

IN THE COURT OF APPEALS OF IOWA

No. 0-355 / 09-1591
Filed June 16, 2010

STATE OF IOWA,
Petitioner,

vs.

**IOWA DISTRICT COURT FOR
JOHNSON COUNTY,**
Defendant.

Appeal from the Iowa District Court for Johnson County, Stephen C. Gerard II, District Associate Judge.

The State filed a petition for writ of certiorari, challenging the orders of the Johnson County District Court requiring the Iowa Department of Human Services, in child-in-need-of-assistance proceedings, to pay costs, up to \$2000, associated with establishment of an Illinois guardianship, and ordering the Department to negotiate and enter into a kinship guardian assistance agreement.

WRIT SUSTAINED.

Thomas J. Miller, Attorney General, and Bruce Kempkes, Assistant Attorney General, for petitioner.

No appearance for defendant.

Considered by Vaitheswaran, P.J., and Doyle and Tabor, JJ.

DOYLE, J.

It matters not that the juvenile court's order is well-intentioned and has the potential of saving the State some money. The court's order, directing the Iowa Department of Human Services (Department) to pay guardianship attorney fees and to negotiate and enter into a kinship guardian assistance agreement, is not authorized under the law. We must therefore sustain the State's petition for writ of certiorari.

I. Background Facts and Proceedings.

In 2006, E.L., then twelve years of age, was adjudicated a child in need of assistance (CINA) by the juvenile court. In August 2007, E.L. was placed with the child's paternal grandparents, who reside in Chicago, Illinois, under the protective supervision of the Department. On September 21, 2007, the juvenile court filed an in-court review order in the case, ordering that the "Department should consider a subsidy to enable the grandparents to obtain legal guardianship in the state of Illinois."¹

In March 2008, the court filed an in-court review order stating "[i]t is anticipated that a legal guardianship will be established in the state of Illinois and concurrent jurisdiction is granted for that purpose." Thereafter, the Illinois district court was granted concurrent jurisdiction. In September 2008, the court filed an in-court review order establishing a permanency goal of a guardianship with the grandparents. In December 2008, the court's in-court review order ordered the Department to "provide financial assistance to [the] custodian to assist in

¹ Such a subsidy is authorized under Iowa Administrative Code rule 441-204.4(4) (2007).

obtaining guardianship.” An in-court review order filed in March 2009 ordered the Department to “continue to encourage establishment of a legal guardianship in the state of Illinois.”

The juvenile court’s June 2009 in-court review order stated that the “Department’s failure to assist in establishing a guardianship for [the child] with [the] grandparents in Illinois is delaying permanency for this child. The Department has *not* made reasonable efforts to achieve permanency.” (Emphasis in original.) Thereafter, the Department filed its family case plan on August 26, 2009, stating the grandparents had contacted a Chicago attorney concerning a guardianship and the attorney had submitted a bill for services and fees amounting to \$1331.² The Department noted it was only able to contribute \$700³ for the services and fees and that the grandparents were unable to pay the remaining balance. Because the attorney fees had not been paid, the guardianship had not been filed, and no guardianship was in place.

In an in-court review order filed in October 2009, the juvenile court found, in part:

It is in the best interests of this child that permanency be established through obtaining a legal guardianship in the state of Illinois wherein the child’s grandparents are appointed as [the child’s] legal guardians. The entry of a guardianship order would allow the State of Iowa to dismiss and close this case.

The [Department] refuses to pay the reasonable attorney’s fees required by the attorney in the state of Illinois to provide the services necessary to establish the guardianship.

² The amount included \$1000 for attorney fees and \$331 for court costs.

³ At the time, Iowa Administrative Code rule 441-201.6(1)(a)(7) provided “[p]ayment for nonrecurring expenses is generally limited to \$500 per child,” although “[a]n additional \$200 may be allowed for reasonable court costs and other related legal expenses.” The additional \$200 allowance provision was eliminated by an amendment effective January 1, 2010.

The child's relatives receive no financial assistance to contribute to the support of the child. If this child were required to be maintained in a foster family, the State of Iowa would incur expenses of at least \$400 per month according to the Department's representative. The child has been in the care of [the] grandparents since the summer of 2007. [The child] was ordered placed in their care pursuant to a permanency order entered by the court on August 13, 2007. This placement has saved the state of Iowa over \$10,000 in foster family subsidies over that time period.

It is completely unreasonable for the Department to refuse to pay the requested fee of just over \$1300 to obtain the guardianship. The requested fee is reasonable and modest for comparable fees in the Chicago area. To allow only the sum of \$700 based upon some unknown standard is unreasonable and makes no sense when for an additional \$700 this case could be closed, and would have been closed months ago.

[E.L.] is 15 years old. If this case stays open until he attains his age of majority the Department will be involved for over 36 more months. The cost of court appointed counsel for the child to be paid by the state of Iowa during this period will certainly exceed the \$700 additional fee. The value of the time of the Department employees will certainly exceed the \$700 additional fee. The Department is being "penny-wise and pound-foolish" in all regards.

Under federal law, kinship guardian assistance payments are specifically authorized and mandated in cases such as this. 42 U.S.C. [§] 673 [(2007)]. This law provides that "the State will pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child, to the extent the total cost does not exceed \$2,000." [*Id.* § 673(d)(1)(B)(iv).] The position of the Department in this case is contrary to federal law.

Federal law further provides that the prospective relative-guardian of the child is entitled to receive kinship guardian assistance payments based upon the circumstances of the relative-guardian and the needs of the child. The law requires a state to negotiate and enter into a written, binding kinship guardianship assistance agreement.

The juvenile court then ordered:

The Department is ordered to pay such amount, not to exceed \$2000, to the attorney selected by the child's grandparents to pay the total nonrecurring expenses associated with obtaining legal guardianship of the child, such payment to be made within 30 days.

The court further ordered the Department to “negotiate and enter into a kinship guardian assistance agreement with the prospective guardians, the child’s grandparents,” and to “pay to the grandparents such amount as is reasonable to assist in the care and welfare of the child.”

The State filed a motion to reconsider acknowledging that the federal government allows a maximum of \$2000 to be awarded towards attorney fees in guardianships, but noted:

However, [Congress] allowed individual state legislatures to set limits that could potentially be lower amounts. The Iowa Legislature has not granted the Department the ability to comply with the court’s order, therefore the [Department] is unable to comply with the court’s order.

In denying the motion to reconsider, the court responded:

There is no reason the Department cannot comply with the terms of this order and there is every reason, in the best interests of the child, why the Department *should* comply with this order. Further, fiscal responsibility dictates that this order should be complied with.

(Emphasis in original.)

The State filed a petition for writ of certiorari and motion for stay asserting the juvenile court exceeded its authority in ordering the Department to pay up to \$2000 to the guardianship attorney to pay the total nonrecurring expenses associated with obtaining legal guardianship of the child. The State also asserted the juvenile court exceeded its authority in ordering the Department to negotiate and enter into a kinship guardian assistance agreement. The Iowa Supreme Court granted the stay and transferred the matter to this court.

II. Discussion.

Any party claiming a district court judge, an associate district court judge, an associate juvenile judge, or an associate probate judge exceeded the judge's jurisdiction or otherwise acted illegally may commence an original certiorari action in the supreme court by filing a petition for writ of certiorari

Iowa R. App. P. 6.107(a). Illegality exists “when the court’s ruling lacks ‘substantial evidentiary support or when the court has not applied the proper rule of law.’” *State v. Iowa Dist. Ct.*, 750 N.W.2d 531, 534 (Iowa 2008) (citations omitted).

Our scope of review for juvenile court proceedings is de novo. However, because “[r]elief through certiorari proceedings is strictly limited to questions of jurisdiction or illegality of the challenged acts,” our review is for corrections of errors of law.

Id. (citations omitted).

The State asserts no Iowa statute mandates that the Department provide for subsidized guardianships, nor have we found such a statute. Nevertheless, the Department provides for such subsidies pursuant to its administrative powers.⁴ The process begins with an application for a subsidy by the guardian. Iowa Admin. Code r. 441-204.3(1). The Department makes the determination of whether a child meets eligibility requirements. Iowa Admin. Code r. 441-204.3(2). “The amount of subsidy shall be negotiated between the [D]epartment and the guardian, and shall be based upon the needs of the child, and the circumstances of the family.” Iowa Admin. Code r. 441-204.4(1). Upon completion of negotiations, the guardian and the Department shall sign a

⁴ “This chapter implements a five-year demonstration waiver project for a subsidized guardianship program to provide financial assistance to guardians of eligible children who are not able to be adopted and who are not able to return home.” Iowa Admin. Code ch. 441-204 (Preamble).

Guardianship Subsidy agreement. *Id.* The Department shall enter into such agreements based upon available funds. Iowa Admin. Code r. 441-204.4(2). The subsidy is based on a flat daily rate, subject to a cap. *Id.*

The Department has also enacted rules authorizing payment by the State for nonrecurring expenses necessary to finalize a guardianship. Iowa Admin. Code r. 441-204.4(4). At the time the juvenile court's order was entered, the Department's rules provided that "[p]ayment for nonrecurring expenses is generally limited to \$500 per child," although "[a]n additional \$200 may be allowed for reasonable court costs and other related legal expenses." Iowa Admin. Code r. 441-201.6(1)(a)(7).

States participating in the federal program must have a plan approved by the Secretary of Health and Human Services. 42 U.S.C. § 671(a). In order to be eligible to participate in the program, a state's kinship guardian assistance agreements must provide "that the [s]tate will pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child, to the extent the total cost does not exceed \$2,000." *Id.* § 673(d)(1)(B)(iv). The State represents it does not currently participate in the federal program. Until such time as Iowa participates in the federal program, the Department's rules, not the federal rules, govern the maximum amount the Department is obligated to pay for nonrecurring expenses. The juvenile court's reliance on 42 U.S.C. section 673 is therefore misplaced.

A guardian dissatisfied with the Department's decision may appeal pursuant to the Department's administrative appeals procedures under Iowa Administrative Code chapter 441-7. Iowa Admin. Code r. 441-204.8. Upon

exhaustion of administrative remedies, judicial review of the Department's decision may be had. Iowa Code § 17A.19 (2009). No statute authorizes the juvenile court to order the Department to negotiate and enter into a kinship guardian assistance agreement and to pay up to \$2000 for nonrecurring expenses associated with obtaining legal guardianship of the child. Nor did the juvenile court have the inherent authority to enter such an order. *Iowa Dist. Ct.*, 750 N.W.2d at 534-35. Therefore, without statutory or inherent authority, the juvenile court acted illegally when it ordered the Department to negotiate and enter into a kinship guardian assistance agreement with the grandparents and to pay the nonrecurring expenses associated with obtaining legal guardianship of the child above the statutory limit.

Accordingly, the writ of certiorari is sustained. We annul the parts of the juvenile court orders requiring the Department to negotiate and enter into a kinship guardian assistance agreement and requiring the Department to pay nonrecurring expenses associated with obtaining legal guardianship of the child.

WRIT SUSTAINED.