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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By: SO

No. 331008

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**THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION III**

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**Briana Wakefield,  
Appellant,**

**v.**

**City of Kennewick,  
Respondent,**

**and**

**City of Richland,  
Respondent.**

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**REPLY BRIEF OF APPELLANT**

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**TABLE OF CONTENTS**

**I. INTRODUCTION .....1**

**II. COUNTERSTATEMENT OF THE CASE.....2**

**III. REPLY ARGUMENT .....2**

A. SSI is for low-income individuals. ....2

B. Ms. Wakefield ability to pay discretionary LFOs must be based on her actual, non-speculative financial means. ....8

C. The Cities’ position that LFOs must be paid regardless of indigency violates the law established in *Fuller v. Oregon* and *State v. Blazina*. ....11

D. The Benton County District Court used its contempt powers to coerce the payment of a civil debt owed to the county.....13

E. The Benton County District Court violated Ms. Wakefield’s rights to Procedural Due Process. ....15

**IV. CONCLUSION .....18**

**TABLE OF AUTHORITY**

**Cases**

*Bearden v. Georgia*, 461 U.S. 660, 667-68, 103 S. Ct. 2064, 76 L. Ed. 2d 221 (1983).....8

*Bennett v. Arkansas*, 485 U.S. 395, 108 S.Ct. 1204, 99 L.Ed.2d 455 (1998) .....8

*Bering v. Share*, 106 Wn.2d 212, 220, 721 P.2d 918 (1986), *cert. denied*, 479 U.S. 1050 (1987).....10

*City of Bellevue v Acrey*, 103 Wn.2d 203, 207, 691 P.2d 957 (1984).....18

*City of Bellevue v. Hellenthal*, 144 Wn.2d 425, 436, 28 P.3d 744 (2001) 16

*Figeroa Ruiz v. Delgado*, 359 F. 2d 718 (1st. Cir. 1966).....16

*French v. Dir., Mich. Dept. of Soc. Servs.*, 92 Mich.App. 701, 285 N.W.2d 427 (Mich. App. 1979).....6

*Fuentes vs. Benton County*, Yakima County cause number 15-2-02976-1 .....13

*Fuller v. Oregon*, 417 U.S. 40, 54, 94 S. Ct. 2116, 40 L. Ed. 2d 642 (1974) .....8, 12

*Giles v. City of Prattville*, 556 F.Supp. 612 (M.D. Ala. 1983).....16

*Holcomb v. Holcomb*, 53 Wash. 611, 612-13, 102 P. 653 (1909).....14, 15

*In re M.B.*, 101 Wn. App. 425, 469, 3 P.3d 780 (2000) .....16

*James v. Strange*, 407 U.S. 128, 92 S. Ct. 2027, 32 L. Ed. 2d 600 (1972)13

<i>Moore v. Colautti</i> , 483 F.Supp. 357 (E.D.Pa. 1979), <i>aff'd</i> , 633 F.2d 210 (3rd Cir. 1980).....	6
<i>Philpott v. Essex Cnty. Welfare Bd.</i> , 409 U.S. 413, 93 S. Ct. 590, 34 L. Ed. 2d 608 (1973).....	6, 7
<i>Russo v. Russo</i> , 1 Conn.App. 604, 474 A.2d 473 (Conn. App.1984).....	4, 5
<i>Smith v. Whatcom Cnty. Dist. Ct.</i> , 147 Wn.2d 98, 105, 52 P.3d 485 (2002) .....	13, 16, 17
<i>State ex rel. Barnard v. Bd. of Educ.</i> , 19 Wash. 8, 17-18, 52 P. 317 (1898) .....	17
<i>State v. Barklind</i> , 87 Wn.2d 814, 557 P.2d 314 (1977).....	8, 9
<i>State v. Blazina</i> , 182 Wn.2d 827, 838-39, 344 P.3d 680 (2015) .....	8
<i>State v. Curry</i> , 118 Wn.2d 911, 915-16, 829 P.2d 166 (1992).....	8, 12
<i>State v. Forza</i> , 70 Wn.2d 69, 71, 422 P.2d 475 (1966) .....	18
<i>State v. Smits</i> , 152 Wn. App. 514, 216 P.3d 1097 (2009) .....	8
<i>Tidwell v. Schweiker</i> , 677 F.2d 560 (7th Cir. 1982), <i>cert. denied</i> , 461 U.S. 905 (1983).....	5, 6
<i>Tunncliffe v. Commw. Dept. of Pub. Welfare</i> , 783 Pa. 275, 396 A.2d 1168 (Pa. 1978).....	6
<i>Washington State Dep't of Soc. &amp; Health Servs. v. Guardianship Estate of Keffeler</i> , 537 U.S. 371, 385-86, 123 S. Ct. 1017, 154 L. Ed. 2d 972 (2003).....	7

*Wounded Knee v. Andera*, 416 F. Supp 1236 (D.S.D. 1976) .....16

**Statutes**

42 U.S.C. §1382 – 1382b.....9

42 U.S.C. §407.....5, 6, 7, 8

42 USC §12101.....11

RCW 10.01.180 .....13

RCW 49.60.030 .....11

RCW 9.94A.777 .....10

**Rules**

Evidence Rule 1101 (c)(3).....16

GR 34(3)(A)(iii).....8

**Constitution**

Washington Constitution, Art. 1, Section 17 .....13

## I. INTRODUCTION

The determinative issue in this case is whether a Washington court may order the payment of legal financial obligations (“LFOs”) from means-tested public benefits. By extension, whether a Washington court can find someone in willful contempt for not paying their LFOs when they are indigent—as defined by GR 34—and imprison them for failing to pay over means-tested public benefits to a Washington county or other jurisdiction.

When the law is properly applied to the facts of Ms. Wakefield’s case, it is clear that the trial court erred in nearly every way. All parties agree that Ms. Wakefield is indigent and that her only source of cash income is Supplemental Security Income (“SSI”). She was indigent at every stage of her criminal proceedings and remains so. The Cities want this Court to ignore the fact Ms. Wakefield has no other means of income and her disability prevents her from working. When Ms. Wakefield asked the trial court to remit her discretionary LFOs, the trial court refused thereby keeping Ms. Wakefield under perpetual threat of imprisonment for non-payment of a debt.

Ultimately, the Cities want this Court to uphold a collection system where everyone is required to pay something, regardless of indigency and ability to pay. However, such a collection system is contrary to law.

## II. COUNTERSTATEMENT OF THE CASE

The Cities concede the trial court did not find Ms. Wakefield had willfully failed to pay her LFOs. Respondents' Brief at p. 6. No party disputes the superior court found Ms. Wakefield's only means of income was SSI and other government benefits.<sup>1</sup> No party disputes the fact Ms. Wakefield made payments on her LFOs from her means-tested public benefits. Respondents' Brief at pgs. 3 and 5.

## III. REPLY ARGUMENT

### A. SSI is for low-income individuals.

Ms. Wakefield receives Supplemental Security Income "SSI" benefits of around \$710 a month from the Social Security Administration (SSA). The SSA pays disability benefits through two programs: the Social Security disability insurance program (SSDI) and the Supplemental Security Income program (SSI). SSDI provides benefits to disabled or blind persons who are "insured" by workers' contributions to the Social Security Trust Fund.<sup>2</sup> The SSI program is a program that makes cash assistance payments to aged, blind, and disabled persons who have limited income and resources. *Id.* A person may receive concurrent benefits from both SSDI and SSI depending on their eligibility. *Id.*

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<sup>1</sup> See Finding of Fact #3.

<sup>2</sup> 2015 Red Book: A Summary Guide To Employment Supports for Persons with Disabilities under the Social Security Disability Insurance and Supplemental Security Income Programs, page 7. <https://www.socialsecurity.gov/redbook/>

The SSA does have incentive to work programs for people receiving SSDI and SSI that are able to engage in some employment. However, one of the basic requirements to receive SSDI or SSI is a person's medical condition is so severe that they are prevented from performing a substantial amount of work. *Id* at 5. The SSA defines a substantial amount of work, referenced as substantial gainful activity (SGA), as earnings of \$1,090 a month from working.<sup>3</sup> If a person earns \$1,090 or above, they will no longer be eligible for SSI benefits.<sup>4</sup>

If Ms. Wakefield was able to “mow lawns” or “babysit”, any income she received above \$65 would reduce her SSI payment.<sup>5</sup> Even if she were able to engage in some part-time employment, her income would still render her indigent. For example, if Ms. Wakefield could theoretically find someone that would hire her to “babysit” twenty hours a week at minimum wage, she would be required to report income to the SSA of \$735.60. The SSA would calculate her benefit by deducting the first \$65 to get to \$688.60 and then half that amount to determine Ms. Wakefield's countable income – \$344.30. The SSA then deducts the countable income from the SSI benefit to determine her benefit of \$388.70. Ms. Wakefield would then have \$1,142.30 in theoretical income for the month. The

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<sup>3</sup> <https://www.socialsecurity.gov/oact/cola/sga.html>

<sup>4</sup> *Supra*, ft. nt. 3.

<sup>5</sup> <http://www.ssa.gov/oact/cola/incomexcluded.html>

indigency threshold for a single person in 2015 (125 percent of the federal poverty level) is \$1,226,04.<sup>6</sup> The Cities want this Court to accept the premise that Ms. Wakefield could do odd jobs while still receiving her full SSI monthly benefit, thereby increasing her income making her able to pay a debt. However, SSI benefits are reduced the more SGA a person is able to perform.<sup>7</sup> If this Court accepts the Cities' allegation regarding whether Ms. Wakefield could work odd jobs while receiving SSI, her income would still never be above 125 percent of the federal poverty level. She would still remain indigent and unable to meet her basic essential needs.

The Cities' argument fails to take in to account the eligibility rules of SSI or Ms. Wakefield's serious poverty and documented disability. If Ms. Wakefield were able to perform some odd jobs to earn some extra money, she would need it to battle her unstable housing and food shortage, not pay a civil debt. CP 853, CP 655, CP 443-50, and CP 58-65. Ms. Wakefield currently lives well below the federal poverty level and does have enough money every month to meet her basic essential needs.

The Cities try to mislead this Court by citing two cases they purport support the ability of courts to enforce debts against a person receiving SSI. The first case cited by the Cities, *Russo v. Russo*, is a

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<sup>6</sup> <http://aspe.hhs.gov/2015-poverty-guidelines#thresholds>

<sup>7</sup> <http://www.ssa.gov/pubs/EN-05-11011.pdf>

dissolution case out of Connecticut. 1 Conn. App. 604, 474 A.2d 473 (Conn. App.1984). The Connecticut Appeals Court found that it was not a violation of 42 U.S.C. §407 when the court ordered Mr. Russo to pay his own liabilities listed on his financial affidavit. The court did not specifically state what funds or potential sources of income Mr. Russo should use to pay his liabilities and noted he received SSDI and had other potential sources of income. *Id.* at 607-608. First, SSDI is not SSI. SSDI allows recipients to have assets and resources unlike the minimal assets and resources allowed by SSI.<sup>8</sup> People receiving SSDI may also receive disability benefits for their children and other dependents; the same is not true for SSI.<sup>9</sup> Further, the Russo case is a dissolution case and not a case where a person faces jail time if they do not pay LFOs. As a recipient of SSI, Ms. Wakefield does not have other sources of income and her position is nothing like Mr. Russo's.

The second case the Cities cite to support its claim that the district court did not delineate Ms. Wakefield's SSI income when they ordered her to pay \$15 a month towards her LFOs is *Tidwell v. Schweiker*, 677 F.2d 560 (7th Cir. 1982), *cert. denied*, 461 U.S. 905 (1983). This case concerns the legality of an Illinois statutory and regulatory scheme providing for payment of social security disability benefits to institutionalized mental

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<sup>8</sup> <https://www.socialsecurity.gov/ssi/text-resources-ussi.htm>

<sup>9</sup> <https://www.socialsecurity.gov/planners/disability/dfamily4.html>

patients. *Id.* The Seventh Circuit found that the Illinois scheme did violate 42 U.S.C. §407. *Id.* at 567-568. The Seventh Circuit referenced an earlier Supreme Court opinion where it concluded that “the language of section 407 is all inclusive and it imposes a broad bar against the use of any legal process to reach Social Security benefits.” *Id.* (citing *Philpott v. Essex Cnty. Welfare Bd.*, 409 U.S. 413, 93 S. Ct. 590, 34 L. Ed. 2d 608 (1973)).

The *Tidwell* opinion discusses three other cases where agreements to pay back a loan that did not delineate the source of repayment did not violate 42 U.S.C. §407. The three opinions point out that if the social security recipient chose not to repay the state agency in the agreement, then the social security benefits could not be reached. *Moore v. Colautti*, 483 F.Supp. 357 (E.D.Pa. 1979), *aff'd*, 633 F.2d 210 (3rd Cir. 1980); *French v. Dir., Mich. Dept. of Soc. Servs.*, 92 Mich.App. 701, 285 N.W.2d 427 (Mich. App. 1979); *Tunncliffe v. Commw. Dept. of Pub. Welfare*, 783 Pa. 275, 396 A.2d 1168 (Pa. 1978). But, if the state puts itself in the place of a preferred creditor – it is illegal per *Philpott. Tidwell*, 677 F.2d at 568. The Benton County District Court puts itself in the place of a preferred creditor by ordering Ms. Wakefield to pay \$15 a month from her SSI benefits. The district court knows it could not get any of Ms. Wakefield’s SSI income if they sent the debt to a private collection agency. By keeping the debt with the court and threatening Ms. Wakefield with imprisonment

if she does not pay over her SSI benefits, the court makes itself a very productive preferred creditor. The *Tidwell* holding is unsupportive of the Cities' case.

The Cities' incorrectly cite to *Guardianship Estate of Keffeler* to support their claim the Benton County District Court's order for Ms. Wakefield to pay \$15 a month in installment payments did not amount to "other legal process." Respondents' Brief, p. 21. Ms. Wakefield cites as authority *Guardianship Estate of Keffeler* for her explanation of what constitutes "other legal process." *Washington State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler*, 537 U.S. 371, 385-86, 123 S. Ct. 1017, 154 L.Ed.2d 972 (2003); Appellant's Brief, p. 27. In *Guardianship Estate of Keffeler*, the court held Washington State's use of foster children's social security benefits for reimbursement purposes, when it was the representative payee of the foster children, did not violate 42 U.S.C. §407(a). *Id.* at 372. The court noted Washington State's reimbursement scheme operated on funds already in its control and did not amount to other legal process. *Id.* The court distinguished cases where the objective of the process is to discharge, or secure discharge of, some enforceable obligation, noting that the state in *Guardianship Estate of Keffeler* did not have any enforceable claim against its foster children. *See Philpott*, 409 U.S. 413; *Bennett v. Arkansas*, 485 U.S. 395, 108 S. Ct.

1204, 99 L.Ed.2d 455 (1998). In Ms. Wakefield's case, the district court does have an enforceable obligation against her - LFOs. The district court attempts to secure discharge of the LFO obligation through jail time and bench warrants. The judicial mechanism of jail time used by the Benton County District Court to force Ms. Wakefield to pay a debt from her SSI benefits, her only source of cash income, violates 42 U.S.C. §407(a).

**B. Ms. Wakefield's ability to pay discretionary LFOs must be based on her actual, non-speculative financial means.**

Recipients of means-tested public benefits are indigent as a matter of law. GR 34(3)(A)(iii). The trial court found that Ms. Wakefield's only source of income was from SSI – a needs-based, means-tested assistance program – therefore, as a matter of law the trial court must find her indigent. *State v. Blazina*, 182 Wn.2d 827, 838-39, 344 P.3d 680 (2015) and FFCL #3. Further, the state may not incarcerate an indigent defendant because of her inability to pay LFOs. *See Bearden v. Georgia*, 461 U.S. 660, 667-68, 103 S. Ct. 2064, 76 L. Ed. 2d 221 (1983); *Fuller v. Oregon*, 417 U.S. 40, 54, 94 S. Ct. 2116, 40 L.Ed.2d 642 (1974); *State v. Barklind*, 87 Wn.2d 814, 557 P.2d 314 (1977); *State v. Smits*, 152 Wn. App. 514, 216 P.3d 1097 (2009); *State v. Curry*, 118 Wn.2d 911, 915-16, 829 P.2d 166 (1992).

At all relevant times herein, the Cities were on notice that Ms. Wakefield receives benefits under the SSI program. CP 635, CP 717, CP 725, CP 732-733, CP 735, CP 738, CP 760- 761, CP 831-833, CP 894, CP 902, CP 908, CP 913, and CP 914. Eligibility for SSI benefits requires not only proof of indigency, but also medical proof—to a standard specified and accepted by the Social Security Administration—establishing that the applicant is permanently and totally disabled from being able to perform any substantial gainful activity. *See* 42 U.S.C. § 1382 – 1382b.

The trial court may not compel repayment of discretionary LFOs if the facts show no likelihood that a defendant's indigency will end. *Barklind*, 87 Wn.2d at 817. There was no evidence offered—and none available—that Ms. Wakefield's indigency or disability would end. The trial court was on notice that Ms. Wakefield was indigent and permanently disabled. CP 635, CP 717, CP 725, CP 732-733, CP 735, CP 738, CP 760-761, CP 831-833, CP 894, CP 902, CP 908, CP 913, and CP 914. The Cities offered no evidence establishing that there was a likelihood that her indigency would end or that she had any means—other than SSI—to pay LFOs. The fact that Ms. Wakefield under peril of incarceration, previously made some payments from her SSI income does not establish that it was

appropriate for the court to extract those public benefits from her or that she had the ability to pay.

The Cities essentially argue that the court does not have to believe the substantial evidence proving Ms. Wakefield's indigency and disability even though zero evidence was offered contradicting these facts. "Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise." *Bering v. Share*, 106 Wn.2d 212, 220, 721 P.2d 918 (1986), *cert. denied*, 479 U.S. 1050 (1987). There is no substantial evidence in the record that Ms. Wakefield has money to pay her LFOs or has any employment history to pay her LFOs.

The Cities argue Ms. Wakefield could work, even though she receives SSI. However, Ms. Wakefield testified that she was unable to perform work crew due to her mental health disabilities. CP 63 and CP 448. There is no evidence in the record Ms. Wakefield had any employment history or that she was able to work with her disabilities. It is clear the Cities consider Ms. Wakefield's disability for "some mental health issues" to be insufficient to establish a permanent disability.<sup>10</sup> Respondents' Brief at p.13.

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<sup>10</sup> This view is contrary to both state and federal law. For instance, RCW 9.94A.777 provides that before imposing any legal financial obligations upon a defendant who suffers from a mental health condition, a judge must first determine that the defendant

The Cities continued reference to Ms. Wakefield’s “mental health issues” clearly exposes its attitude that Ms. Wakefield’s mental health disability is somehow less a disability than a physical disability. Respondents’ Brief at pgs. 13, 17-18. Such an assertion is discrimination prohibited by both Federal and Washington law.<sup>11</sup> The Americans with Disabilities Act defines disability as “a physical or *mental impairment* that substantially limits one or more major life activities of such individual.” 42 USC §12101(*emphasis added*). For the Cities to infer Ms. Wakefield’s mental disability is somehow less limiting than a physical disability for employment purposes is not only wrong, but unlawful.

C. **The Cities’ position that LFOs must be paid regardless of indigency violates the law established in *Fuller v. Oregon* and *State v. Blazina*.**

The Benton County District Court has a policy of requiring all defendants to make a minimum payment, regardless of indigence. The Cities confirm this policy by arguing that LFOs can never be remitted, under any circumstances: “[T]he court set payments at \$15.00 per month - \$10.00 per month less than the court’s minimum payment.” Respondents’

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has the means to pay such additional sums. It also instructs a court that a defendant suffers from a mental health condition when there is a determination of mental disability as the basis for the defendant's enrollment in a public assistance program, a record of involuntary hospitalization, or by competent expert evaluation. RCW 9.94A.777.

<sup>11</sup> RCW 49.60.030 provides Ms. Wakefield “[t]he right to be free from discrimination because of . . . the presence of any sensory, mental, or physical disability . . . is recognized as and declared to be a civil right.”

Brief at P.18. This policy and argument ignores the law and exposes the collection policy of the Benton County District Court—everyone must pay something regardless of ability to pay. Under *Fuller v. Oregon*, repayment must not be mandatory, ordered only if the defendant is or will be able to pay taking into account the financial resources of the defendant and the nature of the burden that payment of costs will impose, and the repayment obligation may not be imposed if it appears there is no likelihood the defendant’s indigency will end. 417 U.S. at 44; *See also Curry*, 118 Wn.2d at 915-16.

A minimum payment clearly is inconsistent with the directive that “repayment must not be mandatory.” It also exposes the failure of the court to properly implement the “ability to pay” standard. Constitutionally, ability to pay must mean that a person has some money left over after meeting their basic essential needs. If the court finds that someone has the ability to pay when they do not have enough money for rent, food, heat, or basic medical care, then the court is prioritizing a civil debt over basic human needs. The Benton County District Court’s policy clearly shows its practice of finding everyone has to pay, regardless of indigency. If

Ms. Wakefield does not qualify as a person unable to pay a debt, it is hard to imagine who would qualify in the eyes of the district court.<sup>12</sup>

If this Court does not reverse the trial court's decision and order that the discretionary LFOs be remitted in full, it will condone this unlawful policy. It would rule that local jurisdictions may intercept means-tested public benefits for its own benefit, making the court a priority creditor. It would rule that no level of indigency would be sufficient to prevent the threat of incarceration and it would never be a manifest hardship to pay discretionary LFOs. It would sanction the establishment of required minimum payments, regardless of indigence.

**D. The Benton County District Court used its contempt powers to coerce the payment of a civil debt owed to the county.**

The contempt proceeding authorized by RCW 10.01.180 is civil. *Smith v. Whatcom Cnty. Dist. Ct.*, 147 Wn.2d 98, 105, 52 P.3d 485 (2002). Constitutionally, states seeking to collect financial obligations from criminal defendants may not impose unduly harsh or discriminatory collection terms merely because an obligation is owed the state rather than a private creditor. *James v. Strange*, 407 U.S. 128, 92 S. Ct. 2027, 32 L. Ed.2d 600 (1972). The Washington Constitution, Art. 1, Section 17,

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<sup>12</sup> Benton County District Court's systemic use of such collection practices has been the subject of recent litigation. See *Fuentes vs. Benton County*, Yakima County cause number 15-2-02976-1. The lawsuit alleges Benton County has a systemic policy, practice, and custom of generating revenue for the county by incarcerating or threatening to incarcerate indigent persons who are unable to afford LFOs.

prohibits imprisonment for the non-payment of a debt. In a show cause contempt proceeding, it is “always a defense . . . to show that the disobedience was not willful, but was the result of pecuniary inability or other misfortunes over which the accused had no control.” *Holcomb v. Holcomb*, 53 Wash. 611, 612-13, 102 P. 653 (1909).

*Holcomb* is controlling and particularly relevant to this case. The Cities argue Ms. Wakefield failed to borrow money from anyone, previously made payments, and even had enough money to purchase coloring supplies for her children. Respondents’ Brief at p.14 and 17-18. This and the speculation of the Cities that Ms. Wakefield could “mow lawns or babysit” to pay her discretionary LFOs are the sum total of their evidence. Respondents’ Brief at P.17.

However, past forced actions to avoid jail, the actions or the ability of others, or speculation from the Cities does not establish Ms. Wakefield’s ability to pay. The *Holcomb* court reversed a finding of a trial court imprisoning a debtor where it appeared:

“judgment was based upon the fact that the appellant was able to prosecute appeals and give supersedeas bonds in the past, rather than upon the testimony or the absence of testimony. But the fact that the appellant’s mother may have heretofore advanced money to pay alimony, or the fact that his brother may have given security to keep him out of prison, affords no sufficient basis for the order appealed from. We think the inability of the appellant to comply with the terms of the decree was clearly shown.”

*Id.* at 613.

The Cities note Ms. Wakefield never received notice of the “fine review” hearing and, in fact, those fine review hearings were returned to the court as undeliverable. Respondents’ Brief at p. 21. This is a common problem for indigent, homeless defendants. Instead of seeking to effect actual notice of the proceeding on Ms. Wakefield, the court issued a warrant for her arrest. It did this because it was fully aware of the fact that she was disabled, had no wage income to garnish, and no assets to levy. She was “judgment proof”; therefore, only imprisonment—or the threat thereof—would convince her to beg, borrow and steal to scrape together enough money to pay a debt manifestly beyond her ability to meet. This Court should not abide such a practice.

**E. The Benton County District Court violated Ms. Wakefield’s rights to Procedural Due Process.**

The Cities argue Ms. Wakefield should have asked District Court Judge Butler to recuse herself at the beginning of the hearing. Ms. Wakefield’s due process violation argument has nothing to do with the personal interest of District Court Judge Butler in the outcome of the proceeding, but everything to do with how the Benton County District Court conducts “fine review” hearings. The Benton County District Court

does not use civil show cause procedures as required and acts as both judge and prosecutor during the “fine review” hearings.

The Cities’ contention that the rules of evidence do not apply to contempt proceedings is incorrect. Evidence Rule 1101 (c)(3) states the rules of evidence do not apply to contempt proceedings in which the court may act summarily. This rule applies to direct contempt hearings only. *In re M.B.*, 101 Wn. App. 425, 469, 3 P.3d 780 (2000). Ms. Wakefield’s contempt hearing on August 20, 2013, was an indirect show cause civil contempt proceeding. *Whatcom Cnty. Dist. Ct.*, 147 Wn.2d at 105.

Ms. Wakefield agrees a court may ask clarifying questions, but Ms. Wakefield’s contention is the district court went far beyond asking clarifying questions on August 20, 2103. CP 86, CP 471, CP 87, CP 472, CP 87, CP 88-89, and CP 474-475. The district court literally acted as both judge and prosecutor and affirmatively examined witnesses on behalf of the Cities (who were not present at the hearing). Respondents’ Brief, p. 3. A trial judge advocating on behalf of one party to a dispute denies due process of law. *See City of Bellevue v. Hellenthal*, 144 Wn.2d 425, 436, 28 P.3d 744 (2001) (citing *Figeroa Ruiz v. Delgado*, 359 F. 2d 718 (1st. Cir. 1966); *Giles v. City of Prattville*, 556 F.Supp. 612 (M.D. Ala. 1983); *Wounded Knee v. Andera*, 416 F. Supp 1236 (D.S.D. 1976)). The principle of impartiality, disinterestedness, and fairness on the part of the judge is as

old as the history of courts. *State ex rel. Barnard v. Bd. of Educ.*, 19 Wash. 8, 17-18, 52 P. 317 (1898).

Ms. Wakefield did not waive her right to proper notice on August 20, 2013. The fact Ms. Wakefield was fortunate enough to have prepared representation at her “fine review” hearing does not excuse the district court’s obligation to follow the civil show cause procedures as required. *Whatcom Cnty. Dist. Ct.*, 147 Wn.2d at 105. Never once did the district court inform Ms. Wakefield she may be found in contempt and sent to jail. When Ms. Wakefield’s counsel told the court she was unclear as to the purpose of the fine review hearing, the district court never once used the words “contempt proceeding” in describing the purpose of the hearing or did it inform Ms. Wakefield that her liberty was at issue:

“If there is some issue here that there is not adequate information as to why we’re here at this hearing, I’m happy to reset it. I’m happy to tell you, Ms. Wakefield, that this is because you have not paid your fines, that this hearing was set, that a warrant was lifted. There was a motion made by your attorneys. We lifted the warrant, we set it for this case. We did not require you to make a \$100 warrant payment. You’re here today to address the issue of what do you want to do about your fines, fines that date from 2010 and -- I don’t want to be wrong -- 2012. I am happy to reset this if that’s not adequate notice to Ms. Wakefield.” CP 424-425 and CP 39-40.

In order for a defendant to waive proper notice required by due process, the waiver must be intelligent, voluntary, and knowledgeable.

*State v. Forza*, 70 Wn.2d 69, 71, 422 P.2d 475 (1966). The court must indulge every reasonable presumption against waiver of fundamental rights. *City of Bellevue v Acrey*, 103 Wn.2d 203, 207, 691 P.2d 957 (1984). No such waiver occurred on August 20, 2013. The fact that Ms. Wakefield's counsel correctly determined the purpose of the hearing, does not excuse the court from properly informing defendants of the purpose of why they are before the court, especially when their liberty is at stake.

#### IV. CONCLUSION

Ms. Wakefield asks this Court to find in her favor, order the remission of her discretionary LFOs, and find that recipients of means-tested public benefits are indigent as a matter of law and may not be imprisoned for non-payment of a debt, regardless of whether it is owed to a public or a private entity.

October 22, 2015

Respectfully submitted,

Northwest Justice Project



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