96871-3

NO. 77543-0-I

COURT OF APPEALS, DIV. I
OF THE STATE OF WASHINGTON

THOMAS ANDERSON,

Plaintiff-Appellant

v.

JENNIFER JEAN BUKSH, DAVID OMAR BUKSH,

Defendants-Appellees.

PETITION FOR REVIEW BY THE SUPREME COURT

BY THOMAS ANDERSON

Thomas Anderson, Pro Se Plaintiff
1024 SW Main St. #340
Portland, OR 97205
505-492-3373

21 Feb. 2019

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PETITION FOR DISCRETIONARY REVIEW

BY THE SUPREME COURT

A. IDENTITY OF PETITIONER

Plaintiff Appellant Thomas Anderson is the prevailing party in this automobile accident case, in which his car was rear-ended while stopped in line to an intersection.

B. DECISION BELOW

Petition is made for the Washington State Supreme Court to review the Washington Court of Appeals decision of, *Anderson. v. Buksh*, No. 77543-0-I, 2019 WL 296119, 2019 Wash. App. LEXIS 148 (Wash.App., Jan. 22, 2019), affirming the King County Superior Court case No. 16-2-18992-0.

C. ISSUES PRESENTED FOR REVIEW

The following issues merit review under RAP 13.4(b)(1)-(4):

1. Whether the Trial and Appellate Court decisions violate the rules, statutes, and Appellant's rights: (1) by accepting and ratifying the Amended Award; (2) by abrogating and revising the established provisions of rule, statute, and law.

2. Whether the trial court violates the statutes with local rules that establish non-mandatory arbitration, and require a substantive show cause hearing before entering judgment thereon.

D. STATEMENT OF THE CASE

1. On 8 Aug. 2013, in Seattle, Defendant Buksh drove her car into the rear end of Plaintiff Anderson's car, while he was stopped in line to an intersection.

2. On 9 Aug. 2016, Anderson commenced a lawsuit in King County Superior Court against Jennifer and David Buksh. The complaint asserted various negligence claims and requested damages. [Sub #1; CP 1].

3. The trial court transferred the case to the mandatory arbitration department, which subsequently appointed an arbitrator on 27 Feb. 2017. [Sub #19; CP 25].

4. The arbitration hearing was held on 19 Jul. 2017.

5. Mandatory arbitration is not a proceeding of record, and no portion of the arbitration proceeding is in the court record, except the Mandatory Arbitration Award [Appx. 1] and proof of service entered in the court record on 20 Jul. 2017. [Sub #21-22; CP 26-27].

6. 28 days later on 17 Aug. 2017, after the non-extendable time to request a trial de novo had passed, MAR 7.1(a), and the Arbitrator had lost authority in the case, the Superior Court erroneously accepted, filed, and entered a Mandatory Arbitration Amended Award. [Appx. 2; Sub #24; CP 29].

7. On 7 Sep. 2017, the trial court entered an "order", not a judgment, denying Plaintiff Anderson's motions to strike in opposition to entry of the Amended Award at p. 3, ll. 21-23, and to enter judgment on the Award. [Sub #34; CP 123].

8. Beginning on 8 Sep. 2017, in strict accordance with RCW 7.06.050(2) and local rules, Plaintiff Anderson began to prosecute entry of judgment on the Award in the ex-parte department. [Sub #35-38; CP 125-135].

9. In response to prosecution by Defendant Buksh, on 13 Sep. 2017, the ex-parte department issued a restraining order precluding entry of Judgment on the Award, pending show cause rehearing on the substantive merits of the arbitration. [Sub #42A-B; CP 150-152].

10. On 24 Oct. 2017, Plaintiff Anderson filed a notice of appeal. [Sub #60; CP 195].

11. On 28 Nov. 2017, the Court of Appeals granted an order _waiving filing fees, which remains in effect for the same ongoing conditions. [Appx. 3].

12. On 22 Jan. 2019, the Court of Appeals entered its opinion affirming the trial court. [Appx. 4].

13. No motion to reconsider was filed in the Court of Appeals. Review by the Supreme Court is far more appropriate, since the

volume of cases on these matters indicates a significant disconnect between the language of the MAR and its application by the courts.

14. This petition for review by the Washington Supreme Court is e-filed on 21 Feb. 2019, 30 days after entry of the appellate opinion.

15. To date, 30 months after the mandatory arbitration award, and 27 months after the requirement under Wash. Const. Art. IV, § 20, no judgment has been entered in this case.

E. ARGUMENT

The Court of Appeals decision in this case opens the door for Mandatory Arbitration participants to have substantive matters in their award reconsidered first by the Arbitrator, and then by the Superior Court — while precluding the right to a jury trial de novo. The standard established in this case is protracted repeat litigation on the basis of: "ooops, I forgot"

This abrogates the doctrine of finality and Wash. Const. Art. IV §20 ("Every cause submitted to a judge of a superior court for his decision shall be decided by him within ninety days ").

Amending on the basis of an affirmative defense pleaded by Defendant, but not asserted and incorporated by the Arbitrator into the Award, is not merely an inadvertent miscalculation or description, but is a substantive reconsideration — not allowed under the rules. Defendant's remedy was to request a trial de novo, rather than seek-

ing relief from the Superior court — after the time to request a trial de novo had expired. Further, the amendment was not made within the time to file the award; and no application to the Superior Court was ever made by the arbitrator for leave to amend.

The Court of Appeals properly determined at p. 6, that the Arbitrator's "second filing is an amended award subject to MAR 6.2." That rule is ultimately a "decision" of the Supreme Court made upon delegated legislation, with which both the Superior Court and the Court of Appeals decisions conflict in the following respects:

1. TIME LIMITATIONS ON AMENDMENT

The Court of Appeals rendered its erroneous decision at p. 6, that "the court approved the late amendment by denying Anderson's motion to strike", as follows (underscore added):

> MAR 6.2 concerns the filing of an arbitration award, and amended award. It provides as follows:
>
> …an amended award… if done within the time for filing an award or upon application to the superior court to amend.
>
> …Under the rule, an arbitrator may make such an amendment "either within 14 days after filing and service of the award or later, only if allowed by the court." *Bongirno v. Moss*, 93 Wn. App. 654, 662, 969 P.2d 1118 (1999).

Without conducting any due process analysis, the Court of Appeals arbitrarily and capriciously abrogated the portion of MAR 6.2 requiring "application to the superior court to amend." Plaintiff

Anderson's motions to strike the Amended Award and enter judgment on the Award were plainly not an application by the Arbitrator for leave to amend the Award. Since the time to request a trial de novo had expired, the Arbitrator lost jurisdiction to file anything. Neither party had requested a trial de novo — the only process by which a mandatory arbitration award can essentially be "appealed." The Superior Court had no authority to re-adjudicate any substantive issue. Conflict is addressed in, *Putman v. Wenatchee Valley Med. Ctr., PS*, 166 Wn.2d 974, 980 (2009).

> If the activity of one branch threatens the independence or integrity or invades the prerogatives of another, it violates the separation of powers. *City of Fircrest v. Jensen*, 158 Wn.2d 384, 394 (2006); *State v. Moreno*, 147 Wn.2d 500, 505-06, 58 P.3d 265 (2002). Some fundamental functions are within the inherent power of the judicial branch, including the power to promulgate rules for its practice. Id.; *In re Disbarment of Bruen*, 102 Wash. 472, 476, 172 P. 1152 (1918). If a statute appears to conflict with a court rule, this court will first attempt to harmonize them and give effect to both, but if they cannot be harmonized, the court rule will prevail in procedural matters and the statute will prevail in substantive matters. *Jensen*, 158 Wn.2d at 394.

The 20-day period within which to request a trial de novo may not be extended. MAR 7.1(a). Allowing substantive amendment of the Award after the time to request a trial de novo, and thereby precluding such, presents a fundamental conflict that unconstitutionally violates both substantive due process by diminishing a property right

and tort remedy in the litigation; and the procedural due process "right of trial by jury shall remain inviolate…" Wash. Const. Art. I, §21.

"[S]trict compliance with the requirements of MAR 7.1(a) better effectuated the legislative intent of chapter 7.06 RCW, which was to reduce congestion in the courts and delays in civil cases." *Malted Mousse, Inc. v. Steinmetz*, 150 Wn.2d 518, 529 (2003); citing, *Nevers*, 133 Wn.2d 804, 947 P.2d 721 Id. at 815. Parties who fail to request a trial de novo may not alter an arbitration award by requesting action by the Superior Court which would amend that award. *Malted*, 150 Wn.2d at 530; citing, *Trusley v. Statler*, 69 Wn. App. 462, 465, 849 P.2d 1234 (1993). "Following *Roberts* and *Nevers*, we reasoned that the unambiguous language in MAR 7.1(a) did not allow for amended requests, and the aggrieved party's failure to timely make a MAR 7.1(a) request precluded him from seeking a trial de novo." *Malted*, *supra*; citing *Wiley*, 143 Wn.2d at 347.

The record is completely devoid of any objective evidence showing payment between the parties respective insurers — which Plaintiff Anderson preserved in his motion to strike at p. 3, ll. 21-23 — in opposition to amendment.

2. SUBSTANTIVE LIMITATIONS ON AMENDMENT

The Court of Appeals rendered its erroneous decision at p. 6, that the Amended Award "sought to remedy the same type of errors in calculations resolved by amendments" as follows:

> MAR 6.2 concerns the filing of an arbitration award. It provides as follows:
>
> …amended award to correct an obvious error made in stating the award…
>
> * * *
>
> An arbitrator may amend an award "to adjust the award in matters of form rather than substance, such as to correct an inadvertent miscalculation or description." *Dill v. Michelson Realty Co.*, 152 Wn. App. 815, 820, 219 P.3d 726 (2009) (citing 15A Douglas J. Ende & Karl B. Tegland, Washington Practice: Civil Procedure, § 79.3 authors' cmt. at 612-13).
>
> * * *
>
> In an email, the arbitrator made clear he intended the award to offset the previous payment to Anderson.

And at p. 6, "As the arbitrator had intended the award…"

Examination of the Arbitrator's intent when he signed the Award requires a review of the mandatory arbitration record. However, Mandatory Arbitration is not a proceeding of record, and both the Superior Court and Court of Appeals lack authority to look behind the award and attempt to speculatively re-adjudicate any subrogation offset in an amount exceeding 1/3 the award. "[A] postjudgment motion will be considered a Rule 59(e) motion where it involves reconsideration of matters properly encompassed in a decision on

the merits." *Osterneck v. Ernst & Whinney*, 489 U.S. 169, 174 (1989); citing, *White v. New Hampshire Dept. of Employment Security*, 455 U.S. 445 (1982). A judicial error involves an issue of substance; whereas, a clerical error involves a mere mechanical mistake. The test for distinguishing between "judicial" and "clerical" error is whether, based on the record, the judgment embodies the trial court's intention. *Presidential Estates v. Barrett*, 129 Wn.2d 320, 326 (1996); *Marchel v. Bunger*, 13 Wn. App. 81, 84, rev.den., 85 Wn.2d 1012 (1975); 46 Am. Jur. 2d Judgments § 209 (1969).

Without conducting any due process analysis, or finding ambiguity that required statutory construction and interpretation, the Court of Appeals arbitrarily and capriciously abrogated the portion of MAR 6.2 requiring "obvious error", and substituted "substantial intent"; and also redefined MAR 6.2 to encompass substantive adjudicative issues based upon evidence not developed in any court record. I.e., allowing the Superior Court to erroneously render a *nunc pro tunc* order on a substantive matter. Explaining the well established common law standard in the case of, *Pasco v. Napier*, 109 Wn.2d 769, 775 (1988):

> It is well established that nunc pro tunc orders are not a proper vehicle for changes of substance in prior orders or judgments. A judgment or decree nunc pro tunc corrects procedural mistakes but not matters of substance. It cannot

> be used to change the terms of, or remedy omissions in, the prior judgment or decree. *In re Marriage of Pratt*, 99 Wn.2d 905, 909-11, 665 P.2d 400 (1983); *State v. Mehlhorn*, 195 Wash. 690, 692-93, 82 P.2d 158 (1938).

After the available remedy of trial de novo had expired, the only authorized process was to enter judgment. RCW 7.06.050(2) ("If no appeal has been filed at the expiration of twenty days following filing of the arbitrator's decision and award, a judgment shall be entered…").

Subrogation is a substantive issue. See, e.g. *Columbia Cmty. Bank v. Newman Park, LLC*, 177 Wn.2d 566, 572 (2013). The Arbitrator's omission was not merely "obvious error", or inadvertent miscalculation / description. The obvious error of inadvertent miscalculation is *prima facie* found on the Award, whereby the stated total before costs is $6,609.66, but the actual calculated total before costs is $6,633.66. The difference being 10% of the costs award — $24.00, cannot be offset on the 10% comparative negligence.

By allowing substantive amendment of the arbitration order — after the time to request a trial de novo has expired, and after the Superior Court lost authority to adjudicate any substantive matter in the case — the State of Washington violated Plaintiff Anderson's due process right to a jury trial, and harmed his vested property interest

in the litigation. Explained in *Dill v. Michelson Realty Co.*, 152 Wn. App. 815, 820, 219 P.3d 726 (2009):

> >There is no mechanism for reconsideration of a mandatory arbitration award. 15A Karl B. Tegland & Douglas J. Ende, Washington Practice: Washington Handbook on Civil Procedure § 79.3 authors' cmt. at 612 (2008-09). The arbitrator may amend an award "to correct an obvious error made in stating the award," but only if done within the time for filing the award or upon application of the superior court to amend. MAR 6.2; 15A Tegland & Ende, § 79.3 authors' cmt. at 612. Amendments are permitted to adjust the award in matters of form rather than substance, such as to correct an inadvertent miscalculation or description. 15A Tegland & Ende, § 79.3 authors' cmt. at 612-13. Parties who fail to request a trial de novo "may not alter an arbitration award by requesting action by the Superior Court which would amend that award." *Trusley v. Statler*, 69 Wn. App. 462, 465, 849 P.2d 1234 (1993).

3. ARBITRATION IS NOT MANDATORY IN KING COUNTY

The legislature established that, "In counties with a population of more than one hundred thousand, arbitration of civil actions under this chapter shall be required." RCW 7.06.010. This court can take judicial notice that the population of King County is greater than 100,000. The King County Superior Court has promulgated a local rule that abrogates the legislation that arbitration is "required." KCSC LMAR 2.1 shifts responsibility to the parties for requesting "mandatory" arbitration — "wishing to transfer" — and allows both parties to escape it by just doing nothing:

> (a) Statement of Arbitrability. A party believing a case to be suitable for mandatory arbitration pursuant to MAR 1.2 shall

> file a statement of arbitrability upon a form prescribed by the Court before the case schedule deadline. After the date indicated on the case schedule has passed, the party wishing to transfer a case to arbitration must obtain an order from the Court upon a showing of good cause.

F. RELIEF SOUGHT

There are significant chronological discrepancies and loopholes in the MAR, which cause inconsistency and uncertainty in the courts. The ultimate remedy is to revise the MAR. But in this case, it was what it is. The arbitrator, the trial court, and the court of appeals exercised power over areas where authority was lacking – in conflict with enactments of the legislature and this court.

For the all the above reasons, and those set forth in Plaintiff Anderson's Appellate briefs, he respectfully requests the Court of Appeals to grant the following relief:

1. Reverse, or remand with instruction to strike, the amended mandatory arbitration award entered on 17 Aug. 2017 at Sub #24 [CP 29].

2. Reverse, or remand with instruction to strike, the entirety of the Superior Court order entered on 7 Sep. 2017 at Sub #34 [CP 123].

3. Reverse, or remand with instruction to strike, paragraphs 4, 5, and 6 of the Superior Court order entered on 27 Sep. 2017 at Sub #55 [CP 192].

4. Remand with instruction for the Superior Court clerk to disburse to Defendant Buksh, the balance of funds held on deposit in

this case pursuant to the order entered on 27 Sep. 2017 at Sub #55 [CP 191].

5. Remand with instruction for the Superior Court's ex-parte department to receive presentation of judgment from Plaintiff Anderson in writing via the clerk of the mandatory arbitration department;[1] that such judgment shall be in the amount of $6,849.66, plus 12% statutory interest from the time when Anderson scheduled presentation of judgment for 18 Sep. 2017, at Sub #27 [CP 50], until the judgment is fully and unconditionally satisfied by Appellee-Defendant Buksh or her agent designated in writing, by remittance of negotiable instrument payable directly to Appellant-Plaintiff Anderson.

6. Allow Anderson, within the jurisdiction of this court — costs to be presented under RAP 14; fees and expenses to be presented under RAP 18.1.

G. CERTIFICATION OF SERVICE

I certify that on this date the foregoing papers were served on the following persons in a first class postage paid cover:
- Samuel Behar, 2012 N Pearl St. Ste. D400, Tacoma, WA 98406-2250.

Dated: 21 Feb. 2019
Harris Co., TX

Signed: ss\\ThomasAnderson\\
Thomas Anderson, Pro Se,
1024 SW Main St. #340
Portland, OR 97205
505-429-3373

1. who can most effectively fulfill the objectives of mandatory arbitration by insuring that the simplified and direct process is followed

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THOMAS ANDERSON

PLAINTIFF(S),

VS.

JENNIFER JEAN BUKSH
DAVID OMAR BUKSH **DEFENDANT(S).**

NO. 16-2-18992-0 SEA

ARBITRATION AWARD
(Clerk's Action Required - ARBA)

The issues in arbitration have been heard on JULY 19, 20 17, **I make the following award:** FOR THE PLAINTIFF IN THE AMOUNT OF $6,609.66 AS FOLLOWS.

1) MEDICAL EXPENSES = $2,347.28
2) PROPERTY DAMAGES = $2,523.45
3) GENERAL DAMAGES = $2,500.00
LESS 10% COMPARATIVE NEGLIGENCE (-$737.07)
TOTAL = $6,609.66
PLUS TAXABLE COSTS = $240.00

Twenty days after the award has been filed with the clerk, if no party has sought a trial de novo under MAR 7.1, any party on notice to all parties may present a judgment on the Arbitration Award for entry as final judgment in this case to the Ex Parte Department.

Was any part of this award based on the failure of a party to participate at the hearing?
Yes_____ **(PLEASE EXPLAIN)** **No** X **(MAR 5.4)**

DATED: JULY 20, 20 17

Arbitrator 537 WSBA #
JOHN J. SOLTYS

FILE THE ORIGINAL WITH THE CLERK'S OFFICE, KING COUNTY COURTHOUSE, TOGETHER WITH PROOF OF SERVICE ON THE PARTIES. SEND A COPY TO:

KING COUNTY SUPERIOR COURT
ARBITRATION DEPARTMENT
516 THIRD AVENUE - E219
SEATTLE WA 98104

NOTICE: If no Request for Trial De Novo has been filed and Judgment has not been entered within 45 days after this award is filed, the Clerk will notify the parties by mail that the case will be dismissed for want of prosecution.

16-6431

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THOMAS ANDERSON, Plaintiff, v. JENNIFER JEAN BUKSH, and DAVID OMAR BUKSH, Defendants.	NO: 16-2-18992-0 SEA ~~[PROPOSED]~~ ORDER CLARIFYING ARBITRATOR'S AWARD *(Clerk's Action Required)*

THE ARBITRATOR, having heard the argument of the parties on Defendants' motion, finds that the Defendant, by virtue of their earlier subrogation payments, has already paid Plaintiff the amount of $2,347.28. As such, the award remaining to be paid is $4,262.38 plus taxable costs of $240.00.

DATED this 15th day of August, 2017.

JOHN SOLTYS, WSBA #537

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RICHARD D. JOHNSON,
Court Administrator/Clerk

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November 28, 2017

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CASE #: 77543-0-I
Thomas Anderson, Appellant v. Jennifer Jean Buksh & David Omar Buksh, Respondents

Counsel:

The following notation ruling by Commissioner Mary Neel of the Court was entered on November 28, 2017, regarding appellant's motion for instruction:

Based on the trial court's finding that appellant Thomas Anderson is indigent, the filing fee is waived. The hearing on the court's motion set on Friday, December 1, 2017 is stricken.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

jh

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

THOMAS ANDERSON, Appellant, v. JENNIFER JEAN BUKSH and DAVID OMAR BUKSH, Respondents.	No. 77543-0-I DIVISION ONE UNPUBLISHED OPINION FILED: January 22, 2019

CHUN, J. — Plaintiff Thomas Anderson prevailed in an arbitration against the Bukshes. The arbitration award failed to incorporate an offset for an amount already paid to Anderson by the Bukshes' auto insurance carrier. The arbitrator amended the award to include the offset. Without disputing he had received the payment from the carrier, Anderson moved to strike the amended award on timeliness grounds. He claimed, because the amendment did not meet the 14-day deadline of MAR 6.3, the trial court was required to enter the original award. The trial court denied Anderson's request. Because the trial court acted within its authority in allowing the amendment, we affirm.

I.
BACKGROUND

On August 8, 2013, Jennifer Buksh struck the rear end of Anderson's car while driving her car in Seattle.

In a letter dated March 22, 2014, Anderson's insurer, Safeco, notified Jennifer's[1] insurer, State Farm, that it had paid Anderson $2,347.28 in personal insurance protection benefits and was requesting reimbursement.

On August 9, 2016, Anderson commenced a lawsuit in King County Superior Court against Jennifer and David Buksh. The complaint asserted various negligence claims and requested damages.

The Bukshes filed their answer on November 28, 2016. The answer pleaded an affirmative defense for "offset for any damages or other monies already paid."

On February 27, 2017, the trial court transferred the case to mandatory arbitration and appointed an arbitrator. The arbitrator held a hearing on July 19, 2017. At arbitration, a representative from State Farm affirmatively represented to the arbitrator that the entire subrogated amount of $2,347.28 had been paid. The arbitrator issued his award on July 20, 2017[2], and awarded Anderson $6,609.66 plus $240 in taxable costs. The award also provided as follows:

> Twenty days after the award has been filed with the clerk, if no party has sought a trial de novo under MAR 7.1, any party on notice to all parties may present a judgment on the Arbitration Award for entry as final judgment in this case to the Ex Parte Department.

Because the arbitration award did not offset the $2,347.28 Anderson had already received, the Bukshes filed a motion to clarify with the arbitrator on July 26, 2017. The same day, the arbitrator emailed the Bukshes[3] as follows:

---

[1] This opinion refers to the Bukshes by their first names where necessary to prevent confusion. We do not intend any disrespect.

[2] The arbitrator also filed proof of service of the award on July 20, 2017.

[3] The arbitrator did not include Anderson on the email because at the time Anderson did not have Internet access. The Bukshes, however, did mail Anderson a copy of the email.

> Any payment on behalf of the defendant to the plaintiff (or his care providers) up to, but not exceeding, the amount I awarded to compensate the plaintiff for medical specials is a set off on the award. I hope that the defense will pay the plaintiff the amount of the judgment awarded minus the previously paid medical bills (again up to the amount awarded for medical specials) without the need for an amended award. If not, let me know so that I can file an amended award. Upon such payment, the plaintiff should satisfy the award.

The arbitrator filed an "Order Clarifying Arbitrator's Award" on August 17, 2017. The order provided, "the Defendant [sic], by virtue of their earlier subrogation payments, has already paid Plaintiff the amount of $2,347.28. As such, the award remaining to be paid is $4,262.38 plus taxable costs of $240.00."

On August 24, 2017, Anderson rejected a check from State Farm for $4,526.38. Anderson stated he rejected the check because it did not come from the "defendant" and did not equal the amount of the mandatory arbitration award.

Anderson then moved to strike the amended award on August 25, 2017. He contended that, because the amended award was untimely and the Bukshes did not request a trial de novo, the court was required to enter the original arbitration award. Anderson also moved to enter the original arbitration award. The Bukshes opposed both motions and requested CR 11 sanctions, arguing the motion to strike was frivolous. On September 7, 2017, the court entered judgment denying Anderson's motions and ordering Anderson to pay $330 in sanctions.

The next day, Anderson attempted to obtain judgment on the original arbitration award through the ex parte department of King County Superior Court. On September 13, 2017, the Bukshes moved to strike this ex parte request.

They also obtained a temporary restraining order preventing Anderson from seeking entry of judgment without a compelling reason.[4]

On September 20, 2017, the Bukshes moved to deposit funds with the court pursuant to CR 67. They sought to deposit $4,196.38, the amount of the check from State Farm minus the $330 in sanctions. The trial court granted the motion on September 27, 2017.

Anderson appeals.

II.
ANALYSIS

Anderson asserts the trial court erred by denying his motion to strike the amended arbitration order and his motion to enter the original arbitration award. He claims the trial court was required to enter judgment on the original arbitration award because the arbitrator did not timely amend the award and the Bukshes did not seek a trial de novo. Determining the trial court did not err, we affirm.

Appellate courts interpret the mandatory arbitration rules as if the legislature drafted them and construe them consistent with their purpose. Wiley v. Rehak, 143 Wn.2d 339, 343, 20 P.3d 404 (2001). Mandatory arbitration aims to "reduce congestion in the courts and delays in hearing civil cases." Nevers v. Fireside, Inc., 133 Wn.2d 804, 815, 947 P.2d 721 (1997) (emphasis omitted) (internal citations and quotations omitted). Appellate courts review de novo whether the trial court correctly applied the rules to the facts. Malted Mousse, Inc. v. Steinmetz, 150 Wn.2d 518, 525, 79 P.3d 1154 (2003).

[4] The Bukshes state the court declared their motion to strike moot and did not hear it because Anderson did not fix an error in noting his ex parte motion.

MAR 6.2 concerns the filing of an arbitration award. It provides as follows:

> Within 14 days after the conclusion of the arbitration hearing, the arbitrator shall file the award with the clerk of the superior court, with proof of service upon each party. On the arbitrator's application in cases of unusual length or complexity, the arbitrator may apply for and the court may allow up to 14 additional days for the filing and service of the award. If the arbitrator fails to timely file and serve the award and proof of service, a party may, after notice to the arbitrator, file a motion with the court for an order directing the arbitrator to do so by a date certain. Late filing shall not invalidate the award. The arbitrator may file with the court and serve upon the parties an amended award to correct an obvious error made in stating the award if done within the time for filing an award or upon application to the superior court to amend.

MAR 6.2. An arbitrator may amend an award "to adjust the award in matters of form rather than substance, such as to correct an inadvertent miscalculation or description." Dill v. Michelson Realty Co., 152 Wn. App. 815, 820, 219 P.3d 726 (2009) (citing 15A DOUGLAS J. ENDE & KARL B. TEGLAND, WASHINGTON PRACTICE: CIVIL PROCEDURE, § 79.3 authors' cmt. at 612-13). Under the rule, an arbitrator may make such an amendment "either within 14 days after filing and service of the award or later, *only if allowed by the court*." Bongirno v. Moss, 93 Wn. App. 654, 662, 969 P.2d 1118 (1999) (emphasis added), overruled on other grounds by Malted Mousse, Inc. v. Steinmetz, 150 Wn.2d 518, 79 P.3d 1154 (2003).

Here, the Bukshes asked the arbitrator for an order clarifying that the earlier subrogation payment offset the amount awarded to Anderson. In an email, the arbitrator made clear he intended the award to offset the previous payment to Anderson. The arbitrator filed an "order clarifying arbitrator's award" consistent with the email.

Though the arbitrator titled his second filing an "order clarifying arbitrator's award," it was an amended award. The second filing sought to remedy the same type of errors in calculations resolved by amendments. Additionally, the arbitrator noted in his email that he may have to file an amended award to reflect the offset. As such, the second filing is an amended award subject to MAR 6.2.

MAR 6.2 requires arbitrators to amend an award within 14 days of filing and service or upon a party's application to superior court to amend. The amended award in this case did not meet either requirement. However, an arbitrator may file an amended award after the 14-day deadline if approved by the court. Here, the court approved the late amendment by denying Anderson's motion to strike the amended award after hearing his argument based on the same issue of timeliness.

As the arbitrator had intended the award to offset the previous payment to Anderson and he amended the award within a month, we see no reason to determine that the court erred in allowing the late amendment. We affirm the trial court's order denying Anderson's motion to strike and its order granting the Bukshes' motion to deposit funds.[5]

Affirmed.

Chun, J.

WE CONCUR:

Leach, J.

Dwyer, J.

[5] Because Anderson does not prevail on appeal, we decline his request to seek costs under RAP 14 and fees and expenses under RAP 18.

THOMAS ANDERSON - FILING PRO SE

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