

NO. 34120-8-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

FILED

Apr 14, 2017

Court of Appeals
Division III
State of Washington

STATE OF WASHINGTON,

Appellant,

v.

ANTHONY SIMS,

Respondent,

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SPOKANE COUNTY

The Honorable Salvatore F. Cozza, Judge

BRIEF OF RESPONDENT

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A. INTRODUCTION

Washington State's failure to appropriately fund care of the mentally ill is well known. This case involves a trial judge's attempt to ensure our state live up to its duties by imposing contempt sanctions on the Department of Social and Health Services (DSHS) for its repeated refusals to provide timely competency evaluations and restoration services in criminal cases. During the long delays, severely mentally ill persons languish while their mental health deteriorates in county jails that are ill equipped to meet their needs. Thus, the judge ordered the necessary services be provided by a specified date and subsequently imposed \$200 per day sanctions after the deadline was not met. The funds were ordered paid to the county to pay for mental health services in the jails.

These were well statutorily authorized remedial sanctions because they were designed to serve two goals: (1) to coerce compliance with the court's orders that the services be provided in a reasonably timely manner and (2) to compensate for the systemic damage that is being done to mentally ill persons awaiting criminal trials. The authority to award interest is part and parcel of the authority to craft remedial contempt sanctions, and sovereign immunity is, therefore, impliedly waived. Respondents ask this Court to affirm the contempt order.

B. ISSUES PRESENTED

1. Unreasonable delays in competency services are a systemic problem in our state that causes specific harm to mentally ill persons detained in jail awaiting trial. Court orders to provide the services within a reasonable time are repeatedly and deliberately ignored.

a. Does a trial court properly exercise its authority to impose remedial coercive sanctions for contempt when, in an attempt to provide an incentive for high-level governmental change, it imposes a per diem fine for delays exceeding the court-ordered deadline?

b. Does a trial court properly exercise its authority to impose compensatory sanctions for contempt when it orders the amounts of the fine to be directed to the jail for purposes of providing services to mentally ill detained persons?

2. The legislature impliedly waives sovereign immunity with respect to interest on judgments when a statutory framework is intended to provide for comprehensive relief. Given the court's broad statutory authority to craft remedial contempt sanctions, has the legislature impliedly waived sovereign immunity with respect to interest on remedial sanctions for contempt.

C. STATEMENT OF THE CASE

Respondent Anthony Sims is one of 28 respondents who, in Spokane County, were subjected to extended delays when doubts about their competency arose while awaiting trial on criminal charges. Sims was charged with second-degree burglary after he picked up a bag of dog food from the shelf at a Wal-mart store and then attempted to return it for cash, specifically, \$5.41. CP 1792. He was already on probation in mental health court. CP 1794-95. On October 14, 2014, the court entered an agreed order for an evaluation assessing Sims' competency to stand trial. CP 1796-99. A month later, no evaluation having occurred, counsel moved to compel the evaluation under chapter 10.77 RCW. CP 1800-24. On November 20, 2014, the court ordered Eastern State Hospital (ESH) to perform Sims' evaluation by December 2, 2014. CP 1825.

On November 26, correctly anticipating that the evaluation would not be performed by the deadline, counsel filed a motion for an order to show cause requesting sanctions in the amount of \$500 per day past the December 2 deadline. CP 1533-43. The State filed a response arguing contempt was inappropriate for several reasons. CP 1544-56. The State argued the order setting the December 2 deadline was entered without an opportunity for ESH to be heard, violation of the court order was not willful,

and the court lacked authority to impose punitive sanctions for contempt absent a criminal complaint filed by a prosecutor. CP 1544-56.

On December 12, 2014, the court found DSHS in contempt and ordered sanctions. RP 55-58. The court explained that, while there was no apparent ill will on the part of ESH staff, intentional decisions made at higher levels of government in the legislative and executive branches were responsible for the backlog. 1RP 55-58; 2RP 12-13. The court explained the fines were not intended to be crippling, but to put pressure on the responsible parties to take action.¹ 1RP 110.

The written order was not entered until January 16, 2015. CP 1560-65. In the mean time, Sims' evaluation was performed on December 15. CP 1563. The court ordered ESH to pay sanctions in the amount of \$200 per day between the December 2 deadline and December 14, 2014. CP 1563.

The same order imposed sanctions in four other cases among the 28 consolidated on appeal. CP 1560-65. The Sims hearing was the first in the group of cases, all of which resulted in essentially the same contempt orders over the course of 2015. 1RP² 58, 65-67, 89, 111, 121, 160-61, 179; 2RP 12-13.

¹ This summary of the court's reasoning is taken from the hearings in Sims as well as in the other consolidated cases in this appeal.

² There are three volumes of Verbatim Report of Proceedings referenced as follows: 1RP – Dec. 11-12, 2014, Jan. 16, Mar. 6, May 22, June 26, July 24, Oct. 23, Dec. 9, 2015; 2RP – Feb. 27, 2015; 3RP – Oct. 29, 2015.

Approximately 13 months after the court found DSHS in contempt in the Sims matter, on January 15, 2016, the court amended the contempt order, specifying the sanctions were to be paid to the clerk of the court and directed to Spokane County Detention for the purpose of assisting mentally ill offenders in the jail. CP 1826-35. In Sims' case, judgment was entered against DSHS in the amount of \$2,600, \$200 per day for 13 days. CP 1564.

DSHS filed notice of appeal. CP 1557, 1569. Sims' appeal was consolidated with 27 other appeals from similar contempt orders. For purposes of resolving the legal issues presented in this appeal, Sims agrees his case serves as a template and the dates and amounts in the State's chart fairly represent the amounts and dates at issue in the other 27 appeals.

D. ARGUMENT

1. THE COURT IMPOSED CIVIL SANCTIONS TO COERCE COMPLIANCE WITH ITS ORDERS FOR COMPETENCY SERVICES AND COMPENSATE THOSE HARMED BY THE DELAYS.

a. The Court Has Authority to Impose Coercive and Compensatory Sanctions for Contempt.

Courts have statutory authority to impose coercive sanctions for contempt of court. RCW 7.21.030. Contempt is defined as intentional disobedience of a court order. RCW 7.21.010. Washington law recognizes two types of sanctions for contempt: remedial sanctions, imposed to coerce compliance with a court order, and punitive sanctions, imposed to punish

past contempt. RCW 7.21.010. Remedial sanctions are civil, while punitive sanctions are criminal in nature. In re Rapid Settlements, Ltd, 189 Wn. App. 584, 601, 359 P.3d 823 (2015), rev. denied, 185 Wn.2d 1020 (2016) (quoting Gompers v. Buck's Stove & Range Co., 221 U.S. 418, 441, 31 S. Ct. 492, 55 L. Ed. 797 (1911)).

The court may, sua sponte, impose civil remedial sanctions. RCW 7.21.030. The sanctions can include imprisonment or forfeiture of up to \$2,000.00 per day that the contempt continues. Id. Remedial sanctions can also include compensating a party for losses resulting from the contempt. Id. Punitive criminal sanctions, by contrast, must be imposed in a proceeding initiated by a prosecutor filing a complaint or information. RCW 7.21.040.³ The distinction between civil and criminal contempt (including the heightened procedural protections required for criminal contempt) is required by constitutional due process in addition to Washington statute. In re M.B., 101 Wn. App. 425, 453, 3 P.3d 780 (2000).

The distinction between civil (remedial) and criminal (punitive) contempt depends on the character and purpose of the sanctions imposed. Rapid Settlements, 189 Wn. App. at 601 (citing Gompers, 221 U.S. at 441). Distinguishing between the two is “a notoriously difficult task.” M.B., 101

³ Courts also may impose summary sanctions for contempt that occurred in the courtroom in front of the judge. RCW 7.21.050. That provision is not at issue here.

Wn. App. at 438. Many, if not most, sanctions contain both punitive and remedial elements, and have both punitive and remedial effects. Id.

Whether contempt is warranted is within the court's discretion. In re Guardianship of Wells, 150 Wn. App. 491, 502, 208 P.3d 1126, 1132 (2009). The question of a court's authority to impose contempt sanctions is a legal question reviewed de novo. In re Dependency of A.K., 162 Wn.2d 632, 644, 174 P.3d 11 (2007). In this appeal, the State challenges the court's authority to order per diem sanctions for dates occurring before the written order of contempt. Appellant's Opening Brief at 8. This Court should affirm the order because the court acted within its discretion and its statutory authority. The sanctions were designed for two remedial purposes: (1) to provide an incentive for the high level changes necessary to ensure compliance with the court's orders for timely competency services and (2) to compensate for the harm done by the failure to timely provide those services.

b. The Court's Goal in Imposing Sanctions Was to Coerce the State to Remedy the Ongoing Unreasonable Delays in Competency Services.

The sanctions imposed in these cases are coercive, not punitive, for three main reasons. First, the court's purpose was to force the state government as a whole to comply with due process by providing for timely competency services. Second, the State had many opportunities to comply with the court orders, thereby avoiding sanction. Third, the State's

recalcitrance in the face of repeated court orders highlights the coercive nature of the sanctions.

i. The Sanctions Were Intended to Be Coercive on a Systemic Level.

The court's purpose in imposing sanctions in these cases was to force the State to remedy the ongoing problem of unreasonably long delays in providing competency services. CP 1563. In the contempt order, the court discussed the increase in competency evaluations, the resulting backlog, and the fact that intentional decisions are being made by "the state administration at the higher levels of DSHS and state government, the executive branch and the legislature." CP 1563. The court specifically mentioned the types of intentional decisions leading to the problem including "budgetary allocations, resource allocations, personnel staffing, etc." CP 1564. This statement demonstrates the court's view of this as a systemic problem, rather than one limited to the individual cases before it.

After recognizing the systemic problem, the court imposed per diem fines for the delays. Per diem fines, such as the ones imposed in this case, are generally viewed as coercive, remedial, civil contempt sanctions. Shell Offshore v. Greenpeace, 815 F.3d 623, 630 (9th Cir. 2016). The court's goal, to create an incentive for remedying the systemic problem, indicates the sanctions are within the court's authority to impose remedial coercive

sanctions. See, e.g., Gompers, 221 U.S. at 441 (“It is not the fact of punishment, but rather its character and purpose” that distinguishes between civil and criminal contempt).

- ii. The State Had Ample Opportunity to Purge the Contempt by Complying with the Court’s Orders.

In addition to the character and purpose of the sanctions, courts also look at the contemnor’s ability to “purge” the contempt by complying with the court’s order. Rapid Settlements, 189 Wn. App. at 253. The ability to avoid the sanction by taking the required action generally indicates the sanction is generally civil and coercive. Id. A final written contempt order is remedial when it contains a purge conditions. State v. Boatman, 104 Wn.2d 44, 48, 700 P.2d 1152 (1985). Here, both the final written order and the original oral ruling contained the same purge condition: performing the court-ordered competency services. CP 1560-68; IRP 58.

Despite the systemic nature of the problem, the State urges this Court to view these sanctions as isolated cases, in which the State could not, at the time of the written contempt order, avoid the sanction by avoiding delays that had already occurred. Appellant’s Opening Brief at 8. This argument fails to appreciate the larger context in which these cases arise.

The problem is not limited to one or even a few individual cases. In addition to the 28 consolidated appeals in this case, federal litigation has

resulted in an injunction requiring that competency evaluations be provided within a reasonable time. See Trueblood v. Washington State Dep't of Soc. & Health Servs., 822 F.3d 1037, 1040 (9th Cir. 2016) (remanding to amend the injunction, but holding permanent injunction remains appropriate).

The State's focus on the hospital as an entity is myopic. The court made clear the hospital administrators were not at fault. CP 1563. Thus, it is incorrect to view them as the target of the court's coercive sanctions. Although the hospital could not retroactively eliminate the prior delays, the sanctions were still coercive at the higher levels state government. Those entities were the true object of the court's coercive sanction, and could take action at any time to stem the flow of sanctions against the hospital.

To the extent the court is concerned with notice, that notice was available from the first contempt order forward. Beginning on December 12, 2014 when the court first held the State in contempt in Sims and four other cases, the State was on notice that it would be held in contempt when it failed to provide competency services in a timely manner. 1RP 55-58. In the cases that followed, it had numerous opportunities to do so, thereby avoiding the sanctions it knew would ensue.⁴ 1RP 58, 65-67, 89, 111, 121, 160-61, 179; 2RP 12-13.

⁴ The law generally presumes a party is capable of performing actions required by the court. Rapid Settlements, 189 Wn. App. at 615 (citing In re Pers. Restraint of King, 110

This case can be analogized to cases in which sanctions are imposed for frivolous pleadings in violation of CR 11. In such cases, prompt notice of the potential violation is necessary to give the offending party the opportunity to mitigate the sanctions by amending or withdrawing the offending pleading. Biggs v. Vail, 124 Wn.2d 193, 198, 876 P.2d 448 (1994). In Biggs, the court concluded that it was sufficient that Biggs was “provided with general notice that sanctions were contemplated” even though the opposing attorney had mislabeled them. Id. at 199. Specifically, the court found that “the deterrent function of the rule would be vitiated were Biggs allowed to avoid sanctions simply because opposing counsel mislabeled his request.” Id.

Like the deterrence provided by CR 11, the incentive to comply with the court’s order in this case would also be vitiated if the State is allowed to avoid sanctions merely because some of the fined dates occurred prior to the written contempt order. At the latest when counsel filed the motion for contempt, the State had general notice that contempt sanctions would be contemplated for failure to comply. CP 1533-43. It had the opportunity to comply with the court’s order. At a minimum, from the date of the court’s oral ruling finding the State in contempt, the State had specific notice that it was not just potentially but actually being held in contempt and was aware of

Wn.2d 793, 804, 756 P.2d 1303 (1988)). In this appeal, the State does not challenge the underlying contempt finding or argue it was unable to comply with the court’s orders.

the specific sanctions that were being imposed. This notice was sufficient to provide the State with the opportunity to purge its contempt by complying with the court's order.

Even if this Court were to accept the State's argument that the per diem fines are only remedial if imposed for dates after the actual contempt finding, the sanctions were still appropriately remedial beginning with the date of the court's *oral* contempt ruling in December 2014. The mere fact that the contempt order had not yet been reduced to writing does not alter the court's remedial purpose or the State's opportunity to avoid the sanctions by complying with the court's order. "When a trial judge makes a clear nontentative ruling on such an issue, the defendant is entitled to rely upon that ruling." State v. Latham, 100 Wn.2d 59, 66, 667 P.2d 56 (1983). Here, the court's finding of contempt on December 12, 2014 was not tentative. It told the State exactly what to expect: \$200 per day sanctions for every day that the evaluations were not performed as ordered. 1RP 58.

iii. The State's Repeated Intentional Violations of Court Orders Show the Appropriateness of Coercive Sanctions.

In finding sanctions to be properly coercive, courts also look at a party's history of noncompliance. In CBS Broad. Inc. v. FilmOn.com, Inc., 814 F.3d 91, 103 (2d Cir. 2016), the court explained, "civil contempt powers are particularly adapted to curb recidivist offenders where future compliance

is a well-founded concern.” The court went on to explain that FilmOn’s history of aggressively pushing the bounds of the injunction “further highlights the sanction’s coercive purpose & effect.” Id. (internal quotes omitted).

DSHS is also a recidivist offender when it comes to court orders regarding timely competency services. The district judge in the Trueblood litigation noted the State has “a “long history of failing to adequately protect the constitutional rights” of the class and had “demonstrated a consistent pattern of intentionally disregarding court orders.” Trueblood, 822 F.3d at 1042. The court further acknowledged Washington State has “demonstrated a consistent pattern of intentionally disregarding court orders ... and [has] established a de facto policy of ignoring court orders which conflict with [its] internal policies.” Id. at 1044.

That very same insistence on internal policies in the face of court orders was on display in this case. The State admitted that, instead of complying with the court’s order to evaluate him by the deadline, the hospital simply placed Sims on their waitlist. CP 1545. In light of the system-wide recalcitrance in the face of repeated court orders, the sanctions in this case should properly be viewed as coercive and, therefore, remedial, in nature. CBS Broad, 814 F.3d at 103.

Punitive sanctions are ones that have “no practical purpose other than punishment.” In re Ocean Warrior, 835 F.3d 1310, 1317 (11th Cir. 2016); see also M.B., 101 Wn. App. at 446 (solely punitive sanction is criminal in nature). The record in this case makes clear that the purpose here is not punishment. It is to coerce our state government to take meaningful action to remedy a systemic problem that leads to repeated and ongoing violations of due process as well as irreparable damage to the mental health of some of our most vulnerable citizens.

c. The Sanctions Are Also Civil and Remedial Because They Are an Attempt to Compensate for the Harms Caused by the State’s Contempt.

In this appeal, the State does not dispute that harm is being done to mentally ill persons detained in jail awaiting trial and competency services. See Trueblood, 822 F.3d at 1042 (discussing “serious mental health consequences” of prolonged detention). Much of the harm, particularly the loss of liberty and damage to mental health, is likely irreparable on an individual level. Id. (discussing district court finding that “[p]unitive settings and isolation for twenty-three hours each day exacerbate mental illness and increase the likelihood that the individual will never recover”). The court did not err in attempting to fashion a sanction that would, at least in part, compensate the class of affected persons and remedy some of the harm being done.

The sanctions are to be paid to Spokane County Detention Services. CP 1566. The court's amended contempt order specifically directs that the money be directed "to assist mentally ill offenders in the Spokane County Jail." CP 1834-35. This is a compensatory purpose that is within the court's authority to order civil sanctions for contempt. RCW 7.21.030.

Federal courts and a majority of state courts allow compensatory sanctions, payable directly to the injured party, as part of civil or remedial contempt sanctions. Rapid Settlements, 189 Wn. App. at 609 (citing Annotation, Right of Injured Party to Award of Compensatory Damages or Fine in Contempt Proceedings, 85 A.L.R.3d 895, § 2[a] (1978)). Washington law likewise permits the court to order, as a remedial sanction, that the contemnor "pay a party for any losses suffered by the party as a result of the contempt." RCW 7.21.030(3). The purpose of this statute is to "provide complete relief. . . and eliminate the necessity of a second suit." Rapid Settlements, 189 Wn. App. at 609-10 (discussing State ex rel. Lemon v. Coffin, 52 Wn.2d 894, 896, 332 P.2d 1096 (1958)). Compensatory sanctions are civil and remedial without regard to any coercive purpose or effect. Rapid Settlements, 189 Wn. App. at 601 (citing State ex rel. Chard v. Androw, 171 Wash. 178, 17 P.2d 874 (1933)).

Unlike coercive sanctions, civil compensatory sanctions typically take the form of unconditional monetary sanctions. Shell Offshore, 815 F.3d

at 629. Thus, the fact that some of the sanctions were unavoidable by the time the sanctions were reduced to a written order, is immaterial so long as the sanctions are properly viewed as compensatory for the systemic, irreparable, ongoing harms being caused by delays in competency services.

The court in these cases heard testimony and argument supporting a compensatory contempt remedy. First, the counsel informed the court about the harm being done to her mentally ill clients, who may or may not be competent to stand trial, as they wait and wait for delayed competency evaluation and restoration services. One client was described as “decompensating” and hallucinating about Paris Hilton. RP 7-10. It appears the court was well aware of the harms, later described in the Trueblood case as follows:

class members had suffered serious mental health consequences as a result of prolonged detention—often in solitary confinement—pending evaluation or services, including suicidal behavior, self-harm, and refusal to take medications. It was no surprise, therefore, that the district court found “[p]unitive settings and isolation for twenty-three hours each day exacerbate mental illness and increase the likelihood that the individual will never recover.”

822 F.3d at 1042.

The court also heard testimony about the systemic and intractable problems preventing timely services. Testimony showed that the waiting list as of December 2015 included 115 people. RP 18. The hospital had only

seven forensic evaluators who could do at most nine felony, or up to 24 misdemeanor cases per month. RP 15. Although there was currently funding to hire at least one additional evaluator, it was difficult do so because other employers pay more for similarly skilled professionals. RP 20.

From the earliest hearings on this issue, counsel argued sanctions should be paid to the jail for mental health services, for the benefit of clients who were being harmed by the delays. RP 58. Ultimately, the sanctions were, in fact, ordered paid to the jail for mental health services. CP 1566, 1834-35. Providing mental health services in the jails will serve as a class-wide remedy for all those who suffer from the unreasonable delays when the State refuses to comply with court orders for timely competency services.

The court similarly approved of a classwide contempt remedy in United States v. City of Miami, 195 F.3d 1292, 1298 (11th Cir. 1999). In City of Miami, an employment discrimination case, the court could not identify which individuals, among an affected class, would have properly received the promotions, absent the discrimination. Id. The court held there should be “make whole” relief for contempt, dividing the monetary value of the promotion among all the unpromoted employees. Id. at 1299-1300.

This classwide remedy was appropriate because the court could not identify which of the officers should have received the promotions. Id. Any

attempt to create an individual remedy would create a “quagmire of hypothetical judgments.” Id. at 1299. A class wide remedy was the only real option because the other two possibilities – random relief or no relief – were deemed equally “unpalatable.” Id. at 1299-1300.

City of Miami illustrates the proposition that courts’ inherent contempt power includes “wide discretion to fashion an equitable remedy for [civil]contempt that is appropriate to the circumstances.” Id. at 1298 (citing Equal Emp’t Opportunity Comm’n v. Guardian Pools, Inc., 828 F.2d 1507, 1515 (11th Cir. 1987)). The purpose of so-called “make whole relief” is to recreate the conditions as they would have been without the contempt. Id. at 1299. When that is impossible, as it may often be, courts have broad discretion to fashion an equitable remedy. Id. The court’s civil contempt power “is measured solely by the ‘requirements of full remedial relief.’” Id. at 1298 (quoting Citronelle–Mobile Gathering, Inc. v. Watkins, 943 F.2d 1297, 1304 (11th Cir. 1991)).

This case is akin to City of Miami in that is likely impossible to craft an individual remedy for the harms actually suffered by specific individuals in these 28 cases. Nevertheless, like the court in City of Miami, the superior court here apparently and reasonably found it “unpalatable” to provide no relief whatsoever to the entire class of injured persons. 195 F.3d at 1299-1300. Given the systemic nature of problem in this case and the intangible

and irremediable nature of the damage, the court was justified in crafting a way to compensate the class of persons being injured. Id. at 1299-1300. Monetary sanctions for delays that are directed to the jail to provide mental health services for inmates is a reasonable way of compensating the class of persons that continues to be harmed by the delays.

The purpose of the sanctions was not to punish Eastern State Hospital. 2RP 12-13. It was to provide a strong incentive for high-level change and make whole the harm the harm that was being done. 1RP 55-58, 110. The court acted within its statutory and inherent authority to craft a sanction that would serve these coercive and compensatory purposes. RCW 7.21.030. The contempt order should be affirmed.

2. THE STATE IMPLIEDLY CONSENTED TO INTEREST ON CONTEMPT SANCTIONS.

The State argues that, under the doctrine of sovereign immunity the State cannot be held to interest on its debts without its consent. Appellant's Opening Brief at 12-13. But the contempt statute should be viewed as an implied waiver of sovereign immunity with respect to interest on contempt sanctions.

“[T]he consent to liability for interest ... can be an implied consent, and is not limited to the express statutory or contractual consent, which was required by subsequent cases.” Union Elevator & Warehouse

Co. v. State ex rel. Dep't of Transp., 171 Wn.2d 54, 62–63, 248 P.3d 83 (2011) (quoting Architectural Woods, Inc. v. State, 92 Wn.2d 521, 526, 598 P.2d 1372 (1979)). An implied waiver can occur when the legislature enacts a statute providing “comprehensive relief to aggrieved claimants.” Union Elevator, 171 Wn.2d at 65 (discussing Smoke v. City of Seattle, 132 Wn.2d 214, 937 P.2d 186 (1997)); see also Architectural Woods, 92 Wn.2d at 527 (legislature implied waived immunity for post-judgment interest by enacting RCW 28B.10.300, which permitted state universities to enter into various contracts); Smoke (chapter 64.40 RCW, authorizing suit for damages for land use decisions, impliedly waived immunity for post-judgment interest).

For example, in Union Elevator, the statute at issue listed several categories of compensable expenses, but did not expressly list interest on the amounts among them. 171 Wn.2d at 61. The court reviewed de novo the statutory interpretation question of whether the statute impliedly waived sovereign immunity as to interest on the judgment. Id. at 59, 61.

The court first noted that implied waiver of sovereign immunity is not limited to contract cases. Id. at 63. It explained that a waiver is implied when in enacting the statute giving rise to the liability, the legislature intended to “provide comprehensive relief to aggrieved claimants.” Id. at 64-65. That was the case in Smoke, where an attorney

fee provision showed the legislature's intent to provide comprehensive relief. Id. (discussing Smoke, 132 Wn.2d at 228). The court distinguished Union Elevator's case from Smoke by pointing out that Union Elevator was seeking pre-judgment, rather than post-judgment interest, under a statute that was expressly limited in the causes of action it created. Union Elevator, 171 Wn.2d at 65.

Like the attorney fee provision in Smoke, the contempt statute, giving courts broad authority to impose remedial sanctions for contempt, likewise suggests the legislature's intent to provide comprehensive relief. For example, the purpose of RCW 7.21.030's provision for compensatory sanctions is to "provide complete relief. . . and eliminate the necessity of a second suit." Rapid Settlements, 189 Wn. App. at 609-10. Because the contempt statute is intended to provide comprehensive relief, it should, be construed as an implied waiver of sovereign immunity.

Both the coercive and compensatory purposes of remedial sanctions are ill-served if interest cannot be included in the sanction. The sanctions in this case were imposed because of the State's lengthy history, in this and other cases, of blatantly disregarding court orders aimed at protecting the due process rights of mentally ill persons being detained in jails. The Ninth Circuit recently noted that the State has "demonstrated a consistent pattern of intentionally disregarding court orders." Trueblood,

822 F.3d at 1042. In this case, the judge also observed that intentional decisions had led to the problem, and found sanctions appropriate because “the pressure needs to be kept on to solve this problem.” IRP 57-58, 110. Without the ability to require interest on the contempt sanctions, the sanction becomes just another court order that the State is, based on past experience, likely to simply disregard. It is the interest on the sanctions that provides the incentive for the State to actually pay them.

Because it provides an incentive to pay the sanctions, the interest award is also an essential part of achieving the court’s compensatory purpose. The sanctions are aimed at compensation and mitigation for the harm caused by the State’s intransigence. Achieving the goal of compensation and mitigation depends on the State actually paying the amounts awarded.

Without an award of interest, the court’s attempt to force the State to comply with court orders and stop violating the due process rights of mentally ill detainees will lack teeth. Additionally, without interest, the court’s attempt to mitigate the harm caused by the unreasonable delays will likely remain unfunded and ineffective. This Court should reject the State’s attempts to de-fang the court’s contempt powers and avoid liability for its own intentional conduct.

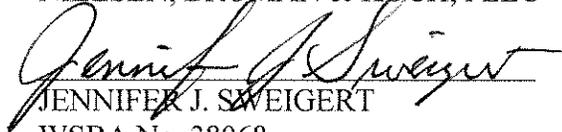
E. CONCLUSION

For the foregoing reasons, Sims and the other respondents request this Court affirm the order finding the State in contempt and imposing sanctions.

DATED this 17th day of April, 2017.

Respectfully submitted,

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No. 34120-8-III

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



John Sloane
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04-14-2017
Date
Done in Seattle, Washington