

FILED
SUPREME COURT
STATE OF WASHINGTON
11/22/2024
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FILED
Court of Appeals
Division I
State of Washington
11/21/2024 8:00 AM

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Case #: 1036311

CASE NO.: 84503-9

IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON
DIVISION I, KING COUNTY

DOMINIQUE M. KEIMBAYE
Petitioner/Plaintiff,

v.

SAFECO INSURANCE COMPANY OF AMERICA, A LIABILITY
MUTUAL INSURANCE COMPANY AND KIMBERLY A. EXE,
individuals,
Respondent/Defendants.

APPEALS FROM KING COUNTY SUPERIOR COURT
Case NO.: 21-2-07543-2SEA
Honorable Adrienne McCoy

DOMINIQUE KEIMBAYE
PO BOX: 2024
BELLEVUE, WA 98009
PRO SE PLAINTIFF

APPELLANT'S PETITION FOR REVIEW & REQUEST FOR
RELIEF

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I. INTRODUCTION

Pursuant to **RAP 13.4(b)** and **RAP 13.4(c)(7)**, Dominique M. Keimbaye (“Petitioner”) respectfully hereby requests and petitions this Honorable Court for a review of the decision rendered by the Court of Appeals of the State of Washington on September 30, 2024, in **Case No. 845039**, wherein the Court of Appeals affirmed the decision of the King County Superior Court (**No. 21-2-07543-2**) denying Petitioner's claim for economic damages arising from a rear-ended motor vehicle collision with an insured driver by Liberty Mutual Insurance Company, Kimberly A. Exe (“Respondent”). Pro se Appellant strongly contends that several erroneous rulings by the trial court and the misapplication of the law undeniably led to a prejudiced outcome. Specifically, injured victim Mr. Keimbaye contends that the trial court improperly excluded critical evidence of his medical expenses and lost wages, obstructed his ability to establish causation, and by doing so, failed to ensure substantial justice. The Court of Appeals additionally denied Petitioner's Motion for Reconsideration and Motion to Publish its opinion. This petition presents substantial grounds for review under **RAP 13.4(b)(1)**, **(3)**, and **(4)** and based on significant errors in evidentiary rulings, misinterpretation of the standards governing medical testimony, improper denial of relevant evidence for wage losses, and an overall failure to properly accord due process to the pro se appellant. This Petition for Review

will demonstrate that review is warranted under **RAP 13.4(b)** because: **(1)** the decision conflicts with established precedent regarding pro se litigants' procedural rights and evidentiary standards for medical and wage-related damages; **(2)** issues of substantial public interest are presented; and **(3)** the decision involves significant questions of law under Washington statutes governing damage recovery in motor vehicle negligence cases. As the Supreme Court has the authority to ensure consistent application of the law, a reversal is appropriate to redress the deprivation of Petitioner's rightful opportunity to prove damages caused by a rear-ended motor vehicle collision. Petitioner respectfully requests that this Court grant review and reverse the lower Trial and Appellate Courts' Decisions, awarding the compensatory and economic damages rightfully due, including his remaining emotional damages, Court costs, legal expenses, legal interest, and attorney fees.

II. STATEMENT OF THE CASE

Petitioner respectfully requests review of the Court of Appeals' ruling in **Keimbaye v. Exe, No. 845039**, in which the Appeals Court denied his appeal on September 30, 2024, for his remaining damages following a motor vehicle collision with Respondent Kimberly A. Exe. In June 2018, Petitioner was rear-ended by Respondent Kimberly A. Exe on Interstate 405 North bound and admitted fault for the collision, resulting in injuries **(a**

broken bone on Petitioner's right foot) and subsequent economic and non-economic damages. Pro se Petitioner sought to recover economic damages for his medical expenses and lost wages, as well as noneconomic damages. Although Respondent admitted 100% fault for the collision, the jury, influenced by the lower trial court's handling and restrictive evidentiary rulings, awarded only insignificant noneconomic damages and failed to acknowledge the significant economic losses Petitioner sustained. At trial, Petitioner clearly provided his own testimony and documentary evidence of lost wages and medical expenses. However, the trial court excluded critical evidence of Petitioner's medical expenses and lost wages due to the absence of expert testimony and prevented Petitioner from establishing a causal link between the collision and his medical expenses by rejecting evidence due to lack of medical expert testimony, a barrier the pro se litigant could not reasonably overcome. Despite Petitioner's testimony and documentation and after resting his case, the trial court granted Respondent's motion for judgment as a matter of law on medical expenses. The jury then awarded Petitioner only **\$20,000** in noneconomic damages but zero in economic damages. The Appellate Court affirmed these rulings on September 30, 2024, and upheld the lower court's rulings, creating a precedent that undermines access to justice for pro se litigants. Petitioner filed a Motion for Reconsideration and a Motion to Publish the Appeals

Court's opinion, but both motions were also denied on October 23 & 24, 2024.

III. ISSUES PRESENTED FOR REVIEW

1. Whether the Court of Appeals erred in affirming the trial court's exclusion of Petitioner's medical expenses on the grounds of insufficient expert testimony, thus denying Petitioner the ability to establish causation despite available evidence.
2. Whether the Court of Appeals erred in affirming the trial court's judgment that Petitioner failed to provide sufficient evidence to establish causation for economic damages, specifically medical expenses, despite Respondent's admission of fault.
3. Whether the Court of Appeals failed to apply **RAP 9.11(a)** correctly by refusing Petitioner's request to introduce additional evidence supporting wage loss due to Respondent's alleged misconduct, thus violating Petitioner's due process rights.
4. Whether the trial court's management of Petitioner's pro se status and exclusion of key evidence constitutes an abuse of discretion that warrants reversal under Washington law.
5. Whether the Court of Appeals improperly dismissed Petitioner's Motion for Reconsideration and Motion to Publish its opinion

without adequate consideration of relevant legal standards and evidence.

IV. REASONS FOR GRANTING REVIEW UNDER RAP 13.4(b)

A. Conflict with Precedent and Misapplication of RAP Standards

Conflicts with Prior Decisions (RAP 13.4(b)(1)): The Court of Appeals' decision conflicts with established Washington case law regarding the admissibility of medical expense evidence without expert testimony and the proper handling of pro se litigants, meaning the rights of pro se litigants to have their claims fairly adjudicated without undue procedural burdens. Petitioner is entitled to show causation based on reasonable evidence, and the exclusion of all medical expenses due to a lack of expert testimony contradicts the standard of equity inherent in Washington law (see *Little v. Countrywood Homes, Inc.*, 132 Wn. App. 777, 133 P.3d 944 (2006)). The trial court's exclusion of Mr. Keimbaye's medical expenses due to a lack of medical expert testimony misinterprets the burden of proof under Washington law. Specifically, the trial court's exclusion of Petitioner's claimed medical expenses due to the absence of a medical expert contravenes precedent allowing non-expert testimony to establish damages when such damages are readily observable or within the petitioner's personal knowledge. By affirming this exclusion without granting

Petitioner an opportunity to introduce additional testimony or supplement his evidence, the decision conflicts with case law that interprets **CR 50** motions with flexibility, particularly when the exclusion limits an individual's right to seek full compensation. Given that Exe admitted fault, the trial court's stringent application of **CR 50** standards unfairly burdened Mr. Keimbaye, especially as he had initially listed his medical expenses, which is permissible under **RCW 4.84.010**. The trial court's evidentiary exclusions deprived Petitioner of substantial justice, justifying Supreme Court review.

B. Need to Resolve Substantial Uncertainties and Secure Uniformity in the Law

Significant Question of Law Under the Constitution (RAP 13.4(b)(3)):

The case presents significant constitutional questions concerning a pro se litigant's right to access the courts and present evidence in support of his claims. The Court of Appeals' reliance on discretionary standards to affirm the trial court's exclusion of evidence and denial of a new trial lacks the uniform application essential to civil litigation. The appellate decision relies on *Saleemi v. Doctor's Assocs., Inc.*, 176 Wn.2d 368, 292 P.3d 108 (2013), which justifies non-reversal for harmless error. However, the denial of economic damages was not harmless but determinative of the overall case outcome. The discretionary exclusion of material evidence, when combined

with procedural constraints faced by the pro se appellant, necessitates a clear standard ensuring litigants' rights are not compromised due to procedural obstacles. This case again presents substantial questions of law regarding the evidentiary requirements for establishing causation and economic damages in motor vehicle injury claims. Washington law, including **ER 402**, permits relevant evidence, and the trial court's redaction of the petitioner's exhibits, alongside its exclusion of medical expenses due to the lack of expert testimony, effectively denied him the ability to present a complete case. This restriction imposed a heightened evidentiary standard that is inconsistent with Washington case law allowing plaintiffs in civil cases to rely on lay testimony to establish a prima facie case for economic damages. See *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 828 P.2d 549 (1992).

C. Significant Question of Law Affecting Public Interest

Issues of Substantial Public Interest (RAP 13.4(b)(4)): The decision impacts the rights of pro se litigants statewide, affecting the fair administration of justice and access to the courts. The evidentiary barriers imposed upon pro se litigants, particularly in relation to medical expenses causation, constitute a significant issue of public interest. The Court of Appeals decision effectively sets a precedent that imposes a disproportionate burden on pro se appellants to secure costly expert

testimony, even when clear liability has been established. The trial court's procedural limitations on Plaintiff, including restrictive evidentiary rulings and limited jury instruction adjustments, deprived him of a fair trial. Washington case law establishes that access to courts should not be hindered by procedural disadvantages encountered by pro se litigants (see *Holder v. City of Vancouver*, 136 Wn. App. 104, 147 P.3d 641 (2006)). The trial court failed in this aspect, as it did not afford Mr. Keimbaye opportunities to present his case fully. Such rulings should be reviewed in light of **RAP 13.4(b)(2)**, to prevent manifest injustice resulting from differential treatment of pro se litigants. Review is warranted given the broader implications for pro se litigants in civil cases, particularly those involving claims for damages in motor vehicle accidents. By affirming the denial of Appellant's motion for a new trial and excluding evidence of his economic damages, the Court of Appeals has potentially limited the ability of other pro se litigants to effectively pursue claims for injury-related damages, which is a matter of significant public concern. By accepting review, this Court can establish guidelines to ensure fair treatment of self-represented litigants in civil cases involving proven liability.

D. Error in Applying RAP 9.11(a) Concerning Additional Evidence

Petitioner's request to introduce evidence of wage loss due to Respondent's

alleged collaboration with Providence was denied by the Appellate Court without due consideration under **RAP 9.11(a)**. This failure prevented Petitioner from presenting material facts, thus impacting the jury's ability to determine fair compensation. A review is necessary to clarify the scope of **RAP 9.11(a)** as it pertains to wage loss and related evidence relevant to a party's claim for economic damages.

V. ARGUMENT

A. The Court of Appeals' Decision on Exclusion of Evidence Conflicts with Established Precedent Decisions

1. Exclusion of Medical Expenses Evidence Violates Fair Access to Justice

Medical Expenses Do Not Always Require Expert Testimony: Washington Law Allows Medical Expense Evidence Without Expert Testimony in Certain Circumstances. Washington courts have held that lay testimony can establish causation for medical expenses when the connection between the accident and the injury is apparent to a layperson, meaning Washington courts recognize that expert testimony is not always necessary to establish causation for medical expenses when the connection between the injury and the event is apparent to a layperson. See *Bender v. City of Seattle*, 99 Wn.2d 582, 590, 593, 664 P.2d 492 (1983). Washington law does not categorically require expert testimony to prove causation in motor vehicle cases, particularly where the nature of injuries and resulting economic damages

are apparent from the circumstances. In this case, Petitioner was rear-ended by Respondent, an admission of fault was made, and Petitioner testified about his injuries and provided documentation of his medical treatment and expenses. The trial court erred by requiring expert medical testimony to establish causation for his medical expenses, contrary to *Bender* and subsequent cases. The trial court's exclusion of Petitioner's medical expenses effectively denied him the ability to prove damages, creating an undue barrier contrary to equitable treatment principles (see *Nava*, 177 Wn. App. at 289). Given that Respondent conceded fault, the causation link to medical expenses should have been open to reasonable inference without medical expert testimony. The trial court's requirement of expert medical testimony to substantiate Plaintiff's medical expenses contradicts Washington's established standard, which recognizes that a plaintiff's personal testimony, supported by exhibits such as medical records, can suffice to establish a causal link between a defendant's negligence and the plaintiff's injuries. The trial court improperly excluded Petitioner's proposed expert testimony from Dr. Alan Brown, which was critical in establishing the causation necessary for economic damages under **RCW 4.16.040**. The trial court's failure to recognize the reliability and relevance of Dr. Brown's testimony constitutes a misapplication of **ER 702**, warranting reversal. See *Loth v. Tacoma Community College*, 161 Wn.

App. 556, 654 P.2d 1315 (1982). Washington courts have consistently held that expert testimony is essential in cases where the causal link between negligence and economic losses is contested. See *Lovelace v. City of Seattle*, 124 Wn. App. 412, 427, 193 P.3d 1237 (2008). The Washington courts have previously acknowledged that medical expenses and lost wages are damages that pro se litigants can substantiate without medical expert testimony, especially when the injuries and subsequent treatments are consistent with the type of accident in question. See *Little*, 132 Wn. App. at 777-780. Washington courts have consistently emphasized the importance of allowing self-represented litigants the opportunity to substantiate their claims under fair and manageable standards. The trial court erred by excluding Mr. Keimbaye's medical expenses and lost wages as evidence, claiming an absence of medical expert testimony to establish causation. Appellant clearly demonstrated causation through circumstantial evidence and his own testimony that the injuries are reasonably foreseeable and causally linked to the incident in question. Here, Mr. Keimbaye's injuries were sustained in a rear-end collision—a type of incident commonly associated with physical harm—and his economic losses were documented. Mr. Keimbaye's testimony and evidence of his medical expenses, introduced as **Exhibit 8** and partially admitted as **Exhibit 15**, offered reasonable support for his claim, and the exclusion of this evidence under

CR 50 was an undue procedural restriction that unjustly limited his ability to present his full case to the jury. The Court of Appeals failed to recognize that the detailed documentation provided by Petitioner satisfies the burden of proof required under **RCW 4.16.150**. The trial court's ruling ignored the fact that rear-end collisions are typically understood to produce foreseeable physical injury. Excluding Mr. Keimbaye's medical expenses solely for lack of an expert infringes on his right to present a complete claim for economic damages, contrary to **ER 402**, which states that all relevant evidence should be admissible unless otherwise stipulated by law. By dismissing his damages claim on a technical basis, the trial court applied a heightened evidentiary burden unsuited to a pro se litigant in this context, which is inconsistent with Washington's commitment to fair treatment in civil litigation. Given that Exe admitted fault, the trial court's stringent application of **CR 50** standards unfairly burdened Mr. Keimbaye, especially as he had initially listed his medical expenses, which is permissible under **RCW 4.84.010**. By excluding Petitioner's medical expenses, the trial court denied him the opportunity to present critical evidence, violating his right to a fair trial. This exclusion impacted the jury's ability to fully assess damages, warranting reversal. This exclusion undermines Washington's policy of fair trial access for all litigants. The exclusion of Dr. Brown's testimony was not merely a discretionary error but a reversible one, as it

directly impacted the ability to establish causation. See *Stimson v. State*, 88 Wn.2d 40, 196 P.3d 987 (2008). Without expert testimony, the jury was left without essential evidence to fairly evaluate the economic damages claimed by Petitioner, contravening the principles of due process.

2. Denial of Wage Loss Evidence Violated RAP 9.11(a) Standards

The trial court also denied Plaintiff's evidence of lost wages. Testimony from a Providence Health Services representative, Peggy Simmard, indicated that Petitioner had been on administrative leave prior to the accident and was later terminated. However, Washington law supports that lost wages may be claimed if evidence reasonably links such losses to the defendant's fault (*Holder v. City of Vancouver*, 136 Wn. App. 104, 106, 147 P.3d 641 (2006)). The jury should have been permitted to weigh Plaintiff's arguments regarding the impact of the collision on his employment status, particularly where Exe admitted fault, establishing a direct link to the initial injury. The court's reliance on procedural constraints in denying this evidence ran contrary to Washington law's directive to treat pro se litigants fairly while respecting their right to present a complete case. The court compounded this error by dismissing Appellant's claims of lost wages based on speculative assumptions about his employment status rather than directly examining his testimony and documented evidence. Washington courts maintain that parties must be permitted to substantiate

their economic loss claims through reasonable inferences drawn from employment records and personal testimony. See *State v. Nava*, 177 Wn. App. 272, 311 P.3d 83 (2013). According to *State v. Nava*, evidentiary decisions warrant reversal where there is an abuse of discretion, especially in excluding lay testimony related to economic losses. By prematurely removing Appellant's economic claims from the jury's consideration, the trial court preempted a complete adjudication of the case. The lower court's narrow interpretation of admissible evidence unjustly deprived Petitioner of his right to a jury determination of his actual wage losses. Petitioner's inability to present evidence of wage loss resulting from Respondent's alleged collusion with his employer constitutes a denial of due process. **RAP 9.11(a)** permits additional evidence on review in cases where material facts were wrongfully excluded. The Appellate Court erred by denying the motion to supplement the record, preventing a fair evaluation of damages. Without this evidence, Petitioner was deprived of a substantive component of his claim.

3. Denial of Proper Jury Instructions Contributed to Manifest Injustice

The trial court's decision not to issue jury instructions reflecting the ordinary duty of care and contributory negligence undermined Mr. Keimbaye's case. In circumstances where fault is admitted, jury instructions

should reflect all applicable standards to enable the jury to evaluate both economic and non-economic claims fully and fairly. Washington law is clear that plaintiffs injured through another's negligence are entitled to full compensatory relief, including economic damages for medical expenses and lost wages. In *Saleemi v. Doctor's Associates, Inc.*, 176 Wn.2d 368, 381, 292 P.3d 108 (2013), the Washington Supreme Court underscored that courts must ensure damages adequately reflect the injured party's economic losses to prevent prejudice. *Saleemi v. Doctor's Assocs., Inc.* emphasizes that jury instructions must provide jurors with clear guidelines on relevant legal standards. The trial court's refusal to clarify Exe's ordinary duty of care deprived the jury of essential context needed to award adequate damages, especially in assessing economic losses tied to an admitted fault. By instructing the jury to disregard Mr. Keimbaye's economic damages due to a procedural technicality, the trial court essentially denied him this right. Moreover, this approach undeniably creates an adverse precedent that disproportionately impacts pro se plaintiffs, who may lack the resources to present expert testimony but whose injuries are apparent and legitimate. The appellate court's decision to affirm such an outcome signals a concerning trend toward procedural rigidity over substantive justice. The appellate court erred by denying the motion to supplement the record, preventing a fair evaluation of damages. Without this evidence, Petitioner was deprived

of a substantive component of his claim. The appellate court incorrectly applied the harmless error standard. The standard for harmless error requires that the appellate court must view the evidence in the light most favorable to the prevailing party, and any error must not affect the substantial rights of the parties. *See Stimson v. State*, 88 Wn.2d 40, 196 P.3d 987 (2008). Here, the exclusion of expert testimony on causation directly impacted the outcome, thus rendering the error not harmless.

4. Improper Denial of New Trial Based on Exclusion of Key Evidence (RCW 4.76.030)

Under **RCW 4.76.030**, a new trial is warranted when a jury's damages award is unmistakably inadequate as to indicate that the jury was improperly influenced or external prejudice. Here, the jury awarded only non-economic damages despite evidence presented by Mr. Keimbaye regarding his medical expenses and wage losses. The trial court's refusal to allow Mr. Keimbaye to call a key witness, Dr. Alan Brown, after granting a **CR 50** motion on medical causation, deprived him of a fair opportunity to support his claim, creating a fundamental inequity that should merit review by this Court. Mr. Keimbaye's motion for a new trial under **RCW 4.76.030**, which allows for a retrial when the awarded damages are clearly inadequate or excessive due to jury prejudice or error, was improperly denied. Mr. Keimbaye argued that his lack of legal counsel and the court's restrictive

rulings prevented the jury from fully considering the extent of his economic losses. In *Henderson v. Thompson*, 200 Wn.2d 417, 518 P.3d 1011 (2022), the Washington Supreme Court held that a denial of a new trial motion where procedural errors impacted the fairness of the trial outcome constitutes an abuse of discretion. Washington courts affirmed that trial courts must consider the balance and fairness of damage awards when ruling on new trial motions. Here, the denial of Mr. Keimbaye's economic claims—while providing a modest non-economic award—was insufficient to address the financial impact of the accident on his life and was inconsistent with **RCW 4.76.030**. By denying Mr. Keimbaye an opportunity to address these critical issues in a new trial, the court violated his right to substantial justice. Additionally, the court's failure to acknowledge potential bias or oversight in its exclusion of Mr. Keimbaye's evidence conflicts with *State v. Nava*, 177 Wn. App. 272, 311 P.3d 83 (2013), which held that evidentiary exclusions that lack substantial basis constitute an abuse of discretion. The jury's award of only non-economic damages without corresponding economic compensation indicates possible oversight or misunderstanding, particularly as Ms. Exe's fault was uncontested. This statute, alongside **CR 59(a)(9)**, argues that inadequate damages warrant a retrial to ensure justice and comprehensive assessment of losses incurred due to the accident. The court's rejection of Mr.

Keimbaye's reasonable, documented claims of lost wages and medical expenses disregards his right to have the jury assess his economic damages, creating substantial injustice.

B. The Court of Appeals' Decision Conflicts with Established Precedent on Pro Se Litigants

1. Pro Se Litigants Are Entitled to Fair Treatment

While pro se litigants are held to the same standards as attorneys, courts are also instructed to ensure that they have a fair opportunity to present their cases. In *Haines v. Kerner*, 404 U.S. 519, 520 (1972), the U.S. Supreme Court held that pro se pleadings are to be held to less stringent standards. In *In re Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993), the court acknowledged that while pro se litigants must comply with procedural rules, the court should be mindful of the difficulties they face. 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. The appellate court misapplied its procedural discretion by ignoring Mr. Keimbaye's substantive claims simply due to format errors. As held in *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992), Washington courts have an obligation to prioritize substantive justice over procedural formalities,

particularly when a party's inexperience with legal rules may result in undue prejudice.

2. Abuse of Discretion in the Trial Court's Handling of Pro Se Representation

The trial court's rigid application of evidentiary rules without consideration of Petitioner's pro se status and lack of legal expertise resulted in an unjust outcome. The court failed to provide necessary explanations or accommodations, which is inconsistent with Washington's commitment to equitable treatment in the justice system. The trial court's procedural handling of Mr. Keimbaye's pro se status imposed unnecessary restrictions that favored the represented party, contravening established Washington standards on the equitable treatment of pro se litigants (cf. *Hickock-Knight v. Wal-Mart Stores, Inc.*, 170 Wn. App. 279, 284 P.3d 749 [2012]). The Court of Appeals failed to accommodate Petitioner's pro se status, thereby prejudicing his ability to present his case effectively. The court's strict evidentiary rulings and denial of Petitioner's request for additional evidence demonstrate an abuse of discretion, warranting reversal to secure Petitioner's right to a fair trial. Under **CR 59(a)**, the cumulative effect of these evidentiary and procedural errors constitutes grounds for a new trial, as it denied Mr. Keimbaye a full and fair opportunity to prove his case. Washington precedent affirms that substantial justice cannot be served

when material evidence is excluded or the jury is left without necessary context due to procedural barriers. The trial court's failure to admit critical evidence, compounded by the appellate court's dismissal of meritorious claims, mandates reversal and retrial to ensure fair consideration of Mr. Keimbaye's damages claims. Thus, the trial court failed in this aspect, as it did not afford Mr. Keimbaye opportunities to present his case fully. Such rulings should be reviewed in light of **RAP 13.4(b)(2)**, to prevent manifest injustice resulting from differential treatment of pro se litigants.

C. Significant Constitutional Questions and Public Interest Justify Review

1. Access to Justice and Due Process Concerns

The 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.

2. Impact on Pro Se Litigants and Public Confidence

Denial of Publication and Reconsideration of the Court's Opinion:

RAP 13.4(b) allows for reconsideration when the appellate court overlooks significant evidence that could alter the decision. Petitioner presented

additional evidence and legal arguments that the Court of Appeals failed to adequately address, thereby warranting reconsideration under **RAP 13.4(c)(7)**. This case affects the substantial public interest by setting a precedent that could deter pro se litigants from seeking justice due to procedural barriers. The appellate court compounded the trial court's errors by denying Mr. Keimbaye's Motion for Reconsideration under **RAP 12.4(b)** and Motion to Publish. The denial of the Motion for Reconsideration effectively upheld a ruling based on procedural technicalities that excluded substantive evidence. This approach is contrary to Washington's judicial commitment to open access and transparency in the appellate process. Furthermore, the decision to deny publication limits future pro se litigants' access to case law that could inform their understanding of evidentiary and procedural standards. The Court of Appeals' refusal to publish its opinion and its denial of Mr. Keimbaye's motion for reconsideration deprived him of an opportunity to establish binding precedent for other pro se litigants facing similar evidentiary challenges. The denial of the Motion to Publish was arbitrary and lacked consideration of the public interest in disseminating the appellate court's erroneous interpretation of causation in economic damages claims. *Edwards v. Le Duc*, 157 Wn. App. 455, 464, 238 P.3d 1187 (2010), supports the publication of opinions that clarify or correct legal

misunderstandings. Washington courts have a duty to consider motions to publish where the issue in question has significant public implications, particularly where it affects access to justice for unrepresented parties. These denials highlight the court's rigid stance, which neglects the principles of judicial responsibility to ensure pro se litigants receive meaningful opportunities for redress. Washington precedent does not support dismissing appeals based solely on minor procedural deficiencies when the underlying claims present legitimate issues, as articulated in *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). Given the substantial public interest in ensuring procedural fairness for pro se litigants, review should be granted to establish clear guidelines regarding evidentiary standards and pro se litigant rights. Ensuring that self-represented individuals have fair access to justice is of substantial public interest in the legal system.

VI. REQUEST FOR RELIEF

Under **CR 56(c)**, summary judgment is appropriate where “there is no genuine issue as to any material fact and... the moving party is entitled to a judgment as a matter of law.” See *Adams v. King County*, 164 Wn.2d 640, 647, 192 P.3d 891 (2008). In this present case, liability is not in dispute, as Defendant has admitted full fault for the collision which eliminates any

dispute over causation of the accident itself. The only remaining issue concerns the quantification of damages, which was improperly handled by the trial court. There is no genuine issue of material fact regarding the incurred medical expenses, wage loss, and other damages which Plaintiff has documented and demonstrated. Based on the uncontested facts and legal errors detailed above, Petitioner requests that this Court enter a judgment for the following relief: **\$339,002.71** in compensatory damage and any Other Relief Deemed Just and Proper by law.

VII. CONCLUSION

Given the substantial issues presented in this case, including significant legal errors that have far-reaching implications for pro se litigants in Washington, Petitioner respectfully requests that this Court grant the Petition for Review, reverse the Court of Appeals' decision, and remand the case for a fair determination of the appropriate compensatory damages owed to Petitioner. This action would allow a fair assessment of full compensatory damages and align with Washington's commitment to equitable access to justice for all parties, regardless of their representation. Alternatively, Petitioner respectfully requests that the Court grant such other relief in his favor for all compensatory damages, including court costs and legal expenses, legal interest (**calculated from the date of the**

collision, June 18, 2018, to present), sanctions and punitive damages, and any other relief deemed just and proper in accordance with Washington law.

WHEREFORE, Petitioner respectfully requests the following relief:

Type of Damage	Amount
Past and Future Medical Expenses documented	\$30,000
Wage Loss for six months calculated at \$6,734.56	\$40,407.36
Court Costs and Legal Expenses permitted by RCW 4.84.010	\$18,595.35
Additional Noneconomic Damages	\$150,000
Punitive Damages under RCW 4.84.185	\$50,000
Sanctions under CR 11	\$50,000
Total Compensatory Damages	<u>\$339,002.71</u>

Additionally, Petitioner requests:

- **Legal Interest:** pre- and post-judgment interest pursuant to **RCW 4.56.110** and **RCW 4.56.115** accrued from the date of the collision, **June 18, 2018 to present.**
- **Attorney Fees:** As allowed under **RCW 4.84.080** and **RAP 18.1(a)**
- **Any Other Relief Deemed Just and Proper.**

CERTIFICATE OF COMPLIANCE

I certify that on this 20th day of November 2024, I caused a true and correct copy of the foregoing Petitioner's Petition for Review and Request for Relief containing **4,994-word count** to be filed with the Supreme Court via Court of Appeals Division One (1) and served upon all counsel and their Respondent in the above captioned via the Court's eFiling system.

DATED: this 20th of November, 2024 Seattle Washington

Respectfully submitted,

/s/Dominique Keimbaye
Appellant Pro se

APPENDIX

- 1- Appellant's Opening Brief**
- 2- Appellant's Reply Brief**
- 3- Appeals Court's Decision and Opinion**
- 4- Appellant's Motion for Reconsideration**
- 5- Appellant's Motion for Publication of the Court's
Opinion**
- 6- Court's ruling denying Appellant's motions for
Publication and Reconsideration**

All of the above appendix and pleading documents supporting this petition have been already filed and in possession with the Court of Appeals, and Petitioner Mr. Keimbaye respectfully requests that this Court should properly and effectively forward any and all these pleading documents to the Supreme Court for review.

DOMINIQUE KEIMBAYE - FILING PRO SE

November 20, 2024 - 10:34 PM

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Appellate Court Case Number: 84503-9
Appellate Court Case Title: Dominique M. Keimbaye, Petitioner v. Kimberly A. Exe, Respondent

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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. BACKGROUND

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:

Seldman, 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.