

IN THE COURT OF APPEALS OF IOWA

No. 8-889 / 08-0703
Filed December 17, 2008

STATE OF IOWA,
Plaintiff-Appellant,

vs.

IOWA DISTRICT COURT FOR JOHNSON COUNTY,
Defendant-Appellee.

Appeal from the Iowa District Court for Johnson County, Stephen C. Gerard, II, District Associate Judge.

The State of Iowa by certiorari action claims the juvenile court acted illegally in ordering the Iowa Department of Human Services to incur certain expenses. **WRIT SUSTAINED.**

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Janet Lyness, County Attorney, and Kristin Parks, Assistant County Attorney, for appellant.

Natalie Cronk, Iowa City, for appellee-mother.

W. Eric Nelson, Coralville, for appellee-father.

Thomas Maxwell, Iowa City, for intervenor-foster parents.

Ellen Ramsey-Kacena, Cedar Rapids, for intervenor-paternal grandmother.

Christine Frederick, Davenport, for appellee-minor child.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

PER CURIAM

Following a hearing the juvenile court terminated the parental rights of seven-year-old D.W.'s father. It dismissed the State's petition for termination of the parental rights of D.W.'s mother. The court ordered that D.W. be placed in the legal custody of D.W.'s paternal grandmother, who resides in Missouri, in whose physical custody the court had previously placed him and with whom he appears to be bonded. The court ordered that the Iowa Department of Human Services (DHS) submit an amended case permanency plan for another planned permanent living arrangement—relative placement of D.W. with his paternal grandmother—pursuant to Iowa Code section 232.117(5) (2007).

The DHS prepared and filed in the underlying child in need of assistance case the ordered amended case permanency plan and a progress report. The juvenile court then entered a review order approving the progress report and its recommended actions, and establishing a permanency goal of another planned permanent living arrangement—long term relative care by D.W.'s paternal grandmother. The court's order encouraged the grandmother "to obtain a legal guardianship in the State of Missouri." The order further provided that the DHS "shall provide financial assistance for est[ablishment] of guardianship and shall provide funds to enable child to attend next in court review." The State challenges, by writ of certiorari issued by our supreme court, this latter portion of the court's order.

Certiorari is a procedure to test whether a lower board, tribunal or court exceeded its proper jurisdiction or otherwise acted illegally. Relief through certiorari is strictly limited to questions of jurisdiction or illegality of the challenged acts.

Therefore, our review of the district court's action is to correct errors of law.

French v. Iowa Dist. Ct., 546 N.W.2d 911, 913 (Iowa 1996) (citations omitted).

The State claims the juvenile court acted illegally in imposing the challenged costs upon the DHS, arguing that courts must have authority to impose any particular expense upon a state agency such as the DHS and no such statutory authority exists for imposition of either of the challenged costs. In support of its position it cites *Pfister v. Iowa Dist. Ct.*, 688 N.W.2d 790, 796-97 (Iowa 2004); *Gouge v. Northern Ind. Commuter Transp.*, 670 N.E.2d 363, 369 (Ind. Ct. App. 1996); *Missouri Hosp. Ass'n v. Air Conservation Comm'n*, 900 S.W.2d 263, 267 (Mo. Ct. App. 1995); and *In re Lazano*, 585 N.E.2d 889, 891 (Ohio Ct. App. 1990).

In specific support of its position concerning financial assistance for establishment of a guardianship, the State points out that although our legislature has established a project for subsidized guardianships, see Iowa Code § 234.39(5) (2007), and has appropriated funds for that purpose, see, e.g., 2007 Iowa Acts ch. 1184, § 10; 1996 Iowa Acts ch. 1213, § 10, the project is experimental. The State further points out that the program involves random assignment to either a control group or an experimental group, see Iowa Admin. Code r. 441-204, Preamble; requires an application requesting to participate, see Iowa Admin. Code r. 441-204.3, and there is no evidence of such an application having been made in this case; and conditions the eligibility for a guardian for a child upon satisfaction of certain criteria, including a child under twelve years of age who is the ward of the guardianship being part of a sibling group with a child

twelve or older, see Iowa Admin Code r. 441-204.2(1)(c); and there is no evidence the paternal grandmother meets all of the required conditions.

The appellee, D.W., does not challenge the State's assertion that absent statutory authority courts may not impose costs or expenses upon a state agency. D.W. instead asserts that D.W.'s paternal grandmother is of limited means,¹ and argues the juvenile court's order is fiscally responsible and financially in the best interest of the State and is in the best interest of D.W.

We agree with the position taken by the State, concluding that absent statutory authority a court may not require a state agency to incur financial obligations.² See, e.g., *Batcheller v. Iowa State Highway Comm'n*, 251 Iowa 364, 368, 101 N.W.2d 30, 33 (1960) ("Nor may the courts require defendant to pay or disburse public funds without statutory authority."). We conclude the juvenile court acted illegally when it ordered the DHS to provide financial assistance for the establishment of a guardianship in Missouri, and when it ordered the DHS to provide funds for transporting D.W. to Iowa for an in-court review. We sustain the writ of certiorari and annul those parts of the juvenile court order requiring the DHS to incur such expenses.

WRIT SUSTAINED.

¹ Those materials included in the appendix neither support nor refute this assertion.

² We need not and do not address the question of whether a court may do so in cases in which providing funds might be required by constitution, as that question is not before us.