

IN THE COURT OF APPEALS OF IOWA

No. 9-821 / 09-0632
Filed December 17, 2009

IN THE MATTER OF DISPUTED ATTORNEY FEES,

F. DAVID EASTMAN,
Appellee,

vs.

STATE PUBLIC DEFENDER,
Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Peter B. Newell, Judge.

The State Public Defender appeals a district court order approving a court-appointed attorney's motion to exceed the fee guidelines. **REVERSED AND REMANDED.**

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

F. David Eastman, Clear Lake, appellee pro se.

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

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

MAHAN, S.J.**I. Background Facts & Proceedings**

Attorney F. David Eastman was appointed by the juvenile court on December 20, 2007, to represent a father during termination proceedings. Eastman had a conflict with another proceeding at the time of the termination hearing. He arranged to have attorney Douglas Grabinski appear for him.¹ Following the decision in the termination of parental rights proceedings, the father filed a notice of appeal on December 9, 2008.

The two attorneys also agreed that Grabinski would represent the father on appeal of the termination order. A fee application of \$1125.74 for the appeal was submitted to the State Public Defender's Office (SPDO) on December 31, 2008. See Iowa Code § 13B.4(4)(b) (2007). The SPDO limited the payment to the fee cap of \$600 for a juvenile petition on appeal, set by Iowa Administrative Code rule 493-12.6(2), because there was no order authorizing the attorneys to exceed the fee limits on appeal.² The SPDO entered a Notice of Action on January 15, 2009, modifying the payment on the claim to \$687.74.

On January 22, 2009, Eastman filed an application to exceed the fee guidelines, stating the fee guidelines for the appeal had been exceeded on September 17, 2008. He stated Grabinski had been handling the appeal due to Eastman's schedule and "[a]s a result, no application was filed to exceed the fee guidelines."

¹ In an order dated September 12, 2008, the juvenile court approved Eastman's request to exceed the fee guidelines in the original termination proceedings.

² Iowa Code section 13B.4(4)(a) gives the SPDO the authority to "establish fee limitations for particular categories of cases" for court-appointed attorneys.

The juvenile court entered an order on January 23, 2009, finding “just cause to retroactively grant natural father’s Motion and excuse his failure for not timely filing the application.” The court determined the fee cap of \$600 for termination appeals could be exceeded up to \$1200, effective September 17, 2008. Eastman was then informed by the SPDO that the court’s order was void because there had not been a hearing. See Iowa Code § 13B.4(4)(d)(8) (“If the state public defender is not first notified and given an opportunity to be heard, any court order entered after the state public defender has taken action on a claim, which affects that claim, is void.”).

On February 2, 2009, Eastman filed a second application to exceed the fee guidelines. At the hearing, Eastman testified there may have been a communication problem because it was an unusual situation where he had been appointed, but Grabinski handled the case. Grabinski testified he had a short time-frame to file the appeal, and did not know he had exceeded the fee guidelines until they had already been exceeded. The SPDO argued that while there may have been good cause to exceed the fee guidelines, the attorneys did not show good cause for filing a late motion to exceed the fee guidelines.

The court granted an order on April 2, 2009, to exceed the fee guidelines. The court noted the SPDO was not contesting whether there was good cause to exceed the fee guidelines, but was “simply argu[ing] that the attorneys did not make their request for an order to exceed the fee guidelines in a timely manner.” The court found there was good cause to grant the attorneys compensation in

excess of the fee guidelines, and approved the late-filed application to exceed the guidelines. The SPDO appeals the decision of the court.

II. Standard of Review

This action was tried at law, and our review is for the correction of errors at law. Iowa R. App. P. 6.907 (2009); see also Iowa Code § 13B.4(4)(d)(7) (providing for the appeal of a court's review of the action of the State Public Defender's Office denying or reducing a claim). The court's factual findings are binding on appeal if supported by substantial evidence. Iowa R. App. P. 6.904(3)(a).

III. Merits

The compensation for court-appointed attorneys under a contract with the SPDO is governed by the rules adopted by the SPDO. *State Public Defender v. Iowa Dist. Ct. for Clarke County*, 745 N.W.2d 738, 740-41 (Iowa 2008). The SPDO 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. *State Public Defender v. Iowa Dist. Ct. for Plymouth County*, 747 N.W.2d 218, 222 n.3 (Iowa 2008).

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, in addition to showing good cause for exceeding the fee limits, an attorney must also prove good cause for failure to file a timely application to exceed the fee guidelines. *State Public Defender v. Iowa Dist. Ct. for Woodbury County*, 731 N.W.2d 680, 683-84 (Iowa 2007).

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 Admin. Code r. 493-12.6(5). The administrative rules define "good cause" in this situation:

"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.

Id.

Both Eastman and the SPDO agree there was good cause to exceed the fee limitations. That is not the issue here. Instead, the issue is whether there is good cause for the late filing of the application to exceed those limitations. The SPDO points out that Eastman had abundant time to file his application in this case. The record shows that window of opportunity to be from September 9, 2008, to January 2, 2009. The SPDO argues this was sufficient time to comply with section 815.10(A)(3). We agree.

"Good cause" to excuse an attorney's failure to file the application prior to exceeding the fee guidelines has been defined in Iowa Administrative Code rule

493-12.6(5). Rule 493-12.6(5) makes it clear that good cause is more than an excuse, plea, apology, extenuation or some justification. Inadvertence or oversight do not constitute good cause. Iowa Admin. Code r. 493-12.6(5). We therefore conclude that good cause did not exist for the late filing of the application to exceed the fee limitations.

While we are cognizant of, and sympathetic to, Eastman's arguments as set forth in his brief, those arguments are no substitute for establishing good cause. Because of the resolution of this case, we do not address the SPDO's alternative argument.

We reverse the decision of the juvenile court, and remand for entry of a judgment consistent with this opinion.

REVERSED AND REMANDED.