

FILED
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STATE OF WASHINGTON
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CASE NO. 96200-6

THE SUPREME COURT OF WASHINGTON

TERESA L. BANOWSKY,

Petitioner,

v.

GUY BACKSTROM, DC DBA BEAR CREEK CHIROPRACTIC.

Respondents

SUPPLEMENTAL BRIEF OF PETITIONER BANOWSKY

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I. INTRODUCTION

Teresa L. Banowsky (“Banowsky”), plaintiff and petitioner, initiated a medical negligence lawsuit against Guy Backstrom, DC dba Bear Creek Chiropractic (collectively “Dr. Backstrom”), defendants and respondents, by a filing a complaint with the District Court alleging damages “in excess of \$100,000.” Despite CRLJ 14(A)(b), which states that “the district court shall order the entire case removed to superior court,” the District Court dismissed the complaint – after the statute of limitations on Banowsky’s claim had expired – for lack of subject matter jurisdiction, and denied Banowsky’s alternative requests to amend her petition to plead exactly “\$100,000” in damages, or to transfer her case to Superior Court using CRLJ 14(A)(b).

II. ARGUMENT

1. The District Court has jurisdiction to apply CRLJ 14(A)(b).

The District Court acquired jurisdiction over this case upon filing of Plaintiff’s complaint. 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.”

In the course of carrying out its duty to administer justice, the District Court can take all manner of actions related to a case. In the present case, the following actions were taken by the District Court:

- Plaintiff's complaint was accepted;
- Plaintiff's attorney filed an Entry of Appearance;
- Plaintiff's Motion to Transfer was accepted;
- Defendant's Opposition to said Motion was accepted;
- Plaintiff's Reply to the Opposition was accepted;
- A hearing on Plaintiff's Motion was set; and
- The District Court held a hearing on the Motion.

Performing such administrative actions are a practical necessity that any court must take to ensure that the public has access to the court and that all parties to an action are properly joined and heard. The application of CRLJ 14(A)(b) may be properly viewed as one such action that the District Court must take to position the parties before the most appropriate court to guarantee that justice is most perfectly served under the laws of the State of Washington.

2. CRLJ 14(A)(b) applies to the Plaintiff/Petitioner in this case.

The legislature of Washington State called for different levels of courts to be created based on the amount in controversy in a given case, and the Supreme Court of Washington adopted court rules to assure that

this mandate was carried out in a manner consistent with the intent of the legislature. Such court rules are continuously updated as court holdings are issued that seem to be incongruent with the intent of the legislature and public policy. The adoption of the present version of CRLJ 14(A)(b) in 2004 was an effort to harmonize court rules with legislative intent and public policy, by providing a remedy to an apparently inequitable situation that could arise in the prosecution of a civil lawsuit, to-wit: that a Plaintiff may lose her cause of action simply by pleading an amount that exceeds the monetary jurisdictional limitations of a court.

As originally proposed, an amendment to CRLJ 14(A)(b) referred only to “a plaintiff in an amended complaint, third party defendants, or cross claimant.” (The original Rule only applied to defendants and cross claimants.) This proposed amendment, whether by intention or not, addressed the specific facts and the harsh result of *Howlett v. Weslo, Inc.*, 90 Wn. App. 365, 951 P.2d 831 (1998). However, this particular language was explicitly rejected by the Board of Judicial Administration. Instead, the Board suggested that the phrase referenced above be changed to “any party” and that term was officially incorporated into the rule. As a result, the plain language of CRLJ 14(A)(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.

The Court of Appeals erred when it stated:

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. [Citation omitted]. 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).

Court of Appeals Opinion at 10.

The logic expressed by the Court of Appeals in the cited excerpt reflects a fact pattern identical to one contemplated by the originally proposed amendment to CLRJ 14(A)(b) - that the rule is limited to plaintiffs who already have a matter pending before the court. It ignores

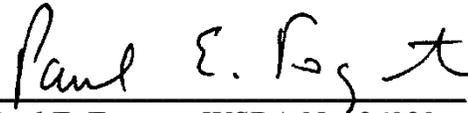
the fact that the Board, which included the Chief Justice of the Washington Supreme Court, explicitly rejected this view, and that the ultimate rule adopted by the Washington Supreme Court operated to broaden the scope of parties that could avail themselves of the rule, including the Plaintiff in the present action. The reasoning of the Court of Appeals is flawed in that it ignores the precise language of CLRJ 14(A)(b) and applies a rejected version of the rule instead.

In adopting CRLJ 14(A)(b), the Washington Supreme Court clearly did not believe that a Plaintiff claiming an amount in excess of the monetary jurisdictional limits of the District Court is beyond application of the Rule. Just as clearly, the Court rejected the view that the Rule should apply only to a plaintiff in an amended complaint. CRLJ 14(A)(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. That includes the present case.

III. CONCLUSION

The District Court had jurisdiction to act administratively to transfer and also jurisdiction at least up to the first \$100,000 of the claim. Banowsky respectfully requests that this Court reverse the rulings of the Court of Appeals, and determine that her case can be transferred from District Court to Superior Court pursuant to CRLJ 14(A)(b).

Respectfully submitted this 28th day of December, 2018.

A handwritten signature in black ink that reads "Paul E. Fogarty". The signature is written in a cursive style and is positioned above a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2018, I caused to be served a true and correct copy of **SUPPLEMENTAL BRIEF OF PETITIONER BANOWSKY** by electronic service through the Court's portal system and email to the following:

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