

No. 67759-4-I
King County Superior Court No. 06-2-36124-5 SEA

In The
Court of Appeals of the State of Washington
Division One

PAUL H. KING,
Appellant,

v.

STEVE RICE and BARBARA RICE, husband and wife, and the marital
community comprised thereof, dba SUNLIGHT CONSTRUCTION
Respondents.

**On Appeal from the Superior Court of Washington
County of King**

REPLY BRIEF OF APPELLANT

PAUL H. KING,
Post Office Box 3444
Seattle, Washington 98114
206-414-6851
paulhowardking@yahoo.com

rogerwknight@hotmail.com

Counsel for Appellant

APPELLANT'S REPLY
BRIEF
FILED
JUL 11 2006
COURT OF APPEALS
DIVISION ONE
SEATTLE, WASHINGTON
JUL 11 2006
COURT OF APPEALS
DIVISION ONE
SEATTLE, WASHINGTON
30

Table of Contents

Table of Contents i
 Table of Authorities i
 I. Reply 1
 A. Factual Matters and Legal Issues 1
 B. Amanuensis Signature 5
 C. Respondents Fail to Accurately Read CR 11,
 Should Apply Equally to All Parties 10
 D. CR 11 Should Afford King Opportunity to Cure
 Deficiencies in the Signing of Pleadings 11
 E. Power of Attorney Granted Knight Authority to
 Sign Pleadings on Behalf of King 12
 F. Voluntary Dismissal of Bankruptcy Does Not
 Retroactively Vacate the Stay, 1 Year Rule Does Not
 Apply With, 8 Months After Bankruptcy Dismissal 12
 G. King Tried to Restart Case on Remand, Statement of
 Arbitrability Already on File, Superior Court Failed to
 Appoint Arbitrator and Set New Case Schedule 15
 H. Delay In Obtaining Trial Date Caused by Attempt to
 Enforce Reversed Judgment, Forcing Bankruptcy 18
 I. CR 11, Continuing Supplemental Proceedings After
 Notice of Bankruptcy to Enforce Reversed Judgment 21
 J. New CR 41 Dismissal Issues Raised by Rices 22
 K. King’s Actions Other Than in *King v. Rice* Irrelevant,
 Court Has Already Judged King’s Previous Conduct 23
 L. Attorney’s Fees On Appeal 24
 II. Conclusion 25

Table of Authorities

Table of Cases

Brunetti v. Reed, (1993) 70 Wash. App. 180,
 852 P. 2d. 1099 15
Casse v. Key Bank Nat’l Ass’n (In re Casse),
 (2d Cir. 1999) 198 F. 3d 327 13
Griffith v. City of Bellevue, (1996) 130 Wn. 2d 189, 922 P. 2d. 83 11
In re King, Bankr. Nev. No. 10-11601 14

<i>In re Nash</i> , (9th Cir. 1985) 765 F. 2d 1410	12
<i>In re Neiman</i> , (Bankr. S.D. Fla. 2001) 257 B. R. 105	13
<i>Jones v. Halvorson-Berg</i> , (1993) 69 Wash. App. 117, 847 P. 2d. 945	5, 11
<i>King v. Rice</i> , (2008) 146 Wash. App. 662, 101 P. 3d. 946	23
<i>Polello v. Knapp</i> , (1993) 68 Wash. App. 809, 847 P. 2d. 20	14, 22
<i>Rushton Mining Co. v. Morton</i> , (3d Cir. 1975) 520 F. 2d 716	14
<i>Snohomish County v. Thorp Meats</i> , (1988) 110 Wash. 2d. 163, 750 P. 2d. 1251	18, 22
<i>United States v. Gilbert</i> , (11th Cir. 1998) 136 F. 3d 1451	13
<i>U.S. Philips Corp. v. KBC Bank N.V.</i> , (9th Cir. 2010) 590 F. 3d 1091	14

Table of Laws

Laws of the United States

11 U.S.C. §349	13
11 U.S.C. §362	14
11 U.S.C. §1301 et seq., Chapter 13	<i>passim</i>

Laws of the State of Washington

Chapter 7.06 RCW	16
Chapter 19.34 RCW	6
RCW 39.62.020	6
WAC 434-180	6

Rules of Court

Civil Rule 11	4, 10, 11, 21, 24, 25
Civil Rule 41	<i>passim</i>
Federal Rule of Civil Procedure 11	11
King County Superior Court Local Civil Rule 4	16
Mandatory Arbitration Rule 1.2	16
Rule of Professional Conduct 3.3	19

I. REPLY TO THE BRIEF OF RESPONDENT

A. Factual Matters and Legal Issues

The brief of Respondent Rice is somewhat convoluted. They appear to be advocating a two tier system of conduct one for attorneys and on for all other parties. In order make sense of the issues the following is a list of pertinent matters that are undisputed:

FACTUAL MATTTERS UNDISPUTED IN TIMELINE

1. The case was originally set for trial per an IC judge in 2006. Brief of Respondents pages 2, 34.
2. The matter was set for arbitration and assigned to an arbitrator. Brief of Respondents pages 2, 34. Brief of Appellant page 23.
3. The case was then dismissed. Brief of Respondents page 2.
4. The case was previously appealed to this Court and “reversed and remanded” July 22, 2009. Mandate, Sub No. 285, CP 91. Respondent Brief describes it “dismissed on summary judgment, appealed and **vacated** in King I...” Brief of Respondents pages 34 and 38.
5. The Respondent Rice’s continued to pursue a judgment that was reversed by this court by way of supplemental proceedings. Brief of

Appellant. Brief of Respondents pages 36-37.

6. On January 13, 2010, Rice's attorney McBroom was asked by Judge Paris Kallas if there was still a judgment for which he seeking supplemental proceedings. The transcript at RP 2-3 McBroom infers to the judge that the \$41,689.00 judgment is valid. See RP 2-3 quoted on Brief of Appellant page 39.

7. Appellant King filed for Chapter 13 Bankruptcy repayment plan. Brief of Respondents Rice pages 3, 34, 35 and 36.

8. On February 3, 2010, a hearing was held before Judge Hilyer with Greg McBroom, Rices' attorney misled the court by **not** informing Judge Hilyer the award for attorney fees ("the \$40,000 plus" and "Right now, there's a judgment for \$41,689.00.") had been reversed by this Appellate Court and also misled the judge as to the status of the Chapter 13 Bankruptcy stay in order to receive a warrant of arrest. See sub No. 294, CP 117. RP 4-7.

9. The superior court entered an Order for Warrant for Contempt of Court and for Supplemental Judgment, Sub No. 290, CP 111-113, with a bail amount of \$40,000.00 and included a judgment for attorney fees of \$657.00. Sub No. 290, CP 111-113. RP 4-7.

10. Respondent Rice did not move for relief from bankruptcy stay. Brief of Appellant page 43. Brief of Respondents pages 3, 34, 35 and 36.

11. The Bankruptcy is voluntarily dismissed. Brief of Respondents page 3. Brief of Appellant page 14.

12. Eight months after the dismissal of the Bankruptcy the case was dismissed on Rices' motion under CR 41. Brief of Respondents page 2.

12. King was detained at the time and could not "come to the hearing". Brief of Respondents pages 1, 5, 7.

13. King sought to get the matter set for arbitration again and is told to bring a motion to set the matter for trial before the IC judge. Brief of Respondents Page 3.

14. King filed a Motion to Set Trial Date before Judge Erlich, the assigned IC judge for the case. Sub No. 304, CP 17-18, Brief of Respondents page 5.

15. King also filed a Response to the Motion to Dismiss. Sub No. 305, CP 19-22. Brief of Respondents page 3.

16. The amanuensis signature of Appellant King was on the Motions to Set Trial and Response. Brief of Respondents page 5.

17. The superior court struck the pleading on the basis of CR 11 sua sponte, no briefing was held on the issue or was it the issue before the court. Brief of Respondents page 5.

18. The superior court after that finding entered an Order under CR 41 dismissing the case. Sub No. 311, CP 30-31. Brief of Respondents pages 5 and 6.

20. Knight had oral permission of King to sign for him. Declaration of Paul King in Support of Motion for Reconsideration (King Declaration Recon), Sub No. 314, p. 2, CP 36. Declaration of Roger Knight in Support of Motion for Reconsideration (Knight Declaration Recon), Sub No. 313, p. 2, CP 33. Brief of Respondents pages 5-6.

21. Knight also had a General Power of Attorney for Appellant King. CP 34. Brief of Respondents page 7.

22. Respondent Rice admits that he destroyed by a backhoe a 14 by 40 modular house owned by the Appellant King. The basis for the case Brief of Respondents 38, 39. CP 344.

UNDISPUTED FACTUAL ETHICAL ISSUE

1. McBroom's misconduct in misleading the Superior Court on two

distinct occasions as to the judgment that was reversed and remanded by this Court and once as to the effect of the bankruptcy stay. Not addressed in Brief of Respondents. Addressed in Brief of Appellant pages 38-42.

LEGAL ISSUES

1. The application of the Chapter 13 Bankruptcy stay.
2. Whether the misconduct of the Respondent's Rice's attorneys triggered the fault (cause) provision of CR 41(b)(1).
3. The application of the amanuensis rule.
4. The effect of the general power of attorney.
5. Whether the Appellant King be afforded due process by allowing him a chance to correct his pleadings determined to be erroneous.

The contested matters will be discussed below as above outlined.

B. Amanuensis Signature

The Respondent Rice appears be advocating a two standards and exception from the rules, one for attorneys and one for all other parties: Attorneys may sign for each other under the auspices of *Jones v. Halvorson-Berg*, (1993) 69 Wash. App. 117, 847 P. 2d. 945 and all others may not. Pages 30 of Respondent Rice's brief.

It is undisputed that Mr. King authorized Mr. Knight to sign his name to the pleadings in the superior court that Mr. Knight did sign or rubber stamp King's name, due to Mr. King being in detention and therefore unable to prepare and file timely responses to the Rices' motions any other way.

It is irrelevant to this case that other persons in the cases cited by Respondents Rice have been sanctioned or punished for unauthorized signatures or fraudulent signatures. Respondents Rice point to no cases in which signatures are invalidated without some sort false, fraudulent or unauthorized signature. Brief of Respondents pages 8 and 9.

But in this case and as pointed out in the ALR articles that a person may direct another person to place his mark on the documents. The prevailing weight of the law is in favor such alternative signature, not only for those people detained but for people with disabilities, infirmities and other physical issues or distance requirements that require timely responses. In Washington State vera-signature responses are authorized by the legislature, chapter 19.34 RCW, Electronic Authentication Act and WAC 434-180, and facsimile signatures are allowed in some instances

RCW 39.62.020 are just some of many examples. The real policy issue as pointed out by the Respondent is there fraud or deception that would warrant some sort of invalidation or the resigning of the document in question? In the present case there was none presented. The remedy if the Judge was concerned was to have the party resign the document rather than dismissing the whole case.

As stated previously the parties communicated by phone and orally authorized the communication and written material. King Declaration Recon Sub No. 314, CP 35-37 asserts the basis of the signature.

3. I can call by telephone Roger W. Knight, from the federal facility.
4. We believe we are acting in good faith based upon the “amanuensis rule” that one person can sign on behalf of another person, even with a rubber stamp, is a valid signature and binds the party authorizing the signature as much as his own handwritten signature. This is in accordance with Washington law and with precedents set forth in a number of American Law Review articles. Please find attached some of these ALR articles.
5. I granted general power of attorney to Roger W. Knight. It is attached as an Exhibit to his Declaration.
6. We prepared the rubber stamp with my signature/mark for the purpose of enabling Mr. Knight to sign my name upon my oral authorization and/or with power of attorney.
7. During the pendency of the Motion to Dismiss we discussed the Motion and our response to it.
8. CorrLinks.com is a service that is authorized by the Federal Bureau of Prisons to provide federal inmates the ability to send electronic correspondence. I have been receiving from and sending

electronic correspondence to Mr. Knight through this service.

9. Unfortunately Corrlinks.com does not allow Verisign or other e-signatures.

10. We prepared our responses to the Motion to Dismiss. Mr. Knight drafted them on his computer and copied the text into the electronic correspondence sent through CorrLinks. I sent revisions and his drafts of the Response, his Declaration, and our Motions to Mr. Knight through CorrLinks which he then incorporated.

11. When we were satisfied with the text of the Response, my Declaration and our Motions, I authorized Mr. Knight to sign for me by rubberstamping my signature/mark and in accordance with the power of attorney granted to Mr. Knight.

12. On August 14, 2011 I duly authorized Roger W. Knight to sign my name by rubberstamping my signature/mark to the following documents:

Response in Opposition to Defendants' Motion to Dismiss For Want of Prosecution

Declaration of Paul H. King in Response in Opposition to Defendants' Motion to Dismiss For Want of Prosecution

Notice for Hearing for Motion to Set New Time Schedule

Motion to Set New Time Schedule

Notice for Hearing for Motion to Enter Judgment on Remand

Motion to Enter Judgment on Remand

13. Given the state of the law in Washington and the power of attorney, it seemed like we were complying with all applicable statutes and rules in to allow Mr. Knight to sign with my mark/signature.

14. It takes up to 4 days for the United States Postal Service to get mail to or from me....

Knight Declaration Recon, Sub No. 313, CP 32-33 said also.

2. On August 17, 2011 I attended the hearing on Defendant's Motion to Dismiss. During that hearing Judge Inveen told me that I can answer factual questions but not make argument on behalf of Mr. King. However, I was not placed under oath.

3. During the pendency of the Defendants' Motion to Dismiss and

REPLY BRIEF OF APPELLANT

8

PAUL H. KING
P.O. Box 3444
Seattle, Wash. 98114
206-414-6851

since, Mr. King has been in custody with the Federal Bureau of Prisons on a matter unrelated to this case.

4. Mr. King is able to call me by telephone from the federal facility, which I believe is the federal detention center in Seatac. During the pendency of the Motion to Dismiss we discussed the Motion and our response to it.

5. We believe we are acting in good faith based upon the “amanuensis rule” that one person can sign on behalf of another person, even with a rubber stamp, is a valid signature and binds the party authorizing the signature as much as his own handwritten signature. This is in accordance with Washington law and with precedents set forth in a number of American Law Review articles.

6. Attached is a true and correct copy of the general power of attorney Mr. King granted me.

7. CorrLinks.com is a service that is authorized by the Federal Bureau of Prisons to provide federal inmates the ability to send electronic correspondence. I have consented to receiving and sending Mr. King electronic correspondence through this service.

8. We prepared our responses to the Motion to Dismiss. I drafted them on my computer using Microsoft Word 2007 and copied the text into the e-mails sent through CorrLinks. Mr. King sent revisions and his drafts of the Response, his Declaration, and our Motions to me through CorrLinks which I then incorporated into the Word documents.

9. When we were satisfied with the text of the Response, my Declaration and our Motions, Mr. King authorized me to sign for him by rubberstamping his signature or mark and in accordance with the power of attorney granted to me.

A broader implication for the Court is the fact that many if not all garnishments, writs and other ordinary orders such as case schedules are all stamped by the county clerk with a judge’s signature usually rubber stamped. Many counties have no written authority on file to validate this

practice. Are we to invalidate hundreds of garnishments because they are rubberstamped at the direction of various county clerks or the Superior court?

C. Respondents Fail to Accurately Read the Rule; CR 11 Should Apply Equally to All Parties

Brief of Respondents page 23 includes this sentence:

That is precisely why CR 11 requires the original signature of the unrepresented party, not somebody else.

The language of CR 11 pertaining to unrepresented parties reads:

A party who is not represented by an attorney shall sign and date the party's pleading, motion, or legal memorandum and state the party's address.

For attorneys it state's

Every pleading, motion, and legal memorandum of a party represented by an attorney shall be dated and signed by at least one attorney of record in the attorney's individual name, whose address and Washington State Bar Association membership number shall be stated.

There is no language specifically prohibiting the unrepresented party from authorizing another person to sign his name for him. The Court could have added the words **personally** signed. But they did not do either for attorney or people unrepresented. The US Federal Civil Rules do require

“party personally” sign his or her signature, see FRCP 11.

We categorically reject the argument that a double standard should be created as proposed on Brief of Respondents page 24, where they advocate not allowing people to sign for unrepresented parties. The point the appellant is expressing seems to be that *Jones v. Halvorson-Berg, supra* does not apply to every person appearing in the Superior Court. Instead, the same principles should apply to all parties, those represented by attorneys and those not. At Brief of Respondents page 30, they make clear the double standard that they are promulgating.

King was not an associate signing a legal memorandum for a partner in the same law firm. King was an unrepresented party who could only sign pleadings for himself.

D. Under CR 11 King Should be Afforded Opportunity to Cure Deficiencies in the Signing of the Pleadings.

Griffith v. City of Bellevue, (1996) 130 Wash. 2d. 189, 194, 922 P. 2d. 83 is the basis for dismissal it was only after the at sua sponte finding did the court apply the CR 41 dismissal. The cases cited by the Respondent Rice are therefore inapplicable. As pointed out in that case the court should have allowed time to sign the pleadings personally if the matter was so indicated

The appellant points to other alternative methods of filing but given the time constraints and the employment of his detention none of those were available.

E. Power of Attorney Grants Knight the Authority to Sign Pleadings on Behalf of King

Attached as an Exhibit to Knight Declaration Recon, Sub No. 313, CP 32-34 is a General Power of Attorney with Durable Provision granted by Mr. King to Roger Knight of Seattle, Washington on November 14, 2008, CP 34. Respondent Rice denies its language as not broad enough and Appellant King argues it is sufficient. The language is quoted on page 19. Respondent Rice and Appellant King basically cite the same cases.

F. Voluntary Dismissal of Chapter 13 Bankruptcy Does Not Retroactively Vacate the Stay; 1 Year Rule Does Not Apply As Only 8 Months Since Bankruptcy Dismissal

On pages 34-35 of the Brief of Respondents is present argument that the voluntary dismissal of Mr. King's bankruptcy filing "retroactively" vacates the stay and therefore no stay was in effect on February 3, 2010. The cases cited by the Respondents Rice are not what they say they are.

In re Nash, (9th Cir. 1985) 765 F. 2d. 1410 only found that the

Chapter 13 plan was effectively vacated by the dismissal, and there was no finding with respect to the stay. *United States v. Gilbert*, (11th Cir. 1998) 136 F. 3d. 1451 considered the discharge of a bankruptcy as affecting the date a statute of limitations begins to run. That a voluntary dismissal has the same effect as a denial of discharge for the purpose of when the statute of limitations begins to run for the crime of concealment of assets of a bankrupt does not retroactively vacate the stay. The stay only ends when the relief from stay is granted or when the bankruptcy case is dismissed or discharged.

In re Neiman, (Bankr. S.D. Fla. 2001) 257 B. R. 105 found that a debtor had absolute pre-conversion right to voluntarily dismiss a Chapter 13 case. A state court hearing was immediately stayed upon the filing of the bankruptcy, there was no violation of the stay. This case cites 11 U.S.C. §349(b) to find that the debtor forfeits the automatic stay upon dismissal. However there is no language in the statute or finding by the *Neiman* Court that the forfeiture of the automatic stay is retroactive.

Casse v. Key Bank Nat'l Ass'n (In re Casse) (2d. Cir. 1999) 198 F. 3d 327 considered a dismissal of a Chapter 13 bankruptcy based upon a

13
REPLY BRIEF OF APPELLANT

PAUL H. KING
P.O. Box 3444
Seattle, Wash. 98114
206-414-6851

previous court order barring new bankruptcy filings by that particular debtor. *In re King*, Bankruptcy District of Nevada, No. 10-11601 made no such findings. The Rices did not file any appearance, motion for relief from stay or any other pleadings in the *King* bankruptcy. Therefore whatever arguments they had against the *King* bankruptcy filing and for relief from stay were not presented to the bankruptcy court.

Neither *U. S. Philips Corp. v. KBC Bank N.V.* (9th Cir. 2010) 590 F. 3d. 1091 nor *Rushton Mining Co. v. Morton*, (3d. Cir. 1975) 520 F. 2d. 716 were bankruptcy cases with the bankruptcy stay at issue.

Had the Rices filed a motion for relief from stay in the bankruptcy court, Mr. King would have certainly had the right to respond to such motion. We can only speculate how the bankruptcy court in Nevada would view an attempt to enforce through supplemental proceedings a judgment that had been reversed on appeal.

Interestingly enough the Respondents Rice cite *Polello v. Knapp*, (1993) 68 Wash. App. 809, 847 P.2d 20, which discusses the Bankruptcy stay and its effects. In that discussion it clearly delineates that

The automatic stay of 11 U.S.C. § 362(a)(1) terminates as to an act against the debtor upon the earliest of the entry of an order granting or denying discharge, the closing or dismissing of the case, or

when an order is entered granting stay relief.

They also cite *Brunetti v. Reed*, (1993) 70 Wash. App. 180, 852 P.2d 1099 which similarly does not invalidate the auto stay and fact seems to reinforce its protections. This case is also factually dissimilar.

The matter as discussed previously in the Brief of Appellant pages 43-44 was noted only eight months after voluntary dismissal of the Chapter 13 repayment plan. Many of the Washington cases cited by Respondent Rice support the position of Appellant King as read plainly.

G. Appellant King Tried to Restart the Case on Remand, First Statement of Arbitrability Already on File, Superior Court Failed to Appoint Arbitrator and Set New Case Schedule

Mr. King's attempts to respond to the Defendants' Motion to Dismiss for Want of Prosecution, Sub No. 301, CP 12-14, to note the case for trial, to restart the arbitration process, and to enter judgment upon remand are duly discussed in the Brief of Appellant and herein below.

Sub Numbers 10, 17A, 20 are either Statements of Arbitrability or Replies to Statements of Arbitrability. With the summary judgment reversed by the Mandate, Sub No. 285, CP 79-100, Appellant King's claim is restored and the original Statement of Arbitrability is still valid.

Under MAR 1.2 and chapter 7.06 RCW, a new arbitrator should or may have been appointed upon remand. The superior court and department of arbitration failed to do this, even when contacted during the pendency of the Motion to Dismiss, Sub No. 301, CP 12-14. Indeed, because King County Superior Court automatically issues an Order Setting Case Schedule upon the filing of a new civil complaint, King Co. Local CR 4(a), it would seem incumbent upon the superior court to issue such an Order Setting Case Schedule when a mandate arrives reversing a judgment of dismissal. This would solve the CR 41 problem we are presently having. Such a practice would require the superior court clerk to read the mandates as they arrive. Declaration of Roger Knight in Response to Defendants' Motion to Dismiss, (Knight Declaration Dismiss), Sub No. 306, CP 23-25 details the problems:

2. On August 5, 2011 I visited the Arbitration Office at W-855. The woman there told me that to reset a remanded case to arbitration I would need to send her an e-mail so she can look up the Mandate of the case and determine what needs to be done.
3. Attached as an Exhibit is a printout of the e-mail I sent her that day at 12:22 am, Saturday August 6, 2011.
4. On August 11, 2011 I again visited the Arbitration Office. We sorted out which judge is responsible for the case and to consider the Mandate reversing the original summary judgment. Judge Linda Lau granted the defendant's motion for summary judgment. After she left for the Court of Appeals, the case was assigned to

Judge Monica Benton who then recused. It turns out that Judge John Erlick is the most recent judge to which this case is assigned and the Arbitrator Clerk believes that some kind of implementation of the mandate motion needs to be scheduled and set with Judge Erlick.

5. Later, during the afternoon of August 11, 2011, I contacted by telephone the bailiff for Judge Laura Inveen, Greg Howard. Mr. Howard told me that he did not have the working papers for the Defendants' Motion to Dismiss and could not tell me whether the matter was even scheduled for 1:30 pm Wednesday August 17, 2011. He thought these working papers might have been sent to Judge Erlick's office.

6. I then telephoned Marci Parducci, the bailiff for Judge John Erlick. A telephone recording informed me that she is presently on vacation and will be for next week and to leave a message.

7. We are filing a Motion to Set a New Trial Schedule and a Motion to Enter Judgment on Remand with Judge Erlick. We are noting these motions for Wednesday, August 31, 2011 without oral argument.

As a matter of practice all cases are assigned to individually calendared judges in King County for the past 15 years or so. The older practice of using notes for trial has not existed for some time, though many counties still use them including Snohomish County. It is incumbent on the party to an action to make a motion for a trial schedule if none exists, such is done by motion practice to the chief judge or to your individually calendared judge as was done in this case to Judge Erlich. Judge Erlich was the second judge on this particular case.

The cases cited by the Respondent Rice deal with a system where the party was not in mandatory arbitration and not subject to MAR Rules and/or individually calendared cases in which the assigned judge determines the trial schedule. Times have changed from the noting practice described in *Snohomish County v. Thorp Meats*, (1988) 110 Wash. 2d. 163, 750 P. 2d. 1251, where a party could walk up to the counter and get a trial date from the administrator of the courts.

H. Delay In Obtaining Trial Date Caused by Attempt to Enforce Reversed Judgment, Forcing Chapter 13 Bankruptcy

CR 41(b)(1) reads:

unless the failure to bring the same on for trial or hearing was caused by the party who makes the motion to dismiss

First the respondents do not deny that the Chapter 13 Bankruptcy was filed in response to their continuing with supplemental proceedings after the mandate from this Court¹ was filed with the superior court reversing the previous judgments. Secondly they admit and do not deny that they were attempting to enforce the reversed judgments. A copy of the audio disks was requested by opposing counsel and sent to opposing

¹ Mandate, Sub No. 285, CP 79-100.

counsel so they could verify Mr. McBroom's statements on the RP's and CP's. A declaration of service of the disks is on file for court verification.

The Report of Proceedings and record clearly shows that Mr. McBroom and the superior court continued with the supplemental proceedings after being served notice of the bankruptcy. In addition he misled the Superior Court in the effects of the Bankruptcy stay, reporting that it was "invalid". Declaration of Roger W. Knight re Bankruptcy Filing (Knight Declaration Bankruptcy), Sub No. 291, CP 101-104; RP 5-6 and as already discussed on Brief of Appellant pages 38-42.

To deny that Mr. McBroom said what the Report of Proceedings record that he said would be another violation of the RPC 3.3.

Mr. McBroom also falsely listed a judgment of \$41,689.00 and misleadingly failed to account for the Mandate's reversal of these judgments during the supplemental proceedings before Judge Hilyer. This continuation of the supplemental proceedings forced Mr. King to file for bankruptcy to protect his assets from the enforcement of a reversed judgment. The resulting bench warrants prevented him from getting the case reset before arbitration upon remand. McBroom misled the Court as

to the effect of the Bankruptcy stay. See below statement from Declaration of Paul H. King in Response to Defendants' Motion to Dismiss (King Declaration Dismiss) Sub No. 307, pages 2-3, CP 27-28:

7. The defendant then tried to enforce his judgment by supplemental proceeding on several occasions. I filed for bankruptcy to protect myself from these supplemental proceedings. This bankruptcy action continued until January 2011. Until then I was precluded from acting in this case until the trustee or bankruptcy court made a decision that allowed me to proceed.

8. During the interim I contacted the clerk's office several times to get a new case schedule. Each time I was told it was to be issued shortly.

9. Apparently there has been a change in procedure, the matter who is reserved to Judge Erlick and a formal order has to be entered settling the matters in this case.

10. I was not aware of the procedure. Either party could have entered the matter the defendant did not choose to.

11. My assistant Roger Knight has contacted the Arbitration Department to determine how to reset for arbitration. It turns out that a motion needs to be set for either the judge who originally dismissed the matter on summary judgment, which is Judge Linda Lau, or her successor. It turns out that her successor is Judge John Erlick to whom the case was assigned after Judge Monica Benton recused. Please see Declaration of Roger Knight in Response to Motion to Dismiss for Want of Prosecution.

12. We are filing a Motion to Set a New Trial Schedule and a Motion to Enter Judgment on Remand with Judge Erlick. We are noting these motions for Wednesday, August 31, 2011 without oral argument. This should be sufficient to trigger the last sentence of CR 41(b)(1), which reads:

If the case is noted for trial before the hearing on the motion, the action shall not be dismissed.

13. I would respectfully request that the following order be entered and that a judgment be had against the defendant.

14. I cannot come to the hearing on August 17, 2011 and ask that it be considered without oral argument or the matter be forwarded to Judge Erlick for hearing there.

15. Because of the current status of this case I would request the matter be set for arbitration again and a new case schedule assigned.

By this mechanism, the respondents through their unethical counsel caused the delay in setting the case for trial for a number of months. When the matter was noted for dismissal only eight months passed since the dismissal of the Bankruptcy. Such delay triggered not only the “cause” provisions of CR 41 but the Bankruptcy stay prevented the restarting of the case so that actual time involved was not past the 1 year period required for CR 41(b) dismissals.

I. CR 11 and Continuing Supplemental Proceedings After Notice of Chapter 13 Bankruptcy to Enforce Reversed Judgment

On page 10 of the Brief of Respondents is a quote concerning Civil Rule 11 that reads:

Attorney’s or party’s signature constitutes a certification to the court that the claim is meritorious to the attorney’s (or party’s) best knowledge, information, and belief.

On February 3, 2010 Mr. McBroom went ahead with supplemental proceedings after being served notice of a bankruptcy filing and proceeded

to list a clearly reversed judgment of \$41,689 to obtain a bench warrant with a bail amount of \$40,000 with a judgment for supplemental attorney's fees of \$657. Brief of Appellant pages 11-13 and the references to the record cited therein.

J. New CR 41 Dismissal Issues Raised by Respondents Rice

Brief of Respondents page 39 argues that *Snohomish County v. Thorp Meats*, (1988) 110 Wash. 2d. 163, 750 P. 2d. 1251 and *Polello v. Knapp*, (1993) 68 Wash. App. 809, 847 P. 2d 20 argue for immediate dismissal under CR 41. But *Thorp Meats* found that a trial date had been obtained prior to the dismissal motion:

On August 23, 1983, counsel for plaintiff went to the superior court administrator's office and secured a trial date of February 9, 1984.

It was the local practice in Snohomish County at the time to note the matter for trial and then go to the clerk and just get an assigned trial date. The clerk then usually called the other side and then got a date for trial. This is far different than what is presented in this case and Local King County rules with the individual calendars.

Such actions were common in the past but not in King County

today. Knight Declaration Dismiss, Sub No. 306, CP 23-26 details the problems in trying to get a remanded case restarted.

K. King's Actions in Matters Other Than *King v. Rice* Irrelevant This Court Has Already Judged Mr. King's Previous Conduct in this Case With the Order "Reversed and Remanded"

In the Brief of Respondents pages 8-9 the Respondents Rice discuss Mr. King's "Long History of Abusing the Judicial System" bringing up matters of the Bar discipline of Mr. King and other matters unrelated to this case. The underlying issue in this case is whether Mr. King entitled to some compensation from the Rices for the destruction of his new modular house and if so, how much. Mr. King does forfeit his claim by such unrelated facts. The issues herein above relate to an honest and sincere effort to get this case to trial or arbitration.

Brief of Respondents pages 9-12 bring up the very orders and findings that were reversed by this Court in *King v. Rice*, (2008) 146 Wash. App. 662, 191 P. 3d. 946 and in the Mandate, Sub No. 285, CP 91. The language in the Mandate reads:

Reversed and remanded for further proceedings.

The Respondents Rice could have presented an argument to the superior

court that some of the judgments survived the appeal, but rather than have a contested hearing on that issue, they chose to continue to pursue supplemental proceedings for all of the monetary judgments entered prior to the first appeal, \$40,047.50 in attorney's fees, \$1,642.20 in costs and \$3,000.00 in sanctions.² The award for attorney's fees and costs are clearly dependent upon the summary judgment that was reversed.

L. Attorney Fees on Appeal

Since this is essentially a CR 11 case attorney fee requests are

² Since the Respondents Rice bring up the sanctions, one could consider the flood of paperwork filed by the Respondents.. Appellant King was attempting to respond to this flood of motions during the period of A quick perusal of the on-line docket sheet for King County Superior Court Number 06-2-36124-5 shows us:

On January 22, 2007, an arbitrator was appointed, Sub No. 31. Instead they commenced a motion for summary judgment on May 14, 2007, starting with Sub Number 36. On June 4, 2007, we have a second motion for summary judgment, Sub Number 46. Then we have motions to strike (some had motions within motions) and other pleadings within a very short period of time, until we have the order granting summary judgment dismissing the case on June 15, 2007, at Sub Number 105A. That is around 70 pleadings in about one month. Then we have motions for reconsideration brought by Mr. King and motions for awards for attorney's fees and sanctions brought by the Respondents Rice. The first Notice of Appeal is filed on August 17, 2007, and it is Sub Number 182.

Appellant King had to respond to this flood in a very short period of time. While this can argued to not excuse any dalliance on Mr. King's part, it would provide a perspective that seemed lacking in the superior court at the time.

governed by the appropriate CR 11 as governed by the trial court. Attorney fees requests are governed by trial court which awarded no attorney fees to either side. Respondent request for fees should be denied.

II. CONCLUSION

For the reasons stated herein, the Order Denying Motion for Reconsideration of Order Granting Defendants' Motion to Dismiss for Want of Prosecution, Sub No. 321, CP 78; Order Striking Motion to Enter Judgment on Remand and Motion to Set a New Trial Date, Sub No. 320, CP 77; and the Order Granting Defendants' Motion to Dismiss for Want of Prosecution, Sub No. 311, CP 30-31 should be reversed; and the Order for Warrant for Contempt of Court and for Supplemental Judgment Pursuant to RCW 6.32.010, Sub No. 290, CP 111-113 should be reversed or vacated and attorney fees, fines or sanctions awarded to Appellant for the misleading statements propounded to the Courts.

Respectfully submitted this 4th day of October, 2012,

PAUL KING