SC No. 98371-2
COA No. 36666-9-III



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**IN THE SUPREME COURT FOR THE STATE OF WASHINGTON**

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MICHAEL F. CRONIN,

Respondent,

vs.

CENTRAL VALLEY SCHOOL DISTRICT,

Petitioner.

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# CENTRAL VALLEY SCHOOL DISTRICT'S PETITION FOR REVIEW

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## I. IDENTITY OF PETITIONER

Respondent Central Valley School District asks this Court to accept review of the Court of Appeals' decision terminating review, which is identified below.

## II. COURT OF APPEALS DECISION

The District seeks review of the following decision by the Court of Appeals: *Cronin v. Central Valley School District*, __ Wn. App.3d __, 456 P.3d 857 (2020) (Appendix A). The District moved the Court of Appeals to reconsider its decision. The Court of Appeals, however, denied the District's motion on March 5, 2020 (Appendix B).[1]

## III. ISSUES PRESENTED FOR REVIEW

The District's petition raises several issues of substantial interest that should be addressed by this Court:

A. To preserve the fruits of a successful appeal, a party may seek a stay under RAP 8.1 and 8.3 of a court order while that order is being reviewed on appeal. Despite that purpose, the District was found in contempt for not complying with an order while seeking a stay of

[1] This matter is closely related to the District's pending petition of review that was filed on March 2, 2020 regarding Supreme Court No. 98224-4.

that order under RAP 8.1 and 8.3. Did the Court of Appeals err by upholding that finding of contempt?

B. Revised Code of Washington 7.21.030 allows a court to impose daily penalties on a party to coerce compliance with a court order after the court has found the party to be in contempt of that order. In this case, the Trial Court imposed daily penalties to coerce compliance with an order that the District had not been found in contempt of. Did the Court of Appeals err in upholding those daily penalties?

C. Under the statutory framework for discharging and nonrenewing teachers, a superior court can only reinstate a teacher if it finds sufficient cause does not exist for the teacher's discharge or nonrenewal. Here, the Trial Court reinstated Cronin without a sufficient-cause finding. Did the Court of Appeals err when it determined that the Trial Court could reinstate Cronin without making such a finding?

D. A party will not be subject to double damages for withholding wages if the party genuinely believes the wages aren't owed and if that belief is fairly debatable. The District withheld wages from Cronin while it sought a stay of the order requiring the District to pay him

those wages, genuinely believing it did not have to pay the wages while seeking a stay. Was the District's belief fairly debatable?

## IV. STATEMENT OF THE CASE

On June 29, 2018, the Trial Court entered an order that required the District to give Cronin a hearing to determine whether sufficient cause existed for his discharge and the nonrenewal of his contract. As part of that order, the Trial Court directed the District to reinstate Cronin with pay and benefits pending the outcome of his hearing, even though his prior teaching contract had expired.[2]

Shortly after the June 29 order was entered, the District asked the Trial Court to stay the order to the extent it required the District to reinstate Cronin pending the outcome of his sufficient-cause hearing.[3] On August 22, the Trial Court denied the District's motion and entered a final judgment in Cronin's favor.[4]

Because the District believed the Trial Court erred in awarding Cronin back wages, granting him a hearing, and reinstating him with pay

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[2] CP at 319–22.

[3] CP 323–27.

[4] CP 328–36.

and benefits pending that hearing, the District filed a notice of appeal on August 28.[5]

With its notice of appeal filed, the District began drafting a motion to stay, intending to file it with the Court of Appeals.[6] The purpose of the motion was to seek a stay of the portion of the June 29 order that reinstated Mr. Cronin with pay and benefits pending the outcome of his hearing.[7] Before the District could finish drafting its motion, though, Cronin filed a motion with the Trial Court, requesting that the Trial Court find the District in contempt.[8]

A few days later, the District filed its motion to stay with the Court of Appeals.[9]

Because the District's motion to stay was pending before the Court of Appeals at the time Cronin's motion for contempt came before the Trial Court, the Trial Court reserved ruling on the motion until the District's

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[5] CP 21–33.

[6] CP 12–13.

[7] CP 12–13.

[8] CP 1–2.

[9] CP 32–56.

motion was resolved, recognizing that entering a contempt order at that time could lead to inconsistent rulings.[10]

While the District awaited the outcome of its motion to stay, it moved forward with Cronin's statutory hearing. Before the hearing concluded, though, Court of Appeals Commissioner Monica Wasson denied the District's motion to stay.[11] Shortly after that, Cronin's hearing concluded, and the hearing officer found that sufficient cause existed for Cronin's discharge and nonrenewal as of January 5, 2012.[12] The hearing officer's decision was based on Cronin's repeated alcohol-related arrests, his harassment of adult women, and his inappropriate touching of female students.[13]

Then, on December 28, 2018, the District filed a motion to modify with the Court of Appeals, seeking review of the Commissioner's decision.[14] That same day, Cronin filed a second motion for contempt with the Trial Court.[15]

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[10] RP 19:15–19.

[11] CP 110–13.

[12] CP 115–35.

[13] CP 115–35.

[14] CP 137–57.

[15] CP 72–74.

Even though the District's motion to modify was still pending before the Court of Appeals, the Trial Court found the District in contempt of its June 29 order on February 1, 2019.[16]

As part of its February 1 order, the Trial Court awarded Cronin losses and costs it believed resulted from the District's contempt in lieu of any coercive sanctions because the hearing officer's decision made it legally impossible for the District to comply with the June 29 order to the extent it required reinstatement.[17] Specifically, the Trial Court awarded Cronin the following: wages and benefits from June 29, 2018, to December 21, 2018; double damages; prejudgment interest; and reasonable attorney's fees and costs.[18]

On February 27, 2019, the Trial Court entered an order setting the amounts the District owed Cronin under the February 1 order and reduced it to a judgment.[19] The Trial Court also awarded Cronin post-judgment interest and imposed daily penalties on the District if it failed to pay Cronin the amounts due under the February 27 order within thirty days of the order

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[16] CP 241–46.

[17] CP 241–46.

[18] CP 246.

[19] CP at 284–91.

being entered. [20] The Trial Court stated it had authority to impose daily penalties for future failure to satisfy the judgment under RCW 7.21.030(2)(b).[21]

Disagreeing with the Trial Court's February 1 and February 27 orders and the terms of the judgment, the District appealed on March 11, 2019.[22]

On appeal, the District made the following arguments: the District should not have been held in contempt while seeking a stay under RAP 8.1 or 8.3; the Trial Court lacked the legal authority to reinstate Cronin without first making a finding that sufficient cause did not exist for his discharge and nonrenewal; the Trial Court lacked authority to impose daily penalties to compel the District to comply with its February 27 order; and the Trial Court erred when it awarded doubles damages to Cronin.

The Court of Appeals rejected the District's arguments and upheld the Trial Court's orders.

Following the Court of Appeals' decision, the District asked the Court of Appeals to reconsider the portion of its decision where it upheld the imposition of daily penalties to ensure compliance with the February 27

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[20] CP 290.

[21] CP 290.

[22] CP at 294–312.

order. The Court of Appeals denied the District's motion on March 5, 2020. And now, the District petitions this Court for review.

## V. ARGUMENT

The Court of Appeals' decision presents the following issues that are of substantial interest and that should be determined by this Court: (A) Should a party be held in contempt while seeking a stay under RAP 8.1 or 8.3? (B) Can a court can impose daily penalties on a party to ensure compliance with an order without first finding the party in contempt of that order? (C) Can a court can reinstate a teacher without first making a sufficient-cause determination? (D) Can a court can impose double damages on a party for withholding wages while seeking a stay of the order that required the payment of those wages.

### A. Should a party be held in contempt while seeking a stay under RAP 8.1 or 8.3?

Both RAP 8.1 and 8.3 allow a party to seek a stay of a trial court order while that order is being reviewed on appeal. The purpose of those rules "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."[23] In other words, the purpose behind those rules is to make sure

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[23] *Washington Federation of State Employees v. State*, 99 Wn.2d 878, 883 (1983).

that a party does not lose the benefit of his or her appeal by having to comply with the trial court order from which he or she is appealing.

That purpose, however, is vitiated if a party seeking a stay under RAP 8.1 or 8.3 can be held in contempt for not complying with a trial court order while a 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 order while awaiting the outcome of the motion to stay, defeating the very purpose of seeking a stay.

To a certain extent, the Court of Appeals agreed with that position, saying:

> The process for seeking a stay in an appellate court involves briefing and argument. Although briefing and argument is expedited in these sorts of matters, the process does not allow for an immediate resolution. The ultimate resolution can be further delayed if a party moves to modify a court commissioner's decision. Depending on the nature of the rights in play, it can take weeks or months for this process to conclude. This delay in staying some orders can impair the fruits of a successful appeal.[24]

Ultimately, though, the Court of Appeals did not find that position persuasive enough:

> On the other hand, trial court orders tend to be well supported by the facts and law. We do not want to empower parties to intentionally disobey such orders by adopting a rule that allows them to ignore a lawful court order for weeks

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[24] *Cronin*, __ Wn. App.3d __, 456 P.3d at 861.

> or months while we decide whether to stay it. That is exactly the rule the District would have us adopt.
>
> Procedures exist to safeguard litigants from erroneous orders that would cause irreversible harm. For instance, if a trial court ordered a party's house to be demolished, the trial court under CR 62, or the appellate court under RAP 8.1(b), would likely stay enforcement of the order to prevent irreversible harm.[25]

The Court of Appeals' conclusion leads to absurd and unacceptable results, which can be illustrated by using the Court of Appeals' own example of a court ordering the demolition of a party's home.

First, the Court of Appeals said that a party could avoid complying with such an order by seeking a stay with the trial court under CR 62. But under that rule, the trial court could only grant a stay

> pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to rule 59, or of a motion for relief from a judgment or order made pursuant to rule 60, or of a motion for judgment as a matter of law made pursuant to rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to rule 52(b).

None of those circumstances would apply if a party has already appealed the trial court's order, as was the situation in this case.

The only relief CR 62 would give the party is an automatic temporary stay: "Upon the filing of a notice of appeal, enforcement of

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[25] *Id.*

judgment is stayed until the expiration of 14 days after entry of judgment." So, for fourteen days after the judgment is entered, the party would be protected from enforcement of the judgment requiring the demolition of his or her home. After those fourteen days have passed, though, CR 62 is of no use to the party.

That brings us to RAP 8.1(b). After the party files its notice of appeal, the party can seek a stay of the trial court's order under RAP 8.1(b), which gives the party a right to stay enforcement of a decision affecting real property pending appellate review. As the Court of Appeals' acknowledged, however, the process for obtaining such a stay "does not allow for an immediate resolution" and "can take weeks or months for [the] process to conclude."[26]

Thus, although the party will eventually be granted a stay under RAP 8.1(b) as a matter of right, there likely will be a period in which the party is protected by neither CR 62 nor RAP 8.1(b). During that period, there is nothing—according to the Court of Appeals' decision—that would prevent the trial court from finding the party in contempt of the order to demolish his or her home. If the trial court did find the party in contempt, the party would be subject to inconsistent rulings: one finding it in

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[26] *Cronin*, __ Wn. App.3d __, 456 P.3d at 861.

contempt; the other staying the trial court's order. That's an unacceptable result.

Moreover, the only way the party could ensure that it was not found in contempt would be by demolishing the home. Of course, if the party did that, it would destroy the fruits of a successful appeal—undermining the purpose of seeking a stay under RAP 8.1(b). The same would be true for any party seeking a stay under RAP 8.1 or 8.3.

Therefore, the logical, practical, and equitable approach in such situations is to allow a party 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 and the appeal—or refrain from complying with the order while seeking the stay—risking a finding of contempt.

In contrast to the untenable position faced by an appellant, a respondent is fully protected without need for a contempt order. For example, in this case the, the Trial Court awarded Cronin the amount of lost wages and benefits plus interest accrued between the date of the June 29 order and the initial judgment of August 22, 2018. The District respectfully contends that the appropriate relief for Cronin if he had prevailed on his

sufficient-cause hearing would have been a money judgment for his lost compensation and benefits, plus interest. This would have fully preserved Cronin's full financial remedies while the District sought its stay with the Court of Appeals without requiring the District to risk paying him funds that it would not recover after it prevailed at the sufficient cause hearing or risk daily contempt sanctions and other contempt remedies. This approach would harmonize the court rules and give full meaning to the Rules of Appellate Procedure that authorize a party to seek a stay without risking the fruits of an appeal.

**B. Can a court can impose daily penalties on a party to ensure compliance with an order without finding the party in contempt of that order?**

In its February 1 order, the Trial Court found the District to be in contempt of its June 29 order, which required the District to reinstate Cronin pending the outcome of his sufficient-cause hearing.[27] Given that a hearing officer found sufficient cause existed for Cronin's discharge and nonrenewal, Cronin could not be reinstated at that time. Therefore, the Trial Court stopped trying to enforce the June 29 order and instead awarded

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[27] CP 241–46.

Cronin losses and costs associated with the District's contempt under RCW 7.21.030(3).[28]

Then, the Trial Court entered its February 27 order, which set the specific amounts the District owed under the February 1 order.[29] The Trial Court ensured compliance with the February 27 order by imposing daily penalties on the District under RCW 7.21.030 if it did not satisfy the judgment, regardless of the outcome of an appeal:

> 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.[30]

Two other times in the February 27 order, the Trial Court reiterated that the daily penalties were to coerce compliance with that order: "Defendant shall have 30 days to pay the amounts owed under *this Order and Judgment*. Thereafter, Defendant shall be assessed $100 per day until *this judgment* is paid in full."[31] "Defendant shall have 30 days to pay the amounts owed under *this Order and Judgment*. Thereafter, Defendant shall

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[28] CP 244–46.

[29] CP 284–91.

[30] CP 290 (emphasis added).

[31] CP 290 (emphasis added).

be assessed $100 per day until the judgment is paid in full."[32] Thus, three different times the February 27 order states that the daily penalties were imposed to coerce the District to comply with *that* order.

This is the thing, though: the Trial Court never found the District to be in contempt of the February 27 order. And, RCW 7.21.030 authorizes the imposition of daily penalties to "coerce a party to comply with a court order" *only if* the court has found the party to be in contempt of that order.[33] Stated otherwise, a court must find a party in contempt of a court order *before* imposing a remedial sanction under RCW 7.21.030 to coerce compliance with that order. Because the Trial Court never found the District in contempt of the February 27 order, it could not impose daily penalties under RCW 7.21.030 to coerce compliance with that order. Thus, the Court of Appeals erred in upholding those penalties.

The Court of Appeals further erred in upholding the imposition of daily penalties because it mistakenly believed that the daily penalties were imposed to ensure compliance with the June 29 order.[34] But as shown above—and as is evident from reading the February 27 order—the daily

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[32] CP 291 (emphasis added).

[33] *State v. Sims*, 1 Wn. App.2d 472, 479 (2017) *affirmed in part, reversed in part by State v. Sims*, 193 Wn.2d 86 (2019).

[34] *Cronin*, __ Wn. App.3d __, 456 P.3d at 861.

penalties were not imposed to ensure compliance with the June 29 order—nor could they have been since that order could no longer be complied with after the hearing officer found sufficient cause for Cronin's discharge and nonrenewal. Rather, they were impermissibly imposed to coerce compliance with the February 27 order, regardless of what happened on appeal.

What's more, by imposing daily penalties, the Trial Court unnecessarily slapped the District with two coercive measures: daily penalties and post-judgment interest. Post-judgment interest at 12% annually would have been a big enough stick to coerce compliance. There was no need—and the Trial Court lacked the authority—to also impose daily penalties.

### C. Can a court can reinstate a teacher without first making a sufficient-cause determination?

A "contempt conviction will fall if the underlying order was not within 'the scope of the jurisdiction of the issuing court.'"[35] 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.'"[36]

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[35] *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)).

[36] *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 it lacked the legal authority to order the District to reinstate Cronin with pay and benefits pending his hearing.

The Legislature has established a statutory framework that governs the discharge and nonrenewal of teachers. According to that framework, a teacher has a right to challenge a school district's decision to discharge or nonrenew.[37] A teacher can challenge that decision in one of two ways: by requesting a hearing in front of a hearing officer;[38] or by directly appealing that decision to superior court.[39]

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.[40] The superior court has authority to reinstate the teacher only if the teacher appeals to superior court and prevails.[41]

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[37] RCW 28A.405.210, .300.

[38] RCW 28A.405.310.

[39] RCW 28A.405.380.

[40] RCW 28A.405.320.

[41] 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.[42] Again, the superior court has authority to reinstate the teacher only if the teacher prevails by establishing the lack of sufficient cause.[43]

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.

The Trial Court never did that here. Instead, it reinstated Cronin with pay and benefits while his statutory hearing was pending and then found the District in contempt for not reinstating Cronin despite the ruling from the hearing officer that the District had sufficient cause to discharge and nonrenew. Because the Trial Court did not have the legal authority to order reinstatement on June 29, 2018, its finding of contempt is void. Thus, the Court of Appeals erred in upholding the Trial Court's February 1 finding of contempt and its award of damages purportedly caused by that finding of contempt.

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[42] RCW 28A.405.380.

[43] RCW 28A.405.350, .380.

### D. Can a court can impose double damages on a party for withholding wages while seeking a stay of the order that required the payment of those wages?

Double damages are not warranted if a bona fide dispute exists as to whether wages are owed.[44] A bona fide dispute exists if a party genuinely believes that there is a dispute over whether wages are owed and if that dispute is fairly debatable.[45] Whether a bona fide dispute existed here is tied to whether a party must comply with a trial court order while it is seeking a stay of that order under RAP 8.1 or 8.3.

At the time the District was seeking a stay under RAP 8.1 and 8.3 regarding the Trial Court's June 29 order, the District genuinely believed that it did not have to reinstate Cronin with pay and benefits while its motion was pending. That position was fairly debatable given that the Court of Appeals even agreed with it to a certain extent.[46] Thus, there was a bona fide dispute, and the Court of Appeals erred when it upheld the Trial Court's imposition of double damages.

## VI. CONCLUSION

By upholding the Trial Court's finding of contempt, the Court of Appeals has created binding precedent that places parties seeking stays under

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[44] *Hill v. Garda CL Northwest, Inc.*, 191 Wn.2d 553, 561–62 (2018).

[45] *Id.*

[46] *Cronin*, __ Wn. App.3d __, 456 P.3d at 861.

RAP 8.1 or 8.3 in a precarious position: comply with the court order from which they are seeking a stay—and undermine the purpose of their motion—or run the risk of being in contempt. Moreover, the Court of Appeals has impermissibly expanded the authority of superiors courts, allowing them to impose daily penalties on a party to enforce an order that a party hasn't been found in contempt of and allowing them to reinstate teachers without making a sufficient-cause determination. To correct those errors, this Court ought to accept review.

DATED this 2ND day of April 2020.

Respectfully submitted,

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**APPENDIX A**

**FILED**
**JAN. 30, 2020**
**In the Office of the Clerk of Court**
**WA State Court of Appeals, Division III**

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

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|---|---|---|
| MICHAEL F. CRONIN,<br><br>Respondent,<br><br>v.<br><br>CENTRAL VALLEY SCHOOL DISTRICT,<br><br>Appellant. | ) | No. 36666-9-III<br><br><br><br>OPINION PUBLISHED IN PART |

LAWRENCE-BERREY, C.J. — Central Valley School District appeals the trial court's order and judgment finding it in contempt for intentionally violating a court order. The District argues the trial court lacked authority to hold it in contempt while it was seeking a stay of the underlying order in our court. We disagree.

RAP 8.1(b) permits a party to enforce a trial court decision or order pending appeal or review unless stayed pursuant to the provisions of RAP 8. One way for a party to enforce a trial court order is to request the trial court to hold the contumacious party in contempt. In the published part of this opinion, we hold that a trial court has authority to hold a contumacious party in contempt even while that party is seeking to stay the underlying order in an appellate court. We resolve the other issues raised by the District

against it and affirm the trial court in all respects.

## FACTS

This is the fourth appeal in this lengthy litigation. We limit our discussion of the facts and procedure to those necessary to resolve the issues before us.

*Brief overview of facts and procedure predating this appeal*

The District employed Michael Cronin as a teacher. In early 2012, the District provided Cronin notice of discharge and nonrenewal. Cronin, through an agent, appealed the discharge and requested a statutory hearing, but failed to explicitly appeal the nonrenewal. This ambiguity was clarified weeks later by Cronin's attorney, who advised the District that Cronin wanted a statutory hearing on both discharge and nonrenewal. The District refused to give Cronin any statutory hearing and discontinued his wages and benefits.

Cronin brought a declaratory action, seeking a statutory hearing on the District's determinations that sufficient cause existed for discharge and nonrenewal. The District asserted various reasons why Cronin's request should be denied. These reasons were litigated in two prior summary judgment motions and two appeals to this court. In 2016, we remanded the case and directed the trial court to order the District to give Cronin his requested statutory hearing.

# APPENDIX A

*Arguments and rulings related to this appeal*

On June 26, 2017, both parties again filed motions for summary judgment. Cronin argued he was entitled to: (1) reinstatement and back pay pending his statutory hearing, (2) double damages for the District's willful and intentional withholding of wages, (3) reasonable attorney fees and costs, (4) an additional award because of the tax consequences of a lump sum wage award, and (5) the appointment of a statutory hearing officer.

The District argued: (1) it had authority to nonrenew Cronin's contract based on his misconduct, (2) it had properly nonrenewed Cronin's contract because he did not explicitly request a statutory hearing for nonrenewal, (3) its obligation to pay wages and benefits to Cronin ended with his 2011-2012 school year contract, and, (4) it did not willfully and intentionally withhold Cronin's wages.

Cronin responded that the law of the case doctrine prohibited the District from relitigating whether he was entitled to a statutory hearing for nonrenewal. Cronin noted that our second unpublished decision ordered a statutory hearing on his discharge *and* nonrenewal.

On April 27, 2018, the parties argued their motions. The trial court orally ruled that the District must restore Cronin's employment and reinstate his wages and benefits

pending a statutory hearing. Its order was based on language in RCW 28A.405.210. In addition, the court granted Cronin's request for reasonable attorney fees and costs, but denied his request for double damages and an additional award to compensate him for the increased tax consequences of a large lump sum payment. The District filed a request for reconsideration, which the court denied by written ruling.

On June 29, 2018, the court entered its order on summary judgment. The order provided in relevant part:

> a. The Court grants Plaintiff's request to restore his employment. Judgment shall be entered against Defendant for back wages and benefits owed Plaintiff from September 1, 2012, to the date of this order.[1]
>
> b. Plaintiff's wages and benefits shall be immediately reinstated effective the date of this order and shall continue until such time as a written decision by a statutory hearing officer determines after a hearing on the merits whether the Defendant has proved sufficient cause for either discharge or nonrenewal of Plaintiff from his employment with Defendant.

Clerk's Papers (CP) at 321. The order set an August date for presentment of a monetary judgment.

[1] Cronin's entitlement to *back* wages and benefits was the subject of the third appeal between the parties. We affirmed the trial court in all aspects except for its denial of double damages to Cronin on the withheld wages. On that issue, we remanded for a trial to resolve issues of material fact. *Cronin v. Cent. Valley Sch. Dist.*, No. 36291-4-III, (Wash. Ct. App. January 30, 2020)), https://www.courts.wa.gov/opinions/pdf/362914_pub.pdf.

# APPENDIX A

On July 17, 2018, the District filed a motion to stay the portions of the June 29 order that required it to restore Cronin's employment and to reinstate his wages and benefits.

On August 23, 2018, the trial court entered judgment setting the amounts for back pay, prejudgment interest, attorney fees, together with findings and conclusions supporting the amounts. The trial court also denied the District's motion to partially stay its June 29 order.

On August 28, 2018, the District filed a notice of appeal of the trial court's June 29 order. This appeal was the subject of our third decision.

On September 7, 2018, Cronin moved the trial court for an order of contempt because the District had yet to restore Cronin's employment and reinstate his pay. Cronin asked for double damages and attorney fees on the basis that the District's refusal to pay his wages and benefits constituted a willful withholding.

On September 11, 2018, four days after Cronin's motion for contempt, the District filed a motion to stay with this court. The District then responded to Cronin's motion for contempt and asserted it could not be held in contempt while it was seeking a stay of the order in our court.

# APPENDIX A

On September 21, 2018, the trial court heard argument on Cronin's motion for contempt. The trial court noted its concern about entering a contempt order that could later be inconsistent with an order from this court. The court reserved ruling on Cronin's motion until this court ruled on the District's pending motion to stay. The trial court advised Cronin he could re-note his motion if this court denied the District's motion to stay.

On November 30, 2018, our court commissioner denied the District's motion. It construed the trial court's order restoring Cronin's employment as not requiring the District to actually place Cronin in the classroom, but as requiring the District only to pay Cronin's wages and benefits. Our court commissioner implied that requiring the District to pay Cronin's wages and benefits could not be stayed under RAP 8.1(b)(1) because it was not a money judgment. It also declined to issue a stay under RAP 8.1(b)(3), concluding that the burden on the District of paying Cronin's wages for a few months was less than the burden on Cronin of nonpayment.

On December 21, 2018, the statutory hearing officer issued its decision, finding there was sufficient cause for the District to discharge and nonrenew Cronin.

# APPENDIX A

On December 28, 2018, the District filed a motion in this court to modify the court commissioner's ruling denying the District's motion to stay. We later denied the District's motion.

Before we denied the District's motion, Cronin renewed his motion for contempt. The District responded that the trial court's order restoring Cronin's employment had become moot because the hearing officer's findings precluded Cronin's employment from being restored.

On January 10, 2019, the trial court heard argument on Cronin's renewed motion for contempt. The trial court recognized that its June 29 order explicitly required the District to restore Cronin's employment, the District had knowledge of the order, the District failed to restore Cronin's employment, and the District did not have a reasonable excuse because the order had not been stayed. The trial court orally found the District in contempt of its June 29 order, ordered the District to pay a remedial sanction until it paid Cronin what he was owed under that order and assessed double damages for nonpayment of wages, in addition to reasonable attorney fees and prejudgment interest.

On February 1, 2019, the trial court entered findings, conclusions, and an order effectuating its January 10 oral ruling. On February 15, 2019, the trial court heard argument from the parties as to the amounts owed for Cronin's wages and benefits,

double damages, prejudgment interest, remedial sanctions, and reasonable attorney fees. On February 27, 2019, the trial court entered findings of fact, conclusions of law, and the order and judgment on contempt for the amounts owed.

Specifically, the trial court ordered double damages on Cronin's wages and benefits from June 29, 2018, through December 21, 2018, because of the District's willful and wrongful withholding of wages. The trial court also ordered the District to pay the sums under the order and judgment within 30 days of its entry and, if the District did not pay within 30 days, the order assessed a per diem penalty of $100 dollars from the date of the order until the District paid the judgment in full.

The District appealed the trial court's February 1, 2019 and February 27, 2019 orders and judgments.

## ANALYSIS

The District raises four arguments on appeal: (1) it cannot be found in contempt for not complying with the trial court's order while seeking a stay of that order in this court, (2) the trial court lacked authority to restore Cronin's employment and reinstate his pay, (3) the trial court lacked authority to impose daily penalties to ensure compliance with its February 27, 2019 order, and (3) the trial court erred by awarding Cronin double damages. We address these arguments in the order raised.

# APPENDIX A

A. CONTEMPT DESPITE SEEKING STAY

The District argues the trial court erred by holding it in contempt while it was seeking an order from this court to stay the trial court's order. We disagree.

Contempt of court includes the intentional disobedience of any lawful order. RCW 7.21.010(1)(b). RAP 8.1(a) provides a means of delaying the enforcement of a trial court order in a civil case.

RAP 8.1(b) permits a party to seek to stay enforcement of any trial court civil decision, whether that decision is a money judgment, one affecting property, or any other type. In addition, RAP 8.3 permits an appellate court to issue orders and grant injunctive or other relief to ensure effective and equitable review. "The purpose of [these rules] is to permit appellate courts to grant preliminary relief in aid of their appellate jurisdiction so as to prevent the destruction of the fruits of a successful appeal." *Wash. Fed'n of State Emps. v. State*, 99 Wn.2d 878, 883, 665 P.2d 1337 (1983). The District argues that this purpose would be undermined if a trial court could hold a party in contempt for violating an order while the party is seeking to stay that order on appeal.

To a certain extent, we agree. The process for seeking a stay in an appellate court involves briefing and argument. Although briefing and argument is expedited in these sorts of matters, the process does not allow for an immediate resolution. The ultimate

resolution can be further delayed if a party moves to modify a court commissioner's decision. Depending on the nature of the rights in play, it can take weeks or months for this process to conclude. This delay in staying some orders can impair the fruits of a successful appeal.

On the other hand, trial court orders tend to be well supported by the facts and law. We do not want to empower parties to intentionally disobey such orders by adopting a rule that allows them to ignore a lawful court order for weeks or months while we decide whether to stay it. That is exactly the rule the District would have us adopt.

Procedures exist to safeguard litigants from erroneous orders that would cause irreversible harm. For instance, if a trial court ordered a party's house to be demolished, the trial court under CR 62, or the appellate court under RAP 8.1(b), would likely stay enforcement of the order to prevent irreversible harm.

Here, compliance with the trial court's order did not expose the District to irreversible harm. The order required the District to pay Cronin his wages and benefits for only a few months, pending his statutory hearing.

The parties concede the issue has not been squarely decided by a published Washington decision. Our review of Washington's authorities convince us the answer is clear.

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It has long been understood that the subject of a court order must comply with the order until relieved of the obligation to do so. *Levinson v. Vanderveer*, 169 Wash. 254, 256, 13 P.2d 448 (1932) ("A judgment entered by a court of general jurisdiction is presumed to be valid until set aside on appeal."); *State v. Sheets*, 48 Wn.2d 65, 67, 290 P.2d 974 (1955) ("A final judgment or order in *a civil proceeding* . . . is valid and binding until . . . set aside."). Logically then, a trial court has authority to enforce its order until it is set aside or stayed.

Other authorities lead to a similar conclusion. RAP 8.1(b) provides in part: "A trial court decision may be enforced pending appeal or review unless stayed pursuant to the provisions of this rule." One way a party can enforce a trial court decision or order is by requesting the trial court to hold the contumacious party in contempt. Thus, RAP 8.1(b) supports the conclusion that a trial court may hold a party in contempt even while the party is seeking a stay in an appellate court.

RCW 7.21.070 provides in part: "Appellate review does not stay the . . . order in the . . . proceeding to which the contempt relates." Thus, the legal effect of an order is not impacted by it being appealed. Nor should the legal effect of the order be placed in limbo by the mere act of the contumacious party filing a motion with an appellate court.

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Because the above authorities are against the District's position, we hold that a trial court may find a contumacious party in contempt even while the party is in the process of seeking a stay of that order in an appellate court.

Affirmed.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder, having no precedential value, shall be filed for public record pursuant to RCW 2.06.040, it is so ordered.

B. RESTORING EMPLOYMENT AND REINSTATING PAY

The District contends the trial court lacked authority to order it to restore Cronin's employment and reinstate his pay. We disagree.

As a preliminary matter, we agree with our court commissioner's reading of the trial court's order. The order did not require the District to physically place Cronin in a classroom. Rather, it required the District to restore Cronin's employment status and pay his wages and benefits.

This issue was a central issue decided in the third appeal. We need not provide a complete analysis again. In summary, RCW 28A.405.220 required the District to timely provide Cronin his notice of nonrenewal and a timely opportunity for a hearing. Here, the

District failed to provide Cronin a timely opportunity for a hearing. The District's refusal to give Cronin his statutory hearing resulted in a six-year delay.

RCW 28A.405.220 also provides that failure to provide a timely notice of nonrenewal or the opportunity for a timely hearing results in the conclusive presumption of reemployment for the ensuing term. For this reason, Cronin's employment had been conclusively renewed from year to year, and he was entitled to restoration of his employment, i.e., wages and benefits.

C. DAILY PENALTIES

The District contends the trial court erred because it lacked the authority to impose a per diem penalty to force compliance with the contempt order and judgment. We disagree.

"A court may order a party to perform an act to effectuate the court's resolution of a dispute." *In re Marriage of Mathews*, 70 Wn. App. 116, 126, 853 P.2d 462 (1993). Superior courts have broad power to impose remedial sanctions to ensure compliance with a court order. RCW 7.21.030(2).

RCW 7.21.030(2) provides, in part:

> 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 of court and impose one or more of the following remedial sanctions:

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. . . .

(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.

We review remedial sanctions imposed for contempt and sanctions used to ensure compliance with a prior court order for an abuse of discretion. *Marriage of Mathews*, 70 Wn. App. at 126. "An abuse of discretion occurs only when the decision of the court is 'manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.'" *State v. McCormick*, 166 Wn.2d 689, 706, 213 P.3d 32 (2009) (quoting *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)).

Here, the trial court's order on contempt included a $100 per diem remedial sanction to ensure compliance with its June 29 order, which restored Cronin's employment and pay status. The District argues it is impossible to comply with the trial court's June 29 order, and it is no longer enforceable. While it is true the District cannot restore Cronin's employment *after* the statutory hearing officer's findings, the District can pay Cronin his wages and benefits owed from June 29, 2018, to December 21, 2018. This action is "within the [District's] power to perform." RCW 7.21.030(2).

The trial court gave the District 30 days to pay the judgment before the $100 per diem sanction began to accrue. We find this remedial sanction not an abuse of the trial court's discretion, but within its broad powers to ensure compliance with its orders.[2]

D. DOUBLE DAMAGES

The District contends the trial court erred by awarding Cronin double damages on his wages and benefits accruing between June 29, 2018 and December 21, 2018. The District argues it had a bona fide dispute whether it was required to comply with the trial court's order. We disagree.

RCW 49.52.050(2) makes it unlawful for an employer to willfully and intentionally pay its employee less than owed. An employer that violates RCW 49.52.050(2) is liable for exemplary damages twice the amount of wages unlawfully withheld, unless the employee knowingly submits to the violation. RCW 49.52.070.

The standard to prove willfulness is low. A failure to pay is deemed willful unless it was the result of carelessness or error. *Hill v. Garda CL Nw., Inc.*, 191 Wn.2d 553,

[2] We distinguish the judgment here from a general money judgment. The judgment here resulted from the District's intentional violation of the trial court's June 29 order, which required it to restore Cronin's employment and reinstate his pay. Our holding should not be construed as authorizing a trial court to force a litigant to quickly pay a general money judgment.

561, 424 P.3d 207 (2018), *cert. denied*, 139 S. Ct. 2667, 204 L. Ed. 2d 1069 (2019). "[W]illfulness is found where 'the employer's refusal to pay [is] volitional. . . . Willful means merely that the person knows what he is doing, intends to do what he is doing, and is a free agent.'" *Morgan v. Kingen*, 166 Wn.2d 526, 534, 210 P.3d 995 (2009) (internal quotation marks omitted) (second alteration in original) (quoting *Schilling v. Radio Holdings, Inc.*, 136 Wn.2d 152, 159-60, 961 P.2d 371 (1998)). An employer can defeat a showing of willfulness if it shows there was a bona fide dispute about whether all or part of the wages were due. *Schilling*, 136 Wn.2d at 160. This burden is on the employer. *Wash. State Nurses Ass'n v. Sacred Heart Med. Ctr.*, 175 Wn.2d 822, 834, 287 P.3d 516 (2012).

To establish a bona fide dispute, an employer must satisfy a two-part inquiry. *Hill*, 191 Wn.2d at 562. There is a subjective component and an objective component. *Id.* The subjective "genuine belief" component is a question of fact. *Id.* The objective "fairly debatable" component is a legal question. *Id.* Usually, to determine whether an employer willfully withheld wages is a question of fact; however, where reasonable minds could not differ, the court may determine the question as a matter of law. *Moore v. Blue Frog Mobile, Inc.*, 153 Wn. App. 1, 8, 221 P.3d 913 (2009).

Here, the trial court's June 29 order required the District to restore Cronin's employment and reinstate his pay. It has long been understood that the subject of an order must comply with the order until relieved of its obligation to do so. *Levinson*, 169 Wash. at 256; *Sheets*, 48 Wn.2d at 67. Even if the District genuinely believed it did not need to comply with the June 29 order, the previous authorities render its belief not "fairly debatable."[3] The trial court did not err in awarding Cronin double damages under RCW 49.52.050(2) and RCW 49.52.070.

E. ATTORNEY FEES

Cronin requests reasonable attorney fees on appeal and cites RAP 18.1, RCW 7.21.030(3), RCW 49.48.030, and RCW 49.52.070. RAP 18.1 supports an award of reasonable attorney fees on appeal if authorized by applicable law. RCW 7.21.030(3) authorizes an award of attorney fees to a party when a court finds the other party in contempt. RCW 49.48.030 and RCW 49.52.070 support an award of attorney fees to a party who successfully recovers wages owed. Subject to Cronin's compliance with RAP 18.1(d), we award Cronin reasonable attorney fees for responding to the District's appeal. Our commissioner will decide this award.

[3] Had the District paid Cronin soon after we denied its stay request, the issue here would be different. We would have had to determine whether it was "fairly debatable" that the District's request for a stay in this court excused its delayed payment. But there is

**APPENDIX A**

Affirmed.

Lawrence-Berrey, C.J.

WE CONCUR:

Siddoway, J.

Fearing, J.

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no evidence the District ever paid Cronin any portion of the February 2019 judgment.

**APPENDIX B**

**FILED**
**MARCH 5, 2020**
**In the Office of the Clerk of Court**
**WA State Court of Appeals, Division III**

# COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

| | | |
|---|---|---|
| **MICHAEL F. CRONIN,** | ) | **No. 36666-9-III** |
| | ) | |
| **Respondent,** | ) | |
| | ) | |
| **v.** | ) | **ORDER DENYING** |
| | ) | **MOTION FOR** |
| **CENTRAL VALLEY SCHOOL DISTRICT,** | ) | **RECONSIDERATION** |
| | ) | |
| **Appellant.** | ) | |

The court has considered appellant's motion for reconsideration and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED the motion for reconsideration of this court's decision of January 30, 2020, is denied.

PANEL: Judges Lawrence-Berrey, Siddoway, and Fearing

FOR THE COURT:

Lawrence-Berrey, C.J.

ROBERT LAWRENCE-BERREY
CHIEF JUDGE

## PAUKERT & TROPPMANN, PLLC

## April 03, 2020 - 11:10 AM

## Transmittal Information

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| **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 |

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