

Supreme Court of Kentucky

2018-SC-000492-DG

GENARO HERRERA HERNANDEZ

APPELLANT

V. ON APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE AUDRA JEAN ECKERLE, JUDGE
NO. 13-CR-001336

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION OF THE COURT BY JUSTICE VANMETER

AFFIRMING

Under KRS¹ 30A.415(2), the agency requiring the services of an out-of-court interpreter is responsible for payment. In this case, the Louisville Public Defender's Office requested and received approval from the Jefferson Circuit Court for interpreting services with respect to Genaro Herrera Hernandez's interview with Louisville Metro Police Department. Irrespective of the initial judicial authorization of the interpreting services, and subsequent orders approving and/or reducing the interpreter's fee, the payment obligation for the interpreter's fee remained with the requesting agency, the Louisville Public Defender's Office. While this matter has been presented to us as involving the timeliness of the "appeal" and whether the interpreter is an "indispensable

¹ Kentucky Revised Statutes.

party,” we hold that statutory obligation for payment makes the current proceeding inappropriate for resolution of this matter, and therefore affirm the Court of Appeals’ dismissal, albeit on different grounds.

The relevant facts and procedural posture of this case are as follows. Hernandez, an indigent criminal defendant from Guatemala, struck a motorcyclist and passenger with his vehicle while he was intoxicated, killing the driver and injuring the passenger. Hernandez was appointed a public defender and sought to suppress statements he made during a police interview. He received permission from the trial court to retain the services of a Spanish-language interpreter, Ilse Apestequi, for out-of-court interpretive services. The court’s order authorized payment on proof of “all reasonable fees for out-of-court interpretive services incurred by the defendant . . . up to \$5,000.” The trial court approved the interpreter’s first bill for \$777, and the third bill for \$339.43. However, the trial court questioned the interpreter’s second bill for \$2,520, which represented charges for interpretation and written translation of Hernandez’s audiotaped interview with police which lasted a total of 69 minutes. The court found the amount of this invoice to be unreasonable and unnecessary and reduced it to \$1,200 by order entered August 5, 2015.

On September 25, 2015, Hernandez entered unconditional guilty pleas to manslaughter in the second degree, assault in the first degree and misdemeanor offenses; waived filing of the Presentence Investigation Report; and was sentenced to ten-years’ imprisonment. Final judgment was entered that day. On October 12, 2015 — 17 days after entry of the final judgment —

Hernandez tendered a Motion for Reconsideration of Expert Witness Fees and requested an ex parte hearing to address the trial court's reduction of the interpreter's fees from \$2,520 to \$1,200. The trial court agreed to reconsider the fee request, but ultimately declined to approve additional funds, setting forth its reasons in an order entered February 4, 2016, which the court designated as final and appealable.²

On March 7, 2016, Hernandez filed a notice of appeal from the trial court's February 4, 2016, order. On appeal, Hernandez argued that the trial court abused its discretion by not authorizing payment of the full amount of the interpreter's invoiced bill. The Court of Appeals granted the Commonwealth's motion to dismiss, on grounds that the appeal was not timely filed and an indispensable party (the interpreter) was not named in the notice of appeal. Thereafter, this Court granted Hernandez's petition for discretionary review.

The Court of Appeals, and the parties, have largely focused on whether Hernandez's appeal was timely, and whether Apestequi was an indispensable party to the appeal. However, our review of this case reveals that neither issue is dispositive, since payment for Apestequi's services is, by statute, a matter

² The trial court's February 4, 2016, Order states that "defendant has not provided the Court with any authority that this Order is final and appealable for himself, the Office of the Public Defender, the Interpreter, and/or the Finance Cabinet. However, to allow further review of the issues by an appellate body, the Court will designate this Order as final and appealable. Defendant is once again free to proceed *in forma pauperis*, here and on appeal."

between her and the requesting agency — the Louisville Public Defender’s Office.

KRS 30A.415 addresses responsibility for payment for interpreter’s services and provides as follows:

(1) In criminal or civil cases, the Court of Justice shall be responsible for payment, including ordinary and reasonable expenses, for interpretive services for court appearances.

(2) In any case in which the interpreter is providing services out of court, even though that service relates to a pending court case, the agency requiring the services of the interpreter shall be responsible for payment.

(emphasis added).

No one disputes that Apestequi was providing “services out of court” to assist in Hernandez’s defense. Thus, payment for her invoice is governed by section 2 of KRS 30A.415, and “the agency requiring the services of the interpreter shall be responsible for payment.” The agency requiring Apestequi’s services was the Louisville Public Defender’s Office — that agency is responsible for payment. The trial court’s order reducing Apestequi’s invoiced fee did not change the nature of that agency’s obligation to pay her. Even though this case arose on appeal on Hernandez’s behalf and has worked its way through the court system, resolution of this matter is between Apestequi and the Louisville Public Defender’s Office. The attempt to try and recoup the interpreter’s fee in Hernandez’s name and in this circuit court case was improper.

For the foregoing reasons, we affirm the dismissal of this case, albeit on different grounds than the Court of Appeals.

Minton, C.J.; Hughes, Keller, Lambert, VanMeter and Wright, JJ., sitting.

All concur. Nickell, J., not sitting.

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