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Court of Appeals
Division II
State of Washington
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NO. 53655-2

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

v.

STEPHANIE LYNN POND-HILL,

WASHINGTON STATE DEPARTMENT OF SOCIAL AND
HEALTH SERVICES,

Appellant.

APPELLANT'S REPLY BRIEF

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I. INTRODUCTION

The Department of Social and Health Services challenges the trial court's imposition of a \$3,000-per-day contempt sanction contrary to the requirements of RCW 7.21.030(2)(d), the only provision under which it could have imposed such a forfeiture. The trial court exceeded its statutory authority because, as required by RCW 7.21.030(2)(d), it had to "expressly find[]" that a daily forfeiture of up to \$2,000 per day as authorized by RCW 7.21.030(2)(b) was an inadequate sanction before imposing a greater amount. It made no such finding.

Ms. Pond-Hill does not dispute that a trial court's failure to comply with RCW 7.21.030(2)(d) should result in the vacation of the sanctions. She instead contends that the sanctions could have been imposed under RCW 7.21.030(2)(c), a provision that cannot reasonably be construed to allow for monetary sanctions at all. Because the trial court did not comply with the requirements of RCW 7.21.030(2)(d), this Court should vacate the contempt order as it has done in analogous situations.

II. ARGUMENT IN REPLY

This Court regularly reviews questions involving the trial court's statutory authority for the first time on review. It should be particularly inclined to do so here because the Department had no opportunity to squarely raise this issue to the trial court. This Court should also find that a

\$3,000-per-day contempt sanction may only be imposed after a court complies with RCW 7.21.030(2)(d), and that the trial court failed to do so here.

A. The Trial Court's Failure To Comply with the Limits of the Remedial Contempt Statute Should Be Reviewed by This Court

Ms. Pond-Hill argues that this Court should decline to review the contempt order because the Department has not satisfied RAP 2.5(a)(3), which permits appellate review of manifest constitutional errors not raised to the trial court. Resp. Br. at 5-6. She attacks a straw man. RAP 2.5(a)(3) is not applicable here, nor is it the only means by which this Court can consider a newly-raised error.

Ms. Pond-Hill ignores the actual grounds presented by the Department for reviewing the trial court's erroneous order. Contrary to her contention that it is "without authority" to request review of this issue, Resp. Br. at 6, the Department presented multiple cases in which matters of the trial court's statutory authority were reviewed for the first time on appeal. Op. Br. at 5-6.¹ None of these decisions involved RAP 2.5(a)(3).

¹ *State v. Moen*, 129 Wn.2d 535, 546, 919 P.2d 69, 75 (1996) (reviewing for the first time on appeal whether a trial court exceeded its statutory authority by setting an untimely restitution hearing); *Neilson ex rel. Crump v. Blanchette*, 149 Wn. App. 111, 115, 201 P.3d 1089 (2009), as amended (Apr. 28, 2009) (electing to review an asserted error not raised below because it "concerns the trial court's authority to act" under the Domestic Violence Prevention Act); *Hecker v. Cortinas*, 110 Wn. App. 865, 869, 43 P.3d 50 (2002) (reviewing a trial court's statutory authority to enter a protection order).

Nor does Ms. Pond-Hill dispute that this Court may exercise its discretionary authority under RAP 2.5(a) and RAP 1.2(a) to promote justice and facilitate a decision on the merits in this case. A review of the record reflects that DSHS had no meaningful opportunity to make a more specific objection at the November 13, 2018 show cause hearing because the validity of the sanction did not become an issue until the trial court announced its ruling and concluded the hearing. Verbatim Report of Proceedings (VRP), 7:12-13. Nor was the Department afforded an opportunity to object at a subsequent hearing at which the contempt order was entered.² This Court should accordingly consider the trial court's statutory authority to sanction DSHS as it did in this case.

B. The Trial Court's Contempt Order Exceeded Its Statutory Authority To Sanction

This Court should vacate the trial court's contempt order for failing to comply with the requirements of RCW 7.21.030(2)(d), the only provision under which it could have imposed a \$3,000-per-day monetary forfeiture.

After finding contempt, the court is limited to imposing one or more of the following remedial sanctions:

- (a) Imprisonment if the contempt of court is of a type defined in RCW 7.21.010(1) (b) through (d). The

² During the hearing on November 20, 2018, the court clerk noted that "CourtCall is not connected yet," the means through which counsel for DSHS was scheduled to appear for the hearing. VRP 10:6. The report of proceedings reflects that the trial court never connected counsel for DSHS to the hearing.

imprisonment may extend only so long as it serves a coercive purpose.

(b) A forfeiture not to exceed two thousand dollars for each day the contempt of court continues.

(c) An order designed to ensure compliance with a prior order of the court.

(d) Any other remedial sanction other than the sanctions specified in (a) through (c) of this subsection if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt of court.

RCW 7.21.030(2). Here, the trial court chose not to impose imprisonment as a sanction under RCW 7.21.030(2)(a), nor did it impose a forfeiture of up to \$2,000 per day as permitted by RCW 7.21.030(2)(b).

The \$3,000-per-day forfeiture cannot reasonably be characterized as “an order designed to ensure compliance with a prior order of the court” made pursuant to RCW 7.21.030(2)(c), as courts have recognized that these sanctions are typically non-monetary in nature. *See In re Det. of Young*, 163 Wn.2d 684, 694, 185 P.3d 1180, 1185 (2008) (upholding a stay designed to ensure compliance with a prior order to submit to a mental examination); *In re Marriage of Mathews*, 70 Wn. App. 116, 126, 853 P.2d 462, 469 (1993) (upholding a wage assignment order designed to ensure compliance with a dissolution decree). This leaves RCW 7.21.030(2)(d) as the only authority the trial court could have relied upon to impose a forfeiture sanction in

excess of \$2,000 a day, but it failed to make the finding required by this provision before doing so.

Ms. Pond-Hill's cursory interpretation of RCW 7.21.030(2)(c) to allow for monetary sanctions in excess of the cap set by RCW 7.21.030(2)(b) would also improperly render the latter provision superfluous. *Wright v. Engum*, 124 Wn.2d 343, 352, 878 P.2d 1198, 1202 (1994) (recognizing that courts "do not interpret statutes so as to render any language superfluous."). The more logical read of RCW 7.21.030(2) is that the Legislature capped the daily monetary contempt forfeitures available to courts in RCW 7.21.030(2)(b), and allowed for greater daily forfeitures only after the requirements of RCW 7.21.030(2)(d) have been satisfied.

The trial court exceeded its statutory authority by imposing a daily forfeiture under RCW 7.21.030(2)(d) because it failed to make an express finding that the sanctions available under RCW 7.21.030(2)(a)-(c) were inadequate, either orally or in its written orders. Because an express finding of inadequacy is a statutory prerequisite to imposing such a sanction, the sanction imposed was unlawful and should be vacated.

C. The Trial Court's Inherent Authority To Impose Contempt Sanctions Is Inapplicable Here

Ms. Pond-Hill offers in passing that the sanction could be salvaged by relying on the court's inherent contempt authority. Resp. Br. at 10. Her

suggestion ignores well-established precedent and the fact that the trial court did not rely on any such authority. As a prerequisite to the exercise of a court's inherent contempt power to impose "punitive or remedial sanctions for contempt of court," it must "'specifically find' all statutory contempt procedures and remedies are inadequate." *State v. Salazar*, 170 Wn. App. 486, 492-93, 291 P.3d 255 (2012) (quoting *In re Dependency of A.K.*, 162 Wn.2d at 652). As the trial court below made no finding that its statutory contempt authority was inadequate, the trial court's unutilized inherent sanctioning authority could not save the deficient sanctions orders at issue.

D. Ms. Pond-Hill Does Not Dispute That the Appropriate Remedy Would Be Vacation of the Contempt Sanctions

The appropriate remedy for a trial court imposing a sanction under RCW 7.21.030(2)(d) without complying with statutory requirements is vacation of the sanctions. Op. Br. at 8-9 (citing cases). Ms. Pond-Hill does not dispute this contention, nor does she dispute that the evidence would not support a finding made under RCW 7.21.030(2)(d).

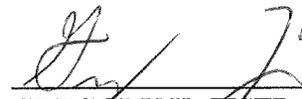
III. CONCLUSION

This Court should vacate the trial court's contempt order and judgment. The trial court failed to make the finding required by RCW 7.21.030(2)(d) that the remedial sanctions available under

RCW 7.21.030(2)(a)-(c) would be inadequate to coerce compliance before imposing a different sanction, nor could it have made any such finding based upon the record before it.

RESPECTFULLY SUBMITTED this 13th day of February 2020.

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CERTIFICATE OF SERVICE

I, *Malai Jordan*, states and declares as follows:

I am a citizen of the United States of America and over the age of 18 years and I am competent to testify to the matters set forth herein. I certify that on February 13, 2020, I served a true and correct copy of this **APPELLANTS' REPLY BRIEF** and this **CERTIFICATE OF SERVICE** on the following parties to this action, as indicated below:

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 13th day of February 2020, at Tumwater, Washington.


MALAI JORDAN
Legal Assistant

SOCIAL AND HEALTH SERVICES DIVISION, ATTORNEY GENERALS OFFICE

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