IN THE COURT OF APPEALS OF IOWA

No. 1-109 / 10-1498
Filed April 27, 2011

**IN THE MATTER OF B.R.,
Alleged to Be Seriously
Mentally Impaired and A
Chronic Substance Abuser,**

B.R.,
Respondent-Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Kathleen Kilnoski, Judge.

The respondent appeals from the district court's order denying her request to find Pottawattamie County in contempt. **AFFIRMED.**

Donna K. Bothwell of Iowa Legal Aid, Council Bluffs, for appellant.

Matthew D. Wilber, County Attorney, and Margaret J. Popp Reyes, Assistant County Attorney, for appellee.

Heard by Vogel, P.J., Vaitheswaran, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

VOGEL, P.J.

I. Background Proceedings.

In February 2007, B.R. was involuntarily committed under Iowa Code chapter 229 (2007). The court ordered that B.R. was to be released from the hospital that month and participate in court-ordered outpatient treatment. B.R. is deaf and has a dual diagnosis for serious mental impairment and chronic substance abuse.

B.R.'s progress in outpatient treatment was marginal. In July 2010, B.R.'s therapist recommended B.R. be placed in a residential facility that specialized in services for the deaf and could address B.R.'s mental health and chemical dependency needs. If that placement was not possible, the therapist recommended B.R. be placed in an inpatient thirty-day program for chemical dependency and then be discharged to a local residential care facility to continue outpatient psychiatric treatment and attend AA meetings with an interpreter.

A review hearing was on July 10, 2009. That same day Judge Kathleen Kilnoski issued an order stating,

> Attached hereto is the progress report from Maggie Kennedy, LISW, Alegent Health, dated July 7, 2009. Respondent, her therapist, and her mother agreed that respondent needed inpatient treatment to address her mental health and chemical dependency needs in an environment that specializes in services for the deaf. This is the treatment plan recommended by the provider. Respondent is diagnosed with alcohol dependence, complicated by her chronic mental illness, lack of insight and independent living skills, and her deafness.
>
> The Court hereby adopts the treatment plan recommended in said report.
>
> IT IS THEREFORE ORDERED that the Respondent shall participate in the treatment plan as recommended by the mental health professional assigned to Respondent, to wit: RESIDENTIAL TREATMENT AT EITHER (1) NATIONAL DEAF ACADEMY,

> MOUNT DORA, FL; OR (2) MINNESOTA CHEMICAL DEPENDENCY PROGRAM FOR THE DEAF.
>
> IT IS FURTHER ORDERED that respondent shall continue to participate in outpatient services pending her acceptance into one of the programs set out above, including any recommended chemotherapy.
>
> IT IS FURTHER ORDERED that the Chief Medical Officer of the treatment center to which Respondent is admitted shall file a report to the court within thirty days of respondent's admission to the program, describing respondent's treatment plan and her response to treatment.

On September 15, 2009, a review hearing was held. Magistrate Clarence Meldrum entered an order stating that the June 2009 order had not been appealed, yet it had not been complied with. The magistrate further found the Minnesota facility would not accept B.R. and ordered she be placed in the Florida facility as provided in the July 2009 order. Finally, the Magistrate ordered that any financial disagreement as to payment for B.R.'s treatment was to be resolved.

A review hearing was held on September 18, 2009. On September 21, 2009, Magistrate Meldrum found B.R. remained seriously mentally impaired, there were no adequate treatment alternatives locally or regionally, and the July 2009 order was to be immediately implemented with B.R. being placed at the Florida facility.

A status review hearing was held on October 23 and 26. On January 19, 2010, Magistrate Meldrum found that B.R. remained serious mentally impaired and a chronic substance abuser and there were no adequate treatment alternatives locally or regionally. The magistrate further found "no action had been taken by anyone to implement the placement orders" and there was no basis to change the placement ordered in July 2009 that B.R. be placed at the

National Deaf Academy "at public expense." Finally, the magistrate ordered that B.R. be immediately placed at the Florida facility and the placement "shall be paid by Pottawattamie County." The County filed a writ of certiorari, asserting the magistrate exceeded its authority, which was still pending before the district court at the time of oral argument in April 2011.[1]

B.R. was not placed at the Florida facility. On March 25, 2010, B.R. filed an application for rule to show cause requesting the County be held in contempt for failing to comply with the orders under Iowa Code chapter 665 (2009). A hearing was held on April 7, 2010, and Judge Kilnoski entered her ruling on April 22, 2010.[2] The Judge found that according to the most recent physician report, B.R. continued to need placement in a residential facility serving deaf clients with both mental health impairment and substance abuse issues. The order stated,

> Chapter 229 continues to lack a statutory mechanism for an involuntary committed person to challenge a county's denial of placement ordered by the court. Section 229.14A(9) states that a placement made pursuant to an order entered under section 229.13 or 229.14 or this section shall be considered to be authorized through the central point of coordination process. Even if the court's orders of July 10 and September 15, 2009, are considered to be authorized through the [central point of coordination] as a matter of law, the court does not find that the County's failure to comply with the court's order was willful or in wanton disregard of [B.R.]'s right to minimally adequate placement. The County, through its central point of coordination, has provided what could be construed to be minimally adequate services for [B.R.], through a patchwork of outpatient therapy and supervised apartment living.
>
> [B.R.] has not met the burden of proving willful and intentional contemp. She will need to continue her quest for the treatment that is minimally adequate for her specific needs in another forum.

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[1] Neither party could explain the delay in obtaining a ruling on the writ.

[2] On Respondent's motion to reconsider, the record was enlarged to incorporate a stipulated hearing record filed June 30, 2010, but the finding that the County was not in contempt remained unchanged.

Therefore, Judge Kilnoski denied B.R.'s request to find the County in contempt. B.R. appeals.

II. Standard of Review.

When an application for contempt is dismissed, a direct appeal is permitted. *State v. Lipcamon*, 483 N.W.2d 605, 606 (Iowa 1992). Our review is for errors at law. *City of Masonville v. Schmitt*, 477 N.W.2d 874, 876 (Iowa Ct. App. 1991).

III. Analysis.

B.R. asserts that the review orders of July 2009, September 2009, and placement order of January 2010 were valid, the County did not appeal any of the orders, and the County cannot collaterally attack the orders in a contempt proceeding. Even assuming that B.R. prevails on each of those arguments, the dispositive issue is whether the County "willfully" violated the orders.

> Resistance to or violation of an order cannot be considered contempt of court unless it is willful. To support a finding of willful disobedience, the court must find conduct that is intentional and deliberate with a bad or evil purpose, or wanton and in disregard of the rights of others, or contrary to a known duty, or unauthorized, coupled with an unconcern whether the contemner had the right or not.
>
> In Iowa, all actions for contempt are quasi-criminal, even when they arise from civil cases. Therefore, contempt must be established by proof beyond a reasonable doubt. The district court's factual findings will be overturned if they lack substantial evidentiary support, which is such evidence as could convince a rational trier of fact.

Reis v. Iowa Dist. Court, 787 N.W.2d 61, 68 (Iowa 2010) (internal citations and quotations omitted).

The district court interpreted its own July 2009 order and the subsequent orders by the magistrate, and found B.R. had not proven "willful and intentional

contempt." "[W]here the same judge entered a prior order or decree which was the subject of interpretation or [e]nforcement in a later proceeding, . . . construction of its own decree by the trial court must be given great weight in determining the intent of the trial court." *Thiele v. Whittenbaugh*, 291 N.W.2d 324, 329 (Iowa 1980) (citations and internal quotations omitted).

The County asserted that the orders were indefinite, claiming that the 2009 orders did not contain "clear and certain" language obligating it to perform any specific duty to fund the recommended out-of-state placement. In the July 2009 order, the court referenced the attached letter from Maggie Kennedy, LISW, CCDP,[3] which recommended residential treatment but did not specifically mention either the Florida or Minnesota facility, and ordered B.R. be placed at one of those facilities. The order did not provide who was responsible for ensuring B.R.'s admission into the facility or who was to fund her placement. *See* Iowa Code § 229.14(2)(b) (proving that if the County is not responsible for payment of the respondent's expenses, the court shall order the respondent placed under the care of an appropriate hospital or facility designated through the central point of coordination process *or* an appropriate alternative placement).

The two September 2009 orders provided that the July 2009 order was to be implemented. The January 2010 order recognized that none of the parties had made any progress towards placing B.R. and ordered that B.R.'s placement was to be provided at "public expense" as well as being paid for by the County. However, this was the first hearing the County was in a position to contest funding, rather than placement, under Iowa Code section 229.14A(7) ("If a

[3] Licensed Independent Social Worker, Co-Occurring Disorders Professional.

respondent's expenses are payable in whole or in part by a county through the central point of coordination process, notice of a placement hearing shall be provided to the county attorney and the county's central point of coordination process administrator. At the hearing, the county may present evidence regarding appropriate placement."). The magistrate ordered B.R. be placed at the Florida facility, which "shall be paid for by Pottawattamie County, Iowa." The County then properly challenged this order through a writ of certiorari, which again remains unresolved. In the contempt action, the district court reviewed its order and the subsequent orders, and found that B.R. had not proven "willful and intentional contempt."[4] Having reviewed the record and giving deference to the district court's interpretation of its own order, we find no error and affirm.

AFFIRMED.

Mahan, S.J., concurs; and Vaitheswaran, J., dissents.

[4] In addition, the County also argues that contempt is not the appropriate remedy under Iowa Code chapters 229 or 230. We need not reach this argument because we affirm the district court found the County was not in contempt.

VAITHESWARAN, J. (dissenting)

I respectfully dissent. This is an appeal from an order refusing to hold Pottawattamie County in contempt for failure to comply with several orders requiring the county to pay for B.R.'s placement at a Florida facility. The district court concluded the county's non-compliance was not willful and intentional. I disagree.

The County, and specifically, the central point coordinator, S. Watson, was ordered to be present at a hearing on September 18, 2009 to "report on the progress of the previously ordered placement," with "financial arrangements" to be resolved "forthwith." She was to be personally served with a copy of the order. Watson appeared at the September 18, 2009 hearing. Following the hearing, the magistrate ordered that "placement ordered previously, namely: Residential placement at National Deaf Academy in Mount Dora, Florida, be implemented immediately."

The matter was again considered in late October 2009. The magistrate followed up this hearing with an order dated January 19, 2010, in which he noted that residential treatment at the Florida facility was initially ordered on July 10, 2009, and "[n]o action was ever taken by the county CPC to effect the placement or appeal this order, nor was any action taken to obtain reconsideration of or modification of that order." The magistrate rejected the county's assertions that the ordered treatment was too expensive and current treatment was adequate. Notably, the county attorney raised these same arguments even before Watson's formal appearance at the September 18, 2009 hearing, and both arguments were addressed and rejected in prior orders. Finally, the magistrate in unequivocal

terms again ordered B.R.'s placement at the Florida facility "at public expense" and again required immediate implementation, to "be paid by Pottawattamie County, Iowa." On this record, I have no trouble concluding the county willfully and intentionally violated court directives.