STATE OF MICHIGAN

COURT OF APPEALS

OTTAWA COUNTY, ALLEGAN COUNTY, BAY COUNTY, BERRIEN COUNTY, EATON COUNTY, GRAND TRAVERSE COUNTY, KALAMAZOO COUNTY, MARQUETTE COUNTY, MIDLAND COUNTY, SAGINAW COUNTY, and WASHTENAW COUNTY, Plaintiffs/Counter-Defendants-Appellants, V FAMILY INDEPENDENCE AGENCY, Defendant/Counter-Plaintiff-Appellee.	FOR PUBLICATION March 22, 2005 9:10 a.m. No. 251365 Court of Claims LC No. 01-018083-CM Official Reported Version

Before: Markey, P.J., and Murphy and O'Connell, JJ.

O'CONNELL, J.

Plaintiffs appeal as of right a trial court order granting summary disposition to defendant Family Independence Agency, now the Department of Human Services. We affirm.

Introduction

Plaintiffs are eleven Michigan counties that seek reimbursement from defendant for fifty percent of the costs they incurred in building, equipping, and improving juvenile detention facilities. According to plaintiffs, these costs might include anything from installing new computers and purchasing new software to constructing a large detention complex from the ground up. The parties agree that defendant currently absorbs fifty percent of a county's general costs to operate a facility and to provide care services, but defendant does not currently reimburse counties for substantial capital expenditures like building, equipping, or improving the facilities. The trial court determined that defendant's limitations on capital expenditures were valid, so it dismissed plaintiffs' claim to recover half their capital expenditures.

Issue

The issue in this case is whether the law requires defendant to reimburse a county for half the money the county decides to spend out of its special child care fund to construct, equip, and improve the buildings the county uses to board juveniles. We hold that it does not. Our Constitution only requires the state to reimburse counties for mandated programs, and the counties are not required to build facilities, but may house juveniles in state or private facilities. Therefore, defendant's refusal to reimburse each county's child care fund for construction and other capital costs does not violate the Constitution. Furthermore, our statutes delegate to defendant the authority to determine whether the counties have made a reimbursable expenditure from their child care fund. Nothing in defendant's enabling statute, administrative rules, or policies requires defendant to reimburse the counties for major capital expenditures paid from the child care fund. Therefore, defendant is not required to reimburse counties for their capital expenditures, and the trial court correctly granted defendant's motion for summary disposition.

Discussion

We begin by acknowledging that MCL 45.16 specifically states that a "county shall, at its own cost and expense, provide . . . necessary public buildings, and keep the same in good repair." Therefore, the counties faced a strong presumption that this statute plainly applies to any juvenile detention facility that they may feel compelled to build. They do not overcome this presumption, but their arguments are worthy of careful analysis.

Counties are required to maintain a foster care system that provides for the care and boarding of juveniles that have fallen under the jurisdiction of a county's probate or family court. MCL 400.55(h); *Oakland Co v Michigan*, 456 Mich 144, 154-155; 566 NW2d 616 (1997) (opinion by Kelly, J.). To implement this mandate, MCL 400.117c(1) requires each plaintiff county to place certain money it receives into a separate child care fund, and MCL 400.117a(2) places the fund under defendant's superintending control. Defendant is also charged with regulating the counties' child care funds through "accounting, reporting, and authorization controls and procedures and child care fund expenditure classifications." MCL 400.117a(3). To provide financial support to counties, defendant "shall provide for the distribution of money appropriated by the legislature to counties . . . as follows: . . . the amount distributed shall equal 50% of the annual expenditures from the child care fund . . . ." MCL 400.117a(4)(a).

From the counties' perspective, then, this case is straightforward. Each county spends money from its child care fund to build and furnish facilities, so the state, through defendant, must reimburse the fund for fifty percent of those expenditures.[1] Defendant argues that MCL

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[1] At oral arguments, the counties referred to this relationship as a "partnership," but the concept of a "partnership" has dubious application to plaintiffs' description of their relationship with the state. According to plaintiffs, a county may decide to build a new state-of-the-art facility, as grand as imaginable, and the state must pay half the cost of its construction. The converse, however, is not true. If defendant decides that Ottawa County needs a new facility and decides to build one there, the state must pay for the entire project, and the county freely reaps the incidental benefits. Moreover, any complex built with state-supplemented county funds would belong exclusively to the county, so, theoretically, the county may convert the facilities into a jail

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400.117a(3) authorizes it to establish conditions for state reimbursement. The counties respond that defendant may not choose which expenditures to reimburse because the language in MCL 400.117c allows counties to spend fund money on foster care in any way the counties see fit.

Conceding the counties' discretion to spend fund money, we are persuaded that an expenditure's *reimbursement* is, nevertheless, conditional. For example, counties may not receive reimbursement for fund money spent in violation of the Social Welfare Act. MCL 400.117a(4)(a). This blanket restriction includes compliance with rules for staff training and quality of care, MCL 400.18c, as well as myriad other financial and administrative issues. MCL 400.55.

Another condition is found in MCL 400.117a(3), which first charges defendant with the task of regulating fund expenditures and then directs that defendant "shall fund services that conform to the child care rules promulgated under this act." Given the context, the statute also stands for the inverse proposition that defendant need not, and should not, "fund" services that do not conform to its rules. Any confusion regarding the Legislature's meaning of the verb "fund" is dispelled in the first sentence of MCL 400.117a(4), which begins, "The department shall provide for the distribution of money appropriated by the legislature to counties for the cost of juvenile justice services as follows," and then outlines the fifty-percent reimbursement schedule. Therefore, defendant's responsibilities are not limited to replenishing, perfunctorily, half the money that counties spend from their child care funds no matter how tenuously the expenditures relate to foster care. Rather, defendant is obligated to establish standards for reimbursing the funds and may withhold reimbursement if certain expenditures violate its rules.

Our conclusion is solidified by MCL 400.117a(8), which contains another fairly enigmatic limiting provision. It states that defendant must "develop a reporting system providing that reimbursement under subsection (4)(a) *shall be made only* on submission of billings based on care given to a specific, individual child." MCL 400.117a(8) (emphasis added). In accordance with this statute, defendant's predecessor promulgated 1999 AC, R 400.2024(a), which states, "The operating costs of a county-operated facility . . . are restricted to the following expenditures for services and goods necessary to provide direct services to the youth placed in the facility . . . ." The expenses that follow are not related to capital improvements; they pertain to staffing and services. In 1999 AC, R 400.2001, defendant defines a "direct service" as a "service provided to a specific client rather than to a general target group." Defendant's "published policies and procedures" expand on the idea of "direct services" and severely limit reimbursement for capital expenditures,[2] presumably because large capital expenditures do not

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or courthouse whenever it chooses, irrespective of the state's interests or objections. Finally, it is undisputed that these facilities raise revenues for counties, yet plaintiffs fail to outline their plan to split those revenues with their state "partner." Simply put, we do not see the inequity in requiring plaintiffs to pay for their own revenue-oriented building projects.

[2] According to Rule 400.2001(m), "'Published policies and procedures' means those policies and procedures contained in the office publications entitled 'The Child Care Fund Handbook,' the 'Annual Child Care Fund Plan and Budget Guidelines,' and department manual material." The Child Care Fund Handbook states that defendant will only pay $500 for building maintenance or equipment expenses. Regrettably, defendant failed to adopt the Child Care Fund Handbook as a

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provide a "direct service" to an individual youth. Instead, they impermissibly accommodate the "general target group" of all the children a building will board or all the children a new computer system will serve. Under this definition, building and equipping a permanent juvenile facility would never qualify as a "direct service" because the stay of any particular juvenile would be relatively short.

Constructing, furnishing, or improving a building violates the reimbursement condition that a county's costs must be attributable to the individual care of each child. MCL 400.117a(8). It follows that the large capital expenditures at issue also fail to satisfy the extrapolated restriction in Rule 2024 that allows reimbursement for only "direct services." Because the counties fail to demonstrate that the general reimbursement obligation extends to their nonconforming expenditures, they are responsible for absorbing the large capital costs of building and equipping the facilities, MCL 712A.25, 45.16, and the trial court correctly granted defendant's motion for summary disposition on the counties' statutory claim.

The counties also argue that defendant's failure to reimburse their capital costs violates the Headlee Amendment. Const 1963, art 9, § 29. We disagree. The relevant provision decrees, "The state is hereby prohibited from reducing the state financed portion of the necessary costs of any existing activity or service required of units of Local Government by state law." *Id*. While a statute permits a given county to construct a juvenile detention facility as a county agency, MCL 712A.16(2), the statute does not state that each county must build a facility. Rather, it is incumbent upon the state to determine the juvenile housing needs of the various counties and build facilities accordingly. MCL 400.115d. Each county has the alternative of detaining juveniles in private, state, or county facilities. MCL 712A.18; *Oakland Co*, *supra* at 155 (opinion by Kelly, J.). The counties fail to plead a lack of private, state, or federal facilities that might render the construction of their own facilities a cost "necessary" to fulfill their statutory obligation to arrange boarding for juvenile wards. Therefore, because the costs associated with the counties constructing and equipping their own facilities are not necessary to fulfill the counties' statutory obligations, the Headlee Amendment does not require defendant to reimburse half the counties' capital outlay for these discretionary expenditures.[3]

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properly promulgated rule under the Administrative Procedures Act, MCL 24.201 *et seq.*, and defendant does not claim an exemption under MCL 400.6(3) to the rulemaking procedures. Therefore, its failure to adopt the self-proclaimed "policy" as a "rule" limits our ability to apply it. MCL 400.6, 24.207. Nevertheless, for the purposes of this case, it is incumbent upon plaintiffs to demonstrate that defendant has a statutory duty to reimburse the counties for half their capital outlay for facilities. Because defendant has no other rule that requires large-scale capital reimbursement, and because we would not enforce any rule that contradicted a statutory obligation anyway, the issue is largely irrelevant to our analysis of this issue.

[3] We also note that plaintiffs failed to raise a genuine issue of material fact regarding the state's payment of these costs in the base fiscal year of 1978-1979. *Oakland Co*, *supra* at 151 (opinion by Kelly, J.). The overwhelming evidence was that defendant (and its predecessors) always excluded large capital expenditures from the child care funds, and the scant evidence of exceptions consisted of self-contradictory forms (filled out by individuals who requested reimbursement for capital outlays despite boilerplate language disallowing them) and a list of

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As we stated at the outset, MCL 45.16 plainly requires a county to pay for its own buildings with its own money. Holding otherwise would undermine the Legislature's goal of encouraging counties to provide focused care for each child. It would twist the statutory design into an unbudgeted and unaccountable state subsidy that provides unlimited matching funds for any purchase that a county decides its juveniles might use. Neither the law nor sound policy persuades us, let alone compels us, to adopt plaintiffs' position. On the contrary, the law plainly expresses the Legislature's intent that counties bear the cost for this class of expenditures. Therefore, defendant properly withheld reimbursement for the nonconforming expenditures, and the trial court correctly granted defendant's motion for summary disposition.

Affirmed.

/s/ Peter D. O'Connell
/s/ Jane E. Markey

Markey, P.J., concurred.

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expenses apparently assembled as part of a state inquiry and not as a reimbursement request. Because the state did not fund capital expenditures in the base year, it is not required to fund them now.