No. 98371-2

SUPREME COURT OF
THE STATE OF WASHINGTON

No. 36666-9-III

IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION III

MICHAEL F. CRONIN,

Respondent,

vs.

CENTRAL VALLEY SCHOOL DISTRICT,

Appellant.

RESPONDENT MICHAEL F. CRONIN'S ANSWER TO APPELLANT CENTRAL VALLEY SCHOOL DISTRICT'S PETITION FOR DISCRETIONARY REVIEW

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I. INTRODUCTION

This case ultimately boils down to a School District that repeatedly ignored the rights of one of its teachers when it refused to comply with applicable statutory provisions for a due process termination hearing, and then again, when it blatantly refused to comply with a valid court order. The School District first violated teacher Michael F. Cronin's ("Cronin") due process and statutory rights when it took the unlawful and uncategorical position to ignore his union representatives timely written request for a statutory hearing on the merits of his termination. The School District ignored that request and terminated him without ever proceeding to a due process statutory hearing.

Then, after being ordered to proceed to a hearing, the School District intentionally ignored a valid court order that returned the teacher to pay and benefits pending a decision on the merits of his statutory hearing. This was despite denial of the School District's motion for reconsideration and after denial of the School District's *three separate* requests for a stay to not only the Trial Court, but the Court of Appeals' Commissioner, and a panel of judges at the Court of Appeals. All of these decisionmakers agreed with the Trial Court that Cronin should have been placed on pay and benefits pending a decision by the statutory hearing officer. The School District refused to comply with this valid court order then and to this day has not complied.

As a result, the School District was found in contempt by the Trial Court, which fashioned remedial sanctions that expressly stated that the School District could purge itself of the contempt and comply with the underlying order by

paying Cronin the wages and benefits he was entitled to pending the statutory hearing but was never paid as a direct result of the School District's contempt. The Trial Court included in its order a 30-day grace period to afford the School District the opportunity to purge the finding of contempt. However, after 30 days, the order provided per diem remedial sanctions would accrue if the School District was still in contempt and continued to ignore the Trial Court's order. This per diem provision was ordered to ensure the District would comply with the court order. On appeal, Division III of the Court of Appeals unanimously affirmed the Trial Court's order of contempt pursuant to the Trial Court's broad discretion and authority under RCW 7.21.

The School District now petitions this Court, seeking to avoid complying with a court order that it blatantly and intentionally ignored under the guise that its motion practice strategy should prohibit the entry of a contempt finding with remedial sanctions. It claims that the law allows it to continue to ignore a valid court order so long as a motion with some adjudicating body is pending. The School District seeks to effectively usurp a Trial Court's authority and discretion which would ultimately allow a party to avoid complying with a clear and valid court order, one which no court would stay under the circumstances, despite several requests. The School District's position is clear: as long as motion is pending at any level of an appeal, a party need not comply with valid court orders and cannot be subject to contempt proceedings. This position is directly contrary to existing law and the Trial Court's broad authority to fashion a remedy to ensure compliance with its orders. Further, it would empower litigants, as the

School District did here, to repeatedly file the same motion, despite previous denials, to avoid complying with a valid court order. A party cannot ignore a clear and valid court order because it did not agree with that order, which is precisely what the District did in this case.

II. ISSUES PRESENTED FOR REVIEW

Cronin is not cross appealing any issues.

III. STATEMENT OF THE CASE

Despite this case's protracted litigation history, the facts relevant to the issues on review are simple. On April 27, 2018, the Honorable Judge John C. Cooney provided an oral ruling from the bench on the parties' cross motions for summary judgment. CP 6. He denied Central Valley School District's ("District") motion but granted in part Cronin's summary judgment. *Id.* Unhappy with the Trial Court's ruling, the District, moved for reconsideration on May 8, 2018. CP 317-318. The Court issued a written decision on June 1, 2018, denying the District's motion for reconsideration. *Id.*

Following a presentment hearing on June 22, 2018, on June 29, 2018, the Court entered an order on summary judgment. CP 319-322. Part of that order specifically required the parties to proceed to a statutory hearing on the merits of Cronin's Notice of Probable Cause for discharge and non-renewal. *Id.* The order also required the District to reinstate Cronin's pay and benefits pending a decision on the merits by a statutory hearing officer. *Id.* Receipt of pay and benefits was not contingent on Cronin's successful appeal at hearing. *Id.*

Although the parties moved forward and proceeded with a statutory hearing at the time, the District never complied with the Trial Court's Order reinstating

Cronin's pay and benefits under the June 29, 2018 Order. CP 241-46. On July 17, 2018, the District moved for a limited stay, requesting that the Trial Court stay that portion of the June 29, 2018 order that required the District to reinstate Cronin's pay and benefits. CP 6-7. The District's motion was denied as part of the Trial Court's August 22, 2018, order determining damages. CP 328-36.

The District appealed the August 22, 2018 order to the Court of Appeals on August 28, 2018. CP 7. The District did not appeal the denial of the stay by the Trial Court or request a stay by the Court of Appeals in its August 28, 2018, notice of appeal. *Id.* The parties proceeded to a statutory hearing while the matter was being processed on appeal, but Cronin's pay and benefits were never reinstated despite the Trial Court denying the District's motion to stay and the District's failure to further request a stay. CP 241-46. Accordingly, on September 7, 2018, Cronin moved for an order finding the District in contempt and for remedial sanctions for failing to pay him his wages and benefits pending a decision on the statutory hearing. CP 1-2, 5-11. No motion to stay was pending at that time. It was only four days later, after Cronin served the District with his motion for contempt, that the District filed a motion for stay with the appellate court on September 11, 2018.[1]

[1] The District has proffered inconsistent "justifications" for not immediately filing a motion to stay after filing its appeal. Before the Trial Court, the District argued that it could not file a motion to stay because it "had to wait for the Court of Appeals to assign a case number." CP 12-13. However, that was inaccurate as RAP 8.1(b)(3) permits a party to file for a stay before acceptance of review. CP 60. Nor did the District file a motion on an emergency or expedited basis under RAP 17.4(b). But then, before the Appellate Court. District's counsel filed a self-serving declaration that he had simply not finished drafting the motion before Cronin filed for contempt. *App. School Dist.'s Brief in Support of Motion to Stay,* COA No. 362914-III (Sept. 11, 2018). The District's inconsistencies beg credibility. Regardless, neither excuse offered by the District justifies its intentional refusal to comply with a valid court order.

On September 21, 2018, the Trial Court heard oral argument on the contempt motion. CP 69-70. Noting the potential for inconsistent rulings while two separate motions were pending before the Court of Appeals (one motion was whether the District had properly perfected its appeal of the June 29, 2018 order and the other was the District's motion for stay), the Trial Court reserved ruling on Cronin's contempt motion. *Id.* The Trial Court invited Cronin to re-note his motion if the stay was denied by the Court of Appeals. *Id.*

On November 30, 2018, Court of Appeals Commissioner Wasson issued a ruling denying the District's motion to stay. The Commissioner rejected the District's same argument they now make to this Court, that the Trial Court order required the District to put Cronin back in the classroom and only the hearing officer had such authority. *Comm. Ruling,* COA No. 362914-III (Nov. 30, 2018). The District was wrong. The order simply required Cronin be placed on pay and benefits pending the statutory hearing. *Id.* at 3. The Commissioner analyzed the District's motion for stay under the framework of RAP 8.1(b)(3) and determined that "the superior court's Order does not present a need for a stay… As in all teacher discharge proceedings, the teacher's employment status and pay and benefits continues pending the hearing officer's decision." *Id.* The Commissioner did not find that compliance with the Trial Court's Order would cause substantial injury or irreparable harm to the District. *Id.* 2-3.

Yet the District continued to willfully ignore the court order and refused to reinstate Cronin's pay and benefits despite the stay being denied by the Court of Appeals. Rather, it simply ignored matters and proceeded with the statutory

hearing on the merits. CP 75-81. On December 21, 2018, the statutory hearing officer found sufficient cause to discharge and non-renew Cronin.[2] CP 167. On December 28, 2018, with the claimed benefit of the statutory hearing officer's decision in hand, the District then moved to modify the Commissioner's November 30, 2018 ruling denying the District's motion for stay. *App. Mot. To Modify,* COA No. 362914-III (Dec. 28, 2018). That same day, Cronin renewed and renoted his motion for contempt with the Trial Court as the District never complied with the June 29, 2018 order to reinstate Cronin's pay and benefits pending the hearing officer's decision. CP 72-74.

On January 10, 2019, the Trial Court heard oral argument on the contempt issues and found the District in contempt of the June 29, 2018 Order, stating:

> Here, the order entered on June 29th was extremely clear. The order indicates that the plaintiff's wages and benefits shall be immediately reinstated, effective the date of this order, which was June 29th, and shall continue until such time as a written decision by a statutory hearing officer... That was extremely clear. He was to be immediately reinstated effective June 29.
>
> As of this date, now January 10th of 2019, he still hasn't been reinstated to employment, and at this point it's impossible to have him reinstated because the hearing officer has made a decision terminating his employment. The Court can't enforce the order that was previously entered because the clock has run out.... Here, the District is never going to be able to comply with that portion of the order. VR 4:10-5:8, Jan. 10, 2019.

Recognizing that the District had refused to comply with the June 29, 2018 order to the point that compliance was now impossible, the Trial Court utilized its broad discretion and authority to "do what's necessary to gain compliance with

[2] The statutory hearing officer's decision finding probable cause to discharge and non-renew Mr. Cronin is presently on appeal in Spokane County Superior Court (Case No. 19-2-00279-32).

the court order." *Id.* at 5:3-4. The Trial Court found that the District had knowledge of and willfully violated the court's order by failing to immediately reinstate Cronin's pay and benefits as it had been clearly ordered to do. *Id.* at 5:17-25, CP 241-46. Judge Cooney continued, "There doesn't appear to be a reasonable excuse, other than 'we're trying to get a stay,' which isn't a valid reason for not complying with a court order." VR 6:1-3, Jan. 10, 2019.

On February 1, 2019, the Trial Court entered an order of contempt pursuant to RCW 7.21.070, and the Court's January 10, 2019 oral ruling, and fashioned the order to ensure the District complied with the prior June 29, 2018 order. CP 241-46. The order required that the District pay Cronin the wages and benefits that *should have been paid to him* from June 29, 2018, through the hearing officer's decision on December 21, 2018. *Id.* The Court also awarded Cronin double damages and attorney's fees as the District intentionally withheld wages pursuant to RCW 49.52.070. *Id.* It then set a subsequent hearing to determine the specific damage amounts and the amount for the remedial sanctions. *Id.*

On February 15, 2019, the Trial Court heard oral argument regarding the specific amounts due for back wages and benefits owed, double damages, pre-judgment interest, attorney's fees, and a per diem amount accruing until the remedial sanctions were paid in full. *See generally* VR Feb. 15, 2019. The Court considered not only RCW 7.21 et. seq., but its inherent contempt powers to fashion a remedy that ensured the District complied with the court's valid June 29, 2018 order, rather than continue to willfully ignore it. *Id.*

Meanwhile, on February 22, 2019 the Court of Appeals entered a decision

denying the District's Motion to Modify the Commissioner's ruling who had earlier denied the District's motion for stay. This decision was now the third time the District's request to stay the reinstatement of Cronin's pay and benefits under the June 29, 2018 order was denied. Subsequently, the Trial Court entered an order on February 27, 2019 establishing the amounts owed pursuant to the Court's finding of contempt against the District. CP 284-91.

The District argues in its Petition for Discretionary Review that the per diem remedial sanctions were ordered because the District failed to comply with the *February 27, 2019* order and that was unlawful because a second finding of contempt was necessary in order for any remedial sanctions to be issued under that order. The premise of that claim is inaccurate and misrepresents the record. *See* Pet. at 2, 6-7, 13-16. *Prior to* the February 27, 2019 order, on January 10, 2019, the District was found in contempt of the *June 29, 2018* order, which was codified in the February 1, 2019 order. CP 241-46. The February 27, 2019 order established the amounts owed and the manner in which the District could purge itself from contempt. *Id.* If it did not purge itself from contempt within 30 days, the Trial Court ordered a remedial sanction to ensure the District complied with the June 29, 2018 order, not the February 27, 2019 order. *Id.* It was totally within the District's control at that point whether it would continue to ignore what it was ordered to pay Cronin or take its chances on appeal.

The per diem amount awarded was based on the District's contempt of the June 29, 2018 order, not the February 27, 2019 order. *Id.* It was fashioned to compel payment of the wages and benefits owed from the June 29, 2018 through

December 21, 2018 time period, when Cronin's pay and benefits should have been reinstated pending the hearing. *Id.* The District continues to ignore the critical distinction that it was found in contempt for failing to abide by the June 29, 2018 order, not the February 27, 2019 order. The Trial Court was not required to first hold the District in contempt of the February 27, 2019, order for it to have authority under the law to order and determine per diem remedial sanctions. The District has cited no authority for its position that it must first be held in contempt of the February 27, 2019 order before per diem remedial sanctions can be ordered. The District was already found in contempt of the June 29, 2018 order. *Id.* Now, the Trial Court was giving the District the opportunity to comply and pay the amounts owed in order to purge itself from the contempt of the June 29, 2018 order. *Id.* The District could have avoided any per diem sanctions by paying Cronin the amounts owed to him under the June 29, 2018 order. *Id.* As the Trial Court explained:

> There was a valid court order that was supposed to restore Mr. Cronin to employment effective June 29th. The District chose not to restore him to employment in the hopes that the Court of Appeals would grant it a stay... It turned out the District's motion was denied and the order was not stayed.
>
> Mr. Cronin was deprived his return to employment between June 29 and December 21st when he was formally terminated. That was a gamble the District took. *That was the basis for contempt*. ...
>
> Mr. Cronin was supposed to be restored to his employment. He wasn't restored to his employment. As a result, he lost pay and benefits for a substantial period of time.
>
> What I'm going to do is indicate that the District has 30 days to pay the judgment. And after 30 days, there will be a per diem of $100 per day *until that judgment is paid*. VR 3:19-25; 4:1-4; 5:22-25; 6:1-5 (emphasis added).

The Trial Court's February 27, 2019 order was appealed by the District on March 11, 2019. CP 294. The Court of Appeals in two separate decisions affirmed the Trial Court's underlying June 29, 2018 and August 22, 2018 orders on summary judgment, and the February 27, 2019 order on contempt. *Cronin v. Central Valley School District,* 456 P.3d 843 (2020); *Cronin v. Central Valley School District,* 456 P.3d 857 (2020). The District moved for reconsideration with the Court of Appeals, but only the Court's decision affirming the Trial Court's imposition of per diem remedial sanctions. *App. Brf. In Support of Mtn. for Reconsideration,* COA No. 36666-9-III, Feb. 18, 2020.

IV. ARGUMENT

A. Review Should Be Denied As The District Failed To Argue Any Considerations Governing Acceptance Of Review.

The Rules of Appellate procedure are clear. A petition for review will only be accepted if one or more of the four considerations detailed in RAP 13.4(b) are at issue: "A petition for review will be accepted by the Supreme Court **only**:" if the Court of Appeals decision is (1) in conflict with a decision with the Supreme Court; (2) in conflict with a published decision of the Court of Appeals; (3) raises a significant constitutional question of law; or (4) involves an issue of substantial public interest. RAP 13.4(b)(emphasis added). The burden is on the petitioning party to demonstrate the existence of an issue that would merit review pursuant to the considerations in RAP 13.4(b). *Id.* If the petitioning party fails to demonstrate the existence of any issues meriting review under RAP 13.4(b), then discretionary review will be denied. *In re Wilson,* 338 P.3d 275 (2013). The

District has not only failed to meet this burden, but it has failed to even argue or raise the considerations for review under RAP 13.4(b). In fact, the District did not cite RAP 13.4(b) a single time in its petition for review.

The District concludes that the underlying decision presents "issues that are of substantial interest" (not substantial "public interest") and that is the basis for this Court to accept discretionary review. *Pet.* at 8; *see also Id.* at 1 ("The District's petition raises several issues of *substantial interest*")(emphasis added). But at no point does the District argue or support this conclusion that the issues presented are of substantial "public" interest. Rather, the District's presumes this to be true and then re-argues the issues that were decided on appeal. Essentially, the District wants this Court to accept review because the District does not agree with the underlying Court of Appeals decision, which ruled against it.

Further, whether an issue happens to be of "substantial interest" is not the standard for this Court's review under RAP 13.4(b), when the standard is "substantial *public* interest." The District does not argue or claim that the Court of Appeals' decision conflicts with a decision of the Supreme Court or with a published decision of the Court of Appeals. Nor does the District argue anywhere that the decision raises a significant constitutional question of law. The District has failed to argue, let alone demonstrate, the existence of any issue meriting review under RAP 13.4(b). As a result, discretionary review should be denied.

B. The Issues Presented by the District for Review Were Properly Decided by the Trial Court and Affirmed by the Court of Appeals.

Despite the District failing to carry its burden under RAP 13.4(b), Cronin addresses each issue raised by the District in its petition.

1. **The District Was Found in Contempt After Both Motions for Stay were Denied.**

This is not a case where a house was demolished while a motion to stay was pending before the Court of Appeals only days after an appeal was filed. The District is comparing paying Cronin approximately six months' worth of wages and benefits to the demolition of a home. The comparison is not illustrative of what happened in this case. On January 10, 2019, when the Trial Court found the District in contempt of court, there was no motion for stay pending.[3] Further, by that time, the District's motions to stay both before the Trial Court and the Court of Appeals' Commissioner had been denied. This is important because at the time the District was found in contempt by the Trial Court, two separate decision-makers had already considered the potential injuries to the parties should a stay be granted or denied, and both determined that a stay was not proper in this case under these particular facts and circumstances. This was critical to the Court of Appeals as well, "Here, compliance with the trial court's order did not expose the District to irreversible harm. The order required the District to pay Cronin his wages and benefits for only a few months, pending his statutory hearing." *Cronin,* 456 P.3d at 861.

In reality, Cronin filed his motion for contempt on September 7, 2018, *prior to* when the District's motion for stay was even filed on September 11, 2018. The Trial Court *reserved its ruling* on contempt, pending a decision by the Court of

[3] The District's Motion to Modify the Commissioner's Ruling Denying the Motion for Stay was pending on January 10, 2019, however, its motion was denied on February 22, 2019, *prior to* the Trial Court's final contempt order entered on February 27, 2019, the order appealed by the District. So, at the time the February 27, 2019 order was entered, no motion for stay was pending.

Appeals on the District's motion for stay. Commissioner Wasson denied the motion on November 30, 2018, and the Trial Court found the District in contempt on January 10, 2019. The District misrepresents for the record that the Trial Court held them in contempt while a motion to stay was pending. No motion to stay was pending. The only matter pending was the District's motion to modify the Commissioner's ruling denying a stay. *Pet. for Review,* 1-2, 8-13. As of November 30, 2018, when the stay was denied by Commissioner Wasson, the District had been ignoring a valid court order for over *five months*. The District had not reinstated Cronin's pay and benefits pending the statutory hearing despite a clear and valid court order while the parties were still proceeding with the statutory hearing. The District was given an opportunity to argue the merits of its stay before being held in contempt by the Trial Court. The stay was denied, and the District still refused to comply with and willfully violated a valid court order. The Trial Court properly found the District in contempt on January 10, 2019.

Both the Court of Appeals and Trial Court recognized the longstanding authority that unless a court order is stayed or set aside, it is enforceable. *Cronin,* 456 P.3d at 861. Seeking a stay does not excuse a party from complying with an order unless and until the order is stayed or set aside. *Id.* The Court of Appeals relied on RCW 7.21.070 and RAP 8.1 to conclude that a party is not relieved from the legal effect of an order when it is appealed, nor is an order on appeal placed "in limbo by the mere act of the contumacious party filing a motion with an appellate court." *Id.* Filing a motion to stay does not have the legal effect of

automatically staying an order or diminishing the effect of it as the District contends. *Id.*

The Court of Appeals noted that although motions do not provide immediate or instantaneous relief, procedural safeguards do exist for litigants when erroneous orders would cause irreversible harm. [4] The facts of this case did not support a finding of irreversible harm. No house was being demolished. A few months of a teachers pay and benefits is neither significant nor irreversible harm even if the District prevailed on appeal. Ultimately, the District did not prevail on appeal and was not harmed in any way whatsoever when its motions for stay were denied.

The position that the District asked the Court of Appeals to adopt, and is now asking this Court to consider, would empower parties to intentionally disobey valid court orders for weeks or months simply with an aggressive motion practice. This position is unsupported by any law. Rather, the authorities support the Court of Appeals' decision that a Trial Court has the authority under its broad powers to find a contumacious party in contempt even while that party is in the process of seeking a stay of the order in an appellate court.

2. The Trial Court had Authority to Fashion a Per Diem Remedial Sanction Under the Clear Language of RCW 7.21.030(2)(c).

The Trial Court has broad discretion and the power to fashion an appropriate remedy for noncompliance with its orders. *In re Silva,* 166 Wn.2d 133, 140-41 (2009)(Courts are vested with an inherent contempt authority as contempt of

[4] The District argues that the underlying June 29, 2018 order was erroneous. But that Order was affirmed by the Court of Appeals. *Cronin v. Central Valley School Dist.,* 456 P.3d 843 (2020).

court is disruptive to court proceedings and undermines the Court's authority). Furthermore, a court has the power to award money damages instead of specific performance where specific performance is not feasible. *Crafts v. Pitts,* 161 Wn.2d 16, 27 (2007) *citing Zastrow v. W.G. Platts, Inc.,* 57 Wn.2d 347, 357 (1960); *Morgan v. Bell,* 3 Wn. 554, 556 (1892)(when a party incapacitates themselves from performance, an award for monetary damages is an appropriate remedy). The defense of impossibility for a contempt finding is invalid when the impossibility was self-created. *In re Lawrence,* 279 F.3d 1294, 1300 (11th Cir. 2002). Under the Contempt of Court statutes, RCW 7.21.030(2) provides in part:

> If the court finds that a 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 one or more of the following remedial sanctions:*
> ...(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. (emphasis added).

Under the plain language of the statute, the Trial Court had authority to impose its per diem sanction under the circumstances.

The District is incorrect that the per diem remedial sanctions are based on the February 27, 2019 order. Rather, "the Trial Court's order on contempt included a $100 per diem remedial sanction to ensure compliance with its June 29 order[.]". *Cronin,* 456 P.3d at 861. The Trial Court found the District in contempt for intentionally refusing to comply with the June 29, 2018 order. The District never purged its contempt finding. The District claimed that when it was found in contempt, it was impossible to comply with the June 29, 2018, order as it was no longer enforceable because the statutory hearing officer effectively terminated

Cronin's employment on December 21, 2019. However, impossibility is not a defense to contempt because in this instance, the District self-created the impossibility of performance by willfully ignoring the court's order until the statutory hearing officer issued a written decision. Furthermore, the District can still at its option pay Cronin his wages and benefits owed from June 29, 2018, to December 21, 2018. This is within the District's power to perform. Or it can continue to let the per diem accrue. The choice is theirs. The fact is the Trial Court's February 27, 2019 order was fashioned to ensure compliance with the June 29, 2018 order, and the District had the power to purge itself of contempt and the per diem remedial sanctions if at some point it chose to pay, which would effectuate compliance with the June 29, 2018 order. CP 284-291.

The Court of Appeals reviewed the per diem remedial sanctions under the abuse of discretion standard and found the Trial Court did not abuse its discretion but acted well within its broad authority. *Cronin,* 456 P.3d at 861. The Court of Appeals specified that the February 27, 2019 order was not authorizing a Trial Court to force a litigant to quickly pay a money judgment, rather, the order was the result of the District's intentional violation of the Trial Court's June 29, 2018 order. *Id.* This distinction also demonstrates how absurd the District's contention is that it must first have been found in contempt of the February 27, 2019 order before the Trial Court could award per diem remedial sanctions. The February 27, 2019 order was not simply a money judgment, it was an order on contempt fashioned under RCW 7.21.030(2) to ensure compliance with the *prior* June 29, 2018 order, *after* the District was found in contempt of that very order.

Accordingly, the petition for review on this issue should be denied.

3. The District Cannot Use a Contempt Proceeding to Collaterally Attack the Underlying Order.

The District is attempting to collaterally attack the underlying June 29, 2018 order by arguing that the Trial Court lacked authority to reinstate Cronin's pay and benefits. Not only is this an impermissible collateral attack on the underlying order in a contempt proceeding, but it misrepresents the Court's ruling.

First, under the collateral bar rule, "a court order cannot be collaterally attacked in contempt proceedings arising from its violation, since a contempt judgment will normally stand even if the order violated was erroneous or was later ruled invalid." *Det. Of Broer v. State,* 93 Wn. App. 852, 858 (1998). The only exception is when a court lacks jurisdiction to enter the underlying order. *Id.* The test for "jurisdiction" measures whether the court was performing the kind of function consistent with its vested judicial powers. *Id.*

The District attempts to claim that the Trial Court lacked jurisdiction to reinstate Cronin's pay and benefits since under RCW 28A.405.310, only a statutory hearing officer can reinstate Cronin. Their argument begs the issue. The District relies exclusively on this statute which grants a statutory hearing officer the authority to reinstate a teacher to the classroom, including back pay and benefits *after* a statutory hearing on the merits, claiming that it stands for the proposition that only the hearing officer, not a superior court judge, has the sole and exclusive authority to reinstate a teacher. This statute is inapplicable. It is not what the Trial Court did nor was attempting to fashion. Rather, the District was ordered to reinstate Cronin's pay and benefits *pending* the statutory hearing,

not reinstate and restore him to the classroom which is what a hearing officer has authority to do *after* determining the merits in a statutory hearing. The Trial Court recognized that the parties should be placed in the same position as they would have been in 2012 had the District participated in a statutory hearing after Cronin's timely appeal. Cronin would have been on pay and benefits pending the statutory hearing, so the Trial Court fashioned an order accordingly. The Trial Court returned the parties to the status quo in an attempt to remedy the District's failure to comply with RCW 28A.405.310 back in 2012.

The Court of Appeals likewise agreed that the Trial Court did not require the District to physically place Cronin in the classroom, but to restore his employment status with pay and benefits pending the statutory hearing. *Cronin,* 456 P.3d at 861. The Court of Appeals affirmed the Trial Court's order reasoning that the plain language of RCW 28A.405.210 required that the District provide Cronin a timely opportunity for a hearing which it failed to do. *Id.* The District's refusal to participate in a statutory hearing resulted in a delay that conclusively renewed his employment entitling him to the restoration of his pay and benefits, *pending* a statutory hearing. *Id.* This is not a jurisdictional issue that would permit the District to collaterally attack the underlying June 29, 2018 order in this contempt proceeding. Accordingly, review on this issue should be denied.

4. Taking a Legally Incorrect Position Does Not Create a Bona Fide Dispute in Order for the District to Avoid Double Damages for Withholding Employee Wages.

RCW 49.52.050 and .070 mandate an award of double damages for wages unlawfully withheld if the employer withheld the wages (1) willfully (2) with the

intent to deprive the employee of any part of his or her wages and (3) the employee did not knowingly submit to such violations. *Hill v. Garda CL Northwest, Inc.,* 191 Wn. 2d 553, 561 (2018). The standard for proving willfulness is low but can be overcome if the employer demonstrates there was a bona fide dispute about whether all or part of the wages were due. *Id.* at 561-62. A "bona fide dispute" has both an objective and a subjective prong: the employer has the burden of showing a "genuine" belief in the dispute at the time of the withholding of wages (the subjective component), and must *also* demonstrate the dispute is objectively reasonable –"that is, the issue must be 'fairly debatable'". *Hill,* 191 Wn.2d at 562 *citing Schilling v. Radio Holdings, Inc.,* 136 Wn. 2d 152, 161 (1998).

The District argues it should not be liable for double damages because it genuinely believed it did not have to comply with a valid court order while a motion to stay was pending. *Pet. for Review,* 19. The District does not argue that this genuine belief was objectively reasonable or fairly debatable. It failed to argue the objective prong of the bona fide dispute standard. The Court of Appeals expressly rejected the District's claim of "genuine belief" as not being objectively reasonable. *Cronin,* 456 P.3d at 861. After analyzing case law, court rules, and applicable statutes, the Court stated, "Because the above authorities are against the District's position, we hold that a trial court may find a contumacious party in contempt even while the party is in the process of seeking a stay of that order in an appellate court." *Id.* Having a genuine belief in a legally incorrect position does not create a bona fide dispute. The objective prong does not permit

a "genuine" misunderstanding, misapplication, and/or ignorance of the law to establish a bonda fide dispute. *See Dep't of Labor and Indust. v. Overnite Trans. Co.,* 67 Wn. App. 24, 34-36, 39-40 (1992)(an employer's reliance on a wrongly decided case that was later overturned did not give rise to a bona fide dispute to relieve the employer of liability for double damages for withholding wages).

The Court of Appeals decision affirmed the Trial Court's award of double damages, reasoning that: "Here, the trial court's June 29 order required the District to restore Cronin's employment and reinstate his pay… Even if the District genuinely believed it did not need to comply with the June 29 order, the previous authorities render its belief not 'fairly debatable.'" *Cronin,* 456 P.3d at 861. As the Trial Court and the Court of Appeals appropriately applied the law when awarding Cronin double damages, the petition for review on this issue should be denied.

V. CONCLUSION

For the foregoing reasons, the District's Petition for Discretionary Review should be denied as the Court of Appeals properly affirmed the Trial Court's orders on contempt after the District intentionally and knowingly refused to comply with a valid court order.

Respectfully submitted this 4th day of May, 2020.

POWELL, KUZNETZ & PARKER, P.S.

By_____ for
Larry J. Kuznetz, WSBA #8697
Attorney for Respondent

By_____
Sarah N. Harmon, WSBA #46493
Attorney for Respondent

Certificate of Service

I HEREBY CERTIFY that on the 4th day of May, 2020, I caused a true and correct copy of RESPONDENT MICHAEL F. CRONIN'S ANSWER TO APPELLANT CENTRAL VALLEY SCHOOL DISTRICT'S PETITION FOR DISCRETIONARY REVIEW, to be sent by the method indicated below to:

Paul E. Clay Stevens Clay, P.S. 421 W. Riverside Ave., Ste. 1575 Spokane, WA 99201-0409 pclay@stevensclay.org	___ U.S. Mail ___ Hand Delivery ___ Facsimile Transmission XX E-filing XX E-mail
Breean L. Beggs Paukert & Troppman, PLLC 522 W. Riverside, Ste. 560 Spokane, WA 99201 bbeggs@pt-law.com	___ U.S. Mail ___ Hand Delivery ___ Facsimile Transmission XX E-filing XX E-mail

DATED at Spokane, WA this 4th day of May, 2020.

Ashley Sandaine

POWELL, KUZNETZ, AND PARKER, PS

May 04, 2020 - 12:29 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	98371-2
Appellate Court Case Title:	Michael F. Cronin v. Central Valley School District
Superior Court Case Number:	12-2-01155-3

The following documents have been uploaded:

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