

No. 74643-0-I

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

MICHAELA OSBORN,
f/k/a Michaela Fellows,

Appellant,

v.

CHARLES FELLOWS,

Respondent.

BRIEF OF RESPONDENT

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INTRODUCTION AND SUMMARY

In this dissolution action, the trial court ordered Appellant Michaela Osborne not to damage the house of her ex-husband, Respondent Charles Fellows. After the house was found defaced, the trial court determined that Osborne had committed the damage. The court therefore found Osborne in contempt of its earlier order not to damage the house. Determining that the damage to the house totaled at least \$75,000, the court entered a judgment of \$75,000 in favor of Fellows. That judgment should be affirmed.

The trial court had more than enough evidence to find that Osborne had intentionally disobeyed the trial court's earlier order not to damage the house. Osborne—not Fellows—lived in the house and had control over it until a few days before the damage was reported. The character of the damage also pointed to Osborne as the culprit. Much of the damage consisted of insults, printed on walls or carved into surfaces, and addressing Fellows by name. These statements suggest that Osborne damaged the house in order to injure, control, and intimidate Fellows himself. The damage also included children's handprints and footprints, suggesting that Osborne had recruited her young children to aid in the destruction.

Osborne disputes these conclusions, and argues instead that Fellows, in an act of harassment, mutilated his own house and framed Osborne for it. The trial court, however, found Osborne not to be credible, and, after weighing the circumstantial evidence, it rejected her alternative theory of the damage. That credibility determination, and the trial court's weighing of circumstantial evidence, cannot be disturbed on appeal. *See Bale v. Allison*, 173 Wn. App. 435, 458, 294 P.3d 789 (2013) (when trial court acts as factfinder, appellate court does not rebalance competing testimony and inferences); *Endicott v. Saul*, 142 Wn. App. 899, 909, 70 P.3d 560 (credibility determinations are solely for the factfinder).

Osborne also argues that the trial court relied on inadmissible hearsay evidence. Osborne never raised this argument before the trial court, and thus forfeited her ability to raise it now. The argument is also wrong. The police report that Osborne labels hearsay is admissible. Any inadmissible hearsay in the evidence is immaterial, since the trial court had more than enough admissible evidence to support its finding.

Osborne next argues that the trial court's contempt order was punitive, not remedial, and thus should have been subject to the safeguards of criminal procedure. That argument is incorrect. The trial court's award of \$75,000 was a model of remedial relief, because it compensated

Fellows, if only in part, for the damage that Osborne had done to his house.

Finally, the statute governing remedial contempt sanctions, RCW 7.21.030, authorizes this Court to award reasonable attorneys' fees to a party defending a contempt order on appeal. Fellows therefore respectfully requests that the Court award him his reasonable attorneys' fees on appeal.

STATEMENT OF THE ISSUES

1. Was the trial court within its discretion to find that Michaela Osborne had damaged Charles Fellows' house and thus had intentionally disobeyed the court's order not to damage the house in any way?
2. Should Fellows be awarded reasonable attorneys' fees on appeal under RCW 7.21.030(3)?

STATEMENT OF THE CASE

- I. The trial court orders Osborne not to damage Fellows' house in any way.**

This appeal arises out of dissolution proceedings between Michaela Osborne and Charles Fellows. After hearing testimony and the parties' arguments, the trial court said that it would issue a written order later, but wanted "to let the parties know right now orally" what the order

would say. 3 BT 238:11–12.¹ Among other things, the court said that it would award the parties’ house to Fellows. 3 BT 238:13–239:1. It was Osborne, however, and not Fellows, who was living in the house at this time. The trial court therefore allowed Osborne to live in the house for 60 more days. 3 BT 240:4–7.

Counsel for Fellows then asked the court to “issue an oral ruling” directing Osborne not to “do something to the house or destroy it.” 3 BT 240:14–16. The trial court responded, “The house needs to be maintained in the condition it is. . . . [T]here’s nothing that should be holding you together, including this house, so the house needs to be in a livable condition.” 3 BT 240:17–22.

In the final dissolution decree, the trial court ordered Fellows to pay over \$50,000 to Osborne for her equity interest in the house. 4 BT 246:11–13; Clerk’s Papers (“CP”) 6. It also entered a permanent order of protection, forbidding Fellows from getting within 1000 feet of wherever Osborne was living. 3 BT 238:13–14; CP 447.

On the day the trial court entered this final decree, it again ordered Osborne not to damage the house in any way during the 60 days she would

¹ Four volumes of the Verbatim Report of Proceedings (VRP) consist of the marriage-dissolution bench trial. Fellows will cite these four volumes using the abbreviation “BT,” for “bench trial.” The other portion of the VRP is the transcript of the November 9, 2015 contempt hearing. Fellows will cite this transcript using the abbreviation “Contempt Tr.”

live there. The court noted that it would entertain a contempt motion if she disobeyed:

The home should be in -- if there's any sabotage or anything done to the home, I will allow -- consider a contempt motion here and will address any potential reduction of damages. I think the easiest way to -- I think Ms. Fellows is aware that she needs to leave the home intact. *Do not damage it in any way, shape or form.* If that's a concern, the parties may come back for a contempt consideration and address any damages that may have occurred

4 BT 251:6–14 (emphasis added). This is the July 8, 2015 order on which the trial court based its later contempt finding. CP 502.

II. After living elsewhere, Fellows returns to his house to find it damaged.

A few days after Osborne had moved out of Fellows' house, Fellows arrived to find that it had been trashed. Gallons of paint were splattered throughout the house. CP 14–16, ¶¶ 1.02, 1.06, 1.09, 1.11; CP 90–92, 94–98, 125–127, 132–134, 136–139, 140–146, 150–154, 210. Appliances had been removed, and holes had been drilled through cabinets, doors, walls, and tiles. CP 15–17, ¶¶ 1.07, 1.08, 1.09, 1.13; CP 80, 83, 100, 118, 132, 136, 139, 149, 158, 172, 181, 186, 191, 199, 207, 211, 222, 237, 298, 357, 368, 384. Someone had taken a hammer to surfaces in the kitchen, the downstairs bathroom, and the upstairs bathroom. CP 15–17, ¶¶ 1.08, 1.10, 1.13; CP 78, 184–185, 196, 208, 229–230, 233–234, 351, 363–364, 369. Speakers had been ripped from the

walls and ceilings, and someone had kicked gaping holes in the drywall. CP 15–16, ¶¶ 1.07, 1.11; CP 72–76, 87, 142, 144, 161, 218, 225, 244, 264–265, 275–276, 282, 335. Many other kinds of damage appeared throughout the house as well. *E.g.*, CP 135, 147, 162, 173, 192, 206, 212, 217, 221, 235, 240, 243, 247.

Around the house, Fellows found writing, sometimes carved into surfaces and sometimes printed on the walls. The writing was addressed to him. Among the statements that Fellows discovered around the house were:

- “Take your meds Chuck.”
- “Great Job Chucky! Just like your last relationship by the end of 7 years it’s tapout time! Like I’ve always told you, you’re predictable!”
- “Please forgive the kids for their momentary lapse on [*sic*] judgment. Just this time make sure the PUNISHMENT fits the CRIME!”

CP 15, ¶ 1.07; CP 24, 26; *see also, e.g.*, CP 120, 158, 164, 166–170, 180, 375, 393–394.

III. Fellows reports the damage to the police, who interview Osborne.

Fellows reported the damage to police. *See* CP 574–79. The police interviewed Osborne on the same day that Fellows made his report.

See CP 577–78.

An official report, made under penalty of perjury, recounts the police's interview with Osborne. The interview took place via a phone call and then a follow-up meeting.

On the phone, Osborne told the interviewing officer that she was "in possession of the house until 9-8-2015." CP 577. The house was "hers until 9-8-15," she told the officer, "and anything that she does to her house until then is okay." CP 577. She also instructed the officer to "tell crazy [C]huck to take his meds." CP 577.

Minutes after the phone call ended, Osborne met the police officer for an in-person interview. She partially corrected an earlier statement, giving August 31, 2015 rather than September 8, 2015 as the date she had to be out of the house. CP 578. She also told the police that she "technically didn't do the damage to the house"—her children did. CP 578. In an apparent contradiction, though, she added that the "damage to the house was a temporary lapse in judgment," and that "[s]he could do whatever she wanted to her house." CP 578.

IV. The trial court finds Osborne in contempt and enters a judgment of \$75,000 against her.

Shortly after finding his house damaged, Fellows moved for an order to show cause why Osborne should not be held in contempt for damaging the house. CP 10–12. In support, he submitted his own and

others' declarations; many photographs of the damage; estimates from two firms showing that it would cost about \$150,000 to repair the house; the police report; and a declaration from Karen Sanderson, a private investigator. CP 13–20, 64, 67–399, 406, 574–79. In response to the motion, Osborne maintained that it was not she, but Fellows, who had damaged the house. CP 426. In support, she submitted declarations from herself and from friends and relatives. CP 426–434, 489–500.

At the hearing on Fellows' motion, however, the trial court found that Osborne was responsible for the damage, calling it “a tantrum, and an expensive one at that. . . . It was a she[e]r malicious tantrum.” Contempt Tr. at 15:1–3. The court told Osborne's counsel, “I've seen the pictures. I've seen the reports. I've seen the admissions. . . . I've seen the evidence. I've reviewed all of the documents. Your client's credibility is not flying in this case.” Contempt Tr. at 14:3–4, 14:21–23. The court had repeatedly warned Osborne not to damage the house, but she “ignored this court,” and would therefore be held in contempt. Contempt Tr. at 14:9, 14:13–14.

The court then awarded damages of \$75,000 to Fellows, noting that Osborne had done at least \$75,000 worth of damage to the house. Contempt Tr. at 14:14–15. The court ordered that these damages be offset against the monies owed by Fellows under the court's divorce decree. CP 504. This appeal followed.

STANDARD OF REVIEW

The Court of Appeals reviews the trial court's contempt order deferentially, asking only whether the order was an abuse of discretion. *Weiss v. Lonquist*, 173 Wn. App. 344, 363, 293 P.3d 1264, *review denied*, 178 Wn.2d 1025, 312 P.3d 652 (2013). An order is an abuse of discretion "only if there is a clear showing that the exercise of discretion was manifestly unreasonable, based on untenable grounds, or based on untenable reasons." *Moreman v. Butcher*, 126 Wn.2d 36, 40, 891 P.2d 725 (1995). In addition, "[a]n appellate court will uphold a trial court's contempt finding 'as long as a proper basis can be found.'" *Stella Sales, Inc. v. Johnson*, 97 Wn. App. 11, 20, 985 P.2d 391 (quoting *State v. Boatman*, 104 Wn.2d 44, 46, 700 P.2d 1152 (1985)), *review denied*, 139 Wn.2d 1012, 994 P.2d 849 (1999).

The factual findings embraced in the trial court's order are reviewed for substantial evidence. *See In re Marriage of Rideout*, 150 Wn.2d 337, 351–52, 77 P.3d 1174 (2003). This deferential standard of review applies even where, as here, the trial court did not hear live testimony at the contempt hearing. *See id.* at 350–51. The review is deferential because "trial judges and court commissioners routinely hear family law matters," and "are better equipped to make credibility determinations." *Id.* at 352.

Credibility determinations themselves “cannot be reviewed on appeal.” *Endicott*, 142 Wn. App. at 909 (quoting *Morse v. Antonellis*, 149 Wn.2d 572, 574, 70 P.3d 125 (2003)). Those determinations are “solely for the trier of fact.” *Id.* (quoting *Morse*, 149 Wn.2d at 574). Nor can an appellate court reweigh the evidence—that job, too, is for the trial court. *Bale*, 173 Wn. App. at 458.

ARGUMENT

I. The trial court was well within its discretion to hold Osborne in contempt for damaging the house.

The trial court found Osborne in contempt under chapter 7.21 RCW. *See* CP 501 (citing RCW 7.21.010 in the footer).² That chapter allows a court to impose contempt sanctions if a person intentionally disobeys a court order. *See* RCW 7.21.010(1) (defining contempt). The contemnor must have the power to comply with the court order. *See* RCW 7.21.030(2). “Violation of an oral order may serve as a proper basis for a contempt finding.” *Stella Sales*, 97 Wn. App. at 20 (citing cases).

Under chapter 7.21 RCW, a trial court may impose remedial contempt sanctions “on the motion of a person aggrieved by a contempt

² The order’s footer also mentioned RCW 26.09.160, a statute governing contempt of a parenting plan. That citation appeared because counsel for Fellows—in accordance with local rules, which require the use of forms—used form WPF DRPSCU 05.0200, which is designed for contempt orders under either RCW 26.09.160 or chapter 7.21 RCW. *See* King Cty. LFLR 3. The trial court was thus invoking its powers under chapter 7.21 RCW. *See* *Stella Sales*, 97 Wn. App. at 20 (appellate court will uphold trial court’s contempt order as long as a proper basis can be found).

of court” and “after notice and hearing.” RCW 7.21.030(1). As part of these remedial powers, a trial court may order the contemnor to pay the other party “for any losses suffered . . . as a result of the contempt.” RCW 7.21.030(3).

A. The trial court reasonably found that Osborne had intentionally failed to comply with the court’s order by damaging Fellows’ house.

No one disputes that someone damaged Fellows’ house. The photographs that Fellows submitted to support his motion for contempt are proof enough of that. The dispositive question is who committed the damage. As Fellows will explain, the trial court acted well within its discretion to find Osborne—and not anyone else—responsible.

1. The trial court had substantial evidence to find Osborne in contempt for intentionally damaging the house.

The trial court had more than enough evidence to find that Osborne was responsible for the destruction. She was living in and had control over the house until at least August 27, 2015—only a few days before Fellows first returned there.³ CP 428–429. The writing on the house’s walls and other surfaces also suggest that Osborne damaged the house to control or intimidate Fellows. The writings were addressed to “Chuck,” or

³ Osborne’s declaration says that she left the house on August 27, 2015. CP 428–429. Two other declarations place Osborne there on August 28. CP 489, 492. Another declaration appears to place her there on August 29. CP 495. Fellows returned to the house on August 31. CP 13, ¶ 1.01.

“Chucky”—Fellows’ first name is Charles—and they derided him for not staying in relationships longer. CP 15, ¶ 1.07; CP 24–25. The character of the damage itself indicated that Osborne had recruited her young children to help her: children’s feet and hands had been “dipped in paint and marked over the house,” and her children’s writing (“Sorry Daddy Charles”) was on a wall. CP 15, ¶¶ 1.06, 1.07; CP 134–135, 151, 338, 345, 394.

The trial court was also entitled to conclude that Osborne had meant to commit the damage, and hence had intentionally disobeyed the court’s order not to “damage [the house] in any way, shape or form.”⁴ 4 BT 251:11–12. The damage was extensive. Osborne had kicked and drilled holes in the wall, cabinets, and ceiling, had splattered gallons of paint around the house, and had apparently taken a hammer to surfaces in a number of different rooms. *E.g.*, CP 98, 126, 153, 186, 192, 199, 210, 225, 282. This sort of damage does not happen by accident—it happens only when someone has intended it.

Finally, the trial court acted within its discretion when it found that Osborne was able to abide by the order not to damage the house. CP 502. Not even Osborne herself argues that she was compelled to damage the

⁴ Osborne appears to concede that *if* she damaged the house, that would have violated the plain terms of the trial court’s order.

house. Nor does Osborne argue that she cannot pay the \$75,000 judgment. That kind of argument would make little sense, since the judgment was offset against money that Fellows owed to Osborne. CP 504.

2. The trial court was well within its discretion to reject Osborne's theory that Fellows had committed the damage.

Osborne argues, however, that it was Fellows who defaced his own house—presumably sometime between August 27, 2015, when Osborne left the house, and August 31, 2015, when Fellows first reported the destruction to the Renton Police Department. Br. of Appellant 8, 12; CP 430. But the trial court acted well within its discretion when it considered and explicitly rejected the theory that Fellows damaged his own house to harass Osborne. *See* Contempt Tr. at 14:24–15:2. This is so for two main reasons: (1) Osborne was not credible; and (2) Osborne, not Fellows, had control over the house.

1. The trial court found Osborne not to be credible. The trial court had every right to disbelieve Osborne and believe Fellows—and its contempt finding can be affirmed on this ground alone. It determined that Osborne's "credibility is not flying in this case," Contempt Tr. at 14:23, and this credibility determination is unreviewable on appeal. *Endicott*, 142 Wn. App. at 909. The trial court also had good reason to doubt Osborne's credibility, given her changing story. She never told the Renton police, for

example, that she believed Fellows had committed the damage. *See* CP 577–78. To the contrary, she told police that “[s]he technically didn’t do the damage to the house, her 3 children did,” that “[t]he damage to the house was a temporary lapse in judgment,” and, most suspiciously, that “[s]he could do whatever she wanted to her house” until she moved out.⁵ CP 577–78.

Because the trial court was within its rights to disbelieve Osborne, it was right to disbelieve her factual assertions. Thus, for example, the trial court was entitled to reject her assertion that the writing on the walls and surfaces had been there before the divorce became final.⁶ *See* Br. of Appellant 13 (so asserting); CP 429 (same); *see also* CP 513–14 (declaration of Fellows, stating that the writing had not been there earlier and pointing out that an attached April 2015 appraisal had not mentioned any writing on the walls). It was likewise entitled to reject Osborne’s claim that her children had made the extensive hand- and footprints only when they accompanied a Renton police officer who was following up on

⁵ Osborne argues that the police report is inadmissible, but, as explained below, she is incorrect. *See infra* Argument, § I.B.

⁶ Even if Osborne *had* marked up the walls and carved the surfaces before the divorce became final, that fact would hardly cut in her favor. It would not explain away the rest of the damage. And it would undercut Osborne’s credibility still further by showing that she admittedly had a habit of defacing the house when she was upset at Fellows.

Fellows' report of damage. *See* Br. of Appellant 13 (making that claim); CP 429 (same).

For similar reasons of credibility, the trial court was equally entitled to disbelieve or give little weight to the declarations that Osborne submitted in opposition to the motion for contempt. The declarants were all relatives or friends of Osborne, and the trial court was free to disregard them for that reason. *See, e.g., Bartel v. Zuckriegel*, 112 Wn. App. 55, 63, 47 P.3d 581 (2002) (rejecting the argument that the trial court should have believed the testimony of certain witnesses, and noting that “the weight given to conflicting evidence is for the trial court to decide—not us”). But even if the declarations are believed, they fail to rule out Osborne as the culprit. At most, they show that the house was not yet seriously damaged on August 28 or 29, 2015. CP 489, 492, 495. They leave open the possibility that Osborne defaced the house on August 30, the day before Fellows arrived there and first reported the damage.

2. *Osborne controlled the house.* The trial court also had a second reason to reject Osborne's explanation for the damage. As the trial court noted, Osborne had control over the house until August 27, 2015, and thus had the opportunity to damage the house before leaving. *See* Contempt Tr. at 15:7–9. What is more, Fellows lacked access to the house, and had to hire a locksmith to let him into the house when he returned. *See* CP 14, ¶¶

1.03–1.05; CP 22. While Osborne has asserted that Fellows, in August 2015, had access to the house via a garage door opener, CP 430, she has provided no evidence beyond her own say-so to support that assertion. And, in any event, the trial court was entitled to believe Fellows, who testified that Osborne changed the garage code after 2013 so that he no longer had access. CP 518:4–8. It would certainly be rather odd for Fellows to go to the trouble of hiring a locksmith to let him into the house if he could easily have entered through the garage.

Osborne dismisses this evidence of control as “circumstantial evidence,” Br. of Appellant 9, 13, but a trial court may give circumstantial evidence just as much weight as direct evidence. “[C]ircumstantial evidence is as good as direct evidence.” *Rogers Potato Serv., L.L.C. v. Countrywide Potato, L.L.C.*, 152 Wn.2d 387, 391, 97 P.3d 745 (2004). Evidence of one party’s control, even if labeled circumstantial, provides substantial evidence to support a finding. *See id.* at 392 (affirming a trial court’s finding, which was based on circumstantial evidence of control); *cf.* 6 Washington Practice: Washington Pattern Jury Instructions: Civil 1.03 (6th ed. 2013) (“The law does not distinguish between direct and circumstantial evidence in terms of their weight or value in finding the facts in this case. One is not necessarily more or less valuable than the other.”). In attacking the evidence as circumstantial, then, Osborne is

simply attacking the weight the trial court gave that circumstantial evidence. The Court should turn down Osborne's invitation to reweigh the evidence. *See Bale*, 173 Wn. App. at 458 (appellate courts do not reweigh the evidence).

B. The trial court's finding was based on admissible evidence, and Osborne has forfeited any argument to the contrary.

While Osborne argues that the trial court admitted inadmissible hearsay evidence, she forfeited her ability to make this argument on appeal by failing to object to the evidence before the trial court. This Court generally does not review evidentiary objections that the appellant did not raise in the trial court. RAP 2.5(a); *Wilson v. Overlake Hosp. Med. Ctr., Inc.*, 77 Wn. App. 909, 914, 895 P.2d 16 (1995). Nowhere in her materials opposing Fellows' motion for contempt did Osborne argue that either the police report or Karen Sanderson's declaration contained inadmissible hearsay. *See* CP 426–500. Nor did Osborne make those arguments at the contempt hearing. *See* Contempt Tr. at 9:12–13:11, 13:13–14:1. When Osborne mentioned the police report, she attacked its weight, not its admissibility. Contempt Tr. at 11:7–18. Osborne cannot raise her evidentiary objections on appeal.

But even if Osborne had not waived her evidentiary arguments, her objection to the police report, *see* Br. of Appellant 16–17, would still be

erroneous as a matter of law. The document was not hearsay because the officers making the report declared under penalty of perjury that it was true and correct. CP 578, 579; *see* ER 801(c) (defining hearsay). And even if the police report *were* hearsay, it would still be a public record that is admissible under RCW 5.44.040.⁷ And the statements of Osborne that appeared in that police report were admissible as a party admission. ER 801(d)(2).

To attack the police report, Osborne notes that it stated that she had three children, rather than the two she actually has. But this misstatement goes to the weight the factfinder should give to the police report, not to whether the report was admissible. *Cf. State v. Young*, 160 Wn.2d 799, 820, 161 P.3d 967 (2007) (where statements were admissible under a hearsay exception, discrepancies in the statements went to weight, not admissibility). And, on appeal, this Court defers to the weight that a factfinder gives to admissible evidence. *See, e.g., Bale*, 173 Wn. App. at 458.

⁷ RCW 5.44.040 governs “duly certified” public records. The police report bore a copy of the seal of the City of Renton, CP 574–76, which is sufficient. To qualify as duly certified, only a copy of the seal, rather than an original seal, is required. *State v. Smith*, 66 Wn. App. 825, 828, 832 P.2d 1366 (1992). In any event, Osborne, even on appeal, has never challenged the police report on the ground that it was not duly certified. *See also Deutsche Bank Nat’l Trust Co. v. Slotke*, 192 Wn. App. 166, 177, 367 P.3d 600 (2016) (an issue raised for the first time in a reply brief is forfeited).

Finally, even if the trial court should not have admitted declarant Karen Sanderson's report of what neighbor Michael Elvidge told her, admission of that evidence did not affect the outcome. To support its contempt finding, the court had far more evidence than just an admission to a neighbor. It had Fellows' declaration, the photographs and other exhibits to that declaration, and the police report. *See* Contempt Tr. at 14:3–4. This evidence, particularly when combined with the trial court's finding that Osborne was not credible, was more than enough to support the order of contempt. That order should therefore be affirmed. *See Stella Sales*, 97 Wn. App. at 20 (appellate court will uphold trial court's contempt order as long as a proper basis can be found).

C. The order of contempt was remedial, not punitive.

Finally, Osborne maintains that the order of contempt was criminal in nature. And, she argues, because the trial court did not abide by the procedural safeguards that apply to criminal proceedings, the order of contempt must be reversed. But the premise of this argument is wrong: the order of contempt was remedial and civil, not punitive and criminal.

To determine whether a sanction for contempt is civil or criminal, “courts look not to the subjective intent of a State’s laws and its courts, but examine the character of the relief itself.” *In re M.B.*, 101 Wn. App. 425, 439, 3 P.3d 780 (2000) (citation and internal quotation marks omitted),

review denied, 142 Wn.2d 1027, 21 P.3d 1149 (2001). Civil contempt relief may “be employed for either or both of two purposes”: “to coerce the defendant into compliance with the court’s order, or to compensate the complainant for losses sustained.” *United States v. United Mine Workers of Am.*, 330 U.S. 258, 303–04 (1947); *see also King v. Dep’t of Soc. & Health Servs.*, 110 Wn.2d 793, 800, 756 P.2d 1303 (1988) (noting that a civil contempt sanction “is typically for the benefit of another party”). A criminal contempt sanction, by contrast, punishes the contemnor to “vindicat[e] the authority of the court.” *King*, 110 Wn.2d at 800.

Under these standards, the trial court’s contempt sanction was civil, because it compensated Fellows for “losses sustained.” *United Mine Workers*, 330 U.S. at 304; *see also* RCW 7.21.030(3) (remedial contempt sanctions may order contemnor “to pay a party for any losses suffered”). The trial court fixed the sanction at \$75,000 not as a punitive fine, but as compensation for damage: “This court is satisfied that \$75,000 worth of damage at least has been done and will award that.” Contempt Tr. 15:15–17. Because the contempt sanction simply compensated Fellows for Osborne’s destruction, the sanction was no more criminal than is a jury’s award in a tort case. *See, e.g., Shoemake ex rel. Guardian v. Ferrer*, 168 Wn.2d 193, 198, 225 P.3d 990 (2010) (noting that tort law’s purpose is to make the injured party as whole as possible through monetary

compensation). And Osborne can purge her contempt simply by paying the \$75,000 or allowing it to be offset against moneys owed by Fellows. CP 503.

If anything, the trial court's sanction awarded *less* than the full damage that Osborne had done. The two estimates that Fellows submitted to the trial court both put the cost of restoring the house at around \$150,000. CP 64, 406.

According to Osborne, however, the trial court expressed its punitive intent by labeling her destruction a “tantrum” and by noting that Osborne had “ignored this court,” and had “failed to abide by” the court’s order. Br. of Appellant 19 (quoting Contempt Tr. at 14:9–12, 15:1–2). Osborne appears to be arguing that the sanction was punitive because the trial court supposedly expressed a desire to punish her for disobedience. This argument fails for two reasons.

First, Osborne is confusing moral disapproval with criminal punishment. The trial court certainly disapproved of Osborne’s disobedience—that is why it called that disobedience a “she[e]r malicious tantrum.” Contempt Tr. at 15:2–3. But criticizing an act verbally is not the same as punishing it judicially. If it were, then almost all civil contempt sanctions would be criminal, since no trial court is likely to *condone* disobedience to its lawful orders.

Second, and more fundamentally, Osborne’s argument fails because it tries to plumb the trial court’s “subjective intent,” an inquiry that the Supreme Court has forbidden. *Hicks v. Feiock*, 485 U.S. 624, 635 (1988). Such an inquiry is not only “unseemly and improper,” but “misguided” also, because it forgets that every civil contempt sanction will have the *incidental* effect of doing what a criminal contempt sanction also does: vindicating the court’s legal authority. *See id.* at 635–36 (quoting *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 443 (1911)). Osborne errs, in other words, because she is not examining the character of the trial court’s relief, which was remedial. *See id.* at 636 (“[C]onclusions about the purposes for which relief is imposed are properly drawn from an examination of the character of the relief itself.”).

Osborne makes two final arguments to try to show that the contempt sanction was punitive. According to Osborne, the trial court intended to punish Osborne for her past actions because “there was no review hearing set to ensure” compliance. Br. of Appellant 20. The court set no review hearing because Osborne would no longer have control of the house and thus would not have another opportunity to trash it. There was no need for a review hearing. Osborne also says that the trial court signaled its punitive intent by noting that Osborne “would be lucky” if she did not face a charge of malicious mischief. Contempt Tr. at 15:11–13;

see Br. of Appellant 20. This argument errs by again focusing on the trial court's subjective intent. It also misconstrues what the trial court was saying. The court was telling Osborne that charges of malicious mischief could be filed in the future, not that its present contempt sanction was intended to punish Osborne for malicious mischief.

II. Fellows should be awarded his reasonable attorneys' fees on appeal.

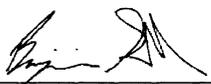
RCW 7.21.030(3) provides that remedial sanctions for contempt may include "reasonable attorney's fees." This provision entitles a party to recover its attorneys' fees on appeal when it has successfully defended an appeal of a trial court's contempt order. *See R/L Assocs., Inc. v. City of Seattle*, 113 Wn.2d 402, 413, 780 P.2d 838 (1989); *In re Marriage of Curtis*, 106 Wn. App. 191, 202, 23 P.3d 13 (2001). Thus, Fellows, pursuant to RAP 18.1(a) and (b), requests an award of his reasonable attorneys' fees on appeal.

CONCLUSION

Acting as a factfinder, the trial court determined that Osborne was not credible, and, weighing the evidence, decided that she had damaged Fellows' house. That credibility determination cannot be challenged on appeal, and the evidence cannot be reweighed. This Court should therefore affirm the trial court's contempt order, and award Fellows his reasonable attorneys' fees on appeal.

RESPECTFULLY SUBMITTED this 19th day of May, 2016.

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CERTIFICATE OF SERVICE

I declare under penalty of perjury of the laws of the State of Washington that on May 19, 2016, I e-mailed a true and correct copy of the foregoing document, including this certificate of service, to the Appellant's attorney at morgan@amlawseattle.com. In addition, on that same day, I mailed the document via U.S. mail, postage prepaid, to:

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