IN THE COURT OF APPEALS OF IOWA

No. 9-1017 / 09-0794
Filed February 24, 2010

THOMAS LONERGAN,
        Appellee,

vs.

STATE PUBLIC DEFENDER,
        Appellant.
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        Appeal from the Iowa District Court for Clinton County, Phillip J. Tabor,

District Associate Judge.

        The State Public Defender seeks review of a district court ruling finding

good cause for a late-filed application to exceed fee limitations. **AFFIRMED AS**

MODIFIED.

        Tomas Rodriguez, State Public Defender, and Julie Miller, Assistant State

Public Defender, for appellant.

        Thomas Lonergan of Mayer, Mayer, Lonergan & Rolfes, Clinton, for

appellee pro se.

        Considered by Eisenhauer, P.J., Potterfield, J., and Huitink, S.J.*

        *Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

POTTERFIELD, J.

The State Public Defender appeals from a district court ruling finding good cause for a late-filed application to exceed fee limitations. We affirm as modified.

I. Background Proceedings.

Thomas Lonergan was appointed attorney and guardian ad litem (GAL) in child-in-need-of-assistance (CINA) proceedings for seven children whose father killed their mother. "[D]ue to his familiarity with the matter," he was appointed as attorney and GAL in the subsequent termination-of-parental-rights proceedings. Lonergan had received court authorization to exceed public defender fee limitations in the CINA proceedings.

On March 17, 2009, Lonergan filed with the State Public Defender (SPD) a claim for compensation and expense reimbursement. On March 25, 2009, the SPD sent Lonergan notice that his claim had been reduced to the "fee limitations for this type of case ($300 for a review or other post-dispositional court hearing)" because "[t]here was no order authorizing you to exceed the fee limitations attached to the claim."

On March 31, 2009, Lonergan filed with the juvenile court an application to exceed appointment fee guidelines asserting good cause existed excusing his failure to timely file the application. Lonergan asked that the court authorize him to "file a timely Application to Exceed Fee Limitations and that the Court approve further the Attorney's right to exceed fee limitations for future services."

A hearing was held on April 22, 2009. The court granted the motion to exceed guidelines in a ruling that same date in which the court found good cause for the delay in filing the application and good cause for exceeding the fee

limitations. The court noted the approval of Lonergan's prior application to exceed fees and the unusual circumstances involved in the termination case. The court found:

> [T]here was good cause in this matter for not obtaining an order, as these were exigent circumstances that required the immediate attention of the Guardian Ad Litem at the time the children were brought back to Iowa, and that he should be paid for the services he rendered.

The SPD appeals, arguing the district court abused its discretion in finding good cause for the late filing of Lonergan's application to exceed the fee limitations.

II. Scope and Standard of Review.

Our review is for the correction of errors at law.[1] Iowa R. App. P. 6.907 (2009). The court's factual findings are binding on appeal if supported by substantial evidence. Iowa R. App. P. 6.904(3)(*a*). We reverse only if this discretion is abused. *See Cent. Nat'l Ins. Co. of Omaha v. Ins. Co. of N. Am.*, 513 N.W.2d 750, 753 (Iowa 1994) (reviewing "good cause" finding in context of ruling on motion to set aside default judgment). Generally, we find

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[1] We note some variance in the appropriate method of review. Traditionally, the appellate courts have addressed these cases on writ of certiorari. *See, e.g., State Pub. Defender v. Iowa Dist. Ct. for Clarke Co.*, 745 N.W.2d 738, 739 (Iowa 2008). Iowa Code section 13B.4(4)(d)(7) (2009), however, states that the decision of the district court following a hearing on a motion to review a denial or reduction of any claim is "a final judgment appealable by the state public defender or the claimant."

A "claimant" is defined as "an attorney or other person seeking reimbursement of costs or fees payable from the appropriations under section 815.11." Iowa Code § 13B.1(2). Here, the public defender is challenging the district court's review of fee decision, which fees are payable under section 815.11 (providing for payment of "[c]osts incurred for legal representation by a court-appointed attorney under . . . section 600A.6B [which includes fees for a court-appointed GAL in termination proceedings.]"). Thus, it appears appeal is an appropriate avenue for our review.

such an abuse only when there is a lack of substantial evidence to support the lower court's ruling. *Id.*

III. Discussion.

The SPD is authorized to review all fee claims submitted for counsel appointed under Iowa Code section 600A.6A and to adopt rules concerning the review and payment of claims submitted. *See* Iowa Code § 600A.6B(3); *State Public Defender v. Iowa Dist. Ct. for Woodbury County*, 731 N.W.2d 680, 683 (Iowa 2007). The SPD establishes the fee limitations for particular categories of cases. Iowa Code § 13B.4(4)(a); *State v. Dudley*, 766 N.W.2d 606, 621 (Iowa 2009). These fee limitations may be exceeded in certain circumstances. *See* Iowa Code § 815.10A(2). The procedure for recovering fees in excess of the fee limitations is found in section 815.10A(3), which provides:

> An attorney shall obtain court approval prior to exceeding the fee limitations established by the state public defender pursuant to section 13B.4. An attorney may exceed the fee limitations if good cause for exceeding the fee limitations is shown. An attorney may obtain court approval after exceeding the fee limitations if good cause excusing the attorney's failure to seek approval prior to exceeding the fee limitations is shown. However, failure to file an application to exceed a fee limitation prior to exceeding the fee limitation does not constitute good cause.

Thus, a court must enter an order specifically authorizing the late filing of an application to exceed the fee guidelines, and find good cause to excuse the attorney's failure to file the application prior to exceeding the fee guidelines. *Iowa Dist. Ct. for Woodbury County*, 731 N.W.2d at 683-84.

Iowa Administrative Code rule 493-12.6(5) defines "good cause":[2]

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[2] The definition of good cause found in rule 493-12.6(5) is identical to the definition of "good cause" used in the context of a motion to set aside a default judgment. *See*

"Good cause" as used in this subrule means a sound, effective and truthful reason. "Good cause" is more than an excuse, plea, apology, extenuation, or some justification. Inadvertence or oversight does not constitute good cause.

The SPD contends the court abused its discretion in finding there was good cause for the late filing of the application to exceed those limitations. The SPD notes that Lonergan's stated excuse, that he "believe[d] that such an application had previously been filed" constitutes no more than inadvertence or oversight. We agree. Neither inadvertence nor oversight constitutes good cause. Iowa Admin. Code r. 493-12.6(5).

However, the court outlined the plight of the children following the termination ruling and found "these were exigent circumstances that required the immediate attention of the Guardian Ad Litem at the time the children were brought back to Iowa." The SPD contends the facts do not support such a finding.

"Exigent" is defined as "requiring immediate aid or action." *Webster's New Collegiate Dictionary* 397 (1981); *accord State v. Williams*, 367 N.W.2d 314, 316 (Iowa Ct. App. 1985) (noting question of existence of exigent circumstances involves the "ultimate issue" of the existence of "an emergency or urgent need"). The court thus found Lonergan's work to protect these children was so urgent or so compelling that it was reasonable to proceed without prior court order.

Cent. Nat'l Ins. Co. of Omaha, 513 N.W.2d at 754. We may look to such case law for guidance here. *Halverson v. Iowa Dist. Ct.*, 532 N.W.2d 794, 799 (Iowa 1995).

The record presented by the State on appeal offers no information regarding the actions taken by Lonergan except for his itemized bill. We accept, however, the description by the district court that:

> In the termination case the children were all placed in family placement in Illinois, and then the family placement proved to be unsuccessful, and three of the children were brought back to [Iowa]. The Guardian Ad Litem assisted one child in obtaining a guardianship for a family in Illinois. Another child had educational issues with the [high school] that required the Guardian Ad Litem to actually attend school meetings to establish an IEP for the child when the school refused to allow the foster parents to appear for the child.

There is nothing in the record before us showing when "the children were brought back to Iowa." However, the district court was in the best position to know the urgency of the situation and the actions of counsel. Without a record to the contrary, we affirm the court's finding of good cause for late filing of the application to exceed fee guidelines.

Finally, the juvenile court found that because of the circumstances of the case, counsel "should be paid for the services that he rendered." We are cognizant of and sympathetic to court-appointed counsel whose work for the children in juvenile court spans a wide range of protective services. It appears from the court's order that Lonergan zealously represented the children, who were in the tenuous situation of having lost their biological parents and then their adoptive parents.

IV. Conclusion.

We conclude that good cause existed for the late filing of the application to exceed the fee limitations and for exceeding the fee limitations. The SPD also

argues that the district court should not have ordered the SPD to pay the fee claim. Rather, the court only has authority to approve the claim. We agree.

We affirm the order of the district court finding good cause for the late filing of the fee application and good cause for exceeding the fee limitations and remand for entry of a judgment consistent with this opinion.

AFFIRMED AS MODIFIED.