

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

PAM & DEAN ROCKWOOD, husband and
wife,

Respondents,

v.

JOHN J. HADALLER, an individual,

Appellant.

No. 41088-5-II

UNPUBLISHED OPINION

Johanson, J. — The trial court held John J. Hadaller in contempt of court for failing to comply with a court order to take all necessary steps to sell a piece of property by a certain date. The trial court imposed a monetary sanction against Hadaller to coerce his compliance. Hadaller appeals the finding of contempt and the sanction. We affirm because Hadaller fails to demonstrate that the trial court abused its discretion.

FACTS

In 2004, developer John Hadaller and Pam and Dean Rockwood entered into a five-year lease-option contract for a Mossyrock property. Per the agreement, following their five-year lease on the property, the Rockwoods could elect the option to purchase it.

At the conclusion of the five-year lease in 2009, the Rockwoods exercised their option to purchase the property. Hadaller, though, did not perform under the lease-option contract. So, the Rockwoods sought specific performance on the original contract. In August 2009, the trial court granted the Rockwoods' summary judgment motion, holding that Hadaller breached the lease-option contract, and it ordered specific performance: Hadaller must sell the property to the Rockwoods as per the lease-option contract by December 31, 2009.

By December 2009, Hadaller had yet to prepare the property for sale. As a result, the trial court appointed a third-party surveyor to prepare the property for sale. On May 17, 2010, the third-party surveyor completed its preparation of the property for sale. At a hearing on June 18, the trial court ordered Hadaller to “take all necessary steps to complete the ordered sale” by June 30. Clerk’s Papers (CP) at 172. The trial court noted Hadaller’s “maneuvering, obfuscation and argument that’s gone on over this lifetime of the lawsuit.” Verbatim Report of Proceedings (VRP) (June 18, 2010) at 10. It also observed Hadaller’s “slight of hand” attempt to reserve for himself a covenant on the property that would restrain the Rockwoods’ future ability to grant easements on the property. The trial court granted the Rockwoods’ motion and awarded to the Rockwoods further attorney fees and costs.

Hadaller’s continued inaction prevented the sale by the court-ordered June 30 deadline, and on August 6, the trial court heard the Rockwoods’ motion to find Hadaller in contempt of the June 18 order. At the contempt motion hearing, the court indicated that a third-party purchaser of another Hadaller asset had agreed to provide early payment on its contract with Hadaller in order to help Hadaller facilitate the Rockwood closing. But, to the trial court’s dismay, Hadaller responded that he could not use his seller’s interest in the third-party contract to facilitate the Rockwood closing because he had assigned his seller’s interest to another person.¹

The trial court concluded that Hadaller was in contempt of the court’s order and ordered him “to immediately take all necessary steps to expeditiously complete the sale and close on

¹ Hadaller assigned his seller’s interest to Deborah Reynolds, who Hadaller described as his “assistant” that he owed for her work. VRP (Aug. 6, 2010) at 13. The Rockwoods and trial court both refer to Reynolds as Hadaller’s long-term, live-in “girlfriend.” VRP (Aug. 6, 2010) at 17.

August 13, 2010, including without limitation providing necessary funds required for the closing and signing the closing papers.” CP at 176. The contempt order awarded attorney fees to the Rockwoods as the continuing prevailing party, as well as a \$10,000 contempt sanction against Hadaller. The order contained a clause that would purge the \$10,000 sanction if Hadaller were to fully comply with the order and “take[] all necessary steps to facilitate the ordered sale to the Rockwoods by no later than August 13, 2010.” CP at 176. The trial court also appointed attorney T. Charles Althausser to act as Hadaller’s agent to sign the closing documents on Hadaller’s behalf, should Hadaller refuse to sign the closing paperwork himself.

The transaction closed by August 13 without Hadaller’s cooperation. Two days prior to closing, as a result of Hadaller’s delinquency in paying his bills, a local quarry filed a lien against Hadaller’s property, forcing the Rockwoods to find additional funds to pay the costs to lift the lien on the property. Then, just before the August 13 deadline, Hadaller filed a lis pendens encumbrance on the property. Finally, as the trial court had expected, Hadaller refused to sign the closing paperwork; so instead, the Rockwoods worked with Hadaller’s court-appointed agent, the closing agent, and the lending agent to close the sale on time. Consequently, the Rockwoods brought another motion for an order enforcing contempt and awarding supplemental attorney fees and costs because Hadaller had not taken “all necessary steps to facilitate the ordered sale.” CP at 72-73.

On September 3, the trial court held Hadaller in continuing contempt of court because of his actions—and inactions—prior to the August 13 closing. The court cited Hadaller’s non-compliance with the order to take all necessary steps to facilitate the sale. The court ordered

payment of the \$10,000 sanction within 90 days.

Hadaller appeals the trial court's contempt order and \$10,000 contempt sanction.

ANALYSIS

I. Contempt

Hadaller argues that the trial court erred in finding him in contempt of the June 18 order. The trial court, however, did not abuse its discretion in finding Hadaller in contempt. A trial court may hold a party in contempt for failing or refusing to perform "an act that is yet within the person's power to perform." RCW 7.21.030(2). Whether a party's actions warrant contempt is a matter within the sound discretion of the trial court; and, unless the trial court abuses that discretion, it should not be disturbed on appeal. *Moreman v. Butcher*, 126 Wn.2d 36, 40, 891 P.2d 725 (1995). A trial court abuses its discretion only if there is a clear showing that its exercise of discretion was manifestly unreasonable, based on untenable grounds, or based on untenable reasons. *Moreman*, 126 Wn.2d at 40.

In civil contempt proceedings, the law presumes that one is capable of performing those actions the court requires, and the inability to comply is an affirmative defense. *In re Pers. Restraint of King*, 110 Wn.2d 793, 804, 756 P.2d 1303 (1988). The contemnor bears the burden of production and the burden of persuasion to demonstrate its claimed inability to comply with the court's order. *Moreman*, 126 Wn.2d at 40. Moreover, a contemnor must "offer evidence as to his inability to comply and the evidence must be of a kind the court finds credible." *Moreman*, 126 Wn.2d at 40-41 (quoting *King*, 110 Wn.2d at 804). Hadaller fails to demonstrate any abuse of discretion.

The trial court determined that, between the June 18 order and June 30 deadline to sell, Hadaller had money available to complete the sale to the Rockwoods. Rather than executing the sale by June 30, as the court ordered, Hadaller instead assigned his seller's interest in another contract to Reynolds, leaving himself without the funds to cover the closing costs. Hadaller does not deny that he transferred this asset—an asset with value exceeding that needed to complete closing—to a third party.

Instead, Hadaller detailed his inability to close by June 30. He argued that he had no choice but to transfer his seller's interest in the other property to Reynolds because he owed Reynolds on a previous debt. Hadaller also claims that he had expected to qualify for a loan to cover the needed closing costs; but, he did not learn until July 1, 2010 that his credit score would prevent his receiving the anticipated loan.

Hadaller failed to convince the trial court of his inability to comply with the June 18 order. The court characterized Hadaller's justifications for failing to comply: "I don't think I have ever heard a more lame excuse [transferring his asset to Reynolds] in recent memory for not complying with the Court's orders than the one I have heard from you this morning." VRP (Aug. 6, 2010) at 25. The court elaborated: "There's money available here. This idea that you have supposedly assigned it to your – who you refer to as your assistant, obliquely on numerous occasions during the arguments on these cases for no consideration, other than antecedent debt, if there is antecedent debt, is preposterous." VRP (Aug. 6, 2010) at 26.

Now, Hadaller bears the burden of proving—with evidence the trial court finds credible—that he could not comply with the court order. *See Moreman*, 126 Wn.2d at 40-41.

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But, the trial court did not find Hadaller's excuses credible. Therefore, Hadaller fails to demonstrate that the trial court abused its discretion in finding him in contempt. *See Moreman*, 126 Wn.2d at 40.

II. Contempt Sanctions

Hadaller argues that the trial court erred in sanctioning him \$10,000 for his failure to comply with the June 18 court order. Specifically, he claims he purged his contempt and that assessment of the \$10,000 sanction would then amount to punitive sanctions—which would have required additional due process considerations. Again, the trial court did not abuse its discretion in finding Hadaller failed to purge his contempt and imposing civil sanctions. A trial court may impose remedial sanctions to ensure compliance with a court order or, “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); .030 And, if the sole purpose of the sanction is to coerce compliance with the trial court’s lawful order, then it is civil. *King*, 110 Wn.2d at 799.

When punishment in contempt cases is not inevitable but can be controlled by the party itself, such contempt actions are not criminal but remedial civil sanctions. *In re Marriage of Bralley*, 70 Wn. App. 646, 652, 855 P.2d 1174 (1993). Moreover, in a civil contempt proceeding the contemnor is not entitled to a jury trial to determine whether she is in contempt. *See Keller v. Keller*, 52 Wn.2d 84, 87, 323 P.2d 231 (1958).

A trial court abuses its discretion when its orders—to pay sanctions, for example—are manifestly unreasonable or based on untenable grounds. *Holbrook v. Weyerhaeuser Co.*, 118 Wn.2d 306, 315, 822 P.2d 271 (1992). Here, the trial court did not abuse its discretion by imposing remedial civil sanctions against Hadaller. Hadaller argues that the trial court’s contempt sanctions amount to improper punitive sanctions and that punitive sanctions invoke further due

process considerations.

Yet, the trial court's sanctions bear characteristics common to remedial sanctions, rather than the punitive sanctions, which would require further due process procedures. First, the purpose of the sanctions was to coerce Hadaller's compliance with the trial court order to provide the funds required to close the transaction and sign the closing documents by the August 13 deadline. Second, at the time of the June 18 court order, Hadaller had the ability to perform on the order. Third, the \$10,000 sanction did not exceed the \$2,000/day contempt sanction allowed under law. *See* RCW 7.21.030(2)(b).² And fourth, the trial court included in the contempt order a purge clause under which Hadaller could have avoided the sanctions altogether had he simply complied with the court order.³ Because the trial court did not impose an inevitable punishment but rather one within Hadaller's power to control, the trial court imposed remedial sanctions. *See Bralley*, 70 Wn. App. at 652.

The trial court's primary goal was to coerce Hadaller's compliance with the court order and complete the sale to the Rockwoods by August 13. And, because remedial sanctions are civil, rather than criminal, Hadaller's remedial sanctions do not invoke additional due process procedures. *See State v. Boren*, 42 Wn.2d 155, 157-59, 253 P.2d 939 (1953). The trial court

² The trial court imposed the \$10,000 contempt sanction on August 6—after Hadaller failed to comply with the June 18 order requiring sale by June 30. As Hadaller's contempt period exceeded five days, at the time the trial court issued sanctions, the trial court's statutory powers allowed a \$10,000 sanction. *See* RCW 7.21.030(2)(b).

³ The purge clause stated:

Due to Hadaller's contempt, the Court sanctions Hadaller in an amount of \$10,000, payable to the Court. Such contempt sanction may be purged entirely by Hadaller if he fully complies with this Order and takes all necessary steps to facilitate the ordered sale to the Rockwoods by no later than August 13, 2010.

CP at 176.

validly levied its \$10,000 sanction against Hadaller.

III. Failure to Purge

Hadaller finally asserts that, because the Rockwoods completed the purchase of the property by the August 13 deadline—the trial court should have purged his \$10,000 sanction. But, while many individuals worked to complete the sale, Hadaller failed to comply with the court’s August 6 order to “immediately take all necessary steps to expeditiously complete the sale.” CP at 176. Hadaller (1) did not provide his required closing funds; (2) did not pay, set aside, or otherwise obtain waiver of the local quarry’s judgment against him that clouded title to the property prior to sale; (3) failed to sign the closing documents⁴, and (4) Hadaller placed a lis pendens encumbrance on the property just prior to the scheduled closing. For these reasons, the trial court’s order finding that Hadaller failed to purge the contempt sanction is neither manifestly unreasonable nor based on untenable grounds. *Holbrook*, 118 Wn.2d at 315. Accordingly, the trial court did not abuse its discretion in finding Hadaller failed to purge his contempt.

IV. Attorney Fees

The Rockwoods assert that they are entitled to attorney fees and costs on appeal. RAP 18.1 allows a party the right to recover reasonable attorney fees or expenses on review before this court, so long as the party requests the fees. RCW 7.21.030(3) states that a court may order a person found in contempt of court to pay a party costs incurred in connection with the contempt proceeding, including reasonable attorney fees. The statute also permits the award of attorney fees incurred by a party in defending an appeal of a contempt order. *Johnston v. Beneficial Mgmt. Corp. of Am.*, 26 Wn. App. 671, 677, 614 P.2d 661 (1980), *rev’d on other grounds*, 96

⁴ Althausser ultimately signed the paperwork on Hadaller’s behalf when Hadaller refused to sign.

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Wn.2d 708 (1982). Therefore, the Rockwoods are entitled to reasonable attorney fees to be set by a commissioner of our court.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Johanson, J.

We concur:

Van Deren, J.

Worswick, A.C.J.