CASE NO. 76360-1-I
96200-6

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

TERESA L. BANOWSKY,

PETITIONER,

v.

GUY BACKSTROM, DC DBA BEAR CREEK CHIROPRACTIC.

RESPONDENTS

PETITION FOR DISCRETIONARY REVIEW TO WASHINGTON SUPREME COURT FROM COURT OF APPEALS, DIVISION I

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I. IDENTITY OF PETITIONER

Teresa L. Banowsky ("Banowsky"), underlying pro se plaintiff and underlying appellant, is the petitioner.

II. CITATION TO COURT OF APPEALS DECISION

Banowsky seeks review of the Court of Appeals decision filed on July 16, 2018. See Appendix.

III. ISSUES PRESENTED FOR REVIEW

The District Court erred in dismissing the case (and the Superior Court and Court of Appeals erred in affirming the dismissal) instead of transferring the case from the District Court to the Superior Court in accordance with CRLJ 14A(b), when Banowsky's original pleading alleged damages "exceeding $100,000."

A. The plain language of CRLJ 14A(b) mandates that the District Court "shall" transfer a case to Superior Court when "any party" asserts a claim in an amount in excess of the jurisdiction of the district court or seeks a remedy beyond the jurisdiction of the district court. There is no language that qualifies or makes the rule subject to an amended pleading or applicable only to when the District Court initially has jurisdiction through a pleading that asserts a claim within the court's jurisdiction.

B. CRLJ 14A(b) was revised in 2004 to broaden the scope of the rule from "a defendant, third party defendant, or cross claimant" to "any party." However, an original proposed amendment to the rule referred only to "a plaintiff in an amended complaint, third party defendants, or cross claimant." This phrase was explicitly rejected by the Board of Judicial Administration, and "any party" was suggested and adopted. However, the Comment to revised CRLJ 14A(b) was not updated with the final amendment, and still only refers to a plaintiff in an amended petition, a designation that was explicitly rejected by the BJA, thus confusing the issue.

C. *Howlett* and the comment to CRLJ 14A(b) are distinguishable and inapplicable. The District Court and Superior Court relied on *Howlett* and the comment to CRLJ 14A(b) in dismissing Banowsky's case. However, *Howlett* was decided before CRLJ 14A(b) was amended, and the comment to CRLJ 14A(b) does not address every scenario that can arise when a plaintiff asserts a claim for damages in excess of the district court's jurisdiction.

D. Application of CRLJ 14A(b) to transfer the case from District Court to Superior Court is consistent with the jurisdictional limits of the District Court.

E. CRLJ 14A(b) must, as a practical matter, allow the District Court to exercise jurisdiction to act after the filing of a request for damages over $100,000. *Howlett* holds that the District Court immediately loses jurisdiction over a claim where a plaintiff amends a complaint to allege damages in excess of the court's jurisdiction. If a court loses jurisdiction under *Howlett*, it simply cannot apply the rule for lack of subject matter jurisdiction without regard for the jurisdictional status of the case prior to losing jurisdiction.

F. Dismissing Banowsky's pro se case for pleading damages in excess of the District Court's jurisdictional limitations, when the District Court had jurisdiction over the first $100,000 claimed, is contrary to public policy and the stated goals of the Washington courts. Washington courts have long sought to determine cases in controversy according to their merits rather than on procedure whenever possible, and the dismissal of the Plaintiff's case is contrary to that intention.

IV. STATEMENT OF THE CASE

1. Background Facts

In this case, Banowsky alleges that she sought medical care from Dr. Backstrom after experiencing a fall that occurred on or about February 25, 2013. CP at 105. She had sustained injuries to her right hip, pelvis,

and thigh area from the fall, and the injuries were characterized by extensive bruising. *Id*.

Banowsky explicitly requested that Dr. Backstrom not perform the typical manipulation treatment he had previously employed on the injured area because the pain was so great. *Id*. Banowsky requested that Dr. Backstrom take an x-ray of the area, which he proceeded to do even though at the time, he did not have the supplies in his office to develop x-rays and, therefore, could not examine an x-ray prior to his subsequent treatment of Banowsky. *Id*.

Notwithstanding the fact that Banowsky obviously had an abnormal condition, that an x-ray analysis was not performed, and that Banowsky specifically requested not to receive manipulation on the injured areas, Dr. Backstrom proceeded to perform a lumbar spine manipulation on Banowsky. CP at 106.

When Dr. Backstrom performed a manipulation on Banowsky, his actions caused Banowsky's hamstring to immediately detach from the bone, after which Banowsky instantly heard a loud "pop" and felt significantly more intense pain in the injured area as well as additional pain in her lower leg and toes. CP at 106-107.

Furthermore, Banowsky alleges that Dr. Backstrom was experiencing personal issues at the time of the treatment, where he

expressed agitation, and which led to his inattention and use of too much force relating to the chiropractic manipulation. CP at 106.

Banowsky underwent subsequent surgery to re-attach the detached hamstring, but continued to experience severe pain as a result of Dr. Backstrom's actions up to and including the date on which she filed a Complaint against Dr. Backstrom. *Id.*

2. Procedural Facts

On February 25, 2016, Banowsky filed a *pro se* Complaint in the King County District Court. CP at 105. The Complaint requested relief "in an amount exceeding $100,000…." CP at 107. On April 14, 2016, Banowsky's attorney entered an appearance in the case. CP at 101.

On May 6, 2016, Banowsky filed Motion to Transfer Case to Superior Court. CP at 66-67. On May 11, 2016, Dr. Backstrom filed an opposition to the Motion to Transfer Case to Superior Court. CP at 45-53. On May 13, 2016, Banowsky filed a reply to Opposition to the Motion to Transfer Case to Superior Court. CP at 29-35.

On May 16, 2016, the District Court heard the motion to transfer and denied the motion and dismissed the case. CP at 27-28, 134-136.

On June 15, 2016, Banowsky filed Notice of Appeal to Superior Court. CP at 1.

On October 14, 2016, Banowsky filed an Appeal Brief with Superior Court in accordance with the Superior Court's scheduling order. CP at 111-119. On November 14, 2016, Dr. Backstrom filed the Brief of Respondents with the Superior Court. CP at 146-168.

On December 14, 2016, the Superior Court heard the appeal and denied it, affirming the dismissal of the District Court case. CP at 170-172, RP at 17-19.

The Court of Appeals affirmed the District Court's dismissal of the case by opinion dated July 16, 2018.

V. ARGUMENT

Banowsky submits that the Washington Supreme Court should accept review of the matter under RAP 13.4(b) for two reasons. Under RAP 13.4(b)(3), the appeal involves a significant question of law under the Constitution of the State of Washington. Under RAP 13.4(b)(4), the appeal involves an issue of substantial public interest that should be determined by the Supreme Court. That is, the Court of Appeals has created a bright line rule relating to the application (or non-application) of CRLJ 14A(b) that will impact many pro se plaintiffs who file their cases in good faith in the District Court.

A. CRLJ 14A(b) mandates that the District Court transfer the case to Superior Court when a when a party claims damages in excess of the jurisdiction limit.

CRLJ 14A(b) is unambiguous. When "any party" asserts a claim in an amount in excess of the district court's jurisdiction, the court "shall" order the entire case removed to superior court. CRLJ 14A(b). The rule states:

> (b) Claims in Excess of Jurisdiction - Generally. When **any party** in good faith asserts a claim in an amount in excess of the jurisdiction of the district court or seeks a remedy beyond the jurisdiction of the district court, the district court **shall** order the entire case removed to superior court.

CRLJ 14A(b) (emphasis added).

The rule's plain language applies to all parties, which includes a plaintiff. Also, the rule provides the court with no option and no discretion other than to transfer the case to superior court. The rule does not say "may order the case removed." The rule does not provide dismissal as an option. The only option is transferring the case to superior court.

B. CRLJ 14A(b) was revised in 2004 to broaden the scope of the rule from "a defendant, third party defendant, or cross claimant" to "any party."

CRLJ 14A(b) was amended and broadened in 2004 to include plaintiffs ("any party"):

> When ~~a defendant, third party defendant, or cross claimant~~ any party in good faith asserts a claim in an amount in excess of the jurisdiction of the district court or seeks a

> remedy beyond the jurisdiction of the district court, the district court shall order the entire case removed to superior court.

See WSR 04-15-028, Rules of Court, State Supreme Court, In the Matter of the Adoption of the Amendments to CRLJ 14A(b), Order No. 25700-A-792. That is, the rule was expanded to specifically include plaintiffs.

In an apparent explanation of the reason for the amendment, a part of the official comment to CRLJ 14A(b) states:

> This rule change would allow a plaintiff the same right as other parties to transfer a case to superior court, **upon the filing of an amended complaint**, [and] will encourage plaintiffs to file cases initially in the district court. Plaintiffs can file in the district court knowing that if a basis for claiming damages in excess of the jurisdictional limit of the district court should arise after they have filed their complaint, then they will have the opportunity to transfer their case to the superior court.

However, the comment corresponds with an interim amendment that was offered to, and rejected by, the Board of Judicial Administration (chaired by Supreme Court Chief Justice Gerry Alexander) before the Board finally adopted the current version of the rule. *See Minutes of the Board of Judicial Administration meeting on January 24, 2003*, Olympia, Washington.

The initially proposed amendment to CRLJ 14A(b) provided:

> When a ~~defendant~~ plaintiff in an amended complaint, third party defendant, or cross claimant in good faith asserts a claim in an amount in excess of the jurisdiction of the district court or seeks a remedy beyond the jurisdiction of the district court, the district court shall order the entire case removed to superior court.

Id. But the Board explicitly rejected this proposed version of the rule, and recommended adoption of the rule in its present state, which refers to "**all parties."** Therefore, it is clear that the Board did not intend the additional parties included in the amended rule to be limited to "plaintiffs in an amended complaint." This appears to put the current rule and its associated comment in conflict, but a reasonable inference can be made that the comment was not updated to reflect the final amendment that was recommended by the Board and ultimately adopted by the Supreme Court, or that the comment is just one example of the many scenarios that could arise under the rule, including Banowsky's situation.

Additionally, there is specific, post-rule revision, Division 1 case law that supports an interpretation that if a plaintiff asserts a claim in excess of the district court's jurisdiction that the proper procedure is to transfer the case to superior court. *E.g.*, *City of Seattle v. Sisley*, 164 Wn. App. 261, 265, 263 P.3d 610, 612 (2011) ("Finally, RCW 3.66.020 provides that district courts have no jurisdiction if a claim exceeds

$75,000: ‘If the value of the claim or the amount at issue does not exceed seventy-five thousand dollars, exclusive of interest, costs, and attorneys' fees, the district court shall have jurisdiction.’ When a claim exceeds that value, it may be removed to superior court. (citing CR 14A(a) [sic])”.

In any event, the plain language of CRLJ 14A(b) indicates that a plaintiff in the position of Banowsky may avail herself of the rule and have her case transferred to the superior court.

C. *Howlett* and the comment to CRLJ 14A(b) are distinguishable and inapplicable.

The District Court and Superior Court appear to rely heavily on *Howlett v. Weslo, Inc*., 90 Wn. App. 365, 951 P.2d 831 (1998) and the comment to the CRLJ 14A, essentially finding that before CR 14A(b) [sic] can apply, the district court must already have jurisdiction over the case and a subsequent claim asserts a claim for damages over $100,000. *E.g.*, CP at 134-136, RP at 17-19. But both Howlett and the comment to CR 14A are distinguishable.

Howlett, a Division 3 case, held that when a plaintiff amended the complaint to assert a claim alleging the damages exceeding the district court’s jurisdictional limit, there was no authority for the district court to transfer jurisdiction over the case to the superior court. *Howlett v. Weslo, Inc.*, 90 Wn. App. 365, 367, 951 P.2d 831, 833 (1998).

First, *Howlett* was decided before CRLJ 14A(b) was amended and broadened in 2004 to include plaintiffs in general ("any party"). Accordingly, the plaintiff in *Howlett* did not (and could not) argue that the district court has a specified power to transfer the case under CR 14A(b). *See, Howlett* at 367 ("Nor does she argue the district court has a specified power to transfer the case. Instead, she argues the district court has the inherent or implied power to transfer the case to the superior court because RCW 3.66.010 vests the district courts with 'all the necessary powers, which are possessed by the courts of record in this state.'").

Second, and in support of dismissal in *Howlett*, the *Howlett* court cited *Crosby v. Spokane County*, 87 Wn. App. 247, 253, 941 P.2d 687 (1997) and *Marley v. Dep't of Labor & Indus.*, 125 Wn.2d 533, 539, 886 P.2d 189, 193 (1994). Neither *Crosby* nor *Marley* addressed facts or issues that are similar to this case.

In *Crosby*, the plaintiff failed to perfect her appeal. *Crosby at* 253 ("The court in this case did not err. Under *Griffith* and *Sterling*, the court lacked jurisdiction because Mr. Crosby failed to file the affidavit or verification required by RCW 7.16.050 within 90 days after filing the writ application. A court lacking jurisdiction of any matter may do nothing other than enter an order of dismissal."). *Crosby* is distinguishable where the plaintiff failed to perfect her appeal and there was no option other than

to dismiss. In Banowsky's situation, the district court had jurisdiction up to $100,000 and a revised CRLJ 14A(b) provided a mechanism to transfer the case to the superior court.[1]

In *Marley*, the issue was whether the Department's order (an adjudication) was void. *Marley* at 539 ("[A] void judgment exists whenever the issuing court lacks personal jurisdiction over the party or subject matter jurisdiction over the claim"). *Marley* is distinguishable because an order (an adjudication, a judgment) was actually entered deciding the case and the order was void for lack of jurisdiction. In Banowsky's case, the District Court did not enter a judgment for over $100,000 (the district court would lack jurisdiction to do so). In Crosby, the plaintiff failed to perfect her appeal. In Marley, the issue was whether the Department's order (an adjudication) was void.

The comment to CRLJ 14A(b) addresses when a plaintiff amends her complaint (*e.g. Howlett*), and appears to specifically address the inequitable situation such as the one at issue in *Howlett,* where the plaintiff amended her complaint to assert a claim in excess of the

[1] Additionally, it should be noted that *Crosby* was reversed in 1999, when the Supreme Court held that the jurisdictional requirement had been satisfied by substantial compliance with the affidavit/verification requirement. *See Crosby v. Spokane County*, 137 Wn.2d 296, 301-303, 971 P.2d 32 (1999) ("Our approach is consistent with sound public policy…[citation omitted] that the merits of controversies be reached…[citation omitted] and the purpose of the civil rules it to place substance over form to the end that cases be resolved on the merits.") It is undisputed that Banowsky substantially complied with the filing of her complaint in the District Court.

jurisdictional limit, leading to dismissal. But the comment does not suggest that CRLJ 14A(b) be so limited to exclude the fact pattern in this case. In fact, as discussed above, the fact that the Board of Judicial Administration explicitly rejected wording that would limit the application of the rule to "plaintiffs in amended complaints" indicates that the rule should not be read to limit its application in such a manner.

Whether or not the limitation of the comment should be read into the rule can be determined by following canons of statutory construction. Although CRLJ 14A(b) is a court rule, and not a legislative statute, the same rules of construction can be applied. *State v. Otton*, 185 Wn.2d 673, 681, 374 P.3d 1108, 1112 (2016) (The court interprets court rules the same way it interprets statutes, using the tools of statutory construction and the court begins with the plain language of the rule). By virtue of separation of powers, courts are empowered to make their own procedural rules, and can even overrule court rules enacted into law by a legislature. *Marine Power & Equip. Co. v. State*, 102 Wn.2d 457, 461, 687 P.2d 202, 204-05 (1984) ("It is within the power of this court to dictate, under the constitutional separation of powers, its own court rules, even if they contradict rules established by the Legislature"). In fact, Superior Court Civil Rule CR 81 states that procedural statutes - other than certain enumerated proceedings - are superseded by the civil and criminal rules

for superior court. *See, also* Civil Rules for Courts of Limited Jurisdiction Rule 81(b), which states, "(b) Conflicting Statutes and Rules. Subject to the provisions of section (a) of this rule, these rules supersede all procedural statutes and other rules that may be in conflict."

It has long been the rule to interpret statutes (and rules) as they are plainly written, unless a literal reading would contravene legislative intent by leading to a strained or absurd result. *Marine Power & Equip. Co. v. State*, 102 Wn.2d 457, 461, 687 P.2d 202, 204-05 (1984).

Looking to scholarly writings on statutory construction, legal scholars have written and opined extensively on how Washington courts interpret statutes. For example, Philip A. Talmadge, in *A New Approach to Statutory Interpretation in Washington*, 25 Seattle U. Law Review 179, 190, 211 (2001), writes "Washington courts have long indicated that they will not construe a plain and unambiguous statute, that is, they will not resort to canons of construction or legislative history to analyze the meaning of a statute. This is often described as the plain meaning rule." Under the plain meaning rule, courts must give statutes their full effect, *even if the result is unjust, arbitrary, or inconvenient. Id*., citing *Board of Trade v. Hayden*, 4 Wash. 263, 280, 30 P. 87, 91 (1892), (emphasis added). Likewise, Professor Wang writes, "[a]s a corollary to the rule permitting examination of legislative history in the case of ambiguity,

Washington courts have found it inappropriate to consider the legislative history of an unambiguous statute." Wang, Arthur C., 7 *Univ. of Puget Sound Law Review* 571 at 576 (1984).

Even if one believes that applying the exact language of Rule CRLJ 14(A)(b) rather than more narrowly according to the comment (*i.e.* only to plaintiffs in amended complaints) would lead to a case where the words go beyond what was probably the intention, the long history of jurisprudence in Washington requires that the interpretation, based on the exact language of the rule, controls any other interpretation. "Where, as here, the language of the statute is plain and not ambiguous, a departure from its clear meaning is not warranted." *McCarver v. Manson Park and Recreation Dist*., 92 Wn. 2d 370, 378, 597 P.2d 1362, 1366 (1979), citing *Roza Irrigation Dist. v. State*, 80 Wn.2d 633, 497 P.2d 166 (1972).

In *Roza Irrigation Dist*., the Supreme Court of Washington, *en banc*, found that interpretation of a statute was necessary because there were at least two meanings of the term "municipal corporation." However, the Court first stated, "Of course the basic rule is that, where the language of a statute is clear and unambiguous, there is no room for judicial interpretation." *Id*. at 635, citing *King County v. Seattle*, 70 Wn.2d 988, 425 P.2d 887 (1967).

Accordingly, CRLJ 14A(b) should be applied to the present case, according to its plain language, and Banowsky's case should be transferred from the District Court to the Superior Court.

But if the comment to CRLJ 14A(b) is considered, a history of the adoption of the comment should also be considered. According to the minutes of a Board for Judicial Administration (BJA) meeting discussed *supra*, an amendment to CRLJ 14A(b), as originally proposed, specifically referred to "a plaintiff in an amended complaint…." (Emphasis added). However, the BJA rejected that proposed amendment and instead, decided to change "*a plaintiff in an amended complaint*, third party defendants, or cross claimant" to "*any party*" in the proposed rule, thus broadening the scope of the parties that could avail themselves of the rule. (Emphasis added). *Minutes of the Board of Judicial Administration meeting on January 24, 2003*, Olympia, Washington. The rule, as amended with reference to "any party," was ultimately adopted by the Supreme Court. *See* WSR 04-15-028, Rules of Court, State Supreme Court, In the Matter of the Adoption of the Amendments to CRLJ 14A(b), Order No. 25700-A-792.

Whether the commentary is considered with the plain language of the rule or not, the Supreme Court of Washington intended that a mechanism be put in place to transfer a case from District Court to

Superior Court when damages are claimed in an amount in excess of the jurisdiction limit of the District Court. This was done to avoid an injustice to the claiming party. Applying the plain language of the rule to the present fact pattern does not produce an absurd result, as it would simply allow a case to be transferred to preserve the plaintiff's right. In fact, it would be more absurd to read the rule with the comment and hold that a plaintiff should lose her cause of action for claiming as little as one cent over the jurisdictional limit.

D. CRLJ 14A(b) must, as a practical matter, allow the District Court to act after the filing of a request for damages over $100,000.

A logical fallacy is inherent in two primary arguments made by Dr. Backstrom. On one hand, he claims that CRLJ 14A(b) only applies to a claim over which the district court already has jurisdiction if it is later determined the amount in controversy exceeds the court's jurisdictional limits. On the other hand, Dr. Backstrom relies on *Howlett* which holds that the District Court immediately loses subject matter jurisdiction over a case when a plaintiff amends her complaint to allege damages in excess of the court's jurisdiction limits.

But if the court has lost jurisdiction, it cannot apply the rule, whether or not there was some color of jurisdiction prior to it being lost. Therefore, a plaintiff who is asserting damages in excess of $100,000 in an

amended complaint is in exactly the same position, vis-à-vis the court's jurisdiction, as a plaintiff who is asserting damages in excess of $100,000 in an original complaint.

Hence, interpreting CRLJ 14A(b) in the manner proposed by Dr. Backstrom produces an untenable result, unlike interpreting the rule according to its plain language.

E. Dismissing Banowsky's case for pleading damages in excess of the District Court's jurisdictional limitations, when the District Court had jurisdiction over the first $100,000 claimed, is contrary to public policy and the stated goals of the Washington courts.

Washington courts have long sought to determine cases in controversy according to their merits rather than on procedure whenever possible, and the dismissal of the Plaintiff's case is contrary to that intention. For example, CRLJ 1 states in part: "[These rules] shall be construed and administered to secure the just, speedy, and inexpensive determination of every action."

In this case, the District Court had jurisdiction over the first $100,000 claimed by Banowsky. Dismissing Banowsky's pro se district court case for pleading damages in excess of the court's jurisdictional limitations (even if she had pleaded one cent over $100,000), when the District Court would have jurisdiction over the first $100,000 (within the Court's jurisdiction), is an unjust result and must be contrary to public

policy and the stated goals of the Washington courts. Also, Dr. Backstrom was on notice of the case within the statute of limitations (the case was filed within the statute of limitations and he was properly served within 90 days after filing), and he suffers absolutely no prejudice if the case is transferred to the superior court. Banowsky substantially complied with the filing requirements in the District Court. Respectfully, the dismissal, especially in light of the express language of CRLJ 14A(b), leads to an absurd and unjust result, contrary to CRLJ 1.

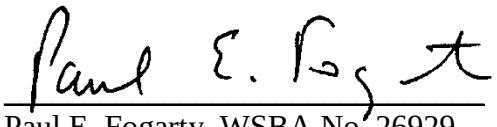
F. The Proper Remedy is to Transfer the Case.

The Washington Supreme Court has written, "[o]f course, a plaintiff frequently seeks more than the law permits, but that in itself does not destroy jurisdiction; it merely limits the effective relief the court can properly grant." *See, e.g., Silver Surprize v. Sunshine Mining Co.*, 74 Wn.2d 519, 523 (1968), *citing Monongahela Power Co. v. Shackelford*, 142 W.Va. 760, 98 S.E.2d 722 (1957). CRLJ 14A(b) is consistent with RCW 3.66.020 because it recognizes that the District Court lacks jurisdiction to decide claims over $100,000 and it provides a procedural mechanism to transfer the case to the Superior Court. Such a procedural mechanism is similar to a federal court that decides it lacks jurisdiction (e.g., lack of diversity of citizenship or lack of a federal question). The remedy is to remand the case back to state court, not dismiss the case.

VI. CONCLUSION

Banowsky respectfully requests that the Supreme Court reverse the rulings of the District Court, Superior Court and Court of Appeals, and remand the case back to the District Court with instructions to transfer the case to Superior Court pursuant to CRLJ 14A(b).

Respectfully submitted this 14th day of August, 2018.



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VII. APPENDIX

1. Court of Appeals Opinion filed on July 16, 2018.

2. CRLJ 14A

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2018, I caused to be served a true and correct copy of this Petition for Discretionary Review by electronic service through the Court's portal system and email to the following:

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VIII. APPENDIX

1. Court of Appeals Opinion filed on July 16, 2018.

2. CRLJ 14A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

TERESA BANOWSKY, Appellant, v. GUY BACKSTROM, D.C., d/b/a BEAR CREEK CHIROPRACTIC CENTER, Respondent.	)	No. 76360-1-I PUBLISHED OPINION FILED: July 16, 2018

VERELLEN, J. — "Jurisdiction over the subject matter of an action is an elementary prerequisite to the exercise of judicial power."[1] If a court lacks subject matter jurisdiction, it is compelled to dismiss the action. District courts in Washington have subject matter jurisdiction limitations both as to types of controversies and the amount in controversy. The amount-in-controversy limit is grounded in the Washington State Constitution. When a plaintiff invokes the jurisdiction of the district court by filing a complaint expressly seeking damages in an amount exceeding the amount-in-controversy ceiling, the court lacks subject matter jurisdiction and must dismiss the action. A court rule such as CRLJ 14A(b) may not expand the authority of the court to take any action other than dismissal.

[1] In re Adoption of Buehl, 87 Wn.2d 649, 655, 555 P.2d 1334 (1976).

We affirm the superior court's decision on RALJ appeal affirming the district court's dismissal of the action filed by Teresa Banowsky expressly seeking damages in excess of $100,000.

FACTS

Banowsky, representing herself, filed her chiropractic malpractice lawsuit against Dr. Guy Backstrom in district court expressly seeking "actual compensatory damages in an amount exceeding $100,000.00 together with attorney's fees, court costs, and whatever other damages deemed appropriate by the Court."[2] She filed her complaint on the last day of the statute of limitations period.

Seven weeks later, attorney James Banowsky appeared on behalf of Theresa Banowsky and filed a motion to transfer the lawsuit to superior court based on CRLJ 14A(b). The motion alleged that when the complaint was filed, the plaintiff was unaware of the limitation of damages in district court. The motion also confirmed that "Plaintiff's claim exceeds the $100,000.00 District Court Limit."[3]

The district court denied the motion to transfer and dismissed the case. On RALJ appeal, the superior court affirmed the district court's dismissal for lack of subject matter jurisdiction.

A commissioner of this court granted discretionary review.

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[2] Clerk's Papers (CP) at 107.

[3] CP at 95-96.

ANALYSIS

Banowsky argues that CRLJ 14A(b) required the district court to transfer her case to superior court even though her complaint alleged damages that exceeded the district court's amount-in-controversy limit. Because the district court did not have subject matter jurisdiction over the controversy as alleged by Banowsky in her original complaint, we disagree.

We review an order of dismissal for lack of subject matter jurisdiction de novo.[4] The consequences of a court acting without subject matter jurisdiction are "'draconian and absolute.'"[5] "A judgment entered by a court that lacks subject matter jurisdiction is void. There is no time limit for attacking a void judgment."[6] Because of these weighty consequences,[7] great caution is warranted to avoid confusing the broad term "jurisdiction" with the specific term "subject matter jurisdiction."[8] "'When a court lacks subject matter jurisdiction in a case, dismissal is the only permissible action the court may take.'"[9]

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[4] Fontana v. Diocese, 138 Wn. App. 421, 425, 157 P.3d 443 (2007).

[5] In re Marriage of McDermott, 175 Wn. App. 467, 479, 307 P.3d 717 (2013) (quoting Cole v. Harveyland, LLC, 163 Wn. App. 199, 205, 258 P.3d 70 (2011)).

[6] Cole, 163 Wn. App. at 205 (internal citation omitted).

[7] Bour v. Johnson, 80 Wn. App. 643, 646-47, 910 P.2d 548 (1996).

[8] Cole, 163 Wn. App. at 205.

[9] Young v. Clark, 149 Wn.2d 130, 133, 65 P.3d 1192 (2003) (quoting Deschenes v. King County, 83 Wn.2d 714, 716, 521 P.2d 1181 (1974)).

Generally, a court has subject matter jurisdiction if it has authority to adjudicate the type of controversy involved in the action.[10] The "type of controversy" refers to the nature of the case or the relief sought.[11] But an amount-in-controversy limitation may also be a component of subject matter jurisdiction.[12] The parties agree that the district court's amount-in-controversy limitation is a component of subject matter jurisdiction. That limitation is grounded in article IV, section 10 of the Washington Constitution, which states in relevant part:

> Justices of the peace shall have original jurisdiction in cases where the demand or value of the property in controversy is less than three hundred dollars or such greater sum, not to exceed three thousand dollars or as otherwise determined by law, as shall be prescribed by the legislature.

The legislature later renamed justices of the peace as district courts.[13] The legislature currently authorizes district courts to hear civil claims where "the value

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[10] McDermott, 175 Wn. App. at 480-81 (quoting Shoop v. Kittitas County, 108 Wn. App. 388, 393, 30 P.3d 529 (2001)); see also Cole, 163 Wn. App. at 209 ("The critical concept in determining whether a court has subject matter jurisdiction is the type of controversy.").

[11] Dougherty v. Dep't of Labor & Indus., 150 Wn.2d 310, 316, 76 P.3d 1183 (2003); Magee v. Rite Aid, 167 Wn. App. 60, 73, 277 P.3d 1 (2012).

[12] See generally RESTATEMENT (SECOND) OF JUDGMENTS § 11 cmts. a & e at 108 & 111-12 (AM. LAW INST. 1982) (recognizing that the authority of courts derives from constitutional provisions or from statutory provisions adopted in the exercise of a legislative authority and that courts may have jurisdiction over actions based on a specified amount).

[13] RCW 3.30.015 ("All references to justices of the peace in other titles of the Revised Code of Washington shall be construed as meaning district judges. All references to justice courts or justice of the peace courts in other titles of the Revised Code of Washington shall be construed as meaning district courts.").

of the claim or the amount at issue does not exceed one hundred thousand dollars, exclusive of interest, costs, and attorneys' fees."[14]

Similarly, amount-in-controversy limitations also govern the appellate courts. The Washington Supreme Court may not consider civil claims for the recovery of money or personal property when the "original amount in controversy" is $200 or less (with limited exceptions).[15] Under RCW 2.06.030, the Washington Court of Appeals has a similar amount-in-controversy floor. An appellate court "'must dismiss an appeal when the lack of jurisdiction is apparent because the amount claimed does not reach the statutory amount of $200.'"[16]

One question presented in this appeal is how a court should measure the amount in controversy in a district court matter. Article IV, section 10's reference to "the demand" indicates the amount in controversy is the amount stated in the prayer for relief in the initial complaint.[17] This is consistent with our Supreme Court's holding that the amount-in-controversy floor for appeals under article IV,

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[14] RCW 3.66.020.

[15] WASH. CONST. art. IV, § 4.

[16] City of Bremerton v. Spears, 134 Wn.2d 141, 150, 949 P.2d 347 (1998) (quoting 1 WASHINGTON STATE BAR ASS'N, APPELLATE PRACTICE DESKBOOK § 9.2(4), at 907 (2d ed. 1993)).

[17] See generally 20 AM. JUR. 2D COURTS § 102 (2015) ("As a general rule, it is the amount or value set forth in the damages clause of the complaint or other initial pleading of the plaintiff which determines whether the court has jurisdiction under provisions restricting jurisdiction on the basis of the amount in controversy.").

section 4 is determined by the initial pleadings, not the amount ultimately requested for judgment or the amount of judgment.[18]

Here, Banowsky's initial complaint expressly demanded damages in excess of $100,000. Because the amount demanded exceeded the constitutionally based amount-in-controversy limitation for district court, the district court lacked subject matter jurisdiction and its only permissible action was dismissal.

Banowsky argues that the $100,000 limit on the district court's subject matter jurisdiction must yield to CRLJ 14A(b), which states, "When *any* party in good faith asserts a claim in an amount in excess of the jurisdiction of the district court or seeks a remedy beyond the jurisdiction of the district court, the district court *shall* order the entire case removed to superior court."[19] Banowsky contends this rule compels the district court to transfer her case to superior court.

On its face, the rule purports to compel a transfer when "any party" asserts a claim beyond the amount-in-controversy limit, which would include the plaintiff's

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[18] Baker v. Oliver, 37 Wn.2d 862, 864, 226 P.2d 567 (1951) ("the original amount in controversy is to be determined by the averments of the pleadings"); Loveland v. Riley, 142 Wash. 44, 45, 252 P. 154 (1927) ("The amount in controversy as fixed by the Constitution is determined by the averments of the pleadings and not by the demand for judgment."); but see Moore v. Myers, 175 Wash. 234, 235, 27 P.2d 117 (1933) (holding that it is the amount "submitted to the trier of the facts" that determines whether the appellate court has subject matter jurisdiction); but cf. J & J Drilling, Inc. v. Miller, 78 Wn. App. 683, 898 P.2d 364 (1995) (holding that where a counterclaim alleged damages greater than the amount-in-controversy limit in bad faith to escape district court jurisdiction, the court may look to the actual amount litigated and disregard the original allegation of damages in the counterclaim).

[19] (Emphasis added.)

initial complaint.[20] But such an application of CRLJ 14A(b) expressly and absolutely conflicts with CRLJ 12(h)(3), which states that "[w]henever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court *shall* dismiss the action."[21]

Banowsky cites no authority supporting her premise that a court rule may carve out an exception to the district court subject matter jurisdiction amount-in-controversy ceiling. "The civil rules are 'procedural rules applicable only after the commencement of any action.'"[22] They "do not purport to extend subject matter jurisdiction of the court."[23] Therefore, a court rule may only provide relief in circumstances that arise after the district court acquires subject matter jurisdiction; that is, when the original complaint invokes jurisdiction within the amount-in-controversy limitation. The constitutionally grounded amount-in-controversy limitation on subject matter jurisdiction cannot be eliminated or altered by means of a court rule. For this reason, the district court is prohibited from transferring a case to superior court under CRLJ 14A(b) where the original complaint demanded damages in excess of the court's amount-in-controversy limitation.

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[20] Because there is no ambiguity in the language of CRLJ 14A(b), we do not look to the rule's comments for further clarification.

[21] (Emphasis added.)

[22] Patrick v. DeYoung, 45 Wn. App. 103, 107-08, 724 P.2d 1064 (1986) (quoting Tarabochia v. Gig Harbor, 28 Wn. App. 119, 123, 622 P.2d 1283 (1981)).

[23] Diehl v. Growth Mgmt. Hearings Bd., 153 Wn.2d 207, 216, 103 P.3d 193 (2004); CRLJ 82 ("These rules shall not be construed to extend or limit the jurisdiction of the courts of limited jurisdiction or the venue of actions therein.").

Public policy also favors this result. The clear policy of our state constitution is that the superior court is the court of almost "universal" subject matter jurisdiction.[24] The other Washington trial courts necessarily have limited jurisdiction. It would greatly undercut that intentional divide to allow a plaintiff to ignore the district court amount-in-controversy limitation and force a transfer even though she demanded an amount over the district court limit.

In her reply at the trial court level, Banowsky requested, alternatively, that the district court allow her to amend her complaint to seek damages of $100,000 or less, or to allow her to proceed in district court without amending her complaint and simply limit the recoverable damages to $100,000. But a midstream request to amend the amount requested or limit damages to comply with the ceiling must fail. The amount-in-controversy limitation is part of the district court's constitutionally-grounded subject matter jurisdiction. Banowsky alleges a single claim greater than $100,000. The court cannot not split that claim to retain subject matter jurisdiction over the first $100,000 and ignore the excess.[25] Allowing subject matter jurisdiction to be manipulated in this way would erode material

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[24] See Ralph v. State Dep't of Nat. Res., 182 Wn.2d 242, 252, 343 P.3d 342, 347 (2014) (article IV, section 6 gives "to the superior courts 'universal original jurisdiction, leaving the legislature to carve out from that jurisdiction the jurisdiction of . . . any other inferior courts that may be created'") (alteration in original) (quoting Moore v. Perrot, 2 Wash. 1, 4, 25 P. 906 (1891)); WASH. CONST. art. IV, § 10 (the courts of limited jurisdiction "shall not trench upon" the near universal subject matter jurisdiction of the superior courts).

[25] But cf. Rasmussen v. Chase, 44 Wn. App. 71, 720 P.2d 860 (1986) (two separate cases, each within the amount-in-controversy limit, consolidated because they represented one cause of action; trial court did not err in limiting the amount of recovery).

differences between the superior courts and the district courts and open the door to potential abuse. Where the entire claim exceeds the amount-in-controversy limit, the district court does not have subject matter jurisdiction and is required to dismiss the case.

Although Banowsky agrees that the amount in controversy is a component of the district court's subject matter jurisdiction, she also contends that the amount in controversy is only a limit on the amount of judgment. Banowsky cites Silver Surprize, Inc. v. Sunshine Mining Co. for the proposition that a plaintiff who seeks more than the law permits does not destroy jurisdiction but only limits her effective relief.[26] But that statement was dicta unrelated to the specific facts of that case and lacked any citation to Washington authority.[27] And, as discussed, such an option is not available; when the court lacks subject matter jurisdiction, it must dismiss. Fundamental policy concerns weigh against such a blurred and meandering dividing line between district court and superior court subject matter jurisdiction.[28]

Given the volume of claims litigated in district court, a bright line rule is apt.[29] If a plaintiff initiates a lawsuit by filing a complaint that expressly demands

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[26] 74 Wn.2d 519, 445 P.2d 334 (1968).

[27] Id. at 523.

[28] See Baker, 37 Wn.2d at 864; Loveland, 142 Wash. at 45.

[29] See, e.g., Kittitas County v. Allphin, ___ Wn.2d ___, 416 P.3d 1232, 1247 (2018) ("A bright-line rule would also give due regard for the importance of maintaining predictability."); State v. Pizzuto, 55 Wn. App. 421, 434-35, 778 P.2d 42 (1989) ("Our Supreme Court has recognized the significant utility of bright line rules" and "[a]doption of something less than a bright line rule . . . would only result in uncertainty . . . and greater numbers of cases for the courts.").

damages greater than the district court's amount-in-controversy limitation, the district court has no option but to dismiss the case for lack of subject matter jurisdiction.

Contrary to Banowsky's arguments, our holding will not render CRLJ 14A(b) meaningless. Where a plaintiff properly invokes the subject matter jurisdiction of the district court by demanding relief that is within the amount-in-controversy limit of the court, CRLJ 14A(b) can afterward be applied to direct a transfer of the case to superior court. For example, a plaintiff may later seek to remove the case to superior court on the good faith belief that although her damages initially were below the limit, they now appear to exceed the subject matter jurisdiction of the district court. Or the rule may be applied where a plaintiff, through third-party practice, recognizes the need to assert a claim against a new party that exceeds the subject matter jurisdiction dollar limit.[30] Additionally, cross claims and counterclaims that exceed the amount-in-controversy limit would also be subject to CRLJ 14A(b). In each of these scenarios, the district court has subject matter jurisdiction when the lawsuit is commenced and still retains subject matter jurisdiction when asked to apply the transfer provision of CRLJ 14A(b).

Banowsky argues that CRLJ 14A(b) is a specific rule that supersedes the more general rule in CRLJ 12(h)(3).[31] But this contextual maxim of statutory

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[30] 4B KARL B. TEGLAND, WASHINGTON PRACTICE: RULES PRACTICE CRLJ 14A (7th ed. 2008).

[31] See generally Kustura v. Dep't of Labor & Indus., 169 Wn.2d 81, 88, 233 P.3d 853 (2010) ("'A specific statute will supersede a general one when both apply.'") (quoting Waste Mgmt. of Seattle, Inc. v. Utils. & Transp. Comm'n, 123 Wn.2d 621, 630, 869 P.2d 1034 (1994)).

interpretation is not applicable here. The lack of subject matter jurisdiction is an absolute bar to any action by a court when a claimant attempts to invoke the jurisdiction of that court by filing an initial complaint that exceeds the constitutionally based amount-in-controversy limitation. Similarly, Banowsky's argument that the court rules at issue may supersede legislative procedural statutes applicable to the district courts is also not persuasive because the district court's amount-in-controversy limitation is grounded in the Constitution, not merely in a statute.

Banowsky also argues that under City of Seattle v. Sisley, if a plaintiff asserts a claim in excess of the district court's jurisdiction, the proper procedure is to transfer the case to superior court.[32] But Sisley held that a municipal court exercising its exclusive jurisdiction to to hear municipal court violations is not subject to the district court amount-in-controversy limitations. The passing reference to CRLJ 14A was dicta.[33] Sisley is not controlling.

Banowsky argues that Howlett v. Weslo, Inc., is not controlling.[34] To the extent that Howlett was decided before the current version of CRLJ 14A(b) was amended,[35] we agree that it does not control the issue presented in this case. Although we do not rely on Howlett in our analysis, that court's observation that a

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[32] 164 Wn. App. 261, 263 P.3d 610 (2011).

[33] Id. at 265-67.

[34] 90 Wn. App. 365, 951 P.2d 831 (1998).

[35] Before its revision in 2004, CRLJ 14A(b) only allowed a "defendant, third party defendant, or cross claimant" to seek removal to superior court, not "any party" as the rule now stands.

case must be dismissed when it exceeds the court's subject matter jurisdiction is entirely consistent with our decision here.[36]

CONCLUSION

Because Banowsky invoked the jurisdiction of the district court by filing a complaint expressly seeking damages in an amount exceeding the amount-in-controversy ceiling, the lack of subject matter jurisdiction compelled dismissal of the action. CRLJ 14A(b) does not alter the result.

We affirm.

WE CONCUR:

[36] See Howlett, 90 Wn. App. at 368.

Civil Rules for Courts of Limited Jurisdiction

RULE CRLJ 14A
REMOVAL TO SUPERIOR COURT

(a) Jurisdiction Over Third Party. A case may be removed to superior court in order to obtain jurisdiction over a third party defendant, as provided in RCW 4.14.010. This procedure is governed by RCW 4.14.

(b) Claims in Excess of Jurisdiction--Generally. When any party in good faith asserts a claim in an amount in excess of the jurisdiction of the district court or seeks a remedy beyond the jurisdiction of the district court, the district court shall order the entire case removed to superior court.

(c) Claims in Excess of Jurisdiction--Orders and Process. If a case is removed to the superior court under section (b) of this rule, the superior court may issue all necessary orders and process as provided in RCW 4.14.030.

(d) Claims in Excess of Jurisdiction--Improper Removal. If it appears that a case has been improperly removed to the superior court under section (b) of this rule, the superior court shall remand the case as provided in RCW 4.14.030.

(e) Claims in Excess of Jurisdiction--Attached Property; Custody. If property of a defendant is attached or garnished prior to the removal of a case, the attachment or garnishment shall be transferred with the removed case to the superior court and shall be held to answer the final judgment or decree in the same manner as it would have been held to answer had the cause been brought in the superior court originally.

[Adopted effective September 1, 1984; September 1, 2004.]

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