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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2013

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AltaPointe Health Systems, Inc.

v.

Mobile County Probate Court

Appeal from Mobile Probate Court
(No. 2011-1899)

MOORE, Chief Justice.

AltaPointe Health Systems, Inc. ("AHS"), appeals from an order entered by Judge Don Davis of the Mobile County Probate Court denying its petition for an award of expert-witness fees in civil-commitment proceedings. This case presents a matter

of first impression: Whether a publicly funded organization is entitled to expert-witness fees for an employee who gives expert testimony at involuntary civil-commitment hearings.

I. Facts and Procedural History

The board of directors of AHS, the community mental-health agency for Mobile County and Washington County, is appointed by the governing bodies that authorize and fund it. See § 22-51-1 et seq., Ala. Code 1975; Ex parte Greater Mobile-Washington Cnty. Mental Health-Mental Retardation Bd., Inc., 940 So. 2d 990, 1005 (Ala. 2006) (holding that AHS, although a public corporation, § 21-51-2, Ala. Code 1975, "is an independent entity rather than a State agency"). An AHS employee provides expert-witness testimony at civil-commitment hearings based on AHS's court-ordered evaluation of respondents to involuntary-commitment petitions, known as "consumers." Until April 2007, the Mobile County Probate Court had routinely paid AHS $160 to provide expert testimony at a commitment hearing. At that time, however, the probate court decided to terminate the payment of that fee because AHS was already being compensated independently for conducting mental-

health evaluations of consumers. As the probate court explained:

> "This action was taken when the Court learned that some of the other probate courts around the State of Alabama did not tax such fee requests as court costs in instances where the entity providing the evaluations received compensation from other sources, as the Court understood that AHS received funding from other sources with regard to the evaluations AHS was performing."

Despite the probate court's change in policy, AHS continued to submit monthly bills for providing testimony at commitment hearings. On October 27, 2009, the probate court held a hearing on these accumulated requests for payment. On January 14, 2010, the probate court denied payment, holding that the testimony of a salaried AHS employee did not require reimbursement by the court. "AHS is not actually incurring the fees for which it is seeking payment from the Alabama State General Fund and it appears that AHS is seeking double payment for a service it has provided." The probate court viewed the testimony as "a vital and integral part of the evaluation process," for which AHS was already compensated through general public funding. The court also noted that the AHS employees testifying "do not individually bill either AHS or the Court for their time spent" and that any payment would go

to AHS, not the employee/witness. AHS did not appeal the denial of its request.

On August 17, 2011, AHS filed a new fee petition, seeking payment for testimony at commitment hearings from July 2008 through August 2011. An exhibit to the petition listed all the days AHS employees had provided testimony and the number of hearings on each day. In total, AHS requested $188,800, representing testimony at 1,180 hearings at a rate of $160 per hearing.[1] On average, AHS provided testimony on the advisability of involuntary commitment at 400 hearings per year, or about 8 per week. The probate court typically held all the hearings for the week on the same day of the week. AHS supported its petition with affidavits from Kevin Markham, AHS's chief financial officer, and Joyce Barber, its coordinator of social services. Markham and Barber also testified at the hearing on AHS's petition held on October 5, 2011.

[1]In its opening brief, AHS requests this Court to render a reduced award of $114,400, representing expert-witness testimony at 715 hearings from January 2010 through August 2011, approximately half the period covered by its petition in the probate court.

Markham testified that AHS received funding from the City of Mobile, Mobile County, Medicare, Medicaid, from private insurance companies, and from federal grants. None of these funds, however, he said, could be used for payment of expert-witness fees at commitment hearings. Markham provided documentation that neighboring Washington County authorized payment at a flat rate of $180 for AHS's expert testimony at commitment hearings; that Chilton County paid $100 per hour to a local mental-health center for court screening, evaluation, and testimony; and that the Montgomery County Probate Court allowed payment of expert-witness fees at a rate of $70 per hour to the Montgomery Area Mental Health Authority for testimony at commitment hearings by qualified employees.

Barber is "the designated employee of [AHS] who ... testifies during civil commitment proceedings in the Probate Court." Markham Affidavit. Her full-time job (except for Tuesday afternoons) is "preparing to testify and testifying in Probate Court." The expert-witness services that AHS provides to the probate court consist solely of Barber's work. "In defining expert witness services in this manner," Barber stated, "I have excluded the services provided by the clinical

staff persons who perform the evaluations and the services of the clinical staff persons who provide mental health treatment to the consumers."

Barber provides specialized knowledge that not only assists the trier of fact, but also is indispensable to its decision-making. In the week before each commitment hearing, Barber reviews records, interviews patients and relevant personnel, and consults with the treating physicians. Coupled with her formal training and experience as a professional counselor, she is qualified by knowledge, skill, experience, training, and education as an expert on civil-commitment evaluations.[2] She does not merely report the professional opinion of the treating psychiatrist. Instead, she is intimately involved in the evaluation process from beginning to end. Barber carefully develops her understanding of each case for the purpose of accurately informing the probate court of the status and prospects of each consumer.

[2]"If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise." Rule 702(a), Ala. R. Evid.

The probate judge acknowledged that Barber provided "an expert opinion" and complimented her on the quality of her testimony. "[S]he is very prepared. She is able to -- to answer most questions that lawyers and I have. ... So I want to compliment Ms. Barber for the manner in which she discharges her duties at the court hearings. And thank you for what you do in that regard." See Charles Gamble, McElroy's Alabama Evidence § 127.02(2) (5th ed. 1996) ("The quantum of necessary expertise is determined by whether it is sufficient to justify an opinion that will be of aid to or assist the trier of fact.").

In its order of April 19, 2012, denying payment of expert-witness fees to AHS, the probate court did not dispute that Barber qualified as an expert witness but instead claimed that "[t]he statute is not intended to reimburse an employer for time spent by an employee testifying, even if such employee may qualify as an expert witness." Thus, the probate court held, if AHS retained an outside consultant to testify at commitment hearings and then proffered the bills to the court for payment, "such expert fees may be awarded if reasonable." The court also found that AHS's in-court

testimony was an integral part of the evaluation process and thus not separately reimbursable as expert testimony.

The probate court denied the fee petition in its entirety. AHS filed a notice of appeal on May 31, 2012.

II. Standard of Review

Because the issue before this Court is the proper interpretation of § 22-52-14, Ala. Code 1975, our review is de novo. "A ruling on a question of law carries no presumption of correctness, and appellate review is de novo." Ex parte City of Brundidge, 897 So. 2d 1129, 1131 (Ala. 2004).

III. Analysis

"The jurisdiction of the probate court is limited to the matters submitted to it by statute." Wallace v. State, 507 So. 2d 466, 468 (Ala. 1987). See § 12-13-1, Ala. Code 1975. Probate courts have jurisdiction over petitions seeking the involuntary commitment of persons believed to be mentally ill. Section 22-52-1.2, Ala. Code 1975. The Code also provides for payment of the costs of the commitment proceeding, including expert-witness fees.

> "In any commitment proceeding, the fees of any attorney appointed by the probate judge to act as advocate for the petition and any attorney or

> guardian ad litem appointed by the probate judge for the person sought to be committed shall be set at the rates established by Section 15-12-21; and any expert employed to offer expert testimony, in such amounts as found to be reasonable by the probate judge; and all other costs allowable by law shall be paid by the state general fund upon order of the probate judge ...."

§ 22-52-14, Ala. Code 1975 (emphasis added).

The issue for resolution in this appeal is whether AHS is eligible for expert-witness fees under § 22-52-14 when Barber or another qualified employee of AHS testifies as an expert witness in a civil-commitment hearing.

In interpreting a law, we first look to the plain language of the statute. "Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says." Tuscaloosa Cnty. Comm'n v. Deputy Sheriffs' Ass'n of Tuscaloosa Cnty., 589 So. 2d 687, 689 (Ala. 1991). Section 22-52-14, Ala. Code 1975, states: "In any commitment proceeding, the fees of ... any expert employed to offer expert testimony, in such amounts as found to be reasonable by the probate judge ... shall be paid by the state general fund upon order of the probate judge ...." (Emphasis added.)

The probate court contends that AHS, as a recipient of public funding, is entitled to no separate compensation for providing expert testimony to the court. However persuasive such an argument might be as a matter of public policy, the statute itself makes no such distinction, but instead applies to "any expert employed to offer expert testimony."[3] Whether publicly funded regional mental-health agencies should be denied expert-witness fees for presenting expert testimony regarding court-ordered evaluations is an issue for the legislature to decide, not the courts. Once the AHS employee qualifies as an expert witness, reasonable fees "shall be paid." Further, "all questions of propriety, wisdom, necessity, utility and expediency in the enactment of laws are exclusively for the legislature, and are matters with which courts have no concern." Jansen v. State, 273 Ala. 166, 168, 137 So. 2d 47, 48 (1962). Because the amendment of statutes is a task for the legislature, not the courts, we are not at liberty to add exceptions to a statute that the legislature has not seen fit to supply. See Personnel Bd. of Mobile Cnty.

[3]We understand "employed" to mean "to make use of" or "to use advantageously." Merriam-Webster's Collegiate Dictionary 408 (11th ed. 2003).

v. City of Mobile, 264 Ala. 56, 60-61, 84 So. 2d 365, 369 (1955) ("[T]he only authority which has the power to make State laws is the legislature.").

The probate court complained that it had "not been provided any authority which would allow for fees ... for services rendered by salaried employees of the party making the request." But no such additional authority is necessary when the statute in question makes no exception to its general requirement for payment of reasonable fees for expert testimony. The probate court's order states: "AHS is not employing outside experts and thus is not incurring any expert fees or expenses." Section 22-52-14, however, does not require that AHS hire an outside expert and incur specifically billed fees before AHS may qualify for expert-witness fees. Should the legislature desire to change the statute to disallow experts such as those employed by AHS from receiving expert-witness fees from the State's general fund, it is free to do so. Neither the probate court nor this Court, however, is free to limit the scope of the statute through an exclusionary judicial construction not stated in its text. See Dennis v. Chang, 611 F.2d 1302, 1307 (9th Cir. 1990) (rejecting argument

that award of attorney fees to state-funded legal-services organization was unfair "double payment" and finding that by not including such an exception in the Fee Awards Act, the "question of fairness has been resolved by Congress"); Del. Op. Att'y Gen. No. 78-003 (Feb. 13, 1978) (noting that state statute "governing the payment of expert witness fees, draws no distinction between expert witnesses who are public employees and other expert witnesses"). Just as "the trial court does not have the discretion to award fees for expert witnesses unless a statute authorizes the recovery of such fees," Southeast Envtl. Infrastructures, L.L.C. v. Rivers, 12 So. 3d 32, 52 (Ala. 2008), it also does not have discretion to refuse reasonable fees where the legislature has authorized their payment.[4]

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[4]Although the qualifications of AHS's designated representative to give expert testimony are not at issue in this case, we do not wish to imply that the probate court must in all instances pay the fees of any expert, or proposed expert, who testifies in a civil-commitment hearing. The probate court, as in all cases, has the responsibility to qualify witnesses to testify. "Preliminary questions concerning the qualifications of a person to be a witness ... shall be determined by the court ...." Rule 104(a), Ala. R. Evid. See also Advisory Committee's Notes to Rule 104(a) ("This principle is also applied when a trial court determines whether a witness's qualifications authorize the witness to testify as an expert.").

IV. Conclusion

By disqualifying AHS from receiving expert-witness fees for the testimony of its employees, the Mobile County Probate Court erred as a matter of law. If the probate court desires fact testimony regarding the services rendered by AHS to those committed to its care and the response of such persons to that care, the court may order the appearance of "non-expert" employees who do not provide an opinion and for whom no fee is required.[5] However, when the probate court elicits testimony from an expert witness provided by AHS on the issue of civil commitment and the witness is an employee of AHS, a plain reading of § 22-52-14 entitles AHS to such fees as the probate court in its discretion determines are reasonable.

We therefore reverse the Mobile County Probate Court's order of April 19, 2012, and remand the case for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

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[5]When the treating therapist also functions as a forensic witness, the doctor-patient relationship may be impaired. See Ralph Slovenko, On a Therapist Serving as a Witness, 30 J. Am. Acad. Psychiatry Law 10 (2002). AHS's separation of the treatment and testimony functions may thus be beneficial to the consumers.

Stuart, J., concurs.

Parker, J., concurs specially.

Murdock, J., concurs in part as to the rationale and concurs in the result.

Bolin, Main, Wise, and Bryan, JJ., concur in part and dissent in part as to the rationale and concur in the result.

Shaw, J., dissents.

PARKER, Justice (concurring specially).

I join in the main opinion, and I concur specially for the following reasons.

First, § 22-52-14, Ala. Code 1975, has been amended by the legislature so as to authorize payment to any expert providing expert testimony to a probate court in commitment proceedings. As initially enacted, the statute limited payment to expert witnesses who were employed by the attorney appointed to represent the subject of the proceeding:

> "In any commitment proceeding, the fees of any attorney appointed by the probate judge to act as advocate for the petition any attorney appointed by the probate judge for the person sought to be committed and any expert employed by the attorney appointed to represent the person sought to be committed to offer expert testimony in such amounts as found to be reasonable by the probate judge, and all other costs allowable by law shall be paid by the State General Fund upon the order of the probate judge ...."

Act No. 1226, § 11, Ala. Acts 1975 (emphasis added).

Two years later, the statute was amended to read:

> "In any commitment proceeding, the fees of any attorney appointed by the probate judge to act as advocate for the petition, any attorney or guardian ad litem appointed by the probate judge for the person sought to be committed and any expert employed to offer expert testimony, in such amounts as found to be reasonable by the probate judge, and all other costs allowable by law shall be paid by

> the State General Fund upon order of the probate judge ...."

Act No. 670, § 1, Ala. Acts 1977 (emphasis added). Among other changes, the legislature deleted the phrase "by the attorney appointed to represent the person sought to be committed" that originally followed "any expert employed." This amendment removed the restriction that limited the payment of expert witnesses to those experts employed by the appointed attorney. The statute was amended again in 1984, but the phrase "any expert employed to offer expert testimony" remained undisturbed. Act No. 84-833, § 2, Ala. Acts 1984.

The legislative history of this statute reveals the legislature's intent to remove the original restriction that limited the payment of fees to experts hired by the appointed attorney and to authorize the payment of fees to any expert employed to offer expert testimony in commitment proceedings. In light of this legislative intent, AltaPointe Health Systems, Inc. ("AHS"), is entitled, under § 22-52-14, to reasonable fees for the services it provided the probate court.

Second, the conclusion in the main opinion that AHS is entitled to expert-witness fees is buttressed by the Alabama

Rules of Evidence, which clearly provide for the compensation of expert witnesses appointed by the court. Rule 706, Ala. R. Evid., provides, in relevant part:

> "(a) Appointment. The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. ...
>
> "(b) Compensation. Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. Except as otherwise provided by law, the court shall order that the compensation be paid by the parties in such a proportion as the court may direct, to be paid by the parties as the court may direct ...."

(Emphasis added.) The Advisory Committee's Notes to Rule 706(a) provide that the power of the trial court "to appoint its own expert witnesses" is an "historic power." (Citing Alabama Great S. R.R. v. Hill, 90 Ala. 71, 8 So. 90 (1890).)

The plain and clear language of Rule 706, providing that expert witnesses appointed by the court are entitled to compensation, applies to all court proceedings in our state, including those in the probate courts. Rule 101, Ala. R. Evid., provides that "[the rules of evidence] govern proceedings in the courts of the State of Alabama to the extent and with the exceptions stated in Rule 1101." Rule

1101(a), Ala. R. Evid., provides: "Except as otherwise provided by constitutional provision, statute, this rule, or other rules of the Supreme Court of Alabama, these rules of evidence apply in all proceedings in the courts of Alabama, including proceedings before referees and masters." (Emphasis added.) The Advisory Committee's Notes to Rule 1101(a) clarify that the legislative intent of that rule "is to make the Alabama Rules of Evidence applicable to the same proceedings that were governed by the general law of evidence at the time of their adoption," including proceedings in the probate courts. (Citing § 12-13-12, Ala. Code 1975 (statutory rules of evidence, "so far as the same are appropriate," are applicable in probate courts).) The Advisory Committee also noted that "[t]hese rules in no way change preexisting law regarding the applicability of evidence rules in the probate court." Id. This makes it clear that the intent is that the Alabama Rules of Evidence apply in the probate courts.

The language of the Alabama Rules of Evidence unambiguously establishes not only the power of the courts to appoint expert witnesses, but also the entitlement of court-appointed expert witnesses to compensation. Because such

provisions apply to probate courts, it is clear that AHS is entitled to reasonable fees for expert-witness services provided to the probate court.

MURDOCK, Justice (concurring in part as to the rationale and concurring in the result).

I concur in the result achieved by the main opinion and, save for two aspects, agree with the analysis by which it reasons to that result.[6] The primary holding of the main opinion, as I read it, is that the fact that the expert in this case is employed by an entity that receives public funds does not remove that expert from the ambit of the directive regarding payment of expert-witness fees in § 22-52-14, Ala. Code 1975. On this issue, the main opinion and the special writing of Justice Bolin appear to be in accord. Before explaining the two aspects in which I decline to join the main opinion, I first offer two preliminary observations.

First, I believe the primary conclusion reached in both the main opinion and in Justice Bolin's special writing is supported by the Act of the Alabama Legislature by which the statute in question, § 22-52-14, was most recently amended, Act No. 84-833, Ala. Acts 1984. The title of that Act makes clear the intent of the legislature that experts employed to

[6]I also agree with the views expressed by Justice Parker in his special concurrence and would join that concurrence if not for the two concerns regarding the main opinion expressed herein.

provide expert testimony in commitment hearings are to be paid a reasonable fee, notwithstanding the fact that they are supplied and employed by a facility that receives State funds. That title states that the Act has as its purpose "[t]o amend 1975 Code of Alabama, Sections 22-52-14 and 22-52-17, which relate to mental health evaluations and commitments, so as to require all probate judges to utilize mental health facilities of the State of Alabama when available." Section 1 of the same Act that in Section 2 adopts the current language of § 22-52-14 at issue in this case clearly contemplates that mental-health facilities supported by public funds will be used "to perform mental evaluations of persons sought to be committed for use in final commitment hearings." Act No. 84-833, § 1, amending Ala. Code 1975, § 22-51-17.

Second, I read the main opinion as interpreting -- and correctly so in my opinion -- § 22-52-14 to require the payment of expert witnesses employed in a commitment hearing but, in accordance with the language of the statute, only to the extent such fees are "reasonable." Accordingly, I am not sure how much, if any, space actually exists between the position expressed in the main opinion and that expressed in

Justice Bolin's special writing (with much of which I also agree).

Insofar as the foregoing bears on the issue of the standard of review, however, I do agree with the axiomatic position taken by the main opinion that the question of the meaning of the statute (as either requiring a reasonable fee or not) is a question of law to be decided by this Court de novo. I also agree with Justice Bolin, however, and I do not read the main opinion as saying otherwise, that our review of the amount of fee to be awarded an expert is not de novo, but instead is based on an excess-of-discretion standard.

Having expressed these preliminary concerns, I turn now to the two aspects of the main opinion that I decline to join. First, I decline to join in the following statement in the Conclusion section of the opinion and the footnote (footnote 5) that accompanies it: "If the probate court desires fact testimony regarding the services rendered by [AltaPointe Health Systems, Inc. ('AHS'),] to those committed to its care and the response of such persons to that care, the court may order the appearance of 'non-expert' employees who

do not provide an opinion and for whom no fee is required."[7] __ So. 3d at __. I find this sentence and the footnote that accompanies it unnecessary to the result achieved. More than that, I am uncertain and concerned as to their import on a practical level.

The quoted sentence from the text speaks of the ability of the court to order, without payment, the appearance and testimony of what it labels "'non-expert' employees." It speaks of these "non-experts" as giving "fact testimony." It contemplates that these "fact" witnesses will provide their testimony in a commitment hearing conducted by a judge, without formal medical training, for the purpose of receiving medical evidence and formulating an opinion on a patient's condition, the patient's ability to function safely with or without certain treatments, and, ultimately, the need for institutionalization. The sentence contemplates that the value of ordering testimony from such a witness will derive

[7]The footnote that accompanies this sentence and appears to provide context for it reads as follows: "When the treating therapist also functions as a forensic witness, the doctor-patient relationship may be impaired. ... AHS's separation of the treatment and testimony functions may thus be beneficial to the consumer." __ So. 3d at __ n.5.

from the fact that the patient is "committed to its care" and that the witness will be able to testify competently as to that care and "the response of such [patient] to that care." As a general rule, the only person qualified or competent to testify as to the "facts" of a patient's condition and the patient's clinical response to treatments that have been provided will, in fact, be a medical expert. Moreover, it almost invariably will be the case that expert opinion testimony, not just the "facts" of raw clinical data or observations, is necessary to assist a court in making the necessary judgments as to these matters. Accordingly, I question whether this extra step taken by the main opinion of implicitly sanctioning the calling of such experts as "fact witnesses" to share the "facts" pertaining to their clinical assessments and conclusions (conclusions that would never have been formed had the patient not been sent by the probate court to the witness or his or her employer for assessment in the first place) in effect just undermines the general rule requiring the compensation of such witnesses that we otherwise uphold today.

Furthermore, and independent of the foregoing concerns, I am concerned by footnote 5 in its own right. I fail to see how the encouraged "separation of the treatment and testimony functions" addresses the stated concern for the impairment of the doctor-patient relationship when the "separate" witness's testimony simply relays information the witness has received from the doctor.

Secondly, in terms of the main opinion, I decline to join footnote 4. The first sentence of this footnote states, in part, that "we do not wish to imply that the probate court must in all instances pay the fee of any expert ... who testifies in a civil-commitment hearing." __ So. 3d at __. Again, subject to the reasonableness restriction, that is exactly what I read the main opinion as not only implying, but expressly holding. If an expert has in fact testified as an expert, it will be because the "preliminary questions" regarding his or her qualifications to do so have already been resolved by the court in the witness's favor.

Because of these concerns and because I believe the preceding aspects of the main opinion go beyond the question before us today, I respectfully decline to join them.

BOLIN, Justice (concurring in part and dissenting in part as to the rationale and concurring in the result).

The probate judge in this case entered an order denying the petition for expert-witness fees filed by AltaPointe Health Systems, Inc. ("AHS"), under § 22-52-14, Ala. Code 1975, based on his findings that the fees were "improper" and not "allowable" under the statute. Specifically, the probate court determined that "AHS is not actually incurring the fees for which it is seeking payment," because "AHS is not employing outside experts and thus is not incurring any expert fees or expenses." The probate court further stated that "the time spent by a medical expert witness, both preparing to testify and actually testifying in court, must be considered a part of the overall evaluation services provided by AHS in involuntary mental commitment cases." The main opinion reverses the probate court's order, based on its interpretation of § 22-52-14, Ala. Code 1975, applying a de novo standard of review. Specifically, the main opinion interprets § 22-52-14 as mandating the payment of a reasonable fee for any expert qualified to testify in a commitment proceeding.

Section 22-52-14 provides:

> "In any commitment proceeding, the fees of any attorney appointed by the probate judge to act as advocate for the petition and any attorney or guardian ad litem appointed by the probate judge for the person sought to be committed shall be set at the rates established by Section 15-12-21; and any expert employed to offer expert testimony, in such amounts as found to be reasonable by the probate judge ...."

(Emphasis added.)

Section § 22-52-14, regarding payment of fees to be taxed as costs in involuntary-commitment proceedings, is unambiguous in establishing that the probate judge appoints attorneys to act as advocates and attorneys or guardians ad litem for the respondent and that their fees are set by statute, while the fees awarded to unappointed expert witnesses "employed," or, put another way, "used," to offer expert testimony are determined by the probate court, not by statute, in such amounts as found to be reasonable by the court. Hence, I submit that the proper standard of appellate review of the probate court's order in this proceeding should be guided by whether the probate judge exceeded his or her discretion, and therefore not subject to the interpretation and analysis of the statute embodied in the main opinion.

The key phrase of the statute, i.e., "found to be reasonable," clearly vests the probate court with the discretion to fix and determine the appropriate expert-witness fee under the statute, subject only to correction if the probate court exceeds its discretion. The reasonableness of an expert-witness fee to be paid is a matter within the discretion of the probate court and its decision on such matter will not be reversed on appeal unless the court exceeds that discretion.[8] Cf., by analogy to counsel fees, Lanier v. Moore-Handley, Inc., 575 So. 2d 83, 85 (Ala. 1991)("The reasonableness of an attorney fee under a contract providing for the recovery of reasonable attorney fees is largely within the discretion of the trial court."); see also Commercial Standard Ins. Co. v. New Amersterdam Cas. Co., 272 Ala. 357, 362, 131 So. 2d 182, 186 (1961)("The matter of fixing the fee rests largely within the discretion of the trial court, subject only to correction for abuse of discretion."). The

[8]"This Court has for several years been using the phrase 'exceeded its discretion' rather than the phase 'abused its discretion.' The word 'abused' has a negative connotation this Court does not believe is useful in describing the judicial acts of our trial court judges, thus prompting us to use the word 'exceeded.' The standard of review remains the same." State v. Isbell, 985 So. 2d 446, 453 n. 3 (Ala. 2007).

probate court in this case was not interpreting the statute, and neither is it necessary for this Court to do so to properly review the probate court's decision. Rather, this Court should be reviewing whether the probate court exceeded its discretion in declining to award any fee because the expert qualified to testify in this case was an employee of AHS, a publicly funded mental-health agency.

As stated, the first part of § 22-52-14 applies to the payment of court-appointed attorney/advocates and court-appointed attorneys or guardians ad litem for the respondent. These attorneys, pursuant to the statute, are paid fees in amounts set by a fixed standard in § 15-12-21, Ala. Code 1975. The second part of § 22-52-14 specifically provides for the payment of expert-witness fees and provides that such fees are to be set "in such amounts as found to be reasonable." Although the first part of § 22-52-14 empowers the probate court to "appoint" the necessary attorneys or guardians for the proceedings, the second part of the statute simply refers to any expert "employed" to offer expert testimony. In this case, AHS "designate[d]" or provided the expert-witness testimony to be given to the probate court during the "merits"

hearing. Because the expert witness in this case was not appointed by the court, the use of the term "employed" in the statute must be given its plain meaning. Words in a statute must be given their natural, ordinary, commonly understood meaning. Ex parte Weaver, 871 So. 2d 820 (Ala. 2003). In the context of this statute, the word "employ[ed]" is defined by Black's Law Dictionary 586 (8th ed. 2006) as "[t]o make use of" or "to hire." See also American Heritage Dictionary of the English Language 428 (New College ed. 1976) defining "employ[ed]" as "[t]o engage the services of."

The probate court declined to award any fee whatsoever to AHS based on the court's findings (1) that AHS was not employing a non-employee outside expert witness to testify and was, therefore, not incurring any fees for which it was seeking payment; (2) that the expert witness designated by AHS to testify was a salaried AHS employee, who does not individually bill either AHS or the court for her time spent testifying; and (3) that the time spent by the expert witness, both preparing to testify and actually testifying in court, must be considered a part of the overall evaluation services provided by AHS. Applying the exceeding-its-discretion

standard as I submit that we should, I conclude that the probate court exceeded its discretion in denying AHS's requested fees under the facts in this case. First, the fact that the expert witness in this case was employed by AHS is no different than a private psychiatrist who testifies as an expert witness being employed by a professional practice group, whereby the entity requesting an expert fee might well be the psychiatrist's employer. Indeed, AHS pays the salary of its designated expert witness from its own budget, and the record reflects that it is not reimbursed for that expenditure by any outside funding source. Second, I do not agree that the expert testimony in this case must be considered as part of the overall evaluation services provided by AHS. A respondent in an involuntary-commitment proceeding is "evaluated" to determine whether a mental illness exists and, if so, the respondent's diagnosis. A respondent then receives "treatment" for the particular diagnosis. These functions are obviously carried out by a hospital or mental-health facility outside the court's presence. At the hearing before the court, however, there must be "expert testimony" to convince the probate court as to whether a serious mental illness is

present, and whether the respondent should be ordered committed on either an inpatient or outpatient basis. According to AHS, "expert witness services" refer to "the activities of planning and preparing to testify, and actually testifying during civil commitment hearings." In this case, AHS's designated expert sometimes spends "forty (40) hours per week preparing to, and actually testifying in, the hearings before the Probate Court." AHS is not seeking reimbursement by way of costs from the State General Fund for the "evaluation and treatment" of consumers in involuntary-commitment proceedings. Rather, it is seeking reimbursement solely for the expert testimony of its employees that it provides to the probate court in those proceedings. Regardless of whether AHS employs a paid outside expert to provide such testimony or whether it makes use of, or engages the services of, its own in-house expert to provide the testimony, AHS is still providing an invaluable service by way of expert testimony to the probate court, for which it should be entitled to reasonable compensation.[9] Arguably, AHS might

[9]By virtue of the nature of involuntary-commitment proceedings and the required statutory findings, should relief be granted, i.e., if the probate court orders outpatient or inpatient treatment pursuant to §§ 22-52-10.2 and 22-52-10.4,

not have need for this particular employee in its employ if

Ala. Code 1975, it is difficult to conceive of a factual basis sufficient for a probate court to order either such relief without the receipt of expert testimony.

Section 22-52-10.2, Ala. Code 1975, provides:

> "A respondent may be committed to outpatient treatment if the probate court finds, based upon clear and convincing evidence that: (i) the respondent is mentally ill; (ii) as a result of the mental illness the respondent will, if not treated, continue to suffer mental distress and will continue to experience deterioration of the ability to function independently; and (iii) the respondent is unable to make a rational and informed decision as to whether or not treatment for mental illness would be desirable."

(Emphasis added.) Section 22-52-10.4(a), Ala. Code 1975, provides:

> "(a) A respondent may be committed to inpatient treatment if the probate court finds, based upon clear and convincing evidence that: (i) the respondent is mentally ill; (ii) as a result of the mental illness the respondent poses a real and present threat of substantial harm to self and/or others; (iii) the respondent will, if not treated, continue to suffer mental distress and will continue to experience deterioration of the ability to function independently; and (iv) the respondent is unable to make a rational and informed decision as to whether or not treatment for mental illness would be desirable."

(Emphasis added.) It would difficult, and seemingly impossible, for a probate court to order any relief to a petitioner pursuant to the elements of the statutes above without expert testimony.

not for her role in providing expert testimony and would therefore not have an expenditure for her salary. But, as here, where AHS does pay an employee to provide this service, and the service is received by the probate court, AHS should be entitled to an award of a reimbursed expert-witness fee in a reasonable amount set by the probate court. Because I conclude that the probate court exceeded its discretion in denying AHS's requested expert-witness fees, I concur with the main opinion that AHS is entitled to reasonable compensation under the statute for those fees.

However, I respectfully disagree with any implication in the main opinion that an expert-witness fee must be paid to any qualified expert giving testimony in all possible circumstances. In the event a probate judge deems a witness qualified to testify, there still may be circumstances in which the judge declines to award a fee for that testimony. The probate court in this case acknowledged that AHS's designated witness was qualified to testify and that she provided valuable testimony; however, that may not always be the case. For instance, what would happen in the event multiple family members or friends of a respondent each

provided a different expert to give testimony to the court; in such event, must the probate judge pay an expert fee to each expert qualified by the court, even if their testimony was cumulative? Further, should an occasion arise in which a witness qualified to testify as an expert, or that witnesses's employer, was found to receive funding for giving expert testimony from an additional source, must that witness be paid again as part of the costs of court? The clear answer to each example is in the negative based on a probate court's proper exercise of discretion as given to it in § 22-52-14, not as a matter of law as the main opinion concludes.

There are 67 probate courts and 68 probate judges in the State of Alabama presiding over involuntary-civil-commitment proceedings. The facilities and resources available to provide medical help and assistance to persons with a serious mental illness vary greatly from county to county. Some urban counties have multiple hospitals, psychiatrists, and resources to treat mental illness, while some rural counties must make do with little or limited resources. Still, the legislature was tasked with enacting a statute regarding the payment of expert-witness costs in those proceedings that would be

workable and fair in all the probate courts in Alabama. The legislature answered this calling by vesting the probate courts with the discretion to fix and determine "reasonable" compensation in this area, and, accordingly, a valid exercise of that discretion under different facts than we have herein might well be that no fee is due to be awarded. For this reason probate judges have the latitude, or put another way--the discretion given to them under the statute--to determine, on a case-by-case and witness-by-witness basis, whether a fee should be awarded and taxed as costs to a qualified expert, or to an expert's employer, and, if so, the reasonableness of that fee.

Main, Wise, and Bryan, JJ., concur.

SHAW, Justice (dissenting).

I believe that under the plain language of Ala. Code 1975, § 22-52-14, the probate judge in this case had the discretion to deny the payment of expert-witness fees. The Code section states, in applicable part:

> "In any commitment proceeding, the fees of any attorney appointed by the probate judge to act as advocate for the petition and any attorney or guardian ad litem appointed by the probate judge for the person sought to be committed shall be set at the rates established by Section 15-12-21; and any expert employed to offer expert testimony, in such amounts as found to be reasonable by the probate judge; and all other costs allowable by law shall be paid by the state general fund upon order of the probate judge ...."

This Code section contains three clauses set apart by semicolons. The first clause provides that the fees to be paid to attorneys who act as advocates or guardians ad litem are set at the rates found in Ala. Code 1975, § 15-12-21. The second clause provides that the probate judge (as opposed to a Code section) sets the fees to be paid to experts based on what it finds reasonable. The third clause provides "all other costs"--i.e., not the fees of attorneys or expert witnesses--are to be paid if the probate judge so orders.

The issue in this case involves the fee for an expert witness under the second clause: the fee for an expert is set at such amount "found to be reasonable by the probate judge." Here, the probate judge found that no fee was reasonable. I do not believe that he exceeded his discretion in so finding.

I do not read the language from the third clause, "shall be paid," as commanding the probate judge to order the payment of fees to expert witnesses. Instead, it requires only that fees or costs be paid if so ordered by the probate judge. Specifically, the clause states that what "shall be paid" is only what the probate judge orders to be paid: "shall be paid ... upon order of the probate judge ...." This language is not directing the probate judge to award fees to the expert, which is the issue involved in this case; it is instead directing that all fees and costs "shall be paid" pursuant to an "order [by] the probate judge." If there is no "order of the probate judge," then there is nothing that "shall be paid by the state general fund." I agree that "any expert employed ... shall be paid" but that that expert will be paid only if the probate judge so orders.