

TABLE OF CONTENTS

I. INTRODUCTION 1

II. STATEMENT OF ISSUES 1

III. STATEMENT OF THE CASE..... 3

 A. General Background of the Case 3

 B. Background Specific to Issues on Appeal 8

IV. AUTHORITY AND ARGUMENT..... 15

 A. The Trial Court Did Not Abuse Its Discretion in Finding Hadaller in Contempt of Its June 18, 2010 Order 17

 B. The Trial Court’s Contempt Sanction Was Civil Pursuant to RCW 7.21.030 20

 C. The Trial Court Did Not Abuse Its Discretion in Finding Hadaller Failed to Purge His Contempt..... 23

 D. Assessment of Previously Ordered Contempt Sanction Following Failure to Purge Does Not Change the Character of the Contempt to Criminal Subject to RCW 7.21.040 27

 E. The Rockwoods Are Entitled to Their Attorney’s Fees and Costs On Appeal 29

V. CONCLUSION..... 30

TABLE OF AUTHORITIES

CASES

<i>Blanchard v. Golden Age Brewing Co.</i> , 188 Wash. 396, 63 P. (2d) 397 (1936).....	15
<i>Britannia Holdings Ltd. v. Greer</i> , 127 Wn. App. 926, 113 P.3d 1041 (2005).....	17
<i>Bushong v. Wilsbach</i> , 151 Wn. App. 373, 213 P.3d 42 (2009).....	29
<i>Carrara, LLC v. Ron & E Enters., Inc.</i> , 137 Wn. App. 822, 155 P.3d 161 (2007).....	29
<i>Ermine v. City of Spokane</i> , 143 Wn.2d 636, 23 P.3d 492 (2001).....	16, 19
<i>Freeburg v. City of Seattle</i> , 71 Wn. App. 367, 859 P.2d 610 (1993).....	17
<i>Gibson v. County of Snohomish</i> , 70 Wn. App. 646, 855 P.2d 1174 (1993).....	23
<i>Holbrook v. Weyerhaeuser Co.</i> , 118 Wn.2d 306, 822 P.2d 271 (1992).....	16, 20, 26
<i>In re Dependency of A.K.</i> , 162 Wn.2d 632, 644-45, 174 P.3d 11 (2007).....	15, 20
<i>In re King</i> , 110 Wn.2d 793, 756 P.2d 1303 (1988)	21
<i>In re Marriage of Haugh</i> , 58 Wn. App. 1, 790 P.2d 1266 (1990).....	23
<i>In re Marriage of Mathews</i> , 70 Wn. App. 116, 853 P.2d 462 (1993).....	15
<i>In re Rebecca K.</i> , 101 Wn. App. 309, 2 P.3d 501 (2000)	21
<i>Int’l Union, United Mine Workers of Am. v. Bagwell</i> , 512 U.S. 821, 114 S. Ct. 2552, 129 L. Ed. 2d 642 (1994).....	15
<i>Johnston v. Beneficial Management Corp. of Am.</i> , 26 Wn. App. 671, 614 P.2d 661 (1980), <i>rev’d on other grounds</i> , 96 Wn.2d 708 (1982).....	29

<i>Keller v. Keller</i> , 52 Wn.2d 84, 323 P.2d 231 (1958).....	15, 28
<i>King v. Department of Soc. Servs.</i> , 110 Wn.2d 793, 756 P.2d 1303 (1988).....	16
<i>Magana v. Hyundai Motor Am.</i> , 167 Wn.2d 570, 220 P.3d 191 (2009).....	16, 19
<i>Moreman v. Butcher</i> , 126 Wn.2d 36, 891 P.2d 725 (1995).....	17
<i>Puget Sound Plywood, Inc. v. Mester</i> , 86 Wn.2d 135, 542 P.2d 756 (1975).....	29
<i>R.A. Hanson Co. v. Magnuson</i> , 79 Wn. App. 497, 903 P.2d 496 (1995), <i>review denied</i> , 129 Wn.2d 1010 (1996).....	29
<i>State ex rel. Smith v. Smith</i> , 17 Wash. 430, 432, 50 P. 52 (1897).....	17
<i>State v. Boren</i> , 42 Wn.2d 155, 253 P.2d 939 (1953)	23
<i>State v. Buckley</i> , 83 Wn. App. 707, 924 P.2d 40 (1996).....	20
<i>State v. Hobble</i> , 126 Wn.2d 283, 892 P.2d 85 (1995)	16
<i>Truancy of Perkins</i> , 93 Wn. App. 590, 969 P.2d 1101 (1999).....	16, 19
<i>Yamaha Motor Corp. v. Harris</i> , 29 Wn. App. 859, 631 P.2d 423, <i>review denied</i> , 96 Wn.2d 1013 (1981).....	16

STATUTES

RCW 7.21.010(2).....	21
RCW 7.21.010(3).....	21
RCW 7.21.030	passim
RCW 7.21.030(2).....	17
RCW 7.21.030(2)(b)	19
RCW 7.21.030(2)(c)	16, 19
RCW 7.21.030(3).....	passim
RCW 7.21.040	passim
RCW 7.21.040(5).....	22

RULES

RAP 18.1..... 1, 30
RAP 18.1(a)..... 29
RAP 8.1..... 14

I. INTRODUCTION

Appellant John J. Hadaller has failed to establish that the trial court abused its discretion in finding Hadaller in civil contempt and ordering remedial, coercive sanctions. Likewise, Hadaller has failed to establish any abuse of discretion in finding that Hadaller failed to purge the contempt and enforcing the sanction and awarding attorney's fees and costs. Accordingly, Respondent Pam and Dean Rockwood respectfully urge the Court to confirm the trial court's actions, and further to award the Rockwoods their attorney's fees and costs on appeal, as provided for by RAP 18.1 and RCW 7.21.030(3).

II. STATEMENT OF ISSUES

The Rockwoods disagree with Hadaller's statement of issues on appeal, and restate the issues as follows:

1. Did the trial court abuse its discretion in finding Hadaller in contempt of its June 18, 2010 order to take all necessary steps to complete the property sale to the Rockwoods, including signing the required closing documents, where Hadaller (a) refused to provide funds required to close the transaction despite his access to sufficient funds, and in fact fraudulently sought to transfer the assets to his girlfriend to avoid the trial court's order; and (b) refused to sign the purchase and sale agreement and other required closing documents?

2. Was the trial court's contempt sanction against Hadaller civil pursuant to RCW 7.21.030 (rather than criminal pursuant to

RCW 7.21.040) where (a) its sole purpose was to coerce compliance with the trial court's lawful order to take all necessary steps to complete the ordered property sale to the Rockwoods, including signing required closing documents; (b) it ordered Hadaller to perform acts that were within his power at the time the court entered the contempt order; (c) it imposed a forfeiture that did not exceed \$2,000 for each day Hadaller was in contempt; (d) it contained a purge clause under which Hadaller had the ability to avoid the sanction; and (e) it did not include incarceration for noncompliance?

3. Did the trial court abuse its discretion in assessing the remedial, civil contempt sanction against Hadaller after Hadaller intentionally refused to take ordered steps within his power to perform that would have purged the sanction, and further willfully sought to impede the ordered sale to the Rockwoods?

4. Does assessment of the remedial, civil contempt sanction after Hadaller's failure to purge the sanction transform it into a criminal contempt sanction subject to RCW 7.21.040 due process requirements?

5. Should the Rockwoods be awarded their attorney's fees and costs on appeal on the same contractual basis as they were awarded attorney's fees and costs below and/or as specifically provided for under RCW 7.21.030(3)?

III. STATEMENT OF THE CASE

A. GENERAL BACKGROUND OF THE CASE

The relevant background facts, drawn from the verified papers of record in the trial court proceeding, are set forth in this section solely to provide context for this dispute. The Rockwoods disagree with the case background set forth in Hadaller's motion spanning pages 3-8 and note that it consists in large part of unsupported assertions, *ad hominem* attacks on the Rockwoods and their counsel, and false and purely gratuitous characterizations—all of which are wholly irrelevant to the issues on appeal and should be disregarded.

Hadaller entered into a Lease-Option Contract with the Rockwoods effective January 31, 2004, wherein he agreed to sell them an approximate one and one-half (1½) acre portion of property located near Lake Mayfield in Mossyrock, Washington (herein described as "the Option Property") upon timely election by the Rockwoods following a five year lease. (CP 197, 204-211) The Lease-Option Contract specified the monthly lease, the period of the lease, the procedure for election of the option, specific identification of the Option Property and the purchase price. (CP 197-198, 208-213) The Rockwoods paid valuable consideration for the Lease-Option Contract and the contract was duly executed by all necessary parties before a notary public. (CP 197-198, 208-211)

The Rockwoods assumed actual and exclusive possession of the Option Property shortly after commencement of the lease and made

permanent, substantial and valuable improvements to the Option Property during the term of the lease. They made it their home and place to raise their children, manifesting every intention of exercising their option and becoming owners of the property by January 30, 2009. (CP 197-199, 204-211, 214-220)

The Rockwoods properly elected their option to purchase the Option Property by notifying Hadaller of their election in writing, by certified mail, regular mail and hand delivery on or before thirty days prior to the termination of the lease January 1, 2009. (CP 199-201, 221-229) But Hadaller refused to sell them the property according to the terms of the Lease-Option Contract. Specifically, Hadaller breached the Lease-Option Contract by failing to take the steps within his exclusive power and control—steps he was legally obligated to take—to place the Option Property in condition to be sold to the Rockwoods and to complete the sale to the Rockwoods by January 30, 2009. (CP 200-201, 227-229)

In addition, Hadaller sought to take advantage of the situation that would not exist but for his own breach of contract to impose onerous new lease terms upon the Rockwoods. While admitting his breach of the Lease-Option Contract, in May 2009 Hadaller demanded a \$175 increase in monthly payments from the Rockwoods—nearly twenty-five percent (25%)—along with a reduction of the amount applied from the monthly payment towards reduction in the option purchase price. (CP 200-201, 227-229)

The Rockwood family, parents and children, had no practical option other than to continue residing at their home. They also could not afford the dramatic monthly increase demanded by Hadaller. Nor should they have had to, given that the contract dictated that the property was theirs as of January 30, 2009. Accordingly, on May 15, 2009, they filed their complaint against Hadaller and obtained an order to show cause why Hadaller should not be ordered to fulfill the Lease-Option Contract between the parties according to its tenor and be prevented from performing any action adversely affecting the condition or value of the Option Property. (CP 230-232)

On May 29, 2009, after a show cause hearing, the trial court issued an order restraining Hadaller from altering the Rockwoods' monthly payments from that originally set forth in the Lease-Option Contract or performing any action adversely affecting the condition or value of the Option Property. (CP 233-235)

On June 18, 2009, the Rockwoods filed a motion for summary judgment for specific performance seeking an order from the trial court that the Lease-Option Contract was valid and duly exercised and that Hadaller was required to take all necessary steps to place the property in condition to sell and to sell it to the Rockwoods upon the original terms of the contract. Following a hearing, by order dated August 7, 2009, the trial court granted summary judgment in favor of the Rockwoods (and against Hadaller's converted motion to dismiss for failure to state a claim) and ordered specific performance, namely, that Hadaller was required to sell

the Rockwoods the Option Property on the original terms and to take all necessary action to perform the Lease-Option Contract as soon as possible in order to close the sale of the Option Property to the Rockwoods by no later than December 31, 2009. The summary judgment further provided that if Hadaller failed to close the sale of the Option Property by December 31, 2009, the Rockwoods were granted right to apply to the trial court to authorize them to hire the services of a third party agent, at Hadaller's expense, to take charge of the platting process in order to expeditiously complete the sale. The trial court reserved the issue of damages to the Rockwoods due to Hadaller's failure to close the sale by January 30, 2009 and determination of an award of attorney's fees and costs pursuant to the Lease-Option Contract. (CP 236-238)

Hadaller filed a notice of appeal from the trial court's summary judgment order on August 21, 2009. On September 25, 2009, the Court of Appeals granted the Rockwoods' motion objecting to the determination of appealability, noting that there were still matters pending before the trial court and the order on summary judgment was only a partial order not appealable absent discretionary review. Hadaller failed to seek discretionary review and a certificate of finality was issued by the Court of Appeals December 22, 2009. (Case #39706-4-II)

The Rockwoods diligently took necessary steps within their power to prepare for the ordered sale of the Option Property by December 31, 2009, including securing necessary financing. As of December 31, 2009, Hadaller failed to obey the trial court's order by placing the Option

Property in condition to sell and completing the ordered sale to the Rockwoods. Because Hadaller had violated the terms of the trial court's August 7, 2009 order, he triggered the Rockwoods' right to have the trial court appoint a third party agent, at Hadaller's expense, to expeditiously finish the plat development allowing the sale to be complete. After briefing and a hearing on the issue, on January 15, 2010, the trial court issued an order appointing Butler Surveying Inc. of Chehalis, Washington as third party agent. In addition, the trial court ordered that Hadaller was required: (a) to take all necessary steps to be in a position to close the sale of the Option Property as soon as the final short plat was approved and recorded, and (b) to pay the Rockwoods \$100 per day, chargeable as a reduction of the final purchase price, for every day after recordation of the final short plat that the sale was not closed. The trial court again reserved for future consideration the issues of damages to the Rockwoods and an award of attorney's fees and costs, as provided in the lease contract, which to the extent awarded may be chargeable against Hadaller as a reduction of the final purchase price of the Option Property. (CP 239-241)

With the short plat completion and recording imminent, the Rockwoods moved the trial court resolve the remaining issues reserved in the trial court's August 7, 2009 summary judgment, namely, the award of damages, attorney's fees and costs, along with a final accounting to be used for purposes of closing the ordered sale of the Option Property. On April 23, 2010, after full briefing and hearing, the trial court issued the Rockwoods a final order awarding damages, attorney's fees and costs and

accounting. (CP 242-245) At this time, but for enforcement of the trial court's August 7, 2009 summary judgment and April 23, 2010 final order awarding damages, attorney's fees and costs, the case was complete and final as to the merits and the action discontinued.

Hadaller subsequently challenged the trial court's \$100 per day offset from the January 15, 2010 order via a CR 60(b) motion to vacate, which was denied by the trial court in a May 13, 2010 order that also awarded further attorney's fees and costs as offset to the Option Property purchase price. (CP 246-248)

On May 17, 2010, Butler Surveying Inc. placed the short plat in condition for final approval and recording by Lewis County, in spite of Hadaller's refusal to cooperate. At that point, pursuant to the trial court's prior rulings, Hadaller was to close the ordered sale to the Rockwoods, including application of the ordered damages, attorney's fees and costs as offsets. Hadaller refused to obey the trial court's orders to close the property sale to the Rockwoods. Accordingly, the Rockwoods sought to enforce the trial court's prior orders.

B. BACKGROUND SPECIFIC TO ISSUES ON APPEAL

On June 9, 2010, the Rockwoods filed a motion to compel Hadaller to complete the ordered sale and for an award of supplemental attorney's fees and costs. At the June 18, 2010 hearing on the motion, the trial court noted, among other things:

- Hadaller’s continued irrational obstinance throughout the proceedings: “I can’t determine, Mr. Hadaller, if you are bound and determined to try my patience or if you are just hardheaded enough that you keep pounding away at the same think in the hopes that somehow things are going to turn out differently.” (RP 6/18/10 p. 5, ll. 16-20)
- Hadaller’s “maneuvering, obfuscation and argument that’s gone on over the lifetime of this lawsuit.” (RP 6/18/10 p. 10, ll. 8-13)
- Hadaller’s last minute attempt to undermine the trial court and change the terms of the ordered sale to the Rockwoods by reserving for Hadaller a covenant that prevents the Rockwoods from using their property as they see fit. (RP 6/18/10 p. 12, l. 14 – p. 14, l. 14)
- Hadaller’s continuous efforts to prevent the sale to the Rockwoods:

Mr. Hadaller, other than dragging your feet and doing everything you can possibly do to see to it that the Rockwoods don’t manage to buy this particular piece of property, what earthly business is it of yours, whether or not they have an arrangement with Bank of America to finance their purchase? That’s between them and the bank. Your only interest should be in getting your money [] which you would have got a whole heck of a lot more, if you hadn’t dragged this thing out and suffered the judgment for attorney’s fees.

(RP 6/18/10 Transcript p. 18, l. 22 – p. 19, l. 8)

The trial court summed it up when it found Hadaller to be intransigent (RP 6/18/10 p. 21, ll. 18-20).

Based on these findings, the trial court granted the Rockwoods' motion compelling Hadaller to complete the ordered sale by June 30, 2010, and awarded supplemental attorney's fees and costs. Specifically, the trial court ordered Hadaller:

[t]o sign the purchase and sale agreement and otherwise immediately take all necessary steps to complete the ordered sale, including signing all additional required closing documents, and instruct the closing agent to calculate necessary closing documents based on the purchase price set forth [in the order], modified as necessary to adjust for application of the \$100/day offset if the closing date changes from June 30, 2010.

(CP 171-173; RP 6/18/10 p. 18, l. 22 – p. 22, l. 12)

Hadaller again disobeyed the trial court, refusing to complete the ordered sale by June 30, 2010, including signing all required closing document, forcing the Rockwoods to again seek enforcement of trial court's orders. On July 14, 2010, the Rockwoods filed a motion and supporting evidence seeking contempt and to compel Hadaller to complete the ordered sale and for an award of further attorney's fees and costs. (CP 249-304) By order dated August 6, 2010, the trial court granted the Rockwoods' motion, found Hadaller in contempt and sanctioned him \$10,000 to coerce him to take all necessary steps to complete the closing by August 13, 2010, including signing the closing papers, and ordered a supplemental award of attorney's fees and costs. (CP 174-177)

The trial court, in its order, provided that Hadaller's contempt sanction could be purged entirely by Hadaller if he "fully complies with this Order and takes all necessary steps to facilitate the ordered sale to the Rockwoods by no later than August 13, 2010." The Order stated that "[i]n the event that Hadaller fails to comply with this Order, he will be found in continuing contempt and subject to further sanctions in the Court's discretion." (CP 174-77)

As the submitted transcript reflects, the trial court, during the August 6, 2010 contempt hearing, specifically considered and rejected the option of ordering criminal contempt sanctions and placing Hadaller in jail for his actions. The trial court purposefully avoided any sanction that might trigger due process considerations. The Rockwoods confirmed that they were seeking only remedial, civil contempt to coerce Hadaller to obey the trial court's orders and complete the property sale. (RP 8/6/10, p. 4, l. 9 – p. 5, l. 16) The trial court specifically found that Hadaller had disobeyed its orders in failing to take steps within his exclusive power and control to close the sale:

Well, Mr. Hadaller, you have managed to do what frankly I was not going to do and that's to put me in a situation, where as far as I'm concerned I have no alternative but to find that you are in fact in contempt, and I take the contempt powers of the Court very seriously. I've been a judicial officer for 17 years, including four and a half as a Court commissioner full-time and the balance as a judge, and I can count on one hand the number of times I've actually had to find somebody to be in contempt, but you certainly are.

I don't think I have ever heard a more lame excuse in recent memory for not complying with the Court's orders than the one I

have heard from you this morning. I see absolutely no reason whatsoever, other than what comes out in your pleadings—when I read them again yesterday I was struck with the one thought and that is your position and your attitude is I don't care what anybody tells me, I'm going to do what I want to do my way and in essence to heck with everybody else and that's basically the way I read your argument that you made to me this morning.

There's money available here. This idea that you have supposedly assigned it to your—who you refer to as your assistant, obliquely on numerous occasions during the arguments on these cases for no consideration, other than antecedent debt, if there is antecedent debt, is preposterous.

I'm going to—I find that you are in contempt. I'm ordering that this transaction with the Rockwoods is to close no later than the 13th of August. I'm also ordering that you are to take all necessary steps to completely conclude this sale. I'm directing that Mr. and Ms. Lowe may place sufficient funds by prepaying on their contract with you to satisfy the balance to Chase mortgage and payoff the other underlying judgments, which have been granted, and I'm authorizing the employment of the local attorney as requested to sign the documents as attorney in fact in the event that you refuse to sign.

Lest there be any misunderstanding as and for contempt and to insure your compliance with my Court order I'm imposing a monetary penalty, and this is in the form of a fine due and owing to the Court in and for your contempt of \$10,000. You may purge the contempt and avoid paying any of that \$10,000 by doing what I have ordered you to do previously and getting this transaction closed by the 13th of August.

As far as I'm concerned if you don't do it then by that date then as far as I'm concerned, number one, I will consider further sanctions up to and including jail for contempt and I will also require that \$10,000 to actually be paid.

(RP 8/6/10 p. 5, l. 16 – p. 7, l. 7; p. 12, l. 13 – p. 17, l. 14; p. 22, l. 15 – p. 27, l. 15)

On August 13, 2010, notwithstanding Hadaller's failure to take the steps ordered by the Court, the sale of the Option Property to the Rockwoods closed. (CP 310-312)

On August 18, 2010, the Rockwoods sought supplemental attorney's fees and costs occasioned by Hadaller's failure to comply with the August 6, 2010 contempt order. (CP 305-349) On September 3, 2010, after oral argument, the trial court entered an order finding that Hadaller failed to purge the contempt by refusing to "take all necessary steps to facilitate the ordered sale to the Rockwoods by no later than August 13, 2010." Specifically, the Rockwoods proved through evidence and Hadaller's admissions that prior to the August 13, 2010 closing ordered by the trial court Hadaller (1) refused to provide the required closing funds (CP 50, 310-338, 344-349); (2) refused to take steps to pay, set aside or otherwise obtain waiver of a new Winston Quarry judgment against Hadaller that clouded title to the Option Property (CP 51, 310-312, 316-338, 344-349); and (3) refused to sign the closing documents (CP 49, 310-312, 316-338, 344-349). Moreover, to prevent the closing, Hadaller (a) instigated through his girlfriend a new lawsuit and sought an *ex parte* temporary restraining order the day before the scheduled closing to delay the closing (CP 311); and (b) attempted to cloud the title to the Option Property by placing a *lis pendens* on it the day prior to the scheduled closing. (CP 50, 310-312; RP 9/3/10, p. 25, l. 2 – p. 29, l. 4) As a result, the trial court found that Hadaller failed to purge the August 6, 2010 contempt order and ordered Hadaller to pay the \$10,000 contempt

sanction that had been ordered on August 6, 2010 within 90 days. The trial court also awarded the Rockwoods supplemental attorney's fees and costs. (CP 72-74)

In the meantime, on August 12, 2010, Hadaller filed the notice of appeal. (CP 70-71) On August 18, 2010, the Rockwoods filed a motion to dismiss Hadaller's appeal as untimely. On September 2, 2010, after full briefing, the Commissioner issued a ruling granting the Rockwoods' motion to dismiss with respect to all issues below save the issue of contempt, which ruling was confirmed by the Court of Appeals on November 1, 2010.

Once again, Hadaller ignored the trial court's order by refusing to pay the \$10,000 contempt sanction within 90 days, or to take any steps available pursuant to court rule to stay the proceedings during appeal. (*E.g.*, RAP 8.1). Accordingly, on December 8, 2010, the Rockwoods moved the trial court for further contempt against Hadaller and supplemental attorney's fees and costs, which was fully briefed and set for hearing on December 17, 2010. (CP 350-368) By oral ruling after hearing on December 17, 2010, the trial court denied the Rockwoods' motion to sanction Hadaller further for his continuing contempt. In explaining the denial, the trial court confirmed that Hadaller was still in contempt, but explained that unlike the earlier coercive contempt sanction, further sanction against Hadaller's continued refusal to obey court orders would be punitive in nature, and therefore required involvement of the Lewis

County prosecutor to pursue Hadaller for criminal contempt sanctions.
(RP 12/17/10, p. 6, l. 16 – p. 7, l. 17; p. 10, l. 8 – p. 13, l. 13)

IV. AUTHORITY AND ARGUMENT

A court may order a party to perform an act to effectuate the court's resolution of a dispute. *In re Marriage of Mathews*, 70 Wn. App. 116, 126, 853 P.2d 462 (1993). Because contempt of court is disruptive of court proceedings and undermines the court's authority, courts are vested with "an inherent contempt authority, as a power 'necessary to the exercise of all others.'" *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827 n.2, 114 S. Ct. 2552, 129 L. Ed. 2d 642 (1994); *In re Dependency of A.K.*, 162 Wn.2d 632, 644-45, 174 P.3d 11 (2007). As explained by the Washington Supreme Court:

The [contempt] power comes into being upon the very creation of such a court and remains with it as long as the court exists. Without such power, the court could ill exercise any other power, for it would then be nothing more than a mere advisory body. . . .

The power to punish for contempt of court being essential to the efficient action of the court and the proper administration of justice, it is lodged permanently with that department of government, and the legislature may not, by its enactments, deprive the court of that power or curtail its exercise.

Keller v. Keller, 52 Wn.2d 84, 88, 323 P.2d 231 (1958); *Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 423, 63 P. (2d) 397 (1936) (citing cases).

RCW 7.21.010 *et seq.*, which governs civil contempt proceedings, provides that the court may impose remedial sanctions including “an order designed to ensure compliance with a prior order of the court.” RCW 7.21.030(2)(c). Coercive sanctions imposed for contempt are within the sound discretion of the trial court and will not be disturbed absent an abuse of that discretion. *King v. Department of Soc. Servs.*, 110 Wn.2d 793, 798, 756 P.2d 1303 (1988); *Yamaha Motor Corp. v. Harris*, 29 Wn. App. 859, 866, 631 P.2d 423, *review denied*, 96 Wn.2d 1013 (1981).

A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds. *Holbrook v. Weyerhaeuser Co.*, 118 Wn.2d 306, 315, 822 P.2d 271 (1992). A discretionary decision rests on “untenable grounds” or is based on “untenable reasons” if the trial court relies on unsupported facts or applies the wrong legal standard; the court’s decision is “manifestly unreasonable” if the court, despite applying the correct legal standard to the supported facts, adopts a view that no reasonable person would take. *Magana v. Hyundai Motor Am.*, 167 Wn.2d 570, 582-583, 220 P.3d 191 (2009). A finding of contempt will be upheld as long as a proper basis can be found. *State v. Hobble*, 126 Wn.2d 283, 292, 892 P.2d 85 (1995); *Truancy of Perkins*, 93 Wn. App. 590, 593, 969 P.2d 1101 (1999). A “reasonable difference of opinion” does not amount to abuse of discretion. *Ermine v. City of Spokane*, 143 Wn.2d 636, 650, 23 P.3d 492 (2001); *Magana*, 167 Wn.2d at 583. Finally, a trial court’s factual findings are accorded

great deference on appellate review, and all reasonable inferences are taken in favor of the party who prevailed below. *See Freeburg v. City of Seattle*, 71 Wn. App. 367, 371-72, 859 P.2d 610 (1993).

A. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN FINDING HADALLER IN CONTEMPT OF ITS JUNE 18, 2010 ORDER

The trial court is empowered to hold a party in contempt for failing or refusing to perform “an act that is yet within the person’s power to perform.” RCW 7.21.030(2). On June 18, 2010, the trial court granted the Rockwoods’ motion to compel Hadaller to complete the ordered sale by June 30, 2010. Specifically, the trial court ordered Hadaller to:

sign the purchase and sale agreement and otherwise immediately take all necessary steps to complete the ordered sale, including signing all additional required closing documents

(CP 171-173; RP 6/18/10 p. 18, l. 22 – p. 22, l. 12)

The law presumes that one is capable of performing those actions required by the court, and Hadaller bears the burden of both production and persuasion regarding any claimed inability to comply with the trial court’s order by introduction of credible evidence. *Moreman v. Butcher*, 126 Wn.2d 36, 40-41, 891 P.2d 725 (1995); *Britannia Holdings Ltd. v. Greer*, 127 Wn. App. 926, 933-934, 113 P.3d 1041 (2005); *see also State ex rel. Smith v. Smith*, 17 Wash. 430, 432, 50 P. 52 (1897) (“The rule is that the burden of showing inability to comply with an order of this nature is upon the respondent.”). At the time of the trial court’s order, there was no evidence that Hadaller was under any impediment

compromising his power to execute the purchase and sale agreement, execute the other documents required for closing, and provide the funding required to satisfy Hadaller's obligations on the property. To the contrary, Hadaller specifically stated in open court that not only was he able to execute the required closing documents and complete the ordered sale, but he would "have no problem" doing so. (RP 6/18/10 p. 22, ll. 13-21)

Nevertheless, between the date of the hearing and the required closing date of June 30, 2010, Hadaller disobeyed the trial court, refusing to complete the ordered sale, including signing the required closing documents "and otherwise immediately tak[ing] all necessary steps to complete the ordered sale." At the August 6, 2010 hearing, the trial court found that Hadaller (a) refused to provide funds required to close the transaction despite his access to sufficient funds; Hadaller in fact fraudulently sought to transfer the assets to his girlfriend to avoid the trial court's order; and (b) refused to sign the purchase and sale agreement and other required closing documents that he had admitted at the June 18, 2010 hearing he would "have no problem signing." (CP 174-177; 254-255, 258-280, 286-287, 290-304; RP 8/6/10 p. 5, l. 16 – p. 7, l. 7; p. 12, l. 13 – p. 17, l. 14; p. 22, l. 15 – p. 27, l. 15)

Accordingly, after thoughtfully considering the option of ordering criminal contempt, the trial court instead found Hadaller in civil contempt and sanctioned him \$10,000 to coerce him to take all necessary steps to complete the closing by August 13, 2010, including signing the closing papers. (CP 174-177) The amount of the trial court's sanction was well

within the \$2,000 per day amount authorized by RCW 7.21.030(2)(b) (calculating contempt from June 30 through at least August 6, or 45 days), and permissible under the broad authority granted trial courts to impose a variety of sanctions, including a remedial order “designed to ensure compliance with a prior order of the court.” RCW 7.21.030(2)(c). An appellate court can disturb a trial court’s sanction only if it is clearly unsupported by the record; to the contrary, deference should normally be given to the trial court’s decision regarding sanctions. *Magana*, 167 Wn.2d at 583; *Ermine*, 143 Wn.2d at 650.

As is required for such remedial contempt sanctions, the trial court provided that Hadaller could purge the sanction entirely if he “fully complies with this Order and takes all necessary steps to facilitate the ordered sale to the Rockwoods by no later than August 13, 2010.” *Perkins*, 93 Wn. App. at 597 (court imposing civil contempt must provide the contemnor an opportunity to purge the contempt). The contempt order stated that “[i]n the event that Hadaller fails to comply with this order, he will be found in continuing contempt and subject to further sanctions in the Court’s discretion.” (CP 174-77; RP 8/6/10 Transcript p. 26, l. 1 – p. 27, l. 13) Indeed, the trial court specifically explained to Hadaller the consequences if Hadaller failed to purge the contempt sanction:

As far as I’m concerned if you don’t do it then by that date then as far as I’m concerned, number one, I will consider further sanctions up to and including jail for contempt and I will also require that \$10,000 to actually be paid.

(RP 8/6/10 p. 27, ll. 8-13)

The trial court's order is neither manifestly unreasonable nor based on untenable grounds. *Holbrook*, 118 Wn.2d at 315. The trial court applied the correct legal standard and relied upon supported fact, namely, that Hadaller purposefully (a) refused to provide funds required to close the transaction; and (b) refused to sign the purchase and sale agreement and other required closing documents—despite admitting his ability to perform the required acts. Accordingly, the trial court did not abuse its discretion and its finding of contempt should be upheld. (CP 174-177; 254-255, 258-280, 286-287, 290-304; RP 8/6/10 p. 5, l. 16 – p. 7, l. 7; p. 12, l. 13 – p. 17, l. 14; p. 22, l. 15 – p. 27, l. 15)

B. THE TRIAL COURT'S CONTEMPT SANCTION WAS CIVIL PURSUANT TO RCW 7.21.030

A trial court's authority to impose sanctions for contempt is a question of law that is reviewed *de novo*. *Dependency of A.K.*, 162 Wn.2d at 644. Here, there is no question that the trial court had authority to impose sanctions for contempt under the unambiguous statutory provisions of RCW 7.21.030.

Hadaller argues that the trial court's contempt sanction was punitive and criminal, falling under RCW 7.21.040 and requiring special due process procedures. A remedial sanction is imposed for civil contempt while a punitive sanction is imposed for criminal contempt. *State v. Buckley*, 83 Wn. App. 707, 711, 924 P.2d 40 (1996). The courts look to the substance of the proceeding and the character of the relief sought to

determine whether a particular contempt sanction is civil or criminal. *In re King*, 110 Wn.2d 793, 799, 756 P.2d 1303 (1988).

A remedial sanction is one “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). If the sole purpose of the sanction is to coerce compliance with the trial court’s lawful order, then it is civil. *King*, 110 Wn.2d at 799. A punitive sanction is one “imposed to punish a past contempt of court for the purpose of upholding the authority of the court.” RCW 7.21.010(2). If the sole purpose of the contempt sanction is punitive, with no opportunity for the contemnor to purge the contempt, it is criminal. *King*, 110 Wn.2d at 799.

Remedial and punitive sanctions each carry distinct procedural requirements. An order of remedial civil contempt must contain a purge clause under which a contemnor has the ability to avoid a finding of contempt and possible incarceration for noncompliance. *In re Rebecca K.*, 101 Wn. App. 309, 314, 2 P.3d 501 (2000). On the other hand, due process requires that the state file a criminal information in order to initiate a criminal contempt proceeding. *Id.* at 317.

Moreover, remedial and punitive sanctions differ in form. A trial court imposing a remedial sanction may (a) imprison the contemnor to coerce compliance with the trial court’s orders, (b) impose a forfeiture not to exceed \$2,000 for each day the contempt continues, (c) issue an “order designed to ensure compliance with a prior order of the court[,]” and

(d) impose any other remedial sanction other than the foregoing “if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt of court.” RCW 7.21.030(2)(a)-(d). In addition to the above sanctions, the trial court may also order the contemnor to pay the prevailing party’s losses arising from the contempt including reasonable attorney fees. RCW 7.21.030(3). By contrast, a punitive sanction would include a fine not to exceed \$5,000 or imprisonment for not more than one year or both. RCW 7.21.040(5). And the punitive sanction statute does not contain a provision that the contemnor pay attorney fees.

In the present case, the trial court was scrupulous in its levying of the civil contempt sanction against Hadaller. The order and the transcript of the hearing demonstrate the trial court’s adherence to RCW 7.21.030 preserving the remedial, coercive, civil nature of these contempt orders. Rather than levy criminal contempt sanctions pursuant to RCW 7.21.040, the trial court took great pains, in express recognition of the distinction, to craft a civil sanction. First, its sole purpose was to coerce Hadaller’s compliance with the trial court’s lawful order to (a) provide funds required to close the transaction; and (b) sign the purchase and sale agreement and other required closing documents. (CP 171-173) Second, the evidence establishes, Hadaller does not disprove, and Hadaller in fact admits that both acts were within his ability to perform at the time the court entered the contempt order. (RP 6/18/10 p. 22, ll. 13-21) Third, the forfeiture sanction imposed by the trial court was much less than provided for by

statute; the \$10,000 amount did not exceed \$2,000 for each day Hadaller was in contempt (which for 45 days could have been as much as \$90,000). Fourth, the contempt order contained a purge clause under which Hadaller had the ability to avoid the sanction. (CP 174-177). *Gibson v. County of Snohomish*, 70 Wn. App. 646, 652, 855 P.2d 1174 (1993) (when punishment in contempt cases is not inevitable but can be controlled by the party, such contempt actions are not considered criminal but civil). Finally, while the trial court identified the possibility of incarceration for noncompliance, (RP 8/6/10 p. 4, l. 9 – p. 5, l. 16), and such sanction is expressly provided for under RCW 7.21 030, the sanction imposed by the trial court did not include jail time, further distinguishing it from a criminal contempt sanction. *See In re Marriage of Haugh*, 58 Wn. App. 1, 6, 790 P.2d 1266 (1990) (if the purpose of the sanction is punitive and results in a determinate jail sentence with no opportunity for the contemnor to purge himself of the contempt, it is criminal). Contrary to Hadaller's erroneous argument, such civil contempt sanctions do not trigger due process considerations and Hadaller had no right to a jury trial. *See State v. Boren*, 42 Wn.2d 155, 159, 253 P.2d 939 (1953).

C. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN FINDING HADALLER FAILED TO PURGE HIS CONTEMPT

The test here is a clear one: did Hadaller close the sale to the Rockwoods in accord with the Court's order of specific performance? The answer is no. In fact, Hadaller refused to comply with the trial court's August 6, 2010 contempt order by failing to "take all necessary steps to

facilitate the ordered sale to the Rockwoods by no later than August 13, 2010.” Specifically, the evidence established that prior to the August 13, 2010 closing ordered by the trial court Hadaller (1) had not provided the required closing funds (CP 50, 310-338, 344-349); (2) had not paid, set aside or otherwise obtained waiver of a new Winston Quarry judgment against Hadaller that Hadaller had allowed to cloud title to the Option Property (CP 51, 310-312, 316-338, 344-349); and (3) had failed to execute the closing documents (CP 49, 310-312, 316-338, 344-349). Moreover, to prevent the possibility of compliance with the trial court’s order, Hadaller had further (a) instigated through his girlfriend a new lawsuit and sought an *ex parte* temporary restraining order the day before the scheduled closing to delay the closing (CP 311); and (b) had acted to cloud the title to the Option Property by placing a *lis pendens* on it the day prior to the scheduled closing. (CP 50, 310-312; RP 9/3/10 p. 25, l. 2 – p. 29, l. 4) Hadaller’s actions not only failed to comply with the trial court’s order but had foreclosed the possibility of compliance. Accordingly, the trial court found that Hadaller failed to purge the August 6, 2010 contempt order and ordered Hadaller to pay the \$10,000 contempt sanction within 90 days. The trial court also awarded the Rockwoods supplemental attorney’s fees and costs. (CP 72-74)

Hadaller does not deny these facts. Instead, on appeal, Hadaller argues that because the sale was ultimately able to close—*despite Hadaller’s refusal to obey the trial court’s orders and his efforts to impede the closing*—he purged the contempt. Specifically, because the

trial court's order provided an alternate means to ensure the property closing should Hadaller fail to comply, and the closing occurred by that alternate means, Hadaller asserts he has complied. But the fact that the Rockwoods were able to close the sale notwithstanding Hadaller's efforts to the contrary does not excuse Hadaller's actions. And under the express terms of the trial court's purge provision, Hadaller failed to purge the contempt sanction. As explained by the trial court:

The order that I signed specifically required him to take all steps necessary to close the sale, and notwithstanding Mr. Hadaller's statements to the contrary, as far as I'm concerned refusing to sign the papers and then claiming, well, I had an agent to do it, when the agent wasn't his agent, the agent was appointed by the Court for the specific purpose of signing the documents, in the event that Mr. Hadaller would not, and as Mr. Lowe has pointed out this morning, if Mr. Hadaller would bother to communicate or would have bothered to communicate and say I'm unhappy with this, at least Mr. Lowe would have listened to him and would have perhaps come to some sort of an accommodation, but the long and the short of it is, Mr. Hadaller, you weren't interested in communicating with Mr. Lowe. What you were interested in doing is doing anything and everything you could possibly do to see to it that this sale did not close.

Moreover, the filing of the *lis pendens*, which as far as I'm concerned is the most outrageous act that you have taken, I can't imagine anybody in your position having gone through a lawsuit of the type of this lawsuit, where the Court has ruled that there was a valid lease option, that it was properly—the notice of the option was given, that there was an enforceable option, ordered the enforcement of the option, ordered you to sell the property, and, then, for you turn around after the documents have been ordered to be signed to close the transaction, so that a third party lender can step in and the obligation of the buyers with the third party lender will take over and supersede any and all obligations they have to you and you are completely out of the picture, for you then to step in and file a *lis*

pendens, as far as I'm concerned—after you have lost the lawsuit to file a *lis pendens*, as far as I'm concerned would render any Court in a situation where they would find that to be not only outrageous conduct, without any legal basis or merit, whatsoever, notwithstanding your claims that, well, if this is all reversed on appeal, where would I be, I can only conclude that was done for one purpose and one purpose only and that was to impede the sale and see that the closing did not take place. It didn't work. The sale closed, it took place, but the *lis pendens* is probably still there out there, and there's a statute, and I'm going warn you on this as I've warned you before, there's a statute with respect to removal of a *lis pendens* that provides for attorney's fees and costs, if somebody has to go to Court to remove a *lis pendens*, and I suggest you pay attention to that statute, because you are wide open in my view for the Rockwoods to come right back and ask to clear the title of that *lis pendens* using that statute and get an award of additional attorney's fees, and, frankly, more judgments against you for fees and costs you don't need.

But you did not purge yourself of the order finding you in contempt which I signed on August 6.

(RP 9/3/10 p. 26, l. 21 – p. 28. l. 24)

The trial court's order finding that Hadaller failed to purge the contempt sanction is neither manifestly unreasonable nor based on untenable grounds. *Holbrook*, 118 Wn.2d at 315. The trial court applied the correct legal standard and relied upon supported fact, including that Hadaller purposefully (a) refused to sign the required closing documents and (b) filed a *lis pendens* on the property the day before the scheduled closing in an effort to prevent the ordered sale. Accordingly, the trial court did not abuse its discretion and its finding that Hadaller failed to purge the contempt sanction, and the subsequent enforcement of the ordered sanction should be upheld.

D. ASSESSMENT OF PREVIOUSLY ORDERED CONTEMPT SANCTION FOLLOWING FAILURE TO PURGE DOES NOT CHANGE THE CHARACTER OF THE CONTEMPT TO CRIMINAL SUBJECT TO RCW 7.21.040

Hadaller argues that despite his failure to purge the contempt sanction, the trial court was unable to assess the sanction ordered August 6, 2010 without converting the civil contempt to criminal, thus triggering due process considerations including the right to a trial. The “logic” of Hadaller’s argument is that the \$10,000 contempt sanction ordered to coerce him to take all necessary steps to close the sale became a sanction for an act of past contempt once the time expired for him to purge the sanction, and therefore any assessment of the sanction thereafter would cease to be remedial and instead be punitive in nature. In essence, Hadaller’s proposition is that enforcement of a remedial, civil contempt sanction pursuant to RCW 7.21.030 after failure to purge the contempt transforms the sanction into punitive, criminal contempt subject to the heightened due process considerations of RCW 7.21.040. Hadaller’s argument is legally flawed and inconsistent with the purpose of the statute.

Pursuant to the plain, unambiguous language of RCW 7.21.030, the trial court has the authority to impose remedial sanctions including both monetary and imprisonment sanctions. Nowhere in the statute does it mandate that remedial monetary sanctions, once ordered and not purged, are not to be assessed or collected. Hadaller fails to point to a single case where a court declined to assess previously ordered remedial sanctions on

the basis that they because punitive, criminal sanctions where, as here, the contemnor failed to purge the contempt.

The \$10,000 contempt sanction was ordered August 6, 2010—prior to the closing of the property sale. Hadaller failed to purge that sanction. At the September 3, 2010 hearing, the trial court did not issue a new contempt \$10,000 sanction; the contempt sanction did not become \$20,000. Rather, the trial court found only that Hadaller had failed to purge the August 6, 2010 contempt, and ordered Hadaller to pay the existing sanction. Accordingly, there was no new contempt sanction that could be characterized as punitive or trigger criminal considerations. Rather, the Court’s September 3, 2010 order merely ordered Hadaller to pay the contempt sanction previously ordered.

From a practical perspective Hadaller’s argument is nonsensical. The purpose of civil, remedial contempt sanctions under RCW 7.21.030 is to coerce compliance with court orders. If trial courts were not allowed to enforce the contempt sanctions upon failure of the contemnor to purge, contemnors would cease to be motivated to comply with the court orders. Instead, they would simply disregard the trial court’s orders, secure in the knowledge that there would be no accountability for their disobedience. While this is precisely the result Hadaller desires, as one who has repeatedly demonstrated his “intransigence,” (*e.g.*, RP 6/18/10 p. 21, ll. 18-20), it directly undermines the authority of the judicial system. *Keller*, 52 Wn.2d at 88 (“Without such power, the court could ill exercise

any other power, for it would then be nothing more than a mere advisory body.”)

The trial court’s enforcement of its remedial, civil contempt sanction pursuant to RCW 7.21.030 after Hadaller’s failure to purge the contempt did not change the nature of the sanction into punitive, criminal contempt subject to the heightened due process considerations of RCW 7.21.040.

E. THE ROCKWOODS ARE ENTITLED TO THEIR ATTORNEY’S FEES AND COSTS ON APPEAL

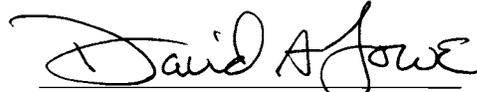
For the same reasons the Rockwoods were entitled to attorney’s fees and costs before, namely, because the underlying contract provided for an award of attorney’s fees and costs, the Rockwoods are entitled to an award of attorney’s fees and costs on appeal in this matter. RAP 18.1(a); *Carrara, LLC v. Ron & E Enters., Inc.*, 137 Wn. App. 822, 155 P.3d 161 (2007); *Bushong v. Wilsbach*, 151 Wn. App. 373, 377, 213 P.3d 42 (2009).

In addition, RCW 7.21.030(3) specifically provides for recovery of attorney’s fees for prosecuting contempt proceedings. *Johnston v. Beneficial Management Corp. of Am.*, 26 Wn. App. 671, 614 P.2d 661 (1980), *rev’d on other grounds*, 96 Wn.2d 708 (1982); *Puget Sound Plywood, Inc. v. Mester*, 86 Wn.2d 135, 143-44, 542 P.2d 756 (1975). This provision has been specifically held to authorize the award of attorney fees incurred in defending an appeal of a contempt order. *R.A. Hanson Co. v. Magnuson*, 79 Wn. App. 497, 502-03, 903 P.2d 496 (1995), *review denied*, 129 Wn.2d 1010 (1996).

V. CONCLUSION

Hadaller seeks to undermine the authority of the trial court by challenging its ability to respond to Hadaller's "continued intransigence." But Hadaller has failed to establish that the trial court abused its discretion in first finding Hadaller in civil contempt and ordering remedial, coercive sanctions—giving Hadaller the opportunity to purge the contempt by performing acts within his power—and then finding that Hadaller failed to purge the contempt and enforcing the sanction and awarding attorney's fees and costs pursuant to RCW 7.21.010 *et seq.* Accordingly, the Rockwoods respectfully urge the Court to confirm the trial court's actions and further to award the Rockwoods their attorney's fees and costs on appeal, as provided for by RAP 18.1 and RCW 7.21.030(3).

RESPECTFULLY SUBMITTED this 10th day of February, 2011.



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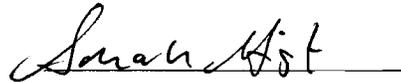
STATE OF WASHINGTON

BY _____
DEPUTY

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of February, 2011, a true copy of the foregoing was served via U.S. Mail, addressed as follows:

John J. Hadaller
135 Virginia Lee Lane
Mossyrock, WA 98564

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