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SUPREME COURT

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Court of Appeals
Division III
State of Washington
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95479-8

NO. 34120-8

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

v.

ANTHONY J. SIMS, et al.

DEPARTMENT OF SOCIAL AND HEALTH SERVICES,
Petitioner.

**DEPARTMENT OF SOCIAL AND HEALTH SERVICES'
PETITION FOR REVIEW**

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I. INTRODUCTION

Two issues of substantial public importance are presented by this petition. The first involves a question of sovereign immunity. In each of the twenty-eight cases consolidated on appeal, the trial court imposed post-judgment interest against DSHS when its remedial contempt sanctions orders were reduced to judgments. The Court of Appeals disregarded the general rule that the State cannot be held liable for interest on its debts and found an implied waiver of sovereign immunity based on a statutory provision that played no role in the trial court's decisions. This erroneous holding is at odds with prior decisions of this court and impacts future contempt proceedings in which the State is a party.

The Court of Appeals also erred by determining that trial courts need not reduce their remedial contempt orders to writing. This holding is contrary to CR 54 and case law, which require that all such orders be in writing. It also improvidently requires a person to comply with a contempt order that he or she may not have been present in court to hear, and leaves the person without legal recourse to contest potentially severe sanctions. This holding too has significant consequences for future contempt proceedings, regardless of whether the State is a party.

This case presents an ideal vehicle for providing needed guidance on these issues. The issue of the State’s sovereign immunity—and the standard for assessing an implied waiver of that immunity—is clearly presented. It was undisputed below that the Legislature had not expressly waived sovereign immunity in respect to post-judgment interest, which renders the issue of implied waiver clearly presented. Similarly, the issue of whether an oral ruling is sufficient to impose remedial contempt sanctions is squarely presented because in each case, written orders were typically entered several weeks after the oral pronouncements.

This Court should accept review of these two issues, which have far-reaching impacts on future contempt proceedings across the state.

II. IDENTITY OF PETITIONER AND DECISION

The Department petitions for review of the published decision of Division Three of the Court of Appeals, *State v. Anthony Jason Sims* (DSHS Appellant), __ Wn. App. __, __ P.3d __ (Dec. 7, 2017) (see Appendix 1).

III. ISSUES PRESENTED FOR REVIEW

1. Sovereign immunity prohibits courts from holding the State liable for interest on its debts. The State has not expressly waived sovereign immunity for interest on contempt judgments. Did the Court of Appeals err when it found an

implied waiver based on a statutory provision not at issue in these cases?

2. A trial court's oral ruling is not final and cannot be appealed until it is reduced to writing. Did the Court of Appeals err in holding that a trial court's oral finding is sufficient to impose remedial contempt sanctions?

IV. STATEMENT OF THE CASE

This appeal involves twenty-eight consolidated cases, all with similar facts and all but one arise from distinct Spokane County Superior Court criminal proceedings before the same judge. The remaining case, *State v. Lopez*,¹ is procedurally similar but took place in Adams County Superior Court. Because each of the proceedings below involves a materially identical procedural background, and because the litigants have agreed that *State v. Sims*, Spokane Cty. Super. Ct. No. 14-1-01738-4, is representative of the other cases on appeal, DSHS will outline the material facts pertaining to *Sims*. Attached as Appendix 2 is a chart that details the information material to all twenty-eight cases on appeal.

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¹ Adams County Superior Court Cause No. 15-1-00106-1.

A. *State v. Sims*

On November 20, 2014, the Spokane County Superior Court ordered DSHS to evaluate Anthony Sims' competency to stand trial pursuant to RCW 10.77 by December 2, 2014 in the then-pending criminal proceeding against him. CP at 1533-534. After a delay in performing the evaluation, Mr. Sims' defense counsel obtained an order requiring Eastern State Hospital, a mental health facility operated by DSHS, to show cause why it had not completed the evaluation and why it should not incur contempt sanctions for the delay. CP at 1533-534. Defense counsel asked that remedial monetary contempt sanctions under RCW 7.21.030(2) be imposed against DSHS. CP at 1536. Compensatory relief as permitted by RCW 7.21.030(3) was not requested.²

Pursuant to the court's order, a show cause hearing in Mr. Sims' criminal proceeding occurred on December 11-12, 2014.³ CP 1572. DSHS submitted briefing beforehand making numerous arguments in opposition to contempt. CP at 1544-556. Relevant to this petition, DSHS argued that

² See CP at 1536-543, where defense counsel requested sanctions under RCW 7.21.030(2) but never sought compensatory relief under RCW 7.21.030(3), and *Sims* Report of Proceedings (RP) at 10, where defense counsel stated: "I'm asking that Eastern State Hospital be held in contempt and sanctioned \$500 a day for every day past the Court's order that evaluations have not been performed."

³ At the hearing, the court simultaneously considered defense counsel's request for contempt sanctions against DSHS in five other criminal cases. CP at 1572. Those cases are also part of this consolidated appeal.

sanctions could only be imposed for periods of time running forward from entry of a contempt order. CP at 1555.

The trial court concluded the hearing by finding DSHS in contempt of the court's competency evaluation order and stating that it would impose sanctions of \$200 per day "measured from the dates in which the Court had set the evaluations to be done." *State v. Cooper, State v. Johnston, State v. Larson, State v. Owen, State v. Ponders, State v. Sims*, VRP at 57-58. The oral decision was not reduced to a written order until January 16, 2015, in which the court imposed sanctions of "\$200 per day . . . from December 2, 2014 through December 14, 2014." CP at 1576-577. As recognized by the contempt order itself, DSHS completed Mr. Sims' competency evaluation on December 15, 2014. CP at 1577.

The trial court's contempt order was later reduced to a \$2,600 judgment that named DSHS as the judgment debtor and summarized the basis for the judgment. CP at 1578-579. The judgment stated that it would bear interest at "12% per annum." CP at 1578. DSHS timely appealed from the judgment. CP at 1557.

B. Summary Of The Remaining Twenty-Seven Cases On Appeal

Between January of 2015 and February of 2016, twenty-seven contempt orders materially identical in form to the order in *State v. Sims* were entered against DSHS after following a similar procedure:

- Defense counsel sought remedial contempt sanctions after a delay in providing court-ordered competency evaluation or restoration services;
- DSHS objected, arguing, *inter alia*, that imposition of punitive contempt sanctions would be improper;
- A hearing occurred in each defendant's criminal proceeding during which the court stated that DSHS was in contempt;
- A written contempt order was later entered imposing sanctions at a rate of \$200 per day of noncompliance, to include a number of days preceding the contempt finding; and
- The contempt order was reduced to a judgment against DSHS, bearing interest at 12% per annum.

On October 16, 2015, Defense Counsel filed a motion seeking to have the accrued remedial sanctions in these matters directed to "Spokane County Risk Management." CP at 1826-833. Defense counsel again did not request that any defendant be compensated for losses under RCW 7.21.030(3). CP at 1826-833. After a hearing, the trial court ordered that all accrued sanctions in *Sims* and the other cases heard up until that point be forwarded to Spokane County Detention Services. CP at 1834-835. No defendant ever sought or was awarded compensation of any kind.

Appendix 2 to this petition identifies the relevant portions of the record for each appeal and the periods for which sanctions were imposed in each case. It reflects that written contempt orders in these proceedings were typically not entered by the trial court until weeks after the contempt hearings at which the court would orally find DSHS in contempt.

C. The Lead Court of Appeals Opinion

In a published decision, Division III of the Court of Appeals agreed with the Department that portions of the daily contempt sanctions in each case were unlawfully imposed, punitive contempt sanctions. *State v. Sims*, No. 34120-8, slip op. at 3 (Wash. Dec. 7, 2017). The Court of Appeals determined that all daily sanctions imposed prior to the trial court's oral finding of contempt in each matter were punitive in character and imposed contrary to the requirements of RCW 7.21.040. *Sims*, slip op. at 7. It accordingly ordered that the contempt sanctions be vacated to that extent. *Id.* DSHS does not seek review of the Court of Appeals' determination to vacate this portion each sanctions order.

The lead opinion disagreed with the Department's position that sovereign immunity precludes an award of post-judgment interest on contempt sanctions imposed against the state. *Id.* at 11-13. It found that the state had impliedly waived sovereign immunity based upon language in

RCW 7.21.030(3), which allows for awards of compensatory relief to parties injured by contempt. *Id.* It then extended this implied waiver to cover the purely remedial contempt sanctions imposed by the trial court under RCW 7.21.030(2)(b). *Sims*, slip op. at 12-13.

The Court of Appeals also disagreed with the Department's position that the trial court's remedial contempt orders did not become effective until entry of a written order. *Id.* at 8-10. While it recognized that "a trial court's oral decision is not binding or final," it concluded that an oral ruling was nevertheless sufficient to effectuate the court's orders. *Id.* at 9.

D. The Dissenting Court of Appeals Opinion

In his dissent, Judge Korsmo expressed his "serious concerns" with the lead opinion's conclusion that the state had waived sovereign immunity as to post-judgment interest. *State v. Sims*, No. 34120-8, slip op. at 8-9 (Korsmo, J., dissenting). He also found it telling that this Court did not order interest to accrue on its daily contempt sanctions imposed against the State in *McCleary v. State of Washington*, No. 84362-7 (2012), even though that relief was requested by plaintiffs in that action. *Sims*, slip op. at 9.

Judge Korsmo also expressed "quite a bit of sympathy" for the Department's position that persons in contempt proceedings should not have to be satisfied with oral contempt rulings. *Id.* at 7. Judge Korsmo correctly recognized that a written document is a necessary condition before

an appeal or reconsideration may be pursued. *Id.* at 8. He also highlighted the practical necessity of a written order, stating that a written order “may be necessary so that the person or agency who has been ordered to perform a task is aware of the job that has been assigned and what is expected.” *Id.* “Written orders,” Judge Korsmo concluded, “are the best practice and should be entered as early as possible.” *Id.*

V. ARGUMENT WHY REVIEW SHOULD BE GRANTED

The Court of Appeals decision resolves two issues of substantial public interest in a manner at odds with Supreme Court precedent. This Court should accept review of both issues under RAP 13.4(b)(1) and (4).

Specifically, the issue of whether the State is liable for interest on its debts is an issue of substantial public importance because it has the potential to affect numerous other proceedings and its determination will avoid unnecessary litigation and confusion. *See State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903 (2005). This issue also involves a constitutional dimension because the Washington Constitution provides that only the Legislature has authority to waive the State’s sovereign immunity. *See Wash. Const. art. II, § 26*. The separate issue of whether remedial contempt sanctions are effective without a written order is also an issue of substantial public importance because it, too, has the potential to affect numerous other proceedings and will avoid unnecessary litigation and avoid confusion.

This Court should accept review of both issues raised by this petition:

A. This Court Should Review Whether the State Has Waived Its Sovereign Immunity In Respect to Post-Judgment Interest On Remedial Contempt Sanctions

The State of Washington's sovereign immunity from post-judgment interest on remedial contempt sanctions is an issue of substantial public importance and raises a significant question of law under the Washington Constitution.

The issue of the State's sovereign immunity from post-judgment interest is substantial because it arises in numerous proceedings and a decision by this court will avoid unnecessary litigation and avoid confusion. The fact that this issue arises in numerous proceedings is illustrated by the fact that this appeal involves 28 consolidated cases, 27 of which are from a single county. Moreover, the Court of Appeals decision will apply to *all* monetary remedial contempt sanctions imposed against the State under RCW 7.21.030(2), regardless of context.

More broadly still, the Court's resolution of this issue will provide it with the opportunity to address the correct standard for an implied waiver of sovereign immunity. The Court's decision with respect to the standard for implied waiver will apply beyond the context of remedial contempt sanctions.

The published opinion of the Court of Appeals in this case demonstrates the need for further guidance from this Court on the standard for an implied waiver of sovereign immunity. The Court of Appeals found an implied waiver by looking to RCW 7.21.030(3), a statutory provision that permits a party to recoup monetary losses caused by another party's contempt. Despite the fact that the trial court never ordered relief under that provision, the Court of Appeals stretched the implied waiver it found in RCW 7.21.030(3)—without reasoning or justification—to all monetary remedial contempt sanctions imposed against the state.

The Court of Appeals opinion conflicts with, or, at a minimum, is in substantial tension with, this Court's holding in *Union Elevator & Warehouse Co. v. State ex rel. Dep't of Transportation*, 171 Wn.2d 54, 65-68, 248 P.3d 83 (2011). In *Union Elevator*, this Court determined that “[a] waiver of sovereign immunity exists when the State has expressly, or by reasonable construction of a contract or statute, placed itself in a position of attendant liability.” *Id.* at 68. There is no reasonable construction of RCW 7.21.030 that suggests the State intended to waive its sovereign immunity in respect to judgment interest on remedial contempt sanctions imposed under RCW 7.21.030(2). Remedial contempt sanctions under RCW 7.21.030(2) serve a fundamentally different purpose than compensatory relief ordered under RCW 7.21.030(3). The former is

imposed to coerce compliance with a court order, *see* RCW 7.21.010(3), while the latter is intended to compensate a party for losses incurred as a result of the contempt. It does not logically follow that an implied waiver as to compensatory relief, assuming such a waiver exists, must extend to remedial sanctions, particularly where remedial sanctions may be imposed even when there has been no monetary losses incurred by a party as a result of the contempt.

In addition to being an issue of substantial public importance, sovereign immunity also contains a constitutional dimension under article 2, section 26, of the Washington Constitution. That section provides that “[t]he legislature shall direct by law, in what manner, and in what courts, suits may be brought against the state.” As a result, the standard for implied waiver of sovereign immunity also raises “a significant question of law under the Constitution of the State of Washington,” such that review is appropriate under RAP 13.4(b)(3).

B. This Court Should Review Whether an Oral Ruling is Sufficient To Effectuate An Order of Remedial Contempt

Whether an oral ruling must be reduced to writing in order to be effective is also an issue of substantial public importance. This principle is well-established. *E.g.*, *State v. Head*, 136 Wn.2d 619, 622, 964 P.2d 1187 (1998); *State v. Dailey*, 93 Wn.2d 454, 458–59, 610 P.2d 357, 360 (1980);

Templeton v. Hurtado, 92 Wn. App. 847, 853, 965 P.2d 1131 (1998). Without meaningful justification, the Court of Appeals carved out an exception from this general principle in the context of the effectiveness of remedial contempt orders. This is contrary to Washington Civil Rule 54(a)(1) and, if permitted to stand, would put Washington at odds with the rule in at least one other state. *McKinney v. McKinney*, 799 S.E.2d 280, 283 (N.C. Ct. App. 2017) (holding that trial court's oral contempt ruling did not become effective until reduced to writing and filed with the clerk).

This is a substantial issue of public importance because it has the potential to impact every person who may be held in contempt under RCW 7.21.030, regardless of the context. A ruling from this Court will provide clarity, avoiding confusion and unnecessary appeals in future cases. Review is therefore appropriate under RAP 13.4(b)(4). *Watson*, 155 Wn.2d at 577.

The importance of this issue is also highlighted by the problems that the Court of Appeals decision could cause in nearly all future contempt proceedings, whether or not the State is a party. Under the decision of the Court of Appeals, persons orally held in contempt will not be able to seek relief. As recognized by Judge Korsmo's dissenting opinion below, the alleged contemnor would have no ability to appeal or seek a stay from an appellate court because there would not yet be a final written order holding

the person in contempt. *Sims*, No. 34120-8, slip op. at 8 (Korsmo, J., dissenting); *see also Templeton*, 92 Wn. App. at 847 (“[A]n oral ruling does not supply an adequate basis for appellate review of an order of contempt.”); RAP 5.2(a) (“a notice of appeal must be filed . . . within . . . 30 days after the entry of the decision of the trial court. . . .”). The Court of Appeals decision proclaims that an oral finding of contempt is substantively effective while at the same time recognizing that it is procedurally defective. *Sims*, slip op. at 10.

The opportunity for timely appellate review is even *more* important in the context of contempt than in most other proceedings given that irreparable harm may result from an improper contempt sanction. *See* RCW 7.21.030(2)(a), (d) (listing imprisonment and “any other remedial sanction” as available contempt sanctions). In the typical judicial proceeding, the judge is a neutral third party; in a contempt proceeding, the judge may be both the accuser and the person responsible for imposing the penalty. In this situation, appellate review is the only means of obtaining review by a neutral third party.

The suggestion of the Court of Appeals that an alleged contemnor could present a proposed order to the court is no answer. The purported contemnor has no ability to enter the order, and there may be delays, during which time contempt sanctions would remain in effect with no opportunity

for appellate review. Opposing counsel may refuse to waive notice of presentation, potentially resulting in a five day delay, *see* CR 54(e), (f), the court may decline to enter the order as drafted, or there may otherwise be delays in the court's ability to sign the proposed order. All the while, the alleged contemnor would be subject to contempt sanctions without the ability to seek relief that would otherwise be guaranteed by RAP 2.2(a). *See In re Estates of Smaldino*, 151 Wn. App. 356, 363, 212 P.3d 579 (2009) (contempt orders are appealable as of right).

Nor does the requirement of a writing in CR 54(a) impair a court's authority. Unlike a party, a court can ensure that its order is immediately reduced to writing, making it immediately effective as a remedial contempt order. Courts are routinely required to do so in other, more time-sensitive contexts. *See* CR 65 (requiring a written order to effectuate injunctions and temporary restraining orders).

In short, the requirement of a written order as a prerequisite to imposing remedial sanctions in no way impedes the ability of a court to enforce its orders. Instead, it simply provides alleged contemnors with meaningful notice and an opportunity to seek review of a time-sensitive contempt order. This is a substantial issue of public importance.

Review is also warranted because the reasoning in the published Court of Appeals decision in this case is inconsistent with cases of this

Court. This Court has held that “a trial judge’s oral decision is no more than a verbal expression of his informal opinion at that time. . . . *It has no final or binding effect*, unless formally incorporated into the findings, conclusions, and judgment.” *Ferree v. Doric Co.*, 62 Wn.2d 561, 566-67, 383 P.2d 900 (1963) (emphasis added); *see also* CR 54(a)(1) (“A judgment is the final determination of the rights of the parties in the action *A judgment shall be in writing* and signed by the judge and filed forthwith as provided in rule 58.” (Emphasis added)). The Court of Appeals decision in this case is inconsistent with these authorities because the Court of Appeals gives an oral contempt ruling final and binding effect. *Sims*, slip op. at 10.

The suggestion of the Court of Appeals that an oral holding of contempt is distinguishable because the contempt statute requires only a “finding” of contempt is also inconsistent with this Court’s jurisprudence. In *LK Operating, LLC v. Collection Group, LLC*, 181 Wn.2d 48, 81 n.17, 331 P.3d 1147 (2014), this Court emphasized that it “look[s] to the trial court’s written findings, rather than its oral statements, as a trial court is free to reconsider its determinations between the time it announces an oral decision and the time it enters written findings.”

In sum, the issue of whether an oral finding of contempt is sufficient to impose remedial contempt sanctions is a substantial issue of public importance, and the Courts of Appeals decision conflicts with decisions of

this Court and published decisions of the Court of Appeals. Accordingly, review of this issue is warranted under RAP 13.4(b)(1) and (4).

VI. CONCLUSION

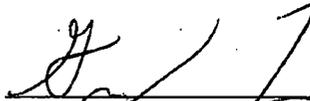
The Court of Appeals turned the concept of sovereign immunity on its head by disregarding the general rule that the State cannot be held liable for interest on its debts. Instead of adhering to this rule, it found an implied waiver of sovereign immunity in RCW 7.21.030(3) and stretched that waiver without justification to all monetary remedial contempt sanctions imposed against the State. Because the trial court did not impose compensatory sanctions under RCW 7.21.030(3), any implied waiver that might be found under that provision is inapplicable to the cases on appeal. This error impacts future contempt proceedings in which the State is a party.

The Court of Appeals also erred by determining that trial courts need not reduce their remedial contempt orders to writing. This holding is contrary to CR 54 and case law, which require that all such orders be in writing. It also condones the unworkable practice of requiring a person to comply with a purge condition that it may not have been present in court to hear and leaves the person without legal recourse to contest potentially severe and irreparable contempt sanctions. This error too has significant consequences for future contempt proceedings, regardless of whether the State is a party.

This Court should accept review and reverse these two erroneous holdings that would significantly upset the law of contempt in this state.

RESPECTFULLY SUBMITTED this 8th day of January, 2018.

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CERTIFICATE OF SERVICE

Beverly Cox, states and declares as follows:

I am a citizen of the United States of America and over the age of 18 years and I am competent to testify to the matters set forth herein.

I certify that on January 8, 2018, I served a true and correct copy of this **DEPARTMENT OF SOCIAL AND HEALTH SERVICES PETITION FOR REVIEW** and this **CERTIFICATE OF SERVICE** as follows:

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

Dated this 8 day of January 2018, at Tumwater, Washington.



BEVERLY COX
Legal Assistant

APPENDIX 1

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

STATE OF WASHINGTON,)	No. 34120-8-III
)	
Plaintiff,)	
)	
v.)	
)	
ANTHONY J. SIMS,)	
)	
Respondent,)	PUBLISHED OPINION
)	
DEPARTMENT OF SOCIAL AND)	
HEALTH SERVICES and WESTERN)	
STATE HOSPITAL,)	
)	
Appellants,)	
)	
and)	
)	
SEVERAL OTHER SIMILAR CASES)	
CONSOLIDATED ON APPEAL.†)	

LAWRENCE-BERREY, A.C.J. — Courts are authorized to impose two types of

† In each of the following consolidated cases, the Department of Social and Health Services (DSHS) and Western State Hospital appealed contempt sanctions that were imposed for delays in providing competency evaluation and/or restoration services to criminal defendants: No. 34121-6-III, *State v. Larson*; No. 34122-4-III, *State v. Owen*; No. 34123-2-III, *State v. Johnston*; No. 34124-1-III, *State v. Cooper*; No. 34125-9-III, *State v. Blake*; No. 34126-7-III, *State v. Pal*; No. 34127-5-III, *State v. Fairfield*; No. 34128-3-III, *State v. Tall*; No. 34129-1-III, *State v. Spain*; No. 34130-5-III, *State v. Lennartz*; No. 34131-3-III, *State v. McCarthy*; No. 34132-1-III, *State v. Alexander*; No. 34133-0-III, *State v. Fleming*; No. 34134-8-III, *State v. Fletcher*; No. 34135-6-III, *State v. Schilling*; No. 34136-4-III, *State v. Montoya*; No. 34137-2-III, *State v. Sackmann*; No. 34138-1-III, *State v. Rettinger*; No. 34139-9-III, *State v. Anderson*; No. 34140-2-III, *State v. Graham*; No. 34141-1-III, *State v. Keranen*; No. 34142-9-III, *State v. Fregoso*; No. 34143-7-III, *State v. Beggs*; No. 34180-1-III, *State v. Sandstrom*; No. 34205-1-III, *State v. Lopez*.

statutory sanctions, remedial or punitive. Remedial sanctions may be summarily imposed for the purpose of coercing a person to perform an act that is yet in the person's power to perform. Punitive sanctions, however, are meant to punish a past contempt of court. By statute, unless the contemptuous act occurred in the court's presence, courts may not summarily impose punitive sanctions. We hold that where a court imposes summary sanctions for contempt that did not occur in its presence, statutory sanctions are limited to remedial sanctions.

In determining whether monetary sanctions are remedial, we focus on the date the trial court made its contempt finding, even if the finding was not then reduced to a written order or judgment. Only monetary sanctions that accrue from the date of the contempt finding are remedial, because only to this extent is the act that the court seeks to coerce within the person's power to perform.

The State must consent to being held to interest on its debts, including postjudgment interest on monetary statutory sanctions. A waiver of sovereign immunity for purposes of postjudgment interest can be either express or implied. A waiver may be implied in those situations where the legislature has enacted a statute that provides for comprehensive relief. By enacting the contempt of court statute, chapter 7.21 RCW, the legislature authorized full compensation to parties injured by contemptuous acts. We, therefore, hold that the State has impliedly waived its sovereign immunity from

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postjudgment interest on statutory sanctions.

Here, the trial court summarily imposed monetary sanctions against the Department of Social and Health Services (DSHS) for not timely completing mental health evaluations for criminal defendants. We reverse the sanctions only to the extent they are punitive, but affirm the award of postjudgment interest.

FACTS

The parties agree that the facts associated with Anthony Sims's appeal serve as a template for the other appeals. We limit our discussion of the facts accordingly.

The State charged Mr. Sims with second degree burglary. A question concerning Mr. Sims's competency arose, and on October 14, 2014, the criminal case was stayed pending a competency evaluation. On November 13, Mr. Sims filed a motion to compel his competency evaluation. On November 20, the trial court heard argument concerning the motion. During argument, DSHS noted that Mr. Sims was and always had been scheduled to have his evaluation on December 15. At the conclusion of the November 20 argument, the trial court ordered DSHS to perform Mr. Sims's competency evaluation by December 2. The trial court's order was not reduced to written form.

On November 26, 2014, Mr. Sims filed a motion asking the trial court to order DSHS to show cause for its failure to schedule his evaluation in compliance with the court's November 20 order. Mr. Sims asked the trial court to impose remedial sanctions

of \$500 per day against DSHS for every day past December 2 until he received his competency evaluation.

On December 10, DSHS filed a response. In addition to other objections, DSHS argued that portions of the requested sanctions were retroactive punitive sanctions and, thus, were unable to be adjudicated in the current action.

On December 11 and 12, the trial court heard Mr. Sims's motion together with motions filed by five other similarly situated defendants. On December 12, the trial court orally ruled that the sanctions would be \$200 per day from the ordered deadline until the contempt was purged by DSHS completing Mr. Sims's competency evaluation. The court explained that the sanctions were remedial sanctions ordered in accordance with RCW 7.21.030, rather than in accordance with its inherent authority. The court directed the funds to go to the registry of the court, pending a later final disposition; but compensation to the defendants for actual losses was not contemplated.¹ Mr. Sims's competency evaluation occurred as originally scheduled, on December 15, 2014.

The trial court did not enter a written contempt order with findings until January 16, 2015. The written order discussed the court's reasoning that high level governmental and budgetary decisions drove the intentional violation of the court's order,

¹ On January 15, 2016, the trial court amended the contempt order, specifying the sanctions were to be paid to the clerk of the court and directed to Spokane County Detention Services for the purpose of assisting mentally ill offenders in jail.

by way of lack of resources for DSHS services in eastern Washington. The court found DSHS in contempt for violating its November 20 order, and sanctioned DSHS \$200 per day from December 2 through December 14.

The trial court held several other hearings in a similar fashion, where groups of defendants whose competency evaluations were not completed timely sought sanctions. At the conclusion of each hearing, the court—usually weeks later—entered a written order of contempt supported by findings.

The principal amounts of the sanctions were set forth in 28 individual orders of contempt and total \$337,500. Each judgment also includes interest at 12 percent per year.

DSHS timely appealed the orders imposing sanctions and the judgments in each of the 26 cases. We consolidated the appeals because they all presented similar legal issues.

ANALYSIS

A. TO THE EXTENT THE SANCTIONS ARE PUNITIVE AND WERE SUMMARILY IMPOSED, THEY MUST BE STRICKEN

DSHS first argues that the sanctions must be stricken to the extent they are punitive. We agree with this portion of DSHS's argument.

1. *The trial court did not comply with the procedures for imposing punitive sanctions and, therefore, it had no authority to impose such sanctions*

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This court reviews de novo a trial court's authority to impose contempt sanctions. *In re Dependency of A.K.*, 162 Wn.2d 632, 644, 174 P.3d 11 (2007). There are two forms of statutory contempt sanctions, remedial and punitive. A remedial sanction is "a sanction imposed for 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). A remedial sanction is sometimes referred to as coercive, because the goal of the sanction is to coerce a party to comply with a court order. *In re Pers. Restraint of King*, 110 Wn.2d 793, 800, 756 P.2d 1303 (1988). A remedial sanction must contain a purge clause or it loses its coercive character and becomes punitive. *In re Rapid Settlements, Ltd.*, 189 Wn. App. 584, 613, 359 P.3d 823 (2015), *review denied*, 185 Wn.2d 1020, 369 P.3d 500 (2016).

A punitive sanction is "a sanction imposed to punish a past contempt of court for the purpose of upholding the authority of the court." RCW 7.21.010(2). Such sanctions do not afford the party an opportunity to purge the contempt. *State v. Buckley*, 83 Wn. App. 707, 711, 924 P.2d 40 (1996). A court may punish the past contemptuous act with a fine and/or imprisonment. RCW 7.21.050(2). Because of due process concerns, RCW 7.21.040 provides a procedure to ensure that a person facing such a sanction actually committed the contemptuous act. *In re M.B.*, 101 Wn. App. 425, 453, 3 P.3d 780 (2000). Unless the contemptuous act occurred in the presence of a judge certifying

the same, the procedure requires the county prosecutor or city attorney to file a complaint or an information, and for a trial to occur before a neutral judge. RCW 7.21.040(2), .050(1); *see also In re Mowery*, 141 Wn. App. 263, 276, 169 P.3d 835 (2007).

Here, the trial court did not afford DSHS the procedures required under RCW 7.21.040(2). For this reason, the trial court was without authority to impose punitive sanctions.

The respondents put forth various arguments, mostly citing federal authorities, why the sanctions should be deemed remedial. For instance, they discuss the intent of the sanctions, the need for sanctions against DSHS, and the arguable compensatory nature of the sanctions. We are unpersuaded by their arguments.

The legislature defined the distinction between remedial and punitive sanctions. The legislature defined a remedial sanction as a sanction imposed “for the purpose of coercing performance when the contempt consists of . . . *an act that is yet in the person’s power to perform.*” RCW 7.21.010(3) (emphasis added). When the trial court, for example, found DSHS in contempt on December 12, 2014, DSHS could not perform Mr. Sims’s competency evaluation any earlier than that date. To the extent the sanctions punish DSHS for its failure to perform Mr. Sims’s competency evaluation prior to December 12, 2014, those sanctions were punitive and we order the trial court to strike them.

2. *RCW 7.21.030(2)(b) authorizes a limited forfeiture for each day the contempt of court continues after the contempt finding*

DSHS next argues that the contempt order should not be considered effective until the contempt order is placed in writing with supportive findings. If we accept DSHS's argument, any amount owing prior to a written order would be considered punitive because there would be no ability for DSHS to purge the accumulated debt. We decline to accept DSHS's argument. To do so would both be contrary to statutory authority and delay the ability of courts to enforce their own orders.

RCW 7.21.030 provides:

(2) If the court finds that the person has failed or refused to perform an act that is yet within the person's power to perform, the court may find the person in contempt of court and impose one or more of the following remedial sanctions:

....

(b) A forfeiture not to exceed two thousand dollars for each day the contempt of court continues.

So by statute, once a court makes a finding that a person is in contempt, the court has authority to impose a limited forfeiture for each day the contempt of court continues. Nothing in the statute requires the court to enter a written order prior to the sanctions becoming effective. The legislature did not see fit to impose such a requirement, nor do we.

DSHS cites to *State v. Dailey*, 93 Wn.2d 454, 610 P.2d 357 (1980), a case where our Supreme Court reviewed the propriety of a trial court's decision based on its written order instead of its oral comments. The *Dailey* court said, "Even a trial court's oral decision has no binding or final effect unless it is formally incorporated into findings of fact, conclusions of law, and judgment." *Id.* at 458-59. We agree that a trial court's oral decision is not binding or final. But this does not mean that a court's verbal order is ineffective, nor does it mean that a person may ignore a court's verbal order until the order is put in writing.

In a similar vein, DSHS argues that oral contempt decisions should be treated differently than written contempt orders because oral decisions are subject to modification until put in written form. We are unpersuaded. The inability to modify an order should not be the touchstone for determining an order's enforceability. A trial court has broad authority to modify an order, even a written one. *See CrR 7.8.*

DSHS also cites to *Templeton v. Hurtado*, 92 Wn. App. 847, 853, 965 P.2d 1131 (1998), a case where the reviewing court remanded with directions for the trial court to enter adequate written findings. The *Templeton* court said, "[t]o protect its own authority to enforce a contempt sanction, a trial court must be sure written findings are entered, either by delegating the task to opposing counsel or writing them out personally." *Id.*

We agree that contempt sanctions should be placed in a written order with adequate findings to protect the trial court's authority. But *Templeton* does not stand for the proposition that an oral contempt decision is not effective. Rather, *Templeton* reiterates the requirement that a written contempt order with adequate findings is necessary for appellate review. *Id.* at 852-53.

DSHS further argues that we should treat oral contempt decisions and written contempt orders differently because oral decisions cannot be appealed. Again, we are unpersuaded. If a person wants to appeal an oral contempt decision, a person can easily put the decision in written form for presentment to the court.

We refuse to adopt a rule that would treat an oral contempt decision as ineffective. To do so would delay a court's authority to enforce its own orders.

We use *State v. Sims* to illustrate our holding. Here, the trial court orally found DSHS in contempt on December 12, 2014. RCW 7.24.030(2)(b) authorizes remedial sanctions for each day the contempt of court continues from the finding. The trial court ordered sanctions in the amount of \$200 per day. The contempt of court continued through December 12, 13, and 14. Three days of sanctions total \$600.

B. POSTJUDGMENT INTEREST

DSHS next argues that postjudgment interest must be stricken because the State has not waived sovereign immunity with respect to postjudgment interest on statutory sanctions. This issue may be raised for the first time on appeal. *State v. Lee*, 96 Wn. App. 336, 345 n.10, 979 P.2d 458 (1999).

The State must consent to being held to interest on its debts. *Carrillo v. City of Ocean Shores*, 122 Wn. App. 592, 615, 94 P.3d 961 (2004). A waiver of sovereign immunity for purposes of postjudgment interest can be either express or implied. *Architectural Woods, Inc. v. State*, 92 Wn.2d 521, 526, 598 P.2d 1372 (1979). Whether such a waiver has occurred is a question of statutory interpretation that we review de novo. *Union Elevator & Warehouse Co. v. Dep't of Transp.*, 171 Wn.2d 54, 59, 248 P.3d 83 (2011).

An implied waiver of sovereign immunity exists when by reasonable construction of a statute or contract the State has “placed itself in a position of attendant liability.” *Id.* at 68. An implied waiver can occur when the legislature enacts a statute providing “comprehensive relief to aggrieved claimants.” *Id.* at 65. To determine whether the legislature has impliedly waived immunity and enacted comprehensive relief to aggrieved claimants, this court focuses on “the statutory language and purpose” of the statute. *Id.* An attorney fee provision is a suggestion the legislature intended comprehensive relief. *Id.* at 64-65 (discussing *Smoke v. City of Seattle*, 132 Wn.2d 214, 937 P.2d 186 (1997)).

The respondents concede that nothing in chapter 7.21 RCW can be construed as an explicit waiver of sovereign immunity that would permit postjudgment interest being added to monetary sanctions imposed against the State. The respondents instead argue that the statutory language and purpose of RCW 7.21.030 support a determination of implied waiver. We agree.

RCW 7.21.030(3) provides:

The court may, in addition to the remedial sanctions set forth in subsection (2) of this section, order a person found in contempt of court to pay a party for any losses suffered by the party as a result of the contempt and any costs incurred in connection with the contempt proceeding, including reasonable attorney's fees.

RCW 7.21.030(3) thus provides full compensatory relief to parties injured by contemptuous acts, including costs and reasonable attorney fees.

DSHS notes that here, the trial court did not award any compensatory relief to a party, but instead ordered all monetary sanctions to be paid to Spokane County Detention Services. DSHS argues that in situations where the trial court's sanctions do not include any compensatory relief to a party, we should not find an implied waiver of sovereign immunity. We disagree with DSHS's argument.

Whether an implied waiver of sovereign immunity has occurred depends on the statutory language and purpose of the statute, not on the specific relief granted by a trial court. Here, the statutory purpose, supported by its language, provides comprehensive

relief to parties injured by contemptuous acts. We, therefore, conclude that the State has impliedly consented to interest on statutory sanctions imposed against it. For this reason, the trial court's award of postjudgment interest was proper.

In a similar vein, DSHS argues that oral contempt decisions should be treated differently than written contempt orders because oral decisions are subject to modification until put in written form. We are unpersuaded. The inability to modify an order should not be the touchstone for determining an order's enforceability. A trial court has broad authority to modify an order, even a written one. *See* CrR 7.8.

Reversed in part, affirmed in part. ²

Lawrence-Berrey, A.C.J.
Lawrence-Berrey, A.C.J.

I CONCUR:

Pennell, J.
Pennell, J.

² The dissent would reverse all sanctions on the theory that they are "an unnecessary attempt to direct legislative and executive policy choices while directly benefiting a political subdivision of the state by transferring state funds to the county." Dissent at 5 (footnote omitted). DSHS did not make this argument to the trial court nor did it make this argument to us. In general, an argument not made to the trial court will be deemed waived for purposes of appellate review. *State v. Robinson*, 171 Wn.2d 292, 304, 253 P.3d 84 (2011). Also, an appellate court will not decide a case on the basis of a theory not briefed by the parties. RAP 12.1. For these reasons, we do not address the dissent's theory.

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KORSMO, J. (dissenting) — The political science novelty that was crafted here, wherein a superior court judge acting on a contempt motion in a criminal case orders an executive branch state agency to make payments to a county jail for the benefit of future county prisoners in order to coerce the state legislature into better funding the agency (and despite the existence of a federal court judgment doing much the same), convinces me that this is not a civil contempt action. John is robbing Peter in order to pay Paul in hopes that one of Peter's relatives will pay Peter enough in the future to do his job, while having Paul do Peter's work for him in the interim. Because this is not civil contempt, I would reverse the remedy imposed by the trial court. Since the majority largely affirms that ruling, I dissent.

As respondent notes in his briefing, the remedy in this contempt action was borrowed from an injunction issued in a civil rights case, *Trueblood v. Washington State Department of Social & Health Services*, 822 F.3d 1037 (9th Cir. 2016). That case involved a class action brought in federal court under the authority of 42 U.S.C. § 1983 that resulted in a permanent injunction requiring that competency evaluations be performed in a timely manner in order to effectuate the due process rights of the detainee.

Id. at 1039-41. On remand¹ from the Ninth Circuit, the district court amended its injunction to require that evaluations be conducted within 14 days of the written order for the evaluation consistent with the time period set forth by an amendment to Washington’s competency statute. *See Trueblood v. Wash. State Dep’t. of Soc. & Health Servs.*, 2016 WL 4268933 (W.D. Wash. Aug. 15, 2016) (court order). The court also imposed fines for missed evaluation deadlines.

While it is easy to see where the trial court’s remedy came from, it also is easy to see this approach is untenable in a civil contempt proceeding. This is the wrong proceeding in which to be taking these actions.

Remedial sanctions are authorized by RCW 7.21.030. This statute is frequently referred to as “civil contempt.” *In re Det. of Young*, 163 Wn.2d 684, 693 n.2, 185 P.3d 1180 (2008). RCW 7.21.030(1) allows either the court or a party to seek remedial sanctions for injuries arising from contempt of court. A “remedial sanction” is one that is “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).

RCW 7.21.030(2), in relevant part, outlines the possible remedial sanctions available for contempt:

¹ The trial court ruling in this case was not informed by the Ninth Circuit opinion or by the district court’s modification of the terms of its injunction.

If the court finds that the person has failed or refused to perform an act that is yet within the person's power to perform, the court may find the person in contempt of court and impose one or more of the following remedial sanctions:

(a) Imprisonment if the contempt of court is of a type defined in RCW 7.21.010(1) (b) through (d). The imprisonment may extend only so long as it serves a coercive purpose.

(b) A forfeiture not to exceed two thousand dollars for each day the contempt of court continues.

(c) An order designed to ensure compliance with a prior order of the court.

Punitive sanctions are authorized by RCW 7.21.040. This statute also is known as "criminal contempt." *Smith v. Whatcom County Dist. Court*, 147 Wn.2d 98, 105, 52 P.3d 485 (2002). "'Punitive sanction' means a sanction imposed to punish a past contempt of court for the purpose of upholding the authority of the court." RCW 7.21.010(2). If a court seeks to impose punitive sanctions, a prosecutor must file a complaint or information and certain other procedures must be followed that are generally consistent with a criminal case. RCW 7.21.040(2).

[A] sanction is punitive if there is a determinate sentence and no opportunity to "purge" the contempt. . . . [I]t is remedial where it is indeterminate and the contemnor is released upon complying with the court's order. . . . A punitive sanction generally is imposed to vindicate the court's authority, while a remedial sanction typically benefits another party.

Rhinevault v. Rhinevault, 91 Wn. App. 688, 694, 959 P.2d 687 (1998).

A trial court's decision to impose remedial sanctions is within the court's sound discretion. *Id.* It will not be disturbed absent abuse of that discretion. *Id.* A court abuses its discretion if its decision is "manifestly unreasonable or rests upon untenable

grounds or reasons.” *Davies v. Holy Family Hosp.*, 144 Wn. App. 483, 497, 183 P.3d 283 (2008).

While the difference between civil (remedial) and criminal (punitive) contempt can be easily stated, distinguishing between the two can be hard because coercive sanctions often appear to be punitive. *In re Interest of M.B.*, 101 Wn. App. 425, 438, 3 P.3d 780 (2000). A critical factor in distinguishing between the two circumstances is the triggering mechanism for the sanction. If the purpose of the sanction is to force a person to do something, it is coercive and hence “remedial.” *In re Pers. Restraint of King*, 110 Wn.2d 793, 800, 756 P.2d 1303 (1988). Where a sanction is imposed for past conduct, it typically is punitive. *Id.* A civil sanction “is conditional and indeterminate, *i.e.*, where the contemnor carries the keys of the prison door in his own pocket and can let himself out by simply obeying the court order.” *Id.*

The ruling here bears hallmarks of both categories. The trigger mechanism for sanctions is the failure to conduct the evaluation by the court’s deadline, something that presumably is within the agency’s power to meet. This suggests a civil contempt is at issue, as does the daily fine authorized by RCW 7.21.030(2)(b). Other aspects of the order suggest otherwise. Of particular concern is that the essential purpose of the penalty provision is to get state government to reorder its policies. The ruling is not remedial

with respect to Mr. Sims or any of the other defendants. It is an unnecessary² attempt to direct legislative and executive policy choices while directly benefiting a political subdivision of the state by transferring state funds to the county. That is not a proper use of the contempt authority in this context.

There are methods of compelling state government to live up to its constitutional obligations. *Trueblood* provides one example—a civil rights class action lawsuit that resulted in injunctive relief defining a due process right to timely competency evaluations, enforced by fines directed at the party that was not complying with the court's judgment. Another example is found in *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012). That was a declaratory judgment action requiring state government to fully fund its constitutional obligation to maintain the public schools. *Id.* at 512. The court used its contempt³ authority to enforce the judgment entered in the declaratory action. *Id.* at 545-46.

² The Department of Social and Health Services (DSHS) is already under court order in *Trueblood* to remedy the deficiencies that have left the department unable to comply with the deadlines required by the injunction in that case. The federal court does not appear to need state court assistance in forcing compliance with its judgment.

³ The Supreme Court in 2014 found the legislature to be out of compliance with the ruling in *McCleary* and, thus, in contempt of court. *See* Order of January 9, 2014. In 2015, the court found that the legislature still was not in compliance with the court's ruling and imposed a penalty of \$100,000 per day for each day the lack of compliance continued. *See* Order of August 13, 2015. The same finding was made in 2016 (Order of October 6, 2016) and in 2017 (Order of November 15, 2017), with the daily fine continuing to be imposed.

This case is neither of those cases. It is not a declaratory action. It is not a civil rights case. There is no injunction. Neither is there a final judgment in need of enforcement. This is an ordinary criminal case where a contempt motion was brought to force an evaluation on a date set by the court instead of by the agency assigned the task of conducting the evaluation. The agency was not even a party to this case.

For all of these reasons, the approach adopted by the trial court is not appropriate to a remedial contempt action. It is an effort by the local court to control and direct the activities of a state agency at both operative and policy levels. The latter action is not designed to remedy Mr. Sims' situation; rather, it is an attempt to influence executive and/or legislative policy choices.⁴ Judicial control over future legislative policy choices may serve to alleviate the problem of delayed evaluations to defendants sometime in the future, but it cannot be said to provide a remedy to Mr. Sims. If his rights were violated in this case, he has been provided no relief.⁵ Instead, he is essentially treated as if he

⁴ One difficulty with the record of this case is that there is no evidence suggesting why DSHS was not funded in a manner allowing it to comply with the dictates of *Trueblood*. Was that a matter of legislative design? Did the agency fail to seek adequate funding? Was sufficient funding supplied, but simply not allocated properly? On this record, we will never know.

⁵ It understandably would be problematic to award damages to Mr. Sims or anyone else whose evaluation was delayed since an award might threaten indigency status or eligibility for government services; nor is a criminal case a good vehicle for establishing an individual's actual damages.

were a plaintiff in a class action designed to obtain an award benefitting future members of the class.

For these reasons, I think the trial court's ruling falls on the criminal contempt side of the line. It is an effort to punish for past budget decisions and shape future decisions rather than provide relief to Mr. Sims or others who were denied their due process rights because of a late evaluation. However, this contempt case was not brought under the auspices of RCW 7.21.040 by the county prosecuting attorney. It should be reversed.

There are additional problems with the trial court's order. Directing that an evaluation be conducted on a specific date is unwise. The scheduling function is beyond the competence of a local judge, who has clear authority to order State agencies to comply with their statutory and constitutional duties, but is poorly equipped to run those agencies since the judges are responsible solely for the cases brought in their jurisdiction and do not have the ability to schedule appointments for an agency tasked with performing evaluations for all of the counties of the state. This can lead to conflicting orders requiring the agency to perform the same task on the same day in multiple jurisdictions, an impossibility for any human who cannot split her body into multiple copies.

Although I agree with the majority that an order need not be reduced to writing before it is effectual, I have quite a bit of sympathy for the argument that the Department of Social and Health Services (DSHS) needs a written order in a timely fashion. For one

thing, receipt of the written order directing a competency evaluation is the trigger for the federal due process right recognized by *Trueblood*. It is ironic that DSHS can be found to violate a right that Mr. Sims himself could not enforce without the written order. But, written orders also serve functions other than memorializing the will of the court. A written document is a necessary condition before an appeal (or discretionary review) to this court can be filed. It typically is necessary for other purposes such as seeking reconsideration or relief from judgment. It may be necessary so that the person or agency who has been ordered to perform a task is aware of the job that has been assigned and what is expected. Orders serve many purposes other than to establish purge conditions. Written orders are the best practice and should be entered as early as possible.

Finally, I have serious concerns with the majority's determination that interest is available on a contempt judgment. There is no controlling Washington authority on this point. My research suggests that the majority of states follow the approach of the majority, but comparing other states is a difficult task given the statutory permutations across the country. Many states expressly say that interest is or is not available. However, other states where legislative schemes are silent on the topic, as is the case in Washington, suggest that waiver of immunity only extends to interest where the legislative scheme says interest is available. One example is Massachusetts. *See, e.g., Sheriff of Suffolk County v. Jail Officers & Emps. of Suffolk County*, 465 Mass. 584, 597, 990 N.E.2d 1042 (2013) (no interest available on contempt judgment since no express

waiver of sovereign immunity as to interest); MASS. GEN. LAWS ch. 258 § 4. More briefing on this topic from states whose statutory waiver of immunity was silent on the question of interest would be useful.

Finally, I would note that in *McCleary*, which likely is the most prominent remedial contempt case of this generation, the Washington Supreme Court did not impose interest on its \$100,000 daily penalty, even though that relief was sought by the plaintiffs in that action. Although the topic is not discussed in any of the three contempt orders entered in the case to this point, the absence of interest is, I think, telling.

In conclusion, and with great respect for the late jurist who entered the contempt orders we are reviewing, the trial court tried to do too much here. The contempt powers of a federal court enforcing an injunction are broader than those created by our statutes. While the attempt to duplicate the federal court rulings was understandable, the enforcement actions exceeded the trial court's statutory authority. The effort to control policy choices belonging to other branches of government tipped this case into the criminal contempt arena. For that reason, we should reverse the rulings in their entirety. Accordingly, I respectfully dissent.


Korsmo

APPENDIX 2

Contempt Sanctions Judgments

Criminal Proceeding	Appellate Cause Number	Clerk's Papers: DSHS Briefing Opposing Contempt	Clerk's Papers: Contempt Order and Judgment	Date of Contempt Hearing	Date of Contempt Sanctions Order	Sanctions Period	Total Days of Punitive Sanctions*	Total Days Sanctioned	Punitive Sanctions Imposed*	Total Sanctions
Alexander, Derrick	34132-1	59-69	83-88	5/22/2015	7/24/2015	4/20/15 - 6/1/15	43	43	\$8,600	\$8,600
Anderson, Jennifer	34139-9	107-117	131-136	10/23/2015	11/2/2015	9/7/15 - 12/10/15	56	95	\$11,200	\$19,000
Beggs, Jonathan	34143-7	215-225	239-244	12/9/2015	12/29/2015	11/19/15 - 1/3/16	40	46	\$8,000	\$9,200
Blake, Valerie	34125-9	271-282	296-301	1/16/2015	1/26/2015	1/2/15 - 2/4/15	24	34	\$4,800	\$6,800
Cooper, Benjamin F.	34124-1	313-325	341-348	12/12/2014	1/16/2015	11/21/14 - 1/13/15	54	54	\$10,800	\$10,800
Fairfield, Jason (1)	34127-5	373-384	413-422	3/6/2015	3/19/2015	2/27/15 - 4/1/15	20	34	\$4,000	\$6,800
Fairfield, Jason (2)	34127-5	385-395	399-409	5/22/2015	7/24/2015	4/15/2015 - 5/31/15	47	47	\$9,400	\$9,400
Fleming, Audra D.	34133-0	436-446	460-465	5/22/2015	11/6/2015	4/17/15 - 6/2/15	47	47	\$9,400	\$9,400
Fletcher, Anthony	34134-8	531-541	555-560	5/22/2015	8/12/2015	5/5/15 - 7/5/15	62	62	\$12,400	\$12,400
Fregoso, Jesus	34142-9	561-571	609-614	11/6/2015	12/29/2015	10/22/15 - 1/3/16	68	74	\$13,600	\$14,800
Graham, Amy	34140-2	725-735**	653-658	10/23/2015	11/2/2015	8/19/15 - 11/09/15	75	83	\$15,000	\$16,600
Johnston, Joseph	34123-2	671-683	699-706	12/12/2014	1/16/2015	12/2/14 - 3/5/15	45	94	\$9,000	\$18,800
Keranen, Alexandra	34141-1	725-735	749-754	10/23/2015	11/2/2015	9/25/15 - 12/13/15	38	80	\$7,600	\$16,000
Larson, Bryce	34121-6	765-777	793-800	12/12/2014	1/16/2015	12/3/14 - 1/14/15	43	43	\$8,600	\$8,600
Lennartz, Patrick	34130-5	858-868	882-887	5/22/2015	7/31/2015	4/28/15 - 7/12/15	76	76	\$15,200	\$15,200
Lopez, Eduardo	34205-1	09-020	24-27	12/11/2015	2/12/2016	9/25/15 - 12/20/15	87	87	\$17,400	\$17,400
McCarthy, Matthew	34131-3	1503-1513**	944-949	5/22/2015	7/24/2015	5/7/15 - 7/19/15	74	74	\$14,800	\$14,800
Montoya, Jesse	34136-4	1012-1022	1036-1041	6/26/2015	7/24/2015	5/21/15 - 7/19/15	60	60	\$12,000	\$12,000
Owen, Christopher	34122-4	1054-1066	1082-1089	12/12/2014	1/16/2015	12/2/14 - 12/22/14	21	21	\$4,200	\$4,200
Pal, William	34126-7	1117-1128	1142-1147	1/16/2015	1/26/2015	12/18/14 - 1/21/15	35	35	\$7,000	\$7,000
Rettinger, Shawn	34138-1	1210-1220	1234-1239	6/26/2015	7/24/2015	5/29/15 - 7/19/15	52	52	\$10,400	\$10,400
Sackmann, Hailey	34137-2	1299-1309	1323-1328	6/26/2015	7/24/2015	4/24/15 - 6/28/15	66	66	\$13,200	\$13,200
Sandstrom, Christian	34180-1	1412-1422	1430-1433	12/9/2015	12/29/2015	12/4/15 - 1/24/16	25	52	\$5,000	\$10,400
Schilling, Loran Scott	34135-6	1503-1513	1527-1532	5/22/2015	10/16/2015	5/2/15 - 6/25/15	52	52	\$10,400	\$10,400
Sims, Anthony J.	34120-8	1544-1556	1572-1579	12/12/2014	1/16/2015	12/2/14 - 12/14/14	13	13	\$2,600	\$2,600
Spain, Daniel	34129-1	1604-1615	1628-1632	2/27/2015	3/6/2015	2/19/15 - 7/15/15	15	147	\$3,000	\$29,400
Tall, Sidappa (1)	34128-3	1657-1668	1759-1763	3/6/2015	3/19/2015	3/2/15 - 4/8/15	17	38	\$3,400	\$7,600
Tall, Sidappa (2)	34128-3	1730_1740	1764-1769	5/22/2015	7/24/2015	4/27/15 - 7/12/15	77	77	\$15,400	\$15,400
TOTALS									\$266,400	\$337,200

*This calculation includes every day of sanctions imposed prior to entry of the written contempt order. Sanctions were imposed at \$200 per day in each case.

** This citation refers to a brief opposing contempt filed by DSHS in a concurrently-heard contempt proceeding, demonstrating that the issue of punitive contempt was before the court in each proceeding.

APPENDIX 3

RCW 7.21.010**Definitions.**

The definitions in this section apply throughout this chapter:

(1) "Contempt of court" means intentional:

(a) Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceedings;

(b) Disobedience of any lawful judgment, decree, order, or process of the court;

(c) Refusal as a witness to appear, be sworn, or, without lawful authority, to answer a question; or

(d) Refusal, without lawful authority, to produce a record, document, or other object.

(2) "Punitive sanction" means a sanction imposed to punish a past contempt of court for the purpose of upholding the authority of the court.

(3) "Remedial sanction" means a sanction 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.

[1989 c 373 § 1.]

APPENDIX 4

RCW 7.21.030**Remedial sanctions—Payment for losses.**

(1) The court may initiate a proceeding to impose a remedial sanction on its own motion or on the motion of a person aggrieved by a contempt of court in the proceeding to which the contempt is related. Except as provided in RCW 7.21.050, the court, after notice and hearing, may impose a remedial sanction authorized by this chapter.

(2) If the court finds that the person has failed or refused to perform an act that is yet within the person's power to perform, the court may find the person in contempt of court and impose one or more of the following remedial sanctions:

(a) Imprisonment if the contempt of court is of a type defined in RCW 7.21.010(1) (b) through (d). The imprisonment may extend only so long as it serves a coercive purpose.

(b) A forfeiture not to exceed two thousand dollars for each day the contempt of court continues.

(c) An order designed to ensure compliance with a prior order of the court.

(d) Any other remedial sanction other than the sanctions specified in (a) through (c) of this subsection if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt of court.

(e) In cases under chapters 13.32A, 13.34, and 28A.225 RCW, commitment to juvenile detention for a period of time not to exceed seven days. This sanction may be imposed in addition to, or as an alternative to, any other remedial sanction authorized by this chapter. This remedy is specifically determined to be a remedial sanction.

(3) The court may, in addition to the remedial sanctions set forth in subsection (2) of this section, order a person found in contempt of court to pay a party for any losses suffered by the party as a result of the contempt and any costs incurred in connection with the contempt proceeding, including reasonable attorney's fees.

(4) If the court finds that a person under the age of eighteen years has willfully disobeyed the terms of an order issued under chapter 10.14 RCW, the court may find the person in contempt of court and may, as a sole sanction for such contempt, commit the person to juvenile detention for a period of time not to exceed seven days.

[2001 c 260 § 6; 1998 c 296 § 36; 1989 c 373 § 3.]

NOTES:

Findings—Intent—2001 c 260: See note following RCW 10.14.020.

Findings—Intent—1998 c 296 §§ 36-39: "The legislature finds that an essential component of the children in need of services, dependency, and truancy laws is the use of juvenile detention. As chapter 7.21 RCW is currently written, courts may not order detention time without a criminal charge being filed. It is the intent of the legislature to avoid the bringing of criminal charges against youth who need the guidance of the court rather than its punishment. The legislature further finds that ordering a child placed in detention is a remedial action, not a punitive one. Since the legislature finds that the state is required to provide instruction to children in detention, use of the courts' contempt powers is an effective means for furthering the education and protection of these children. Thus, it is the intent of the legislature to authorize a limited sanction of time in juvenile detention independent of chapter

7.21 RCW for failure to comply with court orders in truancy, child in need of services, at-risk youth, and dependency cases for the sole purpose of providing the courts with the tools necessary to enforce orders in these limited types of cases because other statutory contempt remedies are inadequate." [1998 c 296 § 35.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

SOCIAL AND HEALTH SERVICES DIVISION, ATTORNEY GENERALS OFFICE

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