70549-1

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Court of Appeals No. 70549-1
King County Superior Court Cause No.10-3-01974-3 SEA

COURT OF APPEALS, DIVISION I,
OF THE STATE OF WASHINGTON

SUNG LEE KIM, HUNG KIM, and DELTA INN, INC., Appellants,

and

SOON IM KIM, Respondent.

BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

Soon Kim and Sung Kim[1] were married for nearly 36 years at the time of their dissolution trial. CP 15. Following a trial in August and September of 2012 during which both Soon and Sung were represented by counsel and presented evidence, Findings of Fact and Conclusions of Law were entered on March 20, 2013. CP 13-29, 699. **The Findings of Fact and Conclusions of Law and Decree of Dissolution were not appealed and are final.** This appeal arises from Sung's ongoing failure to comply with the Decree of Dissolution.

The trial court found that Sung had the ability to pay spousal maintenance to Soon and ordered Sung to pay maintenance to Soon in the amount of $20,000 per month for the remainder of her life, noting that such an award would not cover all of Soon's living expenses. CP 22-24. In the later years of their marriage, Sung and Soon spent upwards of $80,000 per month without incurring debt or invading capital. CP 23; RP 16 (6/16/13). The trial court also awarded Soon over $548,000 in attorney's fees and costs for the dissolution proceeding, pursuant to RCW 26.09.140 and due to Sung's intransigence. CP 25-27. Sung has not paid toward this judgment for attorney's fees and costs. CP 73.

[1] All non-corporate parties have the same last name. As such, they are referenced by their first names to avoid confusion, and no disrespect is intended.

Although he had paid support in the amount of $19,000 per month during the dissolution proceedings and throughout the trial, commencing November 2012, Sung began paying only $2,600 per month toward his maintenance obligation of $20,000 per month. CP 72. Soon initiated the underlying Contempt proceeding by filing a Motion for Contempt against Sung on June 5, 2013. As part of the relief requested, Soon requested entry of a judgment of $105,893.37 for past-due maintenance and $4,405.73 for interest to date of judgment. CP 73. Sung agreed to the calculation of past-due maintenance and agreed to entry of a judgment of $105,893.37. CP 373. He argued instead that he should not be found in contempt because he alleged he did not have the ability to pay. CP 372. However, Sung provided little to no documentation prior to the first contempt hearing on June 13, 2013, and the trial court continued the hearing to allow Sung to submit additional materials to support his claim. RP 14-16 (6/13/13) ("Mr. Kim has the burden of proving by a preponderance of the evidence that he doesn't have the means to comply with my order. And so there's a bunch of information here about the malls and stuff, but I'm not finding anything other than one sentence about his current income and expenses."; "I have no information about his current expenses; . . . . And, of course, one of my concerns in trial was for someone who's income tax returns reflected – I don't remember if it was

$150,000 but it certainly wasn't a million dollars or $500,000 – and yet had no debt, a million dollar home, $80,000 a month on credit card payments."). Sung did not deny that he had historically spent hundreds of thousands of dollars more a year than he claimed he was being paid. RP 21–22 (6/13/13). The court noted during the June 13, 2013 hearing that Sung was making the same argument as he had at trial regarding his income and ability to pay. RP 23 (6/13/13). The court continued the contempt hearing to allow Sung to provide additional documentation. RP 34 (6/13/13).

The second hearing on Soon's motion for contempt was held on June 24, 2013. After considering the additional materials authorized, the court found Sung to be in contempt and ordered that Sung be confined to the King County Jail. RP 60 (6/24/13); CP 700. In making its decision, the court noted:

> But I looked at the financial declaration and I see $100 a month for food and I thought, How in the world? And I went through the check register and it seems to me – you know, one of my concerns obviously in the underlying trial was that a huge percentage if not a majority of the Kims' personal expenses were being paid by Delta Inn. So I looked through the check register and I said there's not one dime here – that's probably an exaggeration but close to it – for food, for laundry, for personal expenses. None of that

> stuff. Cash, there's not cash withdrawals. There's not debit card withdrawals. So and then I look at the credit card and that's where it all is. And every so often they say, "Well, okay, we want you to reimburse us for this haircut." But his personal expenses are still being paid by Delta Inn.
>
> We got all this air travel and I can't tell what's personal and what isn't. But the idea that I'm chaffing at a little bit – and, you know, you've clearly gone to a lot of work and given me a lot of information here – is that Ms. Kim gets paid with what's left after all the other stuff, after he goes to see his son, after he flies the kids up here, after all that, after he pays $700 for a wedding present or whatever and goes to Japan and sees his friend. Whatever's left, Mrs. Kim gets, and that's not my intent.

RP 21-22 (6/24/13). The court found that while Sung's expenses may be slightly more modest, his actual compensation has not changed much since trial. RP 32 (6/24/13). The expenses for which Sung was reimbursed were not business expenses but rather whatever he put on the credit card. RP 56 (6/24/13). The court found Sung to be in contempt for failure to pay his spousal maintenance obligation and **ordered that he could purge the contempt** by being current in the reminder of his July 2013 spousal maintenance obligation and paying $5,000 towards his arrearages. RP 57 (6/24/13); CP 702. The court found that Sung has "not

met his burden of proof by a preponderance of the evidence that he has the inability to pay the maintenance which [was] ordered after trial." RP 59, lines 4-6 (6/24/13); CP 702-703. The court did not find Sung's representation of his income to be credible or that the expenses paid by his employer were all reasonably business related. RP 59-60 (6/24/13). The court found that Sung had the ability to comply with the Decree of Dissolution and that the evidence and information provided by Sung was the same position he presented before at trial. CP 700. Sung was ordered to be confined to jail if $21,000 was not paid through McKinley Irvin by 10:00 a.m. on June 25, 2013. CP 700 ("Confinement suspended provided **Respondent pays** $21,000 prior to 10:00 a.m. on Tuesday, June 25, 2013. . . . The $21,000 shall be paid to the law firm of McKinley Irvin." *Emphasis added.*).

The $21,000 was paid to McKinley Irvin as ordered, and the confinement was therefore suspended. RP 4 (6/25/13). However, Catherine Smith appeared on behalf of Hung Kim and Delta Inn, Inc., on June 25, 2013, and argued that the $21,000 should not be released to Soon. RP 4-5 (6/25/13). Hung and Delta Inn argued that the funds belonged to them. RP 5 (6/25/13). Hung and Delta Inn further argued that the court was using the possibility of jail to require a third party to act. RP 6 (6/25/13). The trial court denied the request for a stay to prevent the fund

from being released to Soon. RP 20, 23-25 (6/25/13). After the trial court orally summarized the findings related to the contempt order, and the basis for those findings and orally denied the request for a stay, the attorney for Hung and Delta Inn withdrew her motion. RP 20, 23-25 (6/25/13).

The trial court specifically stated on the record **that it did not and was not ordering a third party to do anything**:

> This isn't my saying Bill Gates' sister is going to be in contempt unless he bails her out. **My finding at the end of the dissolution trial was that – and my sort of reasoning in them – is that Delta Inn, the company, paid Mr. Kim much, multiples of the amount of money which he was telling me he was being paid for salary. That can only be income to him. Companies don't give money away.** It came from Delta Inn.
>
> Delta Inn paid for a house. They paid for cars. They paid for – and, you know, I'm sorry to harp on this figure, but they were paying – the Kims had $85,000 a month, plus or minus some percent, in credit card expenses which were paid by Delta Inn. They didn't carry a balance. That is income to Mr. Kim. And that was the basis of my award of maintenance.
>
> That has changed only in a matter of degree. Mr. Kim says, "I'm making 20,000" – I mean, I'm sorry – "$10,000 a month from Delta in income." He buys no food. He has no personal expenses. He – they are

> – his personal expenses continue to be paid overwhelmingly by Delta Inn as far as the records that I'm presented. That's income to Mr. Kim.
>
> . . .
>
> **It was my finding that he was – he admitted owing the money. And my finding was that he failed to meet the burden of proof by a preponderance of the evidence that he didn't have the means to pay it.**
>
> **It didn't have anything to do with who was going to pay, if Delta Inn or certainly his brother.** I said he was going to be in contempt. I've held him in contempt. I set the purge conditions. I set a review date. **And before the people from the jail got here, I was told on his behalf that he could come up with the money.** That's my perspective in the historical background.
>
> . . .
>
> . . . But I want to make it clear that my finding involves the fact that he continues – I don't know what else to call it other than income. **When a company pays someone's living expenses and salary and all kinds of other expenses, to me that's income. I don't know any other way around it. And that's the basis of my ruling**.

RP 18-20 (6/25/13). *Emphasis added.*

The non-parties Hung and Delta Inn filed a Notice of Appeal of the contempt order, as did Sung. The court subsequently entered an order awarding attorney's fees and costs to Soon related to the contempt proceeding. CP 771-773. Sung filed a Notice of Appeal of the order awarding attorney fees.

ARGUMENT

The trial court found Sung in contempt and ordered that he pay the remainder of his July 2013 spousal maintenance obligation as well as begin paying $5,000 per month toward his arrearages because Sung did not meet his burden of demonstrating that he was not able to comply with the Decree of Dissolution. Sung admitted that he had not paid $105,893.37 as required by the Decree of Dissolution. The court ordered Sung to jail if he did not pay towards his obligations in an effort to coerce Sung's compliance with the Decree of Dissolution. The court should deny Appellants' request to reverse the contempt order, the request to return the funds paid to Soon, and the request to reverse the award of attorney's fees.

1. **The trial court reasonably determined that Sung had the ability to pay his spousal maintenance obligation and that Sung should be incarcerated unless he purged that contempt by paying the remainder of his July 2013 maintenance obligation and $5,000 towards his arrearages owed.**

Pursuant to RCW 26.18.050 and RCW Chapter 7.21, the trial court has the authority to find a party in contempt for failure to comply with a support or maintenance order. Remedial or punitive sanctions are provided for under RCW Chapter 7.21. RCW 7.21.010(2)-(3); RCW 7.21.030-040. The purpose of remedial sanctions is to coerce performance. RCW 7.21.010(2)-(3). "A contempt sanction involving imprisonment remains coercive, and therefore civil, if the contemnor is able to purge the contempt and obtain his release by an affirmative act." *In re M.B.*, 101 Wn. App. 425, 439, 3 P.3d 780 (2000). It is within the trial court's discretion to "fashion an appropriate purge condition such that the court is assured of the contemnor's future compliance while also ensuring that the sanction is remedial." *Id.* at 448-449. It is also within the court's discretion to make a finding of contempt, and such a finding will be upheld as long as a proper basis can be found. *Id.* at 454. A court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds. *Id.*

Due process requirements are met when the purge conditions are reasonably related to the cause or nature of the contempt. *Id.* at 449. Whether a purge condition exceeded the court's authority or violated a contemnor's due process rights is a question of law reviewed de novo. *Id.* at 454. Imprisonment as a sanction for contempt is to be used when no

alternatives appear available to coerce compliance with the court's order. *Id.* at 439.

After reviewing the pleadings submitted by both Soon and Sung relating to Soon's motion for contempt, the trial court reasonably found that Sung was in contempt for failure to pay his maintenance obligation pursuant to the Decree of Dissolution. Sung did not deny that he had not paid $105,893.37 of his spousal maintenance obligation even though he had paid $19,000 per month as temporary spousal maintenance throughout the dissolution action until the trial court's oral ruling following trial. CP 384. The court found that it was only after trial that Sung claimed to make only $10,000 per month salary from Delta Inn. CP 699. Neither party owed any loans to Delta Inn prior to the commencement of the dissolution action. CP 23. The court found that Sung's claim that he makes only $10,000 per month is neither persuasive nor credible, and that he has the ability to comply with the court's orders though unwilling to do so. CP 699-700. The court's findings that (1) Sung's representation of his income was artificially low, (2) Sung was able to comply with the court's order, and (3) that Sung was in contempt, were all reasonable and supported by the evidence before the court.

The Decree of Dissolution was entered less than three months before Soon brought her motion for contempt. CP 71-73. Sung provided

very little financial information in his initial response to Soon's motion, and after receiving additional time to respond still did not provide complete financial information. CP 490. He did not provide pay information for 2012; he did not provide information regarding pay from other entities; he provided only five partial Chase Bank statements for 2013; he did not provide Key Bank statements for his personal account disclosed at trial; he did not provide statements for business accounts for which he had signing privileges (including a Delta Kor account with $200,000 in May of 2012); he claimed he had only one credit card for personal and business expenses, contradicting his trial testimony.[2] CP 490-492. The "reimbursement records" from Delta Inn purporting to show Sung's obligation to reimburse Delta Inn for <u>some</u> of his personal expenses was created the day after the first hearing on Soon's motion for contempt. CP 492. Sung made no request for life insurance until the motion for contempt, and even then offered no evidence to demonstrate whether or not he actually applied for life insurance. CP 493. He provided no proof of any effort to collect on the hundreds of thousands of dollars owed to him by Ryan Oh and Scott Kim pursuant to the Decree of

[2] During the dissolution action, Sung first claimed he had two credit cards (one Alaska Airlines and one Asiana credit card). Then he claimed that he had two Alaska Airlines credit cards and denied having an Asiana credit card. Then he claimed that he had five credit cards, two of which were Asiana credit cards. CP 492.

Dissolution.[3] CP 495. His employer continued to reimburse his personal expenses, including cosmetic services. CP 492-493. He took vacations and flew family members to Washington to visit him. CP 491-493. He bought $700 wedding presents. CP 406. Although he claimed loans owing to Delta Inn (CP 443), he did not demonstrate any obligation to repay those "loans." Edward Skone, Sung's former dissolution counsel, instructed Sung to artificially reduce his access to resources by documenting funds from Delta Inn as loans. CP 496, 587. Sung has not exercised due diligence in rendering himself able to comply with his obligation, but rather he has intentionally failed to comply with that obligation. *See* RCW 26.18.050(4).

Considering all of the evidence before the trial court, it was well within the trial court's discretion to find that Sung had the ability to comply with the order of maintenance, particularly so soon after the entry of the Decree of Dissolution and following Sung's payment of $19,000 per month until the trial court issued its oral decision following trial. The trial court also reasonably considered Sung's receipt of payment for his

[3] Sung was awarded the loans to Ryan Oh and Scott Kim in the Decree of Dissolution. He provided only hearsay statements alleging that the borrowers could not repay him, which Soon objected to in her Reply. CP 495. He further tried to claim that the loan to Ryan Oh was from Delta Inn. However, that claim was raised at trial and relates to a separate loan to Ryan Oh; the Ryan Oh loan receivable that was awarded to Sung in the divorce was made in 2009 and Sung admitted in discovery that it was a personal loan. CP 548.

personal expenses as income. *See* 26 U.S.C. § 61 ("[G]ross income means all income from whatever source derived, including (but not limited to) . . . (1) Compensation for services, including fees commissions, fringe benefits, and similar items . . . (12) Income from discharge of indebtedness . . . .").

Sung's allegations that Soon has access to resources (including the home she had to list for sale due to her inability to pay the mortgage without receipt of maintenance) is irrelevant. The court already determined following trial that Soon had a need for spousal maintenance of $20,000 per month and that Sung had the ability to pay, and that decision has not been modified or appealed.[4]

The trial court also acted within its discretion when it ordered that Sung be imprisoned as a sanction for his contempt. Soon was granted a judgment for over $548,000 for attorney's fees and costs due to Sung's intransigence during the dissolution proceedings. CP 2, 26-27. Sung has not paid towards this judgment demonstrating that entry of a judgment does not serve to coerce Sung into complying with the court's orders. In addition, the purge condition—payment of Sung's current obligation and payment toward his arrearages—is related to the contempt.

[4] An order was entered that amended the Decree, but the property division was not changed and the amendments were clerical only. CP 760-763.

The trial court was well aware of Judge Shapira's decision in Soon's separate civil action relating to ownership of Delta Inn when it entered the Decree of Dissolution ordering Sung to pay $20,000 per month in spousal maintenance and when it entered the order finding Sung in contempt for failure to pay his maintenance obligation. RP 15-16 (6/25/13). The trial court based its determination that Sung had the ability to pay spousal maintenance and purge his contempt on its determination that Sung's representation of his income was not credible and his income is much higher, based on the evidence before the court, than he claims. The trial court based Sung's opportunity to purge his contempt squarely in Sung's hands, not those of a third party. CP 701; RP 57-58 (6/24/13); RP 18-20 (6/25/13). The trial court ordered that Sung pay the remainder of his July obligation and $5,000 towards his arrearages to purge his contempt, and Sung advised the court he could do so. RP 19 (6/25/13). Of his own accord, Sung apparently had Hung and Delta Inn pay his obligation for him.

The trial court did not abuse its discretion or violate Sung's due process rights when it ordered that Sung was in contempt for violation of his obligation to pay spousal maintenance, that Sung should be incarcerated as a sanction for his contempt, and that Sung could purge his

contempt by payment of the remainder of his July 2013 maintenance obligation and $5,000 toward his arrearages.

2. **Neither Hung nor Delta Inn constitutes an "aggrieved party" entitled to seek review under RAP 3.1 because the trial court's contempt order does not affect their pecuniary or personal interests, and the trial court did not order a third party to fulfill Sung's purge condition.**

Pursuant to RAP 3.1, only an aggrieved party may appeal a judgment or final order. Neither Hung nor Delta Inn is an "aggrieved party".

An "aggrieved party" is one whose proprietary, pecuniary, or personal rights are substantially affected. *Breda v. B.P.O. Elks Lake City 1800 SO-620*, 120 Wn. App. 351, 353, 90 P.3d 1079 (2004) (citing *Cooper v. City of Tacoma*, 47 Wn. App. 315, 316, 734 P.2d 541 (1987)) (holding that a client of a sanctioned attorney cannot appeal the attorney's sanction because the client was not damaged by the sanction).

Hung and Delta Inn argue that the trial court's contempt order compelled Hung and Delta Inn to grant Sung "access" to additional funds over and above his agreed upon income. This statement is patently untrue. The court imposed no such burden on either Hung or Delta Inn. The unambiguous terms of the trial court's order and the record of the hearing place the burden to pay current and past due maintenance squarely on

Sung. CP 698-705; RP 18-20 (6/25/13). The trial court specifically found that Sung had not met his burden of demonstrating that he did not have the ability to comply with the Decree of Dissolution. RP 59 (6/24/13); CP 700. Sung represented to the court that he could transfer the funds to purge his contempt prior to incarceration. RP 19 (6/25/13). The fact that Sung requested and/or obtained money from Hung and/or Delta Inn does not change the fact that neither Hung nor Delta Inn were ordered, required, or compelled by the trial court to make any such payment. The fact that either Hung or Delta Inn may have made a payment at the request of Sung (who was present at court and understood, or should have understood, that the burden was being imposed upon him personally) further does not change the unambiguous language of the trial court's order—nor does it create any right of recovery against Soon. Actions that Hung and/or Delta Inn took voluntarily to assist Sung in payment of Sung's personal obligations do not grant upon them the ability to substitute themselves as "aggrieved parties" in this matter. The plain language of the trial court's Order to Show Cause re Contempt/Judgment confirms that this appeal is without merit.

Additionally, the cases cited by appellants are simply not analogous to this case. First, in *Mestrovac v. Dept. of Labor & Industries*, 142 Wn. App. 693, 176 P.3d 536 (2008), *aff'd on other grounds*, 169

Wn.2d 81, 233 P.3d 853 (2010), the Court of Appeals, Division I, confirmed that the Board of Industrial Insurance Appeals (the "Board") had the right to appeal a Superior Court order specifically holding the Board liable for a claimant's interpreter service fees and ordering the Board to pay attorney fees for attempting to intervene. In the present case, however, the trial court did not direct or order either Hung or Delta Inn to do or pay anything. The only person ordered to do anything was Sung.

Second, in *State v. G.A.H.*, 133 Wn. App. 567, 137 P.3d 66 (2006), the Court of Appeals, Division I, confirmed that the Department of Social and Health Services had the right to appeal a trial court order specifically directing DSHS to "assume custodial and financial responsibility" for a juvenile offender. *Id.* at 575. Again, contrary to DSHS in *G.A.H.*, neither Hung nor Delta Inn have been ordered or directed by the court to do or pay anything.

Third, in *In re Welfare of Hansen*, 24 Wn. App. 27, 35, 599 P.2d 1304 (1979), the Court of Appeals, Division III, confirmed that the guardians of the child had standing to appeal when they had been the child's guardians for more than 8 years and the judge expressed intent that to effect an eventual reunification between the child and the biological mother. The court found that the guardians' property, pecuniary, and personal rights were directly and substantially affected by the lower

court's order. *Id.* Again, contrary to the guardians in *Hansen*, neither Hung nor Delta Inn have been ordered or directed by the court to do or lose rights to anything. Only Sung was ordered to comply with the Decree of Dissolution.

3. The trial court did not violate due process by ordering Sung imprisoned if Sung did not pay his current spousal maintenance obligation and toward his arrearages. The court did not order Hung or Delta Inn to pay Sung's spousal maintenance obligation.

Sung was provided notice of the contempt action and was represented by counsel at all three hearings relating to the motion for contempt. The court provided Sung with the opportunity to supplement his response to the motion for contempt following the first hearing held on June 14, 2013. The trial court ordered only Sung to pay his spousal maintenance obligation to Soon; the court did not direct or order Hung or Delta Inn to pay Sung's spousal maintenance obligation to Soon or to provide Sung "access" to additional funds. The trial court reviewed the record provided by Sung and determined that Sung had not met his burden of demonstrating by a preponderance of the evidence that he did not have the ability to comply with the Decree of Dissolution and his spousal maintenance obligation. The court required that Sung pay the remainder of his July 2013 spousal maintenance obligation and $5,000 towards his

arrearages by 10:00 a.m. on July 25, 2013, after Sung represented that he would be able to make such payment and avoid incarceration.

Due process requires notice and a meaningful opportunity to be heard. *Downey v. Pierce Cty.*, 165 Wn. App. 152, 164, 267 P.3d 445 (2011), *rev. denied*, 174 Wn.2d 1016, 281 P.3d 688 (2012). In this action, the actual party in interest was provided notice and an opportunity to be heard as Sung was served with Soon's motion and represented by counsel; he was even provided the opportunity to supplement his responsive materials to the court. RP 34 (6/13/13).

Sung was not held "hostage" until Hung or Delta Inn acted. Sung was provided the opportunity to purge his contempt, and the trial court did not order Hung or Delta Inn to do or not do anything. CP 701-703. Appellants cite a number of cases in support of their claim that Sung was held "hostage", none of those cases are applicable to this case.[5] The trial court did not order Hung or Delta Inn to do anything, nor did it order Sung to demand any action from Hung or Delta Inn. CP 698-705. The court ordered that Sung could purge the finding of contempt and found that

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[5] Appellants cite to *United States v. Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers, AFL-CIO*, 899 F.2d 143 (2d Cir. 1990), *Newman v. Graddick*, 740 F.2d 1513 (11th Cir. 1984), and *Omni Holding & Dev. Corp. v. 3D.S.A., Inc.*, 356 Ark. 440, 156 S.W.3d 228 (2004). In each of those cases, the court specifically predicated the contemnor's purge conditions on the actions of third parties. The trial court in this case placed Sung's contempt and purge condition squarely on Sung's shoulders without ordering action or inaction of any third party, including Hung and Delta Inn. CP 698-705.

Sung's representation of his income was not credible. CP 698-705. The trial court did not order Hung or Delta Inn to provide Sung with access to anything. The trial court found, based on the evidence presented, that Sung's income is greater than he represented and that he does have access to more than reflected in his financial declaration. CP 703.

In addition, although not parties to this action and not ordered to do or not do anything by the trial court, Hung and Delta Inn were provided the opportunity to address the court and to request that the funds Sung was ordered to pay not be released to Soon. RP 5-8, 20 (6/25/13). Hung's and Delta Inn's argument that the court does not have the authority to order a non-party to do anything is not pertinent because the court did not order Hung or Delta Inn to comply with the Decree of Dissolution or the Order on Show Cause re: Contempt/Judgment. CP 698-705. The court ordered only that Sung comply with the maintenance obligation, that Sung had the ability to comply with the maintenance obligation, that Sung was in contempt, and that Sung could purge his contempt if Sung paid towards his maintenance obligation.[6] CP 698-705. Sung, Hung, and Delta Inn

[6] Appellants cite to *City of Seattle v. Fontanilla*, 128 Wn.2d 492, 909 P.2d 1294 (1996); *Lejeune v. Clallam Cty.*, 64 Wn. App. 257, 823 P.2d 1144 (1992), and *Richards v. Jefferson Cty., Ala.*, 517 U.S. 793, 116 S. Ct. 1761, 135 L.Ed. 2d 76 (1996), in support of their position that they were not offered an opportunity to be heard before being held to comply with the court's order. However, those cases do not apply to the current situation. Hung and Delta Inn were not ordered to do anything; Sung was ordered to comply with the court's orders. CP 698-705.

each had a sufficient and meaningful opportunity to be heard before the trial court. This court should affirm the trial court's order and findings that Sung was in contempt, that Sung had the ability to pay his maintenance obligation, that incarceration was an appropriate sanction, and that the purge conditions were appropriate.

4. The trial court's award of fees should be affirmed.

Sung requests that this court reverse the trial court's award of attorney's fees based solely on his argument that he should not have been found in contempt. He does not argue that the award of fees is unreasonable, incorrect, or inappropriate if the finding of contempt is affirmed. Because this court should affirm the court's finding that Sung was in contempt for failure to pay his spousal maintenance, the order of attorney's fees should be affirmed.

5. This appeal is without merit, and the Appellants should be ordered to pay Respondent's attorney fees and costs.

This appeal is without merit and is intended to further increase Soon's attorney's fees and financial burden. RAP 18.1 allows a party to recover attorney fees in responding to an appeal. RCW 26.09.140 and RCW 4.84.185 allow for recovery on a frivolous matter that is advanced without reasonable cause. In this case, Sung, Hung, and Delta Inn have persisted in driving forward litigation without evidence or legal arguments

to support their claims and have completely misrepresented the trial court's order to this court. Soon has incurred great expense in responding to these claims, and the appellants should be required to repay Soon's fees and costs incurred.

CONCLUSION

Respondent Soon respectfully requests that this court affirm the trial court's finding of contempt, the purge conditions set by the trial court (requiring that Sung pay the remainder of his July 2013 spousal maintenance obligation and $5,000 towards his arrearages), and the award of attorney's fees related to the contempt proceeding. The court found at trial that Sung had the ability to pay the $20,000 per month spousal maintenance award, and it was reasonable based on the evidence before the court at the motion hearing to find that Sung had the ability to comply with that order. The trial court did not order Hung or Delta Inn to do or not do anything, and they are not aggrieved parties to this action. The court should deny Hung and Delta Inn's appeal. The court should award Soon attorney's fees for the necessity of responding to this appeal.

DATED: December 6th, 2013.

McKinley Irvin, PLLC

Jennifer J. Payseno, WSBA #22153
Jessica Moore, WSBA #33778

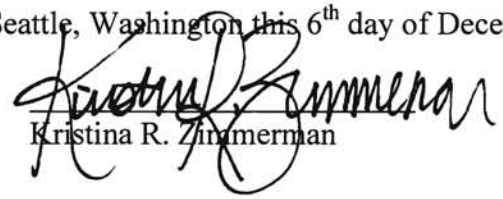
DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the foregoing is true and correct:

That on December 6, 2013, I arranged for service of the foregoing Brief of Respondent, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals – Division I One Union Square 600 University Street Seattle, WA 98101	____ Facsimile X Messenger ____ U.S. Mail ____ E-File
Michael D. Hunsinger The Hunsinger Law Firm 100 S. King Street, Suite 400 Seattle, WA 98104	____ Facsimile ____ Messenger X U.S. Mail X E-Mail
Catherine W. Smith Smith Goodfriend, P.S. 1619 8th Avenue North Seattle, WA 98109	____ Facsimile ____ Messenger X U.S. Mail X E-Mail

DATED at Seattle, Washington this 6th day of December, 2013



Kristina R. Zimmerman