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SUPREME COURT
STATE OF WASHINGTON
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NO. 97277-0

SUPREME COURT OF THE STATE OF WASHINGTON

RICHARD KING and RICHARD JACKSON, individually and
representing a class of similarly situated individuals,

Plaintiffs,

DEREK GRONQUIST,

Respondent,

v.

CHASE RIVELAND, and JANET BARBOUR in there official capacities;
the DEPARTMENT OF CORRECTIONS OF THE STATE OF
WASHINGTON; the INDETERMINATE SENTNECE REVIEW
BOARD, and KEN EIKENBERRY in his official capacity as Attorney
General of the State of Washington,

Defendants,

KING COUNTY PROSECUTOR DANIEL T. SATTERBERG,

Petitioner.

DEPARTMENT OF CORRECTIONS' SUPPLEMENTAL BRIEF

ROBERT W. FERGUSON
Attorney General

HALEY BEACH
WSBA #44731
Assistant Attorney General
Corrections Division
P.O. Box 40116, Olympia, WA 98504
(360) 586-1445

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I. INTRODUCTION

Gronquist moved for civil contempt, alleging the Department of Corrections (DOC) and the King County Prosecutor (KCP) violated a 1993 injunction that had limited the treatment records DOC could provide to the prosecutor. Gronquist sought only remedial sanctions—intended to compel compliance with the 1993 injunction—under RCW 7.21.030(2), plus costs and attorney’s fees. Gronquist did not allege separate losses or damages.

The superior court never made a finding of contempt. Instead, at the request of the prosecutor, the court vacated the 1993 injunction as to Gronquist because state law now requires DOC to provide the prosecutor with all relevant records concerning Gronquist. Since the injunction no longer existed, the superior court dismissed the matter as moot.

The superior court did not err. The type of remedial sanctions sought by Gronquist serve to compel compliance with an existing injunction after a finding of contempt. The judge never found contempt and importantly, given that the injunction no longer existed, any remedial sanctions aimed at obtaining compliance with the injunction are no longer available. The fact that Gronquist sought costs and attorney’s fees as a potential prevailing party does not defeat mootness because the court must premise any award of costs and fees upon a finding of contempt and the imposition of a remedial sanction. Because that can no longer occur, the matter is moot.

II. STATEMENT OF THE CASE

In 1993, a class of inmates obtained a permanent injunction prohibiting DOC from releasing certain records from the Sex Offender Treatment Program (SOTP) outside the confines of the SOTP. This Court affirmed the grant of the 1993 injunction in *King v. Riveland*, 125 Wn.2d 500, 886 P.2d 160 (1994). Derek Gronquist, as a participant in the SOTP, was a member of the class protected by the 1993 injunction.

In September 2014, Gronquist filed a motion for civil contempt in the *King* matter, alleging that DOC had violated the 1993 injunction by providing his SOTP records to KCP. CP 5, 31-33. Gronquist sought remedial sanctions under RCW 7.21.030. CP 5, 28-33. He did not allege or seek losses or damages from the alleged contempt. In response, DOC contended that it did not violate the 1993 injunction because DOC had provided to KCP only records allowed under the injunction.

After intervening in the matter, KCP moved to vacate the 1993 injunction as to Gronquist. CP 79-100. DOC joined in KCP's motion, arguing that the motion, "if granted, is dispositive of Gronquist's motion for contempt against both DOC and the King County Prosecutor." CP 101-107. On January 14, 2016, the superior court granted KCP's motion and vacated the 1993 injunction as to Gronquist. CP 592-597.

On June 30, 2016, DOC moved the superior court to dismiss the action as moot, arguing that the remedial sanctions sought by Gronquist were no longer available to him once the court had vacated the 1993 injunction as to Gronquist. CP 598-604. KCP joined in DOC's motion, and the superior court granted the motion and dismissed the matter as moot on August 5, 2016. CP 707-713, 722-723. Gronquist filed a timely appeal on August 31, 2016. CP 724-725. The superior court never entered a finding that DOC or KCP was in contempt of the 1993 injunction.

The Court of Appeals reversed the superior court's order of dismissal. The court determined the matter was not moot because the superior court "could have awarded Gronquist compensation for any losses, costs, and attorney's fees" as a result of any past "contemptuous acts." *Gronquist v. Dep't of Corr.*, No. 49392-6-II, 2019 WL 949430, at *1 (Wash. Ct. App. Feb. 26, 2019), *as amended* (Apr. 30, 2019), *review granted sub nom. Gronquist v. Satterburg*, 193 Wn. 2d 1037, 449 P.3d 663 (2019). The court acknowledged that to obtain relief, "Gronquist must show that the trial court had some remedial sanction available," and that a remedial sanction under RCW 7.21.010(3) is "a sanction imposed for the purpose of 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." *Gronquist*, 2019 WL 949430, at *3. But relying on *In re of Rapid Settlements, Ltd's*,

189 Wn. App. 584, 601, 359 P.3d 823 (2015), the court held that Gronquist’s civil contempt action was not moot because “a court may find a person in contempt whether or not it is possible to coerce future compliance.” *Id.* The court further noted that a superior court may order a party “found in contempt” to pay for losses, costs, and attorney’s fees under RCW 7.21.030(3). *Id.* The court concluded by stating that, “[i]f Gronquist can prove DOC and KCP are in contempt, then he can recover losses that he proves resulted from the disclosure of his SOTP file.” *Id.* at *4. The Court of Appeals remanded for the superior court “to rule on the contempt motion.” *Id.* at *5. This Court granted KCP’s petition for review.

III. ISSUE PRESENTED

Whether a motion for civil contempt under RCW 7.21.030 is moot where the movant seeks only remedial sanctions plus costs and attorney’s fees, and not losses or damages, and the remedial sanctions are no longer available because the allegedly violated injunction no longer exists.

IV. STANDARD OF REVIEW

The Court reviews a superior court’s decision on a motion for contempt for an abuse of discretion. *In re Marriage of Williams*, 156 Wn. App. 22, 27, 232 P.3d 573 (2010). ““An abuse of discretion is present only if there is a clear showing that the exercise of discretion was manifestly unreasonable, based on untenable grounds, or based on untenable reasons.””

Matter of Det. of Faga, 8 Wn. App. 896, 900, 437 P.3d 741 (2019) (quoting *Moreman v. Butcher*, 126 Wn.2d 36, 40, 891 P.2d 725 (1995)). The Court reviews questions of statutory interpretation de novo. *Spokane Cty. v. Dep't of Fish & Wildlife*, 192 Wn.2d 453, 457, 430 P.3d 655 (2018). Mootness is a question of law, which this Court also reviews de novo. *See Darkenwald v. State, Employment Sec. Dep't*, 183 Wn.2d 237, 244, 350 P.3d 647 (2015).

V. ARGUMENT

A. **The Civil Contempt Motion Is Moot Because the Superior Court May No Longer Grant Remedial Sanctions to Compel Compliance with an Injunction that No Longer Exists**

Gronquist filed a motion for civil contempt under RCW 7.21.030 seeking remedial sanctions plus costs and attorney's fees. CP 5, 28-32. The motion did not allege or seek losses or damages. CP 28-29. The motion became moot once the injunction ceased to exist and the sought after remedial sanctions were no longer available.

Civil contempt is "a proceeding to impose a remedial sanction. . . ." RCW 7.21.030(1). A remedial sanction is "a sanction imposed for the purpose of 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). The superior court may impose a remedial sanction if the judge first finds the person in contempt for failing or refusing "to perform an act that is yet within the person's power to perform. . . ."

RCW 7.21.030(2). After finding the person in contempt, the judge may impose imprisonment, a fine, or any other remedial sanction designed to ensure the person's compliance with the prior order of the superior court. RCW 7.21.030(2). The purpose of the remedial sanctions is to compel compliance with the prior court order. RCW 7.21.030(2).

For example, a judge may confine a person for contempt in order to compel compliance with a prior court order, but “[t]he imprisonment may extend only so long as it serves a coercive purpose.” RCW 7.21.030(2)(a). Similarly, the judge may fine the person for contempt, but only “for each day the contempt of court continues.” RCW 7.21.030(2)(b). The judge may also impose any other remedial sanction if imprisonment or a fine “would be ineffectual to terminate a continuing contempt of court.” RCW 7.21.030(2)(d). But the key in each of these remedial sanctions is that the sanction will serve to eliminate ongoing contempt, and will bring about compliance with the existing court order. The statute does not allow the court to impose such remedial sanctions once the need for such sanctions has expired. RCW 7.21.030. The judge may not continue imprisoning a person found in contempt if imprisonment no longer “serves a coercive purpose.” RCW 7.21.030(2)(a). Similarly, the judge may not impose a fine for days the person is no longer in contempt. RCW 7.21.030(2)(b). The

judge also may not impose other remedial sanctions if they do not have similarly coercive effect. RCW 7.21.030(2)(d).

Thus, two factors must exist for a court to impose remedial sanctions under RCW 7.21.030. First, the court must find the person in contempt. Second, the sanction must serve the purpose of obtaining compliance with the allegedly violated prior court order (in this case, the 1993 injunction). Neither factor is present in this case.

First, the superior court never found DOC or KCP in contempt. The superior court never determined that DOC released records in violation of the 1993 injunction. Rather, the superior court vacated the 1993 injunction as to Gronquist because RCW 71.09.025 requires DOC to provide to KCP Gronquist's complete institutional record, including all SOTP records. DOC and KCP cannot be in contempt when state law now requires the production of all of Gronquist's records. In fact, Gronquist agreed that after the superior court vacated the injunction as to him, there was no legal basis for DOC not to provide KCP the records, which it subsequently did. CP 692-93.

Second, since the 1993 injunction no longer exists as to Gronquist, the remedial sanctions can no longer serve the remedial purpose of compelling compliance with the 1993 injunction. The judge cannot imprison, fine, or otherwise remedially sanction DOC and KCP because the

imprisonment, fine, or other sanction would not serve the purpose of compelling compliance with the non-existent injunction. RCW 7.21.030(2).

Simply put, Gronquist's contempt action fails both statutory prerequisites. The superior court did not previously find DOC or KCP in contempt, and the court cannot now find DOC and KCP in contempt where the court vacated the 1993 injunction and state law requires DOC to provide the records to KCP. A contempt finding is no longer possible in this case. In addition, the remedial sanctions Gronquist sought will not serve the purpose of compelling compliance with the court order since the injunction no longer exists and state law requires DOC to provide the records to KCP. The superior court correctly determined that the civil contempt proceedings were moot because Gronquist cannot obtain his requested relief.

B. The Court of Appeals Misinterprets RCW 7.21.030 By Concluding the Case Is Not Moot Simply Because A Prevailing Party May Recover Costs and Fees Under RCW 7.21.030(3)

Relying on *Rapid Settlements*, 189 Wn. App. at 601, the Court of Appeals below determined that Gronquist's civil contempt action was not moot because "a court may find a person in contempt whether or not it is possible to coerce future compliance." *Gronquist*, 2019 WL 949430, at *3. (citing *id.*).¹ The Court of Appeals erred for at least two reasons: its

¹ *Rapid Settlements* cited no authority for this proposition other than RCW 7.21.010(1)(b) and *State ex rel. Chard v. Androw*, 171 Wash. 178, 17 P.2d 874 (1933).

interpretation of RCW 7.21.030(3) is inconsistent with the plain language of the statute, and *Rapid Settlements* is factually distinguishable.

First, the Court of Appeals erroneously interpreted the statute by concluding that Gronquist's requests for costs and attorney's fees as a prevailing party were the "losses" contemplated by RCW 7.21.030(3). The statute authorizes the superior court to "order a person found in contempt of court to pay a party for any losses suffered by the party as a result of the contempt and any costs incurred in relation to the contempt proceeding, including reasonable attorney's fees." RCW 7.21.030(3). While the Court of Appeals read "costs" and "attorney's fees" as being the same as "losses," the statute shows that "losses" differ from "costs" and "attorney's fees."

The "losses" in the statute are losses suffered by the moving party because of the contemptuous actions of the responding party. For example, if Gronquist had alleged that DOC continued to act in contempt, and that contempt caused him economic damages, then he would have alleged "losses suffered by the party as a result of the contempt." RCW 7.21.030(3). In such case, the court could find DOC in contempt and order it to pay for his demonstrated "losses." But Gronquist has never alleged any losses in this action. "Losses" under RCW 7.21.030(3) do not exist in this case.

Conversely, the "costs" and "attorney's fees" in the statute are the type of costs and fees awarded to a prevailing party. Absent express

statutory authority or a controlling contract provision, Washington law does not allow a court to tax actual attorney's fees of a party as costs in a civil case. *See, e.g., Pennsylvania Life Ins. Co. v. Employment Sec. Dep't*, 97 Wn.2d 412, 413, 645 P.2d 693 (1982) ("Attorney fees may be recovered only when authorized by a private agreement of the parties, a statute, or a recognized ground of equity."); *In re PRP of White*, 25 Wn. App. 911, 913, 612 P.2d 10 (1980) (petitioner not entitled to actual attorney fees in personal restraint petition). Here, the provision in RCW 7.21.030(3) on "costs" and "attorney's fees" is statutory authorization for the superior court to award attorney's fees if the movant is the prevailing party.² Contrary to the Court of Appeals' conclusion, the statutory provision for "costs" and "attorney's fees" is not an example of the type of "losses" recoverable as damages.

Second, *Rapid Settlements* is factually distinguishable from Gronquist's case because the superior court in *Rapid Settlements* found the party in contempt, imposed a remedial sanction, and awarded losses, costs, and attorney's fees in addition to the remedial sanction. Here, Gronquist sought only remedial sanctions and not losses, the superior court did not find any party in contempt, and the court cannot impose remedial sanctions.

² Such award is discretionary. *Holiday v. City of Moses Lake*, 157 Wn. App. 347, 236 P.3d 981 (2010).

In *Rapid Settlements*, a company called Symetra obtained an antisuit temporary restraining order (TRO) against a company referred to as 3B. The TRO enjoined 3B from challenging Symetra's Washington order against 3B in Texas courts. After the entry of the TRO and prior to the hearing on the permanent injunction, 3B proceeded in its Texas court matter. Symetra then moved for an order of contempt. *Rapid Settlements*, 189 Wn. App. at 594. The superior court found 3B and its lawyer in contempt for proceeding in the Texas court action, including failing to strike its motions and appearing in the Texas court. *Id.* at 596. The superior court ordered 3B to pay Symetra's costs and attorney's fees related to the motion for contempt and the Texas proceeding from the date of the TRO until the date of the contempt order, and ordered its attorney to pay a one-day forfeiture of \$1,000. *Id.* at 596-97. The contempt order included a purge clause that required 3B to strike all pending motions in the Texas action and agree not to file any motions or take any other actions in the Texas case while the superior court restrained it from doing so. *Id.* at 597.

In short, the superior court awarded losses, costs, and fees in *Rapid Settlements* because the court had found the responding party, 3B, in contempt and the court imposed remedial sanctions under the statute. These circumstances cannot occur in Gronquist's case.

The award of “losses” under RCW 7.21.030(3) is conditional upon a party being “found in contempt of court.” The finding under this statute cannot be for past actions; rather, the statute dictates that contempt under RCW 7.21.030 is the failure or refusal “to perform an act that is yet within the person’s power to perform.” RCW 7.21.030(2). “If the contempt sanction punishes a person for past violations that are no longer continuing, it is punitive and therefore is a criminal contempt which must be initiated by criminal information filed by the State.” *In re Interest of Rebecca K.*, 101 Wn. App. 309, 317, 2 P.3d 501 (2000).

Other than the statutes themselves, *Rapid Settlements* cited only *State ex rel. Chard*, 171 Wash. 178, 17 P.2d 874 (1933) for the proposition that a contemnor can be made to pay a party’s losses even when he cannot be coerced to comply with the underlying contract on which the contempt proceeding is based. This citation is unavailing for three reasons—first, the order to pay losses in *Chard* was premised on a finding of contempt; second, it was interpreting a previous contempt statute in 1933 and not RCW 7.21.030; and third, the case also included an interest calculation in the losses award, which is incompatible with the current civil contempt statute. *State v. Sims*, 193 Wn.2d 86, 93, 441 P.3d 262 (2019). The citation to *Chard* is unavailing; it cannot overcome the plain language of RCW 7.21.030 and current jurisprudence.

“[T]he purpose of RCW 7.21.030 is clearly to compel compliance” and “[t]he remedial sanctions the statute expressly authorizes provide the parameters for such coercion.” *Sims*, 193 Wn.2d at 95. In determining the meaning of RCW 7.21.030(3), the Court must look to “the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.” *State v. Ervin*, 169 Wn.2d 815, 820, 239 P.3d 354 (2010) (citing *Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002)). This Court cannot add language to the statute. *Sims*, 193 Wn.2d at 95. Nor can it ignore words in the statute. *Rivard v. State*, 168 Wn.2d 775, 783, 231 P.3d 186 (2010). Both RCW 7.21.030(2) and (3) are premised on a finding of present contempt, and the award of “losses” under RCW 7.21.030(3) is something a court may impose “in addition to” a remedial sanction under RCW 7.21.030(2).

In *Sims*, unlike the court below, the Court of Appeals, Division III held that “[o]nly monetary sanctions that accrue from the date of the contempt finding are remedial, because only to this extent is the act that the court seeks to coerce within the person’s power to perform.” *State v. Sims*, 1 Wn. App. 2d 472, 476, 406 P.3d 649 (2017), *aff’d in part, rev’d in part*, 193 Wn.2d 86, 441 P.3d 262 (2019). Division III reasoned that sanctions for past contempt that the party could not purge were punitive rather than remedial, and thus could not be imposed in a civil contempt proceeding. *Id.*

at 480. This part of the ruling was not before this Court on review, *see Sims*, 193 Wn.2d at 93, n.7, and is thus undisturbed and still authoritative law. Division III cited *Rapid Settlements* for the proposition that a remedial sanction must contain a purge clause to maintain its coercive character and avoid being punitive. *Sims*, 1 Wn. App. 2d at 479 (citing *Rapid Settlements*, 189 Wn. App. at 613). Accordingly, it seems that even Division III did not find *Rapid Settlements* to hold that a court could impose sanctions for past conduct in a civil contempt proceeding under RCW 7.21.030.

Division III's interpretation of RCW 7.21.030 in *Sims* in light of *Rapid Settlements* make sense given the plain language of RCW 7.21.030 and the facts of that case. In *Rapid Settlements*, the superior court entered a contempt finding that 3B and its attorney continued to pursue the action in Texas. *Rapid Settlements*, 189 Wn. App. at 600. It also listed 3B's failure to strike pending motions and the attorney's appearance at two hearings as contemptuous. Although Division III relied on these findings for its analysis regarding the availability of relief under RCW 7.21.030(3), the contempt motion was brought in the context of the wider contemptuous conduct of 3B continuing its Texas action generally, and the cessation of that general ongoing contempt is what the superior court included as the purge clause in its contempt order. The court also ordered a remedial sanction under RCW 7.21.030(2)(b). Although it limited the imposition to one day, it was still a

“remedial sanction” under RCW 7.21.030(2). “Because the order describes the forfeiture as ‘pursuant to RCW 7.21.030([2])(b),’ we construe the one-day purge period as incorporated by reference.” *Rapid Settlements*, 189 Wn. App at 614, n.11. Moreover, the losses, costs, and attorney’s fees awarded were in relation to demonstrated costs that Symetra incurred as a result of specific instances of the ongoing contempt, and they were awarded only “in addition to” a “remedial sanction” under RCW 7.21.030(2)(b).

Here, the facts are much different. The superior court will never be able to find that DOC or KCP are presently in contempt of the 1993 injunction. There will never be a remedial sanction imposed because compliance with a vacated order is not within DOC’s or KCP’s power to perform. Because the superior court will never be able to find DOC or KCP in contempt, it will never be able to determine that Gronquist suffered any losses “as a result of the contempt.” And, again, there would be no remedial sanction “in addition to” which losses, costs, and attorney’s fees, could be awarded. The Court of Appeals’ reliance on *Rapid Settlements* caused it to misinterpret RCW 7.21.030 and is misplaced because *Rapid Settlements* is a factually dissimilar case that cannot extend to the situation here.

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C. A Court May Find a Party in Civil Contempt Only for Failing or Refusing To Perform an Act That Is Yet Within the Party's Power to Perform

It is not within DOC's power to comply with a court order that no longer exists and which was contrary to current state law. "Contempt of court is intentional disobedience of any lawful order of the court." *State v. Breazeale*, 144 Wn.2d 829, 842, 31 P.3d 1155, 1161 (2001) (citing RCW 7.21.010(1)(b)); see *King v. Dep't of Soc. & Health Servs.*, 110 Wn.2d 793, 797, 756 P.2d 1303 (1988)). Given that the 1993 injunction was vacated as to Gronquist, there is no lawful court order in place with which DOC could be found to be disobeying or with which DOC could presently comply.

Although DOC has always believed that it complied with the terms of the permanent injunction as to Gronquist, he claimed that DOC was in contempt of court under RCW 7.21.030. The relief Gronquist sought was DOC's compliance with the 1993 injunction order, including an account of any "breaches," his release from prison to community supervision (which Gronquist apparently believed was delayed in relation to his SOTP records), the destruction of any improperly disclosed SOTP records with a daily forfeiture of \$500 under RCW 7.21.030(2)(b), and an inadmissibility determination as to certain SOTP records in Gronquist's sexually violent predator civil commitment trial. CP 28-29. In addition to these remedial sanctions, he sought "an award of attorney's fees and costs under RCW

7.21.030(3) for bringing this contempt motion.” CP 29. But the trial court vacated the permanent injunction as to Gronquist on January 14, 2016, in recognition that RCW 71.09.025 required DOC to provide Gronquist’s entire institutional file and SOTP records to KCP, which DOC did. There currently is no order with which DOC could be coerced to comply, and no possible remedial sanction under RCW 7.21.030(2).

For these reasons, under RCW 7.21.030, it is not possible for the superior court to make a finding of contempt, there is no “remedial sanction” available, and this case is moot. In a civil contempt action, “a threshold requirement is a finding of current ability to perform the act previously ordered.” *Britannia Holdings Ltd. v. Greer*, 127 Wn. App. 926, 933-34, 113 P.3d 1041 (2005). A party “cannot be held in contempt for refusal to comply with an order which the trial court had rescinded.” *State v. Breazeale*, 144 Wn.2d 829, 844, 31 P.3d 1155, 1162 (2001). Here, it is undisputed that DOC cannot “perform the act previously ordered” and “cannot be held in contempt for [it]” because the previous order does not exist and is contrary to current law.

The threshold finding of a civil contempt action is no longer possible, so the action is moot and the trial court properly dismissed it. A claim is moot and should be dismissed when a “court can no longer provide an effective remedy.” *Hart v. Dep’t of Soc. & Health Servs.*, 111 Wn.2d

445, 447, 759 P.2d 1206 (1988). The remedy in civil contempt is to “compel compliance with an order . . . requiring performance of some act by the contemnor.” *Marriage of Didier*, 134 Wn. App. 490, 501, 140 P.3d 607 (2006). Since the injunction no longer exists, this remedy no longer exists.

D. Even if Gronquist’s Civil Contempt Motion Were Not Moot, He is Not Entitled to Any Award of Losses Under RCW 7.21.030(3)

First, Gronquist cannot obtain an award for losses because the superior court has not found DOC or KCP in contempt. A party is entitled to recoup “losses” from a person under RCW 7.21.030(3) only if the person is “found in contempt.” Even if the Court does not deem this action moot, this is still a threshold requirement for an award under RCW 7.21.030(3) that Gronquist cannot meet. Because he will never be able to show that DOC or KCP *are in* contempt, he will never be entitled to relief under RCW 7.21.030(3). And any sanction for only past contempt would be punitive and beyond the scope of civil contempt. *See* RCW 7.21.010(2), .040.

Second, Gronquist cannot obtain an award for “losses” because he never alleged or sought “losses” in the superior court. Throughout this civil contempt proceeding, the only relief Gronquist has ever requested has been limited to remedial sanctions and recovery of costs and attorney’s fees for filing the contempt motion. Gronquist never alleged DOC’s alleged

contemptuous action caused him any economic damage, and he never alleged or sought to recover for such losses.

In the superior court, Gronquist sought an account of any “breaches,” his release from prison to community supervision, the destruction of any improperly disclosed SOTP records with the remedial sanction of a daily forfeiture of \$500 under RCW 7.21.030(2)(b), and an inadmissibility determination as to certain records in Gronquist’s sexually violent predator civil proceeding. CP 28-29. Gronquist also sought costs and reasonable attorney’s fees under RCW 7.21.030(3). CP 29. Similarly, in the Court of Appeals, Gronquist argued that the superior court could have ordered DOC to comply with the injunction even though the injunction had been vacated, that the court could have ordered costs and attorney’s fees, that the court could have requested initiation of criminal contempt proceedings against DOC or KCP, and that the court had the inherent authority to fashion a remedy for the allegedly contemptuous behavior.

Despite always including a comprehensive list of the relief he has sought, Gronquist has never alleged any economic or other “losses” resulting from DOC’s alleged contemptuous acts. Even if Gronquist could be awarded losses under RCW 7.21.030(3), the extent of his “losses” would be limited to what he claimed below and to any losses he actually incurred. This principle is well settled. *See, e.g., United States v United Mine*

Workers, 330 U.S. 258, 303-04, 67 S. Ct. 677, 91 L. Ed. 884 (1947) (compensatory fines “must of course be based upon evidence of complainant’s actual loss, and his right . . . to the compensatory fine is dependent upon the outcome of the basic controversy”). As such, even if a civil contempt action could continue for a determination of “losses” under RCW 7.21.030(3) in the absence of a remedial sanction under RCW 7.21.030(2), this action should not because Gronquist did not claim losses.

Finally, Gronquist is not entitled to costs and attorney’s fees because he is not the prevailing party. There is no relief that this Court or any other can provide him. The Court should reverse the Court of Appeals’ decision.

VI. CONCLUSION

The Court of Appeals erred in reversing the superior court order that dismissed this action as moot. The DOC respectfully requests that this Court reverse the Court of Appeals’ decision and reinstate the superior court order dismissing Gronquist’s civil contempt action as moot.

RESPECTFULLY SUBMITTED this 22nd day of November, 2019.

ROBERT W. FERGUSON
Attorney General

s/ Haley Beach

HALEY BEACH, WSBA #44731
Assistant Attorney General
Corrections Division OID #91025
P.O. Box 40116, Olympia, WA 98504-0116
(360) 586-1445, Haley.Beach@atg.wa.gov

CERTIFICATE OF SERVICE

I hereby certify that on the date below, I caused to be electronically filed the DEPARTMENT OF CORRECTIONS' SUPPLEMENTAL BRIEF with the Clerk of the Court using the electronic filing system which will send notification of such filing to the following electronic filing system participant:

DAVID J. HACKETT	david.hackett@kingcounty.gov
TIFFANY CARTWRIGHT	tiffanyc@mhb.com
JESSE ANDREW WING	jessew@mhb.com

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

EXECUTED this 22nd day of November, 2019, at Olympia, Washington.

s/ Cherrie Melby
CHERRIE MELBY
Legal Assistant 4
Corrections Division OID #91025
PO Box 40116
Olympia WA 98504-0116
(360) 586-1445
Cherrie.Melby@atg.wa.gov

CORRECTIONS DIVISION ATTORNEY GENERAL'S OFFICE

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