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Court of Appeals No. 53878-4-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

KITSAP COUNTY,

Plaintiff/Respondent,

v.

KITSAP RIFLE AND REVOLVER CLUB,
a not-for-profit corporation registered in the State of Washington,
and JOHN DOES and JANE DOES I-XX, inclusive,

Defendant/Appellants/Petitioners,

and

IN THE MATTER OF NUSAINCE AND UNPERMITTED
CONDITIONS LOCATED AT One 72-acre parcel identified by
Kitsap County Tax Parcel ID No. 362501-4-002-1006
with street address 4900 Seabeck Highway NW, Bremerton, Washington

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PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

The Petitioner is Kitsap Rifle and Revolver Club (the "Club" or "KRRC").

II. CITATION TO COURT OF APPEALS DECISION

The Club asks this Court to review the *Unpublished Opinion* of Division II of the Washington Court of Appeals in this matter, *Kitsap County v. Kitsap Rifle & Revolver Club*, No. 53878-4-II (filed Dec. 29, 2020) (the "2020 Opinion" or "2020 Op."). The 2020 Opinion affirms the trial court's *Order Denying Termination of Contempt Sanction* dated June 28, 2019 ("Order"). The Club timely filed a motion for reconsideration of the 2020 Opinion. On February 1, 2021, the Court of Appeals issued an order denying the Club's motion for reconsideration of the 2020 Opinion.

The Appendix to this petition includes copies of the 2020 Opinion and the *Order Denying Motion for Reconsideration*.

III. ISSUES PRESENTED FOR REVIEW

1. Is the 2020 Opinion of substantial public interest because it encourages judgment creditors with unpaid judgments to hold their judgment debtors in contempt and obtain orders preventing the judgment debtors from earning an income until they either (a) borrow or beg the money they need to pay the judgment or (b) show evidence

of rejected loan applications and failed efforts to obtain donations from unspecified third parties?

2. Does the 2020 Opinion conflict with the law of the case doctrine by requiring the Club to produce additional types of evidence that were not required in the Court of Appeals' 2018 Opinion addressing the same issue?

3. Does the requirement in the 2020 Opinion for the Club to present evidence that it applied for loans and made additional fundraising efforts in order to prove its inability to pay for an expensive permitting application conflict with the rule in Washington that parties are not required to perform futile acts to obtain their requested relief?

4. Does the requirement in the 2020 Opinion that the Club must submit evidence of tax returns from prior years, including unfinished drafts, conflict with the rule in Washington that a contemnor's ability to perform must be determined as of the date of its motion to terminate a contempt sanction and not at an earlier date?

IV. STATEMENT OF THE CASE

The Club is a nonprofit organization that was chartered in 1926 for "sport and national defense" and has since then operated an outdoor shooting

range at its present location in Bremerton, Kitsap County. CP at 3. As of 1993, the Club possessed a valid nonconforming use right for the property to operate as a shooting range. CP at 7–8, 24.

In 2011, Respondent Kitsap County (the "County") filed a complaint for injunctive and declaratory relief against the Club. CP at 1–2. One of the County's claims was that the Club had unlawfully expanded its nonconforming use as a shooting range. The trial court agreed and permanently enjoined the Club from operating its shooting range until the Club applied for and obtained a conditional use permit ("CUP injunction"). CP at 33–34.

In its appeal of the original trial decision, the Club sought reversal of the trial court's conclusion that the Club had unlawfully expanded and also sought reversal of the CUP injunction. *Kitsap County v. KRRC* ("*Kitsap I*"), 184 Wn. App. 252, 261, 337 P.3d 328 (2014). The Court of Appeals affirmed that the nonconforming use had expanded but vacated the trial court's CUP injunction as an improper remedy. *Id.* at 275. On remand, the trial court issued the *Order Supplementing Judgment on Remand* (the "supplemental judgment"), filed on February 5, 2016. CP at 42–45. The supplemental judgment required the Club to apply for site development activity permitting (SDAP) within 180 days of the order to cure violations of

Kitsap County Code Titles 12 and 19. CP at 45. The trial court further ordered that a warrant of abatement may be authorized in the event the Club failed to cure the code violations. CP at 45.

On August 18, 2016, the County filed a motion to hold the Club in contempt and asked the trial court to prohibit the Club from operating a shooting range until the Club submitted an SDAP application. CP at 46–53. The trial court granted the County's motion and entered an order with findings of fact and conclusions of law. CP at 61–66. The order enjoined the Club from operating a shooting facility "until such time that [the Club] obtains [site development activity] permitting in compliance with KCC Titles 12 and 19." CP at 64.

The Club appealed the trial court's contempt order, and the Court of Appeals affirmed in part and reversed in part. CP at 73 (*citing Kitsap County v. KRRC* ("2018 Opinion"), No. 50011-6-II, *slip op*. at 2 (Jan. 30, 2018) (unpublished opinion), https://www.courts.wa.gov.opinions/).

The 2018 Opinion held that substantial evidence supported the trial court's implicit finding that the Club was able to comply with the court's order because the Club did not present "detailed evidence" of its "financial situation, including tax returns, assets and liabilities, or bank statements." 2020 Op. at 4 (*citing* 2018 Op. at 16). The 2018 Opinion reversed the

portion of the trial court's contempt order that required the Club to *obtain* an SDAP in order to purge the contempt. *Id*. The Court of Appeals held that the purge condition was impermissibly punitive because actually obtaining a permit was outside the Club's control such that "the Club [did] not have the ability to satisfy the purge condition without relying on the County's actions." 2020 Op. at 5 (*citing* 2018 Op. at 21).

On remand, the trial court entered an amended contempt order on June 7, 2019, that read, in pertinent part:

> "2. [The Club] is enjoined from operating a shooting facility until such time that:
> "(a) [the Club] submits a complete site development activity permit ("SDAP") application to Kitsap County for permitting to cure violations of KCC Titles 12 and 19 found to exist on the Property in the original Judgment (hereafter "Purge Condition"); (b) [the Club] ***proves in a future proceeding that it does not have the ability to comply with the permitting order in the Supplemental Judgment, such as by proving it does not have the ability to perform the Purge Condition***; or (c) [the Club] proves in a future proceeding that it is no longer in contempt, such as by proving that all violations of KCC Titles 12 and 19 found to exist on the Property in the original Judgment have been abated or that [the Club] lacks the ability to cure violations of KCC Titles 12 and 19 found to exist on the Property in the original Judgment."

CP at 68 (the "purge condition") (emphasis added).

On June 20, 2019, the Club filed a motion to terminate the trial court's contempt sanction. CP at 70–81. The Club argued that the coercive

sanction should be terminated because it lacked the funds necessary to submit a complete SDAP application and was therefore unable to perform the purge condition. CP at 78–80.

The County's response did not challenge the Club's evidence regarding the cost of preparing and submitting an SDAP application or the Club's lack of financial resources. CP at 150–56. The County acknowledged that the Club appeared to have "little in the way of liquid assets" but argued the Club's motion should be denied because it did not present evidence of attempts to obtain a loan or engage in other fundraising efforts. CP at 154.

The Club replied with evidence showing that it would be futile to apply for a loan, that the Club had already engaged in fundraising efforts, and that further fundraising efforts would be futile. CP at 214–23.

The trial court denied the Club's motion to terminate the contempt sanction without making any findings of fact or conclusions of law. CP at 234–35.

The Club appealed the trial court's denial of the motion to terminate the contempt sanction. On December 29, 2020, the Court of Appeals issued the 2020 Opinion, which affirmed the trial court's Order. 2020 Op. at 1. The 2020 Opinion included a dissenting opinion by Presiding Chief Judge Maxa. *Id.* at 14–18. The dissent concludes that substantial evidence does not

support the Order because "[t]he record clearly shows that the Club" (1) "did not have sufficient assets to comply with the purge condition in the 2019 amended order[;]" (2) "could not have obtained a loan or credit in order to comply with the purge condition in the 2019 amended order[;]" and (3) "could not have obtained a sufficient level of donations in order to comply with the purge condition in the 2019 amended order." CP at 15, 17, 18.

On January 19, 2021, the Club moved for reconsideration of the 2020 Opinion. On February 1, 2021, the Court of Appeals denied the motion for reconsideration. The Club now petitions for review by this Supreme Court.

V. ARGUMENT

RAP 13.4(b) states a petition for discretionary review "will be accepted by the Supreme Court only" upon at least one of the following conditions: "(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court."

The Club requests the Court to grant the petition because this petition involves an issue of substantial public interest that should be determined by

this Court, and because the 2020 Opinion is in conflict with a decision of the Supreme Court and/or a published opinion of the Court of Appeals.

A. The 2020 Opinion Involves Issues of Substantial Public Interest Regarding the Law of Contempt and Coercive Orders.

There is a substantial public interest in the Club and its outdoor shooting range, which must be made available for use by the general public. In addition, this Court should review the 2020 Opinion because it involves issues of substantial public interest by imposing heightened evidentiary burdens on parties who are required to prove by a preponderance of the evidence that they cannot perform a court order or purge condition.

The presence of an issue of substantial public interest weighs in favor of the Court granting review. RAP 13.4(b)(4). Three criteria determine whether an issue is of substantial public interest:

> "(1) the public or private nature of the question presented; (2) the desirability of an authoritative determination which will provide future guidance to public officers; and (3) the likelihood that the question will recur."

Matter of McLaughlin, 100 Wn.2d 832, 838, 676 P.2d 444 (1984).

1. The Issue Before the Court Is of a Public Nature.

Here, the issue before the Court is of a public nature because the 2020 Opinion has startling implications for judgment creditors, debtors, and parties subject to court orders across Washington. The 2020 Opinion suggests

debtors with unpaid money judgments or unperformed court orders should be coercively jailed or their businesses shut down until they present exhaustive evidence of their inability to beg or borrow money from third parties to pay their judgments or perform their orders.

The 2020 Opinion shows that a debtor cannot meet their burden of proof by submitting uncontradicted evidence of (1) the amount of money they must have in order to purge the contempt (CP at 97, 107, 111, 113); (2) their previous five months of bank statements and the total sum and sources of their liquid capital that show they do not have enough money to perform the purge condition (CP at 76–77, 127–46); (3) their $180,000 liability to a law firm representing them against their insurance company (CP at 220–22, 230); (4) an unchallenged trial court finding that their only real property has $0 value and is so contaminated with lead that it will require a $2-3 million cleanup remedy (CP at 6–7); and (5) their failed attempts to obtain the necessary funds through requests for donations (CP at 220–22, 230–31). And if the debtor is a non-profit organization like the Club, it is insufficient to show the debtor's fund-raising ability is limited because the IRS will revoke its non-profit status if it receives more than 15% of its gross income from non-member sources (CP at 221).

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The heightened evidentiary standard established by the 2020 Opinion has alarming implications for any individual or entity that is subject to an unpaid money judgment or other court remedy. A foreseeable consequence of the 2020 Opinion is a large number of proactive and opportunistic creditors seeking coercive orders to shut down businesses until their judgment debts are repaid. Further, debtors and other parties under court orders are given little clarity under the 2020 Opinion regarding *how much* evidence is enough to show they exhausted all attempts to secure funding from third parties. The Club in this case presented uncontroverted evidence that it lacked sufficient funds to satisfy the purge requirement and further that attempts at securing loans would have been futile.

Under these facts, the 2020 Opinion creates uncertainty for debtors and other parties under court orders while granting creditors and trial courts seemingly unfettered power to issue injunctions in the name of "coercion." The Court should accept review of the 2020 Opinion because it involves issues of a public nature.

2. ***An Authoritative Determination in This Case Will Provide Future Guidance to Judges in Deciding Coercive Remedies for Contempt.***

The Court should grant this petition because its resulting opinion would serve as an authoritative determination on issues that are not plainly

resolved by existing case law. As a result, the Court's opinion would provide future guidance to judges at both the trial and appellate levels in deciding remedies for contempt and whether they are truly coercive.

As discussed below, there are opinions of this Court and the Court of Appeals that involve laws that conflict with the 2020 Opinion, but there does not appear to be any controlling Washington case law that clarifies what kind of evidence is necessary or sufficient to establish a party's inability to perform a court order or purge condition. In this case alone, the Club has received two conflicting opinions from the Court of Appeals that impose different evidentiary standards.

The Court should accept the opportunity to clarify this area of contempt law in order to provide clarity and uniformity for lower courts in deciding whether to hold a party in contempt or to determine that a party has carried her burden in proving she cannot perform a purge condition.

3. The Issues in This Case Are Likely to Recur.

The issues in this case are likely to recur because there is no clear guidance as to the type of evidence a party must submit to prove it cannot perform a court order or purge condition. Indeed, in the event this Court rejects the Club's petition, the Club will return to trial court and likely file another motion to terminate the contempt sanction, but the Club and the trial

court will be bound by two conflicting opinions of the Court of Appeals because they both form the law of the case.

Even if the Club does its level best to comply with both opinions, the 2020 Opinion provides no guidance as to the quantum of evidence the Club must show to prove it is unable to procure money from third parties. For example, the Club already showed that it delivered over 150 letters to third parties in order to solicit donations, which raised about $1,000. CP at 221–22. The 2020 Opinion holds those efforts were insufficient, without clarifying how many more letters the Club should have delivered or what other types of fundraising activities the Club should have performed.

Moreover, the County has twice persuaded the trial court and the Court of Appeals that the Club's uncontradicted evidence is insufficient to prove it lacks the ability to perform the purge condition. If the Club submits another motion to terminate the contempt sanction, the County will almost certainly argue that the Club failed to produce some new type of evidence and thereby seek to raise the evidentiary bar, just as it already did in this case. And if the trial court denies the Club's motion, the Club will likely appeal that decision, and then the Court of Appeals will be in the difficult position of trying to reconcile its previous two contradictory opinions. This Court can

and should stop this dispute from recurring by accepting review of the 2020 Opinion and rendering an authoritative opinion thereon.

B. The 2020 Opinion Conflicts with This Court's Application of the Law of the Case Doctrine.

The Court should grant this petition pursuant to RAP 13.4(b)(1) because the 2020 Opinion is in conflict with this Court's prior holdings regarding the law of the case doctrine.

The law of the case doctrine binds the Court of Appeals to its holdings in the 2018 Opinion. This Court has held, "Under the law of the case doctrine, 'the parties, the trial court, and this court are bound by the holdings of [this] court on a prior appeal until such time as they are 'authoritatively overruled.'" *See Humphrey Indus., Ltd. v. Clay St. Assocs. LLC* ("*Humphrey*"), 176 Wn.2d 662, 669, 295 P.3d 231 (2013). "Questions that were decided by the prior appellate decision, or that could have been decided if they had been raised on appeal, 'will not again be considered on a subsequent appeal if there is no substantial change in the evidence.'" *Kitsap County v. Kitsap Rifle & Revolver Club*, No. 53898-9-II, at 11 (filed Dec. 1, 2020) (quoting *Folsom v. County of Spokane*, 111 Wn.2d 256, 263, 759 P.2d 1196 (1988)).

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This Court reversed the trial court in *Humphrey* when, on remand from this Court, the trial court erroneously awarded attorney fees against the plaintiff upon a finding that the plaintiff's actions were "arbitrary, vexatious, or not in good faith." *Humphrey*, 176 Wn.2d at 671. The *Humphrey* court had already held on appeal that the plaintiff's conduct did not meet that standard of culpability, which became the law of the case. *Id.* Thus, it was error for the trial court to make a finding contrary to this Court's finding on the same issue. *Id.*

Here, like the trial court in *Humphrey*, the Court of Appeals erred by imposing a higher evidentiary burden on the Club in the 2020 Opinion than the burden previously established by the 2018 Opinion. The 2018 Opinion required the Club to present on remand detailed evidence of its present "financial situation, including tax returns, assets and liabilities, or bank statements." 2020 Op. at 4 (*citing* 2018 Op. at 16). The 2020 Opinion goes substantially further and requires the Club to present evidence of its inability to improve its present financial situation by engaging in meaningful and significant fundraising efforts, applying for and being rejected for loans, requesting to enter into deferred payment plans with its consultants who have already made clear their payment terms, presenting evidence of the value of its valueless property in the unlikely event it is able to perform a $2-3 million

cleanup remedy, and producing additional financial reports (i.e., other than bank statements, tax returns, and reports of assets and liabilities). 2020 Op. at 12.

The question of what kind of evidence the Club must submit to prove it is unable to perform the purge condition was decided in the 2018 Opinion. The 2018 Opinion did not require the Club to provide evidence of loan applications, fundraising efforts, requests for engineers and consultants to provide their services on credit, or the value of the Club's property after a hypothetical heavy metals cleanup. Such evidence would relate to the Club's inability to improve its financial situation, as opposed to the Club's actual financial situation, which is what the 2018 Opinion deems relevant. The County accepted the 2018 Opinion without moving for reconsideration or filing a petition for discretionary review by the Washington Supreme Court. The 2018 Opinion is thus controlling precedent on the Court of Appeals and the parties to this lawsuit.

The 2020 Opinion violates the law of the case doctrine, just as the trial court did in *Humphrey*, because it adopts an evidentiary burden that conflicts with the burden established in the 2018 Opinion. The Court should therefore grant this petition and review the 2020 Opinion.

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C. The 2020 Opinion Conflicts with This Court's Opinion and the Court of Appeals' Published Opinion Regarding the Performance of Futile Acts.

Pursuant to RAP 13.4(b)(1) and (2), the Court should grant this petition and review the 2020 Opinion because it is in conflict with this Court's opinion and the Court of Appeals' published opinion that do not require parties to perform futile acts to obtain their requested relief. *Ancheta v. Daly*, 77 Wn.2d 255, 263–64, 461 P.2d 531 (1969); *Larson v. State*, 9 Wash. App. 2d 730, 745, 447 P.3d 168 (2019).

In *Ancheta*, this Court held it would have been futile, and therefore unnecessary, for claimants seeking unemployment compensation to demonstrate their lack of involvement in a labor dispute by crossing a picket line (as otherwise required by statute) in order to obtain jobless benefits because they had already been told by supervisors that they were being laid off. *Ancheta*, 77 Wn.2d at 263.

In *Larson*, the Court of Appeals held it would have been futile, and therefore was not required, for the state to comply with a statutory requirement "of presenting the plaintiffs with a legal release [of claims against the state]" because the plaintiffs already released their claims. *Larson*, 9 Wash. App. at 745.

The 2020 Opinion is in conflict with both *Ancheta* and *Larson* because it requires the Club to engage in futile acts to prove it is unable to perform the purge condition.

For example, the 2020 Opinion holds the Club was required to present evidence of rejected loan applications. 2020 Op. at 12 n.6. A loan application would have been futile, however, based on the Club's uncontroverted evidence about: (a) its debt of over $180,000; (b) its value-less property that requires a $2–3 million cleanup; (c) its lack of any other possible collateral for a loan; (d) its average end-of-month operating balance of less than $5,000; and (e) the injunction that prohibits the Club from operating and engaging in its primary source of fundraising by hosting events, which severely limits its ability to earn income and make loan payments. CP at 6, 76–77, 127–46, 219–20, 230, 232. As the dissent notes, this evidence of the Club's impoverished financial situation shows it is highly unlikely that any lender would extend a line of credit to the Club for over $45,000. 2020 Op. at 15–16 ("[I]t is the majority that is speculating that the Club could have obtained a loan or credit given the Club's financial condition.").

Ancheta and *Larson* do not require the Club to prove it engaged in the futile act of seeking and being denied a loan it cannot repay or to prove it could not perform any of the other acts that would be futile, as demonstrated

by the Club's evidence. Thus, the 2020 Opinion is in conflict with controlling precedent of this Court and a published opinion of the Court of Appeals. The Club therefore asks the Court to grant the Club's petition.

D. The 2020 Opinion Conflicts with the Court of Appeals' Published Opinion Regarding a Contemnor's Proof of Present Inability to Perform a Purge Condition.

The Court should grant the Club's petition because the 2020 Opinion is in conflict with the Court of Appeals' published opinion that only requires a party to prove its present inability to perform a purge condition in order to purge the contempt order.

The Court of Appeals held in *Britannia Holdings Ltd. v. Greer* that a finding of contempt must be predicated on a finding that the contemnor has the "current ability to perform the act previously ordered." 127 Wn. App. 926, 933–34, 113 P.3d 1041 (2005). The *Britannia Holdings* court reversed a trial court's contempt order because the defendants could not perform the purge condition at the time the order was entered. *Id.* at 934. The trial court in *Britannia* held the defendants in contempt for failing "to deliver assets and to provide a credible accounting" to a judgment creditor. *Id.* at 928. The trial court found the defendants had possessed $635,000 and had transferred it in an apparent attempt to evade the creditor. *Id.* at 929. Accordingly, the purge

condition of the contempt order required the defendants to pay $635,000 within four months to the creditor or be jailed for contempt. *Id.* at 930.

The appellate court held the trial court's finding that the defendants' prior possession of $635,000 "is not a finding that *at the time of the contempt order in 2004*, they could purge the contempt." *Id.* at 934 (italics in original). The court therefore reversed the contempt order "because the contemnor must hold the keys to his release, and the [trial] court made no finding that the [defendants] had the present ability to pay the purge amount." *Id.* at 928.

The 2020 Opinion cites *Britannia Holdings* and paraphrases that opinion to mean that a contemnor must have the "present ability to comply with the court's order" and yet refuses to comply therewith. 2020 Op. at 10 (underline added). However, the 2020 Opinion is in conflict with *Britannia Holdings* because it held the Club should have presented tax returns for prior tax years, despite the fact that such returns had no bearing on the Club's inability to pay an uncontroverted sum of money in the summer of 2019.

The Club filed its motion in June 2019 and had not yet filed its 2018 tax return, but the Club submitted unrebutted, credible evidence that its bank statements and treasurer's reports were "the Club's most current and accurate financial documents." CP at 76, 98. The Club's 2018 tax return and its tax returns from prior years were irrelevant at the time of the Club's June 2019

motion because they did not show how much money the Club had at the time of filing the motion, as required by *Britannia*.

The Club's 2018 tax returns might have been relevant if the Club had filed its motion in January or February of 2019, but by the time it filed its motion in June, any information in a 2018 tax return would have been outdated and irrelevant to show the Club's ability to pay at the time of the motion. This argument cuts both ways because if the Club's bank statement from May 2019 had shown $50,000 in cash, a 2018 tax return showing a lack of funds would have been just as irrelevant for showing a present inability to perform the purge condition.

The 2020 Opinion is in conflict with *Britannia* because it requires the Club to submit evidence that does not show a present inability to perform a purge condition. The Court should therefore grant this petition and review the 2020 Opinion.

VI. CONCLUSION

For the reasons stated above, the Club respectfully requests that the Court grant this petition for review and decide the assignments of error presented herein.

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/ / /

DATED: March 3, 2021

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APPENDIX

(1) *Unpublished Opinion*, Kitsap County v. Kitsap Rifle & Revolver Club, No. 53878-4-II, dated December 29, 2020........................... 1

(2) *Order Denying Motion for Reconsideration*, Kitsap County v. Kitsap Rifle & Revolver Club, No. 53878-4-II dated February 1, 2021, ... 19

Filed
Washington State
Court of Appeals
Division Two

December 29, 2020

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

KITSAP COUNTY, a political subdivision of the State of Washington, Respondent, v. KITSAP RIFLE AND REVOLVER CLUB, a not-for-profit corporation registered in the State of Washington, and JOHN DOES and JANE ROES I-XX, inclusive, Appellant. and IN THE MATTER OF NUISANCE AND UNPERMITTED CONDITIONS LOCATED AT One 72-acre parcel identified by Kitsap County Tax Parcel ID No. 362501-4-002-1006 with street address 4900 Seabeck Highway NW, Bremerton, Washington.	No. 53878-4-II UNPUBLISHED OPINION

MELNICK, J. — The Kitsap Rifle and Revolver Club (Club) appeals the trial court's order denying its motion to terminate a sanction for contempt of court. The Club argues that the contempt sanction must be terminated because it is financially unable to perform the sanction's purge condition. The trial court did not abuse its discretion in determining that the Club had the financial ability to perform the contempt sanction's purge condition. We affirm.

FACTS[1]

I. BACKGROUND

The Club is a nonprofit corporation that has operated a shooting range in Bremerton since the 1920s. In 1993, the Club's use of the shooting range was a lawfully established nonconforming use.

In the 1990s, the Club began developing the property on which its shooting range was located. It included clearing and excavating wooded or semi-wooded areas, removing vegetation, replacing a water course that ran through a wetland buffer with two 475-foot culverts, and excavating and moving soil. The Club did not obtain permits for any of this work.

In 2011, Kitsap County filed a complaint for an injunction, declaratory judgment, and nuisance abatement against the Club. The County argued that the Club's development activities were unlawful because it lacked the necessary permits.

After a bench trial, the trial court concluded that the Club's unpermitted use of the property was unlawful and terminated the nonconforming use of the property as a shooting range. The trial court issued a permanent injunction prohibiting the Club from operating a shooting range until the County issued conditional use permits for the Club's property.[2] The court also authorized issuance of a warrant of abatement, the details of which would be determined at a later hearing.

[1] These facts are derived from *Kitsap County v. Kitsap Rifle* (*Kitsap Rifle* III), No. 50011-6-II, (Wash. Ct. App. Jan. 30, 2018) (unpublished), https://www.courts.wa.gov.opinions/, and *Kitsap County v. Kitsap Rifle & Revolver Club* (*Kitsap Rifle* I), 184 Wn. App. 252, 261, 337 P.3d 238 (2014), as well as the record submitted.

[2] The court also issued a permanent injunction prohibiting other activities at the shooting range.

II. *Kitsap Rifle* I (2014)

The Club appealed the trial court's ruling. We stated that "there is no dispute that the Club's unpermitted development work on the property constituted unlawful uses." *Kitsap County v. Kitsap Rifle & Revolver Club* (*Kitsap Rifle* I), 184 Wn. App. 252, 275, 337 P.3d 238 (2014). We affirmed the trial court's ruling that the Club's development work violated County land use permitting requirements. However, we concluded that termination of the nonconforming use was not the proper remedy. As a result, we vacated the trial court's injunction prohibiting the Club from operating as a shooting range and remanded for the trial court to determine the proper remedies for the Club's permitting violations under the Kitsap County Code.

III. Remand from *Kitsap Rifle* I

On remand, the trial court issued an order supplementing judgment on remand. The order stated in pertinent part that the Club had to apply for and obtain site development activity permitting (SDAP) within 180 days of the order, i.e. August 3. The order also ordered that a warrant of abatement could be authorized if the Club's participation in the permitting process did not cure the code violations and permitting deficiencies.

The trial court entered the order on February 5 after the 180-day period ended and the Club had not submitted an SDAP application.

IV. Motion for Contempt

On August 18, the County filed a motion for contempt, requesting that the court prohibit the Club from operating a shooting range until the Club submitted an application for an SDAP.

The trial court held a hearing on August 26. The Club argued that it was unable to comply with the court's order because of the expense. The court declined to find the Club in contempt at

that time and provided an additional 90 days for the Club to file the required SDAP application. The court scheduled a second hearing for December 2.

At the second contempt hearing, the County argued that the Club had not established an inability to pay the expenses of the permit process.

The Club had submitted a declaration of Marcus Carter, the Club's executive officer, about the cost of completing the application and the Club's end-of-month operating account balance in 2016. But the Club failed to present corroborating information about its financial situation, including tax returns, statements of assets and liabilities, or bank statements. The court noted that the Club presented minimal evidence of inability to pay and therefore did not meet its burden of proof. The court concluded that "the lack of detailed evidence" was fatal to the Club's claim that it was unable to comply with the court's order. *Kitsap County v. Kitsap Rifle* (*Kitsap Rifle* III), No. 50011-6-II, slip op. at 16 (Wash. Ct. App. Jan. 30, 2018) (unpublished), https://www.courts.wa.gov.opinions/.

The trial court granted the County's motion for contempt and entered an order, along with findings of fact and conclusions of law. The court concluded that an appropriate remedy for the Club's contempt was an injunction prohibiting the Club from operating a shooting facility until it obtained permitting. On that basis, the court enjoined the Club from operating its shooting facility "until such time that [the Club] *obtains* permitting in compliance with KCC Titles 12 and 19." Clerk's Papers (CP) at 64 (emphasis added).

V. *KITSAP RIFLE* III (2018)

The Club appealed the trial court's contempt order. We affirmed the contempt order. We also held that substantial evidence supported the trial court's implicit finding that the Club was able to comply with the court's order. However, we also decided that the court erred in ruling that

the Club was required to obtain an SDAP, rather than applying for one, in order to purge the contempt. We reasoned that the purge condition was punitive because actually obtaining a permit was outside the Club's control and "the Club does not have the ability to satisfy the purge condition without relying on the County's actions." *Kitsap Rifle* III, slip op. at 21.

In remanding the case, we also noted:

> [T]he fact that the Club in December 2016 did not prove its inability to comply with the trial court's supplemental order does not preclude the Club from producing new or additional evidence of an inability to comply in a future proceeding. The contemnor must be given the opportunity "at regular intervals, to present new evidence tending to show that the [sanction] has lost its coercive effect or that there is no reasonable possibility of compliance with the court order."

Kitsap Rifle III, slip op. at 22 (quoting *In re Pers. Restraint of King*, 110 Wn.2d 793, 805, 756 P.2d 1303 (1988)).

VI. REMAND ORDER

On June 7, 2019, the trial court entered an amended contempt order that read, in pertinent part, as follows:

> 2. [The Club] is enjoined from operating a shooting facility until such time that: (a) [the Club] submits a complete site development activity permit ("SDAP") application to Kitsap County for permitting to cure violations of KCC Titles 12 and 19 found to exist on the Property in the original Judgment (hereafter "Purge Condition"); (b) [the Club] *proves in a future proceeding that it does not have the ability to comply with the permitting order in the Supplemental Judgment, such as by proving it does not have the ability to perform the Purge Condition*; or (c) [the Club] proves in a future proceeding that it is no longer in contempt, such as by proving that all violations of KCC Titles 12 and 19 found to exist on the Property in the original Judgment have been abated or that [the Club] *lacks the ability to cure violations of KCC Titles 12 and 19* found to exist on the Property in the original Judgment.

CP at 68 (emphasis added).

On June 20, 2019, the Club filed a motion to terminate the trial court's contempt sanction. The Club argued that the coercive sanction should be terminated because it lacked the funds necessary to submit a complete SDAP application and was therefore unable to perform the purge condition.

In support of its motion, the Club submitted an e-mail from the County stating that the Club would be required to file an application for an SDAP-Commercial as opposed to a less burdensome SDAP-Grading 2 as suggested by the Club. The Club also submitted a declaration from Barbara Butterton, a Club member who stated that she had submitted several documents to the County to initiate the process of the Club submitting an SDAP application.

In addition, the Club submitted the declaration of Marcus Carter, its executive officer. Carter stated that the application for an SDAP-Commercial would cost $6,722.40. In addition, Carter stated that the total cost of submitting the SDAP application would be $45,377.40.[3]

Carter attached the Club's treasurer's report and bank statements for 2019, which he stated were the Club's most current and accurate financial documents. These materials showed that the Club's monthly average balance for January through May was $4,760.16, and that the Club had $4,022.17 in its accounts at the end of May. The Club expected that its accounts would hold approximately $4,000 at the end of June. Carter stated that these accounts (and petty cash) represented the Club's only liquid assets. He concluded:

> The Club's only significant sources of income in 2019 have been membership dues and donations. Despite the Club's continuous and ongoing efforts to raise funds, it started the year with very little cash and has been unable to improve its financial position. The Club is also not aware of any way it can obtain a loan secured by any of its property, and even if it did it would be unable to make monthly loan payments.

CP at 99.

[3] He based this figure on a consultant's estimated cost and an engineer's estimation.

The County did not challenge the Club's evidence regarding the cost of submitting a SDAP application or the Club's financial resources. The County acknowledged that the Club appeared to have little liquid assets. However, the County emphasized that the Club had not presented evidence of any attempt to obtain a loan or what a monthly payment on a loan would be. The County argued that the Club "has not provided this Court with meaningful information that indicates that financial options have been exhausted, let alone sufficiently explored." CP at 154.

The County also argued that the Club had not presented any evidence of any meaningful fundraising efforts. The County noted that the Club claimed that its continuous and ongoing fundraising efforts had been unsuccessful, but that the Club had left the trial court "with the unanswered question as to what continuous and ongoing fundraising efforts look like." CP at 154.

Finally, the County argued that the Club was simply unwilling to comply with the trial court's order, not unable to comply. The County referenced Butterton's application for a waiver of certain application requirements, which stated that some requirements were a waste of time, resources and money and other requirements were not necessary or needed. The County claimed that these statements reflected the Club's true feelings about the application process.

In its reply memorandum, the Club emphasized that its property had no value, as found in the trial court's 2012 judgment, and was its only source of collateral for a loan. In the 2012 judgment, the trial court found that an appraiser had determined that the Club's property had no value because the property was lead-contaminated and a $2-3 million cleanup might be required.

The Club also submitted another declaration from Butterton, who now identified herself as the Club's president. Butterton stated that no lender would accept the Club's property as collateral for a loan because of environmental and permitting issues, and the Club had no other assets. In

addition, the Club owed over $180,000 in attorney fees for related insurance coverage litigation, which was another reason the Club could not obtain a loan.

Regarding fundraising, Butterton stated the Club's primary source of fundraising, charitable events at the shooting range, was unavailable because the range had been shut down. She stated that the Club had mailed about 150 letters to other shooting ranges, its members, and the National Rifle Association Board of Directors, but that effort resulted in less than $1,000 in donations. The Club tried to establish a GoFundMe page, but the page was rejected as too political. Finally, as a 507(c)(7) organization the Club could not receive more than 15 percent of its income from nonmember sources, which limited its ability to raise $45,000. Butterton noted that despite its fundraising efforts, the Club was "not aware at this time of any person or combination of persons willing to give it $45,000." CP at 230.

After hearing argument, the trial court denied the Club's motion to terminate the contempt sanction. It made no findings of fact. In an oral ruling, the trial court said it agreed with the County's arguments.

The Club appeals the trial court's order denying the motion to terminate the contempt sanction.

ANALYSIS

I. MOTION TO TERMINATE CONTEMPT SANCTION

The Club argues that the trial court erred by denying its motion to terminate the contempt sanction because it presented sufficient evidence that it was financially unable to satisfy the purge condition. Because the trial court did not abuse its discretion in determining that the contemnor could comply with the purge condition, we disagree.

A. Legal Principles

We review the trial court's conclusion regarding the contemnor's ability to comply with a purge condition for an abuse of discretion.[4] *In re Det. of Faga*, 8 Wn. App. 2d 896, 900, 437 P.3d 741 (2019). A court abuses its discretion if there is a clear showing that the court's exercise of discretion was manifestly unreasonable or based on untenable grounds or reasons. *Faga*, 8 Wn. App. 2d at 900. A court also abuses its discretion if a ruling is based on an erroneous interpretation of the law. *In re Marriage of Shortway*, 4 Wn. App. 2d 409, 418, 423 P.3d 270 (2018).

Chapter 7.21 RCW provides courts with the authority to impose sanctions for contempt of court. Contempt of court includes the "intentional . . . [d]isobedience of any lawful judgment, decree, order, or process of the court." RCW 7.21.010(1)(b).

The contempt statutes distinguish between remedial, or civil, sanctions and punitive, or criminal, sanctions for contempt of court. RCW 7.21.010(2), (3); *In re Interest of Silva*, 166 Wn.2d 133, 141-42, 206 P.3d 1240 (2009). Remedial sanctions are "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). Punitive sanctions are imposed "to punish a past contempt of court for the purpose of upholding the court's authority." RCW 7.21.010(2). A civil contempt sanction that is punitive rather than coercive is invalid. *Faga*, 8 Wn. App. 2d at 900.

To qualify as remedial, a contempt sanction must allow the contemnor to purge the contempt by committing an affirmative act. *Faga*, 8 Wn. App. 2d at 900. In addition, the contemnor must have the ability to satisfy the purge condition. *Faga*, 8 Wn. App. 2d at 900-01. A sanction becomes punitive when the contemnor cannot purge the contempt. *In the Matter of*

[4] The person subject to contempt is referred to as the "contemnor."

Rapid Settlements, Ltd., 189 Wn. App. 584, 613, 359 P.3d 823 (2015). "When a contemnor cannot control whether to purge the contempt because purging the contempt is dependent on the actions of third parties, outside of the contemnor's control, the purge condition is inappropriate." *Faga*, 8 Wn. App. 2d at 902.

A remedial sanction may become punitive if circumstances change. When a sanction loses its coercive effect, such as when a contemnor loses his or her ability to comply with the violated court order, the trial court must terminate or modify the sanction. *Faga*, 8 Wn. App. 2d at 900-903.

The law presumes that the contemnor is able to perform actions that the court orders. *Faga*, 8 Wn. App. 2d at 901. Therefore, the inability to comply is an affirmative defense and the contemnor bears the burden of proof. *Faga*, 8 Wn. App. 2d at 901. The contemnor must offer credible evidence regarding the inability to comply. *Faga*, 8 Wn. App. 2d at 901.

In *Britannia Holdings Ltd. v. Greer*, 127 Wn. App. 926, 929-30, 113 P.3d 1041 (2005), the trial court found the contemnor, a judgment debtor, in contempt for disobeying multiple orders to deliver assets. The trial court issued a purge order requiring the debtor to pay $635,000 or be jailed for contempt. *Greer*, 127 Wn. App. at 929-30. On appeal, we reversed the contempt sanction because the trial court failed to make a finding that the contemnor had the present ability to comply with the court's order for the payment. *Greer*, 127 Wn. App. at 933-34. The court reasoned that a contemnor in civil contempt must hold the keys to his jail cell in his own pocket. *Greer*, 127 Wn. App. at 928.

B. Ability to Comply with Purge Condition

In *Kitsap Rifle* III we stated that a trial court must make at least an implicit finding that a contemnor could comply with a court order before imposing a contempt sanction. No. 50011-6-

II, slip op. at 15. We conclude the same rule applies when a court rules on a motion to terminate a contempt sanction.

The trial court here made an implicit finding that the Club had the financial ability to comply with the purge condition in the 2019 amended order. We review this finding to determine if it is supported by substantial evidence. *Cuesta v. Emp't Sec. Dep't*, 200 Wn. App. 560, 570, 402 P.3d 898 (2017). Evidence is substantial if it persuades a reasonable person of the truth of the premise asserted. *Cuesta*, 200 Wn. App. at 570.

Although the Club submitted some evidence of its financial situation, it failed to present tax returns, statements of assets and liabilities, and bank statements. These are the exact type of documentation that we concluded the Club failed to present previously. We previously concluded that "the lack of detailed evidence" was fatal to the Club's claim that it was unable to comply with the court's order. *Kitsap Rifle* III, slip op. at 16.[5]

We note that the Club once again failed to present the documentation that we specified should be presented, such as tax returns, and asset and liability reports. As before, we again conclude that "the lack of detailed evidence" was fatal to the Club's claim that it was unable to comply with the court's order. *Kitsap Rifle* III, slip op. at 16.

[5] We are aware that, Carter submitted the Club's treasurer's reports and bank statements for 2019, which he represented were the Club's most current and accurate financial documents. However, they were incomplete. They lacked the documents we specified should be presented, i.e. tax returns, statements of assets and liabilities, or bank statements. *Kitsap Rifle* III, slip op. at 16.

The Club also failed to present evidence that it had applied for loans or that the loans had been rejected.[6] In addition, the Club did not present any evidence of any meaningful or significant fundraising efforts.

The Club failed to present evidence that no lender would be willing to loan $45,000 to them. It merely provided opinions based on pure speculation. The Club neither applied for loans nor requested deferred payment arrangements with its consultants.

We conclude that substantial evidence supported the court's implicitly ruling that the Club had the financial ability to purge the contempt order. We also conclude that the court did not abuse its discretion in determining that the club did not meet its burden to show that it could not financially purge the contempt order.[7]

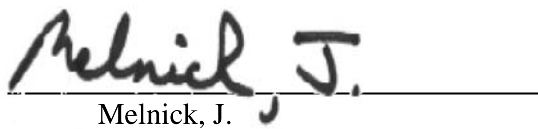
CONCLUSION

We conclude that the trial court did not abuse its discretion in determining that the Club had the financial ability to perform the contempt sanction's purge condition. We affirm.

[6] The evidence the Club submitted on this issue was Carter's testimony that the Club was "not aware of any way it can obtain a loan secured by any of its property" and, even if it did, the Club "would be unable to make monthly loan payments." CP at 77. However, this conclusory statement is mere speculation. The Club should have presented facts that it applied for loans and that the lending agencies denied them. Although the Club's land might require an expensive clean up, the Club failed to present evidence of the property's value after a cleanup.

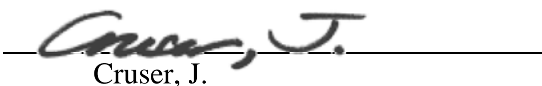
[7] The Club argues that we should disregard the County's following arguments because it raised them for the first time on appeal: that the Club should have disclosed additional financial reports, that the Club should have attempted to work out a payment arrangement with its consultants, and that the Club's $45,000 cost estimate lacked credibility because its first estimate was $158,000. Because these arguments are not novel and they do not inject new facts into the record, we disagree with the Club.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



Melnick, J.

I concur:



Cruser, J.

MAXA, J. (dissenting) – The record demonstrates that the Kitsap Rifle and Revolver Club (Club) satisfied its burden of demonstrating that it is financially unable to perform the purge condition of the trial court's sanction. Therefore, I believe the trial court erred in denying the motion to terminate the contempt sanction because the Club established that it was unable to satisfy the purge condition. Accordingly, I would reverse and remand for the trial court to terminate the sanction.

When a contemnor loses his or her ability to comply with the contempt order's purge condition, that sanction becomes punitive rather than coercive and the trial court must terminate the sanction. *In re Det. of Faga*, 8 Wn. App. 2d 896, 900, 437 P.3d 741 (2019). The trial court apparently made an implicit finding that the Club did not show that it did not have the financial ability to comply with the purge condition in the 2019 amended order. Substantial evidence does not support that finding.

1. Ability to Pay Cost of Application with Liquid Assets

Marcus Carter, the Club's executive officer, attached the Club's treasurer's report and bank statements for 2019, which he stated were the Club's most current and accurate financial documents. These materials showed that the Club's monthly average balance for January through May was $4,760.16, and that the Club had $4,022.17 in its accounts at the end of May. The Club expected that its accounts would hold approximately $4,000 at the end of June. Carter stated that these accounts (and petty cash) represented the Club's only liquid assets. In addition, the Club submitted evidence that submitting an SDAP-Commercial application would require the club to incur approximately $45,000 in expenses. The County did not contest this evidence. And in the trial court, the County acknowledged that the Club appeared to have little liquid assets.

The majority opinion states that the Club could have presented additional financial information such as tax documents and asset and liability reports. In *Kitsap Rifle* III, the Club relied only on the unsupported declaration of Carter to show the Club's assets. *Kitsap County. v. Kitsap Rifle*, No. 50011-6-II, slip op. at 15-16 (Wash. Ct. App. Jan. 30, 2018) (unpublished), http://www.courts.wa.gov/opinions/pdf/D2%2050011-6-II%20Unpublished%20Opinion.pdf (*Kitsap Rifle* III). The Club failed to present any documentation showing its financial situation, including tax returns, assets and liabilities, or bank statements. *Id*. We concluded that "the lack of detailed evidence" was fatal to the Club's claim that it was unable to comply with the court's order. *Id*. at 16.

But here, Carter submitted the Club's treasurer's reports and bank statements for 2019, which he represented were the Club's most current and accurate financial documents. These were the type of documents that were missing when this court rejected the Club's challenge to the issuance of the 2016 contempt sanction. *See Kitsap Rifle* III, No. 50011-6-II, slip op. at 15-16. Nothing in the record suggests that some other documents would have revealed additional assets.

The record clearly shows that the Club did not have sufficient liquid assets to comply with the purge condition in the 2019 amended order.

2. Ability to Obtain Loans to Pay Application Expenses

The majority opinion notes that the Club failed to submit any evidence that it was unable to obtain a loan to pay or credit from its consultants for the application expenses. However, the evidence the Club did submit shows that it was highly unlikely that the Club could obtain a loan or credit.

Carter testified that the Club was "not aware of any way it can obtain a loan secured by any of its property" and, even if it did, the Club "would be unable to make monthly loan payments." CP at 77. Barbara Butterton, the Club's president, stated:

> With the potential for environmental liability and unresolved site development violations, no lender will accept the Club's real property as collateral. The Club has no other assets that could possibly be considered as collateral for a loan of over $45,000. Instead, the Club has significant unpaid liabilities, such as for legal representation against its liability insurer, Northland Insurance Co. The Club owes over $180,000 in attorney fees for that work.

CP at 230.

Further, the trial court entered an unchallenged finding of fact in the 2012 judgment that the Club's real property had been valued by a certified appraiser at "$0" based on the property's "continued use for shooting range purposes and the potential costs of environmental cleanup." CP at 6-7. The appraisal revealed that the property was "lead-contaminated and that a $2-3 million cleanup may be required for the property." CP at 6.

There was no indication in the record that a lender would be willing to loan $45,000 to an entity with $4,000 in liquid assets and an outstanding $180,000 debt when the only possible collateral was lead-contaminated property that had been appraised as having no value. The majority opinion does not assert that the Club actually could have obtained a loan, only that it should have tried to apply for one. But the Club should not be required to engage in a futile act in order to prove an inability to satisfy a purge condition. *See Larson v. State*, 9 Wn. App. 2d 730, 745, 447 P.2d 168 (2019), *review denied*, 194 Wn.2d 1019 (2020) (stating that "the law does not require futile acts").

Similarly, there was no indication in the record that the Club's consultants would have been willing to extend credit to a client with $4,000 in liquid assets and an outstanding $180,000 debt to another professional who was assisting in the Club's efforts to reopen the shooting range.

The majority opinion states that the Club's position that it could not have obtained a loan or credit is based on mere speculation. But it is the majority that is speculating that the Club could have obtained a loan or credit given the Club's financial condition.

The record clearly establishes that the Club could not have obtained a loan or credit in order to comply with the purge condition in the 2019 amended order.

3. Ability to Obtain Donations to Pay Application Expenses

The majority opinion states the Club did not present evidence of any meaningful or significant fundraising efforts, apparently suggesting that the Club could have done more to seek donations to fund the SDAP application.

The Club presented evidence that it solicited donations, but that the donations received were insignificant. Butterton stated:

> It is no secret that the Club is a non-profit that accepts donations. The Club has specifically asked for them since receiving the 2012 trial decision, such as by sending about 150 letters to shooting ranges, their members, and the NRA Board of Directors. That effort generated less than $1,000 in donations. Meanwhile, GoFundMe rejected a page intended to collect donations for the Club because it considered the effort too political.

CP at 230. Butterton noted, "In spite of its fundraising efforts, the Club is not aware at this time of any person or combination of persons willing to give it $45,000." CP at 230.

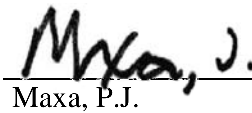
Butterton identified two limitations on the Club's fundraising efforts. First, the closure of the shooting range "has deprived the Club of one of its primary means of fundraising, which was to host charitable events." CP at 230. Second, "the Club is registered with the IRS as a 501(c)(7) organization, which means no more than 15% of its gross income can come from non-member sources." CP at 230. This means that the Club would need to have $255,000 in income from member sources to be able to accept $45,000 from outside donors.

There was no indication in the record that the Club had the ability to obtain donations totaling $45,000. The majority apparently believes that the Club should have tried harder. But as noted above, the Club should not be required to engage in a futile act in order to prove an inability to satisfy a purge condition. *See Larson*, 9 Wn. App. 2d at 745.

The record clearly shows that the Club could not have obtained a sufficient level of donations in order to comply with the purge condition in the 2019 amended order.

4. Summary

I conclude that substantial evidence does not support the trial court's implicit finding that the Club was financially able to satisfy the purge condition in the 2019 amended order. Therefore, I would hold that the trial court erred in denying the Club's motion to terminate the contempt sanction in the 2019 amended order. Accordingly, I dissent.



Maxa, P.J.

Filed
Washington State
Court of Appeals
Division Two

February 1, 2021

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

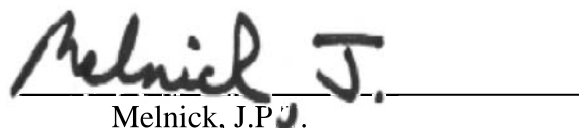
KITSAP COUNTY, Respondent, v. KITSAP RIFLE AND REVOLVER CLUB, a not-for-profit corporation registered in the State of Washington, and JOHN DOES and JANE ROES I-XX, inclusive, Appellant. and IN THE MATTER OF NUISANCE AND UNPERMITTED CONDITIONS LOCATED AT One 72-acre parcel identified by Kitsap County Tax Parcel ID No. 362501-4-002-1006 with street address 4900 Seabeck Highway NW, Bremerton, Washington.	No. 53878-4-II ORDER DENYING MOTION FOR RECONSIDERATION

Appellant, Kitsap Rifle and Revolver Club, moves this court to reconsider its December 29, 2020 unpublished opinion. After consideration, we deny the motion. It is

SO ORDERED.

Panel: Jj. Maxa, Melnick, Cruser.

FOR THE COURT:



Melnick, J.P.T.

CERTIFICATE OF SERVICE

I, Skylar Washabaugh, declare under penalty of perjury under the laws of the State of Washington, that I am now and at all times herein mentioned a resident of the State of Oregon, over the age of eighteen years, not a party to or interested in the above-titled action, and competent to be a witness herein.

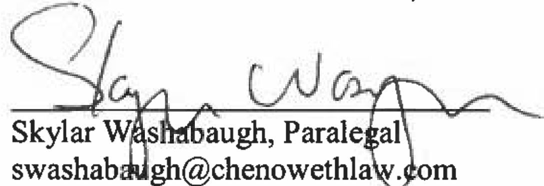
On the date given below, a copy of PETITION FOR REVIEW was served upon the following individuals by via email, pursuant to an e-service agreement between the parties, to the following:

Laura F. Zippel
John Purves
Kitsap County Prosecutor's Office
Civil Division
614 Division St., MS-35A
Port Orchard, WA 98366
Email: lzippel@co.kitsap.wa.us
jcpurves@co.kitsap.wa.us
bfredsti@co.kitsap.wa.us

I filed the PETITION FOR REVIEW electronically with the Court of Appeals, Division II, through the Court's online e-filing system.

DATED: March 3, 2021

CHENOWETH LAW GROUP, PC



Skylar Washabaugh, Paralegal
swashabaugh@chenowethlaw.com

CHENOWETH LAW GROUP, PC

March 03, 2021 - 4:16 PM

Transmittal Information

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Appellate Court Case Title:	Kitsap County, Respondent v. Kitsap Rifle and Revolver Club, Appellant
Superior Court Case Number:	10-2-12913-3

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