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COURT OF APPEALS

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STATE OF WASHINGTON

NO. 34873-0-II

BY *llm*  
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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IN RE THE INTEREST OF J.L.

STATE OF WASHINGTON,  
Respondent,

J.L.,  
Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KITSAP COUNTY

The Honorable Russell W. Hartman, Judge

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BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The court violated appellant's right to due process by imposing a punitive sanction for contempt in a civil truancy proceeding.

Issues pertaining to assignment of error

1. The court below imposed detention as a sanction for appellant's contempt in a truancy proceeding without providing appellant an opportunity to purge the contempt and avoid detention. Did imposition of punitive sanction in this civil proceeding violate appellant's right to due process?

2. Where this Court can provide effective relief and where the issue in this case is one of continuing and substantial public interest, is review by this Court warranted?

B. STATEMENT OF THE CASE

On May 19, 2005, Bremerton High School filed a petition for an order to compel school attendance by J.L., appellant herein. CP 1-7. The petition alleged that J.L. had 42 unexcused absences out of 150 school days, that the school had taken all mandatory steps to eliminate or reduce absences, that those efforts had been unsuccessful, and that court intervention and supervision was necessary. Id.

At a hearing on October 21, 2005, before Commissioner Paula Crane, J.L. admitted the allegations in the petition. 1RP<sup>1</sup> 4. Based on that admission, the court entered an order requiring J.L. to attend school with no unexcused absences for the balance of the school year. 1RP 4; CP 10. The order also indicated that any violation may result in a Finding of Contempt, for which sanctions could be imposed, including up to seven days of detention and/or community service. CP 10. The court informed J.L. that she would be cited for the first violation of the order, and penalties would start attaching right away. 1RP 4.

On November 11, 2005, the school petitioned for an order of contempt, alleging four further unexcused absences. CP 11-13. At a hearing before Commissioner Crane on December 16, 2005, J.L. admitted the allegations, and the court found her in contempt. 2RP 3. The court ordered J.L. to complete 16 hours of community service and tour the detention facility. It also imposed four days of secured detention, which was suspended on the condition that J.L. follow the school's attendance policy. 2RP 4; CP 16.

The school filed a second contempt petition on January 19, 2006, alleging four additional unexcused absences since the court's first finding

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<sup>1</sup> The Verbatim Report of Proceedings is contained in four volumes, designated as follows: 1RP—10/21/05; 2RP—12/16/05; 3RP—3/3/06; 4RP—5/19/06.

and order of contempt. CP 17-19. J.L. again admitted the allegations, and the court again found her in contempt. 3RP 3-4. At the hearing on March 3, 2006, the state asserted that J.L. had not completed the community service hours ordered at the first contempt hearing and asked the court to convert that requirement to two days on work crew. In addition, the state requested two days of secured detention, to be served on work crew for the current contempt. 3RP 4. J.L. indicated that she had completed the community service and asked for time to provide proof of that. 3RP 4. As requested, the court imposed four days on work crew, with two days to be deleted if J.L. provided proof that she had completed the ordered community service. The court also ordered but suspended an additional four days of secured detention. 3RP 5; CP 22.

The school filed a third contempt petition on April 3, 2006, alleging five additional unexcused absences. CP 23-26. A contempt hearing was held on May 19, 2006, before the Honorable Russell W. Hartman. At the hearing, the court informed J.L. that if she admitted the school's allegations, the potential penalty was up to seven days of detention, but if she denied the allegations she had the right to a hearing. 4RP 3. J.L. admitted the alleged unexcused absences. 4RP 4.

The state recommended that the court impose three days of secured detention from the work crew and community services hours which were

not completed following the previous contempt findings. The state also recommended seven days of secured detention for the current contempt, suspended on the condition that J.L. continue to attend school, and that the court extend its jurisdiction in this matter until December 31, 2006. 4RP 4.

Through counsel, J.L. indicated that she was not able to complete the ordered work crew days because she lacked transportation from her home in Bremerton to Port Orchard. 4RP 5. Counsel also requested, if the court chose to order secured detention, that J.L. be given an opportunity to purge the contempt. Citing In re Interest of M.B.,<sup>2</sup> counsel argued that unless the court provided J.L. an opportunity to purge, the determinate term of detention rendered the contempt punitive. Counsel noted that in her experience, courts in another county generally required an essay about obeying the court's orders to purge the contempt. Counsel requested some similar purging condition, so that the contempt would be remedial and civil rather than punitive. 4RP 5.

The court ordered J.L. to serve two days of the previously suspended detention. It also imposed an additional four days of detention, which it suspended, noting that J.L. would continue to have eight days of

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<sup>2</sup> In re Interest of M.B., 101 Wn. App. 425, 3 P.3d 780 (2000), review denied, 142 Wn.2d 1027 (2001).

suspended detention outstanding. It also granted the state's request to extend jurisdiction through December 31, 2006. 4RP 9; 29.

In response to counsel's request for a purge condition, the court noted that the statute specifically states that detention for contempt is remedial rather than punitive. 4RP 9. Given that this was J.L.'s third contempt and she had not substantially complied with the prior sanctions, it would require J.L. to serve two days in detention with no opportunity to purge. 4RP 10.

J.L. filed this timely appeal. CP 30.

C. ARGUMENT

1. THE TRIAL COURT ERRED IN IMPOSING A DETERMINATE TERM OF DETENTION WITHOUT AFFORDING JL THE OPPORTUNITY OF AVOIDING DETENTION BY PURGING THE CONTEMPT.

Under the truancy statute, Chapter 28A.225 RCW, the court may order a child to attend school when it grants a truancy petition filed by the child's school. RCW 28A.225.090(1)(a). If the child fails to comply with the court's order, the court can find the child in contempt and impose up to seven days of detention and/or community service. RCW 28A.225.090(2).

Here, in a civil proceeding under the truancy statute, the court below ordered J.L. to serve two days in detention as a contempt sanction

for violating the court's prior order to attend school. When J.L. requested a purge condition so that the sanction imposed would be remedial rather than punitive, the court noted that the statute indicates that detention is a remedial sanction. 4RP 9.

The truancy statute authorizes detention as provided in RCW 7.21.030(2)(e). RCW 28A.225.090(2). Under RCW 7.21.030(2)(e), a court may impose remedial sanctions for contempt, including commitment to a juvenile detention facility for up to seven days. The statute provides, "This remedy is specifically determined to be a remedial sanction." RCW 7.21.030(2)(e). The legislature's decision to label all contempt sanctions as remedial is not controlling, however. It is the nature of the sanction which determines whether it is remedial or punitive. In re Interest of M.B., 101 Wn. App. 425, 445-46, 3 P.3d 780 (2000) (citing Hicks v. Feiock, 485 U.S. 624, 631, 99 L. Ed. 2d 721, 108 S. Ct. 1423 (1988)), review denied, 142 Wn.2d 1027 (2001); In re Interest of Rebecca K., 101 Wn. App. 309, 317, 2 P.3d 501 (2000).

A punitive sanction is imposed to punish past contempt of court, while a remedial sanction is imposed to coerce performance of an act still within the contemnor's power to perform. M.B., 101 Wn. App. at 438. A contempt sanction involving detention is coercive, and therefore remedial, if the contemnor is able to purge the contempt and obtain release by

performing an affirmative act. Id. at 439. As long as there is an opportunity to purge, a determinate term of detention is remedial, not punitive. Id.; In re Dependency of A.K., 130 Wn. App. 862, 867, 125 P.3d 220 (2005). On the other hand, “use of a detention sanction without a purge condition renders the contempt punitive.” M.B., 101 Wn. App. at 446.

Courts may not impose punitive contempt sanctions “unless the contemnor has been afforded the same due process rights afforded other criminal defendants.” M.B., 101 Wn. App. at 439-40; accord State v. A.L.H., 116 Wn. App. 158, 164, 64 P.3d 1262 (2003). These include initiation of a criminal action by filing a criminal information, assistance of counsel, privilege against self-incrimination, and proof beyond a reasonable doubt. A.L.H., 116 Wn. App. at 164; M.B., 101 Wn. App. at 440.

The sanction imposed in this case was punitive, regardless of the court’s characterization. The court imposed a determinate term of detention to punish J.L. for her past violations of the court’s order to attend school. 4RP 3, 10. J.L. could not purge the contempt and thus avoid detention by “going to school yesterday.” M.B., 101 Wn. App. at 448. Because the court provided no alternate means of purging the

contempt, the sanction was punitive and its imposition violated J.L.'s right to due process.

2. THE ISSUE IS NOT MOOT.

A case is not moot where a court can still provide effective relief. State v. Turner, 98 Wn.2d 731, 733, 658 P.2d 658 (1983). As the lower court noted when ordering J.L. to serve two days detention, orders imposing and suspending an additional eight days of detention remained in effect. 4RP 9. Moreover, the court extended its jurisdiction in this matter until December 31, 2006. Id. Thus, even if J.L. has already served the two days of detention imposed in the May 19, 2006, order, she is still subject to further detention in this truancy proceeding. This Court can provide effective relief by requiring purge conditions if the remaining detention is imposed. See State ex rel. T.B. v. CPC Fairfax Hosp., 129 Wn.2d 439, 447, 918 P.2d 497 (1996) (habeas corpus action not moot even though child escaped from hospital, because she still faced possibility of reincarceration); Turner, 98 Wn.2d at 733 (appeal of contempt sanctions not moot even though appellants had served sentences, because fines remained outstanding).

Even if the issue here is technically moot, it should be reviewed by this Court. In determining whether a technically moot issue is one of continuing and substantial public interest and thus warrants review, courts

consider (1) whether the issue is of a public or private nature, (2) whether an authoritative determination is desirable to provide future guidance to public officers, and (3) whether the issue is likely to recur. State v. Veazie, 123 Wn. App. 392, 397, 98 P.3d 100 (2004) (citing Hart v. Dep't of Soc. & Health Servs., 111 Wn.2d 445, 448, 759 P.2d 1206 (1988)).

First, the question of whether purge conditions are required to render detention sanctions in truancy cases remedial is a public issue rather than a dispute between private litigants. The issue is not unique to this case but may arise in any truancy action.

Next, an authoritative determination from this Court is needed. In M.B., Division One held that in proceedings involving juvenile status offenders,<sup>3</sup> “use of a detention sanction without a purge condition renders the contempt punitive.” M.B., 101 Wn. App. at 446. Division Three cited this holding with approval in a case involving contempt of juvenile dependency placement orders. A.K., 130 Wn. App. at 867-68; accord Rebecca K., 101 Wn. App. at 317 (contempt for violation of ARY orders). And in A.L.H., this Court agreed that, with respect to violation of an at-risk order, a determinate term of detention without a purge condition is punitive. A.L.H., 116 Wn. App. at 163-64. This Court did not

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<sup>3</sup> Status offenders are youths who are before the court because their behavior endangers their welfare, including runaways, at-risk youths, truants, and juveniles in need of mental health and substance abuse treatment. RCW 13.32A.010.

specifically address application of this requirement to truancy cases, however.

At the contempt hearing in this case, J.L.'s counsel pointed out that courts in another county applied M.B. in truancy cases and provided for purge conditions when imposing determinate terms of detention. 4RP 5. The court was not familiar with the holding in M.B., however, and clearly did not understand that a purge condition was required to render the determinate detention sanction it was imposing remedial. 4RP 9. An authoritative determination from this Court's should provide the necessary guidance.

Finally, the issue is likely to recur. Without a final resolution by this Court, juvenile courts in this Division will likely continue to impose detention without purge conditions in truancy actions. The issue could also recur in this case, as J.L. remains subject to several days of suspended detention sanctions.

This Court should review the merits of this case, even if it is technically moot, because there is a continuing and substantial public interest in assuring that contempt sanctions in truancy proceedings serve a remedial purpose and, where a punitive sanction is necessary, juveniles are not deprived of liberty without due process of law. An authoritative decision by this Court will affect the nature and process by which courts

impose contempt sanctions on children in truancy proceedings, and review is appropriate.

D. CONCLUSION

The lower court violated J.L.'s right to due process by imposing detention without providing an opportunity to purge the contempt. Since J.L. remains subject to further detention ordered in this proceeding, and since an authoritative decision on this issue is desirable, this Court should clarify that purge conditions are required to render the sanctions remedial.

DATED this 27<sup>th</sup> day of September, 2007.

Respectfully submitted,



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Certification of Service by Mail

Today I deposited in the mails of the United States of America, postage prepaid, properly stamped and addressed envelopes containing copies of the Brief of Appellant in

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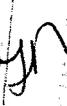
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I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Catherine E. Glinski  
Done in Port Orchard, WA  
September 27, 2006

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