

IN THE COURT OF APPEALS OF IOWA

No. 9-264 / 08-0358
Filed May 29, 2009

STATE PUBLIC DEFENDER,
Plaintiff,

vs.

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

Appeal from the Iowa District Court for Woodbury County, Mary Jane Sokolovske, Judge.

The State Public Defender filed this petition for certiorari, contending that the district court acted illegally in ordering it to pay fees to an attorney incurred in assisting a victim in preparing a victim impact statement. **WRIT SUSTAINED.**

Mark C. Smith, State Appellate Defender, and Julie Miller, Assistant State Public Defender, for appellant.

Maxine Buckmeier, Sioux City, for appellee, Iowa District Court for Woodbury County.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

VAITHESWARAN, P.J.

Attorney Maxine Buckmeier was appointed to represent an indigent mother in a child-in-need-of-assistance action. The action was based on the children's exposure to the father's domestic abuse of their mother. The father ultimately pled guilty to assaulting the mother. At the request of the district court, Buckmeier assisted the mother in preparing a victim impact statement¹ for consideration at the father's criminal sentencing hearing.

Buckmeier submitted a bill to the State Public Defender, who is charged with administering the indigent defense fund. *See State Pub. Defender v. Iowa Dist. Ct. for Linn County*, 728 N.W.2d 817, 819 (Iowa 2007). The defender paid her for her representation in juvenile court but declined to pay her for 6.7 hours spent on the criminal matter.

Buckmeier sought district court review. *See id.* (describing procedures for consideration and review of attorney fee claims). The court recapped the facts leading to Buckmeier's involvement in the criminal proceeding as follows:

After Ms. Buckmeier was notified [of the need to assist the mother in the preparation of the victim impact statement], it became apparent that the matter of submitting a victim impact statement . . . was directly linked to the ultimate outcome of the child in need of assistance case. In order to effectively represent her client's interest in juvenile court, it was necessary that Ms. Buckmeier act in her capacity as [the mother's] juvenile court attorney in resolving the issue of the victim impact statement.

. . .

[T]he legal work done for [the mother] regarding the preparation of the victim impact statement by Ms. Buckmeier was integral to the juvenile court action . . . Ms. Buckmeier was

¹ "Victim impact statement" is defined as "a written or oral presentation to the court by the victim or the victim's representative that indicates the physical, emotional, financial, or other effects of the offense upon the victim." Iowa Code § 915.10(4) (2007).

endeavoring to protect her client's interest in reunifying her with her children.

The court ordered the State Public Defender to reimburse Buckmeier for the time she spent on the criminal matter.

The State Public Defender filed a petition for writ of certiorari, contending Buckmeier's fees for assisting the mother in the criminal matter were not authorized by statute. Our review is for correction of errors at law. *State Pub. Defender v. Iowa Dist. Ct. for Plymouth County*, 747 N.W.2d 218, 220 (Iowa 2008). We may only examine the jurisdiction of the district court and the legality of its actions. *Christensen v. Iowa Dist. Ct.*, 578 N.W.2d 675, 678 (Iowa 1998).

The statutory provision authorizing the creation of a fund for the payment of indigent attorney fees states in pertinent part:

Costs incurred under . . . section 232.141, subsection 3, paragraph "d" . . . on behalf of an indigent shall be paid from moneys appropriated by the general assembly to the office of the state public defender in the department of inspections and appeals and deposited in an account to be known as the indigent defense fund However, costs incurred in any administrative proceeding or in any other proceeding under chapter . . . 915 or other provisions of the Code of administrative rules are not payable from the fund.

Iowa Code § 815.11 (2007). By its terms, that provision precludes the payment of legal representation costs incurred under Iowa Code chapter 915, the chapter governing "victim rights" and "victim impact statements." *Id.*; see also *id.* § 915.21 (addressing victim impact statements). Therefore, the district court did not have authority to require the payment of Buckmeier's fees generated in her preparation of the victim impact statement. See *State Pub. Defender*, 728 N.W.2d at 821 ("If the representation does not fall into one of these enumerated sections or chapters, the 'costs incurred . . . are not payable' from the fund.").

We reach this conclusion notwithstanding the district court's undisputed fact-finding that Buckmeier's assistance in the criminal matter was simply an attempt to protect her client's interests in the juvenile matter. It is true that Iowa Code section 815.11 authorizes the payment of attorney fees from the indigent defense fund in juvenile matters. See Iowa Code § 815.11 (referring to section 232.141(3)(d), which states costs incurred by attorney appointed to represent party in juvenile court "shall be paid by the state from the appropriations to the indigent defense fund"). However, payment is limited to "[r]easonable compensation for an attorney appointed by the court to serve as counsel to any party . . . in juvenile court." *Id.* § 232.141(2)(b) (emphasis added). As noted, the victim impact statement was not prepared in or for the juvenile court. Indeed, the district court found that the mother was reluctant to provide such a statement because she believed it would jeopardize her reunification efforts in juvenile court. Moreover, there is nothing in this record indicating that the Department of Human Services, the agency charged with facilitating the mother's reunification with her children, expected the mother to provide a victim impact statement in the father's criminal proceeding as a precursor to reunification. See *State Pub. Defender v. Iowa Dist. Ct. for Polk County*, 620 N.W.2d 268, 270–71 (Iowa 2000) (upholding a district court order requiring the State Public Defender to pay appointed attorney's juvenile court fees for helping a client obtain housing where department documents showed that the mother "faced the real possibility that the State would move to terminate her parental rights if suitable housing could not be secured"). For these reasons, we are not persuaded that Buckmeier's

representation of the mother in the criminal matter was a necessary part of her representation of the mother in juvenile court.

We recognize the result is harsh; Buckmeier was not paid for legal work that she was told to perform. Nonetheless, we are convinced that the unambiguous language of Iowa Code section 815.11 mandates this result. For this reason, we sustain the writ of certiorari.

WRIT SUSTAINED.

Doyle, J. concurs specially. Potterfield, J. dissents.

DOYLE, J. (concurring specially)

I reluctantly concur. But for the last sentence of Iowa Code section 815.11 that specifically states proceedings under chapter 915 (Victim Rights) are not payable from the fund, I would annul the writ. As the dissent aptly points out, the legal work performed by attorney Buckmeier on the victim impact statement was “integral to the juvenile court action” for work she was appointed and “directly linked to the ultimate outcome of the child in need of assistance case.” There was no evidence to the contrary. Additionally, the judge presiding over the criminal case contacted Buckmeier and required her to assist her client in the preparation of a victim impact statement. As a practical matter, Buckmeier was not in a position to refuse the judge’s request. It seems patently unfair that Buckmeier is now refused payment for the legal services she provided at court request. I agree with the majority opinion that the result is harsh, but that the unambiguous language of section 815.11 mandates the result.

POTTERFIELD, J. (dissenting)

I respectfully dissent. The majority finds nothing in the record “indicating that the Department of Human Services . . . expected the mother to provide a victim impact statement in the father’s criminal proceeding as a precursor to reunification.” Yet, the district court ordered attorney Buckmeier, in her capacity as court-appointed counsel in juvenile court, to assist her client in preparation of the victim impact statement. After an evidentiary hearing, another district court judge specifically ruled that the legal work performed by Buckmeier on the victim impact statement was “integral to the juvenile court action” for which she was appointed and “directly linked to the ultimate outcome of the child in need of assistance case.” The public defender tendered no evidence to the contrary. Representation of an indigent parent in juvenile court is a challenging, multifaceted undertaking, which requires counsel to assist the parent in making life-changing decisions for the benefit of the children. *See State Pub. Defender v. Iowa Dist. Ct.*, 620 N.W.2d 268, 271 (Iowa 2000). I cannot say that the district court erred, as a matter of law, when it found that the attorney’s work was compensable by the State Public Defender as part of her representation of her client in the juvenile court matter. I would annul the writ.