

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 28th day of May, 2020.

Present: All the Justices

David R. Braun,

Appellant,

against Record No. 190974
 Circuit Court No. CL00095494-00

QuantaDyn Corporation, et al.,

Appellees.

Upon an appeal from a judgment rendered by the Circuit Court of Loudoun County.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that the decision below should be affirmed.

On July 31, 2015, attorney Anthony Cooch filed a complaint in the Loudoun County Circuit Court on behalf of plaintiff David Braun against QuantaDyn Corporation, David Bolduc, and William Dunn (collectively, “QuantaDyn”). The complaint alleged fraud and breach of fiduciary duty in connection with the sale of QuantaDyn Corporation. The complaint was not signed.

Four days later, on August 4, 2015, the clerk’s office called Cooch’s office to inform him that the complaint was unsigned and that the court needed one additional copy. Cooch’s partners were at the circuit court for a trial at that time, so Cooch asked his legal assistant to retrieve the unsigned copies and bring them to his partners to sign, along with an additional copy. Those copies were served on QuantaDyn on August 27, 2015.

From August 7 to August 16, Cooch was on vacation. After he returned from vacation, on August 17, Cooch went to the clerk’s office, asked to see the case file, and upon seeing that the original complaint filed with the clerk was still unsigned, signed it. Cooch did not seek leave from the court to sign the complaint.

The case progressed until January 28, 2018, when the circuit court’s docket manager informed the parties that she was removing the pending demurrer hearing from the circuit court’s docket because the original complaint in the clerk’s office’s scanned system lacked a signature.

Braun's counsel responded with a scanned copy of the complaint bearing Cooch's signature. The docket manager reviewed the paper record, confirmed that it contained a signed complaint, and placed the demurrer back on the docket. Sua sponte, the circuit court held two status hearings to determine whether there was any significance to the signature issue on June 21, 2018, and August 13, 2018. After the August 13 status hearing, the circuit court entered an order allowing limited discovery about the signing of the complaint. Pursuant to that discovery order, QuantaDyn's counsel deposed Cooch on August 28, 2018.

Following the deposition of Cooch, QuantaDyn filed "Defendant's Plea in Bar and Motion to Strike Plaintiff's Complaint" ("Motion to Strike") with the circuit court on January 4, 2019. After a hearing on April 19, 2019, the circuit court entered a final order and opinion on April 29, 2019. The order sustained the Motion to Strike and dismissed Braun's complaint. It ruled that the remedial provisions of Code § 8.01-271.1 did not apply to initial pleadings, and that even if the remedial provisions applied, Cooch had not obtained leave of court or corrected the signature deficiency promptly, and therefore had not complied with the statute. *Id.* Braun appeals the dismissal of his complaint.

This Court reviews questions of statutory interpretation and other questions of law de novo. *McKee Foods Corp. v. Cty. of Augusta*, 297 Va. 482, 495 (2019); *Tullidge v. Board of Sup'rs of Augusta Cty.*, 239 Va. 611, 614 (1990).

Code § 8.01-271.1 requires that every pleading or written motion be signed by the attorney of record, or the party if unrepresented. However, it also provides a remedial mechanism: "If a pleading, written motion, or other paper 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." *Id.** The statute does not distinguish between types of pleadings. By its plain language, it applies to "every pleading . . . of a party represented by an attorney," whether the initial pleading or otherwise. *Id.* (emphasis added); *Northern Virginia Real Estate v. Martins*, 283 Va. 86, 106

* The General Assembly has amended this statute. See 2020 Va. Acts ch. 74 (H.B. 1378). The amendment removes the remedial mechanism at issue and substitutes the following language: "If a pleading, motion, or other paper is not signed in compliance with this paragraph, it is defective. Such a defect renders the pleading, motion, or other paper voidable." However, this version of the statute did not exist at the time this action commenced and therefore does not control the Court's decision in this case.

(2012). The remedial mechanism applies to the same filings as the signature requirement—every pleading. Consequently, the circuit court erred in concluding that Code § 8.01-271.1 does not apply to initial pleadings.

While we have considered signature defects in previous cases, none of those cases addressed this precise situation. In each of those cases, the complaint was defective at the time of filing not because it was unsigned, but because it had been signed by an improper person. *Shipe v. Hunter*, 280 Va. 480, 482 (2010) (complaint signed by attorney licensed outside of Virginia on behalf of a Virginia lawyer); *Aguilera v. Christian*, 280 Va. 486, 487 (2010) (complaint signed by attorney licensed outside of Virginia on behalf of pro se plaintiff); *Kone v. Wilson*, 272 Va. 59, 61 (2006) (wrongful death suit signed by non-lawyer estate representative who could not proceed pro se); *Nerri v. Adu-Gyamfi*, 270 Va. 28, 29 (2005) (motion for judgment signed by attorney with suspended license); *Wellmore Coal Corp. v. Harman Mining Corp.*, 264 Va. 279, 281 (2002) (notice of appeal signed by a foreign attorney). In this instance a signature was lacking, and then one was affixed without obtaining leave of court.

Code § 8.01-271.1 is silent concerning whether counsel must seek leave of court to correct a signature defect. Braun argues that leave of court is not required to fix a signature defect. Rule 1:8 requires that amendments to any pleading be made with leave of court. An amendment is defined as a “formal revision or addition proposed or made to a ... pleading; a change made by addition, deletion, or correction” Black’s Law Dictionary 94 (9th ed. 2009); *see also* Webster’s Third New International Dictionary 68 (1993) (defining “amendment” as an “act of amending esp. for the better: correction of a fault or faults”). Adding a signature to a filing constitutes an “amendment.” A complaint had been filed. Counsel did not withdraw it and file an entirely new complaint. Instead, he sought to alter, or amend, without leave of court, a previously filed pleading. At no point did counsel ask for leave of court to correct the problem.

Furthermore, amendments made without leave of court are ineffectual. *Ahari v. Morrison*, 275 Va. 92, 93 (2008) (an amended complaint is not deemed filed until the trial court grants leave to amend); *Mechtensimer v. Wilson*, 246 Va. 121, 122-23 (1993) (an amended filing has no legal effect if a party files it without leave of court).

All that was necessary for this signature defect to be cured was for counsel to seek leave of court and then to promptly sign the original pleading and service copies once he was alerted to the error. Since leave of court was never sought, the signature affixed to the pleading without

leave of court is ineffectual and, under our precedent, requires us to affirm the judgment of the trial court.

This order shall be certified to the Circuit Court of Loudoun County.

A Copy,

Teste:



Clerk