IN THE COURT OF APPEALS OF IOWA

No. 8-306 / 07-0473
Filed August 13, 2008

DUBUQUE COUNTY,
Plaintiff,

vs.

IOWA DISTRICT COURT
FOR DUBUQUE COUNTY,
Defendant.

Appeal from the Iowa District Court for Dubuque County, John Bauercamper, Judge.

Dubuque County filed a petition for writ of certiorari claiming the district court erred by finding it in contempt under an order for the involuntary hospitalization of J.B. **WRIT SUSTAINED.**

Ralph R. Potter, County Attorney, for plaintiff.

Sarah E. Stork-Meyer of Clemens, Walters, Conlon & Meyer, L.L.P., Dubuque, for J.B.

Considered by Vogel, P.J., and Zimmer, J., and Beeghly, S.J.*

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

PER CURIAM

I. Background Facts & Proceedings

J.B. has a history of mental health problems and has been adjudicated to be seriously mentally impaired under Iowa Code chapter 229 (2005). She has been involuntarily committed to a mental health institute (MHI) in Iowa.[1] The MHI did not recommend continued placement at that facility, however, due to the level of care required for J.B. The MHI staff physician recommended that J.B. be placed at Brookhaven Hospital in Tulsa, Oklahoma, because it was believed she could receive more appropriate treatment there.

A judicial hospitalization referee entered an order on April 20, 2005, which provided J.B. should be placed at Brookhaven Hospital. The order provided, "[p]ursuant to Iowa Code section 229.42, the cost of hospitalization shall be paid by the county of legal settlement, and therefore, the Court Orders that Dubuque County fund the court-ordered placement pursuant to Iowa Code chapter 229."[2] In addition, the order stated, "MHI, DHS, and CPC shall arrange for transfer, transport and funding pursuant to their respective statutory and legal duties . . . ."[3]

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[1] She was most recently ordered to be placed at MHI-Independence on August 12, 2004. J.B. had previous placements at MHI, and other facilities within Iowa.

[2] The referee refers to section 229.42. This section, however, applies to voluntary admissions to a mental hospital. Section 230.1(1)(a) provides that the county in which a person has legal settlement is liable for the costs and expenses for the "support of a person with mental illness admitted or committed to a state hospital . . . ." *See Emmet County Bd. of Super's v. Ridout*, 692 N.W.2d 821, 828 (Iowa 2005).

[3] DHS refers to the Iowa Department of Human Services. CPC refers to Central Point Coordination, which is a process used for "the delivery of mental health, mental retardation, and developmental disabilities services which are paid for in whole or in part by county funds." Iowa Code § 331.440(1)(a).

On May 19, 2005, J.B. filed an application for rule to show cause against Dubuque County. The referee entered an order stating that the contempt matter should be heard before another judge, but also stating "there are considerable funding issues involved in the case that respective funding for the Respondent shall be made consistent with statutory and legal duties only and consistent with the required court-ordered involuntary hospitalization proceedings under Chapter 229."[4]

In March 2006, Brookhaven Hospital contacted Dubuque County and advised that it was necessary for the County to enter into a contract for individual medical services for J.B., and that a legal guardianship should be established for her. Dubuque County informed Brookhaven it was responsible for funding only, and that Brookhaven should contact the court or MHI concerning the contract or a legal guardianship. There was no further response by Brookhaven.

On September 20, 2006, J.B. filed another application for rule to show cause against Dubuque County stating she remained in Iowa and no arrangements had been made for transfer, transport, or funding for her placement at Brookhaven Hospital in Oklahoma. The district court entered an order on February 12, 2007, finding Dubuque County in contempt of court. The court found, "[t]he county and the various agencies cannot agree on which agency is required to do which things needed to negotiate with Brookhaven over its requirements to accomplish [J.B.'s] admission and comply with the Order."

[4] The County filed a separate application for rule to show cause, and matters in this case were continued during the proceedings in that case. Delays also arose because DHS denied a request to fund J.B.'s placement at Brookhaven for the reason it was not psychosocially necessary.

The court concluded, "Dubuque County's conduct in not fully participating in and cooperating with the efforts needed to comply with the placement order was willful, and constitutes contempt." The court then ordered that J.B.'s attorney should negotiate, on behalf of Dubuque County, with Brookhaven over the terms of admission for J.B. This contract would be submitted to the court for approval, and if approved the court would require the County to sign it.

Dubuque County filed a petition for writ of certiorari and a request for an immediate stay. The Iowa Supreme Court granted the petition for writ of certiorari and granted the stay. The case was transferred to the Iowa Court of Appeals for consideration.

II. Standard of Review

When a district court has made a finding of contempt, we review the evidence to determine that the court's factual findings are supported by substantial evidence. *Gimzo v. Iowa Dist. Court*, 561 N.W.2d 833, 834-35 (Iowa Ct. App. 1997). We review the court's legal conclusions for the correction of errors at law. *Id.* at 835. A person should not be punished for contempt unless the alleged contumacious actions have been established by proof beyond a reasonable doubt. *Phillips v. Iowa Dist. Court*, 380 N.W.2d 706, 709 (Iowa 1986).

III. Merits

Dubuque County claims the district court erred by finding it in contempt for failure to fulfill duties that were not clearly imposed on the County by the court's order of April 20, 2005. A party seeking a finding of contempt has the burden to

prove the alleged contemnor (1) had a duty to obey a court order, and (2) willfully failed to perform that duty. *Christensen v. Iowa Dist. Court*, 578 N.W.2d 675, 678 (Iowa 1998). "Before a person may be held in contempt for violating a court order, the order should inform him in definite terms as to the duties thereby imposed upon him, and the command must therefore be express rather than implied." *City of Dubuque v. Iowa Dist. Court*, 725 N.W.2d 449, 453 (Iowa 2006). A party cannot be found in contempt if a court order has not directed the party to perform or not perform an act. *Id.*

The court's order of April 20, 2005, directed that "MHI, DHS, and CPC shall *arrange* for transfer, transport and funding pursuant to their respective statutory and legal duties and reports shall be filed every 15 days regarding treatment." (Emphasis added.) The order also directed "Dubuque County [to] fund the court-ordered placement pursuant to Iowa Code chapter 229." The order limits Dubuque County's responsibility to its statutory responsibility to fund the placement.[5]

A judicial hospitalization referee has the ability, under chapter 229, to place a person adjudicated to be seriously mentally impaired in a suitable facility outside the state of Iowa. *Jasper County v. McCall*, 420 N.W.2d 801, 803 (Iowa 1988). Such a placement should be made only when adequate treatment is not available within Iowa. *Id.* The Iowa Supreme Court stated, "[w]e think it follows that the placement can be ordered at public expense under the same terms and conditions as would be appropriate for placements in Iowa." *Id.* Thus, the fact

[5] The procedures for a county's payment of the expenses of a person having legal settlement in that county and who has been committed to a mental health institute within Iowa are found in sections 230.20 and 230.21.

that a person has been placed in a facility outside the state of Iowa should not place a greater duty on a county than that required for a person placed within Iowa.

The order in this case directed only that "Dubuque County fund the court-ordered placement pursuant to Iowa Code chapter 299." In a case involving the City of Dubuque, the supreme court stated:

> In the case at hand, Dubuque's actions did not violate any terms of the district court's original order unless we read them in by implication. "We cannot, however, supply by interpretation constraints which are not expressed in [the order], especially when the result is to apply powers of the court as formidable as contempt."

City of Dubuque, 725 N.W.2d at 453 (citation omitted). Dubuque County was not found to be in contempt for failure to provide funding.

The district court's order found the County in contempt for "not fully participating in and cooperating with the efforts needed to comply with the placement order . . . ." The court's order of April 20, 2005, however, did not make the County responsible for making arrangements for J.B.'s placement, such as signing a contract with Brookhaven. Under the court's order, MHI, DHS, and CPC are to make the arrangements for funding, as well as the arrangements for transfer and transport. The County's responsibility is to fund J.B.'s placement, as required by statute, once those arrangements are made.

We conclude the County was not in contempt of the court's order of April 20, 2005. We sustain the writ of certiorari.

WRIT SUSTAINED.

BEEGHLY, S.J., (specially concurring)

The April 20, 2005 order required "that Dubuque County fund the court-ordered placement" at Brookhaven. The order was entered pursuant to Iowa Code section 229.42, which provides that "[t]he mental health institute and the county shall work together to locate appropriate alternative placements . . . ." Section 229.42 also provides, "All the provisions of chapter 230 shall apply to such voluntary patients so far as is applicable." Even though section 229.42 refers only to voluntary patients, it applies as well to committed patients under placement order. See Iowa Code § 229.14A(9).

The Dubuque County Board of Supervisors received a letter from Brookhaven along with a proposed contract for services. The proposed contract required that a guardianship be established before admission into the hospital. Under the proposed contract basic services were to be provided at the base rate of $769.81 per day. The base rate would provide room and board on the Neurorestorative Unit at Brookhaven Hospital, therapy services, recreational and psycho-social rehabilitation, laboratory management of medication for admitting mental health or neurological conditions, pharmacy for such conditions and physician services for neurology and internal medicine. The base rate would not cover psychiatric services, physician services other than neurology and internal medicine, medical treatment outside of Brookhaven Hospital, spending allowance or transportation for admission or discharge. It was anticipated that one-on-one staffing might be clinically necessary due to behavioral or safety concerns. In

that event additional staffing would be charged at $15.00 per hour, not to exceed $360.00 per day.

The Board of Supervisors responded:

> The Dubuque County Board of Supervisors and its employees are not the appropriate parties to contract for individual medical services or to establish guardianships for patients. The County's responsibility is solely to provide funding. The placement was ordered by the Hospitalization Referee at the request of MHI - Independence. Those agencies should be approached about the contract and guardianship issues.

Brookhaven's proposal of having a written contract was reasonable. It is good practice for the parties to clarify their respective responsibilities, especially where the financial obligation is substantial. While the county may not have had a duty to provide a guardianship, the CPC process contemplates coordination of efforts with other agencies or individuals to make such arrangements. The record in this case shows no attempt by Dubuque County to utilize the CPC process to arrange a guardianship.

Iowa Code section 331.381(5) specifically requires the county to "comply with chapters 227, 229 and 230, including but not limited to sections 227.11, 227.14, 229.42, 230.25, 230.27, and 230.35, in regard to the care of persons with mental illness."

Section 230.1(1)(a) provides that "[t]he necessary and legal costs and expenses attending . . . admission, commitment, and support of a person with mental illness admitted or committed to a state hospital shall be paid by a county" where legal settlement is in that county and the committed person is over eighteen years of age. If the person is under eighteen or legal settlement is

undetermined the State of Iowa is responsible. *See* Iowa Code § 230.1(1)(b). Section 230.1(3) provides that a county of legal settlement is not liable for costs and expenses associated with a person with mental illness unless the costs and expenses are for services and other support authorized for the person through the CPC process. For purposes of this chapter, "central point of coordination process" means the same as defined in section 331.440.

Section 331.440 defines the CPC process as a process established by a county for the delivery of mental health and other services which are paid for in whole or in part by county funds. Section 331.440 provides that the CPC process may include, but is not limited to, reviewing a person's eligibility for services, determining the appropriateness of the type, level, and duration of services, and performing periodic review of the person's continuing eligibility and need for services.

Dubuque County is liable for the cost of placement for this patient. There was no legal ground to avoid responsibility. The patient was over eighteen years of age. Legal settlement was not in dispute. The placement was court-ordered under section 229.14A. The county received notice of the placement hearing and was provided an opportunity to present evidence under section 229.14A(7). The placement at Brookhaven was authorized through the CPC process as a matter of law under section 229.14A(9). The county had a duty to "work together" with MHI to provide services under section 229.42.

Rather than put its efforts into arranging appropriate placement, the county chose to put its efforts into avoiding court-ordered placement. There is

clear and convincing evidence that Dubuque County, through its Board of Supervisors, stone-walled to avoid funding this placement. It has taken no action to comply with reasonable requirements for placement at Brookhaven. However, contempt must be proven beyond a reasonable doubt.

I concur in the majority's determination that the evidence does not show beyond a reasonable doubt that Dubuque County was in contempt of the April 20, 2005 order of the judicial hospitalization referee.