

IN THE COURT OF APPEALS OF IOWA

No. 2-684 / 12-0034
Filed October 3, 2012

**IN RE THE MATTER OF
T.E., Alleged to be
Seriously Mentally Impaired,**

T.E.,
Respondent-Appellant.

Appeal from the Iowa District Court for Johnson County, Chad W. Thomas, Juvenile Hospitalization Referee.

A juvenile appeals the order and findings of fact asserting substantial evidence does not support her involuntary hospitalization. **VACATED AND REMANDED.**

Christine Boyer, Iowa City, for appellant.

Thomas J. Miller, Attorney General, Gretchen Witte Kraemer, Assistant Attorney General, Janet M. Lyness, County Attorney, and Anne Lahey, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Danilson and Mullins, JJ.

MULLINS, J.

T.E. is the sixteen-year-old respondent in an involuntary hospitalization proceeding that resulted in an order for her hospitalization. A juvenile hospitalization referee presided. On appeal, T.E. argues there was not substantial evidence to support the findings and conclusions required for her involuntary hospitalization. After a review of the briefs and record, this court requested supplemental briefing on whether the “juvenile hospitalization referee” had jurisdiction to enter the order. For the reasons stated below, the order is vacated and this case is remanded.

In 2009, the chief judge of the Sixth District entered an Administrative Order, which provided in relevant part:

By authority of Iowa Code Section 229.21, the undersigned appoints [the referee in this case, and another referee] to serve as Johnson County juvenile referees under the authority of Iowa Code Section 229.6A for the purposes of handling juvenile commitments under Iowa Code . . . Chapter 229 (Hospitalization of Persons With Mental Illness)

To determine whether the law authorizes a hospitalization referee to exercise jurisdiction over a juvenile under Iowa Code chapter 229 as ordered by the chief judge, we must first examine the code sections that the judge referenced in his order.

Iowa Code section 229.21 (2011) provides for appointment of hospitalization referees and identifies their duties. It provides in part:

1. The chief judge of each judicial district may appoint at least one judicial hospitalization referee for each county within the district. . . .
2. . . . The referee shall discharge all of the duties imposed upon the court by sections 229.7 to 229.22 . . . in the proceeding so

initiated. Subject to the provisions of subsection 4, orders issued by a referee, in discharge of duties imposed under this section, shall have the same force and effect as if ordered by a district judge.

Iowa Code § 229.21(1), (2).

Iowa Code section 229.6A(1) explains the role of the juvenile court in these proceedings:

[T]he juvenile court has exclusive original jurisdiction in proceedings concerning a minor for whom an application for involuntary admission is filed under section 229.6 or for whom an application for voluntary admission is made under section 229.2, subsection 1, to which the minor objects. In proceedings under this chapter concerning a minor, notwithstanding section 229.11, the term “court”, “judge”, or “clerk” means the juvenile court, judge, or clerk.

In order to understand the implications of section 229.6A, we are guided by Iowa Code section 602.7101(2), which provides that “[t]he jurisdiction of the juvenile court may be exercised by any district judge, and by any district associate judge who is designated by the chief judge as a judge of the juvenile court.”

Iowa Code section 229.21 identifies the duties of a referee as those “imposed upon the court by sections 229.7 to 229.22.” The legislature could have easily listed section 229.6A among the Code sections that it directed a referee to discharge in a chapter 229 proceeding, but it did not. Section 229.6A could have authorized a referee to exercise jurisdiction over a juvenile in a hospitalization proceeding, but it does not. Section 602.7101(2) could have allowed the chief judge to designate a hospitalization referee to exercise juvenile court jurisdiction in a chapter 229 proceeding, but it does not.

“Courts possess only those jurisdictional powers conferred by our constitution or legislature.” *In re Melodie L.*, 591 N.W.2d 4, 7 (Iowa 1999). “Subject matter jurisdiction refers to the authority of a court to hear and determine cases of the general class to which the proceeding in question belongs, not merely the particular case then occupying the court’s attention.” *Iowa Coal Mining Co., v. Monroe Cnty.*, 555 N.W.2d 418, 428 (Iowa 1996). A court must have both the power “to adjudicate the type of case before it,” and must “be authorized to make the particular decision it is asked to render.” *Melodie L.*, 591 N.W.2d at 7. Otherwise, the action is void. *Id.* “[T]he court itself can assert lack of subject matter jurisdiction at any time.” *Iowa Coal Mining*, 555 N.W.2d at 428.

Hospitalization referees were created by statute, not by our constitution. While the chief judge has the authority to appoint a hospitalization referee, the statute granting such authority limits the duties of the referee to the duties imposed on the court in sections 229.7 to 229.22. See Iowa Code § 229.21(2). Section 229.6A is not among those listed sections. There are no other provisions in the code that grant to a hospitalization referee any authority over a minor. Thus, the hospitalization referee has no jurisdiction over the class of cases involving the involuntary hospitalization of minors. The order for involuntary hospitalization in this case was entered by a person who had no jurisdiction to do so. Accordingly, the “Order for Hospitalization” and the “Findings of Fact,” both entered on December 6, 2011, are void and are hereby vacated. This case is

remanded for further proceedings before a court of competent jurisdiction under section 229.6A.

VACATED AND REMANDED.