

No. 67759-4-I

**IN THE COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

PAUL H. KING,

Appellant,

v.

STEVE AND BARBARA RICE, individually and
the marital community comprised thereof, d/b/a SUNLIGHT CONSTRUCTION

Respondents.

BRIEF OF RESPONDENTS

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I. INTRODUCTION

Appellant's appeal is nothing more than an attempt to unring the bell of an appropriate dismissal without prejudice under CR 41(b)(1). The narrow issue is whether the trial court appropriately dismissed *pro se* litigant Paul H. King's claims without prejudice for want of prosecution under CR 41(b)(1).¹ At the time of the dismissal hearing before the trial court, *King had done nothing for a period of over two years and no trial date had been noted.*

King's friend, Roger Knight, appeared at the dismissal hearing and told the trial court that *he had prepared all the pleadings and rubber stamped King's signature on each of them.* Knight claimed he had "verbal" authorization from *pro se* litigant Paul King. The trial court had nothing from King to substantiate this claim, and King had failed to appear for the hearing. It is well-established that *pro se* litigants are held to the same standards as attorneys and must comply with all the procedural rules. *In re Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). Washington's court rules require parties to sign their own pleadings. CR 11(a); CR 7(b)(3).

The trial court properly recognized *pro se* litigants must sign their own pleadings because, among other things, they are making the requisite CR 11 certification to the Court. Non-attorney third parties are not

permitted to prepare pleadings for *pro se* litigants and rubber stamp their names. Therefore, having received nothing from King and with no trial date having been noted, The trial court correctly dismissed the case without prejudice under CR 41(b)(1). Contrary to King’s claim, the trial court did not commit any error.

II. ISSUES PRESENTED FOR REVIEW

Did the trial court appropriately dismiss the case without prejudice as mandated under CR 41(b)(1) when King failed to note the action for trial or hearing within one year of joining issues of law or fact and failed to properly note the case for trial before the dismissal hearing?

III. STATEMENT OF THE CASE

A. The Trial Court Dismissed the Case for Want of Prosecution Under CR 41(b)(1).

Alleging that “[n]o action has been taken by plaintiff [Paul King] in over two years,” on July 29, 2011, respondents filed a motion to dismiss for want of prosecution pursuant to CR 41(b)(1). CP 12-14. The hearing was noted for August 17, 2011 at 1:30 p.m. *with* oral argument. CP 12. King was served with all the pleadings. In a response filed August 15, 2011, in opposition to the Rice’s motion, King argued the case had already been noted for trial on November 13, 2006, before his case was dismissed

¹ Appellant King has raised a myriad of other irrelevant matters in his brief, which have been addressed by Respondents. Nonetheless, the threshold issue of the trial court’s dismissal without prejudice under CR 41(b)(1) is a narrow one.

on summary judgment and appealed to the court of appeals.² See CP 19; CP 20, ll. 9-16. King further blamed Rice for causing the delay by bringing a “frivolous motion for summary judgment...and its subsequent reversal on appeal” and by “engaging in abusive collection procedures . . . [that] forced Mr. King to use bankruptcy proceedings to protect himself.” CP 20, ll. 19-26; CP 21, line 2.

According to King, “[f]ederal law had stayed the matter” while he was in a Chapter 13 bankruptcy until January 2011 and he “could not act on the matter until the trustee ruled on that matter on hand until the bankruptcy had run its course” CP 22, ll. 5-10. King also argued he had attempted to note the case for trial without success, even though Knight admitted to preparing and filing all the pleadings and rubber stamping King’s name to them. CP 21, ll. 11-24. Finally, King mentioned *he would be* filing a Motion to Set a New Trial Schedule noted for hearing on August 31, 2011 that “should be sufficient to trigger the last sentence of CR 41(b)(1).” CP 22, ll. 1-3.

As stated above, Knight told the trial court that he had prepared all the pleadings and rubber-stamped King’s name on them. King’s pre-hearing signatures on his response (CP 22), declaration (CP 28), and motion to set new trial schedule (CP 18) are identical elaborate stamps that appear genuine except when compared to King’s actual handwritten

² See *King v. Rice*, 146 Wn. App. 662, 191 P.3d 946 (2008) (“*King I*”).

signature filed after the August 17 hearing (CP 38, CP 76). Also, when King's proposed order was filed with the judge and opposing counsel on August 15, 2011, the signature line reserved for the judge has the same rubber-stamped signature of Paul King erroneously inserted where the judge is supposed to sign. *See* Appendix A to Rice's Motion to Supplement the Record filed July 11, 2012.

Therefore, without supervision or proper understanding of the court rules, Roger W. Knight assumed the task of preparing and rubber stamping all the pleadings. *See* CP 23-25; CP 27, l. 25 – CP 28, l. 7.

Knight has a long affiliation with Appellant King even after King's disbarment. For example, as the "long time (sic) assistant of the plaintiff" (CP 23, l. 19), Knight had filed numerous pleadings in the case in support of King, and also stated: "I have been in the litigation business for a number of years." CP 162, line 8 (Decl. of Roger W. Knight in Support of Motion for Reconsideration filed June 27, 2007); CP 138, ¶ 3 (Second Decl. of Roger Knight on Summary Judgment filed June 12, 2007 noting he is a "contract paralegal and was working for John Scannell"). Knight admitted that he filed King's motion for reconsideration, noting that King was "ill from being abroad (also on medication)." CP 158, ¶ 3 (June 27, 2007); CP 162, ¶ 16. Knight also filed pleadings under his own office letterhead "Roger W. Knight" using the same P.O. address as King's. CP 220 (July 24, 2008). Knight filed a bar complaint against Rice's counsel for "wrongfully with-holding (sic) evidence relevant to the case from us."

CP 221, ¶ 3. Knight filed pleadings under the “Actionlaw.net” business entity, declaring that he “perform[s] paralegal and legal assistant work for Paul King, the appellant and for John R. Scannell.” CP 236 (May 22, 2009); CP 225 (Aug. 25, 2008). Knight also filed declarations under King’s letterhead stating he is “the legal assistant for Mr. Scannell in this matter.” CP 129, ¶ 2 (June 1, 2007); CP 131, ¶ 2 (June 4, 2007) (“I am the legal assistant for Mr. Scannell and Mr. King in this matter.”).

Regarding the hearing on Rice’s motion to dismiss, King stated in his August 14 declaration: “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.” CP 28, ¶ 14. King provided no explanation of why he couldn’t appear by telephone or by attorney.

At the August 17 hearing on Rice’s motion to dismiss, as noted by the trial court, the Honorable Laura C. Inveen, *King did not appear*, but his legal assistant, Roger Knight appeared and provided information to the court. CP 30. Knight “represented [orally] to the court that King was currently incarcerated, and that Knight had rubber-stamped King’s signatures on all pleadings” supposedly with King’s authorization. CP 30 (asterisked interlineations at bottom). In granting Rice’s motion to dismiss without prejudice, the trial court explained:

Although a motion to set new trial schedule (sub 304) is on file, and noted for August 31, 2011, the court notes it is “rubberstamped” and thus in violation of CR 11. The court finds that Mr. King has not noted this matter for trial per CR 41(b)(1), and therefore he has not “cured” any reasons to avoid involuntary

dismissal. The court further finds the equities do not lie with plaintiff in that a warrant for contempt has previously been issued for failing to comply with supplemental proceedings, and a judgment against him remains unsatisfied in this matter.

CP 31 (interlineations).³

On August 25, 2011, King and Knight filed a motion for reconsideration and supporting declarations. CP 66, CP 32, CP 35. Knight's and King's declarations confirmed the findings made by the trial court at the August 17, 2011 hearing and confirmed that no error had been committed in dismissing the case without prejudice under CR 41(b)(1). CP 32-33; CP 35-38. The signed signature page for King's Declaration in Support of Motion for Reconsideration (CP 38) is dated August 19, 2011, but is mistakenly a copy of the signature page for King's August 14 declaration in Response to Defendant Rice's Motion to Dismiss (CP 28), with only the date changed and an actual signature substituted for what was previously rubberstamped.

³ King does not properly assign error to Judge Hilyer's February 3, 2010, order finding King in contempt for failing to appear for supplemental proceedings. *See* CP 111. King did not file a motion to vacate the contempt order or seek reconsideration under CR 59 or CR 60. King has not preserved the alleged error for review by this Court. *See Unigard Ins. Co. v. Mut. of Enumclaw Ins. Co.*, 160 Wn. App. 912, 922, 250 P.3d 121 (2011) (party failing to object or assign error properly waives arguments it attempts to raise on appeal); RAP 10.3(a)(3); *Olmsted v. Mulder*, 72 Wn. App. 169, 183, 863 P.2d 1355 (1993) (when appeals court cannot determine from the record whether appellant raised claims below and nothing indicates trial court addressed them, appeals court cannot reach merits of arguments). King did not "provide a separate assignment of error for each finding of fact a party contends was improperly made...with reference to the finding by number." RAP 10.3(g). King offers transcripts of the 2010 supplemental proceedings that are not properly part of the record on review. *See Sherry v. Fin. Indem. Co.*, 160 Wn.2d 611, 615 n. 1, 160 P.3d 31 (2007) (court declines to consider facts recited in brief but not supported by the record).

King admitted that he did not personally sign any of the pleadings filed by Knight in response to Rice’s motion to dismiss, including the Motion to Set a New Trial Schedule, his Response in Opposition or even his certified declaration. CP 36-37, ¶ 12. Knight offered testimony that “Mr. King is able to call me by telephone from the federal facility” where he was in custody. CP 32, ¶ 3-4. King claimed he had been in custody at a federal facility since May 2011 on a probation violation. CP 35, ¶ 2. But, neither Knight nor King explained why King made no effort to appear at the August 17 hearing by telephone or by a licensed attorney.

Asserting a legal argument for King, Knight argued: “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 . . . This is in accordance with Washington law and with procedures set forth in a number of American Law Review Articles.” CP 33, ¶ 5. Knight also put forward a General Power of Attorney purportedly signed by King on November 14, 2008. CP 33, ¶ 6; CP 34. Knight contended he personally drafted all pleadings for King to respond to Rice’s motion to dismiss, including the Motion to Set a New Trial Schedule, and inserted King’s rubber-stamped signature on all the pleadings. CP 33, ¶¶ 8-9.

Knight declared that King orally authorized Knight to sign pleadings for him by rubberstamping “in accordance with the [November 14, 2008] power of attorney granted to me.” CP 33, ¶ 9. The pleadings,

however, were not signed as power of attorney and Knight never informed the trial court that he was acting as an attorney-in-fact. In addition, that power of attorney also did not authorize Knight to sign pleadings or other documents for King, and did not mention rubber stamping. CP 34. By order entered September 9, 2011, finding no error with the original decision, the trial court denied the motion for reconsideration. CP 78.

B. Appellant Paul H. King Has a Long History of Abusing the Judicial System and Washington's Citizens.

King has a long history of abusing the judicial system and Washington citizens. Formerly an attorney in Washington, he was disbarred by Washington's Supreme Court in 2010 and 2011 for egregious misconduct and also had three previous suspensions. *See* http://www.mywsba.org/default.aspx?tabid=178&RedirectTabId=177&User_ID=7370 (WSBA Disciplinary History) (last visited June 14, 2012); *see also In re Disciplinary Proceeding Against King*, 170 Wn.2d 738, 246 P.3d 1232 (2011) (felony conviction) and *In re Disciplinary Proceeding Against King*, 168 Wn.2d 888, 232 P.3d 1095 (2010). He also has at least one other case pending in this Court (No. 67502-08-I).

Roger Knight is not an attorney and has regularly rubber-stamped pleadings for King and others. In 2008, John Scannell (another disbarred attorney) was reprimanded by the WSBA because Knight had rubber stamped his pleadings. *See* Appendix B to Rice's Motion to Supplement the Record filed July 11, 2012 (FF ¶ 17, 18, 21, 24, 28-29, 33; CL ¶ A).

King, Scannell, and Knight are all friends and colleagues. CP 353-354; 361-62. Knight has worked for both King and Scannell. Moreover, Scannell represented King in disciplinary proceedings. CP 371.

Scannell, Knight and King have associated in legal matters since at least 2005. *See In re Disciplinary Proceeding Against King*, 168 Wn.2d 888, 232 P.3d 1095 (2010) (disbarred for various charges including perjury, false swearing, representing client while suspended from practice of law, delivering summons and complaint with fictitious cause number – identifying Knight and King as co-plaintiffs, and filing frivolous motions to obstruct and delay); *In re Disciplinary Proceeding Against Scannell*, 169 Wn.2d 723, 239 P.3d 332 (2010) (in disbarment of Scannell, court noted King and Scannell defended each other against Bar Association investigations). King’s address in his 2010 Nevada Chapter 13 case is listed as “C/O JOHN SCANNELL” in Seattle, Washington. *See* PACER docket, Appndx. C to Rice Motion to Supplement the Record, p. 1. At various times since this case began in 2006, King employed both Scannell and Knight to help him litigate this case. CP 241; CP 225; CP 236.

C. Appellant King Has Demonstrated a Complete Disregard for the Judicial System. The Trial Court Has Sanctioned and Admonished Him for His Continuing Misconduct.

Before *King I* remanded the case, the trial court awarded Rice \$40,047.50 in attorney’s fees, \$1,642.20 in costs, and \$3,000 in sanctions, finding that “[a]lthough the attorney’s fees and costs may seem excessive for this uncomplicated lawsuit, the increased fees and costs are directly

attributable to Plaintiff Paul King's conduct." CP 193, ¶ 8 (Findings of Fact filed June 24, 2007). According to the court, "Plaintiff Paul King's *questionable litigation tactics and intransigence* significantly increased the legal fees and costs of the litigation." CP 193, ¶ 9 (italics added). Examples of King's misconduct cited by the court included obtaining an order of default under false pretenses, refusing to provide a reliable address where King could be served, and failing to respond to communications. CP 193-194. The trial court found:

Despite this Court's admonishments, Plaintiff Paul King consistently submitted untimely materials and failed to comply with civil and local rules governing motions practice. For example, he submitted motions without properly noting them and submitted substantive materials to the court by letter rather than by pleadings or briefs contrary to LR 7.

CP 194, lines 7-10.

Later the trial court found that Paul King, Scannell and Knight had provided false statements in pleadings filed with the court and sanctioned King for failing to "conduct any pre-filing investigation to determine the accuracy of his claim" CP 196-205 & ¶ 15 (Findings of Fact filed July 24, 2007). The court also instructed King on the significance of his signature stating, "[a]n 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 or belief. This, in turn, must be based on an actual inquiry that was reasonable under the circumstances of the particular case." CP 200, ¶ 16 (citation omitted) (italics added).

The court further found:

24. Before signing a document subject to CR 11, the signatory is required to read it and make reasonable efforts to assure that it is in compliance with the rule.

25. Plaintiff Paul King signed, filed, submitted and advocated the above claims that violate the very spirit and purpose underlying CR 11.

31. CR 11 imposes upon attorneys and pro se litigants the responsibility to insure that assertions made and positions taken in litigation are done in good faith and not for an improper purpose. Before signing a document subject to CR 11, the signatory is required to read it and make reasonable efforts to assure that it is in compliance with the rule . . . Plaintiff Paul King filed the declarations of Roger Knight and John Scannell that contained untrue statements.

CP 202-204 (citations omitted).

Finding egregious circumstances warranted CR 11 sanctions in order “to deter, punish and educate,” the trial court ordered King to pay \$3,000 in sanctions to Rice, which he has yet to pay pursuant to the judgment. CP 204. These sanctions were upheld by this Court on appeal. *King*, 146 Wn. App. at 672 (the trial court’s sanctions “were well within the court's discretion and supported by the record.”).

By order filed June 14, 2007, the trial court struck King’s cross-motion for summary judgment because it was not noted in accordance with court rules and local rules. CP 147. By orders dated July 23, 2007, the trial court struck untimely late-filed pleadings submitted by King to oppose summary judgment and request reconsideration. The court stated: “This Court warned Plaintiff on June 15, 2007 against further untimely

submissions and the need to comply with the local and civil rules. Plaintiff failed to heed the warning.” CP 190-191; CP 188-189.

IV. AUTHORITY

A. Standard of Review.

“[D]ismissal of an action for want of prosecution is in the discretion of the court in the absence of a guiding statute or rule of court.” *BSA II*, 274 P.3d at 1027. Interpretation of CR 41(b)(1) is a question of law reviewed *de novo*. *BSA II*, 274 P.3d at 1026 (applying the same rules as those used for interpreting a statute). A discretionary decision is subject to reversal only if manifestly unreasonable, or exercised upon untenable grounds or untenable reasons. *Humphrey Indus., Ltd. v. Clay St. Assocs., LLC*, 170 Wn.2d 495, 506, 242 P.3d 846 (2010). Untenable grounds or untenable reasons means the decision is based upon unsupported facts or applied the wrong legal standard. *Magana v. Hyundai Motor Am.*, 167 Wn.2d 570, 583, 220 P.3d 191 (2009). A manifestly unreasonable decision exists only if the court adopts a view that no reasonable person would take. *Id.*

B. The Trial Court Correctly Dismissed Without Prejudice Because The Elements of CR 41(b)(1) Were Met.

CR 41(b)(1) requires dismissal where (1) an issue of fact or law has been joined; (2) the party seeking relief has failed to note the action for trial within one year thereafter; and (3) the party moving for dismissal has not caused the failure to bring the matter for trial. *Simpson v. Glacier*

Land Co., 63 Wn.2d 748, 750-51, 388 P.2d 947 (1964). When these elements are met, dismissal is mandatory and there is no room for the exercise of discretion. *Business Services of America II, Inc. v. WaferTech, LLC*, 174 Wn.2d 304, 274 P.3d 1025, 1027 (2012) (“*BSA II*”);

1. Appellant King Did Nothing for a Period of Over Two Years and Failed to Note His Case For Trial Before the August 17 dismissal hearing.

Knight told the trial court that *he had prepared* all the pleadings and rubber stamped King’s name on them. This includes the response to the motion to dismiss, a motion to set a new trial date (which was noted *after* the motion to CR 41(b)(1) dismissal hearing), and the associated declarations — it is undisputed that all pleadings were rubber stamped by Knight. At the dismissal hearing, the trial court had no way of knowing whether King had seen or agreed with any of the pleadings prepared by Knight. That *pro se* King had not submitted any pleadings of his own was confirmed by the trial court on King’s motion for reconsideration.

The threshold issue is whether Knight’s rubber-stamped pleadings were effective for King to prevent the trial court from dismissing the case for want of prosecution. The threshold sentence is the final one: “If the case is noted for trial *before the hearing on the motion*, the action shall not be dismissed.” CR 41(b)(1) (italics added). This sentence was construed in *Snohomish County v. Thorp Meats*, 110 Wn.2d 163, 168, 750 P.2d 1251 (1988) (reversing order of dismissal where plaintiff secured trial date on morning *before* afternoon hearing on motion to dismiss).

[T]he final sentence of CR 41(b)(1) means precisely what it says, a case shall not be dismissed for want of prosecution *if it is noted for trial before the hearing on the motion to dismiss . . .* Thus, where a motion for dismissal for want of prosecution is prompted by inaction in bringing the case on for trial, CR 41(b)(1) controls over the more general provisions of CR 41(b) to preclude dismissal if the case is noted for trial before the dismissal motion is argued.

Thorp Meats, 110 Wn.2d at 168-169 (italics added); *BSA II*, 274 P.3d at 1027 (dismissal is mandatory if CR 41(b)(1) applies). In *Thorp Meats*, the Court ruled that dismissal was prevented in that case by CR 41(b)(1) because “the case was noted for trial” *before* the CR 41 hearing commenced. *Id.* In *BSA II, supra*, the defendant did not move to dismiss for want of prosecution *until two months after* the case had been properly noted for trial. Also, there was no issue in *Thorp Meats* or *BSA II* about CR 11, non-signing or signing by a non-attorney.

Knight’s rubber stamped motion to set a new trial schedule failed to obtain the necessary result of causing the case to be noted for trial *before* the August 17, 2011 hearing — the hearing on Rice’s motion to dismiss. When Knight prepared and filed the motion with King’s rubber stamped signature to set a new trial date, he noted it for August 31, 2011, *two weeks after* the hearing on the motion to dismiss.

If the plaintiff fails to note the case for trial *before the hearing*, dismissal is mandatory under CR 41(b)(1), and no discretion is involved. *BSA II, supra; Thorp Meats*, 110 Wn.2d at 167-168; *Polello v. Knapp*, 68 Wn. App. 809, 814-17, 847 P.2d 20 (1993) (trial court erred granting

plaintiff's counsel additional two weeks following dismissal hearing to note case for trial).

Regardless of whether noncompliance was through ignorance or choice, as a *pro se* litigant, King was required to follow applicable court rules — including CR 41(b)(1)'s requirement that the case must be noted for trial before the August 17 hearing in order to avoid dismissal. *See State v. Sullivan*, 143 Wn.2d 162, 178, 19 P.3d 1012 (2001). Since King failed to cause the case to be noted for trial *before* the August 17, 2011 dismissal hearing, the trial court appropriately entered a CR 41(b)(1) dismissal order. With King absent from the hearing by his own volition, the trial court had no authority to continue the hearing. In fact, the response prepared and rubber stamped by Knight asked the Court to determine the issue without oral argument. Nonetheless, King's failure to appear at the hearing was fatal to any *subsequent effort* to cure.

2. It a Well Established That a Case Must Be Noted For Trial at the Time of the CR 41(b)(1) Dismissal Hearing.

Under CR 41(b)(1), the plaintiff's mere intention to note the case for trial is not enough without actual, effective action that accomplishes getting the case noted for trial *before the dismissal order is entered*. *See Thorp Meats, supra; Polello v. Knapp, supra*. King did not take timely action to note the case for trial. He did not make a motion to shorten time to beat the timing of the dismissal hearing. Instead, on August 15, *Knight prepare and filed a rubber stamped motion to set a new trial schedule* that

Knight noted up for August 31, 2012 – two weeks *after* the August 17 dismissal hearing.

Even if a rubber stamped filing by a non-attorney for a *pro se* litigant was appropriate, “case noted for trial” does not mean the plaintiff need only commence the noting process before the dismissal hearing, or start thinking about the process. CR 41(b)(1) means what it says — the case is actually noted for trial on a date certain that is on the calendar. A case is not noted for trial simply by the plaintiff’s ineffectual pleading seeking to make it so, but by the clerk’s action actually noting the matter for trial by placing it on the trial calendar. *Simpson v. Glacier Land Co.*, 63 Wn.2d 748, 750, 388 P.2d 947 (1964) (predecessor rule).

The present version of CR 41(b)(1)...went into effect on July 1, 1967. The significant change from prior versions of the rule is the provision precluding dismissal *if the plaintiff manages to obtain a trial date* before a motion for dismissal can be heard.

Wallace v. Evans, 131 Wn.2d 572, 583, 934 P.2d 662 (1997) (Talmadge, J., dissenting) (italics added; citation omitted); *State ex rel. Woodworth & Cornell v. Superior Court for King County*, 9 Wn.2d 37, 41-42, 113 P.2d 527 (1941) (in case where “[t]he main question here presented concerns the meaning of the phrase “note the action for trial or hearing,” the action was noted for trial when a date certain was fixed by the court assigning case to trial calendar, namely, February 25, 1941).

Noting a case for trial requires minimal time and effort to file if a plaintiff is serious about pursuing his claims. All King offers here are

flimsy excuses, too little and too late to avoid the consequences of his delay, which requires dismissal under CR 41(b)(1). Parties must act early and diligently to accomplish the noting of the case for trial well before the dismissal hearing, or take expedited steps to accelerate the noting process in the face of a pending CR 41(b)(1) motion for dismissal.

“Case noted for trial” is a bright-line test that does not leave it up to the plaintiff’s subjective intention or control, which would only inject uncertainty into an otherwise fixed process. Even disregarding the defective rubberstamping of pleadings, under King’s theory, a plaintiff could merely file a motion to note the case for trial on the day before the dismissal hearing and note his motion for hearing two weeks later in order to defeat the defendants’ CR 41(b)(1) motion to dismiss. Then, before the hearing on his motion to note the case for trial, a vexatious plaintiff intent upon playing games and delaying further, could strike his motion, which in turn would force the defendant to re-file his motion to dismiss, at which point the plaintiff could file yet another motion to note the case for trial to defeat dismissal, and the same endless circle of procedural stalemate would repeat itself *ad infinitum*, adding further delay and cost.

With the pattern of rule violations and sanctions against King in this case, such gamesmanship is likely. If left in the King’s hands, the process could be manipulated for delay, vexation or to increase costs. Even if the delay is unintentional and not in bad faith, under King’s theory, clumsy, incorrect, erroneous efforts to note the case for trial that

require continuous correction and redoing could defeat a CR 41(b)(1) motion to dismiss, and thus defeat its purpose. *See State ex rel. Woodworth & Cornell v. Superior Court*, 9 Wn.2d 37, 42, 113 P.2d 527 (1941) (under predecessor rule “good faith and honest intentions...are immaterial to the result required by rule”).

3. *Pro Se* King’s Rubber-Stamped Motion to Note the Case for Trial Prepared and Filed by Non-Attorney Knight was Void and Ineffective to Prevent a CR 41(b)(1) Dismissal.

To be valid and effective, motions and other pleadings must be signed by an unrepresented party pursuant to CR 7(3)(b) and CR 11(a). *C.f., Harris v. Ski Park Farms, Inc.*, 120 Wn.2d 727, 735, 740 n.49, 744, 844 P.2d 1006 (1993) (court may not consider or give credence to an unsigned declaration or affidavit). When improperly signed pleadings are “stricken” in the context of CR 11, it means the pleading has the same legal effect as though no pleading whatsoever was filed. *See Lloyd Enters., Inc. v. Longview Plumbing & Heating Co.*, 91 Wn. App. 697, 702, 958 P.2d 1035 (1998); *cf., Carroll Constr. Co. v. Smith*, 37 Wn.2d 322, 324, 223 P.2d 606 (1950) (order striking prior orders “vacated in their entirety and rendered null and void and of no effect”); *Statewide Envtl. Servs. v. Fifth Third Bank*, 352 S.W.3d 927, 932, (Ky. App. 2011) (“Striking a deficient pleading has the same legal effect as though no pleading whatsoever was filed.”); *Benjamin-Jenkins v. Lawson*, 781 So. 2d 893, 895 (La. App. 2001) (unsigned interrogatories were null and void and

invalid); *Camacho v. Mancuso*, 53 F.3d 48, 53 (4th Cir. 1995) (voluntary nonsuit motion to dismiss lacking necessary signatures of both parties ineffective and could not be acted upon by court “because there was no motion to dismiss pending before the district court”).

For a party not represented by an attorney, CR 11(a) requires that party “shall sign and date” every pleading and motion. This is an important requirement because it is the basis for promoting accountability and integrity in the judicial process.

The signature requirement is not a hollow, meaningless technicality. It constitutes a certificate that the filing is not for any improper purpose and is well grounded in fact and primarily has the objective of the elimination from the court system of groundless actions. Requiring a signature also makes certain the party actually assents to the filing of the action on his or her behalf.

Blanton v. State, 159 S.W.3d 870, 871 (Mo. App. 2005) (pro se party’s failure to sign motion rendered it a nullity), *quoting*, *Tooley v. State*, 20 S.W.3d 519, 520 (Mo. 2000).

King’s reliance on *Griffith v. City of Bellevue*, 130 Wn.2d 189, 194, 922 P.2d 83 (1996) is misplaced. In addition to not being a CR 41(b)(1) case, *Griffith* involved a timely application for a writ of certiorari where a party filing the writ inadvertently forgot to sign the verification. Unlike *Griffith*, however, non-attorney Knight (who is not a party) signed and rubber stamped the August 15 motion and failed to disclose this improper practice before it was called out at the August 17 dismissal hearing. Without a pleading having been filed by *pro se* King (which is

not disputed here), dismissal under CR 41(b)(1) was mandatory. King, as a former attorney, knew that rubber stamping was inappropriate as did Knight – whose previous rubber stamping actions led to Scannell (King’s good friend) being disciplined by the bar association.

Parties in litigation are capable of fraudulent schemes to promote their self-interest. *Cf.*, *Mitchell v. Wash. State Inst. of Pub. Policy*, 153 Wn. App. 803, 816-818, 225 P.3d 280 (2009) (affirming order vacating cost bill judgment and awarding CR 11 sanctions based on fraudulent invoice created by prisoner under pretext of nonexistent “lawyer,” a forgery used to inflate prisoner’s cost bill); *In re Ricardo A. Guarnero*, 152 Wn.2d 51, 93 P.3d 166 (2004) (attorney disbarred for forging client signature on declaration despite client’s prior signature [signature page lost during filing] and approval of contents).

Following *Griffith*, the court in *Biomed Comm, Inc. v. Dept. of Health*, 146 Wn. App. 929, 193 P.3d 1093 (2008) ruled a petition for review signed by *the corporate party’s operating officer* was timely even though it was not signed by corporate counsel. *Biomed* is another CR 11 case, not a CR 41(b)(1). Nevertheless, in both *Biomed* and *Griffith*, the person conducting the filing was part of the party of interest. Here, non-attorney Knight has no interest in the litigation. In addition, as stated previously, CR 41(b)(1) mandates dismissal when a case has not been noted for trial at the time of the dismissal hearing, as was the case here.

Unlike *Biomed*, King could not legally be represented by non-lawyer Knight. To practice law, one must be an attorney. RCW 2.48.170. By appearing for King, Knight was “represent[ing] another person in court,” which is “the practice of law.” GR 24(a)(3).

By preparing, signing and filing pleadings for King, including the motion to set a trial schedule, Knight was engaged in the unauthorized practice of law.⁴ See RCW 2.48.180 (unauthorized practice of law is gross misdemeanor); GR 24(a)(2) (definition of the practice of law includes “selection, drafting or completion of legal documents...which affect the legal rights of an entity or person(s)”); *In re Disciplinary Proceeding Against Shepard*, 169 Wn.2d 697, 710, 239 P.3d 1066 (2010) (attorney suspended two years for assisting non-lawyer business associate in unauthorized practice of law); *Wash. State Bar Assn. v. Great W. Union Fed. Sav. & Loan Assn.*, 91 Wn.2d 48, 56-57, 586 P.2d 870 (1978) (“pro se’ exceptions are quite limited and apply only if the layperson is acting solely on his own behalf”); see *Advocates for Responsible Development v. The Western Washington Growth Management Hearings Board*, 155 Wn. App. 479, 483, 230 P.3d 608 (2010) (citing *Great W. Union*).

⁴ Knight was sloppy about rubber-stamping King’s signature on pleadings where it didn’t belong. Filed with the superior court on August 15, 2011, King’s proposed order denying Rice’s motion to dismiss for want of prosecution had King’s stamped signature on the line reserved for the trial court to sign at the August 17 hearing. This erroneously signed proposed order was delivered with King’s other rubber-stamped pleadings (CP 17, 19 and 26). See Respondents’ Motion to Supplement the Record, Appendix A.

Since the motion signed by non-attorney Knight was a nullity, any attempt to cure the signature defect would not relate back to the original filing date. *Gonzales v. Wyatt*, 157 F.3d 1016, 1021-1022 (5th Cir. Tex. 1998) (where non-lawyer purports to file notice of appeal for another, no signing or ratification by the thus “represented” party after expiration of limitations period can be effective).⁵ The *Gonzales* Rule furthers the public policy of preventing non-lawyers from engaging in the unauthorized practice of law, and encouraging *pro se* individual parties to take responsibility for ensuring their pleadings are properly reviewed and signed before they are deemed effective filings.

The policy against encouraging litigation by non-lawyers was recently endorsed by this Court in *Dutch Village Mall v. Pelletti*, 162 Wn. App. 531, 537-38, 256 P.3d 1251 (2011). *Biomed* distinguished *Gonzales* largely on factual grounds. 146 Wn. App. at 938-940. *Gonzales* involved an individual plaintiff authorizing a non-attorney to file a pleading on his behalf, which was the situation here with non-attorney Knight preparing and rubber stamping pleadings and filing them. King’s rubber-stamped signature fiasco was the latest in a long line of rule violations, evasions and sanctionable conduct by King. Having been sanctioned before for

⁵ “The present CR 11 was modeled after and is substantially similar to the present Federal Rule of Civil Procedure 11 (Rule 11). We may thus look to federal decisions interpreting Rule 11 guidance in construing CR 11.” *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 218-19, 829 P.2d 1099 (1992).

violating CR 11, the Knight rubber-stamping scheme was a device to evade accountability for frivolous filings.

With non-attorney Knight signing pleadings for King, King could always claim ignorance, lack of authorization or mistake as a way to distance himself from frivolous pleadings. That is precisely the reason why CR 11 requires the original signature of the unrepresented party, not somebody else. *See Bldg. Indus. Ass'n of Wash. v. McCarthy*, 152 Wn. App. 720, 745, 218 P.3d 196 (2009) (“The purpose of CR 11 is to deter baseless filings and curb abuses of the judicial system.”).

Therefore, this case is more like *Gonzales* than *Biomed* or *Griffith*, neither of which involved a CR 41(b)(1) dismissal for want of prosecution, and analogous to *Advocates for Responsible Development*, *supra*, 155 Wn. App. at 484-85, since non-lawyer Knight could not represent King. The pleadings Knight rubber stamped were a nullity and no cured pleadings could relate back to cure them after the trial court signed the dismissal order on August 17, 2011. Since King failed to appear at the dismissal hearing, and dismissal under CR 41(b)(1) was mandatory, any corrected signature would not relate back to filing of King’s invalid rubber-stamped motion to note the case for trial. In other words, contrary to King’s claim, the trial court appropriately dismissed under CR 41(b)(1).

4. Contrary to Appellant King's claim, in Washington, Amanuensis is Not an Accepted Practice for a *Pro Se* Party to Sign Pleadings.

King argued below that the trial court must accept his rubber-stamped signature solely for King's convenience under an arcane legal theory called *amanuensis*. Defined as "one who writes on behalf of another that which he dictates," *Black's Law Dictionary*, p. 104 (4th ed. 1951), *amanuensis* permits rubber-stamp endorsements on the back of bank checks but, as confirmed by the complete absence of any cases on point cited in King's pleadings or brief, it has not been applied by any court to allow rubber-stamped signatures on pleadings. CP 30-31, CP 66-68, CP 32-34, CP 35-38; Brief of Appellant at 27-32.

The doctrine of *amanuensis* in Washington has a very limited application to court reporters. See *State ex rel. Brown v. Blew*, 20 Wn.2d 47, 49, 145 P.2d 554 (1944) (deciding issue of whether court reporter was a public officer, noting statute provided court reporter "shall act as *amanuensis* to the court"); *State ex rel. Lindsey v. Derbyshire*, 79 Wash. 227, 230, 140 P. 540 (1914) (same); *Park v. Mighell*, 3 Wash. 737, 741, 29 P. 556 (1892) (rejecting *amanuensis* theory, referee could not charge more than code allowed by employing stenographer "to act as his *amanuensis*" to type up testimony). The doctrine has never been applied to allow non-attorneys to sign pleadings for unrepresented parties. King points to no supporting authority on point.

When Roger Knight admitted to the trial court during the dismissal hearing on August 17, 2011, that he had prepared the pleadings and rubber-stamped King's signature on them, later admitted by King, this was tantamount to a fraud on the trial court since it was previously undisclosed and unauthorized. The trial court justifiably treated King's pleadings as nullities. *Cf., In re Discipline of Guarnero*, 152 Wn.2d 51, 56-57, 93 P.3d 166 (2004) (lawyer disbarred for simulated forgery tracing client's signature on declaration filed with court).

Insisting on his own unauthorized rubber-stamping method, King ignored superior court rules authorizing alternative methods for signing of pleadings. These included faxing the signature page, a method he used for his motion for reconsideration (CP 75-76), or mailing the pleading that included his original signature. See GR 3.1 (service and filing by an inmate confined in an institution); GR 17 (facsimile transmission).

Taking a known risk, King disregarded these authorized methods before the order of dismissal was entered. King could have moved in state court for a stay of litigation pending his incarceration soon after the case was remanded to superior court. He never did so. Under any scenario, King's intransigence in delaying for two years after mandate to make any effort to note the case for trial, and then refusing to follow the rules with regard to signing his pleadings, cannot be blamed on Rice's supplementary proceedings to collect on court awarded sanctions.

King claims Knight had authority to sign King's name to pleadings by rubber-stamping by virtue of a General Power of Attorney. A third-party agent cannot sign a pleading for an unrepresented party. *Black v. Ameritel Inns, Inc.*, 139 Idaho 511, 81 P.3d 416 (Id. 2003) (under analogous CR 11 rule, and properly signed amended pleading could not relate back as a cure to prior signing defect to toll statute of limitations for appeal). Noting the "issue of whether an agent can sign on behalf of a *pro se* plaintiff is one of first impression in Idaho," the Idaho Supreme Court ruled agents cannot sign. 81 P.3d at 418. Citing *Gonzales v. Wyatt, supra*, the *Black* court held that a pleading signed by a "non-lawyer" (a Washington attorney unlicensed in Idaho) was ineffective because Rule 11 does not allow an agent to sign for an unrepresented plaintiff. *Id.* at 419. The *Black* court further held that unlike an inadvertent omitted signature by a party filing a pleading, the lack of authority for an agent to sign pleadings on behalf of an unrepresented party places the party and signing agent on notice of the defect. *Id.* at 420. Like *Black*, both King and Knight were on notice of their own defects

In addition, the alleged power of attorney here (CP 34) does not explicitly authorize Knight to sign pleadings for King or otherwise represent King in litigation. *Cf., Scott v. Goldman*, 82 Wn. App. 1, 5-8, 917 P.2d 131 (1996) (agent had no authority to accept service of process because powers of attorney are strictly construed, instrument held to grant only those powers specified, and agent may neither go beyond nor deviate

from explicit provisions); *cf.*, *In re JJJ, Inc.*, 988 F.2d 1112, 1113-1114 (11th Cir. 1993) (power of attorney included explicit provision authorizing agent, acting as attorney-in-fact, to sign principal's name by facsimile "using a rubber stamp of her signature"). Moreover, even if the power of attorney did provide for signing authority, King could not avoid the "original signature" requirement of CR 11(a) by claiming it is his own business how he signs pleadings:

The Court now has received a letter from the plaintiff -- bearing another rubber stamped signature -- in which she insists that "the manner in which I affix my original signature to a document . . . is [her] own decision to make." She asks that I rescind my order to docket her papers and direct the Clerk to accept them in the future.

Plaintiff is quite right in asserting that the manner in which she affixes her signature to documents is her own business -- as long as the document in question is not offered for filing in this Court. At that point, it is the Court's business.

Jenkins v. Sladkus, 226 F.R.D. 206 (E.D.N.Y. 2005); *see, also, Downs v. Westphal*, 78 F.3d 1252, 1257 (7th Cir. 1996) (*pro se* litigants do not have unbridled license to choose which of the court's rules and orders they will follow, and which they will willfully disregard).

The signature requirement of CR 11(a) and CR 7(b)(3) is based on a policy to promote accountability in pleadings filed with the court. Since King had previously been sanctioned for violating CR 11 (CP 202-204), the rubber-stamping ruse with Knight signing pleadings with King's signature stamp could be used to avoid accountability. If called to account for false assertions or frivolous legal arguments, King could always claim

he didn't know what Knight had done or that he didn't authorize Knight to sign the offending document. Similarly, Knight could claim he is neither an attorney nor a party, only King's "signing agent," and he misunderstood his principal's directives.

King quibbles with CR 11(a)'s signature requirement. He argues the rule does not specifically exclude a rubber-stamped replica of his signature. King misses the point. It is not the *mode* of signature that counts. Rather, it is signer's confirmation that he is affixing his own name to the document with the intent to authenticate it as his own. *Seattle v. Sage*, 11 Wn. App. 481, 484, 523 P.2d 942 (1974) (officer's signature on citation could be typewritten so long as officer himself typed his own name with intent to affix signature). What is important is *who* signs, not the *how*. Knight rubber-stamping King's signature to a pleading is not King's signature since King is not signing his own name.

There is nothing in the record that shows King reasonably relied on any precedent or case authority to justify his belief that having Knight rubber-stamp King's signature on pleadings was a valid and acceptable practice in King County courts or any other court. Federal and state courts uniformly reject signature by rubber-stamping. *See Zolin v. Caruth*, 2009 U.S. Dist. LEXIS 125965, *31-32 (N.D. Fla. Aug. 12, 2009) (document bearing stamped facsimile of signature is not "signed" within meaning of Federal Rule of Civil Procedure 11(a); any pleading tendered for filing not bearing plaintiff's original signature would be returned without filing); *In*

re Guirard, 11 So. 3d 1017, 1027-1030 (La. 2009) (lawyer disbarred for failure to supervise non-attorney staff who signed pleadings and correspondence with lawyer's signature or used a rubber stamp to do so, even if he was present in the office); *Jenkins v. Sladkus*, 226 F.R.D. 206, 207 (E.D.N.Y. 2005) (rubber-stamped motion by pro se plaintiff is not “signed” within meaning of Rule 11(a); stricken and returned for not being an original signature); *Bailey v. Toyota Motor Corp.*, 2003 U.S. Dist. LEXIS 6456 (S.D. Ind. Apr. 17, 2003) (motion with rubber-stamped attorney’s signature violates court rules because it raises questions whether attorney reviewed document); *In re Hohn*, 171 Ariz. 539, 544, 832 P.2d 192 (Ariz. 1992) (lawyer’s secretary use of rubber-stamp signature and stamping them “dictated but not read” if applied to pleadings would violate Rule 11); *Sandymark Realty Corp. v. Creswell*, 324 N.Y.S.2d 504, 506 (N.Y. Misc. 1971) (petition signed by attorney having employees use rubber stamp to affix his signature held void as verification because not a holographic subscription).

Rubber-stamping may be acceptable for endorsements of commercial paper such as checks or promissory notes, *but it has never been accepted for the signing of pleadings*. King’s failure to cite supporting authority on point is fatal to his appeal. *E.g.*, *State v. Sublett*, 156 Wn. App. 160, 186, 231 P.3d 231 (2010) (without legal argument or citations to authority that support it, assignment of error is waived).

The only case King cites to support his agency theory for the signing of *pro se* pleadings is *Jones v. Halvorson-Berg*, 69 Wn. App. 117 (1993), a case that does not apply here. In *Jones* the issue was whether, as between an associate attorney in a law firm signing *a legal memorandum* “on behalf of [the partner]” and the partner himself whose name was the only one typed on the memo and who personally signed the motion to strike that went with the memo, which one was liable to pay sanctions. *Jones* was not about rubbing-stamping a signature or the validity of the underlying motion. In *Jones*, both the associate and the partner were lawyers. *Jones* did not authorize unrepresented parties to leave the signing of pleadings to non-attorneys for convenience sake.

Unlike *Jones*, this case is not about *sanctions* for violation of CR 11 by asserting frivolous arguments in a legal memorandum. It is about dismissal under CR 41(b)(1). Neither King nor Knight was an attorney. Unlike the associate in *Jones*, Knight did not disclose in the motion that he was signing for King. Knight 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. The issue here, unlike *Jones*, is the effectiveness of the underlying motion to note the case for trial signed by non-attorney Knight for unrepresented King, and whether it could prevent a mandatory CR 41(b)(1) dismissal.

In addition, King’s erroneous proposed order (Appendix A to Rice Motion to Supplement the Record), underscores the fatal defect in King’s

arguments in favor of having Knight rubber-stamp King's signature on pleadings submitted to the court. Purporting to act for King, but apparently acting alone and unsupervised, Knight carelessly rubber-stamped King's signature *on the signature line reserved for the trial court to sign the order*. King and Knight then submitted the improperly signed order to the judge on August 15, 2011.

In this appeal King argues "rubberstamped signatures are not prohibited by CR 11" (Appel. Brief at 33) and invites this Court to adopt a new and insidious rule validating rubberstamped signatures by non-attorney agents as a practical convenience to promote efficiency (*id.* at 36). Contrary to King and Knight's assertion of good faith belief in the validity of amanuensis in Washington, both knew or should have known the practice is not acceptable. The Scannell disciplinary matter, Appendix B to Rice's Motion to Supplement the Record, shows King knew or should have known Knight's rubber-stamping of his signature on pleadings is not acceptable practice in the State of Washington.

The Scannell-Knight disciplinary information (Appendix B to Rice's Motion to Supplement the Record) is also relevant to evaluate King's argument on appeal of good faith mistake about CR 11 signing requirements. The Scannell bar disciplinary matter rebuts King's claim in this appeal that he had a genuine belief in the effectiveness of having Knight use a rubber-stamp to insert King's signature to pleadings in the Rice case. This includes King's Motion to Set a New Trial Schedule on

August 15, 2011 (CP 18), which King argues was effective to note the case for trial and prevent dismissal under CR 41(b)(1). King Brief at 24-27, 29-36. Managing its courtroom calendar and enforcing court rules to preserve order, the trial court did not consider rubber-stamped pleadings effective since Knight, a non-lawyer, drafted and filed the pleadings without King's original signature.⁶ Without justification King chose not appear (either in person or by telephone) at the August 17, 2011 dismissal hearing in Rice to request a continuance or promptly provide his missing signature before she dismissed the case. This is standard practice for King who has willfully disregarded/ignored several court ordered supplemental proceedings in this case to collect upon the sanctions judgment.

Scannell, Knight and King have associated in legal matters since at least 2005. *See In re Disciplinary Proceeding Against King*, 168 Wn.2d 888, 232 P.3d 1095 (2010); *In re Disciplinary Proceeding Against Scannell*, 169 Wn.2d 723, 239 P.3d 332 (2010) (in disbarment of Scannell, court noted King and Scannell defended each other against Bar Association investigations). The close personal and business ties between Knight, King and Scannell are amply demonstrated in the record of this

⁶ Knight and King were aware that attorney John Scannell had been disciplined by the Bar Association for employing Knight in 2002 when Knight used Scannell's signature on pleadings using a rubber-stamp. Appndx. B to Rice Motion to Suppl. the Record, Hearing Officer Silva's Jan. 30, 2005 Finding of Fact ("FF") 18, at p. 5. Hearing Officer Silva concluded that Scannell's failure to supervise resulted in Knight's unauthorized use of the Scannell signature stamp on pleadings – "a criminal act" according to Justice Sanders – and an unauthorized practice of law by Knight. *Id.*, Conclusion of Law at p. 12, ll. 1-2; Sanders Dissent in Supreme Court 200, 290-1 filed November 10, 2005.

case. “John Scannell’s office is directly adjacent to Plaintiff Paul King’s office. John Scannell and Plaintiff Paul King are long-time friends.” CP 200-201, ¶ 19 (Findings of Fact & Conclusions of Law in Support of Sanctions filed July 24, 2007). Attorney John Scannell filed several pleadings as King’s attorney and in support of plaintiff Paul King, sometimes under Paul King’s address and sometimes under Scannell’s own law business entity known as Actionlaw.net. CP 135 (Decl. of John Scannell filed Dec. 15, 2006); CP 122 (Suppl. Decl. of John Scannell filed June 25, 2007); CP 233 (Decl. of John Scannell filed May 22, 2009 under business entity “Actionlaw.net”); CP 135 (Decl. of John Scannell filed June 12, 2007); CP 148 (Decl. of John Scannell filed June 21, 2007).

King also filed pleadings in this case under the name of Scannell’s law business, Actionlaw.net. CP 263 (Decl. of Paul H. King in Support of motion to quash warrant filed May 13, 2009, apparently signed by rubber-stamping). Scannell and King filed joint motions under the Actionlaw.net moniker. *See* CP 241 (Dec. 15, 2006 Motion to Quash); CP 244 (Plaintiff’s Motion for Relief from Judgment filed Aug. 25, 2008, signed by John Scannell as “attorney for Plaintiff” under Action.law.net moniker); CP 251, CP 262 (Motion to Quash Warrant filed May 22, 2009 and signed by John Scannell as “counsel for Plaintiff” under Actionlaw.net moniker); CP 250 (Scannell notice of special appearance for King filed May 20, 2009).

5. The Remand and Appellant's King's Failure to Pay the Trial Court Sanctions Does Not Excuse Appellant King's Failure to Prosecute the Case.

Before the trial court, King argued the case was already noted for trial in 2006 before it was dismissed on summary judgment, appealed and vacated in *King I*. CP 20. But, *BSA II* says the July 22, 2009 mandate in *King I* reset the case and created a new duty to note the case for trial again. See *BSA II*, 274 P.3d at 1028 (“[Since] an issue of law or fact is joined when, among other circumstances, a case is remanded from an appeal...CR 41(b)(1) applies to cases on remand.”).

King's dismissed Chapter 13 bankruptcy in 2010 did not extend or toll the 1 year period of CR 41(b)(1). King's *voluntary dismissal* of his bankruptcy (Appdx. C and D to Rice motion to supplement) had the effect of eliminating whatever bankruptcy protections King might have had if his bankruptcy was not dismissed. See *In re Nash*, 765 F.2d 1410, 1413 (9th Cir. 1985) (voluntary dismissal “effectively vacated” Chapter 13); *United States v. Gilbert*, 136 F.3d 1451, 1455 (11th Cir. 1998) (voluntary dismissal of bankruptcy has same effect as denial of discharge); *In re Neiman*, 257 B.R. 105, 110 (Bankr. S.D. Fla. 2001) (debtor forfeits automatic stay protection by voluntary dismissal).

Voluntary dismissal of his Chapter 13 retroactively rendered King's bankruptcy filing a nullity, which meant the automatic stay never came into effect. See *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1095 (9th Cir. 2010) (order vacated is “void *ab initio*); *Casse v. Key*

Bank Nat'l Ass'n (In re Casse), 198 F.3d 327, 342 (2d Cir. 1999) (Chapter 13 case that is void *ab initio* “was a nullity and consequently, the automatic stay never actually came into effect”); *Rushton Mining Co. v. Morton*, 520 F.2d 716, 719 (3d Cir. 1975) (ordinary definition of “vacate” is to render matter void *ab initio*).

Not only was King not “discharged” (Appel. Brief at 4), not only did he fail to complete any “repayment plan” (*id.*), there was no bankruptcy stay that prevented King from noting the case for trial (*id.* at 9 - 11), or that stopped the “one year clock” for purposes of CR 41(b)(1) (*id.* at 43). Since voluntary dismissal returned the parties to the same position *as if no bankruptcy case had been filed at all*, King cannot argue Rice violated the stay, or the stay excused his failure to prosecute the Rice case, or his months in bankruptcy are not counted towards the 1 year of neglect to note the action for trial under CR 41(b)(1).

Contrary to King’s unsubstantiated claim, even if King’s bankruptcy was not dismissed, the bankruptcy did not prevent King from noting the Rice case for trial or arbitration. *Polello*, 68 Wn. App. at 813-14 (automatic stay in bankruptcy does not apply to stay tort actions initiated by debtor as plaintiff; case remains subject to dismissal for want of prosecution under CR 41(b)(1) if the case is not noted for trial within one year); *Brunetti v. Reed*, 70 Wn. App. 180, 852 P.2d 1099 (1993) (debtors’ bankruptcy filing did not prevent debtors from continuing to defend state court personal injury case and unilaterally filing confirmation

of joinder of parties, claims and defenses or otherwise prosecute case toward trial and appear at status conference where plaintiff-creditors' claims were dismissed for noncompliance).

King argues Rice's prosecution of supplemental proceedings⁷ in 2010 while he was in a Chapter 13 bankruptcy for part of the year caused his delay in noting the case for trial. In certain limited circumstances, CR 41(b)(1) does provide the plaintiff with an excuse for failing to note the case for trial within a year where the "failure to bring the same on for trial or hearing was caused by the party who makes the motion to dismiss." However, King cites no legal authority to support his argument that Rice's collection activity on a valid judgment prevented him from noting the case for trial. Rice's collection activity is not the kind of conduct courts have ruled excuse the plaintiff's failure to prosecute.

Under CR 41(b)(1) the defendant must "not do, or cause to be done, anything *to prevent the plaintiff from bringing the action on for trial.*" *State ex rel. Dawson v. Superior Court for Kittitas County*, 16 Wn.2d 300, 304, 133 P.2d 285 (1943) (italics added) (action of relator in

⁷ The 2010 supplemental proceedings involving King were merely ancillary discovery to a pending superior court case. See *Rainier Nat'l Bank v. McCracken*, 26 Wn. App. 498, 511, 615 P.2d 469 (1980) (purpose of supplemental proceedings is to make judgment debtor answer concerning extent and whereabouts of his or her property); *Wash. Trust Co. v. Blalock*, 155 Wash. 510, 513-514, 285 P. 449 (1930) (disclosure of nature and extent of judgment debtor's interest in estate in process of administration is proper purpose of supplemental proceedings); *Field v. Greiner*, 11 Wash. 8, 10, 39 P. 259 (1895) (supplementary proceedings "are mainly for the purpose of discovery" and do not act to create a specific lien on particular property).

causing court to enter order stay until plaintiff complied with court order directing payment of temporary alimony and suit money precludes her from moving to dismiss for want of prosecution); *Day v. State*, 68 Wn.2d 364, 367, 413 P.2d 1 (1966) (period of time prior to rejection of settlement offer does not count towards one year period to note case for trial under CR 41(b)(1)); *State ex rel. Seattle v. Superior Court for King County*, 6 Wn.2d 540, 543, 108 P.2d 342 (1940) (defendant stipulated that action need not be brought to trial within one year period).

The trial court did not abuse its discretion on the record before it by ruling that Rice did not cause King's failure to note the case for trial. King has nobody to blame but himself. CR 41(b)(1) requires that an action must be noted for trial within one year after it is at issue. The rule provides for no extensions of time because of depositions, interrogatories, demands for admissions, or other normal pretrial procedures. *Mollett v. United Benefit Life Ins. Co.*, 72 Wn.2d 618, 619, 434 P.2d 601 (1967) (predecessor rule).

King's extraordinary delay in moving to note the Rice case for trial is in stark contrast to the trial court's time standards for completing trials. According to King County Superior Court's time standards, "[n]inety percent of all civil cases should be settled, tried, or otherwise concluded

within 12 months of the date of case filing; 98 percent within 18 months of filing; and the remainder within 24 months of filing.”⁸

Here, despite a mandate that issued July 22, 2009, for over 24 months King never got around to initiating action to note the case for trial. Moreover, Rice had no duty under CR 41(b)(1) to note the case for trial on behalf of King. *See BSA II*, 274 P.3d at 1029 & n. 3 (defendant concerned with delay and bringing case to conclusion has no obligation to “forward the prosecution of the case,” but may bring a CR 41(b)(1) motion to dismiss); *State ex rel. Lyle v. Superior Court*, 3 Wn.2d 702, 706, 102 P.2d 246 (1940) (“the failure of the defendant to take any steps to bring the cause to trial or hearing is not a ground for denial of the defendant’s motion to dismiss the cause for want of prosecution, since the obligation in that respect rests upon plaintiff rather than the defendant.”)

6. CR 41(b)(1) Does Not Require the Trial Court to Provide Additional Time for a Non-Complying Party to Cure. Well-Established Law Provides that Dismissal Without Prejudice is Mandatory When CR 41(b)(1) Applies.

King argues the trial court erred in entering dismissal under CR 41(b)(1) because she did not allow him an opportunity to cure as provided in CR 11(a). App. Brief at 28. This argument fails for two reasons. First, dismissal was mandatory at the August 17 hearing because the case was not noted for trial before the CR 41(b)(1) hearing on Rice’s motion. *See*

⁸ *See* Official Comment 1(a) to KCLR 4 at http://www.kingcounty.gov/courts/Clerk/Rules/Individuallinks/LCR_4.aspx (viewed July 30, 2012).

discussion above in Section B. Cases construing CR 41(b)(1) do not allow for the plaintiff to have additional time or a continuance to get the case noted for trial if the plaintiff has not accomplished that end already by the time of the dismissal hearing occurs. *Id.*; *BSA II*, 274 P.3d at 1027; *Thorp Meats*, 110 Wn.2d at 168; *Polello*, 68 Wn. App. at 814-17.

In addition, as in *Gonzales* and *Advocates*, *supra*, the trial court had no reason to allow King additional time following the August 17 dismissal hearing to correct the signature defect under CR 11(a). King did not even appear at the hearing after being properly served. The unsigned rubber stamped motion to set a trial schedule signed by non-lawyer Knight was null and void at its inception. It could not be cured by replacing Knight's signature with King's original signature after the order of dismissal was entered on August 17, as there was no relation back.

King also forfeited his opportunity to make corrections before the trial court entered the order by not appearing at the August 17 dismissal hearing. This case is analogous to *In re Recall Charges Against Lindquist*, 172 Wn.2d 120, 258 P.3d 9 (2011). In *Lindquist*, two *pro se* petitioners filed a recall petition against a county prosecuting attorney. On the day before the scheduled hearing on the merits, the petitioners filed an affidavit of prejudice to have the case heard by a different judge. However, the affidavit was not accompanied by a signed motion stating the relief sought as required by RCW 4.12.050, CR 7, and CR 11. Lindquist challenged the sufficiency of the affidavit of prejudice and

requested oral argument at the next day's hearing. The court granted Lindquist's request and notified the parties he wanted to hear argument. On their own, the petitioners decided not to attend the hearing. With petitioners failing to appear, the trial court judge dismissed the affidavit of prejudice for lacking a signed motion, and also dismissed the recall petition. The Washington Supreme Court affirmed:

Judge Cayce dismissed the affidavit of prejudice because it was not accompanied by a signed motion. Petitioners argue that because they acted pro se, the affidavit of prejudice should not be dismissed for what they consider a technicality; **however, this defect could have been remedied if petitioners had chosen to attend the scheduled hearing.** We conclude that the affidavit of prejudice was properly dismissed because it was not accompanied by a signed motion as required by RCW 4.12.050, CR 7, and CR 11.

172 Wn.2d at 129 (bold added).

As in *Lindquist*, Knight tried ineffectively to prevent Rice's motion to dismiss by preparing and rubber stamping a motion to note King's case for trial two days before the August 17, 2011, dismissal hearing. Same as in *Lindquist*, King chose not to attend the scheduled hearing. Same as in *Lindquist*, the signature defect could have been remedied if King had chosen to attend the August 17 hearing. Same as in *Lindquist*, King argues his untimely unsigned motion is merely "a technicality" and his case should not have been dismissed. However, the Supreme Court's decision in *Lindquist* leaves no room for King to argue failure to provide an opportunity for cure; it is not a mere technicality.

A party cannot stick his head in the sand and remain silent during trial or hearing and then object on appeal. *Leen v. Demopolis*, 62 Wn. App. 473, 479, 815 P.2d 269 (1991) (party's failure to appear at hearing or make timely objection below waived right to argue issue on appeal). As with his past pattern of conduct (the several times King failed to appear for supplemental proceedings in 2010 after being served with an order to appear), King did not show up at the August 17 dismissal hearing to object or inform the judge of his position, and then he complains later by appealing the judge's dismissal order. By remaining silent and not appearing at the August 17 hearing, King failed to preserve the error he alleges on appeal.

Even if the dismissal was not under CR 41(b)(1), CR 11 should not be read to promote gamesmanship by unrepresented parties or deceptive and misleading litigation tactics intended to evade CR 11's accountability standards. When an unrepresented party has a chronic problem with telling the truth, and employs schemes and artifices to evade responsibility for his actions in the case, the trial court is not required to provide additional opportunities for further abuses and delays.

King made no effort to re-sign and re-file any note for trial. To date, there are no valid pleadings that King has filed with the trial court to note the case for trial. King did not even appear at the August 17, 2011, hearing to provide information to the judge, answer her questions or request relief to avoid having his case dismissed. Perhaps Knight on

behalf of King declined to resubmit a properly signed motion, or informed the court King would not cure because she would have to accept King's rubber-stamped signature under King's *amanuensis* theory.

Even if King's motion to note the case for trial is deemed "unsigned" to invoke the cure clause in CR 11(a), which states the unsigned pleading "shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant," the record is inadequate to review King's claim of error. We know Knight was informed of the omission at the August 17 hearing by virtue of the language of the trial court's dismissal order. We don't know whether or why Knight did not offer to contact King by telephone or email and obtain King's faxed or emailed signature to the motion to note the case for trial. Or, why Knight did not request a continuance due to inadvertence or mistake about the signature requirement.

Appellant King has the burden of providing a sufficient record to review the issues he raises on appeal. *See* RAP 9.2(a) & (b); *e.g.*, *In re Marriage of Haugh*, 58 Wn. App. 1, 6, 790 P.2d 1266 (1990) ("The appellant has the burden of perfecting the record so that the court has before it all the evidence relevant to the issue."). Without a verbatim report of proceedings for the August 17 dismissal hearings, it is impossible for this Court to ascertain what happened below. *See Bulzomi v. Dep't of Labor & Indus.*, 72 Wn. App. 522, 525, 864 P.2d 996 (1994) (insufficient record on appeal precludes review); *Olmsted v. Mulder*, 72 Wn. App. 169,

183, 863 P.2d 1355 (1993) (failure to designate relevant portions of the record precludes review).

Since King has not arranged to have the August 17, 2011, dismissal hearing transcribed as the Report of Proceedings, we do not have a record of what was said or done at the hearing beyond the language of the dismissal order. To the extent the trial court made factual findings, the record on review is devoid of any testimony or statements made at the August 17 proceedings for his court to adequately review whether substantial evidence supports the judge's findings. Rice pointed out this deficiency in Respondents' Motion to Strike filed July 2, 2012 and reply brief filed July 26, 2012. However, King still made no effort to provide a verbatim transcript of the August 17 dismissal hearing.

The trial court's order states "The court finds that King has not noted this matter for trial per CR 41(b)(1), and therefore he has not "cured" any reason to avoid Involuntary Dismissal." She then states: "[T]he equities do not lie with [King]" because a warrant for contempt had issued "for failing to comply with supplemental proceedings." King does not assign error to these findings on appeal, and therefore they are verities here. *E.g., Norcon Builders, LLC v. GMP Homes VG, LLC*, 161 Wn. App. 474, 483, 254 P.3d 835 (2011) ("We treat unchallenged findings as verities on appeal.").

King claims he cured the signing defect after the dismissal hearing. "The next day, Mr. Knight filed and served these pleadings as per the local

rules.” App. Brief at 28; *id.* at 29 (“King submitted the documents signed by his own hand several days later and prior to the reconsideration on the matter.”). However, King fails to cite to the record to support these untrue and unprovable allegations. *See* RAP 10.3(a)(6); *Norcon Builders, LLC v. GMP Homes VG, LLC*, 161 Wn. App. 474, 486, 254 P.3d 835 (2011) (appeals court will not consider argument not supported by citation to the record). *Farmer v. Davis*, 161 Wn. App. 420, 432, 250 P.3d 138 (2011) (appellant’s brief must reference relevant parts of the record); *Mitchell v. Wash. State Inst. of Pub. Policy*, 153 Wn. App. 803, 818 n. 13, 225 P.3d 280 (2009) (“Mitchell does not cite to the record to support this contention. We do not review matters for which the record is inadequate.”).

There is no evidence in the files and records that King re-filed his motion to set a new trial schedule with his original signature. The only pleadings he properly signed and filed following the August 17, 2011 dismissal hearing was his motion for reconsideration (CP 66) and declaration in support thereof (CP 35). Thus, on this record King failed to even cure the void motion signed by non-attorney Knight.

C. The Trial Court Also Had the Inherent Authority to Dismiss Based Upon Appellant King’s Known and On-Going Abuses of the Judicial System.

Even if King’s motion rubber-stamped by non-attorney Knight was effective to note the case for trial, CR 41(b)(1) provided a basis for the trial court to use its inherent discretionary powers to dismiss for

“unacceptable litigation practices” other than mere inaction and of a type not described by CR 41(b)(1). *See BSA II*, 274 P.3d at 1027.

King engaged in *a pattern of egregious and dilatory behavior* that allowed the trial court to dismiss the case under its inherent authority to manage the courtroom. His rubber-stamped motion to note the case for trial, signed by Knight and filed in response to Rice’s motion to dismiss, was equivalent to an “unacceptable litigation practice” *tantamount to a fraud on the court*, failure to respond or to appear in court. *See BSA II*, 274 P.3d at 1028-1029. King misrepresented his stamped signature as his own when in fact it was a non-lawyer Knight stamping for him.

Despite CR 41(b)(1) restrictions, a superior court judge retains inherent discretionary power to dismiss a case for “unacceptable litigation practices other than mere nonaction” (i.e., “egregious sorts of dilatory behavior”) under its inherent authority to maintain its calendar and control its courtroom, and to manage its affairs so as to achieve the orderly and expeditious disposition of cases). Examples of dilatory conduct include:

- failure to appear for trial or other court proceeding
- failure to appear at a pretrial conference combined with other general dilatoriness
- failures to appear
- filing late briefs
- noncompliance with a court order or ruling

BSA II, 274 P.3d at 1028 (discussing cases).

Here, King was repeatedly warned by trial court judges to follow the rules of civil procedure, and pay particular attention to CR 11. In defiance of court warnings, CR 11's signing rule and standards of candor (RPC 3.3), King used Knight to rubber-stamp and file a motion to note the case for trial on the eve of dismissal, although he knew or should have known this was not an acceptable practice in Washington.

By failing to appear at the August 17, 2011 hearing on Rice's motion to dismiss, King was deliberately dilatory and contemptuous of the court's authority. King's rubber-stamped pleadings in response to Rice's motion to dismiss and refusing to appear at the August 17 dismissal hearing was a failure to respond or appear in court that empowered the trial court to dismiss King's case. *See BSA II*, 274 P.3d at 1028-1029 (inherent discretion to dismiss case for dilatory behavior under court's authority to maintain its calendar, control its courtroom, and manage its affairs so as to achieve the orderly and expeditious disposition of cases).

1. Appellant King's Defiant, Dilatory and Reckless Litigation Tactics Are Additional Grounds for Affirming the Trial Court.

The doctrine of invited error precludes a party from appealing an error it was responsible for setting up below. *Graham v. Graham*, 41 Wn.2d 845, 850-851, 252 P.2d 313 (1953). Here, King is responsible for creating the alleged errors below he complains of on appeal. He did not follow proper procedures to sign his own pro se pleadings or timely note the case for trial before the dismissal hearing. It was King's ill-advised

misjudgment to delegate his legal defense to a questionable non-attorney, Knight, without adequate supervision or concern for consequences. King failed without explanation to appear at the August 17 hearing either by telephone or in person, leaving his legal defense entirely up to nonattorney Knight. King did not take advantage of CR 7(b)(5) to appear at the hearing by telephone conference call.⁹ If King had been diligent and gone to the hearing he would have been in a position to offer to re-sign and re-file his motion to note the case for trial before the judge entered the dismissal order. Not taking any interest in his own case, King was a no-show at the August 17 hearing despite knowing that Rice was moving for dismissal.

There were abundant ways authorized by the rules for King to timely submit a note for trial without having Knight rubber-stamp a motion with King's signature. *See* GR 3.1 (authorizing service of pleadings by mail for inmates); GR 17(a)(1) (party may transmit pleadings directly to clerk via electronic facsimile transmission, including the signature page); GR 17(a)(2) party may fax original signed motion to another to file with court, along with required affidavit and attestations

⁹ Previously, the trial court had permitted King to appear at a summary judgment hearing by telephone "if Plaintiff's health prevents him from appearing in person," but warned that "If Plaintiff elects to participate by telephone, it shall be Plaintiff's responsibility to promptly telephone this court..." and "Plaintiff's failure to attend or participate by telephone shall be deemed a waiver of oral argument" and "the Defendant's motion shall proceed on the merits." CP 146-147 (Order Denying Plaintiff's Motion for Continuance filed June 14, 2007).

with original signature); GR 17 (a)(5) (judge's working copies may be sent via facsimile). King made no effort to use these procedures or request others so he could note the case for trial with a proper original signature to avoid the dismissal order. By not requesting accommodations at or before the August 17 dismissal hearing, King waived the issue of having more time to file a properly signed note for trial. *Cf., Avellaneda v. State*, 167 Wn. App. 474, 484-485, 273 P.3d 477 (2012) (failure to request continuance waives issue of being allowed additional time to conduct discovery before summary judgment). In addition, in 2009-2011 King could have requested a stay of the proceedings pending his incarceration if he deemed himself too burdened to handle court proceedings. *See King County Local Court Rule 7(b)*.

2. Appellant King Did Not Prosecute His Case Because of the Weakness of His Claims.

This dispute began in August 2003 when King agreed to sell real estate to Rice that had on it an old dilapidated shack with water damage, missing siding and no windows. CP 264 (Rice Decl.); CP 291-306 (sales documents); CP 374-375 (King Dep.). Built by high school kids for a shop project around 1980, no one had ever lived in the 14 x 40 foot shack. CP 388 (King Decl.); CP 308-309 & 506 (photos); CP 427 (dimensions); CP 374-376 (King Dep.). King did not reserve an ownership interest in the shack in the sale or escrow documents, and he did not remove the shack before or after closing. CP 265 - 266 (Rice Decl.); CP 319-320

(King Dep.). He knew Rice planned to demolish the shack and another structure to develop the property, and did not negotiate to take the building with him or try to sell it to Rice. CP 265-266 (Rice Decl.). After the sale closed in April 2004, King sent a man to Rice’s property to prepare the shack for removal without Rice’s permission. CP 267-269 (Rice Decl.) When Rice requested that King negotiate terms and conditions for removal of the shack, King never responded. *Id.*; CP 344 (King. Dep.)

But then King’s handpicked attorney, John Scannell,¹⁰ assisted by nonattorney Roger Knight, who served as escrow agent for the sale, sent a letter—signed by Knight “for John Scannell”—demanding that Rice either remove the shack at his expense or pay “rent in the amount of \$200 per day for as long as you keep the house.” CP 268; CP 342; CP 362 (King Dep.). Sensing he was being taken, Rice acted to protect himself. CP 268, ¶ 33. Two weeks after closing, Rice proceeded to clear the land as planned, demolishing the shack and the other structure in the process. CP 269, ¶38. Incredibly, after demolition, King sued Rice claiming the shack was a mobile “modular living unit” and demanded \$140,000 in damages as the value of the shack. CP 193, ¶ 7 (Findings of Fact filed June 24, 2007); CP 374-375 (King Dep.); *see, generally, King I.*

¹⁰ CP 354 (King Dep.). John Scannell was “an attorney and the escrow agent selected by Plaintiff Paul King to handle the closing.” CP 197, ¶ 4 ll. 18-19 (Findings of Fact filed July 24, 2007).

D. Respondents' Should Be Awarded Their Attorney's Fees and Costs on Appeal by Contract.

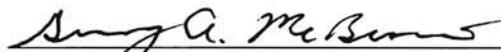
Attorney's fees and costs on appeal should be awarded under RAP 18.1 because both the Purchase and Sale Agreement and Seller's Escrow Instructions and Agreement have a provision for fees and costs to the prevailing party in the litigation. CP 302; CP 463.

V. CONCLUSION

For the foregoing reasons, this Court should affirm the trial court's order to dismiss without prejudice under CR 41(b)(1).

Dated this 30th day of August, 2012

LIVENGOOD, FITZGERALD
& ALSKOG, PLLC



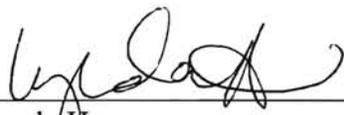
Gregory A. McBroom, WSBA No. 33133
Timothy S. McCredie, WSBA No. 12739
Attorneys for Respondents Steve and Barbara Rice
d/b/a Sunlight Construction

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the United States of America and the State of Washington that on the date specified below, I filed and served the foregoing as follows:

Clerk of the Court of Appeals, Division I 600 University St. One Union Square Seattle, WA 98101-1176 Phone: (206) 464-7750	Messenger Service <input type="checkbox"/> First Class U.S. Mail <input checked="" type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile <input type="checkbox"/>
Paul H. King P.O. Box 3444 Seattle, WA 98114	Messenger Service <input type="checkbox"/> First Class U.S. Mail <input checked="" type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile <input type="checkbox"/>

DATED: August 31, 2012, at Kirkland, Washington



Lynda Ha