STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of DAVID HOSKINS, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

NORTHPOINTE BEHAVIORAL HEALTHCARE SYSTEMS,

Respondent-Appellant.

UNPUBLISHED
November 6, 2001

No. 225381
Menominee Circuit Court
Family Division
LC No. 96-000136-DL

Before: Griffin, P.J., and Markey and Meter, JJ.

PER CURIAM.

Respondent Northpointe Behavioral Healthcare Systems (Northpointe) appeals by leave granted a September 22, 1999, order of the Family Division of the Menominee Circuit Court regarding its responsibility for payment of treatment expenses for minor David Hoskins. Northpointe was created under the Urban Cooperation Act, MCL 124.501 *et seq.* and functions as the community health department for the counties of Menominee, Dickinson, and Iron. See *Northpointe Behavioral Health Care Systems v Menominee Probate Judge*, unpublished opinion per curiam of the Court of Appeals issued June 26, 1998 (Docket No. 197105).

The court order at issue granted a motion filed by Michael Van Court, a social worker of the Family Independence Agency (FIA). The motion purportedly filed on behalf of the FIA[1] stated in pertinent part:

> 2. That the above juvenile [David Hoskins] was made a ward of this court on February 26, 1998, and referred to the Michigan Family Independence Agency for placement and care and movant is his caseworker.

[1] There is no indication in the record that Michael Van Court is an attorney for the FIA. His authority to act for the agency is not specified in the file.

* * *

5. Further, and on or about July 23, 1999, movant received a copy of a written report from Marquette General Hospital indicating that said juvenile was diagnosed as follows:

"Axis I: 299.80, Pervasive developmental disorder, not otherwise specified. Rule out autistic disorder. Attention Deficit Hyperactivity Disorder."

6. That as movant is informed and believes said diagnosis is indicative of a mental illness.

* * *

8. That Northpointe Behavioral Healthcare Systems is the community mental health provider for Menominee County.

9. That Northpointe Behavioral Health Care Systems has, in the past paid for and is currently, paying for the treatment of other mentally ill juveniles.

10. That movant is requesting this court to order Northpointe Behavioral Healthcare Systems to pay for the continuing and past mental health treatment of the above named juvenile.

* * *

WHEREFORE, movant is requesting a hearing to ascertain whether Northpointe Behavioral Healthcare Systems shall be responsible for the treatment of said juvenile's mental illness.

Thereafter, William G. Merkel, assistant prosecuting attorney for Menominee County, issued a subpoena to Michelle Spangenberg of Northpointe Behavioral Center, Menominee, Michigan, directing Ms. Spangenberg to appear on September 22, 1999, for a "probate court motion." Although the record contains no information regarding the status of Ms. Spangenberg's employment with Northpointe Behavioral Health Systems, at oral argument before this Court, counsel for respondent represented that Ms. Spangenberg was the Northpointe caseworker assigned to the file of David Hoskins. The transcript of the September 22, 1999, hearing reveals that Ms. Spangenberg complied with the subpoena by appearing at the hearing. At the hearing, the family division judge announced that there had been a discussion in chambers and stated:

It's my understanding that Northpointe will in fact take over the case management of the treatment and the payment thereof as well; that Northpointe desires to have this young man examined so that they can ascertain the appropriate treatment for him, which is understandable; and, in fact, I would encourage that that process be gone through.

Further, that Northpointe will reimburse Menominee County for the child care that it has expended for this child in the past; and Mr. Van Court, you'll be

> able to procure that information and get that on to Northpointe and copy this Court with that information?

At no point at the hearing did caseworker Ms. Spangenberg consent or stipulate to the rulings of the court. Further, the record contains no indication of Ms. Spangenberg's authority to act on behalf of her employer, Northpointe Behavioral Healthcare Systems. No evidence of actual or apparent authority is present in the record.

On appeal, respondent Northpointe Behavioral Healthcare Systems argues that the September 22, 1999, order of the Family Division violates the revised Probate Court Code, MCL 700.1 *et seq.*, and the Social Welfare Act, MCL 400.1 *et seq.*, by unlawfully transferring one hundred percent of the payment responsibility from the FIA to respondent who serves as the community mental health department. We agree and reverse and remand.

The Social Welfare Act, MCL 400.1 *et seq.*, and the Revised Probate Code, MCL 700.1 *et seq.*, set out counties' obligations to provide foster care services. The Social Welfare Act mandates:

> The county department [Family Independence Agency] shall administer a public welfare program, as follows:
>
> * * *
>
> (h) Except as otherwise provided in this subdivision, to investigate, when requested by the probate court or the family division of circuit court, matters pertaining to dependent, neglected, and delinquent children and wayward minors under the court's jurisdiction, to provide supervision and foster care as provided by court order . . . . [MCL 400.55(h).]

The Revised Probate Code "implements . . . the Social Welfare Act by providing for placement of a child needing foster care who comes within probate court jurisdiction on a noncriminal matter." *Oakland Co v Michigan*, 456 Mich 144, 155; 566 NW2d 616 (1997). The Probate Code grants the family division of the circuit court exclusive jurisdiction over juveniles under seventeen years of age who commit certain acts, MCL 712A.2, and authorizes the court to enter various orders, including placement in a foster care home, private institution or agency, or commitment to the FIA as a state ward. MCL 712A.18(c), (d), (e); *Oakland Co, supra* at 155; *Wayne Co v Michigan*, 202 Mich App 530, 532, 535; 509 NW2d 853 (1993).

The type of order the court enters determines how much of the child's care the county must fund. *Wayne Co, supra* at 535-536. The Probate Code gives a general mandate that the counties pay for the care: "Except as otherwise provided by law, expenses incurred in carrying out this chapter shall be paid upon the court's order by the county treasurer from the county's general fund." MCL 712A.25; *Oakland Co, supra* at 153. Meanwhile, the Social Welfare Act orders the creation and maintenance of "child care funds" consisting of money the county raises or receives to fund foster care. MCL 400.117c. If the county commits the child to a county program or a state-approved private institution or agency, then the county bears one hundred percent of the cost. *Wayne Co, supra* at 535-536. However, if a court makes a child a ward of

the state rather than the county, then the county is obligated to pay only fifty percent of the child's care, with the state paying the remainder, if the county meets certain statutory requirements. MCL 803.305; *Oakland Co*, *supra* at 155-156; *Wayne Co*, *supra* at 535-536.

While the counties bear responsibility for providing foster care for juveniles, the state is obligated to provide mental health services. MCL 330.1001 *et seq.*; *Oakland Co v Dep't of Mental Health*, 178 Mich App 48, 60-61; 443 NW2d 805 (1989), app dis 437 Mich 1047 (1991). The Mental Health Code authorizes the establishment of community mental health (CMH) services programs, MCL 330.1200a *et seq.*, the purpose of which is to "provide a comprehensive array of mental health services appropriate to conditions of individuals who are located within its geographical service area, regardless of an individual's ability to pay." MCL 330.1206(1); MCL 330.1810. The code also sets out the minimum level of mental health services that CMH programs must provide, including "[i]dentification, assessment and diagnosis to determine the specific needs of the recipient and to develop an individual plan of services." MCL 330.1206(1)(b). The county and state share financial responsibility for the services CMH programs provide, with the county paying "10% of the net cost of any service that is provided by the department, directly or by contract, to a resident of that county," MCL 330.1302, and the state paying the remaining ninety percent, MCL 330.1308. The statute requires that a CMH program not deny services to an individual because of an inability to pay, MCL 330.1208(4), but also authorizes CMH programs to charge fees, MCL 330.1205(4)(a), and to establish a charge schedule, MCL 330.1205(h)(i).

In this case, the lower court's referral of Hoskins to the county FIA for placement in foster care obligated the county to pay one hundred percent of the costs of Hoskins' care, with possible reimbursement of fifty percent by the state. MCL 400.117a; MCL 712A.25. Because Hoskins was diagnosed with a mental illness, he may have qualified for services from the CMH program, with the state funding ninety percent of the costs. MCL 330.1308. Thus, Northpointe claims that the lower court's order requiring it to pay for Hoskins' care was merely an attempt to shift the county's financial obligation to the state in violation of the statutes requiring counties to pay for foster care.

On the face of these statutes, the lower court exceeded its authority in ordering Northpointe to pay for Hoskins' care. The Social Welfare Act mandates that counties provide foster care services, MCL 400.55(h), and the Revised Probate Code empowers the family courts to place or commit juveniles to various types of programs. MCL 712A.18; *Oakland Co*, *supra* at 155; *Wayne Co*, *supra* at 532, 535. Further, the Probate Code mandates that the counties bear financial responsibility for minors ordered into foster care – regardless of where the minor is placed. MCL 712A.25. The only provision allowing the counties to escape this responsibility is the one providing a fifty-percent reimbursement from the state. MCL 803.305.

The Supreme Court analyzed the statutes at issue here in *Oakland Co*, *supra* at 144, in which several counties brought a Headlee Amendment challenge to an amendment of the child care fund statute. *Id.* at 149. The Supreme Court determined that counties had been obligated to provide foster care services when the Headlee Amendment was enacted. *Id.* at 155. The Court began by noting that the Social Welfare Act requires counties to provide public welfare programs and that the Probate Code implements this provision by requiring the probate court (now the

family division of the circuit court) to determine which children receive foster care monies. *Id.* at 155-156. The Court also noted the Probate Code requires the county to "bear the full burden of its foster care expenditures" unless it meets the requirements for fifty-percent reimbursement from the state. *Id.* at 155. The Court concluded: "Thus, the Social Welfare Act outlines *the entire child care plan* for the county foster care services required under § 55(h) [of the Social Welfare Act], *including the duties of the probate court and the counties*." *Id.* at 156 (emphasis added).

The *Oakland Co* decision makes clear that the county bears the financial burden of a minor ward's foster care. This Court reached the same conclusion in *Wayne Co*, *supra* at 530, on which the *Oakland Co* court relied. *Oakland Co*, *supra* at 155, 156. In that case, Wayne County argued that an amendment to the Social Welfare Act eliminated its obligation to provide foster care services and with it the county's obligation to pay for such services. *Wayne Co*, *supra* at 533. This Court disagreed, finding that the amendment, which transferred responsibility for administering "a program of general public relief" to the state, did not also transfer responsibility for maintaining foster care services. *Id.* at 533-535. Further, this Court held that because counties still were required to provide foster care services, they also were obligated to pay for them. *Id.* at 534-536.

Nowhere in the Revised Probate Code, MCL 700.1 *et seq.*, or the Social Welfare Code, MCL 400.1 *et seq.*, has the Legislature given the counties permission to transfer this obligation, with the exception of the fifty-percent reimbursement. Moreover, while the state is obligated to provide mental health services for individuals needing them, *Oakland Co*, *supra* at 60-61, the Mental Health Code does not obligate the Department of Community Health or CMH programs to provide foster care – even for minors diagnosed with mental illness. MCL 330.1001 *et seq.* That responsibility lies with the counties. MCL 712A.25. Under the statutes, once a family court deems a juvenile to be a court or state ward, the county bears the financial burden of that ward's foster care, at least fifty percent. Thus, the lower court committed plain error in transferring financial obligation for Hoskins' care to Northpointe.

Moreover, even if the family court had authority to shift the county's financial obligation to Northpointe, it likely could not shift the entire bill. The Mental Health Code obligates CMH programs to accept individuals regardless of their ability to pay, but allows the programs to charge for treatment services on an ability-to-pay basis. MCL 330.1206(1); MCL 330.1810. Financial responsibility for the care falls on the individual, the individual's spouse, or, if the individual is an unmarried minor, on the individual's legal father and mother. MCL 330.1800; MCL 330.1804. Here, Hoskins is a ward of the court, and so the county would be financially responsible for treatment he receives from Northpointe, according to its ability to do so. Allowing the county to shift financial responsibility for Hoskins' care to an agency that is authorized to charge the county for that care is contradictory to the statutory scheme for foster care and mental health treatment.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard Allen Griffin
/s/ Jane E. Markey
/s/ Patrick M. Meter