

IN THE COURT OF APPEALS OF IOWA

No. 8-871 / 07-1944
Filed December 17, 2008

STATE PUBLIC DEFENDER,
Plaintiff-Appellant,

vs.

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

Certiorari to the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge.

The State Public Defender claims the district court exceeded its authority by requiring his office to pay a claim for attorney fees incurred by counsel appointed pursuant to Iowa Code section 915.37. **WRIT SUSTAINED.**

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

Mark Neary of Neary Law Office, Muscatine, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield, J. and Robinson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

POTTERFIELD, J.**I. Background Facts and Proceedings**

On June 18, 2007, Mark Neary was appointed pursuant to Iowa Code section 915.37 (2007) to represent child witnesses to an assault allegedly committed by their father. Neary submitted a billing statement to the State Public Defender requesting payment of his guardian ad litem services. The State Public Defender denied Neary's claim, notifying him that the indigent defense fund was not responsible for payment of his claim.

On August 14, 2007, Neary filed a motion for review of the denial of his fee claim. A hearing was held, and the district court ordered the State Public Defender to pay Neary's claim for attorney fees. The court later filed a nunc pro tunc order ordering the State Public Defender to reimburse Neary for expenses in addition to attorney fees. The State Public Defender filed a petition for certiorari, which was granted on March 27, 2008. The petition states that Iowa Code section 815.11 specifically excludes payment from the indigent defense fund of costs incurred under Iowa Code chapter 915. The State Public Defender therefore asserts that the district court lacked the authority to mandate payment of Neary's claim

II. Standard of Review

We review the district court's ruling for correction of errors at law. *State Pub. Defender v. Iowa Dist. Ct. for Clarke County*, 745 N.W.2d 738, 739 (Iowa 2008). Relief through certiorari is appropriate if the district court has exceeded its jurisdiction or acted illegally. *Id.* A district court acts illegally when its findings lack substantial evidentiary support or when it does not properly apply the law.

Id. The district court's factual findings are binding if well supported, but its legal conclusions are not. *Id.*

III. Fee Claim

Iowa Code section 815.11 establishes instances in which fees earned by a court-appointed attorney may be paid by the indigent defense fund. A 2003 amendment to section 815.11 added language stating "costs incurred in any administrative proceeding or in *any other proceeding* under chapter . . . 915 or other provisions of the Code or administrative rules are not payable from the fund." Iowa Code § 815.11 (emphasis added).

Neary argues that his work was not performed pursuant to chapter 915 of the Iowa Code, but was related to the underlying child endangerment charges. The order appointing Neary as guardian ad litem states "pursuant to Iowa Code section 915.37, attorney Mark Neary is appointed to represent the child witnesses in the above captioned matter." It is section 915.37 that entitles a prosecuting witness under the age of fourteen to be represented by a guardian ad litem in a case involving child endangerment. Neary's work was performed pursuant to section 915.37, as stated in the order appointing Neary. Unfortunately, that section does not provide for payment for the important work expected to be performed by the attorney.

Neary cites case law in which the Iowa Supreme Court required the State Public Defender to pay counsel representing child witnesses. See *State Pub. Defender v. Iowa Dist. Court for Wapello County*, 644 N.W.2d 354 (Iowa 2002); *State Pub. Defender v. Iowa Dist. Court for Linn County*, No. 01-844 (Iowa June 24, 2002). However, both of these cases were decided before the 2003

amendment to section 815.11 that explicitly excludes payments earned under Chapter 915. Section 815.11 clearly and unambiguously excludes payment of costs incurred under Chapter 915. When the language of a statute is clear, we are not to look beyond its express meaning. *State v. Finders*, 743 N.W.2d 546, 548 (Iowa 2008). We find that the district court failed to properly apply section 815.11 and therefore sustain the writ.

WRIT SUSTAINED.