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STATE OF WASHINGTON
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No. 1036311

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Dominique M. Keimbaye, Petitioner v. Kimberly A. Exe, Respondent

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On Appeal From

Division I of the Court of Appeals of the State of Washington
No. 845039-I

The Superior Court of the State of Washington in and for King County – Honorable Adrienne McCoy
No. 21-2-07543-2 SEA

RESPONDENT KIMBERLY A. EXE'S ANSWER TO PETITION FOR REVIEW & REQUEST FOR RELIEF

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I. IDENTITY OF RESPONDENT

The Respondent is Kimberly A. Exe.

II. INTRODUCTION

This matter stems from an admitted rear-end motor vehicle collision between Petitioner Dominique Keimbaye and Respondent Kimberly A. Exe in June 2018. Unsatisfied with the result of the July 2022 trial and September 2024 Court of Appeals decision, Keimbaye now seeks review from the Washington Supreme Court pursuant to RAP 13.4(b)(1), (3), and (4).

Keimbaye fails to demonstrate that the criteria of RAP 13.4(b) are met under the circumstances of this case and review is not merited. Respondent Kimberly A. Exe therefore respectfully requests that this Court deny Appellant's Petition for Review & Request for Relief ("Petition").

III. CITATION TO COURT OF APPEALS DECISION[1]

On September 30, 2024, in Case No. 845039-I, Division One of the Court of Appeals of The State of Washington ("Court of Appeals") issued an Unpublished Opinion affirming the decision of the trial court. Appendix Ex. 1. On October 24, 2024, the Court of Appeals entered an Order Denying Petitioner Dominique Keimbaye's Motion for Reconsideration. Appendix Ex. 2.

IV. COUNTER STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Should review be denied when Keimbaye has failed to satisfy the considerations governing acceptance of review pursuant to RAP 13.4(b)?

2. Did the Court of Appeals correctly affirm the trial court's exclusion of medical evidence when Keimbaye did not satisfy

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[1] As it appears Keimbaye failed to include the Court of Appeals' Orders in compliance with RAP 13.4(c)(9) in his Petition and instead directed this Court to obtain these documents from the Court of Appeals, Exe is including them as an Appendix to her Answer to ensure this Court has copies of the same.

his burden of proof of presenting any medical testimony establishing a causal link between his claimed injuries and the subject motor vehicle collision?

3. Did the Court of Appeals correctly affirm the trial court's decisions with regard to Keimbaye's presentation of evidence related to lost wages?

4. Did the Court of Appeals appropriately deny Keimbaye's motion to supplement the record pursuant to RAP 9.11(a)?

5. Did the Court of Appeals err in affirming the trial court's decision to disallow jury instructions related to duty of care and contributory negligence in an admitted liability case with one defendant?

6. Did the Court of Appeals appropriately affirm the trial court's denial of Keimbaye's request for a new trial based on new arguments presented for the first time on appeal?

7. Does the Court of Appeals decision conflict with established precedent regarding pro se litigants being held to the same standard as attorneys?

8. Should this Court decline to accept Keimbaye's petition when it does not involve a Constitutional issue and is not a matter of substantial public interest?

V. COUNTER STATEMENT OF THE CASE

This case arises from Appellant Keimbaye's claim for personal injuries arising from a motor vehicle collision with Respondent Exe on June 18, 2018. The case was tried to a jury from July 11, 2022 – July 14, 2022. Exe admitted liability for the collision at trial and was the only defendant. During the trial, Keimbaye called himself as the sole witness for his case-in-chief. Keimbaye rested his case without presenting any medical testimony to substantiate his injury claims.

After Keimbaye rested his case, Exe moved for Judgment as a Matter of Law as to Keimbaye's past and future medical expenses under CR 50(a)(1). Exe's motion was granted. In granting Exe's motion, the trial court ruled that Keimbaye had failed to meet his burden of proving both that his alleged injuries were caused by the collision and that the past medical

treatment and associated expenses were reasonable and necessary. Because Keimbaye failed to meet his burden of proof with respect to his medical expenses, the issue of his past medical special damages was not submitted to the jury. The only issues submitted to the jury were Keimbaye's wage loss and general damages claims. The jury awarded Keimbaye $0 in past economic damages, $0 in future economic damages, and $20,000 in past and future noneconomic damages.

VI. ARGUMENT

A. Keimbaye Has Failed to Satisfy the Considerations Governing Acceptance of Review Pursuant to RAP 13.4(b)

Keimbaye assigns error to the Court of Appeals' decision pursuant to RAP 13.4(b)(1), (3), and (4)[2], which provide as follows:

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

[2] Keimbaye also makes reference to RAP 13.4(b)(2) in the argument section of his Petition.

> (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.

See RAP 13.4(b). Because Keimbaye cannot meet his burden of demonstrating any one of the above criteria is met, this Court should deny Keimbaye's Petition.

B. The Court of Appeals' Decision Does Not Conflict with Established Precedent to Warrant This Court's Review Pursuant to RAP 13.4(b)(1) or (2)

This Court will accept a Petition for Review pursuant to RAP 13.4(b)(1) or (2) only when the Court of Appeals decision is in conflict with a Supreme Court decision or Court of Appeals decision. *See* RAP 13.4(b)(1); RAP 13.4(b)(2). Keimbaye claims that the decision to exclude medical evidence and wage loss evidence contradicts established precedent. *See*

Appellant's Petition ("AP") 5-6, 9-14. This is not, however, supported by the record or Court of Appeals' decision.

1. It Was Not Error to Limit Keimbaye's Testimony Regarding His Medical Treatment[3]

Keimbaye argues that the exclusion of evidence related to his medical expenses absent expert testimony on the same violates fair access to justice, that medical expenses do not always require expert testimony, and that his own testimony and medical records should have been enough to allow this issue to go to the jury.[4] *See* AP 9-13.

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[3] Keimbaye raises arguments on this issue for the first time in his Petition. A Washington appellate court can refuse to consider any claim of error that was not raised in the trial court. *See* RAP 2.5(a). Here, not only were these arguments not raised in the trial court, they were also not raised before the Court of Appeals. *See* Appendix Ex. 1 at 5.

[4] Exe's counsel was unable to locate the majority of Keimbaye's case law citations related to this issue (AP 5-6, 9-13) when searching on Westlaw by both case name and pin cite. Most of the cases Exe's counsel was able to locate seem to be entirely unrelated to the subject matter of this action. Moreover, although Keimbaye identifies RAP 13.4(b)(1) as the basis for his Petition on this issue, it does not appear that any Supreme Court cases were cited in support of the same.

However, Keimbaye has not specified what evidence regarding his medical expenses was excluded at trial. In fact, the trial court did not exclude evidence of Keimbaye's medical expenses. As the Court of Appeals stated, a summary of Keimbaye's claimed injuries and associated damages, including wage loss, was admitted into evidence by the trial court. *See* Appendix Ex. 1 at 5. The amounts associated with a loan that was purportedly used to pay Keimbaye's medical bills were excluded because Keimbaye was unable to show that the borrowed funds were used for this stated purpose. Ultimately, Keimbaye's medical bills were not submitted to the jury following Exe's successful Motion for Directed Verdict. Appendix Ex. 1 at 2.

Established case law does not support Keimbaye's position regarding medical expenses. "The causal relationship of an accident or injury to a resulting physical condition must be established by medical testimony beyond speculation and conjecture. The evidence must be more than that the accident

'might have,' 'may have,' 'could have,' or 'possibly did,' cause the physical condition. It must rise to the degree of proof that the resulting condition was probably caused by the accident, or that the resulting condition more likely than not resulted from the accident, to establish a causal relation." *Miller v. Staton*, 58 Wn.2d 879, 886, 365 P.2d 333, 337 (1961) (emphasis added).

"[T]he plaintiff must prove that medical costs were reasonable and, in doing so, cannot rely solely on medical records and bills. In other words, medical records and bills are relevant to prove past medical expenses only if supported by additional evidence that the treatment and the bills were both necessary and reasonable." *Patterson v. Horton*, 84 Wn. App. 531, 543, 929 P.2d 1125, 1130 (1997) (internal citations omitted).

The trial court did not limit testimony on Keimbaye's injuries and treatment. Rather, the trial court granted Exe's Motion for Directed Verdict because Keimbaye "did not present any testimony from a medical expert, he failed to meet his

burden to prove a causal link between the collision and his medical expenses." Appendix Ex. 1 at 2. Once the Motion for Directed Verdict was granted, Exe no longer needed her medical expert to testify regarding Keimbaye's claimed injuries and treatment; therefore, Exe's expert was excused from the trial. *Id*.

In its decision, the Court of Appeals further stated that "Keimbaye does not assign error to the trial court's ruling granting Exe's motion for judgment as a matter of law as to causation, nor does he address or analyze the standards under CR 50, which governs such motions. Without arguing—much less showing—that the trial court erred by concluding that Keimbaye's evidence was insufficient to show the collision proximately caused his medical expenses, Keimbaye cannot show it was error to exclude evidence of the *amount* of those expenses. Thus, it was not an abuse of discretion to exclude this evidence." Appendix Ex. 1 at 5 (emphasis original).

Keimbaye could have called his own treating providers or Exe's expert to testify during his case-in-chief, but he chose not to do so. Instead, Keimbaye attempted to rely upon his own testimony to substantiate his injuries and associated treatment and expenses. Because Keimbaye did not satisfy his burden of proof, the trial court's decision to grant Exe's motion as it related to Keimbaye's medical bills, and Court of Appeals decision affirming the same, was appropriate.

2. Keimbaye Was Provided the Opportunity to Present His Wage Loss Claim to the Jury

Although unsupported by the record and Court of Appeals decision, Keimbaye argues that the trial court "denied Plaintiff's evidence of lost wages." AP 13. Keimbaye cites two cases to support this position. The first, *Holder v. City of Vancouver*, 136 Wn. App. 104, 147 P.3d 641 (2006) was a case involving a disagreement over a parking ordinance and makes no mention of wage loss. The second, *State v. Nava*, 177 Wn. App. 272, 311 P.3d 83 (2013) was a criminal matter related to a defendant's conviction on murder, assault, and unlawful firearm

possession charges. Contrary to Keimbaye's claim that *Nava* stands for the proposition that "Washington courts maintain that parties must be permitted to substantiate their economic loss claims through reasonable inferences drawn from employment records and personal testimony" and that "[a]ccording to *State v. Nava* evidentiary decisions warrant reversal where there is an abuse of discretion, especially in excluding lay testimony related to economic losses," *Nava* makes no mention of economic losses as it was a criminal matter. AP 13-14.

Also contrary to Keimbaye's claim that the trial court prohibited him from introducing evidence of wage loss, Keimbaye submitted his claim for wage loss to the jury by way of Exhibit 15. Appendix Ex. 1 at 2. Keimbaye also had the opportunity to cross-examine defense witness Peggy Simard regarding his claim for lost wages. *Id*. The jury deliberated on Keimbaye's claim for lost wages and, in so doing, it was permitted to weigh the evidence and testimony regarding those

claims. The Court of Appeals appropriately affirmed the trial court's ruling on this issue.

3. The Court of Appeals Appropriately Denied Keimbaye's Motion to Supplement the Record Pursuant to RAP 9.11(a)

Keimbaye claims the Court of Appeals "erred by denying the motion to supplement the record, preventing a fair evaluation of damages." AP 14. Keimbaye additionally argues that "RAP 9.11(a) permits additional evidence on review in cases where material facts were wrongfully excluded." AP 14.

In reality, however:

> RAP 9.11 is a limited remedy under which [the Court of Appeals] may direct that additional evidence may be taken if all of the following six criteria are met:
>
> (1) additional proof of facts is needed to fairly resolve the issues on review, (2) the additional evidence would probably change the decision being reviewed, (3) it is equitable to excuse a party's failure to present the evidence to the trial court, (4) the remedy available to a party through postjudgment motions in the trial court is inadequate or unnecessarily expensive, (5) the appellate court remedy of granting a new trial is inadequate or unnecessarily expensive, and (6) it

> would be inequitable to decide the case solely on the evidence already taken in the trial court.

Harbison v. Garden Valley Outfitters, Inc., 69 Wn. App. 590, 593-94, 849 P.2d 669, 672 (1993). "[RAP 9.11(a)] permits the taking of new evidence only if all six conditions are met and then only on the court's own initiative. Unless the court acts under the authority of RAP 1.2 and 18.8, which provide for waiver or alteration of any rule of appellate procedure to preserve the ends of justice, a literal reading of RAP 9.11(a) suggests that a party's motion for presentation of additional evidence cannot be entertained". *Mission Ins. Co. v. Guarantee Ins. Co.*, 37 Wn. App. 695, 702, 683 P.2d 215, 220 (1984) (emphasis added).

In its decision, the Court of Appeals noted "In a July 25, 2023 submission to this court, Keimbaye requested that we take additional evidence of alleged impropriety on the part of Exe's counsel and the trial court. But this court generally does not take evidence, and Keimbaye does not address the factors in RAP 9.11(a) regarding the taking of additional evidence on

review. Keimbaye's request is hereby denied." Appendix Ex. 1 at 6, fn. 9. Pursuant to the language of the rule itself and case law outlined above, the Court of Appeals appropriately declined to consider Keimbaye's motion to supplement the record pursuant to RAP 9.11(a).

4. Denial of Jury Instructions Related to Duty of Care and Contributory Negligence in an Admitted Liability Matter Did Not Contribute to "Manifest Injustice"[5]

Despite the fact that Exe was the only defendant in this matter and had admitted fault for the subject collision, Keimbaye claims that the "trial court's decision not to issue jury instructions reflecting the ordinary duty of care and contributory negligence undermined Mr. Keimbaye's case." AP 14.

To support his position, Keimbaye cites to *Saleemi v. Doctor's Associates, Inc.*, 176 Wn.2d 368, 292 P.3d 108 (2013)

[5] This issue does not appear to fall under any of the criteria required for acceptance of review by the Supreme Court pursuant to RAP 13.4(b).

for the proposition that "the Washington Supreme Court underscored that courts must ensure damages adequately reflect the injured party's economic losses to prevent prejudice" and "that jury instructions must provide jurors with clear guidelines on relevant legal standards." However, *Saleemi* makes no mention of jury instructions and instead dealt with a franchisor/franchisee disagreement over the enforceability of an arbitration clause. *Saleemi*, *supra*, at 387.

The Court of Appeals addressed the trial court's jury instructions in its decision, stating "even if the trial court erred, any error was at best harmless given that Exe's negligence was uncontested and not before the jury. Accordingly, Keimbaye does not establish a basis for reversal." Appendix Ex. 1 at 5. Because Exe was the only defendant at trial and had admitted fault for the subject collision, issues related to duty of care and fault were not before the jury. The Court of Appeals correctly affirmed the trial court's decisions related to jury instructions for negligence based on the facts of this matter.

5. The Court of Appeals Appropriately Affirmed the Trial Court's Denial of Keimbaye's Request for a New Trial[6]

In his Petition, Keimbaye relies on RCW 4.76.030 for the proposition that his request for a new trial was improperly denied, but as the Court of Appeals noted in its decision, "Keimbaye did not rely on RCW 4.76.030 or argue passion or prejudice below. Instead, his motion was based on CR 59(a)(7) ('there is no evidence or reasonable inference from the evidence to justify the verdict or the decision') and CR 59(a)(9) ('substantial justice has not been done'). The thrust of his motion was that he should get another opportunity to present testimony from his treating physicians or from Dr. Brown. We will not consider Keimbaye's statutory argument for the first time on appeal." Appendix Ex. 1 at 7. Similarly to the Court of Appeals decision, this Court should not consider the same arguments that the Court of Appeals already declined to

[6] This issue does not appear to fall under any of the criteria required for acceptance of review by the Supreme Court pursuant to RAP 13.4(b).

consider as they were not presented to the trial court. Additionally, Keimbaye does not provide any support for how the decision to deny Keimbaye's request for a new trial and Court of Appeals' affirmation of the same falls under and of the requirements of RAP 13.4(b). This Court should accordingly deny Keimbaye's Petition as it relates to his request for a new trial.

6. The Court of Appeals Decision Does not Conflict with Established Precedent on Pro Se Litigants[7]

Without citation to any specific examples, Keimbaye claims that the Court of Appeals "misapplied its procedural discretion by ignoring Mr. Keimbaye's substantive claims simply due to format errors." AP 18. Keimbaye further claims "The Court of Appeals' dismissal of Mr. Keimbaye's assignments of error for insufficient legal citation overlooks Washington's policy of affording leeway to pro se litigants." *Id*.

[7] This issue also does not appear to fall under any of the criteria required for acceptance of review by the Supreme Court pursuant to RAP 13.4.

However, this assertion ignores the well-established law in Washington that "[p]ro se litigants are bound by the same procedural rules as attorneys." *Westberg v. All-Purpose Structures, Inc.,* 86 Wn.App. 405, 411, 936 P.2d 1175 (1997); *In re Marriage of Olson*, 69 Wn.App. 621, 626, 850 P.2d 527 (1993).

Keimbaye cites to *Haines v. Kerner*, 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972) for the proposition that "the U.S. Supreme Court held that pro se pleadings are to be held to less stringent standards." AP 18. This is a wholly inaccurate interpretation of *Haines*, which, in actuality, states that pleadings, such as complaints, are held "to less stringent standards than formal pleadings drafted by lawyers." *Haines*, *supra*, at 520.

As the Court of Appeals pointed out, "A number of Keimbaye's arguments fail under the foregoing standards [regarding an appellant's brief] because they are unsupported by citations to the record or by sufficient argument and

authority." AP 3. Keimbaye's failure to provide supporting authority or citation to the record was not simply a "format error" and Keimbaye does not provide any case law to support his position that, since he is a pro se litigant, he did not have to provide evidentiary support in his appellate briefing.

The Court of Appeals appropriately found that "Keimbaye does not point to any abuse of the trial court's discretion to manage its courtroom, and the record reveals that the court was rather accommodating of Keimbaye, thoroughly explaining its rulings while being mindful not to cross the line into improperly assisting him." Appendix Ex. 1 at 4.

C. Review Pursuant to RAP 13.4(b)(3) is Not Warranted as This Matter Does Not Involve a Significant Question of Law Under the Constitution of the State of Washington or of the United States

Without citation to a single example, Keimbaye asserts, in full, that "[t]he exclusion of critical evidence and the denial of a fair opportunity to present a case raise constitutional concerns under the Due Process Clause of the Fourteenth Amendment and Article I, Section 3 of the Washington

Constitution. Petitioner was denied a meaningful opportunity to be heard and to present his case." AP 20

This is the entirety of Keimbaye's claim related to "access to justice" and "due process concerns". As there are no examples of these alleged Constitutional violations provided, this Court should decline to consider this issue.

D. This Matter is Not One of Substantial Public Interest Requiring This Court's Determination Pursuant to RAP 13.4(b)(4)

1. This Run-of-the-Mill Admitted Motor Vehicle Collision is Not an Issue of Substantial Public Interest

Keimbaye improperly claims that "RAP 13.4(b) allows for reconsideration when the appellate court overlooks significant evidence that could alter the decision." AP 20. To the contrary, RAP 13.4(b) provides only four mechanisms by which this Court may accept a Petition for Review and the appellate court "overlooking significant evidence" is not one of them. *See* RAP 13.4.

Keimbaye next asserts that "[t]his case affects the substantial public interest by setting a precedent that could deter pro se litigants from seeking justice due to procedural barriers." AP 21. However, as the Court of Appeals pointed out, the trial court record reveals the court was "rather accommodating of Keimbaye." Appendix Ex. 1 at 4. Additionally, Keimbaye fails to articulate how the trial court's decisions and subsequent Court of Appeals decision in a run-of-the-mill admitted liability motor vehicle collision would deter pro se litigants from seeking justice.

In contrast with other decisions where this Court has granted review pursuant to RAP 13.4(b)(4), the Court of Appeals' decision is not "[a] decision that has the potential to affect a number of proceedings in the lower courts [that] may warrant review as an issue of substantial public interest if review will avoid unnecessary litigation and confusion on a common issue." *In re Flippo*, 185 Wn.2d 1032, 380 P.3d 413 (2016) (granting review pursuant to RAP 13.4(b)(4) where

"there are numerous now-pending personal restraint petitions ... making claims similar to those asserted by [Plaintiff]"); *see also State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903, 904 (2005) (explaining that "[t]his case presents a prime example of substantial public interest. The Court of Appeals holding, while affecting parties to this proceeding, also has the potential to affect every sentencing proceeding in Pierce County after November 26, 2012, where a DOSA sentence was or is at issue").

Nor does Keimbaye's Petition involve issues which pose a significant danger to public welfare or safety, in sharp contrast to other cases where this Court has accepted review pursuant to RAP 13.4(b)(4). *See*, *e.g*. *Matter of Williams*, 197 Wn.2d 1001, 484 P.3d 445, 447 (2021) (accepting review where the "[t]he chaos wrought by COVID-19 at [] correctional facilities, and the department's efforts in responding to this constantly changing threat, constitutes an ongoing issue of substantial public interest within the meaning of RAP

13.4(b)(4); *In re Matter of Arnold*, 189 Wn.2d 1023, 408 P.3d 1091, 1092 (2017) (finding, in part, that "review is appropriate under RAP 13.4(b)(4)" because "likely incorrect holdings" of Court of Appeals' decisions interpreting statutory rape laws "affect public safety by removing an entire class of sex offenders from the registration requirements").

The subject case involves nothing of such far reaching impact on other proceedings or the public interest as large as was present in *Flippo, Watson, Williams,* and *Arnold*. Rather, the decision of the Court of Appeals here affects only Keimbaye's individual interests relating to a single motor vehicle collision.

2. The Court of Appeals did Not Err in Declining to Publish its Decision

In deciding *not* to publish its decision in this matter, the Court of Appeals determined that its decision was not "of general public interest or importance." *See* RAP 12.3(d). Keimbaye claims that *Edwards v. Le Duc*, 157 Wn. App. 455, 238 P.3d 1187 (2010) "supports the publication of opinions that

clarify or correct legal misunderstandings." AP 21-22. However, *Edwards* makes no mention whatsoever about considerations the Court of Appeals weighs when deciding whether to publish a decision.

Keimbaye next cites to *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 828 P.2d 549 (1992), claiming *Cowiche* states that "Washington precedent does not support dismissing appeals based solely on minor procedural deficiencies when the underlying claims present legitimate issues." AP 22. The issues in *Cowiche* related to standing and trestle removal; the Supreme Court's decision in *Cowiche* makes no mention of procedural deficiencies, so it does not appear to be applicable to the subject matter.

As the decision of whether to publish a Court of Appeals opinion lies with the Court of Appeals pursuant to RAP 12.3, this Court should decline to consider this issue.

VII. CONCLUSION

Keimbaye has failed to satisfy his burden of demonstrating that any of the considerations governing acceptance of review pursuant to RAP 13.4(b). Accordingly, Exe requests this Court deny Keimbaye's Petition.

I certify that this memorandum contains 4174 words in compliance with RAP 18.17.

DATED this 10th day of January, 2025.

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APPENDIX

Exhibit 1 – Division One of the Court of Appeals of the State of Washington's Unpublished Opinion in Case No. 845039-I dated September 30, 2024

Exhibit 2 – Division One of the Court of Appeals of the State of Washington's Order Denying Motion for Reconsideration in Case No. 845039-I dated October 24, 2024

CERTIFICATE OF SERVICE

I, Judith Hong, hereby certify that I filed the foregoing with the Court of Appeals – Division I, State of Washington, and served same upon the following counsel of record:

Via Electronic Service via Washington State Appellate Court's Portal

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DATED this 10th day January, 2025.

s/ Judith Hong
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APPENDIX

EXHIBIT 1

FILED
9/30/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DOMINIQUE KEIMBAYE,

Appellant,

v.

KIMBERLY A. EXE,

Respondent.

No. 84503-9-I

DIVISION ONE

UNPUBLISHED OPINION

DÍAZ, J. — A jury denied Dominique Keimbaye the economic damages he sought following a motor vehicle collision with Kimberly Exe. Keimbaye now asserts pro se that numerous erroneous decisions of the trial court precluded a fair jury from considering relevant evidence supporting those damages. We disagree and affirm.

I. BACKROUND

In June 2018, Exe rear-ended Keimbaye on Interstate 405. In June 2021, Keimbaye sued Exe and represented himself at trial, where he sought to recover economic damages for medical expenses and lost wages, as well as noneconomic damages. Exe admitted fault for the underlying collision. The trial court instructed the jury that the issue before it was "what damages, if any, to [Keimbaye] were proximately caused by [Exe]'s negligence and what amount, if any, [Keimbaye]

should recover."

At trial, the only testimony Keimbaye presented in his case in chief was his own. Keimbaye offered into evidence exhibit 8, which included a list of his claimed medical expenses and lost wages. The trial court admitted a redacted version as exhibit 15.

After Keimbaye rested his case, Exe moved for judgment as a matter of law as to Keimbaye's medical expenses. The trial court granted Exe's motion, reasoning that, because Keimbaye did not present any testimony from a medical expert, he failed to meet his burden to prove a causal link between the collision and his medical expenses. After the trial court so ruled, Exe decided not to call her medical expert, Dr. Alan Brown.

Exe presented testimony from Peggy Simmard, a human resources representative for Providence Health Services (Providence). Simmard testified that, at the time of the underlying collision, Keimbaye was employed by Providence but on administrative leave and, four days later, Providence terminated Keimbaye for cause.

The jury awarded Keimbaye $20,000 in noneconomic damages and zero dollars in economic damages. Keimbaye moved for a new trial, and the trial court denied the motion. Keimbaye appeals.

II. ANALYSIS

Keimbaye, who continues to represent himself on appeal, makes 20 assignments of error. We hold pro se litigants to the same rules of procedure and substantive law as we do licensed attorneys. Holder v. City of Vancouver, 136

Wn. App. 104, 106, 147 P.3d 641 (2006). An appellant's brief must contain "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record." RAP 10.3(a)(6). Arguments unsupported by references to the record or citation to authority need not be considered, nor do claims presented without meaningful analysis. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); Norcon Builders, LLC v. GMP Homes VG, LLC, 161 Wn. App. 474, 486, 254 P.3d 835 (2011). And, this court will not "comb the record with a view toward constructing arguments" for a litigant. In re Estate of Lint, 135 Wn.2d 518, 532, 957 P.2d 755 (1998).

A number of Keimbaye's arguments fail under the foregoing standards because they are unsupported by citations to the record or by sufficient argument and authority. For example, he makes generalized complaints about the trial court's handling of jury selection, its unidentified "evidentiary rulings," alleged "limitations" and "restrictions" on the presentation of his case, and the trial court's rulings on Exe's objections during cross-examination.[1] But he does not articulate how the trial court erred much less cite any authority requiring reversal. Thus, we decline to consider those claims. Cowiche Canyon Conservancy, 118 Wn.2d at 809.

More specifically as to the court's evidentiary rulings, Keimbaye correctly points out that ER 402 states that all relevant evidence is admissible but he ignores the part of ER 402 stating, "*except* as . . . otherwise provided . . . by these rules."

[1] Assignments of error 2-5, and 7.

(Emphasis added.) And while he invokes the Sixth Amendment to the United States Constitution, "[t]he rights arising under the Sixth Amendment are inapplicable to civil cases." Mason v. Mason, 19 Wn. App. 2d 803, 822, 497 P.3d 431 (2021). Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration. Brownfield v. City of Yakima, 178 Wn. App. 850, 876, 316 P.3d 520 (2013).

Keimbaye also takes issue with the trial court's "handling" of his pro se status.[2] But Keimbaye does not point to any abuse of the trial court's discretion to manage its courtroom, and the record reveals that the court was rather accommodating of Keimbaye, thoroughly explaining its rulings while being mindful not to cross the line into improperly assisting him. See cf. Hickock-Knight v. Wal-Mart Stores, Inc., 170 Wn. App. 279, 309 n.11, 284 P.3d 749 (2012) ("Trial courts have wide discretion to manage their courtrooms and to conduct trials fairly, expeditiously, and impartially."); Edwards v. Le Duc, 157 Wn. App. 455, 464, 238 P.3d 1187 (2010) (trial court abused its discretion by denying defendant's motion for new trial where the court repeatedly assisted the pro se plaintiff during trial rather than treating her as it would a lawyer). "It is not the responsibility of this court to attempt to discern what it is appellant may have intended to assert that might somehow have merit." Port Susan Chapel of the Woods v. Port Susan Camping Club, 50 Wn. App. 176, 188, 746 P.2d 816 (1987).

Keimbaye next asserts a number of (more specific) errors having to do with the trial court's exclusion of evidence that Exe was negligent and its decision not

[2] Assignment of error 15.

to give Keimbaye's proposed jury instructions on the duty of ordinary care and contributory negligence.[3] But even if the trial court erred, any error was at best harmless given that Exe's negligence was uncontested and not before the jury. Accordingly, Keimbaye does not establish a basis for reversal. See Saleemi v. Doctor's Assocs., Inc., 176 Wn.2d 368, 381, 292 P.3d 108 (2013) (courts do not reverse civil judgments for harmless error).

Keimbaye also challenges the trial court's rulings about exhibit 8 and its exclusion of other evidence of Keimbaye's medical expenses.[4] The trial court admitted a modified version of exhibit 8, excising its references to Keimbaye's legal costs (the exclusion of which Keimbaye does not challenge), and a personal loan that Keimbaye claimed he used to pay his medical expenses.[5] To this end, Keimbaye does not assign error to the trial court's ruling granting Exe's motion for judgment as a matter of law as to causation, nor does he address or analyze the standards under CR 50, which governs such motions. Without arguing—much less showing—that the trial court erred by concluding that Keimbaye's evidence was insufficient to show the collision proximately caused his medical expenses, Keimbaye cannot show it was error to exclude evidence of the *amount* of those expenses. Thus, it was not an abuse of discretion to exclude this evidence. State v. Nava, 177 Wn. App. 272, 289, 311 P.3d 83 (2013) ("Decisions involving evidentiary issues lie largely within the sound discretion of the trial court and

[3] Assignments of error 1, 8-10.
[4] Assignments of error 6, 11-12, 14, 18-19.
[5] Keimbaye argues that the trial court erred by sustaining objections to the first two pages of exhibit 8. But although Exe initially objected to those pages, she later withdrew her objections, and the trial court admitted those pages.

ordinarily will not be reversed on appeal absent a showing of abuse of discretion.").

In response, Keimbaye claims Dr. Brown would have confirmed the causal connection and takes issue with the fact that Dr. Brown did not testify.[6] But Keimbaye bore the burden to prove proximate cause, Little v. Countrywood Homes, Inc., 132 Wn. App. 777, 780, 133 P.3d 944 (2006), and as the trial court explained below, Keimbaye could have—but did not—call Dr. Brown in his case in chief.

Keimbaye next suggests that the trial court was biased.[7] But the trial court is presumed to perform its functions without bias or prejudice, State v. Leon, 133 Wn. App. 810, 813, 138 P.3d 159 (2006), and the citations to the record Keimbaye provides do not reveal anything that would overcome this presumption. Keimbaye claims further that the trial court failed to address "potential collaboration" between Exe and Providence,[8] and when he raised this issue below, he argued that the only reason Exe planned to call a witness from Providence was to "eliminate" his wage loss claim. But he cites no authority for the proposition that this was unfair or improper, as opposed to a legitimate defense strategy.[9] Thus, we decline to consider those claims. Cowiche Canyon Conservancy, 118 Wn.2d at 809.

Finally, Keimbaye argues that the trial court misapplied RCW 4.76.030 by

[6] Assignment of error 17.
[7] Assignment of error 13.
[8] Assignment of error 16.
[9] In a July 25, 2023 submission to this court, Keimbaye requested that we take additional evidence of alleged impropriety on the part of Exe's counsel and the trial court. But this court generally does not take evidence, and Keimbaye does not address the factors in RAP 9.11(a) regarding the taking of additional evidence on review. Keimbaye's request is hereby denied.

denying his motion for a new trial.[10] RCW 4.76.030 authorizes the court to order a new trial if it "find[s] the damages awarded by a jury to be so excessive or inadequate as unmistakably to indicate that the amount thereof must have been the result of passion or prejudice."

But Keimbaye did not rely on RCW 4.76.030 or argue passion or prejudice below. Instead, his motion was based on CR 59(a)(7) ("there is no evidence or reasonable inference from the evidence to justify the verdict or the decision") and CR 59(a)(9) ("substantial justice has not been done"). The thrust of his motion was that he should get another opportunity to present testimony from his treating physicians or from Dr. Brown. We will not consider Keimbaye's statutory argument for the first time on appeal. See Wingert v. Yellow Freight Sys., Inc., 146 Wn.2d 841, 853, 50 P.3d 256 (2002) (arguments not raised in the trial court generally will not be considered on appeal).

Keimbaye also fails to show that the trial court abused its discretion by not giving him a second chance to call known witnesses that he did not call the first time. Cf. Henderson v. Thompson, 200 Wn.2d 417, 430, 518 P.3d 1011 (2022) ("We review a trial court's decision on a motion for a new trial for abuse of discretion."); 14A DOUGLAS J. ENDE, WASHINGTON PRACTICE: CIVIL PROCEDURE § 22:25, at 29 (3d ed. 2018) (CR 59 motion "does not provide litigants with an opportunity for a second bite at the apple.").

[10] Assignment of error 20.

III. CONCLUSION

We affirm.[11]

Díaz, J.

WE CONCUR:

Feldman, J.

Birk, J.

[11] Keimbaye has appended to his brief of appellant a "MOTION FOR REVERSAL/REQUEST FOR ADDITUR," but that motion is not properly before this court and is hereby denied.

EXHIBIT 2

FILED
10/24/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DOMINIQUE KEIMBAYE, Appellant, v. KIMBERLY A. EXE, Respondent.	No. 84503-9-I DIVISION ONE ORDER DENYING MOTION FOR RECONSIDERATION

Appellant, Dominique Keimbaye, filed a motion for reconsideration of the opinion filed on September 30, 2024 in the above case. A majority of the panel has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:

Díaz, J.

Judge

BURGER, MEYER & D'ANGELO, LLP

January 10, 2025 - 5:00 PM

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