

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR KING COUNTY

DELVONN HECKARD,  
  
Plaintiff,  
  
v.  
  
MAYOR EDWARD MURRAY,  
  
Defendant.

NO. 17-2-09152-9 SEA  
  
**MOTION FOR VOLUNTARY NON-SUIT WITHOUT PREJUDICE**

**I. INTRODUCTION**

Pursuant to CR 41(a)(1)(B), Plaintiff Delvonn Heckard moves to dismiss his claims against Defendant Ed Murray without prejudice. This voluntary non-suit is taken as a matter of right and without notice in accordance with CR 41(a)(1)(B) and well-established case law and can be entered *ex parte*. See *King County Council v. King County Personnel Bd.*, 43 Wn. App. 317, 716 P.2d 322 (1986) (absolute right to non-suit). Moreover, there are no counterclaims of record, and trial is not scheduled until April 2, 2018. In accordance with Washington Civil Rules and case law, this motion must be granted as an absolute matter of right.

1 **II. BACKGROUND**

2 This lawsuit was filed on April 6, 2017.<sup>1</sup> The trial is scheduled for April 2, 2018. On  
3 May 24, 2017, Mayor Murray filed an Answer and asserted no-counterclaims.<sup>2</sup> Mr. Heckard  
4 feels as though it would be wise to complete his extensive counseling and recovery this  
5 December prior to moving forward with this matter. Additionally, Mr. Heckard determined  
6 that it would be better for the success of his lawsuit, and the citizens of the City of Seattle, for  
7 this matter to proceed at a later point in time *after* Mayor Murray is no longer sitting in power.  
8 At present, Mr. Heckard feels as though Mayor Murray garners litigation benefits by  
9 defending this lawsuit while simultaneously sitting as the Mayor. Furthermore, Mayor  
10 Murray, his former campaign team, and his legal team, have successfully tainted the jury pool  
11 with false information about the accusers, including Mr. Heckard. Therefore, as the trial is set  
12 to occur in King County, Mr. Heckard believes that a short delay in the trial date would prove  
13 beneficial to the administration of justice. As situated, Mr. Heckard is not confident that he  
14 can obtain a fair trial. For these, and many other reasons, Mr. Heckard filed this motion to  
15 voluntarily non-suit this claim without prejudice.

16 **III. ARGUMENT**

17 A plaintiff has the absolute right under Washington law to dismiss his or her claim  
18 without prejudice and without notice to a defendant. CR 41(a) states as follows:

19 **(a) Voluntary Dismissal.**

20 **(1) Mandatory.** Subject to the provisions of rules 23(e) and 23.1, any action  
21 shall be dismissed by the court:

22 <sup>1</sup> Docket No. 2 (Case Schedule)

23 <sup>2</sup> Docket No. 63 (Answer)

1 (A) By Stipulation. When all parties who have appeared so stipulate in  
writing; or

2 **(B) By Plaintiff Before Resting. Upon motion of the plaintiff at any**  
3 **time before plaintiff rests at the conclusion of plaintiff's opening**  
4 **case.**

5 (2) *Permissive.* After plaintiff rests after plaintiff's opening case, plaintiff may  
move for a voluntary dismissal without prejudice upon good cause shown and  
upon such terms and conditions as the court deems proper.

6 (3) *Counterclaim.* If a counterclaim has been pleaded by a defendant prior to  
the service upon the defendant of plaintiff's motion for dismissal, the action  
shall not be dismissed against the defendant's objection unless the  
7 counterclaim can remain pending for independent adjudication by the court.

8 **(4) Effect. Unless otherwise stated in the order of dismissal, the dismissal**  
9 **is without prejudice,** except that an order of dismissal operates as an  
adjudication upon the merits when obtained by a plaintiff who has once  
dismissed an action based on or including the same claim in any court of the  
10 United States or of any state.

11 CR 41(a) (emphasis added). Here, Mr. Heckard has not rested his case; Mayor Murray did  
12 not assert any counter-claims; and trial is not scheduled until April 2, 2018. Moreover, as the  
13 WSBA's Washington Civil Procedure Deskbook states:

14 The purpose of CR 41 (a) is to vest in plaintiff a **unilateral right** to a  
voluntary dismissal until the time plaintiff rests, subject to the limitation of  
15 CR 41 (a)(3)...**The court has no discretion in granting a voluntary**  
16 **dismissal at any time before the plaintiff rests at the conclusion of the**  
17 **plaintiff's case.** *Polello v. Knapp*, 68 Wn. App. 809 (1993); *Seattle-First*  
*National Bank v. Westwood Lumber, Inc.*, 59 Wn. App. 344 (1990); *King*  
*County Council v. King County Pers. Bd.*, 43 Wn. App. 317 (1986).

18 2 Washington State Bar Association, Washington Civil Procedure Deskbook, Dismissal of  
19 Actions §§41.5 and 41.6 (1)(a) (2nd Ed., 2002) (emphasis added). Accordingly, dismissal  
20 without prejudice is mandatory upon Plaintiff's present motion pursuant to CR 41(a)(1)(B).

21 As a final matter, CR 41 voluntary dismissals without prejudice are regularly  
22 presented *ex parte* and do not require notice to a defendant:

1 Although CR 41 does not speak to notice, the fact that the motion can be made  
2 at any time before the plaintiff rests his or her case, and then must be granted  
3 by the court, indicates that **prior written notice of the motion is not**  
4 **required**. Indeed, motions for voluntary nonsuit are often made orally at trial,  
5 without substantial notice. **If the trial court relied on lack of notice as a**  
6 **reason for refusing to grant Greenlaw's motion, it erred.**

7 *Greenlaw v. Renn*, 64 Wn. App. 499, 503–04, 824 P.2d 1263, 1266 (1992) (emphasis added);  
8 *see also*, 14 WASH. PRAC. Tegland, Civil Procedure §23.4 (2<sup>nd</sup> Ed., 2009), 3B WASH. PRAC.:  
9 RULES PRACTICE, CR 41, Author's Comments (“the courts have held that the plaintiff **need**  
10 **not give advance notice to the defendant** before requesting a voluntary dismissal”) (emphasis added). As such, Mr. Heckard voluntarily moves to dismiss his claims against  
11 Mayor Murray without prejudice.

#### 12 IV. CONCLUSION

13 Mr. Heckard’s primary goal in relation to this lawsuit, letting the public know the  
14 truth, is accomplished. For the reasons set forth herein, Mr. Heckard respectfully requests the  
15 entry of an order dismissing this claim without prejudice.

16 DATED this 13<sup>th</sup> day of June, 2017.

17 CONNELLY LAW OFFICES, PLLC

18 *Lincoln Beauregard*

19 By \_\_\_\_\_  
Lincoln C. Beauregard, WSBA No. 32878  
Julie A. Kays, WSBA No. WSBA No. 30385  
Attorneys for Plaintiff

20 L.A. LAW & ASSOCIATES, PLLC

21 *Lawand Anderson*

22 By \_\_\_\_\_  
Lawand Anderson, WSBA No. 49012  
Attorney for Plaintiff