

FILED
Court of Appeals
Division III
State of Washington
5/28/2019 11:06 AM
No. 36666-9-III

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

MICHAEL F. CRONIN,

Respondent,

vs.

CENTRAL VALLEY SCHOOL DISTRICT,

Appellant.

APPELLANT SCHOOL DISTRICT'S OPENING BRIEF

BREEAN L. BEGGS WSBA No. 20795
Paukert & Troppmann, PLLC
522 W. Riverside Avenue, Suite 560
Spokane, WA 99201
Tel: (509) 232-7760
Fax: (509) 232-7762
E-Mail: bbeggs@pt-law.com

PAUL E. CLAY, WSBA No. 17106
Stevens Clay, P.S.
421 W. Riverside Avenue, Suite 1575
Spokane, WA 99201
Tel: (509) 838-8330
Fax: (509) 623-2131
E-Mail: pclay@stevensclay.org
Attorneys for Appellant Central Valley
School District

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

I. ASSIGNMENT OF ERRORS1

II. STATEMENT OF THE CASE.....1

III. ARGUMENT.....5

**A. The School District Cannot Be Found In Contempt For Not
Complying With Trial Court Order While Seeking A Stay
Under RAP 8.1(b)(3) and RAP 8.3.....5**

**B. The Trial Court Did Not Have The Authority To Reinstate Mr.
Cronin.....9**

**C. The Trial Court Could Not Impose Daily Penalties On The
School District To Ensure Compliance With The February 27
Order To Pay Losses Arising Out Of The Finding Of
Contempt.....11**

D. Mr. Cronin Is Not Entitled To Double Damages.....15

IV. CONCLUSION..... 16

TABLE OF AUTHORITIES

Cases

Hill v. Garda CL Northwest, Inc., 191 Wn.2d 553 (2018)15

In re Marriage of Matthews, 70 Wn. App. 116 (1993).....8

Mead Sch. Dist. 354 v. Mead Educ. Ass’n, 85 Wn.2d 278 (1975).....9

State v. Coe, 101 Wn.2d 364 (1984).....9

Washington Federation of State Employees v. State, 99 Wn.2d 878,
(1983).....6

State v. Sims, 1 Wn. App.2d 472 (2017).....14

Statutes

RCW 4.96.050.....12

RCW 7.21.010.....5, 12

RCW 7.21.030.....*passim*

RCW 28A.405.210.....9

RCW 28A.405.300.....9

RCW 28A.405.310.....9, 10

RCW 28A.405.320.....10

RCW 28A.405.350.....10

RCW 28A.405.380.....9, 10

Other

RAP 8.1.....*passim*

RAP 8.3.....*passim*

I. ASSIGNMENT OF ERRORS

The Trial Court erred by finding the Central Valley School District (the “School District”) in contempt; awarding Mr. Cronin double damages, pre-judgment interest, post-judgment interest, and attorney’s fees; and imposing additional daily penalties on the School District. Based on the Trial Court’s errors, there are several issues for this Court to review:

1. Can a party be held in contempt for not complying with a trial court order while awaiting the outcome of a motion to stay filed under RAP 8.1(b)(3) or RAP 8.3?
2. Did the Trial Court have the authority to reinstate Mr. Cronin with pay and benefits without determining that sufficient cause did not exist for Mr. Cronin’s discharge and nonrenewal?
3. Could the Trial Court impose additional daily penalties on the School District to coerce payment of the damages award without appellate recourse?
4. Was there a bona fide dispute as to whether the School District had to pay Mr. Cronin wages and benefits while awaiting the outcome of its motion to stay that it filed under RAP 8.1(b)(3) and RAP 8.3?

II. STATEMENT OF THE CASE

On June 29, 2018, the Trial Court entered an order that required the School District to give Mr. Cronin a hearing to determine whether sufficient cause existed for his discharge and nonrenewal. As part of that order, the Trial Court directed the School District to reinstate Mr. Cronin with pay and benefits pending the outcome of his sufficient-cause hearing even though

his prior teaching contract had expired. CP at 243. On July 17, the School District filed a motion with the Trial Court to stay its June 29 order. CP at 243. On August 22, the Trial Court denied the School District's motion and entered a final judgment in favor of Mr. Cronin. CP at 243.

Because the School District believed the Trial Court had erred in granting Mr. Cronin a hearing and in reinstating him with pay and benefits, the School District filed a notice of appeal on August 28, seeking this Court's review. CP at 243. Shortly thereafter, based on RAP 8.1(b)(3) and RAP 8.3, the School District began drafting a motion to stay the portion of the June 29 order that reinstated Mr. Cronin with pay and benefits pending his statutory hearing. Thus, at that time, the School District did not restore Mr. Cronin to his employment, nor did it begin paying him wages and benefits.

Before the School District could finish drafting its motion, though, Mr. Cronin filed a motion with the Trial Court, requesting that the Trial Court find the School District in contempt for not immediately reinstating Mr. Cronin with pay and benefits. CP at 1–2. A few days later, the School District finished drafting its Motion to Stay and filed it with this Court. CP at 32–54.

Because the School District's Motion to Stay was pending before this Court, the Trial Court entered an order on September 21 reserving a

ruling on Mr. Cronin's motion for contempt until the School District's motion was resolved by this Court, recognizing that entering an order of contempt at that time could potentially lead to inconsistent rulings. CP at 69–70; RP at 19:15–19. Relying on the Trial Court's order, the School District continued to not pay Mr. Cronin wages and benefits while it awaited the final outcome of its motion.

On November 30, Court of Appeals Commissioner Monica Wasson issued a decision in which she denied the School District's Motion to Stay. CP at 110–113. After which, the School District, exercising its right under RAP 17.7, filed a motion to modify on December 28, appealing the Commissioner's decision directly to a panel of this Court. CP at 137–157. On the same day that the School District filed its Motion to Modify, Mr. Cronin filed a second motion for contempt with the Trial Court. CP at 72–74.

In between the Commissioner issuing her decision, the School District filing its Motion to Modify, and Mr. Cronin filing his second motion for contempt, Mr. Cronin's sufficient-cause hearing concluded, and the hearing officer issued a written decision finding that sufficient cause existed for Mr. Cronin's discharge and nonrenewal as of January 5, 2012, precluding Mr. Cronin from being further employed with the School District. CP 115–135.

On February 1, 2019, the Trial Court entered an order on Mr. Cronin's Motion for Contempt. CP at 241–246. In that order, the Trial Court found that the hearing officer's decision made the June 29 reinstatement order unenforceable. CP at 244. And despite that the School District's Motion to Modify was still pending before this Court, the Trial Court, nonetheless, found the School District to be in contempt for not reinstating Mr. Cronin and awarded him losses and costs that the Trial Court believed resulted from the School District's contempt, including back wages and benefits, prejudgment interest, and attorney's fees. CP at 241–246. The Trial Court also awarded Mr. Cronin double damages, concluding that the School District had willfully withheld wages from Mr. Cronin. CP at 241–246.

On February 27, the Trial Court entered an order setting the amounts the School District owed Mr. Cronin for lost wages and benefits, double damages, prejudgment interest, and attorney's fees. CP at 284–291. The Trial Court also awarded Mr. Cronin post-judgment interest and ordered that the School District would be subject to penalties of \$100 a day if it did not pay Mr. Cronin the amounts he was due under the February 27 order within 30 days of that order being entered. CP at 290.

On March 11, 2019, the School District filed its Notice of Appeal, seeking review of the superior court’s February 1 and February 27 orders. CP at 294–312.

III. ARGUMENT

A. The School District Cannot Be Found In Contempt For Not Complying With a Trial Court Order While Seeking A Stay Under RAP 8.1(b)(3) And RAP 8.3.

Contempt of court means “intentional . . . disobedience of any lawful judgment, decree, order, or process of the court.” RCW 7.21.010(1)(b). This case presents the following issue: Is a party intentionally disobeying a court order—and thus engaging in contemptuous conduct—by not complying with that order while seeking a stay with this Court under RAP 8.1(b)(3) or RAP 8.3? If a party can be held in contempt for not complying with a court order while seeking a stay under RAP 8.1(b)(3) or RAP 8.3, then the purpose behind those rules would be undermined.

Both RAP 8.1(b)(3) and RAP 8.3 allow a party to seek a stay of a trial court order while that order is being reviewed on appeal:

Except where prohibited by statute, in other civil cases, including cases involving equitable relief ordered by the trial court, the appellate court has authority, before or after acceptance of review, to stay enforcement of the trial court decision upon such terms as are just. . . . In evaluating whether to stay enforcement of such a decision, the appellate court will (i) consider whether the moving party can demonstrate that debatable issues are presented on appeal and (ii) compare the injury that would be suffered by the

moving party if a stay were not granted imposed with the injury that would be suffered by the moving party if a stay were imposed. The party seeking such relief should use the motion procedure provided in Title 17. RAP 8.1(b)(3).

Except when prohibited by statute, the appellate court has authority to issue orders, before or after acceptance of review or in an original action under Title 16 of these rules, to insure effective and equitable review, including authority to grant injunctive relief or other relief to a party. . . . A party seeking the relief provided by this rule should use the motion procedure provided in Title 17. RAP 8.3.

“The purpose of the above rule[s] is to permit appellate courts to grant preliminary relief in aid of their appellate jurisdiction so as to prevent destruction of the fruits of a successful appeal.” *Washington Federation of State Employees v. State*, 99 Wn.2d 878, 883 (1983). In other words, the purpose behind those rules is to make sure that a party does not lose the benefit of his appeal by having to comply with the trial court order from which he is appealing while on appeal. That purpose, however, is undermined if a party seeking a stay under RAP 8.1(b)(3) or RAP 8.3 can be held in contempt for not complying with the trial court order while the motion to stay is pending. If that can happen, the only sure way a party can avoid being found in contempt is to comply with the trial court’s order while awaiting the outcome of a motion to stay, defeating the very purpose of seeking a stay.

Yet, that is what the Trial Court apparently expected the School District to do here. Based on the Trial Court's finding of contempt, it expected the School District to reinstate Mr. Cronin and pay him wages while its motion to stay was pending. But if the School District had done that and its motion had been granted, then the School District would have paid Mr. Cronin wages that he was not entitled to receive during the pendency of the appeal—and may not be entitled to at all depending on whether the School District succeeds on appeal—a result that undermines the purpose of RAP 8.1(b)(3) and RAP 8.3.

Moreover, had this Court granted the School District's request for a stay, the School District would have been subject to inconsistent rulings: one from the Trial Court requiring it to comply with his order to reinstate Mr. Cronin; the other from this Court allowing the School District to refrain from reinstating Mr. Cronin or paying him any wages while the Trial Court's order was being reviewed on appeal—something the Trial Court recognized when Mr. Cronin initially moved for a finding of contempt, but later ignored in finding the School District to be in contempt. RP at 19:15–19 (“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.”)

The logical, practical, and equitable approach in these situations is to allow a party, like the School District, to refrain from complying with a trial court order while its motion to stay is pending without running the risk of being held in contempt for doing so. Otherwise, the party will be stuck between a rock and a hard place: either comply with the order to prevent being found in contempt—losing the benefit of seeking a stay—or refrain from complying with the order while seeking the stay—risking a finding of contempt.

That may be why this Court has implied that attempting to seek a stay under RAP 8.1 could be a defense to not complying with a trial court order: “Here, Mr. Matthews had a duty to do something other than ignore the trial court’s orders as contained in the dissolution decree. There are provisions for stays pending appeal. RAP 8.1. But Mr. Matthews did not attempt to secure such a stay.” *In re Marriage of Matthews*, 70 Wn. App. 116, 126 (1993). And, now, the School District asks this Court to explicitly hold that a party cannot be held in contempt for failing to comply with a trial court order while seeking a stay under either RAP 8.1(b)(3) or RAP 8.3, especially when, as in this case, money damages and interest are available to compensate the judgment debtor who successfully survives the appeal.

B. The Trial Court Did Not Have The Authority To Reinstate Mr. Cronin To His Employment.

A “contempt conviction will fall if the underlying order was not within ‘the scope of the jurisdiction of the issuing court.’” *State v. Coe*, 101 Wn.2d 364, 370 (1984) (quoting *Mead Sch. Dist. 354 v. Mead Educ. Ass’n*, 85 Wn.2d 278, 280 (1975)). A “contempt order is therefore vitiated where there is ‘an absence of jurisdiction to issue the type of order, to address the subject matter, or to bind the defendant.’” *Coe*, 101 Wn.2d at 370 (quoting *Mead Sch. Dist.*, 85 Wn.2d at 284). Here, the Trial Court’s contempt order is vitiated because he lacked the authority to order the School District to reinstate Mr. Cronin to his employment pending the outcome of his statutory hearing without first making a determination as to whether sufficient cause existed for his termination.

The Legislature has established a statutory scheme that governs discharge and nonrenewal of teachers. According to that scheme, a teacher has a right to challenge a school district’s decision to discharge or nonrenew. RCW 28A.405.210, .300. A teacher can challenge that decision in one of two ways: by requesting a hearing in front of a hearing officer, RCW 28A.405.310; or by directly appealing that decision to superior court. RCW 28A.405.380.

If a teacher requests a hearing in front of a hearing officer, a hearing is held in accordance with RCW 28A.405.310 to determine whether sufficient cause exists for the teacher's discharge or nonrenewal. If the hearing officer finds sufficient cause, the teacher may appeal that decision to superior court. RCW 28A.405.320. And if the teacher appeals to superior court and prevails, the court has the authority to reinstate the teacher. RCW 28A.405.350.

If the teacher directly appeals the school district's decision to discharge or nonrenew to superior court, the court must determine whether sufficient cause exists. RCW 28A.405.380. And if the superior court finds that sufficient cause does not exist, then it has the authority to reinstate the teacher. RCW 28A.405.350, .380.

Thus, based on the statutory scheme for discharging and nonrenewing teachers, the superior court has the authority to reinstate a teacher only after it has heard the merits of the case and determined that sufficient cause does not exist.

That did not happen here. The Trial Court never made a sufficient-cause determination before ordering the School District to reinstate Mr. Cronin to his employment. At the point when the Trial Court issued the order of reinstatement, no hearing had been held before a hearing officer. So, there was no hearing officer decision to review. And Mr. Cronin had

not appealed the School District's decision to discharge and nonrenew directly to superior court. Therefore, the Trial Court did not have the authority to reinstate Mr. Cronin to his employment pending the outcome of his statutory hearing.

And because the Trial Court did not have the authority to reinstate Mr. Cronin to his employment pending the outcome of his statutory hearing, the part of his June 29 order requiring the School District to do so is void. Consequently, the Trial Court's contempt order against the School District based on the School District's failure to follow its unauthorized order to reinstate Mr. Cronin to his employment pending the outcome of his statutory hearing cannot stand.

C. The Trial Court Could Not Impose Daily Penalties On The School District To Ensure Compliance With The February 27 Order To Pay Losses Arising Out Of The Finding Of Contempt.

In the Trial Court's order entered into on February 27, 2019, the Trial Court imposed additional daily penalties on the School District if it did not pay Mr. Cronin the amounts due as losses from prior contempt:

Under the Court's remedial powers for sanctions under RCW 7.21.030, the Court has the ability to ensure compliance with an order issued. Defendant shall pay the sums *owing under this Order and Judgment* within 30 days. If payment is not made within 30 days, then a per diem charge shall be made in the amount of \$100 per day until the judgment is paid in full.

CP at 290 (emphasis added). The Trial Court did not have authority under RCW 7.21.030 to impose new daily penalties on the School District to ensure compliance with its February 27 order awarding damages for prior losses.¹

First of all, for RCW 7.21.030 to apply, there must be a finding of contempt. RCW 7.21.030(2) (“If the court finds that the person has failed or refused to perform an act that is yet within the person’s power to perform, the court may find the person in contempt . . .”). Here, there has never been a finding that the School District is in contempt of the February 27 order for not paying Mr. Cronin the money judgment owed under that order. In fact, that money judgment has been stayed as a matter of right pursuant to RAP 8.1(b)(1) and RCW 4.96.050. Therefore, the Trial Court cannot impose remedial sanctions on the School District to coerce it to comply with the February 27 order.

Further, under RCW 7.21.030(2), a court that finds a party in contempt may impose one or more of the following remedial sanctions on that party:

- (a) Imprisonment if the contempt of court is of a type defined in RCW 7.21.010(1)(b) through (d). The imprisonment may extend only so long as it serves a coercive purpose.

¹ The Trial Court found that any prior contempt by the District ended on December 21, 2018, when the hearing officer ruled that the District had sufficient cause not to employ Mr. Cronin. CP at 244.

- (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 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.

The Trial Court's daily penalties ordered for nonpayment of a money judgment awarded under the February 27 order do not fall under any of the remedial sanctions described above.

Obviously, the daily penalties are not imprisonment so RCW 7.21.030(2)(a) does not apply.

Since the Trial Court found that the order the School District was in contempt of—the June 29 order—is no longer enforceable as of December 21, 2018, the School District's contempt under that order cannot continue.² CP at 244 (“The Memorandum decision by the Hearing Officer now makes it impossible for Plaintiff to be reinstated so the Court is unable to enforce its Order because time has run out.”). Therefore, the daily penalties imposed by the Trial Court are not a forfeiture for each day the previous contempt of court continues as contemplated under RCW 7.21.030(2)(b).

² While the February 27 order of contempt assessed damages for prior contempt under the authority of RCW 7.21.030(3), it did not purport to remedy ongoing contempt after February 27.

The daily penalties also are not an order “designed to ensure compliance with a *prior* order of the court” as allowed for under RCW 7.21.030(2)(c). (Emphasis added.) The penalties are expressly designed to ensure compliance with the February 27 order and money judgment for payment of losses, not a prior court order. In fact, they couldn’t be designed to ensure compliance with the June 29 order since, as just mentioned, that order is unenforceable and, thus, cannot be complied with.

Finally, the daily penalties are not remedial sanctions under RCW 7.21.030(2)(d) because the Trial Court never expressly found that the remedial sanctions described in RCW 7.21.030(2)(a)–(c) would be ineffectual. Furthermore, there is no remedial sanction that could terminate a continuing contempt of court here—since there is no continuing contempt to terminate.

Ultimately, the Trial Court has attempted to use the daily penalties as a remedial sanction for future disobedience of the February 27 order and judgment awarding money damages—without actually making a finding of contempt. A court, though, can impose remedial sanctions to coerce compliance with a valid court order only after the court has found the party to be in contempt. *See State v. Sims*, 1 Wn. App.2d 472, 479–480 (2017) (discussing the difference between punitive and remedial sanctions), *aff’d in part, rev’d in part State v. Sims*, 193 Wn.2d 86 (2019).

Therefore, the Trial Court had no authority to hold the School District in contempt for not paying a money judgment within thirty days without a new finding of contempt and without complying with the statutory basis for contempt awards of money. Therefore, the proposed daily penalties of \$100 a day imposed by the February 27 order are impermissible as a matter of law.

D. Mr. Cronin Is Not Entitled To Double Damages.

The Trial Court erred in awarding Mr. Cronin double damages. Double damages are not warranted if a bona fide dispute existed as to whether Mr. Cronin was owed wages. A bona fide dispute exists if the School District genuinely believed that Mr. Cronin was not entitled to the wages disputed and if the dispute is fairly debatable. *Hill v. Garda CL Northwest, Inc.*, 191 Wn.2d 553, 561–62 (2018). A bona fide dispute exists here.

The School District genuinely believed that Mr. Cronin was not entitled to be reinstated with pay and benefits while the School District sought a stay from this Court. The School District genuinely believed that it could follow the procedures provided for in the law without the risk of being held in contempt or being found liable under RCW 49.52.050. And as shown above, the School District's position is fairly debatable. Once again, why would the School District have had to reinstate Mr. Cronin with

pay and benefits while it was seeking a stay of the order that required the School District to do so? If it would have had to do that, there would have been no point in seeking the stay, vitiating the reason for having RAP 8.1(b)(3) and RAP 8.3.

Furthermore, the School District reasonably relied on the Trial Court's September 21 order, where he reserved his ruling on Mr. Cronin's motion for contempt until after the School District's motion to stay was finally decided by a panel of this Court, in continuing not to reinstate Mr. Cronin with pay while it awaited the outcome of its Motion to Stay. The School District should not have to pay double damages after the Trial Court essentially allowed the School District to not pay Mr. Cronin his wages while its Motion to Stay was pending.

IV. CONCLUSION

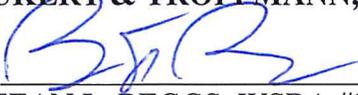
If the School District can be held in contempt for not complying with the June 29 order while seeking a stay of that order under RAP 8.1(b)(3) and RAP 8.3, then the point of those rules is negated. There is no reason to seek a stay if a party must comply with the order it is seeking a stay of. Additionally, the Trial Court lacked the authority to reinstate Mr. Cronin without having first made a sufficient-cause determination. Therefore, the Trial Court erred in finding the School District in contempt and had no jurisdiction to enforce the order using contempt procedures. And

the School District respectfully asks this Court to reverse the Trial Court's February 1 and February 29 orders, including the award of double damages, prejudgment interest, reasonable attorney's fees, post-judgment interest, and daily penalties.

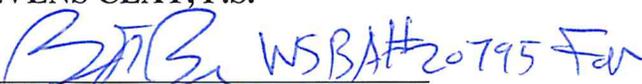
Even if this Court finds the School District was in contempt, the School District respectfully asks this Court to reverse the Trial Court's award of double damages and daily penalties. The School District's failure to reinstate Mr. Cronin with pay and benefits pending the outcome of his sufficient-cause hearing was the result of a bona fide dispute as to whether the School District was required to comply with the June 29 order while it sought a stay. And the imposition of daily penalties is an impermissible attempt by the Trial Court to coerce the School District into paying the damages portion of the February 27 order prior to fully exercising its appellate rights and without an additional finding of contempt required under RCW 7.21.030.

Respectfully submitted May 28, 2019.

PAUKERT & TROPFMANN, PLLC

By: 
BREEAN L. BEGGS, WSBA #20795

STEVENS CLAY, P.S.

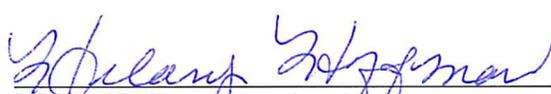
By:  WSBA#20795 For
PAUL E. CLAY, WSBA #17106

Attorneys for Appellant Central Valley School District

CERTIFICATE OF SERVICE

I certify that on May 28, 2019, I served true and correct copies of the foregoing document on the following, in the method indicated:

Larry Kuznetz Powell, Kuznetz & Parker 316 W. Boone Ave. Rock Pointe Tower, Suite 380 Spokane, WA 99201-2346	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> By Legal Messenger <input type="checkbox"/> Fax <input checked="" type="checkbox"/> Email: larry@pkp-law.com sarah@pkp-law.com (Electronic service via Washington State Appellate Courts' Portal E-filing system)
--	---


Hilary Hoffman, Paralegal

PAUKERT & TROPPMANN, PLLC

May 28, 2019 - 11:06 AM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36666-9
Appellate Court Case Title: Michael F. Cronin v. Central Valley School District
Superior Court Case Number: 12-2-01155-3

The following documents have been uploaded:

- 366669_Briefs_20190528110409D3828764_7626.pdf
This File Contains:
Briefs - Appellants/Cross Respondents
The Original File Name was Appellants Opening Brief 366669.pdf

A copy of the uploaded files will be sent to:

- assistant@pt-law.com
- hhoffman@pt-law.com
- jdalley@stevensclay.org
- larry@pkp-law.com
- pclay@stevensclay.org
- sarah@pkp-law.com

Comments:

Sender Name: Breean Beggs - Email: bbeggs@pt-law.com
Address:
522 W RIVERSIDE AVE STE 560
SPOKANE, WA, 99201-0519
Phone: 509-232-7760

Note: The Filing Id is 20190528110409D3828764