion relied solely on the defense expert report, which the Plaintiff criticized for factual

inconsistencies between the videotaped exam and the report, not for its opinions or tests. Under Rule 702, evidence must be reliable to be admissible, and it is the court's duty to act as a gatekeeper. Despite the court's claim that the Plaintiff misunderstood legal doctrine, she correctly interpreted Rule 702, especially with its 2023 revision emphasizing the admissibility of evidence.

Plaintiff argued that the defense expert's methods were unreliable and should be excluded. The court incorrectly treated this as an issue of weight and credibility, not admissibility. Plaintiff also contended that defense experts must adhere to the standards of their licenses, even if she was not a "patient." The advisory committee's revisions support the Plaintiff's arguments, which were ignored by the court. The credentials of expert witnesses are irrelevant except to hold them to higher standards.

Lastly, Courts claim the need for discretion to address situations requiring deviation from regular rules and laws. However, in this case, the trial court failed to see that the fairer option was to deny both motions and let the trial proceed on all issues. The trial judge's judgment was clearly lacking, as a fair approach would have been to allow the parties to argue their cases fully at trial.

3. Motion to cap damages

The motion to cap the plaintiff's damages is an unlawful conversion of the order for partial summary judgment (PSJ), which only limited part of the plaintiff's claims, into an almost complete dismissal of their claims, violating due process. The court and defense's assertion that this was the full intent of the PSJ order from the beginning is illogical and baseless. If the PSJ was meant to cover all claims except for pain and suffering, it would effectively be a full summary judgment. This would contradict standard practice, where claims for pain and

suffering could survive summary judgment based on plaintiff testimony alone, and there would never be full summary judgment orders or dismissals. The order appears designed to render the defense experts' testimony irrelevant, avoiding jury scrutiny. The court's assertion that this was proper under the summary judgment order, rather than a sanctions order, suggests that the sanctions unjustly and without cause fully diminished the plaintiff's claims. The court's refusal to acknowledge this indicates the sanctions order itself is improper.

4. Motion to issue subpoena for defense expert testimony

After the defense claimed that with the motion to cap damages being granted, they no longer needed to call their expert witnesses, the plaintiff moved for a subpoena for their trial testimony. Again, the facts of the case do not align with the conclusions drawn by the trial court or the appellate court. First, to claim that the summary judgment order had in fact made the defense experts irrelevant is unfounded. Plaintiff was ordered to

pay the defense expert fees to attend trial and testify, in order to have her first continuance granted. The continuance came after the summary judgment order, the motion to exclude where the court claimed the defense experts would need to be cross examined at trial, and after the motion for reconsideration the motion for discretionary review. Why was it never mentioned until after the plaintiffs expert was removed, and the summary judgment converted to an order that included all of plaintiffs claims and damages except her pain and suffering for three months? This is clear on it's face of a violation of plaintiffs rights to fairness, and to confront witness. The defense even argued that should the subpoena be granted, then the plaintiff would have to pay the fees. But she already did. They were offset form her award, and still stand, and are used by the appellate court on multiple occasions against the plaintiff. Denying the plaintiff the right to cross-examine defense experts at trial, especially when the plaintiff has alleged in pre-trial motions that the opinions offered are fraudulent, violates the

Constitution on several grounds. This denial undermines the fundamental principles of due process and the right to a fair trial, as enshrined in the Sixth and Fourteenth Amendments. The Sixth Amendment guarantees the right of an accused to confront the witnesses against them. While traditionally applied in criminal cases, this principle extends to civil cases under the Fourteenth Amendment's due process clause. Cross-examination is a critical component of this right, allowing the plaintiff to challenge the credibility, reliability, and accuracy of the defense experts' opinions. Denying this right prevents the plaintiff from exposing potential biases, errors, or fraudulent elements in the testimony, thereby skewing the fact-finding process and compromising the integrity of the trial. The right to a fair trial is a cornerstone of the American legal system. It requires that both parties have an equal opportunity to present and challenge evidence. By using defense expert opinions prior to trial and then preventing cross-examination at trial, the court creates an imbalance that unfairly disadvantages the plaintiff.

This practice effectively allows one party to present potentially unchallenged and possibly fraudulent testimony, while the other party is stripped of their ability to contest it, leading to an unjust outcome. The Fourteenth Amendment's due process clause protects individuals from arbitrary denials of legal rights. Preventing the plaintiff from cross-examining defense experts after allowing their potentially fraudulent opinions to influence pre-trial proceedings constitutes a significant due process violation. It denies the plaintiff a fundamental legal safeguard designed to prevent unjust outcomes and ensure that all parties receive a fair hearing.

Legal precedent supports the necessity of cross-examination in ensuring fair trials. In cases such as *California v. Green* (1970) and *Crawford v. Washington* (2004), the Supreme Court underscored the importance of cross-examination in testing the reliability of testimonial evidence. While these cases are within the criminal context, their underlying principles about the importance of confrontation and testing evidence apply broadly

to civil trials, particularly when serious allegations of fraud are at stake.

This case in all likelihood will be brought before the federal supreme court because of these federal violations.

5. Immunity and discretion violate state and federal Constitutions.

Because of the facts alleged here, the obvious abuse of discretion, the complete lack of any accountability or external oversight over the courts, and the methods employed in this case to diminish the meritorious claims of a pro per litigant, the plaintiff claims that judicial immunity, judicial discretion, summary judgment and the practice of judicial legislation are unconstitutional because they work in conjunction with each other to give the courts absolute power, with no recourse or remedy available to harmed litigants.[6]

[6] Appendix section 5

According to the appellate court, the plaintiff in this case is 100% incorrect in every single factual contention, circumstantial interpretation, and legal conclusion. The notion that a plaintiff would be wrong on 100% of factual and legal contentions is highly improbable due to the distributed nature of human error, reliance on evidence, legal representation, judicial safeguards, the complexity of law, the burden of proof, and historical precedent. Moreover, if such an improbability were to be true, it would signify that the court system is inaccessible to the common citizen, thus undermining the fundamental principle of access to justice. These factors collectively ensure that plaintiffs are likely to have at least some valid points in their legal disputes. Plaintiffs base their claims on evidence, such as documents, testimonies, and expert reports. While some pieces of evidence might be challenged or refuted, it is improbable that all evidence presented by the plaintiff would be entirely false or inaccurate. Courts rely on the evaluation

of multiple sources of evidence, and complete inaccuracy across all contentions defies the logical functioning of judicial processes. In civil litigation, the burden of proof lies with the plaintiff to establish their claims by a preponderance of the evidence. This standard does not require absolute certainty but rather that the claim is more likely true than not. Even if some aspects of the plaintiff's case are weak, achieving a standard of total factual and legal error is statistically improbable. If it were true that plaintiffs could be entirely wrong on all factual and legal contentions, it would suggest a fundamental flaw in the accessibility and fairness of the court system. Such an outcome would imply that the legal process is excessively complex and impenetrable, effectively barring ordinary citizens from seeking justice. This would undermine public confidence in the judicial system and deter individuals from pursuing legitimate claims, believing that they have no chance of

success due to the overwhelming difficulties in presenting a valid case.

VI. Conclusion

The *practice* of law has taken priority over the *purpose* of law. The protection of the status quo, and the authority and prestige of the legal profession, including the judges and administrators and is obnoxiously obvious. The level of corruption in this case is baffling. All favorable inferences or considerations for the plaintiff are ignored so far at every level of the court system. The plaintiff here has every reasonable expectation that the higher courts in all their "discretion" will deny review for the sole purpose of refusing to acknowledge what has happened here. It is of the opinion of the plaintiff that the state of Washington is filed with cowards and will not address her complaints head on for fear of having to answer to them. Unfortunately, the plaintiff in this case,

while making these same arguments time and again, only to be ignored, overlooked, violated and dismissed, has come to the conclusion that you can't argue with stupid, and you certainly can't make a meritorious argument against corrupt actors and officials. This court system is rancid from top to bottom. The issues presented before this Supreme court for review would have substantial impact on the legal system and could change the very nature of how cases are presented, and how access to the courts is ensured. Ruling on these issues would create extraordinary precedent.

This document contains 4993 words.

Signed by Celeste Ryan

Celeste Ryan, Plaintiff/ petitioner Pro Per

This 28th day of May 2024.

Appendix

SECTION 1 :

Washington State Constitution :

SECTION 2 SUPREME LAW OF THE LAND. The Constitution of the United States is the supreme law of the land.

SECTION 3 PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property, without due process of law.

SECTION 5 FREEDOM OF SPEECH. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right.

SECTION 7 INVASION OF PRIVATE AFFAIRS OR HOME PROHIBITED. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

SECTION 10 ADMINISTRATION OF JUSTICE. Justice in all cases shall be administered openly, and without unnecessary delay.

SECTION 12 SPECIAL PRIVILEGES AND IMMUNITIES PROHIBITED. No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

SECTION 21 TRIAL BY JURY. The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of

record, and for waiving of the jury in civil cases where the consent of the parties interested is given thereto.

SECTION 29 CONSTITUTION MANDATORY. The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.

Article I Section 30 SECTION 30 RIGHTS RESERVED. The enumeration in this Constitution of certain rights shall not be construed to deny others retained by the people.

United States Constitution:

FIRST AMENDMENT- Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

SEVENTH AMENDMENT - In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

FOURTEENTH AMENDMENT , SECTION 1 - All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

PRECEDENCE-

A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution. *Murdock v. Pennsylvania, 319 U.S. 105 (1943)*

"It is generally recognized that there can be no conviction for aiding and abetting someone to do an innocent act." *Shuttlesworth v. Birmingham*, 373 U.S. 262, 265 (1963)

"She asserted a right which was hers, and which none could take away. " *Miller v. United States*, 230 F.2d 486, 489 (5th Cir. 1956)

The *See* and *Reisman* decisions, and the statutory procedures of § 7402(b), reflect the obvious concern that there be no sanction or penalty imposed upon one because of his exercise of constitutional rights. In Spevack v. Klein, 385 U.S. 511, 87 S.Ct. 625, 17 L.Ed.2d 574 (1967), for example, the Supreme Court held that an attorney could not be disbarred solely because he claimed his privilege against self-incrimination in refusing to provide records and testimony for an investigation into his alleged professional misconduct. "In this context `penalty' is not restricted to fine or imprisonment. It means, as we said in Griffin v. California, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965), the imposition of any sanction which makes assertion of the Fifth Amendment privilege `costly.'" *Id.* at 515, 87 S.Ct. at 628. *Sherar v. Cullen*, 481 F.2d 945, 947 (9th Cir. 1973)

An insurer owes its insured a duty of good faith. See, e.g., *St. Paul Fire & Marine Ins. Co. v. Onvia, Inc., 165 Wn.2d 122, 129-130,196 P.3d 664, 667-668 (2008).*

If a liability insurance company commits bad faith by breaching its duty to settle, a Washington court might require the insurer to pay the entire amount of an adverse judgment against the insured, without regard to policy limits. See, e.g., Besel v. Viking Ins. Co. of Wisconsin, 146 Wn.2d 730, 735-736, 49 P.3d 887, 890 (2002) ("We have long recognized that if an insurer acts in bad faith by refusing to effect a settlement . . . an insured can recover from the insurer the amount of a judgment rendered against the insured, even if the judgment exceeds contractual policy limits").

"The Insured May Be Permitted To Settle with the Claimant for an Amount in Excess of Policy Limits and Hold the Insurer Liable for Bad Faith Failure To Settle- Although it was apparently an uncontested hearing after a default judgment, the claimant in Whiteside obtained a judgment against the insured before pursuing remedies for bad faith failure to settle. Some courts have recently relaxed this requirement as well. In recent cases, the insured (or an excess insurer) and the claimant have reached a settlement in excess of policy limits (even in cases where the primary insurer is defending) and then pursued the primary insurer for the full amount of the settlement. The primary insurers in those cases would argue that they have a right (not just a duty) to defend and have the right to try cases against the insured that they believe are defensible. They argue that they cannot be held liable for bad faith until a bad faith judgment is actually entered. Nonetheless, some courts have found that an insurer is liable for an excess settlement.

"In Scottsdale Ins. Co. v. Addison Ins. Co., 448 S.W.3d 818, 828 (Mo. 2014), the Missouri Supreme Court held that an excess judgment is not necessary to pursue a bad faith claim finding that where an insurer refuses to settle, the insured's "loss is suffered regardless of whether there is an excess judgment or settlement." It does not appear that the primary insurer argued that there were any potential

> defenses to liability to explain its refusal to settle. Instead, it argued only that there was no excess judgment and that it ultimately agreed to contribute its $1,000,000 limit to a settlement along with $1,000,000 from the excess. The Court observed, however, that the plaintiffs initially demanded $1,000,000 to settle, which the primary insurer declined. That demand was subsequently withdrawn making it necessary for the excess insurer to contribute." Blume, B. A. (2021, October 18). *Insurers' expanding exposure for bad faith failure to settle*. Kennedys Law. https://www.kennedyslaw.com/en/thought-leadership/article/insurers-expanding-exposure-for-bad-faith-failure-to-settle/

For a party to be held in contempt, it must be shown that (1) a valid order existed, (2) the party had knowledge of the order; (3) the party disobeyed the order. United States v. Thornton, 2015 WL 1522245 (D. Minn. March 27, 2015).

SECTION 2 :

Washington State Constitution :

SECTION 2 SUPREME LAW OF THE LAND. The Constitution of the United States is the supreme law of the land.

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SECTION 10 ADMINISTRATION OF JUSTICE. Justice in all cases shall be administered openly, and without unnecessary delay.

SECTION 12 SPECIAL PRIVILEGES AND IMMUNITIES PROHIBITED. No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

SECTION 21 TRIAL BY JURY. The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and for waiving of the jury in civil cases where the consent of the parties interested is given thereto.

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FOURTEENTH AMENDMENT , SECTION 1 - All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Washington State Rules of Evidence:

ER 702 - TESTIMONY BY EXPERTS

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Precedence:

General Electric Co. v. Joiner (1997),[1] which held that a district court judge may exclude expert testimony when there are gaps between the evidence relied on by an expert and that person's conclusion, and that an abuse-of-discretion standard of review is the proper standard for appellate courts to use in reviewing a trial court's decision of whether it should admit expert testimony

Whether the expert has adequately accounted for obvious alternative explanations. *See Claar v. Burlington N.R.R.*, 29 F.3d 499 (9th Cir. 1994) (testimony excluded where the expert failed to consider other obvious causes for the plaintiff's condition). *Compare Ambrosini v. Labarraque*, 101 F.3d 129 (D.C.Cir. 1996) (the possibility of some uneliminated causes presents a question of weight, so long as the most obvious causes have been considered and reasonably ruled out by the expert).

Whether the expert "is being as careful as he would be in his regular professional work outside his paid litigation consulting." *Sheehan v. Daily Racing Form, Inc.*, 104 F.3d 940, 942 (7th Cir. 1997). *See Kumho Tire Co. v. Carmichael*, 119 S.Ct. 1167, 1176 (1999) (*Daubert* requires the trial court to assure itself that the expert "employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field").

The Court in *Daubert* declared that the "focus, of course, must be solely on principles and methodology, not on the conclusions they generate." 509 U.S. at 595. Yet as the Court later recognized, "conclusions and methodology are not entirely distinct from one another." *General Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997). Under the amendment, as under *Daubert*,

when an expert purports to apply principles and methods in accordance with professional standards, and yet reaches a conclusion that other experts in the field would not reach, the trial court may fairly suspect that the principles and methods have not been faithfully applied. *See Lust v. Merrell Dow Pharmaceuticals, Inc*., 89 F.3d 594, 598 (9th Cir. 1996). The amendment specifically provides that the trial court must scrutinize not only the principles and methods used by the expert, but also whether those principles and methods have been properly applied to the facts of the case. As the court noted in *In re Paoli R.R. Yard PCB Litig*., 35 F.3d 717, 745 (3d Cir. 1994), " *any* step that renders the analysis unreliable . . . renders the expert's testimony inadmissible. *This is true whether the step completely changes a reliable methodology or merely misapplies that methodology*."

The law does not require an expert declaration for a treating physician testifying on subjects such as causation and standard of care (*Dozier v. Shapiro, 2011; Schreiber, 22 Cal.4th 31, 39).*

"'In principle, under the Federal Rules no common law of evidence remains. "All relevant evidence is admissible, except as otherwise provided .... " In reality, of course, the body of common law knowledge continues to exist, though in the somewhat altered form of a source of guidance in the exercise of delegated powers.'" *Id.*, at 51-52." *Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)*

"That the *Frye* test was displaced by the Rules of Evidence does not mean, however, that the Rules themselves place no limits on the admissibility of purportedly scientific evidence.7 Nor is the trial judge disabled from screening such evidence. To the contrary, under the Rules the trial judge must ensure that any and all scientific testimony or evidence

admitted is not only relevant, but reliable." *Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)*

Daubert requires that "when expert testimony is offered, the trial judge must perform a screening function to ensure that the expert's opinion is reliable and relevant to the facts at issue in the case." *Watkins v. Telsmith, Inc.*, 121 F.3d 984, 988-89 (5th Cir. 1997).

This requires the trial judge to ensure that the expert's testimony is "relevant to the task at hand" and that it rests "on a reliable foundation". *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 584-587. Concerns about expert testimony cannot be simply referred to the jury as a question of weight. Furthermore, the admissibility of expert testimony is governed by Rule 104(a), not Rule 104(b); thus, the judge must find it more likely than not that the expert's methods are reliable and reliably applied to the facts at hand.

SECTION 3 :

Washington State Constitution :

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Precedence:

“Cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof, rather than wholesale exclusion under an uncompromising "general acceptance" standard, is the appropriate means by which evidence based on valid principles may be challenged.” Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)

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Article I Section 12 - Special Privileges and Immunities Prohibited
Article I Section 21 Trial by Jury.
Article I Section 29 - Constitution Mandatory
United States Constitution

U.S.C. § 1654

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Filed
Washington State
Court of Appeals
Division Two

February 27, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

CELESTE RYAN, Appellant, v. JEFF TIMMERMAN AND JANE DOE TIMMERMAN, and the marital community composed thereof; SILVERDALE PLUMBING & HEATING, INC., a Washington Corporation, Respondents.	No. 57847-6-II UNPUBLISHED OPINION

GLASGOW, C.J.—In 2002, Jeff Timmerman was driving a Silverdale Plumbing van when he rear-ended a car where six-year-old Celeste Ryan was a passenger. Matthew Ryan,[1] Ryan's father, was a chiropractor. He later diagnosed Ryan with dysautonomia, a nervous system disorder. In late 2016, when she was 20, Ryan sued Timmerman and Silverdale Plumbing for negligence, seeking about $12 million in damages for injuries she believed she incurred in the accident, including the onset of her dysautonomia.

Ryan and Matthew repeatedly sought to directly contact the defendants after the defense lawyer told them to stop, so the trial court ordered Ryan and her representatives to communicate

[1] For clarity, we refer to Celeste Ryan by her surname and Matthew Ryan by his first name.

only with counsel. The trial court later excluded Matthew's testimony entirely as a sanction for continuing to try to contact the defendants.

The defendants sought partial summary judgment, and Ryan failed to timely provide any sworn expert testimony to establish the accident caused her dysautonomia. The trial court granted summary judgment, denied Ryan's motion to exclude the defendants' medical experts, and limited Ryan's claim for general damages to a three-month period after the accident. The trial court later denied Ryan's motion to subpoena the medical experts. A jury awarded Ryan $3,289, which was offset by sanctions and attorney fees to result in a judgment for the defendants of nearly $9,000.

Ryan appeals. She argues that the trial court erred by ordering her and Matthew to stop contacting the defendants directly and by excluding Matthew's testimony as a sanction for violating that order. She contends that the trial court erred by granting the partial summary judgment motion, denying her motion to exclude the defendants' medical experts, and limiting her general damages. Next, she argues that the trial court erred by denying her motion to subpoena the defense medical experts to testify at trial. And she insists that the administration of the trial violated her due process and equal protection rights. Both parties seek attorney fees on appeal.

We affirm. We deny both parties' requests for appellate attorney fees.

FACTS

I. BACKGROUND

In December 2002, Timmerman was driving a Silverdale Plumbing van when he rear-ended a car where six-year-old Ryan was a passenger. In November 2016, when Ryan was 20, she sued Timmerman and Silverdale Plumbing for negligence, seeking over $12 million in damages. She asserted the accident gave her dysautonomia, a nervous system condition that causes

lightheadedness and fainting. An insurance company attorney represented the defendants (collectively referred to as Timmerman).

II. PRELIMINARY PROCEEDINGS

A. Motion to Prohibit Ryan and Her Representatives from Directly Contacting the Defendants

Matthew appeared uninvited at Timmerman's house several times, speaking first with Timmerman's mother and then with his wife. Matthew said he was trying to reach Timmerman directly and asserted that the insurance company lawyer was lying to the family. Timmerman and his wife "found these visits unusual, concerning, and upsetting." Clerk's Papers (CP) at 31. The defense lawyer sent letters to Ryan stating that his clients did not want Ryan to contact them and that any settlement authority would come from the defendants' insurer through defense counsel. Insurance policies generally give the insurer control over settlement of a lawsuit. *Arden v. Forsberg & Umlauf, P.S.*, 193 Wn. App. 731, 752, 373 P.3d 320 (2016).

Timmerman sought an order prohibiting Ryan and "her representatives from having direct communication with the defendants." CP at 11. Timmerman specifically asked that the trial court order Ryan to comply with RPC 4.2, which prohibits lawyers from contacting a represented opposing party.

In response, Ryan explained she had repeatedly tried to set up settlement conferences to no avail, and she insisted that she had the authority to settle with the defendants directly without approval from the insurance company. She also stated that rules applicable to attorneys did not apply to her and she intended to continue to try to contact the defendants despite their attorney's direction not to. Ryan also claimed that she did not ask her father to contact the defendants.

The trial court granted the motion, telling Timmerman's attorney that his clients could instruct him to allow direct communication with Ryan but "they also have the right to have their matter heard through counsel." Verbatim Rep. of Proc. (VRP) (Nov. 17, 2017) at 3. And it was "clear . . . that your clients don't wish direct communication with the plaintiff." *Id.* The trial court stated that it could not prohibit Matthew from contacting the defendants in the order because he was not a party. The order 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.

B. Motions for Partial Summary Judgment and to Exclude Defense Medical Experts

1. Arguments on summary judgment

Discovery closed in December 2017. In January 2018, Timmerman moved for partial summary judgment. He requested dismissal of Ryan's claims for general damages for dysautonomia and all past medical bills over $3,289.

a. Timmerman's medical evidence

Timmerman asserted that two defense medical experts who had conducted a CR 35 examination of Ryan in 2017, concluded she had neck and back strains from the accident, "which have resolved." CP at 69. The doctors agreed that Ryan was entitled to $3,289 in medical bills. Thus, while Timmerman conceded that the accident caused minor injuries, he asserted that those injuries had since resolved and that Ryan could not demonstrate a causal link between the accident and her ongoing nervous system complaints.

The CR 35 exam report submitted to the trial court was written by an orthopedic surgeon and a chiropractor and sworn under penalty of perjury. The report listed the records the doctors

reviewed as well as the tests they conducted and the results and probable diagnoses. This included a battery of neurological tests. A neurologist also reviewed Ryan's medical records. All three defense medical experts were certified as independent medical examiners by state or national boards.

The report concluded that Ryan's injuries from the accident consisted of "minor soft tissue strains" that reached maximum medical improvement in March 2003. CP at 260. The doctors concluded that Ryan's current complaints were likely not related to the accident. They also disputed whether she had dysautonomia at all. The CR 35 report concluded that there was no permanent neck injury, and that some of Ryan's complaints could be from a "benign" nerve pinching condition in her elbows. CP at 261. The neurologist observed "very mild, probably clinically insignificant degenerative changes" in several of Ryan's spinal discs. CP at 330. Ryan's report of lightheadedness was not supported "by objective findings on vital sign testing, clinical examination, or detailed autonomic [nervous system] testing." CP at 327.

Timmerman also noted that in Matthew's deposition, he declined to offer any opinion on Ryan's injuries or "exams and recovery and prognosis," because he did not "have an active license . . . to act in a medical capacity" and therefore could not give "a medical opinion," including any opinion on what treatment was reasonable as a result of the accident. CP at 68, 88.

Timmerman also submitted records from a neurologist Ryan visited in January 2017. That neurologist reported that Ryan appeared to demonstrate "[o]rthostatic intolerance," but he did not diagnose her with a specific disease or disorder. CP at 92. At a later visit, the neurologist declined to identify a causal link between the accident and Ryan's complaints.

b. Ryan's medical evidence

In response, Ryan asserted that images of her spine showed a permanent injury and the injury was causally linked to the accident. She cited to a "Medical Summary" Matthew produced the day before his California chiropractic license expired. CP at 118.

The summary asserted that the accident caused Ryan "nervous system injuries" that resulted in "central nervous system and autonomic nervous system abnormalities and dysreflexia[]." CP at 122. The summary did not identify any testing that Matthew performed to diagnose Ryan with nervous system problems or establish his qualifications for doing so as a chiropractor. The summary was not signed under any oath or penalty of perjury.

Next, a radiologist who reviewed images of Ryan's spine found mild changes to her spine curvature and movement but no evidence of permanent ligament damage. And another chiropractor who x-rayed Ryan's spine in late 2016 found that some spinal discs had begun to degenerate. The chiropractor did not indicate what might have caused the damage. None of the medical records Ryan submitted were attached to declarations sworn under penalty of perjury. Nor did she provide declarations attesting to the authenticity of those records.

The day before the summary judgment hearing, Ryan filed a surreply. She attached a sworn declaration from Matthew asserting that he was Ryan's treating physician and "a qualified expert with specialized medical knowledge, training[,] and experience." CP at 402.

Matthew stated that Ryan had permanent "spinal and neurological conditions received as a direct and proximate result of the accident." CP at 413. He stated that Ryan's complaints were common for people diagnosed with dysautonomia "due to the autonomic neurological/vascular complexity of that condition." CP at 409. He also stated that Ryan's "neurological condition" was

"verified by a reliable, reproducible testing method, and with unequivocal positive test result for that condition." CP at 411. He did not specify what the test was or which doctor performed it.

All of Matthew's qualifications related to chiropractic work; he did not provide any proof that he was qualified to diagnose or treat neurological or nervous system disorders. RCW 18.25.005(1) prescribes the limits of chiropractic practice, providing, "Chiropractic is the practice of health care that deals with the diagnosis or analysis and care or treatment of the vertebral subluxation complex and its effects, articular dysfunction, and musculoskeletal disorders." The statute does not mention neurological or nervous system disorders.[2]

2. Hearing and trial court ruling

At the hearing, the trial court informed Ryan that it could not consider her surreply, including Matthew's declaration, "because it wasn't filed timely." VRP (Feb. 23, 2018) at 2; *see also* CR 56(c), (f) (requiring responsive documents to be filed 11 days before a summary judgment hearing but allowing continuances to further develop evidence). Ryan did not ask for a continuance or extension of the discovery cutoff. The trial court explained that, to survive summary judgment, Ryan needed to present a prima facie case of the elements of her claim. But Ryan had not produced admissible evidence to support her claim that the accident caused her dysautonomia. In particular, Matthew was not "an admissible expert witness unless he can give a medical opinion as it relates to this claim." VRP (Feb. 23, 2018) at 17. Thus, the trial court granted the motion for partial summary judgment and dismissed all of Ryan's claims for past medical bills over $3,289. Ryan moved for reconsideration of the summary judgment ruling, and the trial court denied the motion.

[2] Further, "unprofessional conduct" under the chapter regulating chiropractic practice "includes failing to differentiate chiropractic care from any and all other methods of healing at all times." RCW 18.25.112(1).

3. Arguments regarding defense experts

The same day that she filed her initial response to the summary judgment motion, Ryan moved to exclude all of Timmerman's medical expert opinions and testimony. Ryan argued that the experts were biased and would mislead the jury. The trial court denied the motion. It explained that Ryan was primarily raising credibility issues that were best addressed by cross-examining the experts if called at trial.

4. Later proceedings related to summary judgment and monetary sanctions

Several days after the summary judgment hearing, Timmerman sent Ryan a CR 68 offer of judgment for $10,300, which she did not accept. In addition, Ryan incurred several thousand dollars in additional sanctions and attorney fees for delaying trial and for bringing a frivolous motion for discretionary review.

C. Motion to Exclude Matthew's Testimony

After the order prohibiting Ryan and her representatives from contacting the defendants, Matthew tried several times to contact Silverdale Plumbing's owner. In August 2019, Timmerman moved to sanction Ryan for violating the court's order.

The husband of Silverdale Plumbing's owner filed a declaration stating that Matthew e-mailed both the husband and his brother stating their attorney was being dishonest and encouraging them to have the owner contact Matthew. After the motion for sanctions, Matthew contacted the brother again, accusing the husband of committing perjury.

Timmerman moved to either exclude Matthew as a witness or dismiss the case entirely. He argued that the sanctions in chapter 7.21 RCW did not apply and requested that the court use its inherent authority to sanction instead. Timmerman reasoned that excluding Matthew from

testifying was appropriate because he was "intimately involved" in the case and "repeatedly attempted to improperly interject himself" in violation of the court's order. CP at 731. And with Ryan already owing thousands in sanctions and attorney fees, further monetary sanctions would be an inadequate deterrent. Timmerman's attorney contended that Matthew acted in bad faith, trying to drive a wedge between the attorney and his clients.

Ryan insisted that Matthew was not acting as her representative and 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 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 the 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 "veiled threats" that violated the prior court order. *Id*. at 25.

The trial court found that Ryan, through Matthew, violated the prior order in bad faith. It found that the sanctions authorized by chapter 7.21 RCW did "not adequately apply under the circumstances" and instead excluded Matthew from testifying. CP at 938.

D. Motion to Limit General Damages

In October 2019, Timmerman moved to limit Ryan's claims for general damages to the three months after the accident. Timmerman explained that based on the partial summary judgment ruling, "no treatment after March 2003 was reasonable." CP at 915. And Timmerman

acknowledged that if his motion was granted he would not "call any medical experts or even witnesses at trial." CP at 916.

Ryan primarily argued that she should be permitted to cross-examine the medical experts. She also asked the judge to recuse due to "the appearance of bias." VRP (Oct. 11, 2019) at 6. The judge stated that she saw "no basis for which to recuse" and pointed out that she had already made several discretionary rulings, which prevented Ryan from disqualifying her under RCW 4.12.050(1)(a). *Id*. at 7. 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*.

E. Motion to Subpoena Defense Experts

Timmerman acknowledged that the defendants were liable for Ryan's special damages, specifically her reasonable medical bills incurred in the three months after the accidents in the amount of $3,289. Having limited the scope of trial to determining Ryan's general damages in the three months after the accident, Timmerman no longer planned to call his medical experts to testify. In November 2019, Ryan moved for a subpoena directing the doctors who conducted the CR 35 exam to testify at trial. Because Ryan could not explain how the experts' testimony was relevant to the issues remaining for trial, the trial court denied subpoena.

III. TRIAL

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. Once 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. 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 her $3,289 in medical bills and nothing in general damages. After offsetting the prior monetary sanctions against Ryan, including statutory costs because the judgment was less than Timmerman's CR 68 offer, the trial court entered a judgment of roughly $9,000 for Timmerman.

Ryan appeals.

ANALYSIS[3]

I. PROHIBITION ON DIRECTLY CONTACTING THE DEFENDANTS

A. Order to Refrain from Contacting Defendants

Ryan argues that the trial court erred by ordering her and her representatives to comply with RPC 4.2 and cease trying to directly contact the defendants. We disagree.

RPC 4.2 requires lawyers representing clients to "not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order." Timmerman does not point to any authority stating that RPC 4.2 applies to parties who are not attorneys. He relies on cases more generally stating that unrepresented nonlawyers are subject

[3] Ryan argues that the trial court was biased against her and that we should therefore apply a de novo standard of review to every issue. But after a careful review of the record, we disagree with the assertion that the trial court was biased against Ryan.

to the same substantive and procedural laws as lawyers, but none of those cases has held that an unrepresented nonlawyer is subject to the RPCs. *See In re Marriage of Wherley*, 34 Wn. App. 344, 349, 661 P.2d 155 (1983); *Bly v. Henry*, 28 Wn. App. 469, 471, 624 P.2d 717 (1980). Nevertheless, the trial court has broad discretion to make trial management decisions. *State v. Gorman-Lykken*, 9 Wn. App. 2d 687, 691, 446 P.3d 694 (2019).

Here, Timmerman's attorney explained to Ryan that only the insurance company had authority to settle with her, but the Ryans continued to try to reach the defendants by showing up at their homes and contacting their relatives to try to settle the case. *See Arden*, 193 Wn. App. at 752 (explaining that the insurer, not the insured, typically has authority to settle). Thus, Ryan knew that her attempts to directly contact the defendants would not have any substantive effect on the outcome of the case. Moreover, the defendants expressly told the court that they wanted Ryan to communicate only with counsel. Ryan suggests that the trial court could not prohibit contact between the parties unless Timmerman sought a no contact order, but given the trial court's broad authority to manage the cases before it, the court also had discretion to enter an order, limited to the time when litigation was ongoing, preventing unwanted contact.

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.

B. Sanctions for Violating Order

Ryan next argues that the trial court erred by sanctioning her for her father's conduct. She reasons that Matthew was not her representative because he was not acting as her legal representative or guardian. She also insists that the husband of Silverdale Plumbing's owner was not a party to the case, so contact with him did not violate the order. And Ryan argues that the trial court should have sanctioned Timmerman as punishment for filing the sanctions motion. We disagree.

1. Cases and statutes governing sanctions

We review a trial court's order imposing sanctions for abuse of discretion. *Moreman v. Butcher*, 126 Wn.2d 36, 40, 891 P.2d 725 (1995). "An abuse of discretion is present only if there is a clear showing that the exercise of discretion was manifestly unreasonable, based on untenable grounds, or based on untenable reasons." *Id*.

There are statutory restrictions that apply when a contempt sanction is imposed. *See* RCW 7.21.030(2), .040(2). But separate from sanctions under the contempt statute, a trial court may "fashion and impose appropriate sanctions under its inherent authority to control litigation." *In re Firestorm 1991*, 129 Wn.2d 130, 139, 916 P.2d 411 (1996). 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. *State v. S.H.*, 102 Wn. App. 468, 475, 8 P.3d 1058 (2000). 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. *State v. Merrill*, 183 Wn. App. 749, 755, 335 P.3d 444 (2014). And a court may sanction a

pro se litigant as it would an attorney for their litigation conduct. *See, e.g., In re Recall of Lindquist*, 172 Wn.2d 120, 136, 258 P.3d 9 (2011). Bad faith conduct includes that which delays or disrupts litigation. *S.H.*, 102 Wn. App. at 475. "Sanctions may be appropriate if an act affects 'the integrity of the court and, [if] left unchecked, would encourage future abuses.'" *Id*. (alteration in original) (quoting *Gonzales v. Surgidev*, 120 N.M. 151, 899 P.2d 594, 600 (1995)).

For example, in *Merrill*, a defense attorney contacted victims directly to discuss the plea agreement despite knowing that the victims wished to communicate only with a victim advocate present. 183 Wn. App. at 752. The attorney contacted the victims again after the State informed him that it would pursue sanctions for the first contact. *Id*. at 752-53. Division Three affirmed the trial court's finding that the second contact was in bad faith, because that contact was made "despite the pending motion for sanctions for the very same conduct," justifying sanctions. *Id*. at 756.

2. The sanction in this case

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 Ryan and Matthew violated the order prohibiting contact in bad faith. 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.

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 the contact was 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. Ryan and Matthew repeatedly operated under their own interpretation of the law, despite explanations and court orders to the contrary, and they maintained throughout proceedings that they did not have to play by the same rules as the attorneys they faced.

We hold that the trial court did not abuse its discretion by excluding Matthew's testimony as a sanction for violating the court's order prohibiting contact with the defendants. And the trial court did not err by declining to sanction Timmerman for filing a meritorious sanctions motion.

II. PARTIAL SUMMARY JUDGMENT

Next, Ryan argues that she produced evidence of a genuine issue of material fact regarding a causal link between the accident and her dysautonomia. Specifically, she asserts that the "summary report" Matthew produced, which diagnosed her with dysautonomia and stated the condition was caused by the accident, was sufficient to create a genuine issue of material fact. Br. of Appellant at 29. Ryan argues the summary was admissible even though it was not a sworn statement, relying in part on the business records exception to the rule against hearsay. She also reasons that her injury was not beyond a lay person's knowledge, so she did not need expert testimony to establish its cause. We disagree.

A. Summary Judgment and Complex Medical Claims

We review a summary judgment decision de novo, engaging in the same inquiry as the trial court. *Int'l Ultimate, Inc. v. St. Paul Fire & Marine Ins. Co.*, 122 Wn. App. 736, 744, 87 P.3d 774 (2004). A defendant is entitled to summary judgment if the plaintiff fails to make a prima facie showing of an essential element of their claim. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). "A party may not rely on mere allegations, denials, opinions, or conclusory statements." *Int'l Ultimate*, 122 Wn. App. at 744. Affidavits opposing summary judgment must be made on personal knowledge, set forth admissible evidence, and "show affirmatively that the affiant is competent to testify to the matters stated therein." CR 56(e). And a "court may not consider inadmissible evidence when ruling on a motion for summary judgment." *King County Fire Prot. Dists. No. 16, No. 36 & No. 40 v. Hous. Auth. of King County*, 123 Wn.2d 819, 826, 872 P.2d 516 (1994). Thus, under ER 901, documents attached to declarations must be authenticated. *Int'l Ultimate*, 122 Wn. App. at 745-46.

A plaintiff suing for negligence must demonstrate the existence of a duty, a breach of that duty, a resulting injury, and that the breach proximately caused the injury. *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008). "If any of these elements cannot be met as a matter of law, summary judgment for the defendant is proper." *Id*. at 553.

"'In general, expert testimony is required when an essential element in the case is best established by an opinion which is beyond the expertise of a layperson.'" *Rinehold v. Renne*, 198 Wn.2d 81, 92, 492 P.3d 154 (2021) (internal quotation marks omitted) (quoting *Berger v. Sonneland*, 144 Wn.2d 91, 110, 26 P.3d 257 (2001). "Medical facts in particular must be proven by expert testimony unless" a layperson can observe and describe them without medical training.

Harris v. Robert C. Groth, M D, Inc., 99 Wn.2d 438, 449, 663 P.2d 113 (1983); *see L.M. by & through Dussault v. Hamilton*, 193 Wn.2d 113, 137, 436 P.3d 803 (2019). Thus, expert testimony is generally necessary to establish "most aspects of causation" in personal injury cases involving "obscure medical factors." *Harris*, 99 Wn.2d at 449; *Riggins v. Bechtel Power Corp.*, 44 Wn. App. 244, 254, 722 P.2d 819 (1986). "[M]edical testimony must be based on the facts of the case and not on speculation or conjecture." *Fabrique v. Choice Hotels Int'l, Inc.*, 144 Wn. App. 675, 687, 183 P.3d 1118 (2008).

Finally, an unrepresented litigant "is held to the same rules of procedural and substantive law as an attorney," including deadlines. *In re Decertification of Martin*, 154 Wn. App. 252, 265, 223 P.3d 1221 (2009).

B. Partial Summary Judgment in This Case

To begin, as a nervous system condition that required neurological testing to diagnose, dysautonomia was certainly beyond a lay person's expertise. Therefore, medical testimony was necessary to establish both injury and causation. *Rinehold*, 198 Wn.2d at 92.

Timmerman produced a CR 35 medial report and a separate neurologist report that disputed the existence of a causal link between Ryan's complaints and the accident. The experts also questioned whether Ryan actually had dysautonomia because they could not find evidence of a permanent neck injury and they could not make objective findings that would support her physical complaints. And when asked, Ryan's neurologist refused to identify a causal link between the accident and Ryan's complaints.

The only timely evidence of a causal link between the accident and any long-term injury was the "Medical Summary" Matthew produced in 2016, 14 years after the accident. CP at 118.

The medical summary was not sworn under oath and Ryan did not timely provide any evidence of authentication. Importantly, Matthew refused to offer expert opinions during his deposition because he was not licensed. Ryan produced no other timely evidence that the accident caused her condition.

Not until the day before the summary judgment hearing, after the discovery cutoff and the deadline for submitting responsive evidence, did Ryan file a surreply with Matthew's sworn declaration asserting that the accident caused Ryan's condition. At the hearing, Ryan stated that she did not know that medical testimony needed to be sworn under oath and assumed that her medical records were automatically admissible. She did not have another explanation for why she was late filing the surreply and Matthew's declaration.

Responsive evidence is due 11 days before a summary judgment hearing under CR 56(c). *See also* KCLCR 7(b)(1)(A). Ryan did not seek a continuance or ask to reopen discovery to gather more evidence under CR 56(f). Setting aside Ryan's late materials, the trial court concluded that Ryan had not produced 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 timely summary from Matthew asserting a causal link between the accident and Ryan's dysautonomia, was not authenticated by any sworn statement. *Int'l Ultimate*, 122 Wn. App. at 745-46. Nor did the summary explain how Matthew was qualified to testify on the cause of neurological symptoms. And Ryan's medical records were not automatically admissible under the business records exception to hearsay, because even "routine records created in the normal course of business may be inadmissible if they contain conclusions or opinions based on the preparer's special degree of skill or discretion." *In re Welfare of M.R.*, 200 Wn.2d 363, 380, 518

P.3d 214 (2022). 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.

The trial court did not err by concluding that Ryan failed to make a prima facie showing of an essential element of her claim, causation. The trial court properly dismissed 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. We affirm the order granting partial summary judgment.

III. MOTION TO EXCLUDE DEFENSE MEDICAL EXPERTS

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. She believes that the experts violated their professional licenses during the CR 35 exam because their conclusions were "pre-meditated" and "fraudulent." Br. of Appellant at 44. We disagree.

"We review a trial court's decision to admit or exclude evidence for abuse of discretion." *City of Kennewick v. Day*, 142 Wn.2d 1, 5, 11 P.3d 304 (2000). A trial court abuses its discretion when it bases its decision on untenable grounds or reasons. *Id.*

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." Expert testimony is generally admissible if the expert is qualified, they rely "on generally accepted theories in the scientific community," and "the testimony would be helpful to the trier of fact."

Johnston-Forbes v. Matsunaga, 181 Wn.2d 346, 352, 333 P.3d 388 (2014). We will not disturb a trial court's ruling if the basis for admitting the evidence is fairly debatable. *Id.* A party claiming unfair bias "must produce sufficient evidence demonstrating bias . . . mere speculation is not enough." *Magula v. Dep't of Lab. & Indus.*, 116 Wn. App. 966, 972, 69 P.3d 354 (2003).

In this case, the defense medical experts concluded that most of Ryan's physical complaints were not related to the accident. Their report was made under oath, explained the tests they conducted, and concluded that Ryan's injuries from the accident consisted of minor soft tissue strains that reached maximum medical improvement in March 2003.

Ryan produced no evidence that the experts were not qualified, that they were using invalid theories or methods, or that their conclusions were not relevant. *Johnston-Forbes*, 181 Wn.2d at 352. Except for Matthew's untimely declaration, which the trial court declined to consider, Ryan relied entirely on her own assertions that the experts deviated from a reliable methodology generally accepted by the relevant scientific community.

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. The trial court did not err by denying the motion to exclude the experts. Ryan also contends the trial court improperly ruled on her motion after deciding the summary judgment motion. We discern no prejudice from the order in which the court ruled on motions.

IV. MOTION TO LIMIT GENERAL DAMAGES

Next, Ryan argues that the trial court improperly weighed the evidence when it granted Timmerman's motion to limit general damages to the three months after the accident. We disagree. The trial court's ruling on partial summary judgment effectively limited Ryan's claim for general

damages to the three months after the accident. Because the trial court did not err in granting partial summary judgment, the order limiting Ryan's claim to the time period delineated by that summary judgment ruling was likewise proper.[4] We affirm the order limiting Ryan's general damages.

V. MOTION TO SUBPOENA DEFENSE MEDICAL EXPERTS

Next, Ryan argues that the trial court erred by denying her motion to subpoena Timmerman's medical experts after Timmerman decided not to call those experts at trial. We disagree.

The trial court ruled that the defense medical experts were not relevant to the remaining issues at trial. 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.

We hold 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.

VI. TRIAL ADMINISTRATION

Ryan argues that the trial court violated her rights under article I, section 10 of the Washington Constitution by repeatedly continuing the trial. She asserts that the trial judge should have recused to let another judge conduct the trial sooner. We disagree.

[4] Ryan then contends that the trial court should have sent the case to arbitration rather than allowing it to proceed to trial on such limited issues. But the record shows Ryan resisted when Timmerman sought to have the case sent to arbitration, so the invited error doctrine prevents our review of this contention. *See In re Marriage of Lesinski & Mienko*, 21 Wn. App. 2d 501, 510, 506 P.3d 1277 (2022).

Article I, section 10 provides, "Justice in all cases shall be administered openly, and without *unnecessary* delay." (emphasis added). However, under CrR 3.3(a)(2), "[c]riminal trials shall take precedence over civil trials." Ryan herself requested several continuances, including one that resulted in her paying several thousand dollars of fees to Timmerman's expert witnesses. She did not specifically identify objectionable continuance orders in her notice of appeal. At least some of the delays were due to court closures because of the COVID-19 pandemic, and then from clearing the resulting backlog of criminal trials. And Ryan cites no authority giving civil plaintiffs a right to a speedy trial comparable to that afforded criminal defendants. Finally, Ryan does not show how transferring the case to a different judge would have expedited the trial. We reject this constitutional argument.

Ryan also argues that the entire Washington trial system awards attorneys "special privileges, which prejudice the self-represented litigant" in violation of article I, section 12. Br. of Appellant at 64. She argues that attorneys are "held in higher esteem by the courts," receive "unfettered access" to the court record, have a subpoena power that unrepresented litigants do not, and have access to an electronic filing system that unrepresented litigants do not. *Id*. at 64-65.

Article I, section 12 provides, "No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations." A privileges and immunities clause claim first requires a legislative classification. *Int'l Franchise Ass'n v. City of Seattle*, 803 F.3d 389, 411 (9th Cir. 2015). The fact that certain court systems and procedures may be more familiar to attorneys than to untrained, unrepresented litigants, does not constitute a legislative classification,

and Ryan has failed to identify a particular legislative classification that creates the disparity she complains about. We reject this constitutional argument as well.

ATTORNEY FEES

Both parties seek attorney fees on appeal. Ryan does not prevail on any issue. We deny her request for fees. Timmerman requests attorney fees under RAP 18.9(a) as a sanction for a frivolous appeal. Although she does not prevail, Ryan's appeal was not frivolous. We deny Timmerman's request for fees on appeal.

CONCLUSION

We affirm. We deny both parties' requests for appellate attorney fees.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Glasgow, C.J.

We concur:

Cruser, J.

Veljacic, J.

CERTIFICATE OF SERVICE

The undersigned certifies, under penalty of perjury under the laws of the State of Washington, that on the below date I caused to be electronically filed with Supreme Court of the State of Washington, and arranged for service of a true and correct copy of the foregoing **Petition for Review** upon the following:

Sharon Ambrosia-Walt,
WSBA No. 15212 WILSON SMITH COCHRAN DICKERSON
1000 Second Avenue, Suite 2050 Seattle, WA 98104
Phone: (206)623-4100 Fax:
(206)623-9273
walt@wscd.com
Attorney for Respondents

Signed this 28th day of May ,2024

By: Celeste Ryan

Celeste Ryan, Petitioner

CELESTE RYAN - FILING PRO SE

May 28, 2024 - 10:45 AM

Filing Petition for Review

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