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COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

MICHAEL F. CRONIN,

Respondent,

vs.

CENTRAL VALLEY SCHOOL DISTRICT,

Appellant.

APPELLANT SCHOOL DISTRICT'S REPLY

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

I. ARGUMENT.....1

A. The School District’s Motion to Stay with the Court of Appeals was still pending when the Trial Court entered its finding of contempt.....1

B. Mr. Cronin misconstrues the School District’s argument that it should not be held in contempt for seeking a motion to stay.....1

C. *In re Marriage of Matthews* implies that attempting to secure a stay under RAP 8.1 can be a defense to a finding of contempt2

D. *In re Detention of Herrick* preserves the possibility of defending against a finding of contempt while seeking a stay.....3

E. The School District is not collaterally attacking the Trial Court’s underlying order.....6

F. Mr. Cronin misunderstands the School District’s argument that the Trial Court did not have the authority to reinstate Mr. Cronin.....7

G. The daily penalties conditioned on not paying a judgment are not permissible.....9

H. There is a bona fide dispute as to whether the School District was required to pay Mr. Cronin wages while it sought a stay.....12

II. CONCLUSION.....13

TABLE OF AUTHORITIES

Cases

<i>In re Detention of Herrick</i> , 198 Wn. App. 1029, 2017 WL 1314217 (April 3, 2017).....	3, 4
<i>In re Marriage of Curtis</i> , 106 Wn. App. 191 (2001).....	9, 10
<i>In re Marriage of Matthews</i> , 70 Wn. App. 116 (1993).....	2
<i>Matter of Marriage of Young</i> , 26 Wn. App. 843 (1980).....	9, 10
<i>State v. Sims</i> , 1 Wn. App.2d 472, 480 (2017).....	11, 12
<i>Van Horn v. Highline Sch. Dist.</i> , 17 Wn. App. 170 (1977).....	9

Statutes

RCW 4.96.050.....	11
RCW 7.21.030.....	11, 12
RCW 28A.405.310.....	7,8
RCW 28A.405.350.....	8
RCW 28A.405.380.....	8

Other

RAP 8.1.....	<i>passim</i>
RAP 8.3.....	<i>passim</i>

I. ARGUMENT

A. The School District's Motion to Stay with the Court of Appeals was still pending when the Trial Court entered its finding of contempt.

Mr. Cronin claims that there was no motion to stay pending before this Court when the Trial Court entered its finding of contempt. Respondent's Answer at 15. But then contradicts himself by admitting that the School District's Motion to Modify the Commissioner's decision to deny the School District's Motion to Stay was pending when the Trial Court found the School District to be in contempt. Respondent's Answer at 15; CP at 241–246. Had this Court granted the School District's Motion to Modify, the Trial Court's order requiring the School District to reinstate Mr. Cronin with pay and benefits pending the outcome of his statutory hearing would have been stayed. Thus, the School District's Motion to Stay with this Court was still, in fact, pending at the time the Trial Court found the School District to be in contempt.

B. Mr. Cronin misconstrues the School District's argument that it should not be held in contempt for seeking a motion to stay.

Mr. Cronin makes it seem as though the School District is contending that the School District's Motion to Modify "somehow automatically creates a stay that has never been granted." Respondent's Answer at 15. That is not what the School District is arguing. Rather, the

School District is arguing that it should not be held in contempt for failing to comply with the Trial Court's order while it was, in good faith, seeking a stay of that order in accordance with the rules of appellate procedure, which included seeking a modification of the Commissioner's decision to deny the School District's Motion to Stay.

C. *In re Marriage of Matthews* implies that attempting to secure a stay under RAP 8.1 can be a defense to a finding of contempt.

Mr. Cronin asserts that *In re Marriage of Matthews* does not support the School District's argument that seeking a stay under RAP 8.1 could be a defense to a finding of contempt. That case, though, implies that attempting to secure a stay under RAP 8.1 can be a defense to a finding of contempt. In reviewing Mr. Matthews' challenge, this Court pointed out that Mr. Matthews "had a duty to do something other than ignore the trial court's order" and that he "did not attempt to secure" a stay under RAP 8.1. *Id.* Given those circumstances, this Court could not say that the contempt finding constituted an abuse of discretion. *Id.*

It appears, though, that this Court left open the possibility that a party who does not simply ignore a trial court's order but attempts to secure a stay under RAP 8.1 could successfully defend against a finding of contempt even though the party's motion to stay was eventually denied. The key being that the party was doing something other than ignoring the trial

court's order by following the rules of appellate procedure in seeking a stay. Once those procedures have been exhausted and the party has not obtained a stay, then it could be held in contempt *if* it continues to not comply with the court order without good reason—because at that point the party really would be simply ignoring the order.

Here, the School District didn't simply disregard the Trial Court's order. The Trial Court even recognized that when it initially allowed the School District to pursue a stay without being held in contempt. Rather, the School District attempted to use the procedures available to it to have the order stayed pending appeal—but was held in contempt before it had a chance to exhaust those procedures. Such a result vitiates the purpose behind RAP 8.1 and RAP 8.3. There must be a period where a party can seek relief under those rules without running the risk of being held in contempt.¹

D. *In re Detention of Herrick* preserves the possibility of defending against a finding of contempt without actually obtaining a stay.

Mr. Cronin points to *In re Detention of Herrick* as if it precludes the School District from defending against the finding of contempt because the School District did not, in fact, successfully obtain a stay. Respondent's Answer at 17–18. However, *Herrick* is distinguishable from this case and

¹ And here, Mr. Cronin would have been protected from any delay that resulted from the School District seeking stay by the Trial Court awarding post-judgment interest.

leaves open the possibility of defending against a finding of contempt without actually obtaining a stay.

In that case, Mr. Herrick never sought a stay of the trial court's order requiring him to submit to a penile plethysmograph (PPG); rather, he only sought a stay of trial. *In re Detention of Herrick*, 198 Wn. App. 1029, 2017 WL 1314217, at *2 (April 3, 2017). In other words, Mr. Herrick never asked the court of appeals to stay the specific order that he ended up being held in contempt of. In this case, though, the School District sought a stay of the trial court's specific order requiring the School District to reinstate Mr. Cronin with pay and benefits pending the outcome of his statutory hearing.

Further, imagine that the facts of *In re Detention of Herrick* were slightly different than they actually were. In a footnote, the court recognizes the challenge someone like Mr. Herrick faces when "compelled to engage in an invasive procedure and who faces contempt for failing to comply," noting that "an appeal as a matter of right after the invasive procedure could be a hollow remedy." *Id.* at *4 fn. 21. That suggests that Mr. Herrick could have sought relief under RAP 8.3 before waiting for a finding of contempt from the trial court.

Assume that Mr. Herrick had sought a stay (or an injunction) of the trial court's order requiring him to submit to a PPG, invoking RAP 8.3. If

Mr. Herrick was required to submit to a PPG while he awaited the outcome of his motion, there would be no point in him seeking a stay. Even if one was granted, his victory would be a hollow one, having already submitted to an invasive PPG. On the other hand, if Mr. Herrick pursued a stay without submitting to the PPG, he would risk a finding of contempt, making Mr. Cronin's interpretation of the rules a risky endeavor for any party aggrieved by a trial court. However, a party must have an opportunity to pursue the remedies provided for under RAP 8.1 and RAP 8.3 before being held in contempt; otherwise, those remedies are worthless.

Similarly, if the School District had reinstated Mr. Cronin and started paying him wages and benefits while awaiting the outcome of its Motion to Stay, then prevailing on that motion would have been effectively meaningless. The School District would have lost the benefit of its motion, and its only relief would have been arguing—under some unidentified legal theory—that Mr. Cronin should have to pay back the wages and benefits he was given—making it highly unlikely that the School District would ever get that money back.

Additionally, as the Trial Court initially pointed out, entering a finding of contempt while a motion to stay is pending at the court of appeals sets up the possibility of having inconsistent rulings:

If I find the District in contempt for failing to comply with this order, this order could be stayed at a later date and then we'd have a conflict between my order of contempt and the order staying the enforcement of this order, which is another problem.

...

[M]y concern is if I enter a contempt order on this that the Court of Appeals will stay that and we'll just have a whole other problem to deal with.

RP at 19:15–19; 20:13–15. However, the Trial Court didn't wait for this Court to ultimately decide whether to grant the School District a stay—even though the Trial Court's earlier rationale for holding off on finding the School District in contempt still would have applied since the School District would have been subject to inconsistent rulings had this Court granted the Motion to Modify.

Thus, there are a number of reasons why a party should not be held in contempt for seeking a stay of a trial court order under RAP 8.1 or RAP 8.3.

E. The School District is not collaterally attacking the Trial Court's underlying order.

Mr. Cronin asserts that the School District is impermissibly collaterally attacking the Trial Court's order. Respondent's Answer at 20. The School District, though, is not arguing that the Trial Court's finding of contempt was erroneous because the underlying order was erroneous (that

is the subject of another appeal). It's arguing that the Trial Court lacked the authority to enter the underlying order because the Trial Court reinstated Mr. Cronin without a hearing officer **or** the Trial Court determining that there was not sufficient cause to discharge or nonrenew him. As explained in the School District's opening brief, the Legislature has fully occupied the field of public school teacher employment and has conditioned reinstatement on a finding of insufficient cause, which was never found in this case. Appellant's Opening Brief at 9–11.

F. Mr. Cronin misunderstands the School District's argument that the Trial Court did not have the authority to reinstate Mr. Cronin.

Mr. Cronin says that the School District “argues that under RCW 28A.405.310, the statutory hearing officer, not Superior Court, is the *only one* with the exclusive authority provided by the legislature, to reinstate a teacher after a statutory hearing.” Respondent's Answer at 21. That is not what the School District is arguing. As laid out in its opening brief, the School District is arguing that based on the statutory scheme for discharging and nonrenewing teachers, there must be a finding—whether by a hearing officer or *the superior court*—that sufficient cause for discharge or nonrenewal does not exist before a teacher can be reinstated to his or her employment. Because no such finding was made by either a hearing officer or the Trial Court, the Trial Court lacked the authority to reinstate Mr.

Cronin to his employment or hold the School District in contempt for not doing so.

And because Mr. Cronin misunderstands the School District's argument, he spends several pages arguing about issues that don't exist and that can be ignored by this Court. Respondent's Answer at 22–26. For example, the School District is not arguing that the Trial Court usurped the function of the hearing officer. Respondent's Answer at 22. Nor is it arguing that the "Trial court loses jurisdiction to do anything once a statutory hearing officer is assigned or agreed by the parties to hear a matter." Respondent's Answer 23. The School District is arguing that a finding that sufficient cause does not exist—which can be made by either a hearing officer or the superior court—is a prerequisite to reinstating a teacher who has received a notice of probable cause for discharge or nonrenewal.

The School District is arguing that the Legislature set out the exclusive procedures by which a teacher who receives notice of probable cause can be reinstated to his or her employment, that those procedures require that a hearing officer or the superior court actually find that sufficient cause does not exist before reinstating the teacher, and that neither a hearing officer nor the superior court has the authority to disregard those procedures and reinstate a teacher without such a finding. RCW 28A.405.310, 28A.405.350, 28A.405.380.

Mr. Cronin, on the other hand, seems to contend that because superior courts are generally granted original jurisdiction, they have authority to ignore specific statutory procedures and do whatever they want. Respondent's Answer at 25–26. But even the superior court is bound by statutory procedure. *See Van Horn v. Highline Sch. Dist.*, 17 Wn. App. 170, 175–76 (1977) (finding that the superior court could not ignore procedural requirements set forth in the statutory scheme for discharging and nonrenewing teachers by doing something other than reinstating a teacher after finding that sufficient cause did not exist).

G. The daily penalties conditioned on not paying a judgment are not permissible.

The Trial Court's attempt to impose new contempt penalties of \$100/day for failure to pay the judgment are not permitted and must be stricken. Such penalties for failure to pay a money judgment are only allowed in matters related to marital or child support. *See In re Marriage of Curtis*, 106 Wn. App. 191, 200–02 (2001); *Matter of Marriage of Young*, 26 Wn. App. 843, 845–46 (1980). Although the Trial Court in this matter recognized that the School District could no longer comply with its original order of reinstatement, it attempted to coerce prompt payment of the damages judgment arising out of the earlier failure to adequately comply with the order: "Defendant shall have 30 days to pay the amounts owed

under this Order and Judgment. Thereafter, the Defendants shall be assessed \$100 per day until this judgment is paid in full.” CP at 290. This daily penalty is in addition to the post-judgment interest amount of 12% per annum, which would be the normal method of encouraging payment. CP at 290.

There is no legal authority for imposing a daily penalty for failure to pay a judgment for damages outside of specified family support, and this penalty must be stricken even if the order of contempt is upheld. *Curtis*, 106 Wn. App. at 200–02; *Young*, 26 Wn. App. at 845–46. In both *Curtis* and *Young*, the judgment debtors blatantly refused to pay money judgments against them, and the Court of Appeals in both instances held that orders of contempt for not paying money judgments were reversible as a matter of law unless the judgments fit the unique condition of family support as authorized by statute. *Id.*

Mr. Cronin argues that even though the Trial Court ruled that the School District could no longer comply with its order of reinstatement as a matter of law, it had the authority to coerce early payment of the damages judgment arising out of an earlier but non-continuing contempt. Respondent’s Answer at 28. Mr. Cronin does not cite to any statute, case law, or court rule that provides for daily contempt penalties for failure to pay a damages judgment. Instead, he implies that because the School

District can no longer comply with the Trial Court's earlier order reinstating Mr. Cronin, it must pay the judgment for those damages without the benefit of an appeal. Respondent's Answer at 28.

RCW 7.21.030(2) does allow for the imposition of daily fines to coerce a party into performing an act ordered by the trial court within their control, but there is nothing in the statute or case law that would allow imposition of fines to coerce payment of a money judgment for damages outside of family support beyond the award of post judgment interest. The additional daily penalty for not paying the judgment while on appeal also appears to violate the automatic stay of collections for a school district provided by RCW 4.96.050, RAP 8.1(b)(1), and 8.1(f).

Even if trial courts were allowed to impose contempt financial penalties on failure to pay money judgments, the Trial Court would had to have held a hearing and made a specific finding of contempt after non-payment of the judgment. *State v. Sims*, 1 Wn. App.2d 472, 480 (2017) ("Here, the trial court did not afford DSHS the procedures required under RCW 7.21.040(2). For his reason, the trial court was without authority to impose punitive sanctions.").

After concluding that the School District could not purge any earlier contempt, the Trial Court essentially tried to impose a self-executing finding of contempt for not paying a money judgment. Under RCW

7.21.030 and *Sims*, the Trial Court would first have had to hold a hearing and make specific findings of new contemptuous activity by the School District. But because the School District appealed the money judgment before the Trial Court's 30-day deadline passed and was protected by a statutory stay on that money judgment, there is no way the Trial Court could have found contempt—nor would Mr. Cronin suffer any further damages because he is protected by the award of post-judgment interest. CP at 294–312.

Mr. Cronin has invited this Court to turn Washington collection of judgments law on its head and allow trial courts to coerce early payments of non-familial support money judgments, undercutting any rights to appeal or the statutorily provided safe harbors for preserving favored classes of judgment debtor property like government benefits. This Court should not accept that invitation. Mr. Cronin will lose nothing since any judgment sustained by this Court is already subject to post judgment interest. Any additional judgment penalties of \$100/day must be reversed.

H. There is a bona fide dispute as to whether the School District was required to pay Mr. Cronin wages while it sought a stay.

As the School District has already argued, there is a fairly debatable issue as to whether the School District had to pay Mr. Cronin wages while it awaited the outcome of its Motion to Stay and Motion to Modify. Even

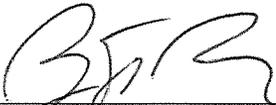
the Trial Court itself allowed the School District to not pay Mr. Cronin while the parties awaited the Court of Appeal's decision on its Motion to Stay, recognizing that requiring the School District to do so could lead to inconsistent rulings. RP at 19:15–19. Thus, although the Trial Court's original order requiring reinstatement may have been clear, it was not clear that the School District was required to pay Mr. Cronin while it awaited the outcome of its motion at the Court of Appeals—especially since paying him at that time would have undermined the purpose for seeking a stay in the first place.

II. CONCLUSION

Based on the foregoing, the School District asks this Court to reverse the Trial Court's finding of contempt, imposition of daily post-judgment penalties, and award of double damages.

Respectfully submitted June 25, 2019,

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CERTIFICATE OF SERVICE

I certify that on July 25, 2019, I served true and correct copies of the foregoing document on the following, in the method indicated:

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