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NO. 68663-1-I
1999

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

DONALD HAYDEN,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

BRIEF OF RESPONDENT

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I. INTRODUCTION

Mr. Donald Hayden was found not guilty by reason of insanity (NGRI) of Assault with a Deadly Weapon in the First Degree in 1977. Pursuant to RCW 10.77, the King County Superior Court has retained jurisdiction over him since then. Over the last thirty-plus years, the King County Superior Court has controlled when Mr. Hayden is allowed to be conditionally released from Western State Hospital, and when his conditional releases are revoked. He was most recently recommitted to Western State Hospital in 2002, and his most recent request to be conditionally released was denied in 2009.

In 2011, the Department of Social and Health Services (DSHS) filed a petition in King County Superior Court asking for authorization to allow Western State Hospital to involuntarily administer antipsychotic medications to Mr. Hayden on a temporary basis. The petition was based on DSHS's statutory obligation under RCW 10.77 to provide adequate care and treatment to NGRI patients in its custody. Over the course of four proceedings, the trial court first heard argument over whether or not the superior court had jurisdiction over the subject matter of the petition, and then took testimony over the merits of the petition itself. On January 5, 2012, the trial court found that it had jurisdiction under RCW 10.77 to decide the merits of the petition, and on April 19, 2012, it

granted the petition. The medication order was effective for only 180 days, and expired on October 16, 2012.

Due to an error on the part of DSHS, the petition was mistakenly filed under the cause number of another King County Superior Court criminal matter involving Mr. Hayden, and not the cause number of the case which led to his NGRI commitment. Although DSHS acknowledged at the initial hearing in January 2012 that a factual mistake had been made regarding the origination date of Mr. Hayden's NGRI commitment, the cause number under which the trial court's findings were issued was not corrected to reflect the cause number of the 1977 proceedings.

Mr. Hayden now argues that the trial court's orders should be dismissed due to a lack of jurisdiction. However, this appeal should be dismissed as moot because the orders being challenged expired over a year ago, and the issues presented are not of a continuing and substantial public interest. In the alternative, this Court should exercise its inherent power to correct clerical errors and conform the true action of the trial court to the record by amending the orders to reflect the cause number of the 1977 proceedings.

II. COUNTERSTATEMENT OF THE ISSUES

- A. Should this Court decline to review the orders authorizing involuntary treatment for up to 180 days because they have expired and the case is moot?
- B. Should this Court exercise its inherent power to correct clerical errors and amend the orders to reflect the intended cause number?

III. COUNTERSTATEMENT OF THE CASE

On November 14, 1977, Donald Hayden was found NGRI of Assault with a Deadly Weapon in the First Degree under King County Superior Court Cause Number 83100. Supplemental Clerk's Papers (Suppl. CP) at 1-3. Because the maximum possible sentence for this crime is life, Mr. Hayden is subject to commitment under RCW 10.77 for life.¹ Although Mr. Hayden was originally conditionally released into the community, his conditional release was revoked on July 26, 1984, by the Honorable Donald Haley, and he was committed to Western State Hospital. Suppl. CP at 4-7. Mr. Hayden's conditional release was revoked because he failed to take his medication as prescribed and drove a motor vehicle. *Id.* at 5. As part of the order revoking his conditional release, the court ordered the Sheriff of King County to deliver

¹ See *State v. Hayden*, 128 Wn. App. 1066, 2005 WL 1870786 (2005).

Mr. Hayden to Western State Hospital “following entry of judgment in King County Criminal Proceeding Number 84-1-01573-6.” *Id.* at 5-6.

King County Criminal Proceeding 84-1-01573-6 is a separate proceeding in which Mr. Hayden was charged with the crimes of robbery in the second degree and taking and riding in a motor vehicle without permission. Clerk’s Papers (CP) at 1-3. These charges were eventually resolved when Mr. Hayden pled guilty to taking a motor vehicle without permission. CP at 9-11. As part of the Judgment and Sentence in that case, Judge Haley ordered that Mr. Hayden was “to follow all normal conditions of release of King County cause #83100, and comply with the court order in 83100 which revokes his conditional release and commits him to Western State Hospital.” CP at 9. Supervision was terminated in this matter by Judge Haley in 2002. CP at 43.

Since 1984, Mr. Hayden has spent time both within Western State Hospital and on conditional release, with his last conditional release being revoked in 2003. Suppl. CP at 8-10. After this last revocation, Mr. Hayden has repeatedly returned to King County Superior Court to attempt to get another conditional release granted. All of these requests have been denied by the Honorable J. Wesley Saint Clair under Cause Number 83100. Suppl. CP at 16-31. The last occurred in 2009. *Id.* at 30-31.

In November 2011, based on concerns that Mr. Hayden was refusing antipsychotic medication and becoming increasingly hostile, assaultive and delusional, DSHS filed a Motion to Intervene and a Petition for Involuntary Treatment with Antipsychotic Medication on Mr. Hayden in King County Superior Court. CP at 12-16, 45-88. Due to confusion over which criminal case was the original source of Mr. Hayden's NGRI commitment, the petition incorrectly stated that Mr. Hayden was receiving treatment for up to the rest of his life pursuant to a King County Superior Court order entered in 1984, and both documents were incorrectly filed under the 1984 cause number, and not the 1977 cause number. CP at 12, 45. This occurred even though the petition also mentioned that Mr. Hayden had been found NGRI with regards to a charge of Assault 1 in 1977. *Id.* at 12-13.

Both the King County Prosecutor and Mr. Hayden filed briefs in opposition. The King County Prosecutor's brief was filed under the 1977 cause number and referenced the fact that Mr. Hayden had been charged with, and found NGRI of, Assault with a Deadly Weapon in the First Degree. Suppl. CP at 32. It also discussed the trial court's authority over Mr. Hayden as a NGRI patient under RCW 10.77. Suppl. CP at 33-35. Although Mr. Hayden's brief was filed under the 1984 cause number, it acknowledged that "Donald Hayden entered a plea of not guilty by reason

of insanity” and that he currently resides in-patient at Western State Hospital, while also addressing the trial court’s jurisdiction under the criminal insanity statutes (RCW 10.77). *See* CP at 17-23. Neither brief made any reference to Mr. Hayden’s 1984 conviction.

A hearing on the Motion to Intervene was held on January 5, 2012, before Judge Saint Clair. Report of Proceedings (RP) Vol. 1, (Jan. 5, 2012), at 1. The first issue argued was whether or not the King County Superior Court had subject matter jurisdiction under RCW 10.77 to hear the petition. DSHS argued that it did, because the criminal court retained jurisdiction over Mr. Hayden after his NGRI finding, while the King County Prosecutor argued that it did not, because RCW 10.77 only gives the court the limited authority to make determinations over conditional release or final discharge, and not forced medications. RP Vol. 1, at 4-14. Mr. Hayden’s attorney agreed with the prosecutor’s argument. RP Vol. 1, at 14.

During this argument, the judge asked when the court’s jurisdiction over Mr. Hayden expires, and the King County Prosecutor informed the court it was a lifetime jurisdiction because the crime was assault with a deadly weapon. RP Vol. 1, at 26. After commenting about the difficulty caused by the silence in RCW 10.77 regarding “the actual actions [the court] can take under the not guilty by reason of insanity [laws],” the

judge ruled that the trial court had subject matter jurisdiction inherent from the superior court's general authority. RP Vol. 1, at 29-30.

The next argument addressed whether venue was more appropriate in King or Pierce County. RP Vol. 1, at 30. At this point in the hearing, the attorney for DSHS incorrectly stated that Mr. Hayden was committed to Western State Hospital under Cause Number 84-1-01573-6, instead of Cause Number 83100. RP Vol. 1, at 31. The error was not caught or corrected by the parties or the court. In ruling that venue was proper in King County, the judge described his personal history with this case by stating that "[t]his was a case that was tried by Judge Hayden - - excuse me, Haley, and I was appointed in 2004, and so I inherited this and several other cases as well." RP Vol. 1, at 32. Similarly, while approving DSHS's authority to intervene in the case, the judge noted that most of the information provided in DSHS's petition "is information that the Court has had. This isn't the first time I've interacted with Mr. Hayden." RP Vol. 1, at 37.

The final issue to be determined at the hearing was whether or not authority exists under RCW 10.77 to allow DSHS to involuntarily medicate NGRI patients. During this argument, Mr. Hayden's attorney made multiple references to the fact that Mr. Hayden is a NGRI patient. *See* RP Vol. 1, at 41-42 ("[y]ou know, they go so far out of the way to

come up with the conclusion, hey, this authorizes a court to order forced meds on a post plea of an NGRI client such as Donald Hayden[,]” “[p]ersons committed under civil commitment are treated differently than those criminally insane, such as Donald Hayden”) *id.* at 42. (“They have not statutorily authorized forced medication in post NGRI individuals, the position that Mr. Hayden’s in.”) *Id.* at 49. Ultimately, the court found that authority existed, based upon the decision in *State v. C.B.*, 165 Wn. App. 88, 265 P.3d 951 (2011), *rev. denied*, 173 Wn.2d 1027 (2012). RP Vol. 1, at 51-53.

When the trial court asked for the proposed order, the attorney for DSHS acknowledged that a mistake had been made regarding which prior case led to Mr. Hayden’s NGRI status. She told the court that “I had thought that Mr. Hayden had been committed to Western or NGRI in 1984, and it turns out it was actually 1977, and that his [conditional release] was revoked in ’84.” RP Vol. 1, at 58. In response, the judge stated “I thought there were a couple of [conditional releases] that he’s had. Okay.” *Id.* Although the attorney for DSHS made an attempt to correct the factual misunderstanding for the proposed court order, no action was taken to amend the cause number. *Id.* However, within the order itself, the court states that it retains jurisdiction over Mr. Hayden under RCW 10.77, and that RCW 10.77 and the *C.B.* decision are bases

under which it has authority to authorize the involuntary administration of antipsychotic medication to Mr. Hayden. CP at 98-100.

After the hearing in January 2012, two evidentiary hearings were held in March RP Vol. 2 and April 2012 RP Vol. 4 to determine whether the petition for involuntary administration of antipsychotic medication should be granted. Mr. Hayden's criminal conviction for taking a motor vehicle without permission was never discussed at these hearings, although his NGRI status was.² The court entered an order authorizing the administration of antipsychotic medication on April 19, 2012. CP at 31-35. The authorization was limited to up to 180 days from the date of the order, and expired on October 16, 2012. CP at 34.

Mr. Hayden timely submitted his appeal on April 23, 2012. CP at 36-42. On May 1, 2012, a new law authorizing the administration of antipsychotic medication without consent to criminally insane individuals took effect.³ It set forth the procedures to be followed in these proceedings, and gave jurisdiction over these matters to "either the superior court of the county that ordered the commitment or the superior

² For example, when a question arose regarding how long Mr. Hayden had been at Western State Hospital, the judge commented "This man has been in -- at Western State since the finding of not guilty by reason of insanity, has he not, in one form or another, certainly under the jurisdiction for the last, almost 30 years, correct." RP Vol. 2 (March 9, 2013), at 171.

³ Chapter 256, Laws of 2012 § 12.

court of the county in which the individual is receiving treatment”
RCW 10.77.094(1)(b).

IV. ARGUMENT

A. This Case Is Moot And Should Be Dismissed Because It Turns Upon Facts Unique To Mr. Hayden’s Case And Does Not Raise A Matter Of Continuing Public Interest

Washington courts follow a general rule that appeals which involve nonissues or abstract propositions should be dismissed. *Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972). A case is considered moot when the court can no longer provide the basic relief that appellant originally sought. *In re the Detention of LaBelle*, 107 Wn.2d 196, 200, 728 P.2d 138 (1986). Appellate courts will decide a moot case if it involves “‘matters of continuing and substantial public interest.’” *In re the Detention of Cross*, 99 Wn.2d 373, 377, 662 P.2d 828 (1983) (quoting *Sorenson v. Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972)). There are three criteria used to measure whether a sufficient public interest exists: (1) “the public or private nature of the question presented; (2) the desirability of an authoritative determination which will provide future guidance to public officers; and (3) the likelihood the question will recur.” *Cross*, 99 Wn.2d at 377. *See also Harley H. Hoppe & Assoc., Inc. v. King County*, 162 Wn. App. 40, 52-53, 255 P.3d 819 (2011). None of these factors are present in this case.

1. This Court Cannot Provide Effective Relief To Mr. Hayden

Mr. Hayden has requested that this Court vacate the order finding that the trial court had jurisdiction to consider the petition, as well as the order granting the petition. Brief of Appellant (Br. Appellant) at 14. However, the order authorizing DSHS to involuntarily treat Mr. Hayden with antipsychotic medication was limited to only 180 days, and expired on October 16, 2012. Because the treatment period has expired, this appeal is moot since this Court cannot provide Mr. Hayden effective relief.

2. The Question Presented Is Private In Nature

The only issue Mr. Hayden raises on appeal is whether the trial court had jurisdiction to order him to be involuntarily medicated. Br. Appellant at 1. Although Mr. Hayden states that he is challenging both the personal and the subject matter jurisdiction of the trial court in his assignments of error, he provides no argument for why the committing superior court does not have subject matter jurisdiction over the issue of involuntarily medicating a NGRI patient.⁴ An assignment of error not

⁴ This issue of subject matter jurisdiction in this circumstance has been addressed both by the Court of Appeals and by the Legislature. The authority of a committing superior court to authorize the involuntary administration of antipsychotic medication to a NGRI patient was first recognized in *State v. C.B.*, 165 Wn. App. 88, 265 P.3d 951 (2011), *rev. denied*, 173 Wn.2d 1027 (2012). This authority was later expanded by the Legislature in 2012 to also include the superior court of the county in which the individual is receiving treatment. *See* RCW 10.77.094.

argued in the appellant's brief is deemed abandoned. *Brown v. State Dep't of Health, Dental Disciplinary Bd.*, 94 Wn. App. 7, 13, 972 P.2d 101 (1999) (citing *Pappas v. Hershberger*, 85 Wn.2d 152, 153, 530 P.2d 642 (1975)). Therefore, the only remaining issue on appeal is whether or not the trial court had personal jurisdiction over Mr. Hayden.

The source of the jurisdictional dispute in this case is an error in the cause number written on the trial court's orders. Mr. Hayden argues that the King County Superior Court did not have personal jurisdiction over him in this matter because the cause number written on the specific orders in question is from a criminal case in which the statutory maximum sentencing period had expired. Because the superior court no longer has jurisdiction over him under Cause Number 84-1-01573-6, Mr. Hayden argues that the trial court's orders should be dismissed. Br. Appellant at 8, 10-11. However, this position ignores the fact that the King County Superior Court continued to retain jurisdiction over Mr. Hayden as a result of his NGRI status under Cause Number 83100, and the trial court record indicates that the filing of the orders under the other cause number was an inadvertent clerical error. Therefore, the question before this Court is not whether the superior court still had jurisdiction over Mr. Hayden under Cause Number 84-1-01573-6, but

what is the appropriate outcome when the superior court inadvertently entered an order affecting Mr. Hayden's NGRI status using the cause number of a case that is not the one from which its NGRI jurisdiction over Mr. Hayden originates. The answer to this question is private in nature because it is particular to the facts of this case, and affects only Mr. Hayden.

In an effort to avoid dismissal on the grounds of mootness, Mr. Hayden argues that the trial court intentionally ordered the administration of antipsychotic medication under Cause Number 84-1-01573-6 in the mistaken belief that it still has jurisdiction to impose conditions on him in that case, even though the statutory maximum time period has expired. As a result, Mr. Hayden contends that review is appropriate because "[a] trial court's erroneous conclusion it has authority to impose conditions, after the expiration of the statutory maximum, raises an issue of continuing and substantial public interest that is likely to evade review." Br. Appellant at 13.

Questions regarding a judicial officer's authority are public in nature. *Cross*, 99 Wn.2d at 377. However, Mr. Hayden's characterization of the actions taken by the trial court is not supported by the record. The trial court's authority to enter an order authorizing the involuntary medication of Mr. Hayden existed through his 1977 NGRI commitment

under Cause Number 83100, and there is nothing in the record to indicate that the trial court believed it was acting under the authority of the expired criminal matter. While the court and the parties made multiple references throughout the course of the proceedings to Mr. Hayden's status as a NGRI patient and the trial court's authority over him under RCW 10.77, the only references in the record to Mr. Hayden's 1984 criminal conviction can be traced directly to the actions of the attorney for DSHS, who incorrectly filed the original motion and petition under the 1984 cause number. But, by the end of the first hearing, the attorney for DSHS had acknowledged that there had been a misunderstanding surrounding which prior case led to Mr. Hayden's NGRI status, and confirmed to the court that Mr. Hayden had first been committed as NGRI in 1977, and subsequently revoked from his conditional release in 1984. RP Vol. 1, at 58. Unfortunately, no accompanying action was taken at that time to correct the cause number under which the orders were being entered.⁵

This was not an attempt by Judge Saint Clair to improperly expand the scope of his authority by imposing conditions in a criminal matter after the expiration of the statutory maximum. Apart from the mistakes inadvertently made by DSHS, there is nothing in the record which

⁵ At that point in the proceeding, misfiling under the wrong cause number could have been considered a technical mistake and the trial court could have corrected it. *See SCM Group USA, Inc. v. Proteck Mach. Co.*, 136 Wn. App. 569, 576, 150 P.3d 141 (2007).

indicates that Judge Saint Clair or the parties (including Mr. Hayden) believed this proceeding was anything other than an attempt by DSHS to intervene in Mr. Hayden's ongoing NGRI commitment. Therefore, this case only concerns an inadvertent clerical error in court orders that expired over a year ago, and is not a matter of continuing and substantial public interest that justifies overcoming its mootness.

3. There Is No Need For A Determination To Provide Future Guidance To Public Officers

Because this case concerns an inadvertent clerical error within expired orders, there is no need for an authoritative determination on this issue to provide future guidance to public officials. First of all, Mr. Hayden is no longer subject to the orders, so future courts would not be able to enforce the orders against him. Second of all, RCW 10.77.094, which provides authority for a superior court to authorize involuntary medication to a NGRI patient, does not direct the court to order involuntary medication based upon whether such orders have previously been entered. Thus, the orders challenged by Mr. Hayden would not bind a future court were another petition for involuntary medication brought in the future. *Cf. In re Detention of M.K.*, 168 Wn. App. 621, 625-26, 279 P.3d 897 (2012) (determining that review of an expired civil commitment order was not moot because, were patient to be petitioned for civil

commitment in the future, the trial court is directed by statute to consider, in part, a history of recent prior civil commitments). Finally, because consideration of the issue in this case turns solely on facts and evidence pertaining to Mr. Hayden, this Court's determination would not assist in resolving similar challenges in the future.

4. It Is Not Likely That This Question Will Recur

It is unlikely that a similar clerical error regarding which cause number led to Mr. Hayden's NGRI commitment will reoccur. The trial court made the mistake as a result of erroneous materials DSHS provided to it; a mistake which DSHS conceded to at trial, and attempted to correct at the time. The fact that the attempt to correct the mistake was not completely successful is not an indication that the mistake is likely to be repeated.

Furthermore, changes in the law make it unlikely that DSHS will request to intervene in Mr. Hayden's NGRI case in the future. In addition to the original committing county, RCW 10.77.094 now gives jurisdiction over the involuntary medication of NGRI patients to the superior court of the county in which the individual is receiving treatment. Therefore, any future requests to seek the involuntary treatment of Mr. Hayden with antipsychotic medication can be done in Pierce County under a Pierce County cause number; an option which DSHS conceded would have been

preferable if it had been allowed to pursue it at the time of the hearing.

RP Vol. 1, at 16.

Because there is little likelihood that this particular question will recur, this question does not present an issue of continuing and substantial public interest. *Cross*, 99 Wn.2d at 377. The Court should dismiss this appeal as moot.

B. Failure To Cite To The 1977 Cause Number Is A Clerical Error That This Court Has The Inherent Authority To Correct

In order to make the true action of a trial court conform to the record, an appellate court may correct a clerical error in a judgment appealed from without remanding the judgment to the trial court. *Callihan v. Dep't of Labor and Indus.*, 10 Wn. App. 153, 156-57, 516 P.2d 1073 (1973). An error is clerical if the amended judgment corrects the language “to reflect the court's intention” *State v. Snapp*, 119 Wn. App. 614, 627, 82 P.3d 252 (2004). To determine whether an error is clerical, the reviewing court looks to “ ‘whether the judgment, as amended, embodies the trial court's intention, as expressed in the record at trial.’ ” *Snapp*, 119 Wn. App. at 627 (quoting *Presidential Estates Apartment Ass'n. v. Barrett*, 129 Wn.2d 320, 326, 917 P.2d 100 (1996)). A court may correct a clerical mistake or scrivener's error at any time:

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

State v. Davis, 160 Wn. App. 471, 478, 248 P.3d 121 (2011) (quoting CrR 7.8(a)). The test used to determine whether a clerical error exists under CrR 7.8 is the same test used to determine a clerical error under CR 60(a), the civil rule governing amendment of judgments. *Snapp*, 119 Wn. App. at 626.

At issue in this case is whether the trial court intended to enter the contested orders under the expired criminal cause number, or whether the record at trial indicates that the use of the 1984 cause number was a clerical error, and the true intention of the trial court was to issue these orders under the 1977 cause number which formed the basis for the superior court's continuing NGRI jurisdiction over Mr. Hayden. DSHS concedes that the source of the trial court's error was DSHS's use of the 1984 cause number in the original motion and petition. As the attorney for DSHS explained to the trial court at the first hearing, there was confusion over which year Mr. Hayden was originally found NGRI and which year his conditional release was revoked. Unfortunately, even after this explanation was provided to the trial court, no one caught the impact this

error had on the cause number DSHS had filed the motion and petition under.

Even though no one at the hearings realized that the cause number they were proceeding under was incorrect, it is clear from the record that the trial court believed it was acting under the NGRI jurisdiction it retained over Mr. Hayden under Cause Number 83100. The judge made clear both through his oral rulings as well as his written orders that he believed the trial court's authority over Mr. Hayden stemmed from RCW 10.77 as a result of the NGRI finding, and not the 1984 criminal conviction. The prosecutor also behaved as though the trial court was acting under its authority under RCW 10.77, even filing a brief under the 1977 cause number. The attorney for Mr. Hayden also limited his arguments to the trial court's authority under RCW 10.77, not mentioning the 1984 conviction. Finally, even though the attorney for DSHS acknowledged that she made a mistake regarding the year Mr. Hayden was committed, the arguments she made in support of why the trial court had jurisdiction to involuntarily medicate Mr. Hayden were all based on RCW 10.77 and Mr. Hayden's NGRI status, not his 1984 criminal conviction.

Based on the record at trial and the trial court's articulated rationale, it is clear that the court's intention was to grant these orders

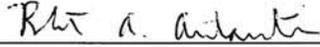
under the authority provided by the 1977 NGRI finding. The fact that the orders were entered under the 1984 cause number is a clerical error that does not reflect the true action of the trial court. It was not an attempt by the trial court to impose conditions in a criminal case beyond the statutory maximum time period. Therefore, the trial court's orders should be affirmed and this Court should utilize its inherent authority to correct the erroneous orders without remanding the judgment back to the trial court. Otherwise, this Court should affirm the orders and remand the case back to the trial court for correction.

V. CONCLUSION

For the reasons set forth in this brief, this Court should dismiss the appeal as moot. In the alternative, this Court should affirm the trial court's orders and either amend them to reflect the correct cause number, or remand them back to the trial court for correction.

RESPECTFULLY SUBMITTED this 3 day of December, 2013.

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CERTIFICATE OF SERVICE

Jamie Bryk, states and declares as follows:

I am a citizen of the United States of America and over the age of 18 years and I am competent to testify to the matters set forth herein. On December 3, 2013, I served a true and correct copy of this **BRIEF OF RESPONDENT** and this **CERTIFICATE OF SERVICE** on the following parties to this action, as indicated below:

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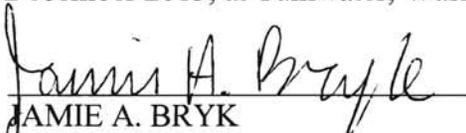
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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 3 day of December 2013, at Tumwater, Washington.


JAMIE A. BRYK
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