THE SUPREME COURT OF WASHINGTON

MATHEW & STEPHANIE McCLEARY, et al.,	)	**ORDER**
Respondents/Cross-Appellants,	)	Supreme Court No. 84362-7
v.	)	
STATE OF WASHINGTON,	)	King County No. 07-2-02323-2 SEA
Appellant/Cross-Respondent.	)	

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Washington State Supreme Court
SEP 11 2014
Ronald R. Carpenter
Clerk

In *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012), this court unanimously affirmed a declaratory judgment of the King County Superior Court finding that the State is not meeting its "paramount duty . . . to make ample provision for the education of all children residing within its borders." WASH. CONST. art. IX, § 1. The court initially deferred to the legislature's chosen means of discharging its constitutional duty, but retained jurisdiction over the case to monitor the State's progress in implementing by 2018 the reforms that the legislature had recently adopted. Pursuant to its retention of jurisdiction, the court has called for periodic reports from the State on its progress. Following the State's first report in 2012, the court issued an order directing the State to lay out its plan "in sufficient detail to allow progress to be measured according to periodic benchmarks between now and 2018," noting it must indicate the "phase-in plan for achieving the State's mandate to fully fund basic education and demonstrate that its budget meets its plan." Order, *McCleary v. State*, No. 84362-7, at 2-3 (Wash. Dec 20, 2012).

Following the 2013 legislative session, the Joint Select Committee on Article IX Litigation (Committee) issued the second of these reports, on the basis of which the court found

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(as it had after the Committee's first report) that the State was not making sufficient progress to be on target to fully fund education reforms by the 2017-18 school year. Reiterating that the State had to show through immediate and concrete action that it was making real and measurable progress, the court issued an order on January 9, 2014, directing the State to submit by April 30, 2014, "a complete plan for fully implementing its program of basic education for each school year between now and the 2017-18 school year," including "a phase-in schedule for fully funding each of the components of basic education." Order, *McCleary v. State*, No. 84362-7, at 8 (Wash. Jan. 9, 2014).

After the 2014 legislative session, the Committee issued its report to the court. In it, the Committee admitted that "[t]he Legislature did not enact additional timelines in 2014 to implement the program of basic education as directed by the Court in its January 2014 Order." REPORT TO THE WASHINGTON STATE SUPREME COURT BY THE JOINT SELECT COMMITTEE ON ARTICLE IX LITIGATION at 27 (May 1, 2014) (corrected version). In light of this concession, the court issued an order on June 12, 2014, directing the State to appear before the court and show cause why it should not be held in contempt for violating the court's January 2014 order and why, if it is found in contempt, sanctions or other relief requested by the plaintiffs in this case should not be granted.

Pursuant to its show cause order, the court held a hearing on September 3, 2014. As it did in its briefing, the State again admitted that it did not comply with the court's January 2014 order, but it urged the court not to hold the State in contempt and instead give the legislature the opportunity during the 2015 budget session to develop and enact a plan for fully funding K-12 public education by 2018. The State assured the court that a contempt order is not necessary to get the legislature's attention, that school funding is the number one issue on the legislature's agenda, and that the 2015 session will provide the best opportunity to take meaningful action on the matter.

The court has no doubt that it already has the legislature's "attention." But that is not the purpose of a contempt order. Rather, contempt is the means by which a court enforces compliance with its lawful orders when they are not followed. The State has suggested throughout these proceedings that the court may be approaching its constitutional bounds and entering into political and policy matters reserved to the legislature. But as the court has repeatedly stated, it does not wish to dictate the means by which the legislature carries out its constitutional responsibility or otherwise directly involve itself in the choices and trade-offs that are uniquely within the legislature's purview. Rather, the court has fulfilled its constitutional role to determine whether the State is violating constitutional commands, and having held that it is, the court has issued orders within its authority directing the State to remedy its violation, deferring to the legislature to determine the details. These orders are not advisory or designed only to get the legislature's "attention"; the court expects them to be obeyed even though they are directed to a coordinate branch of government. When the orders are not followed, contempt is the lawful and proper means of enforcement in the orderly administration of justice.

The court is not persuaded by the State's argument that a finding of contempt is unwarranted because the admitted violation was neither "disrespectful" nor the result of a "concerted effort by the Legislature to disregard the Court's order." A violation need not be "disrespectful" or result from "concerted effort" or even be motivated by literal "contempt" or other ill feeling toward the court. It is necessary only that a party's action be intentional. RCW 7.21.010(1)(b). The State suggests that one measure of whether a finding of contempt is warranted is whether an order has been repeatedly violated. Assuming that is a consideration, the current order is only the latest order that the court has issued since its decision in *McCleary*. It directed the State to provide its detailed plan in December 2012, prior to the 2013 legislative session, and it has

repeatedly emphasized that the State is engaged in an ongoing violation of its constitutional duty to K-12 children. The State, moreover, has known for decades that its funding of public education is constitutionally inadequate. *See Seattle Sch. Dist. No. 1 v. State*, 90 Wn.2d 476, 585 P.2d 71 (1978). This proceeding is therefore the culmination of a long series of events, not merely the result of a single violation. In retaining jurisdiction in *McCleary*, the court observed that it "cannot stand idly by as the legislature makes unfulfilled promises for reform." *McCleary*, 173 Wn.2d at 545. Neither can the court "stand idly by" while its lawful orders are disregarded. To do so would be to abdicate the court's own duty as a coordinate and independent branch of the government.

Accordingly, the court unanimously finds the State in contempt for failing to comply with the court's January 9, 2014 order. The question remains whether sanctions are immediately warranted. The State has assured the court that education funding is the legislature's top priority and that the legislature is determined to (and the State expects it to) take meaningful action in the 2015 budget session. In the interest of comity and continuing dialogue between the branches of government, the court accepts the State's assurances that it will be compliant by the end of the 2015 session. Thus, the court will not presently impose sanctions or other remedial measures, and will provide the State the opportunity to purge the contempt during the 2015 legislative session by complying with the court's order. If the contempt is not purged by adjournment of the 2015 legislature, the court will reconvene and impose sanctions or other remedial measures.

Now, therefore, it is hereby

ORDERED:

That the State is in contempt of court for violating the court's order dated January 9, 2014. The State failed to submit by April 30, 2014 a complete plan for fully implementing its program of basic education for each school year between now and the 2017-18 school year. Sanctions and

other remedial measures are held in abeyance to allow the State the opportunity to comply with the court's order during the 2015 legislative session. If by adjournment of the 2015 legislative session the State has not purged the contempt by complying with the court's order, the court will reconvene to impose sanctions and other remedial measures as necessary. On the date following adjournment of the 2015 session, if the State has not complied with the court's order, the State shall file in the court a memorandum explaining why sanctions or other remedial measures should not be imposed. This memorandum is separate from the court's order requiring an annual progress report. No other pleadings should be filed by any of the parties except at the direction of the court.

DATED at Olympia, Washington this 11th day of September, 2014.

For the court:

Madsen, C.J.

CHIEF JUSTICE