

IN THE COURT OF APPEALS OF IOWA

No. 7-868 / 07-0528
Filed January 16, 2008

STATE PUBLIC DEFENDER,
Plaintiff,

vs.

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

Appeal from the Iowa District Court for Clay County, Donavon D. Schaefer, District Associate Judge.

The state public defender was granted certiorari review from a district court order requiring a representative of the public defender's office to personally appear for a review hearing regarding a claim for attorney fees. **WRIT SUSTAINED.**

Mark C. Smith, First Assistant State Public Defender, for plaintiff.

Michael Houchins of Zenor, Houchins & Borth, Spencer, for defendant.

Considered by Vogel, P.J., and Mahan and Zimmer, JJ.

ZIMMER, J.

The state public defender was granted certiorari review from a district court order requiring a representative of the public defender's office to personally appear for a review hearing regarding a claim for attorney fees. The public defender contends that because Iowa Code section 13B.4(4)(d)(3) (2005) provides that the "state public defender . . . may participate by telephone" during review claim hearings, the district court did not have the authority to order the public defender to appear personally. Because we conclude the district court did not have this authority, we sustain the writ.

I. Background Facts and Proceedings.

In January 2007 attorney John Sandy filed a fee claim with the state public defender for payment of attorney fees in a Clay County juvenile case. The state public defender denied a portion of the fee claim, and, subsequently, Sandy sought review of the public defender's action.¹ On February 16, 2007, the court entered an order scheduling a review hearing for March 13, 2007. In its order the court stated that

the Court feels that the Public Defender's Office denial [of the fee claim] is unreasonable and inappropriate and that, despite the language of Section 13B.4(4)(d)(3) allowing appearance at the hearing by telephone, the Court feels the State Public Defender's Office should appear personally for the hearing and will not accept appearance by telephone.

The court's order noted that a portion of the claim which had been denied involved travel time and expenses which had been preauthorized.

¹ The issue of whether the state public defender acted properly in denying a portion of the claim is not at issue in this appeal.

On March 13, 2007, Julie Miller, an assistant state public defender, appeared by telephone on behalf of the state public defender's office at the time scheduled for the fee review hearing. Attorney Sandy, who appeared in person, requested that the hearing be continued to provide Miller a second opportunity to appear in person and to personally address the issues before the court. Miller also requested a continuance. She asked the judge to recuse himself from this case because the court's statement in its February order that "the Court feels that the Public Defender's Office denial is unreasonable and inappropriate" indicated that the court was predisposed to ruling for Sandy. After some discussion regarding the language of section 13B.4(4)(d)(3), the court decided to continue the hearing. That same day, the court entered a written order continuing the hearing until May 22, 2007. The order stated that the "State Public Defender and Appellant shall appear personally."

On March 15, 2007, the state public defender filed a petition for writ of certiorari and request for stay claiming the district court acted illegally and in excess of its authority in requiring a representative of the state public defender to appear personally at the fee claim review hearing.² On May 9, 2007, the Iowa Supreme Court granted the petition and stayed the proceedings in district court.

² In her petition for writ of certiorari, the public defender also requests "that further proceeding below be conducted by a judge who has not prejudged the merits of the matter." At the conclusion of the hearing held on March 13, the court stated that if Miller wished to file a request for recusal, she could do so before the date of the rescheduled hearing, and that the court would review the motion and take action on it as soon as it was received. There is no evidence in the record that such motion was ever filed. Therefore, because this matter was not presented to and decided on by the district court, we do not review it on appeal. See *Meier v. Senecaut*, 641 N.W.2d 532, 539 (Iowa 2002) (holding that an issue not ruled on by the district court is not preserved for appellate review).

II. Scope and Standards of Review.

A writ of certiorari lies where a lower board, tribunal, or court has exceeded its proper jurisdiction or otherwise has acted illegally. Iowa R. Civ. P. 1.1401; *Director of Iowa Dep't of Human Servs. v. Iowa Dist. Ct.*, 621 N.W.2d 189, 191 (Iowa 2001). Thus, “we may examine only the jurisdiction of the district court and the legality of its actions.” *Id.* (quoting *Christensen v. Iowa Dist. Ct.*, 578 N.W.2d 675, 678 (Iowa 1998)). “Illegality exists when the findings on which the court has based its conclusions of law do not have substantial evidentiary support or when the court has not applied the proper rule of law.” *Whitlock v. Iowa Dist. Ct.*, 497 N.W.2d 891, 893 (Iowa 1993). Our review is on errors of law. *Amro v. Iowa Dist. Ct.*, 429 N.W.2d 135, 140 (Iowa 1988).

III. Discussion.

The sole issue presented by this appeal is whether the district court erred in requiring the state public defender to appear personally for the fee claim review hearing. Upon our review of the record and the controlling statute, we conclude the court erred.

The State Public Defender is an administrative agency, created by the legislature in Iowa Code chapter 13B. Iowa Code section 13B.4(4)(d) sets forth a detailed process for reviewing the state public defender’s action on attorney fee claims. Specifically, section 13B.4(4)(d)(3) provides that during the review claim hearing the “state public defender or the attorney may participate by telephone” and that “[i]f the state public defender participates by telephone, the state public defender shall be responsible for initiating and paying for all telephone charges.”

During the March 13 hearing, the district court interpreted the statute to mean that the public defender may appear by telephone unless otherwise directed by the court. The court believed that it, not the public defender, had the authority to determine whether the public defender may appear by telephone. For the reasons which follow, we disagree with the court's interpretation.

Although the trial court has considerable discretion in directing the course of a trial, the court must abide by the rules and statutes regulating certain court proceedings. See *In re Marriage of Ihle*, 577 N.W.2d 64, 67 (Iowa Ct. App. 1998) ("It is generally recognized that matters relating to the course and conduct of a trial, *not regulated by statute or rule*, are within the discretion of the trial judge.") (emphasis added). In this case, Iowa Code section 13B.4(4)(d) regulates the state public defender's action in review claim hearings. We believe a reasonable reading of 13B.4(4)(d)(3), within the context of the chapter that creates the state public defender, indicates the decision to appear in person or by telephone during a review claim hearing was intended to be left to the public defender's discretion.

The ultimate goal of statutory construction is to determine and effectuate the intent of the legislature. *Beier Glass Co. v. Brundige*, 329 N.W.2d 280, 283 (Iowa 1983). The polestar is legislative intent. In discovering such intent, we seek a reasonable interpretation that will best effectuate the purpose of the statute. *State v. Johnson*, 528 N.W.2d 638, 640 (Iowa 1995). Legislative intent can be discerned through omissions as well as inclusions. *Barnes v. Iowa Dep't of Transp.*, 385 N.W.2d 260, 263 (Iowa 1986).

In assessing the legislature's intent as to who has the authority to determine whether the public defender may appear by telephone in a fee claim review hearing, we look to the context of the Iowa Code chapter in which section 13B.4(4)(d)(3) is found. See *State v. Peterson*, 347 N.W.2d 398, 402 (Iowa 1984) (considering statutes relating to the same subject matter in searching for legislative intent). Iowa Code chapter 13B is replete with references to things the state public defender "may" do. See Iowa Code §§ 13B.4(3) (state public defender may contract with attorneys and nonprofit organizations), 13B.4(4)(c) (state public defender may review attorney fee claims and take certain action to either approve, reduce, or deny the claims), 13B.5 (state public defender may appoint assistant public defenders), 13B.6(1) (state public defender may bill a county for services rendered to the county), 13B.7 (state public defender may supervise the provision of legal services to inmates), 13B.8(1) (state public defender may establish or abolish local public defender offices), 13B.8(2) (state public defender may appoint and remove local public defenders). Examining the list of things the public defender may do, it is clear that the legislature intended the public defender, and no one else, to perform these tasks.

Furthermore, section 13B.4 is entitled, "Duties and powers of state public defender." As the wording of the title suggests, we believe the legislature intended the duties and powers listed within that section to belong to the state public defender. Moreover, because the second sentence in section 13B.4(4)(d)(3) provides that if the state public defender appears by telephone, the state public defender will pay for the call, it does not seem reasonable to

allow anyone other than the public defender to decide if the public defender will appear by telephone and acquire the cost of the call.

Given the wide range of duties and powers the legislature provides the state public defender in chapter 13B, and specifically in section 13B.4, we believe the legislature intended to leave it to the public defender's discretion whether to appear in person, or by telephone, during a review claim hearing. To give this power to the court could result in public defenders being required to travel all over the state for fee review hearings at the insistence of local judges. We do not believe this is a result the legislature intended.

In his brief, the appellee points out that section 13B.4(4)(d)(3) uses the word "may" as opposed to "shall." While other provisions in section 13B.4 use the word "shall" to describe the public defenders' duties and powers, *see, e.g.*, Iowa Code §§ 13B.4(1) (state public defender shall coordinate the provision of legal representation of indigents in certain circumstances), 13B.4(4)(a) (state public defender shall establish fee limitations for particular categories of cases), 13B.4(4)(b) (state public defender shall establish a procedure for the submission of all claims for payment of indigent defense costs), we do not believe the use of the word "may" in section 13B.4(4)(d)(3) indicates that the legislature intended someone other than the public defender to decide whether the public defender will appear in person or by telephone for a review claim hearing. If the legislature had used the word "shall" as opposed to "may" then the public defender would arguably be required to appear by telephone and prohibited from appearing in person. We do not believe this was the purpose of the statute.

The appellee requests appellate attorney fees in his brief on appeal. Because the appellee has cited no authority in support of his request for attorney fees, this issue is deemed waived. See Iowa R. App. P. 6.14(1)(c). Moreover, because there is no statute or contract that authorizes attorney fees in this case, we would deny the appellee's request. See *Hockenburg Equip. Co. v. Hockenburg's Equip. & Supply Co. of Des Moines*, 510 N.W.2d 153, 158 (Iowa 1993) (holding a party generally has no claim for attorney fees in the absence of a statute or contract).

IV. Conclusion.

Having considered the context of Iowa Code section 13B.4(4)(d)(3), and the other duties and powers provided to the state public defender within chapter 13B, we conclude that section 13B.4(4)(d)(3) provides discretion for the state public defender, and not the court, to determine whether the public defender will appear personally or by telephone in fee claim review hearings. Accordingly, we find the district court erred in requiring the public defender to appear personally for the review hearing and we sustain the writ. We deny the appellee's request for appellate attorney fees.

WRIT SUSTAINED.