COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

AARON E. DOYLE,	)	**No. 29335-1-III**
Respondent and Cross-Appellant,	)	
	)	**ORDER DENYING MOTION FOR RECONSIDERATION AND AMENDING OPINION**
v.	)	
HALEY TAYLOR, PEGGY GRAY and ROBERT GRAY,	)	
Defendants,	)	
BRIAN CHASE,	)	
Intervenor/Appellant.	)	

THE COURT has considered appellant's motion for reconsideration and the answer thereto, and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED, the motion for reconsideration of this court's decision of September 15, 2011 is hereby denied.

IT IS FURTHER ORDERED the opinion filed September 15, 2011 is amended by adding a new footnote to page 13; footnote 4 on page 14 is renumbered as footnote 5. Line 16 on page 13 now reads:

> CP at 79. Mr. Chase offers no explanation how he avoids that stipulation.[4] All parties in
>
> _____
>
> [4] By motion for reconsideration, Mr. Chase points to the February 2010 dismissal of the federal action as the way he avoids the April 2010 stipulation and order. But through the parties' subsequent request for remand, they demonstrated to the federal court that they had not intended to dismiss the contempt issue (something also evidenced by their February 2010 stipulation in state court). It is true that by stipulating in April only to an order of remand, they skipped over the conceptual step of vacating the order of dismissal, but the fact remains, contrary to Mr. Chase's position, that Fed. R. Civ. P. 60(b) provides a basis for reinstating an action for a limited purpose if the original dismissal is overbroad. *Noland v. Flohr Metal Fabricators, Inc.*, 104 F.R.D. 83 (D. Alaska 1984); *Schmier v. McDonald's LLC*, 569 F.3d 1240, 1243 (10th Cir. 2009) (where a plaintiff, rather than a defendant, seeks to set aside a voluntary dismissal "[w]e know of no reason to deny jurisdiction to a district court to consider granting a dismissing plaintiff relief under Rule 60(b)"). *Noland* also holds that a formal motion under Fed. R. Civ. P. 60(b) is not required if a plaintiff is in substance seeking reinstatement and the court has authority and intends to grant the relief, as the federal court clearly intended to do here. 104 F.R.D. at 86 (holding that "'since nomenclature is unimportant, moving papers that are mislabeled in other ways may be treated as motions under Rule 60(b) when relief would be proper under that rule'" (quoting 7 James W. Moore & Jo Desha Lucas, Moore's Federal Practice ¶ 60.18[8], at 60-139 (2d ed. 183))). If Mr. Chase, a nonparty, claimed an interest and wanted to be heard in connection with what he now complains was the technically incorrect manner of reinstating the case and remanding the issue of contempt, he could have sought to intervene under Fed. R. Civ. P. 24. He did not, however, and he is in no position in this court to complain about the remand order.
>
> We also agree with Mr. Doyle's response to the motion for reconsideration that if the federal court had lacked authority under Fed. R.

Civ. P. 60(b) to reinstate the case and remand the contempt matter, he would have enjoyed the authority to remand it as a supplemental issue under the authority of *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395-96, 110 S. Ct. 2447, 110 L. Ed. 2d 359 (1990), which explicitly identifies contempt charges as a collateral matter over which a federal court exercises ongoing jurisdiction after a plaintiff files a voluntary dismissal. *See also Emerson v. Eighth Judicial Dist. Court*, ___ P.3d ___, 2011 WL 4633872, * 3-4 (Nev. 2011).

DATED:

PANEL: Judges Siddoway, Sweeney, Brown.

FOR THE COURT:

_____
TERESA C. KULIK, Chief Judge

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

AARON E. DOYLE,	)	**No. 29335-1-III**
Respondent and Cross-Appellant,	)	
	)	**Division Three**
v.	)	
HALEY TAYLOR, PEGGY GRAY and ROBERT GRAY,	)	
Defendants,	)	**UNPUBLISHED OPINION**
BRIAN CHASE,	)	
Intervenor/Appellant.	)	

Siddoway, J. — Brian Chase appeals an order finding him in contempt of a court order directing him to immediately return documents and data allegedly stolen by his client from Aaron Doyle. Mr. Doyle cross-appeals the trial court's award of only one-

third of his fees incurred in the contempt proceedings. We find no error or abuse of discretion by the trial court and affirm.

FACTS AND PROCEDURAL BACKGROUND

The aftermath of the breakup of Aaron Doyle's and Haley Taylor's dating relationship escalated from merely acrimonious, to litigious, to criminal complaints, to contempt of court, and ultimately to this appeal.

This particular lawsuit (one of a number) is an action by Mr. Doyle alleging abuse of process and malicious prosecution, which named as defendants Ms. Taylor's mother and stepfather, Peggy and Robert Gray, and eventually Ms. Taylor. Mr. Chase appeared as a lawyer for the Grays. In the course of a deposition of Mr. Doyle taken by Mr. Chase, he marked as exhibits and questioned Mr. Doyle about several sensitive, private documents. We know little about their content, other than that they were sealed in earlier California litigation involving Mr. Doyle and, according to him, could not have been obtained by anyone "without hacking them from his computer or computer storage devices and/or stealing them from his residence." Clerk's Papers (CP) at 4. Mr. Doyle's lawyer asked Mr. Chase to tell him on the deposition record what documents belonging to Mr. Doyle were in his possession. Mr. Chase would not say. At that point, warning Mr. Chase of his intentions, Mr. Doyle's lawyer suspended the deposition so that Mr. Doyle could travel to the Quincy Police Department, where he worked as a police officer, to

report a claimed theft of his documents.

Law enforcement responded with alacrity. Upon the arrival of the first Quincy police officer at the deposition location, Mr. Chase agreed to provide copies of documents alleged to belong to Mr. Doyle to the officer. When additional officers arrived and indicated that a search warrant was being obtained, Mr. Chase agreed in lieu of a search to turn over to the officers a portable solid state data storage device (thumb drive), which Mr. Doyle was shown and identified as belonging to him, and to give the officers the hard copies of the documents claimed by Mr. Doyle to belong to him. Mr. Doyle represents that the thumb drive surrendered by Mr. Chase to the officers contains highly sensitive personal information.

The day following the deposition, Mr. Doyle's lawyers filed a motion for protective order and return of records. For reasons that are not entirely clear, it was not heard until September 18. The Grays were represented at the hearing by Jack Burns, who had been associated by Mr. Chase. Mr. Burns did not contend that the documents or thumb drive had come into Ms. Taylor's or Mr. Chase's hands legitimately; in defense of the Grays, he stated that if anyone stole anything, "[i]t was Ms. Taylor and perhaps Mr. Chase." CP at 530. He proposed an order requiring only confidential treatment of the documents.

The court also heard from Mr. Chase. During his argument, the trial court questioned Mr. Chase about whether Ms. Taylor, and by extension Mr. Chase, could lay claim to legitimate ownership or possession of the documents. Mr. Chase summarized Ms. Taylor's testimony in deposition as follows:

> [MR. CHASE] - She came into possession of it, according to her testimony; she received in the mail, in a white envelope, that was addressed to her, at her house, that thumb drive. There is also a little note with it saying something to the effect that Haley, I heard you could probably use this. And so, she, believing that the thumb drive had been given to her, she looked at the thumb drive.
> [COURT] - Does she have the envelope or the note?
> [MR. CHASE] - No, she doesn't.

CP at 533. After hearing from all parties and Mr. Chase, the court orally granted the motion, explaining its decision, in part, as follows:

> [COURT] - . . . By a preponderance of the evidence, the documents relating to Mr. Doyle were acquired from him unlawfully. It is unnecessary to say by whom. They were acquired from him unlawfully. For that reason, and in support of the Court's inherent authority and authority under the rules to control and regulate the discovery process, the originals or any copies; paper or electronic, of those documents, in the hands of any party, the counsel for any party, or the former counsel for any party in these four cases should be immediately returned to counsel for Mr. Doyle. The documents should not be – no other use should be made of the documents without leave of the court. They should not be disseminated to any person other than counsel for Mr. Doyle. . . . Then I think where that leaves you is, if there is a legitimate claim

that these materials are discoverable, make your discovery request.

CP at 535-36. Rather than enter the form of order proposed by either lawyer, the court asked for an order that reflected its directive, without the findings proposed by the parties. *Id.* at 536. Mr. Doyle's lawyer responded that he would draft an order and circulate it. *Id.*

Mr. Doyle's lawyer wrote Mr. Chase on September 30 to remind him of the court's oral ruling and provided his proposed written order and a notice of presentment for October 16. On October 6, Mr. Chase wrote Mr. Doyle's lawyer and asked him to provide a copy of the order when entered so that he could "'properly obey said order.'" CP at 212. He did not express any objection to the proposed order. On October 8, Mr. Doyle's lawyer replied to Mr. Chase, demanding immediate compliance with the court's oral order of September 18.

On October 16, presentment was stricken with a clerk's notation that Mr. Doyle's lawyer wished to present the order ex parte. The court made several changes to the proposed order and entered it on October 21. The order defined "documents" as

> any document relating to Plaintiff, Aaron Doyle, obtained from a thumb drive that was ever in the custody of Ms. Taylor, or obtained by her from the files of Plaintiff, or by any other person from said files without the knowledge and consent of Plaintiff. The term "documents" shall also include, but not be limited to, any document(s) from or relating to Plaintiff's prior employment with the Sierra County, California, Sheriff's Office that were sealed by the Sierra County Superior Court.

CP at 487. It commanded that:

> The originals or any copies, paper or electronic, in the possession of any party to this action, or the counsel of any party to this action, or former counsel to any party in this action including, but not limited to, Jack Burns and Brian Chase, of any "document," as herein defined shall be immediately returned to counsel for Plaintiff, Aaron Doyle. No other use shall be made of the documents without leave of the court. The documents shall not be disseminated to any other person other than counsel for Plaintiff.

Id.

On October 29, Mr. Doyle's lawyer mailed to Messrs. Chase and Burns a notice of entry of the order and included a copy of the October 21 order. Receiving no response from Mr. Chase,[1] on November 20, Mr. Doyle filed a motion for an order requiring Mr. Chase to appear on December 4 and show cause why he should not be held in contempt for his failure to comply.

Mr. Chase requested a continuance of the hearing and submitted an affidavit in support, attesting that he had complied with the court's order on November 25 by producing documents and a second thumb drive to Mr. Doyle's lawyer. He also explained his delay, representing that he did not see the order until November 9 due to an absence from the office. He stated that he and his staff then began gathering documents covered by the order, but it had taken them a "good deal of time to sift through the

[1] Mr. Doyle's brief represents that Mr. Burns produced all of the documents in his possession on October 22, 2009, but does not direct us to any evidence of this in the record. Br. of Resp't at 6.

voluminous paperwork contained in the clients' numerous files." CP at 515-16. He represented that he completed the process on November 20 but decided to deliver the documents at a mediation scheduled for December 2. Upon receiving the motion for order to show cause on November 25, he mailed the materials instead.

Mr. Chase's request to continue the show cause hearing was granted. Due to an intervening removal of the case to federal court (after Mr. Doyle amended his complaint to include Ms. Taylor and asserted a federal claim), the trial court struck the hearing. A several month hiatus in state court proceedings followed.

In early 2010, the federal case was settled and the action was dismissed without prejudice. A stipulation and order filed below dismissed all claims "without prejudice to Plaintiff's motion for contempt against Defendant's Attorney, Brian Chase." CP at 79. An order of remand entered by the federal court provided that the state superior court should hear Mr. Doyle's motion for contempt. Mr. Doyle obtained another show cause order.

By the time of the hearing, Mr. Doyle had filed additional deposition excerpts in support of his request that Mr. Chase be sanctioned for contempt. They included deposition testimony of Mr. Chase that the trial court understood to establish[2] that before Mr. Chase relinquished to police the thumb drive belonging to Mr. Doyle (Doyle thumb

[2] As observed by the trial court, "the deposition testimony is less than clear." CP at 213 n.1.

drive #1), he copied its contents onto a thumb drive of his own, which he kept (Chase thumb drive #1). Mr. Chase understood the October 21 order to require him to deliver Chase thumb drive #1 to Mr. Doyle's lawyer. Before doing so, however, he copied the contents of Chase thumb drive #1 onto a third thumb drive (Chase thumb drive #2), ostensibly because Chase thumb drive #1 contained some of his own records in addition to the data from Doyle thumb drive #1. He deleted his own files from Chase thumb drive #1 and included it in his November 25 production to Mr. Doyle's lawyer, keeping Chase thumb drive #2. Mr. Chase testified that sometime later, after making electronic copies of only his own files from Chase thumb drive #2, he destroyed it, by smashing it with a hammer. Mr. Doyle also submitted excerpts of depositions of Mr. Chase's staff to the effect that they had not significantly assisted him in locating and assembling the documents mailed to Mr. Doyle's lawyer on November 25. Mr. Doyle argued that Mr. Chase had been less than candid in explaining his delayed compliance.

The trial court took the matter under advisement and announced its decision by letter opinion, finding that Mr. Chase intentionally violated its October 21 order in two respects: by his 16-day delay in delivering the materials after seeing the order on November 9, when the volume of documents in no way justified such a delay, and by making and retaining Chase thumb drive #2. The court rejected Mr. Doyle's argument that Mr. Chase's contempt began shortly after it orally announced its decision on

September 18. It characterized its oral decision as merely an expression of his thought process, that was "neither enforceable nor [did it] subject anyone to contempt powers. This is especially true when the court's oral decision includes a directive to counsel to prepare a written order to be entered." CP at 214.

The court explained that in determining the propriety of sanctions, it had in mind "(1) that recovery of sensitive personal documents was a compelling and central issue for the plaintiff; (2) that before the time noted for initial hearing of the contempt motion, Mr. Chase had complied with the court's order; and (3) no losses other than attorney fees were incurred by the plaintiff by virtue of Mr. Chase's noncompliance." *Id.* It concluded that since compliance was compelled in substantial part by Mr. Doyle's contempt motion, "it is appropriate to compensate [Mr. Doyle] for his attorney fees in bringing the original motion." *Id*. Although Mr. Doyle's attorney had filed a declaration in support of his request for fees on December 11 that attached billing records reflecting fees of $1,625 through December 8 and later filed a supplemental declaration requesting fees and costs "in the amount no less than $3,000.00"[3] representing that a minimum of an additional five hours of time at $250 per hour had been spent on proceedings taking place after the first fee affidavit, the court awarded fees of $1,000, without disclosing its method for arriving at the reduced amount.

[3] CP at 166.

Mr. Chase timely appealed, arguing that (1) the trial court exceeded its jurisdiction and abused its discretion in ordering Mr. Chase to deliver material in his possession received from a client independently of this case; (2) Mr. Chase did not violate the trial court's order; and (3) the trial court lacked authority to award $1,000 in attorney fees against Mr. Chase.

Mr. Doyle cross-appeals, arguing that (1) the trial court's determination that oral orders are unenforceable until reduced to writing is erroneous and (2) evidence that Mr. Doyle's attorney fees were in excess of $3,000 was submitted and the trial court lacked substantial evidence to award only $1,000.

ANALYSIS

I

Mr. Chase recognizes the well-settled proposition that an individual must obey even an erroneous order. "'[W]here the court has jurisdiction of the parties and of the subject matter of the suit and the legal authority to make the order, a party refusing to obey it, however erroneously made, is liable for contempt.'" *Dike v. Dike*, 75 Wn.2d 1, 8, 448 P.2d 490 (1968) (quoting *Robertson v. Commonwealth*, 181 Va. 520, 536, 25 S.E.2d 352 (1943)). He therefore does not argue that the court erred, but that it lacked jurisdiction—either initially, by entertaining what he characterizes as essentially a

replevin action by Mr. Doyle against Mr. Chase or later, having lost jurisdiction upon entry of the stipulation of dismissal. Either way, he argues, the court's contempt order and judgment require reversal. Br. of Appellant at 11-24. Whether the court had jurisdiction is an issue we review de novo.

Article IV, section 6 of the Washington Constitution does not exclude any sort of causes from the jurisdiction of its superior courts, leaving Washington courts with few constraints on their jurisdiction. *Krieschel v. Bd. of Cnty. Comm'rs of Snohomish Cnty.*, 12 Wash. 428, 439, 41 P. 186 (1895). The critical concept in determining whether a court has subject matter jurisdiction is the "type of controversy." *Dougherty v. Dep't of Labor & Indus.*, 150 Wn.2d 310, 316, 76 P.3d 1183 (2003) (citing *Marley v. Dep't of Labor & Indus.*, 125 Wn.2d 533, 539, 886 P.2d 189 (1994)). "'If the type of controversy is within the subject matter jurisdiction, then all other defects or errors go to something other than subject matter jurisdiction.'" *Id.* (quoting *Marley*, 125 Wn.2d at 539).

Even the absence of jurisdiction will not always deprive a court of the power to punish for contempt. *See Mead Sch. Dist. No. 354 v. Mead Educ. Ass'n*, 85 Wn.2d 278, 281-84, 534 P.2d 561 (1975) (punishing for contempt of a restraining order, despite finding that the court lacked jurisdiction to enter it because the plaintiff's action was not duly authorized). "The 'jurisdiction' test measures whether a court, in issuing an order or holding in contempt those who defy it, was performing the sort of function for which

judicial power was vested in it." *Id.* at 282. "'Only when a court is so obviously traveling outside its orbit as to be merely usurping judicial forms and facilities, may [its order] be disobeyed and treated as though it were a letter to a newspaper.'" *Id.* (alteration in original) (quoting *United States v. United Mine Workers*, 330 U.S. 258, 309-10, 67 S. Ct. 677, 91 L. Ed. 884 (1947) (Frankfurter, J., concurring)). "[O]nly an absence of jurisdiction to issue the type of order, to address the subject matter, or to bind the defendant will vitiate contempt." *Id*. at 284.

Moreover, a court has jurisdiction to determine jurisdiction. *Id.* at 280. A court's order must be obeyed if it had the power to decide whether it was authorized to issue it, even if it is later held that it was not so authorized; cases so holding are based on the fundamental premise that when a question of authority is raised, someone must decide it, and the initial decision is going to be made by the forum court itself. *Id.* at 280-81.

Mr. Doyle sought a protective order. CR 26(c) provides that upon motion by a party, and for good cause shown, the court may "make any order which justice requires to protect a party . . . from annoyance, embarrassment, oppression, or undue burden or expense." The court also relied on its inherent power in entering the order. Every court of justice has power to provide for the orderly conduct of proceedings before it and to control, in furtherance of justice, the conduct of its ministerial officers and of all other persons in any manner connected with a judicial proceeding before it, in every matter

appertaining thereto. RCW 2.28.010(3), (5). A trial court has inherent authority to sanction litigation conduct upon a finding of bad faith. *State v. S.H.*, 102 Wn. App. 468, 475, 8 P.3d 1058 (2000).

Mr. Chase does not dispute the trial court's finding that the documents stored on the thumb drive were acquired unlawfully by someone from Mr. Doyle. Yet until challenged by Mr. Doyle's motion, Mr. Chase appeared confident he could use documents obtained from the thumb drive, despite learning from Mr. Doyle that the drive—which his client obtained under dubious circumstances, at best—was in fact stolen. Whether or not the trial court correctly assessed the scope of its inherent authority or its authority under CR 26(c) (an issue we need not decide), it had jurisdiction to issue protective orders, to control, in furtherance of justice, the parties' conduct in manners connected with the lawsuit, to determine the extent of its jurisdiction in those regards, and to enter an order binding on Mr. Chase. It was not traveling outside its orbit and it was incumbent upon Mr. Chase to comply.

Mr. Chase's final argument is that if the court enjoyed jurisdiction at one time, it lost it with the parties' voluntary dismissal of their claims. All parties to this action, including Mr. Chase's clients, stipulated below to dismissal of all claims "without prejudice to Plaintiff's motion for contempt against Defendants' Attorney, Brian Chase." CP at 79. Mr. Chase offers no explanation how he avoids that stipulation.[4] All parties in

the federal action stipulated and agreed that the case should be remanded to the Grant County Superior Court for further proceedings; that stipulation particularly identified the contempt proceedings against Mr. Chase and explicitly agreed that "the Grant County

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[4] By motion for reconsideration, Mr. Chase points to the February 2010 dismissal of the federal action as the way he avoids the April 2010 stipulation and order. But through the parties' subsequent request for remand, they demonstrated to the federal court that they had not intended to dismiss the contempt issue (something also evidenced by their February 2010 stipulation in state court). It is true that by stipulating in April only to an order of remand, they skipped over the conceptual step of vacating the order of dismissal, but the fact remains, contrary to Mr. Chase's position, that Fed. R. Civ. P. 60(b) provides a basis for reinstating an action for a limited purpose if the original dismissal is overbroad. *Noland v. Flohr Metal Fabricators, Inc.*, 104 F.R.D. 83 (D. Alaska 1984); *Schmier v. McDonald's LLC*, 569 F.3d 1240, 1243 (10th Cir. 2009) (where a plaintiff, rather than a defendant, seeks to set aside a voluntary dismissal "[w]e know of no reason to deny jurisdiction to a district court to consider granting a dismissing plaintiff relief under Rule 60(b)"). *Noland* also holds that a formal motion under Fed. R. Civ. P. 60(b) is not required if a plaintiff is in substance seeking reinstatement and the court has authority and intends to grant the relief, as the federal court clearly intended to do here. 104 F.R.D. at 86 (holding that "'since nomenclature is unimportant, moving papers that are mislabeled in other ways may be treated as motions under Rule 60(b) when relief would be proper under that rule'" (quoting 7 James W. Moore & Jo Desha Lucas, Moore's Federal Practice ¶ 60.18[8], at 60-139 (2d ed. 183))). If Mr. Chase, a nonparty, claimed an interest and wanted to be heard in connection with what he now complains was the technically incorrect manner of reinstating the case and remanding the issue of contempt, he could have sought to intervene under Fed. R. Civ. P. 24. He did not, however, and he is in no position in this court to complain about the remand order.

We also agree with Mr. Doyle's response to the motion for reconsideration that if the federal court had lacked authority under Fed. R. Civ. P. 60(b) to reinstate the case and remand the contempt matter, he would have enjoyed the authority to remand it as a supplemental issue under the authority of *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395-96, 110 S. Ct. 2447, 110 L. Ed. 2d 359 (1990), which explicitly identifies contempt charges as a collateral matter over which a federal court exercises ongoing jurisdiction after a plaintiff files a voluntary dismissal. *See also Emerson v. Eighth Judicial Dist. Court*, ___ P.3d ___, 2011 WL 4633872, * 3-4 (Nev. 2011).

Superior Court should hear any motions for contempt instituted by the Plaintiff against attorney Brian Chase." CP at 602. The federal court entered an order of remand that provided:

> This cause is remanded to the Grant County Superior Court for the purpose of enforcement of any of the Orders of the Grant County Superior Court issued prior to the removal of the cause to the United States District Court relative to Brian Chase. The Grant County Superior Court shall hear Plaintiff's Motion for Contempt as to Brian Chase.

CP at 544. Mr. Chase does not suggest that this remand order was ever revised or appealed, or explain how he avoids it or the stipulation on which it was based.

The stipulations and remand order control whether the trial court had continuing jurisdiction. Clearly it did. Cases relied upon by Mr. Chase, all involving unqualified dismissals, do not apply.[5]

II

Mr. Chase next argues that the trial court's order of October 21, 2009, was

[5] Mr. Chase also makes passing complaint about the irregular procedure followed in noting the motion. While Mr. Doyle initially noted his protective order motion and later renoted it for hearing in this case, the motion itself was filed only in related cases that were later dismissed. Mr. Chase does not cite authority for or develop this argument and we could reject it on that basis. RAP 10.3(6). In addition, the trial court was familiar with the motion, which had equal application to this case, and observed that it had been raised orally several times before the September hearing. Mr. Chase attended the hearing and had an opportunity to respond. CP at 532-33. In making its oral ruling, the court observed that any irregularity in the motion having been filed in a different matter had been overcome, since the parties argued the motion by consent and were given a full opportunity to do so. CP at 535. We agree with the trial court; this is no basis for reversal.

ambiguous and that he cannot be found in contempt for violating an ambiguous order. In a contempt proceeding, a court's order will not be expanded by implication beyond the meaning of the terms used when read in light of the issues and purposes for which it was sought. The facts must constitute a plain violation of the order. *Johnston v. Beneficial Mgmt. Corp.*, 96 Wn.2d 708, 712-13, 638 P.2d 1201 (1982).

The first alleged ambiguity is the requirement of the order that Mr. Chase "return" the documents. Mr. Chase argues that inasmuch as he did not *receive* documents from Mr. Doyle, delivered the only item belonging to Mr. Doyle that he possessed (Doyle thumb drive #1) to the Quincy police, and was himself the owner of Chase thumb drive #2, "returning" documents would have been impossible. This is an unreasonably narrow reading of "return," which does not require that an item be *received* from the owner, only that it belong to the owner. Among the definitions of "return" are "to pass back to an earlier possessor," "to bring, send, or put (a person or thing) back to or in a former position," and "to give (something) back to the owner." Webster's Third New International Dictionary 1941 (1993). The order provided that not only originals, but copies, paper or electronic, must be "returned" to Mr. Doyle's lawyer. The requirement was not ambiguous.

The second alleged ambiguity is the requirement to return documents "immediately." Washington courts have had occasion to construe the meaning of the

word "immediately" in various kinds of written instruments and have held that it does not necessarily mean "upon the instant," "forthwith," or "without any intervening lapse of time," but that there is a certain latitude to be given the significance of the word, and that it may mean "proximately," "directly," "close to," or "within a reasonable time." *Foley v. New World Life Ins. Co.*, 185 Wash. 89, 94, 52 P.2d 1264 (1936). The word is not ambiguous, then, although whether the documents were produced within a reasonable time presents a question of fact.

Findings of fact are reviewed for substantial evidence. *Soltero v. Wimer*, 159 Wn.2d 428, 433, 150 P.3d 552 (2007). Substantial evidence means sufficient evidence to persuade a rational, fair-minded person that the premise is true. *Wenatchee Sportsmen Ass'n v. Chelan Cnty.*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000). Here, the evidence was that Mr. Chase had been aware of the court's oral ruling since mid-September and had known since early October of the form of order filed by Mr. Doyle, to which he did not object. While he did not see the final order until November 9, its material provisions were almost entirely foreseeable. The documents in his possession that were subject to the order were not voluminous. Substantial evidence supported the trial court's finding that Mr. Chase failed to return the documents immediately.

III

Mr. Chase next argues that because he returned the documents before the contempt

hearing the trial court lacked authority to award fees, relying on language in RCW 7.21.030(1) that "the court, *after notice and hearing*, may impose a remedial sanction." (Emphasis added.) We review questions of statutory construction de novo. *City of Spokane v. Spokane Cnty.*, 158 Wn.2d 661, 672-73, 146 P.3d 893 (2006). In interpreting a statute, we assume that the legislature means exactly what it says. Plain words do not require construction. *Woodstream Constr. Corp. v. Van Wolvelaere*, 143 Wn. App. 400, 405, 177 P.3d 750 (2008) (quoting *City of Kent v. Jenkins*, 99 Wn. App. 287, 290, 992 P.2d 1045 (2000)).

In this case, the statute is clear. Before *imposing a remedial sanction*, there must be notice and a hearing. Mr. Chase received notice and a hearing before the court imposed a remedial sanction authorized by RCW 7.21.030(3). RCW 7.21.030(3) authorizes a court to order a person found in contempt "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." The statute does not say that a party who cures a failure to comply prior to the contempt hearing cannot be held in contempt.

IV

In his cross-appeal, Mr. Doyle challenges the award of only $1,000 of his $3,000 attorney fees. RCW 7.21.030(3) provides that the court *may*, as a remedial sanction,

order a person in contempt to pay reasonable attorney fees incurred in connection with the contempt proceedings. In explanation of its award, the trial court stated, "Since compliance was compelled, in substantial part, by the plaintiff's contempt motion, it is appropriate to compensate the plaintiff for his attorney fees in bringing the original motion." CP at 214. We review an award of attorney fees for abuse of discretion. *Rettkowski v. Dep't of Ecology*, 128 Wn.2d 508, 519, 910 P.2d 462 (1996).

Statutes or contracts may create an entitlement on the part of a prevailing party to an award of reasonable attorney fees or they may, as does RCW 7.21.030(3), make an award of fees entirely discretionary, as to fact and amount. *Cf. Highland Sch. Dist. No. 203 v. Racy*, 149 Wn. App. 307, 314, 316, 202 P.3d 1024 (2009) (trial court had discretion under RCW 4.84.185 both to impose fees as sanctions and to determine the amount). Attorney fee awards under cost-shifting statutes should include consideration of the purpose of the statute. From the discretionary character of a fee award in contempt proceedings, we can infer a purpose to impose the cost of coercing compliance with a court order on the violator when resort to the contempt process is required, but to authorize a court to deny a fee award where, for example, it concludes that contempt was charged prematurely, unnecessarily, or to an unwarranted extent.

The trial court's statement that it was appropriate to compensate Mr. Doyle "for his attorney fees *in bringing the original motion*," suggests a reason for only a partial

award, but it is insufficient for appellate review. In awarding reasonable attorney fees, a trial court should have a sufficient basis for the award and sufficiently explain the basis for its fee award to permit appellate review. *Highland Sch.*, 149 Wn. App. at 316. Where a trial court fails to provide an adequate record of its reasons, we will vacate the judgment and remand for a new hearing and entry of findings of fact and conclusions of law regarding the award. *In re Marriage of Bobbitt*, 135 Wn. App. 8, 30, 144 P.3d 306 (2006). The award in this case must be vacated and remanded for such findings.

V

Finally, Mr. Doyle argues that the trial court erred in concluding that its oral decision on September 18 was not enforceable and would not support contempt, and in thereby sanctioning Mr. Chase too mildly.

Violation of an oral order *may* serve as a proper basis for a contempt finding. *Stella Sales, Inc. v. Johnson*, 97 Wn. App. 11, 20, 985 P.2d 391 (1999) (citing *State ex rel. Curtiss v. Erickson*, 66 Wash. 639, 641, 120 P. 104 (1912), *aff'd sub nom.* 234 U.S. 103, 34 S. Ct. 717, 58 L. Ed. 1237 (1914)). In *Curtiss*, the court rejected the argument that an order of the court is not effective until formally entered by the clerk, at least "where there is no conflict or question as to the order of the court." *Curtiss*, 66 Wash. at 641. In other cases, a trial court's oral statements may be "'no more than a verbal expression of [its] informal opinion at that time . . . necessarily subject to further study

and consideration, and may be altered, modified, or completely abandoned.'" *State v. Dailey*, 93 Wn.2d 454, 458, 610 P.2d 357 (1980) (alteration in original) (quoting *Feree v. Doric Co.*, 62 Wn.2d 561, 567, 383 P.2d 900 (1963)). Whether violation of an oral order constitutes contempt therefore depends first and foremost on whether it was clear and clearly intended to be binding. *But cf.* CR 65(b), (d) (requiring temporary restraining orders and injunctions to be in writing). We agree with the trial court that where it has orally directed Mr. Doyle's lawyer to prepare a written order, its oral decision was reasonably understood to be nonfinal, a violation of which would not constitute contempt.

We vacate the court's award of attorney fees, remand for further proceedings on the fee issue consistent with this opinion, and otherwise affirm.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Siddoway, J.

WE CONCUR:

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Sweeney, J. Brown, J.