

No. 96200-6
CASE NO. 76360-1-I

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

TERESA L. BANOWSKY,

Plaintiff/Appellant,

v.

GUY BACKSTROM, DC DBA BEAR CREEK CHIROPRACTIC.

Defendants/Respondents

REPLY BRIEF OF APPELLANT BANOWSKY

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I. INTRODUCTION

The heart of this appeal is the question of what to do with a case where a Plaintiff originally files her complaint in the district court requesting damages “in excess” of \$100,000. Consistent with RCW 3.66.020, Plaintiff Teresa L. Banowsky (“Plaintiff”) has invoked CRLJ 14A(b) to request that the case be transferred from district court to superior court. CRLJ 14A(b) is constitutional, and consistent with RCW 3.66.020, the district court is empowered to transfer the case under CRLJ 14A(b). Transferring the case is in accordance with public policy, and justice is served by transferring the case to superior court.

II. ARGUMENT

A. The District Court has Authority to Transfer the Case.

Defendant Guy Backstrom, DC dba Bear Creek Chiropractic (“Defendant”) asserts CRLJ 12(h)(3) in part A, page 9, of the “Argument” section, stating that “A court lacking subject matter jurisdiction has no authority to act and must enter an order of dismissal.” Even though Plaintiff has not explicitly specified CRLJ 12(h)(3), she has argued from the beginning that the district court had the power to apply CRLJ 14A(b) and transfer her case to superior court. Numerous arguments and authority were presented in Appellant’s initial brief to this court. The arguments

will not be repeated *in toto* here, but clear authority and arguments were proffered to show that the court has authority to transfer the present case.

B. CRLJ 14A(b) is Consistent with CRLJ 81 and RCW 3.66.020.

In part B, p. 10, of his Argument, Defendant cites CRLJ 81: “The Civil Rules for the Courts of Limited Jurisdiction do not expand the subject matter jurisdiction of the district courts.” Again, although Plaintiff did not explicitly recite this rule, her argument has always been that application of CRLJ 14A(b) does not expand the subject matter jurisdiction of the district court.

RCW 4.28.020 states: “From the time of the commencement of the action by service of summons, or by the filing of a complaint, or as otherwise provided, the court is deemed to have acquired jurisdiction and to have control of all subsequent proceedings.” This allows the court to handle various kinds of actions before a matter is heard by a court. For example, the court accepts the filing of the initial complaint (that typically includes a cover sheet that clearly indicates the amount of damages at issue), and simultaneously accepts the requisite filing fee. The case is then assigned to a judge and the court communicates with the parties. Under this authority, the district court can apply CRLJ 14A(b), and transfer a

case filed in district court to superior court without expanding any jurisdiction conferred by the legislature.

Furthermore, the Washington Supreme Court has written, “Of 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 Surprise 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).

While the district court may not have jurisdiction to enter a judgment for damages for an amount in excess of its jurisdiction, that is not what is being argued in the present appeal. Plaintiff argues that the district court should have transferred the case to superior court, which it may do under CRLJ 14A(b).

CRLJ 14A(b) is consistent with CRLJ 81 and RCW 3.66.020 because CRLJ 14A(b) recognizes that if a claim is made in excess of the district court’s jurisdiction, the district court cannot enter judgment in excess of its jurisdiction, and therefore, the district court should transfer the case to the superior court.

C. Plaintiff Did Not Confirm Lack of Jurisdiction.

Defendant states in his response (Argument part C., p. 12), that “Ms. Banowsky alleged, and then confirmed, her damages exceeded the

district court's jurisdictional limit, thereby *confirming it lacked subject matter jurisdiction.*” (Emphasis added). While Plaintiff did confirm that the Complaint, as originally filed, claimed damages in an amount in excess of \$100,000, she did not confirm that the court lacked the authority to transfer the case under CRLJ 14A(b). To claim such a thing is to ignore the two appeals relating to the District Court decision and is a gross mischaracterization of Plaintiff’s briefing. Plaintiff continues to assert that the district court had the authority to apply CRLJ 14A(b) and transfer her case to superior court.

D. *Howlett* is Inconsistent with Amended CRLJ 14A(b).

The district court’s dismissal of Plaintiff’s claim pursuant to *Howlett v. Weslo, Inc.*, 90 Wn. App. 365, 367, 951 P.2d 831, 833 (1998), was in error. *Howlett* held that when a plaintiff amended her claim to exceed the court’s jurisdictional limits, it had no option but to dismiss her claim. But, at the time of *Howlett*, CRLJ 14(A) had not yet been amended to allow for the transfer of a case to superior court if the claims were asserted by anyone other than “a defendant, third party defendant, or cross claimant.” But since *Howlett*, the class of persons asserting such a claim that can be transferred to superior court has been expanded to include “any party” and accordingly, must include a plaintiff.

If the Court applies Defendant’s literal argument that once a claim is made in excess of the district court’s jurisdictional limit the district court must dismiss the case, then CRLJ 14A(b) can *never* be applied. This is as true for a plaintiff already before the court who files an amended petition as it is for a plaintiff originally filing her complaint. Contrary to assertions made by Defendant, there is no authority holding that the rule can only be applied to parties already before the court. The literal application of CRLJ 14A(b), that the district court should transfer the case to the superior court if “any party” asserts a claim in excess of the court’s jurisdiction provides a more rational result than does the application of *Howlett* in the context of the amended CRLJ 14A(b).

E. CRLJ 14A(b) is Constitutional.

Defendant argues that his “interpretation of CRLJ 14A(b) [avoids constitutional issues] by allowing a plaintiff to remove a case *if the requisite element of subject matter jurisdiction is established*, thereby avoiding the issue of whether the Washington Supreme Court usurped the role of legislature by enlarging the jurisdiction of the district courts through court rule.” (Brief of Respondent, p. 21, emphasis added).

The Defendant’s interpretation requires reading extraneous language into the rule. Legal analysis is not undertaken to find the easiest way to avoid conflict, but to determine what the law states, and what the

meaning of the stated law is. Rules of statutory construction have developed according to this principle and have been set forth in the Brief of Appellant with arguments and authority supporting Plaintiff's interpretation that CRLJ 14A(b) was adopted with the understanding that it would apply to all parties, including plaintiffs. No distinction was made between new plaintiffs and those already having a case before the court. In fact, as previously shown, the proposed amended rule was revised prior to adoption to avoid applying only to plaintiffs in amended complaints.

The Defendant's statement also implies that the Washington Supreme Court implemented an unconstitutional rule when it adopted CRLJ 14A(b). Although Defendant claims that Plaintiff's interpretation requires consideration of that issue, Plaintiff asserts - to the contrary - that the Washington Supreme Court did not adopt an unconstitutional rule after long and thoughtful consideration of the rule. Defendant advocates adding convenient language to the rule so that a non-existent issue can be avoided. Such an assertion should be disregarded.

F. The Proper Remedy is to Transfer the Case.

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.

G. Defendant Incorrectly Argues that Plaintiff Improperly Argued “Limited Damages” and “Substantial Compliance.”

The response brief purportedly quotes the initial brief as renewing the “limited damages” and “substantial compliance” arguments (in quotes) and refers to pages 19 and 20. Plaintiff finds no mention of a substantial compliance argument. Also, there are two places where Plaintiff states that since the district court had jurisdiction over the first \$100,000 in damages, the court could apply CRLJ 14A(b) and distinguishes the cases cited in *Howlett* (pp. 12 and 19). Contrary to the assertion contained in the response brief, the two references to the “first \$100,000” is not a renewal of the argument made in the District and Superior Courts, that the district court should retain jurisdiction of the case with damages limited to \$100,000. The excerpts are reproduced below.

On page 12 of the initial brief, Plaintiff argues that in *Crosby v. Spokane County*, 87 Wn. App. 247, 253, 941 P.2d 687 (1997) (cited in *Howlett*), 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.

Then, in page 19 of the initial brief, Plaintiff argued that 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 the 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, Defendant was on notice of the case within the statute of limitations (the case was filed within the statute of limitations and he was properly within 90 days after filing), and he suffers absolutely no prejudice if the case is transferred to the superior 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.

Finally, Ms. Banowsky requests that the Defendant's request for fees and costs should be denied. In the unlikely event that the Court disagrees with Plaintiff's position, the position is certainly not frivolous. The transfer issue under amended CRLJ 14A(b) is a case of first impression.

III. CONCLUSION

Transferring the present case to the superior court under CRLJ 14A(b) comports with public policy. Doing so causes no harm to the Defendant, provides for a hearing and decision on the merits of the case, and provides justice to the Plaintiff in accordance with public policy. Refusing to do so places process over substance and denies justice. Ms. Banowsky respectfully requests that her case be allowed to be transferred to Superior Court.

Respectfully submitted this 16th day of October, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2017, I caused to be served a true and correct copy of **REPLY BRIEF OF APPELLANT BANOWSKY** by electronic service through the Court's portal system and email to the following:

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