NO. 97277-0

WASHINGTON SUPREME COURT

RICHARD KING and RICHARD JACKSON, individually and representing a class of similarly situated individuals,

Plaintiffs,

DEREK GRONQUIST

Respondent,

vs.

CHASE RIVELAND and JANET BARBOUR in their official capacities; the DEPARTMENT OF CORRECTIONS OF THE STATE OF WASHINGTON; the INDETERMINATE SENTENCING REVIEW BOARD; and KEN EIKENBERRY in his official capacity as Attorney General of the State of Washington,

Defendants,

KING COUNTY PROSECUTOR DANIEL T. SATTERBERG,

Petitioner.

PROSECUTOR DANIEL T. SATTERBERG' S PETITION FOR REVIEW

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I. INTRODUCTION

To comport with due process and other constitutional concerns, this Court has maintained a clear separation between remedial and punitive sanctions in contempt of court proceedings. *See King v. Dep't of Soc. & Health Servs.*, 110 Wn.2d 793, 800 (1988) ("A civil contempt sanction is coercive and remedial, and is typically for the benefit of another party; a criminal sanction is punitive and is imposed for the purpose of vindicating the authority of the court."). Whereas the "purpose of a criminal contempt sanction is to punish for past behavior[,] the purpose of a civil contempt sanction is to coerce future behavior that complies with a court order." *Id.*

In 1989, consistent with this Court's decisions, the Legislature repealed Washington's old general contempt statute (RCW Ch. 7.20) and adopted the required civil/remedial and criminal/punitive contempt approach, which is now codified in RCW Ch. 7.21. *See* Laws of 1989 Ch. 373. Available remedial sanctions are defined in RCW 7.21.030. *State v. Sims*, 193 Wn.2d 86, 93 (2019). Under RCW 7.21.030(2), "[I]f the court finds that the person has *failed or refused to perform an act that is yet within the person's power to perform*, the court may find the person in contempt of court and impose" a remedial sanction. (Emphasis added). Following a positive finding under subsection (2), RCW 7.21.030(3)

permits a court, "*in addition to the remedial sanctions set forth in subsection (2)* of this section," to order a party to pay "for any losses suffered by the party as a result of the contempt and any costs incurred in connection with the contempt proceeding, including reasonable attorney's fees." (Emphasis added).

Here, Respondent Gronquist alleged in his contempt motion that the Department of Corrections ("DOC") violated a 1993 Injunction by disseminating his Sex Offender Treatment Program ("SOTP") records to Petitioner, Prosecutor Satterberg, when it referred him for possible civil commitment under the Sexually Violent Predator ("SVP"), RCW Ch. 71.09. CP 5-6. He asked for destruction of those records and an order preventing their use in civil commitment proceedings.[1] CP 6. Although DOC and Prosecutor Satterberg denied any contemptuous behaviors,[2] prior to consideration of the contempt motion, Prosecutor Satterberg rendered Gronquist's claims moot by successfully vacating the 1993 Injunction and obtaining a full copy of the SOTP file under the authority

[1] He also asked for release from prison and attorney fees. CP 6.
[2] There is no finding below that either DOC or Prosecutor Satterberg violated the 1993 Injunction. Both DOC and Prosecutor Satterberg continue to contest this allegation.

of RCW 71.09.025.[3] The Superior Court subsequently dismissed Gronquist's contempt motion as moot because no civil/coercive sanction was available to him under RCW 7.21.030(2) and criminal/punitive sanctions cannot be obtained by a private party. With the SOTP records in Prosecutor Satterberg's lawful possession, no remedial sanction was available to Gronquist because a court cannot coerce future compliance with a vacated injunction that is no longer in effect.

Nevertheless, the Court of Appeals reversed the Superior Court's order of dismissal. Rather than following the plain and unambiguous language of RCW 7.21.030 – where the availability of a coercive sanction under subsection (2) is a prerequisite to the recovery of additional losses under subsection (3) – the Court of Appeals relied on the Division III case of *In re of Rapid Settlements, Ltd's*, 189 Wn. App. 584, 601 (2015) to allow Gronquist to pursue "compensatory relief" directly under subsection (3). *Gronquist v. Dep't of Corr.*, 49392-6-II, 2019 WL 949430, at *4 (Wash. Ct. App. Feb. 26, 2019), *as amended* (Apr. 30, 2019).[4]

This was error meriting further review by this Court. First, review is warranted under RAP 13.4(b)(1) because the Court of Appeals

[3] DOC had previously withheld these records from Prosecutor Satterberg pursuant to the 1993 Injunction and they did not come into his possession until after the injunction was vacated. CP 809.

[4] A copy of this opinion, which is unpublished, is attached as Appendix A.

construed RCW 7.21.030 contrary to this Court's very recent decision in *Sims* and the plain language of the statute. By allowing Gronquist's contempt allegation to proceed despite the unavailability of any coercive sanction, the Court of Appeals ignored *King* and numerous other decisions from this Court emphasizing the necessary distinction between civil and criminal contempt. Second, review is warranted under RAP 13.4(b)(4) because the scope of the Superior Court's contempt powers and the proper interpretation of RCW 7.21.030 are matters of substantial public interest that should be decided by this Court. For these reasons, Prosecutor Satterberg's petition for review should be granted.

II. FACTS

In 1991, several former inmates sought an injunction against DOC in Thurston County Superior Court to preclude the agency from releasing certain SOTP records to prosecutors in connection with SVP referrals under RCW 71.09.025. Gronquist was not a party to this action, nor was the King County Prosecutor. In 1993, after certifying a class, the Superior Court issued a permanent injunction precluding DOC from releasing certain SOTP records (hereinafter "1993 Injunction"). The 1993 Injunction was affirmed in *King v. Riveland*, 125 Wn.2d 500, 503, 886 P.2d 160, 163 (1994).

Gronquist has a lengthy history of sexually violent acts. CP 808. In 1988, he was convicted of Kidnapping in the First Degree and Indecent Liberties. *Id.* While imprisoned for these offenses, he participated in the Twin Rivers Sex Offender Treatment Program where he came under the possible coverage of the 1993 Injunction. *Id.* In 1993, Gronquist was released from DOC without facing SVP civil commitment, but he quickly reoffended by committing several new sexually violent acts. *Id.* "Over a two day period, Gronquist attempted to kidnap three teenage girls." *State v. Gronquist*, 36203-8-I, 1996 WL 470607, at *1 (Wash. Ct. App. Aug. 19, 1996) (affirming conviction). *Id.* He was convicted in 1995 on three counts of Attempted Kidnapping in the First Degree with sexual motivation. *Id.* The sentencing court imposed an exceptional sentence due to Gronquist's danger of future re-offense and he remains incarcerated for these offenses. *Id.*

As Gronquist approached his April 21, 2013 "Early Release Date" ("ERD"), DOC referred Gronquist to Prosecutor Satterberg for possible civil commitment as a sexually violent predator. *Id.* In connection with the referral, DOC was required to produce "all relevant information," including "[a]ll records relating to the psychological or psychiatric evaluation and/or treatment of the person," and a current mental health evaluation of the person. RCW 71.09.025. Because DOC believed that

Gronquist was subject to the terms of the 1993 Injunction, it withheld significant portions of his SOTP file from the referral packet. CP 809.

In the summer of 2014, Gronquist filed a motion for contempt of court against DOC, a DOC official, and Prosecutor Satterberg under the old *King v. Riveland* cause number in Thurston County Superior Court. His contempt motion alleged that protected SOTP records were released internally within DOC, and then passed on to Prosecutor Satterberg in violation of the 1993 Injunction. CP 1-6. There is no finding below that the records disclosed pursuant to RCW 71.09.025 contained any records covered by the 1993 Injunction. Indeed, it remains Prosecutor Satterberg's understanding that the documents sent by DOC in 2013 followed the 1993 Injunction and omitted documents that were covered by the 1993 Injunction. CP 809.

Nevertheless, in order to remove any doubt about the propriety of Gronquist's DOC records and to prevent Gronquist's continuing manipulation of the SVP process, Prosecutor Satterberg brought a motion to vacate the 1993 Injunction as to Gronquist alone due to intervening changes in the applicable statutes and case law. *See* CP 810-11. The Thurston County Superior Court granted Prosecutor Satterberg's motion:

> The injunction is premised on an equitable theory of promissory estoppel, and it must give way to legal mandates. *In re QLM v. State*, 105 Wn.App. 332, 540 (2001). The current statutory scheme

> is wholly unlike the scheme discussed extensively in the *King* decision and, accordingly, no longer supports the viability of the injunction going forward as it relates to Gronquist.

CP 594. After additional efforts by Gronquist to block the release of his SOTP records failed,[5] DOC produced them to Prosecutor Satterberg for consideration under the SVP statute. Those records remain in the prosecutor's lawful control and possession.

Because the trial court could no longer grant a coercive civil contempt remedy, DOC moved to dismiss Gronquist's motion for contempt due to mootness. Prosecutor Satterberg joined in this motion. In essence, civil contempt was a plausible remedy for Gronquist only when it could be used to coerce return of the records allegedly protected by the 1993 Injunction. Because the injunction was now vacated and the records were lawfully in the prosecutor's possession, no coercive sanction was

[5] Gronquist failed to file a timely appeal from the vacation order, and as a result, it is not part of this case. Gronquist voluntarily abandoned his first effort to seek review of the order vacating injunction. Motion to Voluntarily Withdraw Petition for Discretionary Review, *King**Error! Bookmark not defined.** v. Riveland*, No. 49057-9 (Wash. App. Div. II June 13, 2016). He then tried to re-raise his challenge to the vacation order under this cause number, but this issue was dismissed by order of the Court of Appeals Commissioner. Ruling on Motion to Dismiss, *King v. Riveland*, No. 49392-6-II (Wash. App. Div. II Dec. 6, 2016). Motions to modify this ruling were then denied by both the Court of Appeals and the Supreme Court Commissioner. Ruling Denying Review, *King v. Riveland*, No. 94338-9 (Wash. Aug. 22, 2017). No motion to modify was filed in this Court so the Commissioner's ruling became final.

appropriate or available. On August 5, 2016, the trial court dismissed Gronquist's motion for contempt "as moot" due to a lack of an available remedy.

In an unpublished opinion, Division II of the Court of Appeals reversed. It recognized that this case was moot unless "a remedial sanction" was available to the trial court. 2019 WL 949430, at *3. Such a sanction is defined in RCW 7.21.010(3) as "a sanction imposed for the purpose of coercing performance when the contempt consists of the omission or refusal to perform an act that is yet in the person's power to perform." *Id.* The court recognized that "RCW 7.21.030(2) provides that a court may find a person in contempt and impose a remedial sanction ***only*** upon a 'person [who] has failed or refused to perform an act that is yet within the person's power to perform.'" *Id.* (emphasis added).

Despite correctly interpreting the applicable statutes, the Court of Appeals nonetheless relied on Division III's opinion in *In re of Rapid Settlements, Ltd's,* 189 Wn. App. 584, 601, 359 P.3d 823, 832–33 (2015) to hold that:

> "a court may find a person in contempt whether or not it is possible to coerce future compliance." *Id. Rapid Settlements*, 189 Wn. App. at 601. In such a case, the court may "order a contemnor to pay losses suffered as a result of the contempt and costs incurred in the contempt proceedings for any 'person found in contempt of court' without regard to whether it is possible to craft a coercive sanction."

Id. It further held, based on *Rapid Settlements*, that RCW 7.21.030(3) authorizes an award of losses suffered due to the contempt, as well as attorney fees. *Id.* Under this statute, "a defendant may be 'punished' even in a civil contempt proceeding if the purpose is to compensate the complainant." *Id.* at *4 (*Quoting Rapid Settlements*, 189 Wn. App. at 608). The Court of Appeals ultimately held that Gronquist's contempt motion was not moot because "compensatory relief" was available, thereby entitling Gronquist to an award covering "any losses he suffered as a result of [the] alleged contempt." *Id.*

III. ISSUE

Whether a court may order compensatory damages for civil contempt under RCW 7.21.030(3) when a coercive remedial sanction is no longer available under .030(2), and if not, should the civil contempt motion be dismissed as moot?

IV. REASONS TO GRANT PETITION

A. THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH THE DECISIONS OF THIS COURT.

The Court of Appeals claims a viable civil remedy for Gronquist despite the plain and express language of RCW 7.12.030. The Court of Appeals' failure to adhere to the plain language of the statute violates this Court's rules of statutory construction. "When the plain language is

unambiguous—that is, when the statutory language admits of only one meaning—the legislative intent is apparent, and we will not construe the statute otherwise." *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318, 320 (2003). It is a "fundamental principle of statutory construction" that this Court "will not construe unambiguous language in a statute." *Harris v. State, Dep't of Labor & Indus.*, 120 Wn.2d 461, 472 n.7, 843 P.2d 1056, 1062 (1993).

As adopted in 1989, RCW Ch. 7.21 maintains the constitutionally required boundaries between civil and criminal contempt. Under RCW 7.21.010(3), a "remedial sanction" is defined as "a sanction imposed ***for the purpose of coercing performance*** *when the contempt consists of the omission or refusal to perform an act that is yet in the person's power to perform*." (Emphasis added.) In contrast, a "punitive sanction" is a sanction "imposed to punish a ***past contempt of court*** *for the purpose of upholding the authority of the court*." RCW 7.21.010(2) (emphasis added).

In *King* and other cases, this Court has repeatedly emphasized that civil and criminal contempt are separate doctrines that raise distinct constitutional concerns. *King*, 110 Wn.2d at 800; *see also, e.g. In re Dependency of A.K.*, 162 Wn.2d 632, 645, 174 P.3d 11, 17 (2007); *State v. Breazeale*, 144 Wash.2d 829, 842, 31 P.3d 1155 (2001) ("Contempt may

be criminal *or* civil."). Indeed, "[d]ue process protections are determined by whether the sanction is remedial or punitive." *In re Silva*, 166 Wn.2d 133, 141, 206 P.3d 1240, 1245 (2009). For example, when a punitive sanction is sought, criminal due process rights apply and contempt must be initiated by the prosecutor through an information. *Smith v. Whatcom Cty. Dist. Court*, 147 Wn.2d 98, 105 (2002). In contrast, "a civil contempt sanction is *allowed as long as it serves coercive, not punitive, purposes*." *Smith v. Whatcom Cty. Dist. Court*, 147 Wn.2d 98, 105, 52 P.3d 485, 489 (2002) (emphasis added).

In order to preserve the coercive function and purpose of civil contempt, the Legislature allows a civil contempt finding only against a person who "has failed or refused to perform an act *that is yet within the person's power to perform*." RCW 7.21.030(2) (emphasis added). A court "may find the person in contempt of court" and impose "remedial sanctions" under subsection (2) only *after* it makes this specific finding. *Id.*

Although RCW 7.21.030(3) potentially allows for additional remedies, including attorney fees, such relief is dependent on a prior finding of civil contempt and the imposition of a coercive sanction under RCW 7.21.030(2). Under the plain language of subsection (3), "[t]he court may, *in addition to the remedial sanctions set forth in subsection (2)*

of this section, order a person found in contempt of court to pay a party for any losses . . . including reasonable attorney's fees." RCW 7.21.030(2) (emphasis added). Of course, an award under subsection (3) is not "in addition to" remedial sanctions under subsection (2) when there is neither a finding of contempt, nor any remedial sanction whatsoever under subsection (2).

This straightforward analysis of the plain language of RCW 7.21.030 was very recently adopted by this Court in *State v. Sims*, 193 Wn.2d 86, 93 (2019).[6] In *Sims*, this Court notes several times that RCW 7.21.030 is a "plain language" statute, meaning that it is not subject to construction. *Id.* (noting the statute's "plain language"). Examining this plain statutory language, this Court notes that relief under .030(2) wholly depends on the ability to remedy a continuing contempt:

> The statute lists the following available sanctions in subsection (2): (a) imprisonment, (b) "[a] forfeiture not to exceed two thousand dollars for each day the contempt of court continues," (c) an order designed to ensure compliance with a prior order of the court, (d) "[a]ny other remedial sanction . . . *if the court expressly* finds that those [above listed] sanctions would be ineffectual to terminate a continuing contempt of court," and (e) commitment to juvenile detention. RCW 7.21.030 (emphasis added).

[6] The *Sims* analysis was pointed out the Court of Appeals through a timely motion for reconsideration, but no changes were made to the opinion in response.

Sims, 193 Wn.2d at 93 7 (emphasis in original). This Court further emphasizes that relief is available under .030(3) only if the party first obtains relief under .030(2):

> The statute further provides, "The court may, in addition to the remedial sanctions set forth [above], order a person found in contempt of court to *pay a party for any losses suffered by the party as a result of the*
> *contempt* and *any costs incurred in connection with the contempt proceeding, including reasonable attorney's fees*." RCW 7.21.030(3) (emphasis added).

Id. (Emphasis and bracketed text in original).

One of the questions in *Sims* was whether RCW 7.21.030 authorized "the imposition of interest." *Id.* Under this statute, as analyzed by this Court, "the plain language of the statute does not address, include, or provide for interest." *Sims*, 193 Wn.2d at 93. This was because interest was not a coercive remedy under RCW 7.21.030(2), nor was it available under RCW 7.21.030(3) when there was no coercive remedy available under subsection (2).

The Court of Appeals decision to broadly treat RCW 7.21.030(3) as an independent avenue for "compensatory relief" cannot be squared with the plain language of the statute or this Court's analysis in *Sims*. Indeed, rather than reading the plain language of RCW 7.21.030 for its conclusions, the Court of Appeals sole authority for interpreting RCW 7.21.030(3) in isolation from .030(2) was the Division III opinion in *In re*

of Rapid Settlements, Ltd's, 189 Wn. App. 584, 601, 359 P.3d 823, 832–33 (2015). The *Rapid Settlements* opinion fails to undertake any meaningful analysis of these two statutory sections and how they interact. Its conclusion that a party can proceed under .030(3) regardless of the availability of a coercive sanction under .030(2) is based exclusively on citation to *State ex rel. Chard v. Androw*, 171 Wash. 178, 178, 17 P.2d 874, 874 (1933). The 1933 *Chard* decision, however, relies on "Rem. Comp. Stat. § 1058," which is wholly dissimilar to RCW 7.21.030(2) and (3).[7] In short, the Court of Appeal's reliance on the *Rapid Settlements* case fails to account for the plain and controlling language in RCW 7.21.030.

In addition to the conflict with this Court's rules of statutory construction and *Sims*, the Court of Appeals decision unnecessarily blurs

[7] The statute cited in *Chard* was repealed in 1989. *See* Laws of 1989, Ch. 373 § 28 (repealing RCW 7.20.100, previously codified at Rem. Rev. St. §1058). Previously, Rem. Rev. St. §1058 provided that: "If any loss or injury to a party in an action, suit, or proceeding, prejudicial to his rights therein, have been caused by the contempt, the court or judicial officer, in addition to the punishment imposed for the contempt, may give judgment that the party aggrieved recover of the defendant a sum of money sufficient to indemnify him, and to satisfy his costs and disbursements, which judgment, and the acceptance of the amount thereof, is a bar to any action, suit, or proceeding by the aggrieved party for such loss or injury." Obviously, there are few similarities between the statute analyzed in *Chard* and RCW 7.21.030.

the lines between civil and criminal contempt. Contrary to this Court's careful contempt jurisprudence, the Court of Appeals quotes language from *Rapid Settlements* that contempt is "neither wholly civil nor altogether criminal," and that "a defendant may be 'punished' even in a civil contempt proceeding." 2019 WL 949430, at *2 (*quoting* 189 Wn. App. at 608). This analysis is an unsound departure from *King* and its progeny. Consistent with RCW 7.21.030, this Court has clearly stated that "a civil contempt sanction is *allowed as long as it serves coercive, not punitive, purposes*." *Smith*, 147 Wn.2d at 105 (emphasis added). The decision below to turn RCW 7.21.030(3) into a broad compensatory damages action unbound by the availability of a coercive remedy under .030(2) should be reversed because it conflicts with the civil versus criminal dichotomy established by this Court's decisions.

The Superior Court correctly determined that Gronquist's contempt motion was moot because he cannot meet the requirements of RCW 7.21.030(2) due to vacation of the 1993 Injunction. This Court should accept review and reverse the Court of Appeals.

B. THIS CASE INVOLVES AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST THAT SHOULD BE DETERMINED BY THIS COURT.

The proper scope of a court's statutory civil contempt power and the continued viability of Washington's general contempt statute under

Due Process is a matter of substantial public interest. In *In re Dependency of A.K.*, 162 Wn.2d 632, 644 (2007), this Court reviewed a civil contempt matter partially due to important public questions raised about the authority of the courts. Here, the Court of Appeals has embarked on a contempt jurisprudence that blurs the distinction between civil and criminal remedies by removing the need for a coercive sanction. Because such an action could require various due process protections associated with criminal contempt, it is a matter of substantial public interest that merits this Court's review.

Further, the authority of a court to ignore the plain language of the current statute in favor of a 1933 case interpreting a long ago repealed statute is a matter of substantial public interest. The Court of Appeals decision to act contrary to plain and unambiguous statutory language in RCW 7.21.030 exceeds the proper role of our judicial branch. *See Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526, 243 P.3d 1283, 1288 (2010) ("[W]e 'must not add words where the legislature has chosen not to include them,' and we must 'construe statutes such that all of the language is given effect.'"). This issue implicates the proper separation of powers between our legislative and judicial branches, which is an issue of substantial public importance meriting further review from this Court. *See Five Corners Family Farmers v. State*, 173 Wn.2d 296, 311, 268 P.3d

892, 900 (2011) (noting "separation of powers concerns" when a court adds words to a plain meaning statute that were not adopted by the Legislature).

V. CONCLUSION

For the foregoing reasons, Prosecutor Satterberg respectfully asks this Court to accept review and reverse the Court of Appeals' decision. The Superior Court properly dismissed Gronquist's contempt motion because it was moot.

DATED this 30th day of May, 2019.

DANIEL T. SATTERBERG
King County Prosecuting Attorney

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DECLARATION OF FILING AND SERVICE

I hereby certify that on May 30, 2019, I electronically filed the foregoing PROSECUTOR DANIEL T. SATTERBERG' S PETITION FOR REVIEW with the Supreme Court of the State of Washington, and arranged for service of a copy of the same on the parties to this action as follows:

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I declare under penalty of perjury that the foregoing is true and correct.

DATED this 30th day of May, 2019, at Seattle, Washington.

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Appendix A

2019 WL 949430
Only the Westlaw citation is currently available.

NOTE: UNPUBLISHED OPINION,
SEE WA R GEN GR 14.1

Court of Appeals of Washington, Division 2.

Derek GRONQUIST, Appellant,
Richard King and Richard Jackson,
Individually and Representing a Class of
Similarly Situated Individuals, Plaintiffs
v.
DEPARTMENT OF CORRECTIONS of
the State of Washington and King County
Prosecutor Daniel Satterburg, Respondents.
Chase Riveland and Janet Barbour, in
Their Official Capacities; the Indeterminate
Sentencing Review Board; and Ken Eikenberry,
in His Official Capacity as Attorney General
of the State of Washington, Defendants.

No. 49392-6-II
|
February 26, 2019
|
As Amended April 30, 2019

Appeal from Thurston Superior Court, 91-2-02281-7, Honorable Anne Hirsch, J.

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UNPUBLISHED OPINION

Melnick, J.

***1** Derek Gronquist was convicted in 1988 of two felony sex offenses. He entered the Sexual Offender Treatment Program (SOTP).

In 1993 a permanent injunction issued precluding the release of SOTP records, including Gronquist's. Before a court vacated the injunction in January 2016, Gronquist moved for a finding of contempt against the Department of Corrections (DOC) and the King County Prosecutor (KCP). He alleged they violated the injunction. After vacating the injunction, the trial court denied Gronquist's contempt motion on mootness grounds.

Because the trial court could have awarded Gronquist compensation for any losses, costs, and attorney fees associated with DOC's and KCP's contemptuous acts, the trial court erred. We reverse.

FACTS

In 1991, some convicted sex offenders who had participated in the SOTP brought a class action lawsuit against DOC to enjoin the release of their SOTP files. *See* *King v. Riveland*, 125 Wn.2d 500, 502-04, 886 P.2d 160 (1994). The SOTP files included extensive information about the individual's psychological evaluations, treatment progress, answers to tests, DOC evaluation results, staff notes on therapy sessions, relapse prevention plans, and other documents. *King*, 125 Wn.2d at 503. The case resulted in a permanent injunction (*King* injunction) prohibiting DOC from releasing certain documents from any class member's SOTP file.

After being convicted of two sex offenses in 1988, Gronquist entered the SOTP program. Although not a named party in *King*, Gronquist fell within the class of persons protected by the *King* injunction.

II. CURRENT LITIGATION

In July 2015, Gronquist intervened in the 1991 case that resulted in the *King* injunction. He alleged that DOC violated the *King* injunction by sharing his SOTP file with KCP. Gronquist filed a motion for an order to show cause why DOC and KCP should not be held in contempt.[1] Gronquist alleged that DOC had forwarded KCP certain enjoined materials in February 2013 when

KCP planned to initiate civil commitment proceedings against Gronquist. [2]

KCP moved to vacate or modify the *King* injunction as to Gronquist because of law changes since the Supreme Court had upheld the injunction in 1995. DOC joined this motion.

On January 14, 2016, the trial court entered a written order vacating the injunction as to Gronquist. The court noted that the law had "changed significantly since this injunction was entered" and that changes to SVP statutes "unequivocally require[ ] disclosure to the prosecuting attorney of all records, including complete SOTP files, in connection with Sexually Violent Predator proceedings." Clerk's Papers (CP) at 594 (citing RCW 71.09.025). The court concluded that the vacation of the injunction as to Gronquist, would "not directly affect the current contempt action." CP at 595. It clarified that its decision was "prospective only, and [did] not resolve allegations of contempt in the past." CP at 595.

***2** After the injunction had been vacated and this court declined review, DOC provided KCP with Gronquist's complete SOTP file.

DOC and KCP argued that Gronquist's motion for contempt was moot because DOC was no longer prohibited from releasing the SOTP file. They claimed that, because the purpose of civil contempt was to coerce parties to obey court orders, no remaining remedy existed because KCP now lawfully possessed the SOTP file. They argued that any remedy would be punitive, which would require criminal contempt charges and new proceedings initiated by a prosecutor. The trial court agreed and denied Gronquist's motion for contempt as moot. Gronquist appeals. [3]

ANALYSIS

I. STANDARDS OF REVIEW

We review a trial court's decision on a contempt of court motion for abuse of discretion. *Weiss v. Lonnquist*, 173 Wn. App. 344, 363, 293 P.3d 1264 (2013). However, "[a] court's authority to impose sanctions for contempt is a question of law, which we review de novo." *In re Interest of Silva*, 166 Wn.2d 133, 140, 206 P.3d 1240 (2009). Mootness is also a question of law reviewed de novo. *Robbins v. Legacy Health Sys., Inc.*, 177 Wn. App. 299, 308, 311 P.3d 96 (2013).

This case involves the denial of a motion for civil contempt based on mootness. It involves the court's authority to provide effective relief to Gronquist based on DOC's and KCP's alleged contempt. The court's authority to impose sanctions is a legal question that we review de novo.

II. LEGAL PRINCIPLES

Contempt of court includes the "[d]isobedience of any lawful judgment, decree, order, or process of the court." RCW 7.21.010(1)(b).

> Whenever it shall appear to any court granting a restraining order or an order of injunction ... that any person has willfully disobeyed the order after notice thereof, such court shall award an attachment for contempt against the party charged, or an order to show cause why it should not issue.

RCW 7.40.150.

Contempt is " 'neither wholly civil nor altogether criminal,' " such that "a defendant may be 'punished' even in a civil contempt proceeding if the purpose is to compensate the complainant." *In re Rapid Settlements, Ltd.*, 189 Wn. App. 584, 608, 359 P.3d 823 (2015) (quoting *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 441, 31 S.Ct. 492, 55 L.Ed. 797 (1911)). There are differences between civil and criminal contempt.

> "It is not the fact of punishment but rather its character and purpose that often serve to distinguish between the two classes of cases. If it is for civil contempt *the punishment is remedial, and for the benefit of the complainant.* But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the court. It is true that punishment by imprisonment may be remedial, as well as punitive, *and many civil contempt proceedings have resulted not only in the imposition of a fine, payable to the complainant*, but also in committing the defendant to prison."

***3** *Rapid Settlements*, 189 Wn. App. at 608 (quoting *Gompers*, 221 U.S. at 441-42). Because the current case concerns civil contempt, Gronquist must show that the trial court had some remedial sanction available.

A remedial sanction is "a sanction imposed for the purpose of coercing performance when the contempt consists of the omission or refusal to perform an act that is yet in the person's power to perform." RCW 7.21.010(3). Remedial sanctions are "sometimes referred to as coercive" because their goal "is to coerce a party to comply with a court order." *State v. Sims*, 1 Wn. App. 2d 472, 479, 406 P.3d 649 (2017), *review granted*, 190 Wn.2d 1012 (2018). "A remedial sanction must contain a purge clause or it loses its coercive character and becomes punitive." *Sims*, 1 Wn. App. 2d at 479.

RCW 7.21.030(2) provides that a court may find a person in contempt and impose a remedial sanction only upon a "person [who] has failed or refused to perform an act that is yet within the person's power to perform." However, "a court may find a person in contempt whether or not it is possible to coerce future compliance." *Rapid Settlements*, 189 Wn. App. at 601. In such a case, the court may "order a contemnor to pay losses suffered as a result of the contempt and costs incurred in the contempt proceedings for any 'person found in contempt of court' without regard to whether it is possible to craft a coercive sanction." *Rapid Settlements*, 189 Wn. App. at 601 (quoting RCW 7.21.030(3)).

Remedial sanctions for contempt of court include:

> (a) Imprisonment ... so long as it serves a coercive purpose.
>
> (b) A forfeiture not to exceed two thousand dollars for each day the contempt of court continues.
>
> (c) An order designed to ensure compliance with a prior order of the court.
>
> (d) Any other remedial sanction other than the sanctions specified in (a) through (c) of this subsection if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt of court.

RCW 7.21.030(2). The court may also, in addition to the "remedial sanctions" listed above, "order a person found in contempt of court to pay a party for any losses suffered by the party as a result of the contempt and any costs incurred in connection with the contempt proceeding, including reasonable attorney's fees." RCW 7.21.030(3).

"To determine whether sanctions are punitive or remedial, the courts look not to the 'stated purposes of a contempt sanction,' but whether it has a coercive effect—whether 'the contemnor is able to purge the contempt and obtain his release by committing an affirmative act.' " *Silva*, 166 Wn.2d at 141-42 (internal quotation marks omitted) (quoting *In re Dependency of A.K.*, 162 Wn.2d 632, 646, 174 P.3d 11 (2007)).

III. MOOTNESS

Gronquist contends that the trial court erred by denying his contempt motion on the basis of mootness. He contends that his contempt motion was not moot because the trial court could have required DOC and KCP to compensate him "for his injuries, costs, and attorney fees."[4] Br. of Appellant at 27. We agree.

***4** "A case is moot if a court can no longer provide effective relief." *SEIU Healthcare 775NW v. Gregoire*, 168 Wn.2d 593, 602, 229 P.3d 774 (2010). The general rule is that moot cases should be dismissed. *State v. Cruz*, 189 Wn.2d 588, 597, 404 P.3d 70 (2017). " 'The central question of all mootness problems is whether changes in the circumstances that prevailed at the beginning of litigation have forestalled any occasion for meaningful relief.' " *City of Sequim v. Malkasian*, 157 Wn.2d 251, 259, 138 P.3d 943 (2006) (quoting 13A CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3533.3, at 261 (2d ed. 1984)).

RCW 7.21.030(3) provides:

> The court may, in addition to[5] the remedial sanctions set forth in subsection (2) of this section, order a person found in contempt of court to pay a party for any losses suffered by the party as a result of the contempt and any costs incurred in connection with

> the contempt proceeding, including reasonable attorney's fees.

This provision "allows the court to order a contemnor to pay losses suffered as a result of the contempt and costs incurred in the contempt proceedings for any 'person found in contempt of court' without regard to whether it is possible to craft a coercive sanction." *Rapid Settlements*, 189 Wn. App. at 601 (quoting RCW 7.21.030(3)). As a result of this statute, "a defendant may be 'punished' even in a civil contempt proceeding if the purpose is to compensate the complainant." *Rapid Settlements*, 189 Wn. App. at 608.

"Compensatory fines have been imposed in Washington contempt proceedings to address many types of loss and damage caused by a party's contumacious acts." *Rapid Settlements*, 189 Wn. App. at 610. In *Rapid Settlements*, the court awarded attorney fees and costs incurred in the contempt proceedings, losses incurred as a result of the contemptuous conduct, and a onetime $ 1,000 sanction. 189 Wn. App. at 606, 610-11. The court analyzed what specific losses, costs, and fees, were actually attributable to the contemptuous conduct, but it never questioned its own authority to award the portions that were caused by the contempt. *Rapid Settlements*, 189 Wn. App. at 606-12.

DOC distinguishes *Rapid Settlements* on the ground that the party awarded costs and fees in that case also sustained "losses," distinct from costs, and fees, which the court awarded. Br. of DOC at 22. It claims that, unlike the movant in *Rapid Settlements*, Gronquist has not shown any economic losses distinct from his costs and attorney fees. [6]

The issue of mootness is about whether the court is able to provide effective relief. DOC's and KCP's arguments that Gronquist has not shown any losses do not go to mootness but to whether he can show damages. A court has authority to order DOC and KCP to compensate Gronquist for any losses he suffered as a result of their alleged contempt. The trial court denied Gronquist's motion for contempt as moot without reaching the issue of whether contempt actually occurred or whether Gronquist suffered any losses as a result. If Gronquist can prove DOC and KCP are in contempt, then he can recover losses that he proves resulted from the disclosure of his SOTP file. The court can award him compensatory relief. Therefore, Gronquist's motion for contempt is not moot.

***5** We reverse the trial court's order denying Gronquist's motion for contempt as moot and remand for the court to rule on the contempt motion.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

We concur:

Worswick, P.J.

Sutton, J.

All Citations

Not Reported in Pac. Rptr., 2019 WL 949430

Footnotes

1 KCP was not a party to the litigation at this time. After Gronquist filed his motion, KCP intervened as a defendant in the case.

2 Whether DOC and KCP violated the *King* injunction is an issue the trial court will need to resolve on remand. It did not reach this issue because it dismissed Gronquist's contempt motion as moot.

3 Gronquist filed a notice of appeal in which he sought review of four trial court orders. A commissioner of this court subsequently dismissed Gronquist's appeal as to one of those orders and Gronquist has not briefed issues relating to two others. Therefore, we address only Gronquist's appeal of the order denying his contempt motion on mootness grounds.

4 Gronquist also suggests several other types of relief that prevent his motion from being moot. Because we agree that the trial court, if it found DOC and KCP in contempt, could order them to compensate Gronquist for his injuries, costs, and

attorney fees attributable to their contemptuous conduct, we do not reach Gronquist's additional suggested remedies. We also do not reach Gronquist's judicial estoppel argument.

5 DOC contends that this "in addition to" language implies that a court may only order a contemnor to pay losses, costs, and attorney fees if it *additionally* orders one of the remedial sanctions laid out in RCW 7.21.030(2). This argument is inconsistent with *Rapid Settlements*, discussed below.

6 DOC also relies on *Shell Offshore Inc. v. Greenpeace, Inc.*, 815 F.3d 623 (9th Cir. 2016), for the proposition that "coercive contempt proceedings are moot when the order or injunction alleged to have been violated expires or is otherwise no longer in effect." Br. of DOC at 20. *Shell Offshore* specifically distinguished purely coercive contempt orders from those concerning compensatory damages to the movant, such as those alleged in this case. 815 F.3d at 630.

Filed
Washington State
Court of Appeals
Division Two

April 30, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

DEREK GRONQUIST, Appellant, RICHARD KING and RICHARD JACKSON, individually and representing a class of similarly situated individuals, Plaintiffs v. DEPARTMENT OF CORRECTIONS OF THE STATE OF WASHINGTON and KING COUNTY PROSECUTOR DANIEL SATTERBERG, Respondents. CHASE RIVELAND and JANET BARBOUR, in their official capacities; the INDETERMINATE SENTENCING REVIEW BOARD; and KEN EIKENBERRY, in his official capacity as Attorney General of the State of Washington, Defendants.	No. 49392-6-II ORDER GRANTING MOTION FOR RECONSIDERATION IN PART AND AMENDING OPINION

Respondents, Department of Corrections and King County Prosecutor Daniel Satterberg, in separate motions, move this court for reconsideration of its February 26, 2019 unpublished opinion. We deny King County Prosecutor Daniel Satterberg's motion in full. We deny the Department of Corrections' motion, except as to amend the opinion as follows:

The last sentence in paragraph one under the "FACTS" section on page 2 of the opinion that reads:

> The case resulted in a permanent injunction (*King* injunction) prohibiting DOC from releasing any documents from any class member's SOTP file.

shall be changed to read as follows:

> The case resulted in a permanent injunction (*King* injunction) prohibiting DOC from releasing certain documents from any class member's SOTP file.

The last sentence in paragraph one under the "FACTS" section, heading II. Current Litigation on page 3 of the opinion that reads:

> Gronquist alleged that DOC had forwarded KCP his entire SOTP file in February 2013 when KCP planned to initiate civil commitment proceedings against Gronquist.

shall be changed to read as follows:

> Gronquist alleged that DOC had forwarded KCP certain enjoined materials in February 2013 when KCP planned to initiate civil commitment proceedings against Gronquist.

IT IS SO ORDERED.

PANEL: Jj. Worswick, Melnick, Sutton.

Melnick J.
Melnick, J.

We concur:

Worswick J
Worswick, P.J.

Sutton J.
Sutton, J.

KING COUNTY PROSECUTING ATTORNEYS OFFICE CIVIL DIVISION

May 30, 2019 - 4:22 PM

Filing Petition for Review

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