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No. 70549-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

SUNG LEE KIM, HUNG KIM and DELTA INN, INC.,

Appellants,

and

SOON IM KIM,

Respondent.

APPEAL FROM THE SUPERIOR COURT
FOR KING COUNTY
THE HONORABLE PALMER ROBINSON

REPLY BRIEF OF APPELLANTS HUNG KIM and DELTA INN

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I. INTRODUCTION

The trial court ordered Sung Kim incarcerated because it believed that would cause Hung Kim to authorize Delta Inn to pay Soon Kim's maintenance. A contempt order that uses the threat of jailing a party to prompt a nonparty to act, such as the one on appeal here, violates due process; courts routinely reject the argument, made by respondent Soon Kim here, that a contempt order does not improperly coerce a nonparty unless it directly "orders" the nonparty to take a particular action. This court should reverse the contempt order and order the funds paid by Hung and Delta Inn to prevent Sung's incarceration returned.

II. REPLY ARGUMENT

A. **Delta Inn and Hung are "aggrieved" by the trial court's contempt order premised on Delta Inn and Hung granting Sung "access" to their funds.**

Any "aggrieved party" may seek review of a trial court decision that substantially affects its "proprietary, pecuniary, or personal rights." *State v. G.A.H.*, 133 Wn. App. 567, 575, ¶ 19, 137 P.3d 66 (2006) (Delta Inn App. Br. 11); RAP 3.1. Delta Inn and Hung are entitled to appeal the trial court's contempt order because the contempt order coerced them into paying Soon's maintenance. (See, *infra*, § II.B)

The trial court's contempt order directly affects the pecuniary rights of Delta Inn and its owner, Hung. Moreover, the trial court's order aggrieved Hung's personal rights by forcing him to choose between allowing his younger brother Sung to be incarcerated or authorizing Delta Inn to pay Soon's maintenance.

Soon concedes that placing Hung in this dilemma had its intended effect – Hung authorized Delta Inn to pay Soon's maintenance. (Resp. Br. 14, 16) But Soon patently misrepresents the record by asserting that Hung and Delta Inn paid Soon's maintenance "voluntarily to assist Sung in payment of Sung's personal obligations." (Resp. Br. 16) (emphasis removed) To the contrary, Hung had "no interest" in paying his ex-sister-in-law's \$20,000 monthly maintenance, and did so only after it became clear that was the only way to prevent his brother's incarceration. (CP 307) The contempt order directly affected Delta Inn's and Hung's pecuniary interests, as well as Hung's personal interests, entitling both to appeal the order under RAP 3.1.

B. The trial court violated Hung's and Delta Inn's due process rights by ordering Sung's incarceration to coerce their payment of Soon's maintenance.

This court should reverse the contempt order because it improperly used the threat of Sung's incarceration to coerce

nonparties Hung and Delta Inn to pay Soon's maintenance. A court violates due process by holding a contemnor "hostage" to coerce third parties not before the court. *In re M.B.*, 101 Wn. App. 425, 460, 3 P.3d 780 (2000), *rev. denied*, 142 Wn.2d 1027 (2001) (Delta Inn App. Br. 14); *United States v. Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers, AFL-CIO*, 899 F.2d 143, 147 (2d Cir. 1990) ("Teamsters") (Delta Inn App. Br. 15-16); *Newman v. Graddick*, 740 F.2d 1513, 1528 (11th Cir. 1984) (Delta Inn App. Br. 15).

Each of these cases, and many others, reject Soon's *only* argument – that because the trial court's contempt order did not directly "order" nonparties Delta Inn and Hung to pay Soon's maintenance, it did not improperly coerce them in violation of their due process rights. (Resp. Br. 16 ("neither Hung nor Delta Inn were ordered, required, or compelled by the trial court"), 18 ("the court did not direct or order Hung or Delta Inn to pay Sung's spousal maintenance obligation to Soon or to provide Sung 'access' to additional funds"), 19 ("The trial court did not order Hung or Delta Inn to do anything"), 20 ("The trial court did not order Hung or Delta Inn to provide Sung with access to anything"), 22("[t]he trial court did not order Hung or Delta Inn to do or not do anything"))

In *Teamsters*, for instance, the court did not “order” nonparty unions to take action, but instead ordered a union official jailed unless he “arranged” for the unions to withdraw a lawsuit. 899 F.2d at 146. Likewise, the court did not “order” the Governor, Legislature, or Parole Board to address overcrowding in prisons in *Newman*, but instead held the Attorney General in contempt to “prompt” them to act. 740 F.2d at 1528. *See also M.B.*, 101 Wn. App. at 460 (court ordered youth incarcerated unless she was “accepted by a treatment program” but did not “order” the treatment program to accept her).

In none of these cases did the trial court directly “order” a nonparty to take action. But the reviewing court nonetheless recognized that the trial court’s contempt order was an improper attempt to cause third parties not before the court to act.

Despite not directly “ordering” Hung and Delta Inn to pay Soon’s maintenance, the trial court’s contempt order sent Hung and Delta Inn an unmistakable message – pay Soon’s maintenance or Sung will be incarcerated. As Soon concedes, the trial court based its contempt ruling on its belief that Sung could “access” from Hung and Delta Inn the funds to pay Soon’s maintenance. (*See Delta Inn*

App. Br. at 16-20; Reply Brief of Sung at § II.A¹; 6/24 RP 60 (“I think he has access to substantially more in what I consider to be income”); 6/25 RP 20 (“When a company pays someone’s living expenses and salary and all kinds of other expenses, to me that’s income. . . . And that’s the basis of my ruling.”)) But because Hung and Delta Inn were not parties to the dissolution or contempt proceedings, they had no opportunity to dispute the dissolution court’s reasoning – including its inconsistency with a previous, unappealed, judgment finding Hung, not Sung and Soon, owned Delta Inn, that should have collaterally estopped Soon from claiming that Sung had unfettered “access” to Delta Inn funds. (Delta Inn App. Br. 17-18)

The contempt order demonstrates the precise problem identified in *Teamsters*: a nonparty may accede to a contemnor’s demands even though not “legally” required to do so. Here, although the trial court did not directly “order” Hung and Delta Inn to pay Soon’s maintenance, Hung felt compelled to pay his brother’s maintenance “in order to spare [him] the heavy burden of contempt penalties” – indefinite incarceration. *Teamsters*, 899 F.2d at 147.

¹ Hung and Delta Inn incorporate this argument pursuant to RAP 10.1(g).

Hung did so despite having “no interest” in continuing to support Soon’s lavish lifestyle. (CP 307; Delta Inn App. Br. 19) This court should reverse the trial court’s contempt order that improperly coerced Hung and Delta Inn to pay Soon’s maintenance.

C. Hung and Delta Inn supported their arguments with evidence and legal authority. Soon is not entitled to fees for a frivolous appeal.

Soon asserts she is entitled to her attorney’s fees on appeal because Hung and Delta Inn “persisted in driving forward litigation without evidence or legal arguments.” (Resp. Br. 21) To the contrary, Hung and Delta Inn have supported their argument that the trial court violated their due process rights with both evidence and legal authority. (See Delta Inn App. Br. 12-20 (supporting argument with both record cites and legal authority)) *See also* RAP 10.3(a)(6). Indeed, Soon cites in her own brief the legal authority relied on by Hung and Delta Inn. (See, e.g., Resp. Br. 19-20 n.5, n.6) This court should reject Soon’s conclusory request for fees on appeal on the grounds of frivolity.

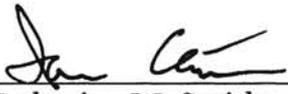
III. CONCLUSION

This court should recognize the right of Hung and Delta Inn to appeal the trial court’s contempt order under RAP 3.1, should

reverse the contempt order, and should order funds paid by Hung and Delta Inn returned.

Dated this 6th day of January, 2014.

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on January 6, 2014, I arranged for service of the foregoing Reply Brief of Appellants Hung Kim and Delta Inn, to the court and to the parties to this action as follows:

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DATED at Seattle, Washington this 6th day of January, 2014.



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