

IN THE COURT OF APPEALS OF IOWA

No. 7-839 / 06-1877
Filed December 28, 2007

MICHAEL JACOBSMA,
Plaintiff-Appellant,

vs.

**IOWA DISTRICT COURT FOR
DICKINSON COUNTY,**
Defendant-Appellee.

Appeal from the Iowa District Court for Dickinson County, David Lester,
Judge.

Michael Jacobsma seeks certiorari after the trial court upheld the state
public defender's denial of Jacobsma's fee claim for court-appointed appellate
work. **WRIT ANNULLED.**

Michael J. Jacobsma and Missy J. Clabaugh of Jacobsma, Clabaugh &
Freking, P.L.C., Sioux Center, pro se.

Mark C. Smith, State Appellate Defender, for appellee.

Heard by Sackett, C.J., and Miller and Eisenhauer, JJ.

EISENHAUER, J.

Michael Jacobsma filed a petition for writ of certiorari after the trial court upheld the state public defender's denial of his fee claim for court-appointed appellate work. The Iowa Supreme Court granted the writ and transferred the case to this court. Finding the district court committed no legal error, we annul the writ.

I. BACKGROUND FACTS AND PROCEEDINGS.

In 1999, Lincoln Belken was convicted of first-degree kidnapping. After exhausting his direct appeals, Belken sought post-conviction relief (PCR) and Jacobsma was appointed to represent him effective January 30, 2002. Belken's PCR applications alleged ineffective assistance of both trial and appellate counsel. After trial, on February 2, 2005, the court ruled against Belken on all grounds.

The event central to this case occurred on February 17, 2005, when the court appointed Jacobsma to represent Belken on his PCR appeal. The order appointing Jacobsma as appellate counsel did not include a specific finding a contract attorney was unavailable to handle Belken's PCR appeal.

In May 2006, the court authorized Jacobsma's fees up to \$10,000 for handling the appeal, the Court of Appeals filed an opinion affirming the denial of PCR, and Jacobsma filed an application for further review of the PCR denial. Also in May 2006, Jacobsma filed two appellate fee claims with the public defender, one for \$8,007.37 and one for \$3,128.18. The public defender denied both claims and in June 2006, Jacobsma filed motions to have the denials reviewed by the court.

In August 2006, after a hearing, the court upheld the public defender's denial of Jacobsma's fee claims. Jacobsma filed a motion to modify the court's ruling, which was overruled on October 17, 2006. Jacobsma next filed a petition for certiorari which was granted on February 7, 2007. Jacobsma's petition claims the trial court acted illegally in ruling he was not entitled to fees under Iowa Code section 815.7 and in ruling he was not entitled to fees under the doctrines of unjust enrichment or *quantum meruit*.

II. STANDARD OF REVIEW.

"Relief through certiorari is strictly limited to questions of jurisdiction or illegality of the challenged acts." *French v. Iowa Dist. Ct.*, 546 N.W.2d 911, 913 (Iowa 1996). In a certiorari case, we review the trial court's ruling for correction of errors at law. *State Pub. Defender v. Iowa Dist. Ct.*, 731 N.W.2d 680, 683 (Iowa 2007). The court's factual findings are binding if well supported. *State Pub. Defender v. Iowa Dist. Ct.*, 644 N.W.2d 354, 356 (Iowa 2002).

III. MERITS.

A. INDIGENT APPEALS AND THE STATUTORY FEE PROCESS.

Chapter 814 of the Iowa Code deals with appeals from the district court and section 814.11 details procedures for indigent appeals. Iowa Code § 814.11 (2005). In enacting section 814.11, the legislature set forth clear requirements and a sequence that must be followed in appointing appellant counsel for indigent parties. When the appeal involves a denial of PCR, the state appellate defender is to be appointed unless a conflict of interest or a temporary case overload prevents the appointment. *Id.* § 814.11(2). Since Belken's PCR application contained allegations of ineffective assistance of counsel directed at

the state appellate defender, the conflict of interest provision is triggered here. When this happens, the statute provides “the court shall appoint an attorney who has a contract with the state public defender to handle such an appeal.” *Id.* § 814.11(3). It is undisputed that Jacobsma is not a contract attorney with the public defender. For the next sequential step, the statute instructs: “If the court determines that no contract attorney is available to handle the appeal, the court may appoint a noncontract attorney. The order of appointment shall include a specific finding that no contract attorney was available.” *Id.* § 814.11(4).

Jacobsma was appointed as a noncontract attorney, but the order of appointment did not include a specific finding a contract attorney was unavailable and it appears the court did not inquire whether or not a contract attorney was available to handle the appeal. Therefore, as found by the district court, in appointing Jacobsma, the appointing court’s process did not comply with the requirements of Iowa Code subsections 814.11(2)-(4).

The legislature also created a process for reviewing attorney fee claims for indigent representation and authorized the state public defender to conduct the review. *Id.* § 13B.4(4)(c). This statute grants the public defender the discretion to deny the fee claim in four different circumstances. *Id.* § 13B.4(4)(c)(2). Here, the public defender based its discretionary denial on subsection (d): “If the claimant was appointed contrary to section 814.11, or the claimant failed to comply with section 815.10, subsection 5.” *Id.* § 13B.4(4)(c)(2)(d). The appointment “contrary to section 814.11” is the relevant portion used by the public defender to deny Jacobsma’s claim.

In reviewing the statutory language, we note the first part of subsection 13B.4(4)(c)(2)(d) allows denial when the appointment process established in section 814.11 is not followed, while the second part allows denial where the claimant has failed to take appropriate action. In an earlier version, the statute authorized denial only when a claimant failed to take appropriate action under subsection six of 814.11 or subsection five of 815.10. See Iowa Code § 13B.4(4)(c)(2)(d) (Iowa 2003). However, in April 2004, the legislature broadened the basis for denial to include all of section 814.11, not just subsection six. See 2004 Iowa Acts ch. 1040, § 3 (codified at Iowa Code § 13B.4(4)(c)(2)(d) (Iowa 2005)). Therefore, we agree with the district court's conclusion that denial of Jacobsma's fee claims is statutorily authorized by section 13B.4(4)(c)(2)(d) when the sequential process for appointing indigent appellate counsel established in subsections two through four of 814.11 is not followed. See Iowa Code §§ 13B.4(4)(c)(2)(d), 814.11(2)-(4) (Iowa 2005).

The legislature also established a process for district court review of the public defender's denial or reduction of attorney fee claims. See *id.* § 13B.4(4)(d). However, this review is very limited and gives no discretion to the district court: "If a claim or portion of the claim is denied, the action of the state public defender shall be affirmed unless the action conflicts with an administrative rule or the law." *Id.* § 13B.4(4)(d)(5). Based on this language, the district court correctly concluded:

[T]his court has no choice but to affirm the action of the state public defender's office in denying attorney Jacobsma's claims despite the obvious unfairness to attorney Jacobsma of such a result. It appears obvious to the court that, at a minimum, attorney Jacobsma should receive the \$1,500 in compensation which, according to attorney Smith, a contract attorney is entitled to

receive for handling a case such as Belken's. However, this court is without authority to enter such an order under the statutory schemes involved in this case.

We conclude the district court did not act illegally in upholding the denial of Jacobsma's fee claim.

On appeal, Jacobsma argues Iowa Code section 815.7 mandates he be paid even if the appointment was erroneous under section 814.11. See *id.* §§ 814.11, 815.7. We disagree. Section 815.7 states noncontract, court-appointed attorneys are entitled to reasonable compensation and expenses and then details the dollar-per-hour amounts considered reasonable for different types of representation and lists the types of expenses allowed to be claimed. *Id.* § 815.7. This statute is an effort to "ameliorate the prior condition, wherein an officer of the court was compelled to contribute his time and efforts gratuitously." *Soldat v. Iowa Dist. Ct.*, 283 N.W.2d 497, 499 (Iowa 1979). Like the district court, we construe this statutory provision to set the hourly rate of compensation a noncontract attorney is reasonably entitled to receive if the attorney is properly appointed pursuant to section 814.11. See 2006 Iowa Acts ch. 1166, § 9 (codified at Iowa Code § 815.7 (Iowa 2007)) (increasing the fee by five dollars per hour for appointments after July 1, 2006).

While we sympathize with Jacobsma and understand his frustration with the public defender's denial of his fee claim, it is up to the legislature and not this court to determine whether changes should be made in the fee approval/denial process it has established for court-appointed attorneys. If a district court fails to follow the mandates of section 814.11 in making a court appointment, it is the

noncontract attorney's responsibility to bring this to the attention of the court so an attorney can be properly appointed under the statutory scheme.

B. UNJUST ENRICHMENT/QUANTUM MERUIT.

Jacobsma argues he is entitled to his attorney fees on the equitable theories of unjust enrichment or *quantum meruit*. The Iowa Supreme Court recently rejected this alternative avenue for obtaining fees: "We conclude that *quantum meruit* cannot serve as the basis for recovery when the statutory requirements for compensation of court-appointed attorneys have not been met." *State Pub. Defender*, 731 N.W.2d at 682. Jacobsma is not entitled to attorney fees under *quantum meruit* or any other equitable theory when the statutory requirements have not been followed.

C. APPELLATE ATTORNEY FEES.

Jacobsma requests appellate attorney fees. However, Jacobsma cites no authority in making this request, which we reject. There is no statutory authority supporting a claim for appellate fees incurred in attorney-fee certiorari actions. *See Soldat*, 283 N.W.2d at 500.

WRIT ANNULLED.