

FILED
Court of Appeals
Division II
State of Washington
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NO. 51707-8

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON

v.

DAMION LAMAR DIAZ
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

Appellants

BRIEF OF RESPONDENT

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I. ISSUES PERTAINING TO APPELLANT'S
ASSIGNMENTS OF ERROR.

The trial court's entry of judgment which included contempt sanctions for a period of time that preceded the court's finding of contempt was impermissible as punitive damages imposed in conflict with RCW 7.21.040 and *State v. Simms*, 1 Wn. App. 2d 472, 406 P.3d 649 (2017).

II. STATEMENT OF THE CASE

Respondent adopts the statement of the case from Appellant's Opening Brief.

III. ARGUMENT

Contempt of court occurs where there has been an intentional disobedience of a court order. RCW 7.21.010(1)(b). Once contempt has been found, a court may impose remedial or punitive sanctions pursuant to RCW 7.21 so long as the statute's required procedures are followed. A remedial sanction is "a sanction imposed for 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). A remedial sanction is sometimes referred to as coercive, because the goal of the sanction is to coerce a party to comply with a court order. *State v. Simms*, 1 Wn. App. 2d 472, 479, 406 P.3d 649 (2017), citing *In re Pers. Restraint of King*, 110 Wash.2d 793, 800, 756 P.2d 1303 (1988). A punitive sanction is "a sanction imposed to punish a past contempt of court for the purpose of upholding the authority of the court." RCW 7.21.010(2). A party is afforded no opportunity to purge a punitive contempt sanction. See RCW 7.21.010(2); *Simms*, 1 Wn. App. at 479. Punitive sanctions shall be commenced by a complaint or

information filed by the prosecuting authority charging a person with contempt of court. RCW 7.21.040(2)(a).

Here, the court ordered Mr. Diaz to be transported to Western State Hospital for a competency evaluation on March 9, 2016. CP 277-82. On April 6, the court found DSHS in contempt for its failure to complete the evaluation and ordered DSHS to pay \$500.00 per day beginning March 16 until such time as Mr. Diaz was admitted to Western State Hospital. CP 277-82. Mr. Diaz was admitted on April 26, 2016. CP 277-82. On November 30, 2017, the court entered judgment against DSHS in the amount of \$20,500.00 for the contempt sanction. CP 277-82.

The relevant facts of *Simms* are nearly identical to the facts in the present case. The trial court ordered Mr. Simms's trial stayed pending a mental health evaluation to determine competency on October 14, 2014, but when the evaluation had not been performed by November 20, the trial court compelled DSHS to perform the evaluation no later than December 2. *Simms*, 1 Wn. App. 2d at 476. As the evaluation still had not been completed by December 12, the court found DSHS in contempt and ordered sanctions of \$200 per day from December 2 until the contempt was purchased by DSHS completing Mr. Sims's competency evaluations, which eventually occurred on December 15. *Simms*, 1 Wn. App. 2d at 478. DSHS appealed the judgment, in part, due to the punitive nature of the sanctions imposed from December 2 to December 12. The Court of Appeals agreed that the sanction was punitive in nature, and that the trial court did not afford DSHS the procedures required under RCW 7.21.040(2). *Simms*, 1

Wn. App. 2d at 480.

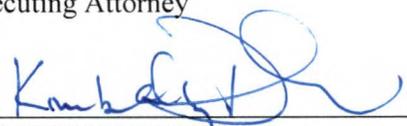
As in *Simms*, the trial court ordered sanctions for actions that predated the order of contempt. Such sanctions are punitive in nature. DSHS was not afforded the procedures of RCW 7.21.040(2) prior to the imposition of punitive sanctions. As the court improperly imposed the punitive portion of the sanctions against DSHS, the State concedes error and respectfully requests this court to remand the matter for entry of a new judgment. The corrected judgment should reflect only those sanctions imposed from the date the court found DSHS in contempt until Mr. Diaz was admitted to Western State Hospital.

IV. CONCLUSION

As stated above, the State respectfully requests this court to remand this case to the trial court to correct the contempt sanction judgment entered against DSHS.

DATED this 28 day of June, 2018.

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CERTIFICATE OF SERVICE

I, Dayna Willingham, declare under the penalty of perjury of the laws of the State of Washington, that on June 28, 2018, I caused the foregoing document to be served on counsel for all parties as follows:

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