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FILED
DECEMBER 29, 2022
In the Office of the Clerk of Court
WA State Court of Appeals Division III

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

DAVID SHEPLER, Respondent, v. TERRY'S TRUCK CENTER, INC., a Washington corporation, and TERRY REES, individually, Appellants.	)	No. 38469-1-III OPINION PUBLISHED IN PART

SIDDOWAY, C.J. — In 2018, the Washington Legislature amended RCW 7.06.050 to provide that a party wishing to appeal a civil arbitration award and request a trial de novo must sign the request. The Supreme Court, exercising its authority to adopt procedures to implement civil arbitration under chapter 7.06 RCW, likewise amended MAR 7.1 (also renaming it SCCAR 7.1) to provide that the request must be signed by the party.

The appellants here, Terry's Truck Center, Inc. and its owner and president, Terry Rees (collectively, the "truck center"), filed and served a request for trial de novo after the filing of an arbitration award in favor of David Shepler. It was signed by only their attorney. Mr. Shepler waited until more than 20 days after the filing of the award and

then moved to strike the request for trial de novo because it had not been signed by the parties.

Mr. Rees promptly signed a second request for trial de novo, which was filed and served. After initially declining to strike the first, timely filed request, the trial court granted a renewed motion to strike following the filing of this court's Division One decision in *Mangan v. Lamar*, 18 Wn. App. 2d 93, 496 P.3d 1213 (2021), which held that a trial court properly struck an otherwise timely request for trial de novo where it was signed only by counsel.

We agree with *Mangan* and with Division Two's decision in *Butler v. Finneran*, 22 Wn. App. 2d 763, 516 P.3d 395 (2022), that if the amendments to RCW 7.06.050 and MAR 7.1 require a party to sign a request for trial de novo within 20 days of the filing of the arbitration award, then actual compliance, not substantial compliance, is required. On the question of whether the statutory and rule changes in fact require a party's signature to be provided within 20 days, we conclude that it is a necessary implication from other language in the statute and rule.

For that reason, and because denial of the defendants' prearbitration summary judgment motion is not appealable, we affirm.

FACTS AND PROCEDURAL BACKGROUND

David Shepler sued his former employer, Terry's Truck Center, and its owner and president, Mr. Rees, for disability discrimination and wrongful discharge in violation of

public policy. A year after the suit was commenced, the truck center moved for summary judgment dismissal of the complaint. The trial court denied the motion.

The case proceeded to civil arbitration. The hearing was conducted on September 10, 2020, the arbitrator signed an arbitration award in Mr. Shepler's favor on September 17, 2020, and the award was filed on September 21, 2020.

Two days later, the truck center filed and served a request for trial de novo. It was signed by only its attorney. Its appended certificate of service indicates it was served on opposing counsel by electronic mail.

Over a month later, Mr. Shepler moved to strike the request, arguing it did not comply with RCW 7.06.050(1) because it did not contain the signatures of Mr. Rees and an authorized representative of the corporation. As 20 days had passed since the arbitration award was filed, Mr. Shepler argued that the truck center had missed the statutory deadline for requesting trial de novo. On November 11, 2020, Mr. Rees sought to cure the defect by signing a second request individually and as the corporation's president. This second request was filed and served on opposing counsel on November 12, 2020. Counsel also filed a declaration from Mr. Rees affirming that the initial request for a trial de novo had been authorized by him. Counsel filed his own declaration explaining that he had relied on pre-2019 MARs that continued to appear on the Washington Courts and Spokane County Superior Court websites, and court forms on

those websites that included only signature lines for counsel, not the party. *See* Clerk's Papers at 399-400, 404-12.

The trial court denied the motion to strike. Mr. Shepler petitioned this court for discretionary review, which our commissioner denied.

Eight months later, Division One published its decision in *Mangan*, in which it affirmed an order striking a request for trial de novo because the request was signed only by the party's lawyer and not the party. 18 Wn. App. 2d at 94-95. Division One held this did not comply with RCW 7.06.050(1) because "[n]oncompliance is not substantial compliance." *Id.* at 97.

Mr. Shepler renewed his motion to strike the truck center's request for trial de novo based on *Mangan*. The trial court, recognizing it was bound by Division One's decision, granted the motion. The truck center timely appealed the order granting the motion to strike. Its notice of appeal also sought to appeal the over-one-year-old denial of its prearbitration motion for summary judgment.

ANALYSIS

Before September 1, 2018, for counties like Spokane County with a population of more than 100,000, mandatory arbitration was required for all civil actions brought in superior court where the sole relief requested did not exceed $15,000—or, if approved by two-thirds of the superior court judges, where the sole relief requested did not exceed $50,000.

Beginning with the regular session of the legislature in 2017, it was proposed in House Bill 1128 to raise the arbitration limit that could be approved by a two-thirds vote of the judges to $100,000.[1] The bill, which also made other changes to chapter 7.06 RCW, passed the legislature as Engrossed House Bill (EHB) 1128 in the regular 2018 session. LAWS OF 2018, ch. 36, §§ 1-9. In public testimony, defense lawyers, plaintiffs' lawyers, and insurers explained that 70 percent or more of the cases subject to mandatory arbitration were personal injury cases, the vast majority being auto cases, or were small business disputes. *See* Public Hearing: HB 1128, et al., House Judiciary Committee, Washington State Legislature, (Jan. 18, 2017) at 16 min., 28 sec. to 16 min., 40 sec; 27 min., 10 sec. to 27 min., 25 sec., *audio recording by* TVW, Washington State's Public Affairs Network, http://www.tv.org.[2] The principal concern expressed by the public testimony was the increase in the jurisdictional limit. *See* Public Hearing, *supra*, at 15 min., 45 sec. to 58 min., 50 sec. Other changes were summarized in bill reports as making changes concerning the time periods for setting hearing dates, permitted discovery, arbitrator qualifications, and filing fees, and removing references to the word "mandatory," replacing "mandatory" with "civil" in some instances. H.B. REP. ON ENGROSSED H.B. 1128.

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[1] *See* https://app.leg.wa.gov/billsummary?BillNumber=1128&Year=2017&Initiative=false.

[2] Available at https://tvw.org/video/house-judiciary-committee-2017011174/?eventID=2017011174.

The change at issue in this case received a one sentence mention in the bill reports: "A written notice of appeal of a civil arbitration must be signed by the aggrieved party." H.B. REP. ON H.B. 1128, at 4; H.B. REP. ON ENGROSSED H.B. 1128, at 4; FINAL B. REP. ON ENGROSSED H.B. 1128, at 3. No legislative history has been brought to our attention that sheds light on the reason for this change, nor have we discovered any. It did change the result under then-existing law as decided in *Russell v. Maas*, 166 Wn. App. 885, 887, 272 P.3d 273 (2012), and *Engstrom v. Goodman*, 166 Wn. App. 905, 908, 271 P.3d 959 (2012). In both cases, an insured defendant apparently had qualms about their appointed lawyer's request for trial de novo following an arbitration award in favor of the plaintiff.[3] The plaintiffs challenged the requests for trial de novo, arguing that under former MAR 7.1(a) (2001), the request for a trial de novo must be filed by an "aggrieved party," not the party's lawyer.[4]

This court observed in *Russell*:

> The use of the term "aggrieved party" in MAR 7.1(a) is analogous to the use of the same term in RAP 3.1: "Only an aggrieved party may seek

[3] In *Russell*, the plaintiff was the defending homeowner's housemate, who fell off a ladder while painting the defendant's house. 166 Wn. App. at 887. In *Engstrom*, the plaintiff was injured in a car accident and the defending at-fault driver personally sent an e-mail to plaintiff's counsel stating she did not agree to a new trial and did not wish to be represented by her lawyer. 166 Wn. App. at 908.

[4] The language on which they relied stated, "Within 20 days after the arbitration award is filed with the clerk, any *aggrieved party* not having waived the right to appeal may serve and file with the clerk a written request for a trial de novo . . . ." Former MAR 7.1(a) (2001) (emphasis added).

> review by the appellate court." This court regularly accepts appeals signed only by a party's attorney. We see no reason why the practice should be different with respect to the filing of a request for trial de novo, which is also a type of appeal.

Id. at 891. The court characterized the only proper question presented by Russell as a legal one: "When an aggrieved party's attorney timely serves and files a request for trial de novo, is MAR 7.1(a) satisfied?" to which it said "[t]he answer . . . is yes." *Id.*

In the appeals in both *Engstrom* and *Russell*, the court observed:

> Once a party has designated an attorney to represent the party in regard to a particular matter, the court and the other parties to an action are entitled to rely upon that authority until the client's decision to terminate it has been brought to their attention. *Haller v. Wallis*, 89 Wn.2d 539, 547, 573 P.2d 1302 (1978). Absent fraud, the actions of an attorney authorized to appear for a client are generally binding on the client. *Haller*, 89 Wn.2d at 545-47; *Rivers v. Wash. State Conference of Mason Contractors*, 145 Wn.2d 674, 679, 41 P.3d 1175 (2002).

Engstrom, 166 Wn. App. at 916; *and see Russell*, 166 Wn. App. at 891.

EHB 1128 effected the new requirement that the party themself request a trial de novo by adding the underscored language to RCW 7.06.050(1):

> . . . Within twenty days after such filing, any aggrieved party may file with the clerk a written notice of appeal and request for a trial de novo in the superior court on all issues of law and fact. <u>The notice must be signed by the party.</u> Such trial de novo shall thereupon be held, including a right to jury, if demanded.

LAWS OF 2018, ch. 36, § 6.

RCW 7.06.030 provides that "[t]he supreme court shall by rule adopt procedures to implement mandatory arbitration of civil actions under this chapter," and 15 months

after the effective date of EHB 1128, MAR 7.1 was amended and retitled SCCAR 7.1, effective December 3, 2019. 194 Wn.2d at 1112-13. What is now SCCAR 7.1(b) was amended as follows:

> **(b) Form.** The request for a trial de novo shall not refer to the amount of the award, including any award of costs or attorney fees, and shall be substantially in the form set forth below, and must be signed by the party:
>
> SUPERIOR COURT OF WASHINGTON
> FOR (_____) COUNTY
>
> _____,
> Plaintiff,
>
> v.
>
> _____,
> Defendant.
>
> No. _____
>
> REQUEST FOR
> TRIAL DE NOVO
>
> TO: The clerk of court and all parties:
>
> Please take notice that [*name of the aggrieved party*] requests a trial de novo from the award filed __[*date*]___.
>
> Dated: _____
>
> _____
> [*Signature* ~~*Name*~~ *of* ~~*attorney for*~~ *aggrieved party*]
> [*Printed name*]:
> [*Title, if applicable*]
>
> _____
> [*Name of attorney for aggrieved party*]

It is these statutory and rule changes, as construed in *Mangan*, that caused the trial court to strike the truck center's request for trial de novo.

The truck center makes two arguments why the trial court erred in granting the motion to strike its request for trial de novo. The first is that it substantially complied with the statute and the rule. The second is that it *actually* complied, or at least cured any defect when Mr. Rees signed the second request.

Division One rejected the substantial compliance argument in *Mangan.* Division Two also affirmed the striking of a timely request for trial de novo that was not signed by the party, in *Butler*.

We nonetheless consider the truck center's arguments. One division of the Court of Appeals is not bound by the decision of another division. *In re Pers. Restraint of Arnold*, 190 Wn.2d 136, 154, 410 P.3d 1133 (2018).

I. SUBSTANTIAL COMPLIANCE

"'Substantial compliance has been defined as actual compliance in respect to the substance essential to every reasonable objective of [a] statute.'" *City of Seattle v. Pub. Emp. Rel. Comm'n*, 116 Wn.2d 923, 928, 809 P.2d 1377 (1991) (alteration in original) (quoting *In re Santore*, 28 Wn. App. 319, 327, 623 P.2d 702 (1981)). It has been found where there has been compliance with the statute albeit with procedural imperfections. *Cont'l Sports Corp. v. Dep't of Lab. & Indus.*, 128 Wn.2d 594, 602, 910 P.2d 1284 (1996) (citing *Pub. Emp. Rel. Comm'n*, 116 Wn.2d at 928).

"'[W]hether strict compliance is required, except in exceptional circumstances, depends on the nature of the words of command or direction in light of policy considerations.'" *Nevers v. Fireside, Inc.*, 133 Wn.2d 804, 812-13, 947 P.2d 721 (1997) (quoting *Pybas v. Paolino*, 73 Wn. App. 393, 400 n.3, 869 P.2d 427 (1994) (citing *State v. Ashbaugh*, 90 Wn.2d 432, 583 P.2d 1206 (1978))). *Nevers* is particularly instructive, because it, too, dealt with a mandatory arbitration rule.

At the time of the arbitration award in *Nevers*, former MAR 7.1(a) (1989) provided that within 20 days after the arbitration award is filed with the clerk, an aggrieved party could serve and file a written request for trial de novo "along with proof that a copy has been served upon all other parties appearing in the case." *Id.* at 810 (emphasis omitted).[5] The *Nevers* court concluded that strict compliance was required not only from this language in subsection (a), which it viewed as unambiguous, but also because a contrary result, in the court's view, would conflict with other language in the mandatory arbitration rules. It would extend the time within which to request the trial de novo, contrary to former MAR 7.1(a)'s language that "[t]he 20-day period within which to request a trial de novo may not be extended." *Id*. at 812. It would conflict with former MAR 6.3, which provided that the party who prevailed at arbitration could present a final

[5] The requirement that the *proof of service* be served and filed within 20 days was later removed at the request of the Washington State Bar Association, which described it as a "trap for the unwary." In re Adoption of Amendments to New CrR 4.11 et al., Order No. 25700-A-974, at 16 (Wash. Dec. 2, 2010) (MAR 7.1 GR 9 cover sheet).

judgment if no party sought a trial de novo within the 20 days. The court also likened the result to *Public Employment Relations Commission*, in which it had stated that service after a time limit "cannot be considered to have been actual service within the time limit." *Id.* at 815 (quoting *Pub. Emp. Rel. Comm'n*, 116 Wn.2d at 929). Finally, it observed that to hold otherwise would be to subvert the legislature's intent "by contributing, inevitably, to increased delays in arbitration proceedings." *Id.*; and *see accord Wiley v. Rehak*, 143 Wn.2d 339, 344, 20 P.3d 404 (2001) (observing that strict compliance "better effectuates" the legislature's intent to alleviate court congestion and reduce delay).

The truck center cites this court's 2011 decision in *Splattstoesser v. Scott*, 159 Wn. App. 332, 338-39, 246 P.3d 230, as holding that substantial compliance with MAR 7.1 can suffice notwithstanding *Nevers*. But *Splattstoesser* relied on an intervening change to the rule's words of command that make substantial compliance sufficient in limited cases. Effective September 1, 2001, MAR 7.1 was amended to provide that a request for a trial de novo "shall be in *substantially the form* set forth" in the rule, a change from its earlier language that the request "'shall be in the following form.'" *Id.* at 335 (some emphasis omitted) (citing 143 Wn.2d at 1134-35). *Splattstoesser* quoted the GR 9(d) coversheet for the proposed 2001 rule change, which, like the earlier-discussed 2011 change, was requested by the Washington State Bar Association (WSBA). The WSBA explained that "'part of the impetus for the suggested rule change'" was *Nevers*, and "'[t]he committee['s] . . . concern[ ] that if a party deviated even slightly from the form

set out in the rule, even because of a typographical error, an argument could be made that there had been no valid request for a trial de novo.'" *Id.* at 336 (quoting In re Adoption of Amendments to CR 28(d), CR 35, CR 49, MAR 1.2, MAR 3.2, MAR 4.1 AND MAR 7.1, Order No. 25700-A-695, at 19 (Wash. Dec. 7, 2000) (MAR 7.1 GR 9(d) cover sheet). Here, the new requirement appears in the body of the statute and rule, not merely in the form set forth in the rule.

It is now well settled that when statutory prerequisites impose timelines, parties must comply. *Freedom Found. v. Teamsters Loc. 117 Segregated Fund*, 197 Wn.2d 116, 138, 480 P.3d 1119 (2021) (citing *Forseth v. City of Tacoma*, 27 Wn.2d 284, 297, 178 P.2d 357 (1947), *overruled on other grounds by Shafer v. State*, 83 Wn.2d 618, 521 P.2d 736 (1974) (plurality opinion)). "[T]here can be no 'substantial compliance' with the provision concerning the time within which a claim must be filed, except by filing it within that time." *Forseth*, 27 Wn.2d at 297. Or, as expressed by Division One in *Mangan*, "[n]oncompliance" with a time limitation "is not substantial compliance." 18 Wn. App. 2d at 97.

Assuming that the 2018 statutory change and 2019 rule change impose a time limit on a party's signature—which the appellants do not concede, as discussed next—substantial compliance does not suffice.

II. ACTUAL COMPLIANCE OR CURE

The question that remains is whether it *is* a statutory prerequisite not only that the request for trial de novo be signed by the party, but that it be signed by the party within 20 days of the filing of the arbitrator's award.

Our fundamental objective in construing a statute is to ascertain and carry out the legislature's intent, and if a statute's meaning is plain on its face, we give effect to that plain meaning as an expression of legislative intent. *Dep't of Ecology v. Campbell & Gwinn*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). Statutory provisions must be read in their entirety and construed together, not piecemeal. *Id.* at 11. Arbitration rules, like other court rules, are interpreted as though they were drafted by the legislature and are construed consistent with their purpose. *Wiley*, 143 Wn.2d at 343.

The sentence of RCW 7.06.050(1) that imposes the 20-day filing requirement states only, "Within twenty days after such filing, any aggrieved party may file with the clerk a written notice of appeal and request for trial de novo in the superior court on all issues of law and fact." "Aggrieved party" is not a term used to mean the party themself, as distinguished from their lawyer. Rather, an "aggrieved party" is one who can appeal a decision because it adversely affects that party's property or pecuniary rights, or a personal right, or imposes on a party a burden of obligation—conversely, a party is not aggrieved by a favorable decision and cannot appeal from such a decision. *Randy Reynolds & Assoc., Inc. v. Harmon*, 193 Wn.2d 143, 150, 437 P.3d 677 (2019). Nothing

in EHB 1128 or its history suggests an intent to narrow or change the meaning of "aggrieved party," which, as this court observed in *Russell*, is used in RAP 3.1, under which we regularly accept attorney-signed appeals. 166 Wn. App. at 891; *and see* 4A ELIZABETH A. TURNER, WASHINGTON PRACTICE: RULES PRACTICE MAR 7.1 author's cmt. 1, at 56 (8th ed. 2020) (observing that MAR 7.1 does not define "aggrieved party," but "the term is well defined in the case law interpreting the Rules of Appellate Procedure"). Nothing in the 2018 legislation reflects an intent to narrow an attorney's authority to accomplish procedural acts on behalf of their client in the regular course of arbitration. Chapter 7.06 RCW continues to identify procedural rights of "a party" that are commonly exercised by the party's attorney. *E.g.*, RCW 7.06.047 (providing that "a party may conduct discovery"); RCW 7.06.050(1)(a) ("a party may serve . . . a written offer of compromise"); RCW 7.06.050(2) (judgment "may be presented . . . by any party").

Other language in RCW 7.06.050 and SCCAR 7.1 implies, however, that a signature provided after 20 days cannot preserve the right to appeal. The signature requirement in RCW 7.06.050(1), which follows a 20-day filing requirement for any notice of appeal, requires "*the* notice" to be signed by the party, not "*a* notice." (Emphasis added.) "Use of a definite rather than indefinite article is a recognized indication of statutory meaning." *Dep't of Ecology v. City of Spokane Valley*, 167 Wn. App. 952, 965, 275 P.3d 367 (2012); *Tewell, Thorpe & Findlay, Inc. v. Cont'l Cas. Co.*,

64 Wn. App. 571, 576, 825 P.2d 724 (1992) (meaning of "a" claim is broader than "the" claim). "The rules of grammar . . . provide that the definite article, 'the', is used 'before nouns of which there is only one or which are considered as one.'" *State v. Neher*, 52 Wn. App. 298, 300, 759 P.2d 475 (1988) (quoting A.J. THOMSON & A.V. MARTINET, A PRACTICAL ENGLISH GRAMMAR 3 (3d ed. 1980)), *aff'd*, 112 Wn.2d 347, 771 P.2d 330 (1989). And similar to *Nevers*, construing the statute to permit the party to sign the request after 20 days would conflict with SCCAR 7.1(a), which states, "The 20-day period within which to request a trial de novo may not be extended." Similar to *Nevers*, it would conflict with RCW 7.06.050(2), which provides that "[i]f no appeal has been filed at the expiration of twenty days following filing of the arbitrator's decision and award, a judgment *shall* be entered . . . ." (Emphasis added.)

The truck center directs our attention to *Griffith v. City of Bellevue*, 130 Wn.2d 189, 922 P.2d 83 (1996), and *Biomed Comm, Inc. v. Dep't of Health*, 146 Wn. App. 929, 193 P.3d 1093 (2008), in which our Supreme Court and this court held that a party must be given a short period of time to cure a signature oversight. In *Griffith*, a petition for a statutory writ of certiorari was timely filed with the court but the signature line for the petitioner's verification was left blank. The Supreme Court held that it was error for the trial court to dismiss the petition for lack of jurisdiction because Griffith offered to sign the verification promptly after the omission was called to his attention "in accordance with CR 11." 130 Wn.2d at 190. CR 11(a)(4) provides that "[i]f a pleading, motion, or

legal memorandum is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant."

In *Biomed*, this court held that the superior court did not lose jurisdiction of Biomed's petition for judicial review of an agency adjudication where its timely-filed petition was signed by a corporate officer rather than an attorney. As in *Griffith*, the court held that the corporation should have been permitted to cure the defect, citing CR 11 as authorizing a motion to strike the pleading but as also permitting the corporation a reasonable amount of time to cure. *Biomed*, 146 Wn. App. at 938.

Unlike the proceedings in *Griffith* and *Biomed*, filing a request for trial de novo following arbitration is not a step needed to invoke the superior court's jurisdiction. For an action subject to civil arbitration, the superior court's jurisdiction "is invoked upon the filing of the underlying lawsuit and it is not lost merely because the dispute is transferred to mandatory arbitration." *Nevers*, 133 Wn.2d at 812 n.4.

And unlike the proceedings in *Griffith* and *Biomed*, CR 11 does not apply here. The truck center argues that while CR 11 deals largely with attorney signatures as certificates, it also applies to party signatures on verified pleadings. *See* CR 11(a) (extending to pleadings that "need not, but may be, verified"). We need not decide whether a party's required signature on a request for trial de novo could be treated as a verification under CR 11, because the SCCARs provide that the civil rules of procedure

do not apply once a case is assigned to an arbitrator. *See* SCCAR 1.3(b)(1).[6] In *Wiley*, the Supreme Court held that the SCCAR 1.3(b)(1)'s predecessor provision, former MAR 1.3(b)(1) (1989), foreclosed reliance on CR 4(h) or CR 60 as a means to cure a defect in the request for trial de novo. 143 Wn.2d at 346-47. As the court observed, CR 81 likewise gives preference to the civil arbitration rules. *Id.* at 347.

SCCAR 1.3(b)(1) forecloses reliance on CR 11 here. It also forecloses reliance on CR 1, which the truck center suggests in passing might be applied to achieve a "just . . . determination." Appellant's Opening Br. at 32-33.

Affirmed.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder, having no precedential value, shall be filed for public record pursuant to RCW 2.06.040, it is so ordered.

III. A PARTY MAY NOT APPEAL FROM DENIAL OF SUMMARY JUDGMENT

The truck center's appeal of denial of its summary judgment motion fails to address the well-settled principle that "[w]hen a trial court denies summary judgment due to factual disputes . . . and a trial is subsequently held on the issue, the losing party must

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[6] SCCAR 1.3(b)(1) provides,

> Until a case is assigned to the arbitrator under rule 2.3, the rules of civil procedure apply. After a case is assigned to the arbitrator, these arbitration rules apply except where an arbitration rule states that a civil rule applies.

appeal from the sufficiency of the evidence presented at trial, not from the denial of summary judgment." *Adcox v. Child.'s Orthopedic Hosp. & Med. Ctr.*, 123 Wn.2d 15, 35 n.9, 864 P.2d 921 (1993) (citing *Johnson v. Rothstein*, 52 Wn. App. 303, 759 P.2d 471 (1988)). As the truck center pointed out at oral argument, Mr. Shepler's response to its assignment of error to denial of summary judgment focused on issues other than this appealability issue. Wash. Court of Appeals oral argument, *Shepler v. Terry's Truck Ctr., Inc.*, No. 38469-1-III (June 7, 2022), Part II, at 46 sec. to 1 min., 55 sec. (on file with court). But Mr. Shepler cited *Adcox*, and we provided an opportunity to respond to this issue at oral argument. *See id.*

The *Adcox* principle is supported by policy (we favor the decision that is based on the best record) and by the purpose of summary judgment (the objective of avoiding useless trials is no longer served once trial takes place). *Johnson*, 52 Wn. App. at 306-07. And this court has held that the rule has special application when a dispute proceeds to arbitration after a summary judgment motion is denied. To allow review of denial of summary judgment after an arbitration would circumvent an important statutory inducement to accept the arbitrator's award: the potential for an award of attorney's fees if the appellant from the award does not improve its position in the trial de novo. *Cook v. Selland Const., Inc.*, 81 Wn. App. 98, 101, 912 P.2d 1088 (1996) (citing *Christie-Lambert Van & Storage Co. v. McLeod*, 39 Wn. App. 298, 302-03, 693 P.2d 161 (1984)).

IV. ATTORNEY FEES

Mr. Shepler requests attorney fees and costs incurred in defending against the appeal, relying on RCW 7.06.060(2) and RCW 49.60.030(2). RAP 18.1(a) allows a party to recover attorney fees or expenses incurred on appeal, so long as applicable law permits such recovery.

Under RCW 7.06.060, if an aggrieved party appeals an arbitration award and fails to improve its position in a trial de novo, it shall be assessed fees and costs of the adverse party. Fee recovery on this basis, including fees on appeal, is available where the party fails to improve their position because they fail to comply with the procedural requirements for obtaining a trial de novo. *Wiley*, 143 Wn.2d at 348. In addition, RCW 49.60.030(2) provides that a successful plaintiff in a suit for a violation of chapter 49.60 RCW is entitled to recover the costs of suit, including reasonable attorney fees.

We award Mr. Shepler his reasonable attorney fees and costs on appeal subject to his timely compliance with RAP 18.1(d).

Affirmed.

Siddoway, C.J.

WE CONCUR:

Lawrence-Berrey, J.

Pennell, J.