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COA NO. 70306-4

No. 87895-1

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

WILL KNEDLIK,

Appellant,

v.

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY

Respondent.

BRIEF OF RESPONDENT

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 ORIGINAL

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I. INTRODUCTION

This case arises from the dismissal of Will Knedlik's appeal of a State Environmental Policy Act ("SEPA") decision regarding the Central Puget Sound Regional Transit Authority's ("Sound Transit's") East Link project. The trial court dismissed Mr. Knedlik's appeal due to his failure to file an appeal brief. Mr. Knedlik is a former lawyer with a history, both in practice and *pro se*, of being sanctioned for bringing frivolous lawsuits or failing to follow court rules. The trial court's ruling was a proper exercise of its discretionary authority to dismiss an action for failure to prosecute and for violation of its scheduling order. There is no basis to find that the trial court abused its discretion in dismissing the appeal, and this Court should affirm.

Tellingly, Mr. Knedlik's brief is devoid of any argument or authority as to why the trial court's dismissal order was in error. Instead, Mr. Knedlik argues the merits of the substantive claims that he failed to pursue before the trial court and that are not properly at issue in this appeal. By failing to argue the merits of his sole assignment of error, Mr. Knedlik has waived this assignment and all possible arguments in support of reversal. This serves as an independent basis to affirm the trial court.

II. STATEMENT OF ISSUE

Whether the Court should affirm the trial court's exercise of discretion dismissing Mr. Knedlik's appeal pursuant to CR 41(b) and KCLCR 4(g)(1) where: 1) Mr. Knedlik did not to raise any argument or authority that would support reversal and has waived his sole assignment of error on review; and 2) the trial court made all necessary findings in support of dismissal and its conclusion that dismissal was proper was consistent with established authority.

III. STATEMENT OF THE CASE

A. Background of Underlying Administrative Appeal.

This case arose as an administrative appeal under the State Environmental Policy Act ("SEPA"). On July 27, 2011, Mr. Knedlik filed an administrative appeal with the Central Puget Sound Regional Transit Authority ("Sound Transit") seeking review of the adequacy of the Final Environmental Impact Statement for the East Link light rail project ("East Link FEIS"). CP 6; CP 18-19; CP 163. In addition to his specific claims under SEPA, Mr. Knedlik's appeal also attempted to raise a "wide variety of non-SEPA claims, including claims relating to the constitutionality of Sound Transit's use of the I-90 Floating Bridge for the East Link project." CP 19. Prior to the hearing on Mr. Knedlik's administrative appeal, an independent Hearing Examiner appointed by Sound Transit determined

that these non-SEPA claims were outside the scope of his jurisdiction and not subject to administrative review. CP 19.

On October 24-25, 2011, the Hearing Examiner conducted an open-record administrative hearing to consider Mr. Knedlik's specific SEPA-related claims regarding the adequacy of the East Link FEIS. CP 20-21. Mr. Knedlik raised three substantive issues in the hearing: (1) the adequacy of Sound Transit's evaluation of the adverse impacts to freight mobility; (2) the adequacy of Sound Transit's ridership modeling, projected future ridership, and "person-throughput" on the East Link line; and (3) the adequacy of Sound Transit's evaluation of the "capacity" of the East Link project. CP 21. The Hearing Examiner heard expert and other witness testimony and reviewed and considered exhibits from both parties. CP 21-28.

On November 22, 2011, the Hearing Examiner issued his Findings of Fact, Conclusions of Law and Decision. CP 18-33. The Hearing Examiner held that Mr. Knedlik did not meet his burden of proving that Sound Transit's analysis of any of the identified issues was inadequate. CP 31-33. The Hearing Examiner further held that the East Link FEIS adequately disclosed, discussed, and substantiated the environmental impacts of the East Link project as required by SEPA. *Id.*

B. Proceedings Before the Trial Court.

On December 16, 2011, Mr. Knedlik filed a “Petition for Review” to the King County Superior Court, seeking review of the Hearing Examiner’s findings, conclusion, and decision regarding the adequacy of the East Link FEIS. CP 1-75. Mr. Knedlik’s Petition for Review also asserted constitutional and other claims regarding Sound Transit’s light rail project. CP 3-16.

Mr. Knedlik served Sound Transit with the Petition for Review and with a copy of the trial court’s Order Setting Case Schedule (Administrative Appeal) (“Case Scheduling Order”) on December 16, 2011. CP 140-45; CP 164. The Case Scheduling Order specifically provided that “[i]t is ORDERED that all parties involved in this action shall comply with the schedule listed above and that failure to meet these event dates will result in the dismissal of the appeal.” CP 142 (emphasis added). Among other dates, the Case Scheduling Order set forth dates for completion of the administrative record and for the filing of the parties’ appeal briefs. *Id.*

The Case Scheduling Order set February 17, 2012 as the deadline to file the administrative record on review. *Id.* In anticipation of this deadline, on February 7, 2012, counsel for Sound Transit contacted Mr. Knedlik to determine what documents, if any, Mr. Knedlik intended to

designate for the administrative record. CP 164; CP 185. Mr. Knedlik did not respond to Sound Transit's inquiry. CP 164.

Sound Transit then prepared the administrative record and timely filed and served a Transmittal of Administrative Record and a CD containing the full administrative record. CP 242-48. The administrative record contained approximately 53 documents from the administrative proceeding, as well as excerpts of transcripts from the two-day administrative hearing. *Id.* On February 17, 2012, Sound Transit served on Mr. Knedlik via US Mail a copy of the Transmittal of Administrative Record and a CD containing the complete administrative record. CP 248. Sound Transit mailed the pleading and CD to the P.O. Box Mr. Knedlik provided in his court filings.¹ *Id.* Mr. Knedlik did not object to the content of the administrative record and did not propose supplementing the record with any additional materials. CP 238.

The Case Scheduling Order set June 4, 2012 as the deadline for Mr. Knedlik to file his appeal brief on the merits. CP 142. Mr. Knedlik did not file or serve a brief by this date, nor did he request an extension of time to do so. CP 130-31; CP 164. On June 14, 2012, Sound Transit filed

¹ On February 28, 2012, Sound Transit mailed Mr. Knedlik a second copy of the CD containing the administrative record, which contained the same content but added hyperlinks to the documents in the record. Thus, Sound Transit mailed two copies of the administrative record to Mr. Knedlik to the P.O. Box he identified for service.

a Motion to Dismiss Appeal on the grounds that Mr. Knedlik did not comply with the Case Scheduling Order and had not filed a brief. CP 155-62. Sound Transit's motion also noted that Mr. Knedlik had not served a written settlement demand on Sound Transit by June 8, 2012, as required by the Case Scheduling Order. CP 157-58; CP 164. Sound Transit argued that dismissal was appropriate under CR 41 (b) and KCLCR 4(g)(1) for Mr. Knedlik's failure to comply with the deadlines set forth in the trial court's order. CP 155-62. At Mr. Knedlik's request, Sound Transit agreed to renote its Motion to Dismiss for the following week to accommodate Mr. Knedlik's response to the motion. CP 197; CP 208.

Mr. Knedlik then filed a Motion for Stay asking the trial court to indefinitely delay and stay his appeal until after the resolution of two separate cases involving Sound Transit's East Link project. CP 76-78. The first case he identified was *Freeman v. State*, Sup. Ct. Case No. 87267-8, which is currently pending before this Court. CP 77. *Freeman* involves an agreement between Sound Transit and the State of Washington for the use of the center lanes on the Interstate 90 ("I-90") bridge over Lake Washington.² The second case is *Building a Better*

² Mr. Knedlik recently moved this Court for leave to file an amicus brief in *Freeman*. In the alternative, Mr. Knedlik asked that this appeal be consolidated with *Freeman*. Sound Transit objected to Mr. Knedlik's amicus brief because it did not comply with the appellate rules and also

Bellevue v. U.S. Dept. of Transp., U.S. Dist. Ct. W. Dist. of Wash. Case No. 2:12-cv-01019, which challenges the federal Record of Decision finding that the East Link FEIS satisfied the requirements of the National Environmental Policy Act (“NEPA”), the federal counterpart to SEPA. CP 77. Mr. Knedlik’s motion did not identify any colorable grounds to stay his case pending further decisions in the other two. CP 76-78.

Mr. Knedlik then filed a Response to Sound Transit’s Motion to Dismiss, which, like the Motion for Stay, also asked that the trial court stay his appeal. CP 79-81. Mr. Knedlik also alleged in this Response for the first time that he had not obtained documents from the Hearing Examiner that he claimed were necessary to prosecute his appeal. CP 80. Mr. Knedlik did not identify what documents he had not obtained, nor did he ask the trial court for any additional time to file his brief or for any other alterations to the Case Scheduling Order. *Id.*

C. Trial Court Hearing and Orders.

On June 29, 2012, King County Superior Court Judge Dean Lum heard argument on Sound Transit’s Motion to Dismiss and Mr. Knedlik’s Motion for Stay. In the hearing, Judge Lum found that Mr. Knedlik had not complied with the Case Scheduling Order, that Mr. Knedlik had

objected to his request for consolidation. On January 29, 2013, the Chief Justice denied Mr. Knedlik’s motion to file an amicus brief and denied his consolidation request.

identified no justification for this failure, and that Sound Transit had been prejudiced as a result. 6/29/12 VRP at 16:6-17:18.

On these grounds, Judge Lum dismissed Mr. Knedlik's case and denied Mr. Knedlik's request for a stay. CP 128-29 (Order Denying Petitioner's Motion to Stay); CP 130-32 (Findings, Conclusions and Order Granting Sound Transit's Motion to Dismiss Appeal). The dismissal order contained specific findings that Mr. Knedlik had failed to comply with the Case Scheduling Order (Finding No. 1), that the failure was willful and deliberate (Finding No. 2), that Sound Transit had suffered prejudice as a result (Finding No. 3) and that no lesser sanction than dismissal was appropriate (Finding No. 4). CP 130-31.

On July 9, 2012, Mr. Knedlik filed a Motion for Reconsideration. CP 135-38. Mr. Knedlik's motion did not seek reconsideration of the dismissal of his SEPA claims, but asked that the trial court reconsider the dismissal of the constitutional claims asserted in his Petition. *Id.* The trial court denied Mr. Knedlik's motion. CP 139. Mr. Knedlik then appealed to this Court, and on October 2, 2012, filed his Statement of Grounds for Direct Review ("Statement of Grounds"). Sound Transit timely answered Mr. Knedlik's Statement of Grounds on October 16, 2012.

In 2000, Mr. Knedlik was disbarred by this Court for violating various ethical rules, including filing frivolous lawsuits and filing

complicated motions and lawsuits without any basis to do so, or for no purpose other than to embarrass, delay or burden third parties. CP 190-91. Since his disbarment, Mr. Knedlik has continued to litigate *pro se*, and has filed numerous lawsuits against Sound Transit and threatened to sue the agency on several other occasions. CP 165. In Mr. Knedlik's most recent case against Sound Transit, the Snohomish County Superior Court dismissed his lawsuit for his failure to comply with the court's order requiring him to file a more definite statement of his allegations. CP 165; CP 193-95. Mr. Knedlik sought direct review of that order to this Court, which dismissed the appeal because Mr. Knedlik's notice of appeal was untimely. *Knedlik v. Constantine, et al.*, Sup. Ct. Case No. 84595-6.

IV. ARGUMENT

The sole issue on appeal is whether the trial court abused its discretion in dismissing Mr. Knedlik's case given his failure to comply with the trial court's Case Scheduling Order. Although Mr. Knedlik assigns error to this ruling, he has not raised any argument or authority as to why the trial court's dismissal was an abuse of its discretion. Accordingly, Mr. Knedlik has waived his sole assignment of error. This Court should affirm on that ground alone.

Moreover, there is no basis to find that the trial court abused its discretion in dismissing Mr. Knedlik's appeal. The trial court made well-

reasoned and supported findings on the record regarding Mr. Knedlik's non-compliance with the Case Scheduling Order, and concluded that dismissal was appropriate under the circumstances. Mr. Knedlik does not challenge these findings on appeal. The trial court's ruling was consistent with established authority governing dismissal of actions when a party fails to comply with the court's case schedule. It should be affirmed.

A. Standard of Review

Courts review a trial court's dismissal of a case under CR 41(b) for abuse of discretion. *Apostolis v. City of Seattle*, 101 Wn. App. 300, 303, 3 P.3d 198 (2000); *Johnson v. Horizon Fisheries, LLC*, 148 Wn. App. 628, 636, 201 P.3d 346 (2009). "A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds." *Apostolis*, 101 Wn. App. at 303.

If this Court chooses to review the trial court's findings in support of dismissal, they should be reviewed under the substantial evidence standard. *Johnson*, 148 Wn. App. at 640. "Substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding." *In re Contested Election of Schoessler*, 140 Wn.2d 368, 385, 998 P.2d 818 (2000). Although Mr. Knedlik notes that constitutional and statutory interpretation issues are reviewed *de novo*, Op. Br. at 7, there are no constitutional or

statutory interpretation issues presented in this case. As such, his claim that the issues on appeal are subject to review *de novo* is incorrect.

B. By Failing to Argue the Merits of the Trial Court's Dismissal, Mr. Knedlik Has Not Established Any Basis for Reversal and Has Waived His Sole Assignment of Error.

Although Mr. Knedlik has the burden of establishing that the trial court's order was in error, his Opening Brief offers no argument or authority on this issue. Indeed, other than assigning error to the dismissal (Op. Br. at 4)³, including an issue statement on this assignment (Op. Br. at 6) and briefly addressing the procedural history of the trial court action in his Statement of the Case (Op. Br. at 10-12), Mr. Knedlik's brief is devoid of any reference to the trial court's dismissal, let alone any argument or authority as to why dismissal was improper. In particular, Mr. Knedlik does not argue that the trial court erred in applying the standards governing the dismissal of actions under CR 41(b) or KCLCR 4(g)(1). Nor does he contend that the trial court failed to make specific findings and conclusions supporting dismissal, or that those findings and

³ Mr. Knedlik's sole assignment of error is that "[t]he Superior Court erred substantively in dismissing challenges to the legal inadequacies of both a nominal Final Environmental Impact statement . . . and also of nominal compliance with fundamental constitutional foundations inherent in Article II, § 40" Op. Br. at 4 (emphasis omitted).

conclusions were improper. In short, Mr. Knedlik has failed to argue – let alone establish – any basis to reverse the trial court here.

Mr. Knedlik’s brief instead argues the substantive merits of his dismissed claims. These claims include his challenge to the adequacy of the East Link FEIS, his argument that the Hearing Examiner should have considered his constitutional arguments in the administrative hearing⁴ and the merits of his constitutional and fiduciary claims. *See generally* Op. Br. at 13-36.⁵ There is no dispute that Mr. Knedlik never briefed these claims before the trial court, and that they were dismissed as a result. These claims are thus outside the scope of this appeal. *See* RAP 2.4; *Matthias v. Lehn & Fink Products Corp.*, 70 Wn.2d 541, 543, 424 P.2d 284, 285 (1967) (“[T]he rule is well established that this court will not consider matters not presented to the trial court, nor will this court review a case on

⁴ Mr. Knedlik could have briefed this issue (as well as the merits of his constitutional claims) before the trial court. Because he did not do so, these issues are not properly raised in this appeal. Regardless, this claim has no basis. Administrative appeals under SEPA are “limited to review of a final threshold determination and final EIS.” WAC 197-11-680(3)(a)(iii). Consistent with this rule, Sound Transit has limited the scope of its administrative appeals only to certain “final SEPA procedural determinations.” www.soundtransit.org/documents/doc/about/board/resolutions/ResoR7-1.doc. The Hearing Examiner’s jurisdiction is limited to deciding only those issues, not constitutional claims. *See Exendine v. City of Sammamish*, 127 Wn. App. 574, 586, 113 P.3d 494 (2005).

⁵ *See also* Op. Br. at 2 (“This brief documents major legal defects at the heart of that nominal FEIS” . . . “This brief thereby identifies both the immediate inadequacy of that nominal FEIS’s failure to meet the explicit legal requirement of WAC 197-11-440(6)(e)”).

a theory different from that in which it was presented at the trial level.”). Even assuming these claims present significant legal questions as Mr. Knedlik contends (which Sound Transit disputes), Mr. Knedlik was obligated to pursue them before the trial court and allow that court to consider them in the first instance. He did not do so, and the trial court dismissed this action on that basis.

Because Mr. Knedlik did not argue the merits of his sole assignment of error regarding the trial court’s dismissal, he has waived all arguments that could possibly support reversal here. It is well-established that “[i]f a party fails to support assignments of error with legal arguments, they will not be considered on appeal.” *Howell v. Spokane & Inland Empire Blood Bank*, 117 Wn.2d 619, 624, 818 P.2d 1056 (1991).⁶ “Only issues raised in the assignments of error ... and argued to the appellate court are considered on appeal.” *Weyerhaeuser Co. v. Commercial Union Ins. Co.*, 142 Wn.2d 654, 693, 15 P.3d 115 (2000) (internal quotation omitted) (emphasis original). “Assignments of error that are not argued or discussed in the brief are deemed to be waived.” *State v. Boggs*, 80 Wn.2d 427, 432, 495 P.2d 321 (1972); *see also Kadoranian by Peach v. Bellingham Police Dept., a Div. of City of*

⁶ RAP 10.3(a)(6) also provides that a party’s appeal brief should contain “argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record.”

Bellingham, 119 Wn.2d 178, 191, 829 P.2d 1061 (1992); *Smith v. King*, 106 Wn.2d 443, 451-52, 722 P.2d 796 (1986).

Mr. Knedlik's sole assignment of error was to the trial court's dismissal of this action. Op. Br. at 4. Despite this assignment, Mr. Knedlik has not raised any argument on this issue. Because Mr. Knedlik did not support this assignment with any authority or argument, he has waived this assignment, and this Court should decline to consider it on appeal. The Court should affirm on this ground.⁷

C. The Trial Court Properly Exercised Its Discretionary Authority to Dismiss This Action for Violations of the Case Scheduling Order.

Although the Court need not reach the merits of the trial court's dismissal given Mr. Knedlik's failure to argue this issue, there is no basis to reverse the trial court here. CR 41(b) and KCLCR 4(g)(1) grant the trial court the discretionary authority to dismiss an action for non-compliance with court orders or rules. Given Mr. Knedlik's failure to file an appeal brief, the trial court found that dismissal was appropriate. This ruling was consistent with established authority and should be affirmed.

⁷ In the event Mr. Knedlik attempts to raise specific arguments for the first time in his reply brief regarding this dismissal, the Court should decline to consider these arguments. *See, e.g., Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) ("An issue raised and argued for the first time in a reply brief is too late to warrant consideration.").

1. The Trial Court is Vested with Discretionary Authority to Manage Its Affairs, Including to Dismiss Actions for Violations of Its Orders.

A trial court is granted the “discretionary authority to manage its own affairs so as to achieve the orderly and expeditious disposition of cases.” *Woodhead v. Disc. Waterbeds, Inc.*, 78 Wn. App. 125, 129, 896 P.2d 66 (1995). This includes imposing sanctions “to effectively manage its caseload, minimize backlog, and conserve scarce judicial resources.” *Id.* “The court may impose such sanctions as it deems appropriate for unexcused violations of its scheduling orders.” *Apostolis*, 101 Wn. App. at 304.

CR 41(b) specifically authorizes a trial court “to dismiss an action for noncompliance with a court order or court rules.” *Woodhead*, 78 Wn. App. at 129; *see also* CR 41(b) (“For failure of the plaintiff to prosecute or to comply with these rules or any order of the court, a defendant may move for dismissal of an action or of any claim against him or her.”). King County Local Court Rule 4(g)(1) additionally provides that the “[f]ailure to comply with the Case Schedule may be grounds for imposition of sanctions, including dismissal, or terms.” Dismissal under these rules is justified “when a party’s refusal to obey the trial court’s order was willful and deliberate and substantially prejudiced the other party.” *Johnson*, 148 Wn. App. at 638; *see also Woodhead*, 78 Wn. App.

at 130. Before dismissing an action, the trial court must consider “whether a lesser sanction would suffice”. *Woodhead*, 78 Wn. App. at 132.

Unless a trial court’s decision to dismiss a case is “manifestly unreasonable or based on untenable grounds” it should be upheld. *Apostolis*, 101 Wn. App. at 303. The trial court’s authority to dismiss a matter for the failure to comply with its case scheduling orders is well-established. *See, e.g., Johnson*, 148 Wn. App. at 639-41; *Woodhead*, 78 Wn. App. at 131-32; *Apostolis*, 101 Wn. App. at 304-06.

2. The Trial Court Made the Proper Findings in Support of Dismissal, and Mr. Knedlik Does Not Challenge These Findings on Appeal.

Consistent with the above authority, the trial court made all the requisite findings in support of dismissal. CP 130-31 (setting forth findings regarding dismissal). Mr. Knedlik has not assigned error to any of these findings. Op. Br. at 4. He was required to do so to challenge them on appeal. *See* RAP 10.3(g) (“A separate assignment of error for each finding of fact a party contends was improperly made must be included with reference to the finding by number.”); RAP 10.3(a)(4) (brief should contain “[a] separate concise statement of each error a party contends was made by the trial court, together with the issues pertaining to the assignments of error.”).

“As a general rule, unchallenged findings of the trial court will be treated by this court as verities on appeal”. *Fuller v. Employment Sec. Dept. of State of Wash.*, 52 Wn. App. 603, 605, 762 P.2d 367 (1988); *see also State v. Ross*, 141 Wn.2d 304, 310-11, 4 P.3d 130 (2000) (failure to assign error to findings is not a “technical flaw” under appellate rules). This is true for findings under CR 41(b). *Woodhead*, 78 Wn. App. at 131 (trial court’s findings of willful and deliberate violation of court’s order and prejudice to other party treated as verities where appellant did not assign error to these findings); *see also Apostolis*, 101 Wn. App. at 306 (court declined to consider argument that trial court failed to consider lesser sanction than dismissal when appellant did not assign error or raise issue in brief). Given Mr. Knedlik’s failure to assign error to the trial court’s findings, this Court’s review is “limited to determining whether the findings support the conclusions of law.” *Fuller*, 52 Wn. App. at 605.

Even if not treated as verities, there is no question that the trial court’s findings were supported by substantial evidence. *Johnson*, 148 Wn. App. at 640. “Substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding.” *Schoessler*, 140 Wn.2d at 385. The trial court’s findings were well-supported in the record and should be upheld.

First, the trial court found that Mr. Knedlik did not comply with the Case Scheduling Order and that this failure was willful and deliberate. CP 131. “Disregard of a court order without reasonable excuse or justification is deemed willful.” *Apostolis*, 101 Wn. App. at 304; *see also Woodhead*, 78 Wn. App. at 130; *Johnson*, 148 Wn. App. at 638. Before the trial court, Mr. Knedlik did not identify any reasonable excuse or justification for failing to file his brief. CP 79-80. Nor did Mr. Knedlik ask for additional time to brief the merits of his claims or for any other alterations to the Case Scheduling Order. *Id.* Instead, Mr. Knedlik asked that the trial court indefinitely stay his appeal. CP 76-78. The trial court found that this was not a reasonable excuse or justification:

Essentially, Mr. Knedlik is saying, I’m not really ready Judge, could you stay or put off consideration of[] my appeal because X, Y, or Z is now occurring or may occur in another lawsuit before the Supreme Court.

...

What is not proper is to sit on this appeal, not do anything about it, and request a stay hoping that something might break your way.”

6/29/12 VRP 16:22-25, 17:7-9. The trial court found Mr. Knedlik’s failures were willful and deliberate. CP 131. This finding was consistent with established authority. *See, e.g., Apostolis*, 101 Wn. App. at 304

(failure to timely file appeal brief and engage in settlement procedures was willful and deliberate when done without reasonable excuse).⁸

The only arguable justification Mr. Knedlik offered regarding his failure to file his appeal brief was that the Hearing Examiner did not provide records at Mr. Knedlik's request. CP 80. Under SEPA, however, Sound Transit is tasked with maintaining the administrative record, and that record was provided to Mr. Knedlik. *See* RCW 43.21C.075(3)(c) (setting forth agency's obligation in preparing record of appeal); CP 242-48. Any documents in the possession of the Hearing Examiner relevant to Mr. Knedlik's appeal were also in the possession of Sound Transit and were transmitted to the trial court and to Mr. Knedlik in the extensive administrative record. CP 242-48. Notably, Mr. Knedlik did not identify any specific documents he requested from the Hearing Examiner, nor did he identify any documents purportedly omitted from the administrative record. CP 80. This was not a reasonable excuse for failing to comply with the trial court's order.

Second, the trial court found that Sound Transit was prejudiced by Mr. Knedlik's failure to file his appeal brief. CP 131. Under the case schedule, Sound Transit had three weeks after the receipt of Mr. Knedlik's

⁸ As in *Apostolis*, Mr. Knedlik also did not follow the mandated settlement procedures in the Case Scheduling Order. CP 142; CP 164.

brief to file its response. CP 142. Because Mr. Knedlik did not file his brief, Sound Transit would have been obligated to file its brief without the opportunity to hear and respond to Mr. Knedlik's substantive arguments on appeal. The trial court found that this put Sound Transit "in a[] kind of a guessing position", and that Sound Transit was "prejudiced by simply not knowing at what point what they're supposed to defend on." 6/29/12 VRP at 17:9-12. This finding was consistent with *Apostolis*, where the court found that the defendant was prejudiced by the plaintiff's untimely filing of a brief in an administrative appeal, because the defendant "never had a written opportunity to respond to [plaintiff's] brief". 101 Wn. App. at 305. In addition, Mr. Knedlik's request for an indefinite stay would leave his SEPA appeal unresolved, which would be itself prejudicial to Sound Transit.

Third, the trial court also considered whether a lesser sanction than dismissal was appropriate and determined that it was not. CP 131. Before the trial court, Mr. Knedlik did not offer any alternative sanction for the court's consideration. He instead requested that the trial court stay his appeal pending the outcome of unrelated matters. CP 77-78. The court found that this was not an appropriate alternative to dismissal. 6/29/12 VRP at 17:4-12 (noting that Mr. Knedlik's request for a stay was "in many ways logically at odds with[] the other position, which is pursuing the

appeal at this time”); CP 131. Mr. Knedlik has not offered any evidence that the trial court did not consider adequately a lesser sanction than dismissal. *See Woodhead*, 787 Wn. App. at 132 (upholding trial court where plaintiff “failed to provide any evidence in the record . . . that the trial court failed to make the required findings with respect to lesser sanctions”).

In sum, Mr. Knedlik did not challenge the trial court’s findings on appeal, and they are verities. Even if this Court reviews these findings, there is no question they are supported by substantial evidence and should be upheld.

3. Given These Findings, the Trial Court Properly Concluded Dismissal was Proper.

Given the above findings, the trial court concluded that dismissal of Mr. Knedlik’s appeal was proper. CP 131. This was consistent with established authority holding that dismissal is proper when a party fails to comply with the court’s case scheduling order. For example, in *Apostolis*, the trial court dismissed an action where, as here, the plaintiff did not file timely a brief in an appeal of an administrative decision and did not engage in mandated settlement procedures. 101 Wn. App. at 305. The Court of Appeals upheld the dismissal despite finding that the plaintiff had

not “deliberately attempt[ed] to mislead the court” and had not otherwise acted in bad faith. *Id.*

Courts regularly recognize that dismissal is proper when it is clear that a party does not intend to “diligently prosecute the case or comply with the court’s orders”. *Johnson*, 148 Wn. App. at 639-40; *see also Woodhead*, 101 Wn. App. at 128 (upholding dismissal where plaintiff did not file confirmation of service pursuant to case schedule and otherwise attempted to mislead court); *Jewell v. City of Kirkland*, 50 Wn. App. 813, 821-22, 750 P.2d 1307 (1988) (plaintiff’s case dismissed under CR 41(b) for failure to pay cost of preparing records for use in judicial review when plaintiff did not provide any reasonable justification for failure to comply with order in timely manner). These circumstances are plainly present here, and the trial court’s dismissal was not an abuse of its discretion.

Mr. Knedlik does not dispute that he was aware of the relevant deadlines set forth in the Case Scheduling Order and chose not to comply with them. The trial court’s order expressly warned that dismissal would result. CP 142 (“failure to meet these event dates will result in the dismissal of the appeal”). “The administration of justice will be best served by a policy of treating court orders as meaning what they say and requiring strict compliance therewith.” *Jewell*, 50 Wn. App. at 822. The trial court did not abuse its discretion in determining that dismissal was

appropriate given Mr. Knedlik's non-compliance with its order. Mr. Knedlik has not raised any argument or authority to the contrary, and this Court should affirm.

V. CONCLUSION

Mr. Knedlik did not raise any argument or authority in support of reversing the trial court's dismissal order, and he has waived his only asserted assignment of error as a result. The trial court did not abuse its discretion in dismissing Mr. Knedlik's appeal given his failure to prosecute his appeal or comply with the case schedule. Accordingly, Sound Transit respectfully requests that the Court affirm the trial court's ruling.

RESPECTFULLY SUBMITTED this 4th day of March, 2013.

PACIFICA LAW GROUP LLP

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Attorneys for Respondent Central Puget
Sound Regional Transit Authority

No. 87895-1

RECEIVED BY E-MAIL

SUPREME COURT OF THE STATE OF WASHINGTON

WILL KNEDLIK,

Appellant,

v.

CENTRAL PUGET SOUND
REGIONAL TRANSIT
AUTHORITY,

Respondent.

**CERTIFICATE OF
SERVICE**

I, Dawn M. Taylor, under penalty of perjury of the laws of the State of Washington, declare as follows:

1. I am and at all times hereinafter mentioned was a citizen of the United States, a resident of the State of Washington, over the age of 21 years, and competent to be a witness in the above action, and not a party thereto.

2. On the 4th day of March, 2013, I delivered true and correct copies of the Brief of Respondent via email and U.S. Mail delivery to the following:

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Signed at Seattle, Washington this 4th day of March, 2013.



Katie Dillon

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To: Katie Dillon
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Subject: RE: Knedlik v. Central Puget Sound Regaional Transit Authority - Supreme Court Cause No. 87895-1 - Brief of Respondent

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Subject: Knedlik v. Central Puget Sound Regaional Transit Authority - Supreme Court Cause No. 87895-1 - Brief of Respondent

Attached for filing, please find the Brief of Respondent (Central Puget Sound Regional Transit Authority), and accompanying Certificate of Service. These documents are being filed by Sarah C. Johnson on behalf of Respondent Central Puget Sound Regional Transit Authority.

Sarah Johnson's email address is: sarah.johnson@pacificallawgroup.com and her WSBA Number is 34529.

A hard copies in the U.S. mail to Petitioner.

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