

IN THE SUPREME COURT FOR THE STATE OF IOWA

Supreme Court No.17-1909

Monona County No. SRCR016184

APPEAL FROM THE IOWA DISTRICT

FOR MONONA COUNTY

THE HONORABLE DUANE E. HOFFMEYER

THE STATE OF IOWA,
Plaintiff-Appellee,

vs.

LORI DEE MATHES,
Defendant-Appellant

AMENDED REPLY BRIEF OF THE APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES3
ARGUMENT.....4
CONCLUSION.....9
CERTIFICATES.....9

TABLE OF AUTHORITIES

Cases

<u>Dillon v. City of Davenport</u> , 366 N.W.2d 918 (Iowa 1985)	8
<u>Farmers' Coop. Shipping Association v. George A. Adams Grain Company</u> , 84 Neb. 752, 122 N.W. 55 (Nebraska 1909).	8
<u>In re Refco Securities Litigation</u> , 779 F.Supp.2d 372 (S.D.N.Y. 2011)	8
<u>State v. Halverson</u> , 857 N.W.2d 632 (Iowa 2015)	4
<u>State v. LaMar</u> , 224 N.W.2d 252 (Iowa 1974)	7
<u>State v. Ondayog</u> , 722 N.W.2d 778 (Iowa 2006)	4
<u>State v. Powell</u> , No. 17-0882, 2018 WL 3912110 (Iowa Ct. App. Aug. 15, 2018).	7
<u>United States v. Hanshaw</u> , 686 F.3d 613 (8th Cir. 2012).	7
<u>Watkins Grain Co. v. Fraser Smith Co.</u> , 221 Iowa 1164, 267 N.W. 115 (Iowa 1936).	8

Statutes

Iowa Code ch. 910.	5
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Rules

Iowa R. App. P. 6.103(1)	4, 5
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ARGUMENT

THE AGREEMENT WAS BEYOND WHAT THE APPELLANT HAD AUTHORIZED HER ATTORNEY TO ENTER, AND WAS THEREFORE VOID.

The Appellee argues that the Appellant had no right to appeal the order requiring that the Appellant pay “administrative fees of the county sheriff, court-appointed attorney fees, and restitution” (Final Brief of the Appellee, “FBAE,” 6-7), that there is no basis for granting a writ of certiorari (FBAE, 7-9_ and that error was not preserved (FBAE, 9-10). The parties have already addressed the nature of this appeal in documents filed separately with this Court. However, the Appellee’s argument against a right of appeal rests in significant part on a perceived agreement by the Appellant to pay costs and fees and therefore Iowa R. App. P. 6.103(1) does not apply. FBAE, 7. The Appellee does not address the alternative argument (Final Brief of the Appellant, “FBAT,” 15) that trial counsel provided ineffective assistance of counsel and that accordingly the usual rules of error preservation do not apply. State v. Halverson, 857 N.W.2d 632, 634–35 (Iowa 2015); State v. Ondayog, 722 N.W.2d 778, 784 (Iowa 2006). The issue of whether

there was an unlimited agreement to pay costs and fees is central to the application of Rule 6.103(1) and to the issue of ineffective assistance of counsel. If the agreement was beyond the amount that the Appellant had authorized her attorney to enter into as her agent so that the Appellant did not in fact agree to the amount of fees and costs, then the Appellee's argument against application of Iowa R. App. P. 6.103(1) fails.

As the Appellee admits, the district court had no statutory basis for imposing restitution in a case where the charges against a defendant have been dismissed. "If no sentence was imposed, there is no statutory authorization to impose restitution." FBAE, 8-9 (citing Iowa Code ch. 910). "The State submits that when all charges were dismissed, and no conviction entered, the court could not impose restitution." *Id.* at 9. The Appellant agrees that there was no legal basis for requiring restitution.

However, the court did enter a dismissal order that "administrative fees of the county sheriff, court-appointed attorney fees, and restitution are taxed to the Defendant." Appx. 66. That order contained a finding that the Defendant had "reasonable

ability” to pay “[b]ased on information in the case file and other information provided by the parties.” Id. The court made its finding with no specific indication of what in the record supported the finding and no hearing at which the Appellant’s ability to pay could be addressed. The Appellant’s letter to the court complaining about the imposed requirement indicates that the “other information” was an agreement between the prosecution and trial counsel, and that the agreement was entered into without the Appellant being fully consulted. Appx. 68.

The Appellee regards the court’s requirement of payments as “in accordance with the parties’ agreement.” FBAE, 7 (citing Dismissal (10/22/17); Appx. 66). The Appellee further cites the Appellant’s letter to the court as proof that he Appellant “agreed she would pay costs.” Id. (citing Letter 11/16/2017; Appx. 68). A glance at the letter shows that the Appelle’s statement is at best inexact. The letter cited states:

I didn’t agree to what is stated, and have been unsuccessful in getting [trial counsel] to respond, as to why he made this agreement without my consent. [Trial counsel] informed me specifically that the charges I would be charged would be Less than \$500 I

even had him make a call, Before I would agree to pay any costs . . .

Id. (original underlining and capitalization). If one emphasizes that an agreement was struck, then the Appellant clearly limited the scope of her agent's authority. Contrary to the Appellee's assertions (e. g. FBAE, 7, 10), the Appellant did not make an open-ended commitment to pay costs.

“A plea agreement is akin to a contract.” State v. Powell, No. 17-0882, 2018 WL 3912110, at *3 (Iowa Ct. App. Aug. 15, 2018).

“Because plea agreements are contractual in nature we must interpret them according to general contractual principles.” Id. (quoting United States v. Hanshaw, 686 F.3d 613, 615 (8th Cir. 2012)). There is no reason to regard the dismissal agreement in the underlying case as not also being akin to a contract. A client is bound by the acts of the attorney within the scope of the attorney's employment. “It is the general rule that a client is bound by the acts of his attorney within the scope of the latter's authority.”

State v. LaMar, 224 N.W.2d 252, 254 (Iowa 1974). “[A] principal is not bound if his agent acts ultra vires . . .” In re Refco Securities

Litigation, 779 F.Supp. 2d 372, 375 (S.D.N.Y. 2011).

It is well established that the authority of an agent cannot be established by his own acts and declarations.

* * * Consequently, when we speak of the apparent authority of an agent as binding his principal, we mean such authority as the acts or declarations of the principal give the agent the appearance of possessing.

Watkins Grain Co. v. Fraser Smith Co., 221 Iowa 1164, 267 N.W.

115, 118 (Iowa 1936) (quoting Farmers' Coop. Shipping Ass'n v.

George A. Adams Grain Co., 84 Neb. 752, 122 N.W. 55, 57 (Neb.

1909)). The agreement that led to the imposition of payments that the Appellant could not make was void.

The [client-attorney] relationship, although fiduciary, is predicated on the doctrine of principal and agent. While an attorney is presumed to act with authority, this presumption is not conclusive and may be rebutted. An attorney cannot settle or compromise a case without authority. However, a settlement made with authority is binding on the client.

Dillon v. City of Davenport, 366 N.W.2d 918, 923–24 (Iowa 1985).

In the underlying case, Appellant had put limits on trial counsel's authority to negotiate. Counsel exceeded those limits. In doing so, counsel provided ineffective assistance. Counsel failed in an essential duty by acting beyond the limits of the authority

set by the Appellant and the effect of the action was to impose an amount in payments that the Appellant could not meet.

Accordingly, the Appellant should not be held to what her attorney had agreed to against her instructions.

CONCLUSION

For the reasons argued herein and in the opening brief, Appellant requests that the Court reverse the trial court's requirement that the Appellant pay costs and fees.

CERTIFICATE OF FILING AND SERVICE

This brief was filed electronically on September 4, 2018, with the Clerk of Court for the Supreme Court of Iowa through the Electronic Document Management System (EDMS) and that notice of said filing will be sent by the EDMS to the Attorney General for Iowa. This brief will also be served on the Appellant on September 5, 2018, by postal mail, all costs prepaid.

/s/ Rees Conrad Douglas AT0002097

CERTIFICATE OF COMPLIANCE WITH IOWA R. APP. P. 6.903(g)(1)

This brief complies with the type-volume limitation of Iowa

R. App. P. 6.903(1)(g)(1) or (2) because:

This brief contains 1155 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using WordPerfect X8 in 14 point Century Schoolbook.

/s/ Rees Conrad Douglas AT0002097

COST CERTIFICATE

I hereby certify that the cost of printing this brief was \$0 because the brief was electronically filed.

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