

IN THE COURT OF APPEALS OF IOWA

No. 2-134 / 11-0846
Filed May 23, 2012

HILARY MASTIO,
Plaintiff-Appellee/Cross-Appellant,

vs.

STATE PUBLIC DEFENDER,
Defendant-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Clarke County, Monty W. Franklin,
District Associate Judge.

The State Public Defender seeks reversal of the district court's ruling,
which granted the guardian ad litem in a child in need of assistance case
reimbursement for travel time. **WRIT ANNULLED.**

Samuel P. Langholz, State Public Defender, and Julie Miller, Assistant
State Public Defender, for appellant.

Hilary J. Mastio of Nuzum, Matthias, Campbell, & Tyler, PLLC, Newton, for
appellee.

Heard by Potterfield, P.J., and Mullins and Bower, JJ.

BOWER, J.

The State Public Defender seeks reversal of the district court's ruling on Hillary Mastio's motion for review of the reduction of her claim for reimbursement of 6.3 hours of travel time charged as part of her court-appointment as a guardian ad litem in a child in need of assistance (CINA) case. The court approved the claim for travel time and ordered the State Public Defender reimburse her accordingly. The State Public Defender contends the ruling was in error.

I. Background Facts and Proceedings.

On July 23, 2009, Mastio was appointed guardian ad litem for a child in a CINA case filed in Jasper County. The child was placed with a relative in Taylor County, and the mother lived in Clarke County. When the child's father passed away, all ties to Jasper County were severed. As a result, venue was transferred to Clarke County on March 24, 2010, before the case was eventually closed in October 2010.

Mastio submitted a fee claim for her services in Clarke County, which included a claim for payment for 6.3 hours of travel time for her attendance at two hearings held in the county. The State Public Defender's office denied this portion of her claim, which reduced the total amount of her fee claim by \$378. Mastio then requested the district court review the reduction.

In its May 5, 2011 order, the district court found Mastio's claim was allowed pursuant to Iowa Administrative Code rule 493-7.1, which allows payment of time spent traveling to "pretrial hearing, trial, or posttrial hearing, if

the venue has been changed from the county in which the crime occurred or if the location of the court hearing has been changed to a different country for the convenience of the court.” Although the State Public Defender argued the rule applies only in criminal proceedings, the district court found that reading “would result in a determination that this section is unconstitutionally vague and a violation of constitutional due process requirements” The district court approved Mastio’s claim for travel expenses and ordered the State Public Defender to authorize reimbursement for 6.3 hours of travel time.

Mastio also made a claim for fees and expenses incurred during the review proceeding. The court denied this claim, citing Iowa Administrative Code rule 493-12.2(8), which states claims “for preparation of a motion to review . . . and any subsequent hearing for review of an attorney fee claim are not payable under the attorney’s appointment.”

On June 2, 2011, the State Public Defender filed a notice of appeal from the court’s ruling and on June 13, 2011, Mastio filed a notice of cross-appeal. The proper method of review is by a petition for writ of certiorari. *See State Pub. Defender v. Iowa Dist. Ct.*, 594 N.W.2d 34, 36 (Iowa 1999). We will treat a notice of appeal as a petition for writ of certiorari. *See Iowa R. App. P. 6.108* (“If any case is initiated by a notice of appeal, an application for interlocutory appeal, an application for discretionary review, or a petition for writ of certiorari and the appellate court determines another form of review was the proper one, the case shall not be dismissed, but shall proceed as though the proper form of review had been requested.”). However, rule 6.108 does not extend the time for

initiating a case. The State Public Defender filed its notice of appeal within thirty days of the district court's ruling, as required for certiorari actions, Iowa R. App. P. 6.107(1)(b), and therefore we will treat it as such. While Mastio's notice of cross-appeal was timely filed pursuant to the rule for cross-appeals, Iowa R. App. P. 6.101(2)(b), it fell outside of the thirty-day deadline required for certiorari. Accordingly, we do not have jurisdiction to consider the merits of her argument and her appeal is dismissed. See *Rater v. Iowa Dist. Ct.*, 548 N.W.2d 588, 590 (Iowa Ct. App. 1996) (holding an untimely petition for writ of certiorari deprives the appellate court of jurisdiction over the subject matter of the case and the proceeding must be dismissed).

II. Scope and Standard of Review.

Certiorari lies when a lower board, tribunal, or court has exceeded its jurisdiction or otherwise acted illegally. *State Pub. Defender v. Iowa Dist. Ct.*, 745 N.W.2d 738 (Iowa 2008). Illegality exists when a court's findings lack substantial evidentiary support or when the court has not properly applied the law. *Id.* Our review of the district court's ruling is for correction of errors at law. *Id.* Although the district court's well-supported factual findings are binding upon this court, its legal conclusions are not. *Id.*

III. Analysis.

The Iowa Code tasks the State Public Defender with establishing court-appointed attorney fee limitations for particular categories of cases. Iowa Code § 13B.4(4)(a) (2011). If an attorney submits a claim for reimbursement for fees not payable within the scope of appointment, the State Public Defender is to notify

the attorney of the portion of the claim not payable, deny that portion, and approve the balance of the claim. *Id.* § 13B.4(c)(5). If any portion of a claim is denied or reduced, the attorney may file a motion with the court for review. *Id.* § 13B.4(d).

Iowa Administrative Code rule 493-7.1 states travel time is payable from the indigent defense fund. The rule defines travel time as reasonable and necessary time spent by the attorney for travel under one of nine circumstances. Iowa Admin. Code r. 493-7.1. At issue here is the second enumerated circumstance in the definition of “travel time,” which states it is payable for travel “[t]o and from the location of a pretrial hearing, trial, or posttrial hearing, if the venue has been changed from the county in which the crime occurred or if the location of the court hearing has been changed to a different county for the convenience of the court” *Id.* (emphasis added). The district court found Mastio’s travel time was compensable because it involved travel to and from the location of a hearing or trial because the location of the hearing was changed to a different county for the convenience of the court. It noted Iowa Code section 232.62(2) allows venue in a CINA case to be transferred to the county of the child’s residence “[w]hen it appears that the best interests of the child or the convenience of the proceedings shall be served by a transfer”

The State Public Defender does not dispute that the travel time Mastio claimed was for travel to and from her Newton office to the court in Osceola after venue was changed. Instead, the State Public Defender argues the court’s interpretation was in error because the use of the word “crime” in the

administrative rule restricts the reimbursement of travel time to criminal proceedings cases where the venue is changed. Even if we are to accept this interpretation, the use of “crime” only applies to the first part of the rule; the second part of the rule refers to a change of venue to a different county “for the convenience of the court.” The use of the word “or” in the rule is presumed to be disjunctive. *Kearney v. Ahmann*, 264 N.W.2d 768, 769 (Iowa 1978). The question then is whether the change of venue here occurred “for the convenience of the court.”

The State Public Defender’s brief states that at the review hearing,¹ the “convenience of the court” language was explained to the court as relating judicial branch budget cuts, which restricted travel of judges and court reporters to reduce travel reimbursement costs. However, a definition for the term “convenience of the court” is not provided with the other definitions found at rule 493-7.1. The district court found the change of venue in the CINA case was for the convenience of the court for the following reasons:

In this case, the CINA proceeding and the CINA hearings could have remained in Jasper County after the death of the child’s father but there would have been no connection between the case and Jasper County. With the child in Taylor County and the child’s mother in Clarke County, the DHS case manager would have been located approximately ninety miles from the residence of the child’s mother and approximately one hundred eighty miles from the child’s placement. The child, the child’s mother, and the child’s aunt would likewise have been required to travel this distance to Court hearings in Jasper County. The Jasper County Juvenile

¹ We note the hearing before the district court was not recorded and no bill of exceptions was filed in this case. Iowa Rule of Civil Procedure 1.1001(1) states, “A bill of exceptions shall be necessary only to show material portions of the record of the cause not shown by the court files, entries, or legally certified shorthand notes of the trial, if any.”

Court would have been severely hampered in such a situation in determining that reasonable efforts were being made to reunify this family due to the distance involved and the lack of hands-on supervision by the DHS.

Accordingly, this case was transferred to Clarke County pursuant to Iowa Code section 232.62(2) to serve the best interests of the child and for the convenience of the proceedings, including the Court. As stated above, the Court is responsible for insuring that the best interests of the child are protected; that reasonable efforts are being made towards reunification of the child with a parent; that Court proceedings are held in a reasonable, convenient, and accessible forum; and that Court proceedings serve a meaningful purpose for the parties as required by statute. The transfer of this case to Clarke County served those purposes for the Court. Therefore the change of venue was in fact made for the convenience of the Court pursuant to rule 493-7.1(2) of the Iowa Administrative Code allowing for payment of travel time to the Guardian Ad Litem for travel to Clarke County for hearings in this case.

We find no error. The court set forth the reasons for the change of venue, which include the convenience of the court. Because the reason for the change of venue falls within one of the circumstances outlined in rule 493-7.1's definition of travel time, the district court committed no legal error in approving Mastio's travel time and ordering the State Public Defender to reimburse her for 6.3 hours of travel time.

WRIT ANNULLED.