

**IN THE COURT OF APPEALS OF IOWA**

No. 9-651 / 09-0156  
Filed October 7, 2009

**IN THE INTEREST OF G.P., JR.,  
Minor Child,**

**STATE PUBLIC DEFENDER,**  
Appellant.

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Appeal from the Iowa District Court for Johnson County, Stephen C. Gerard II, District Associate Judge.

The State Public Defender challenges a district court order approving a fee claim filed by the attorney for an indigent client. **WRIT SUSTAINED.**

Tomás Rodríguez, State Public Defender, and Julie Miller, Assistant State Public Defender, for appellant.

Mary Kate Pilcher Hayek of Kennedy, Cruise, Frey & Gelner, L.L.P., Iowa City, for appellee father.

Considered by Vaitheswaran, P.J., and Mansfield, J. and Zimmer, S.J.\*

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

**VAITHESWARAN, P.J.**

This petition for writ of certiorari raises a challenge to the district court's approval of a fee claim filed by the attorney for an indigent client.

Attorney Mary Kate Pilcher Hayek was appointed to represent an indigent father in a child-in-need-of-assistance (CINA) proceeding involving his teenage son. During that proceeding, the juvenile court learned that the child was transferred from his mother to his father seven years earlier, but the father was continuing to pay a \$500 per month out-of-state child support obligation imposed when the child was in the mother's custody. In light of this information, the court directed Hayek to "seek termination of the [father's] out-of-state child support obligation [for the son]." As a result of Hayek's efforts in the CINA proceeding and on the child support matter, the CINA action was dismissed, the father's support obligation was terminated, and the father recouped close to \$5000 in child support payments.

Hayek submitted a claim for services 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 claim included the time she spent on the child support matter. This claim was paid in full. When Hayek submitted a second claim that again included time spent on the child support matter, the defender declined to pay her for the 9.2 hours she spent on that matter. Her payment was reduced from \$748 to \$242.<sup>1</sup>

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<sup>1</sup>The district court did not address and, therefore, we need not decide whether the public defender was justified in compensating Hayek for the child support matter the first time but in denying her request for the same type of compensation the second time. We note, however, that the Iowa Supreme Court addressed and rejected a similar argument in *State Public Defender v. Iowa District Court for Woodbury County*, 731 N.W.2d 680,

Hayek sought district court review of the reduction. Following a hearing, the court found as follows:

The child's father in this case was being garnished for child support payable for the support of the child concerned in this case, who was, and had at all times material hereto, been in his father's care and custody. The Iowa Child Support Recovery Unit participated in the enforcement of the original child support order which had been entered in the State of Texas.

The financial strain placed upon the family by the child support garnishment adversely affected the family's ability to achieve reunification and the Case Plan goals. Seeking a termination of the child support garnishment was critical to the success of this case.

Based on these findings, the court ordered the defender to reimburse Hayek for the time she spent on the child support matter and to pay Hayek an additional \$500 "for the time unnecessarily spent in resolving this matter."

The defender filed a notice of appeal. The proper method of review is by a petition for writ of certiorari. See *State Pub. Defender v. Iowa Dist. Ct. for Warren Co.*, 594 N.W.2d 34, 36 (Iowa 1999). We will treat the notice of appeal as such a petition. Iowa R. App. P. 6.108 (2009); *Bush v. Iowa Dist. Ct.*, 369 N.W.2d 424, 425 (Iowa 1985).

The defender contends that he lacked statutory authority to pay the fees Hayek incurred in assisting the father on the child support matter and in seeking district court review of the claim reduction. Our review is for errors at law. *State*

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684 (Iowa 2007) in which it determined the district court's reliance on a quantum meruit theory was in error, stating the theory could not be used to supersede the affirmative requirements of the statute.

*Pub. Defender v. Iowa Dist. Ct. for Plymouth Co.*, 747 N.W.2d 218, 220 (Iowa 2008).

As our summary of facts reveals, the district court made a compelling case for payment of all of Hayek's fees, but the pertinent statute dictates a contrary result. Iowa Code section 815.11 (2007) authorizes the payment of attorney fees from the indigent defense fund for "[c]osts incurred under . . . section 232.141[(3)(d)]." Section 232.141(3)(d), in turn, limits the payment to "[r]easonable compensation for an attorney appointed by the court to serve as counsel to any party . . . *in juvenile court.*" Iowa Code § 232.141(2)(b) (emphasis added). The work Hayek performed on the child support matter was not in juvenile court.

Furthermore, the last sentence of section 815.11 specifically provides that costs incurred "in any administrative proceeding or in any proceeding under . . . other provisions of the Code . . . are not payable from the fund." In this case, Hayek sought reimbursement for her participation in a Texas proceeding relating to paternity and child support. While that was technically not a proceeding under the Iowa Code, it would be highly illogical to read the last sentence of section 815.11 as only prohibiting reimbursements for certain work performed in Iowa, but not in other states. We read the statutory language in section 815.11 as a general directive against allowing reimbursements for representation in legal proceedings unless the legal proceeding is on the designated list.

The fact that Hayek seeks reimbursement for participation in a separate legal proceeding also distinguishes this case from *State Public Defender v. Iowa District Court for Polk County*, 620 N.W.2d 268 (Iowa 2000). There the supreme

court upheld compensation for a court-appointed attorney's efforts in assisting his client to obtain suitable housing. Those services did not involve participation in a separate case.

We recognize that the juvenile court directed Hayek to perform the work. However, a court's "inherent power to appoint counsel to assist the court in conducting a proceeding" does not carry with it "the power to order the state to compensate counsel thus appointed." *Maghee v. State*, 639 N.W.2d 28, 31 (Iowa 2002); *accord State Pub. Defender*, 728 N.W.2d at 820 (concluding the State Public Defender is not required to pay an attorney appointed to represent a grandparent in a juvenile court proceeding "simply because the juvenile court appointed her"). Section 815.11 is the "benchmark for the payment of compensation to attorneys appointed by the court." *Maghee*, 639 N.W.2d at 31. Because the unambiguous language of that section does not allow payment from the indigent defense fund for resolution of child support matters, we conclude the district court exceeded its authority in ordering the State Public Defender to pay Hayek for such work. See Iowa Code § 815.11 ("[C]osts incurred in any administrative proceeding or in any other proceeding under . . . other provisions of the Code or administrative rules are not payable from the fund.").

In light of our reversal on this issue, we also reverse the district court's order requiring the State Public Defender to pay Hayek for the fees she incurred in seeking review of the reduction of her claim.<sup>2</sup>

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<sup>2</sup> We also note that this order is not consistent with a rule promulgated by the defender. See Iowa Admin. Code r. 493-12.2(8) (providing claims for "preparation of a motion to review or order and any subsequent hearing for review of an attorney fee claim are not payable under the attorney's appointment and will be denied"). Additionally, Hayek did

As we have said in the past, we are fully aware that the outcome is harsh; an attorney who zealously advocated for her client and reached an outcome for him that could not have been more favorable is precluded from recouping the minimal attorney fees she requested. However, we believe we would be ignoring the language of Iowa Code section 815.11 to hold otherwise.

**WRIT SUSTAINED.**

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not raise the issue of attorney fees for review of the denial and the rules provide that in reviewing the defender's reduction of an attorney's claim, the district court "shall consider only the issues raised in the attorney's motion." Iowa Admin. Code r. 493-12.9(2).