STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
July 28, 2011

In the Matter of M. P., M. P., and D. R., Minors.

No. 296331
Delta Circuit Court
Family Division
LC Nos. 09-000506
09-000507
09-000508

Before: RONAYNE KRAUSE, P.J., and SERVITTO and GLEICHER, JJ.

PER CURIAM.

Respondent Department of Human Services (DHS) appeals by leave granted a circuit court order directing it to treat the three minor children petitioners as eligible for funding under Title IV-E of the Social Security Act, 42 USC 670 to 42 USC 679c. We dismiss the case as moot.

This case concerns the federal funding program known as Title IV-E that offers financial assistance for eligible children in state foster care and adoption systems. 42 USC 670 *et seq*. County governments generally bear primary responsibility for the payment of foster care expenses. MCL 712A.25. However, if a child is eligible for Title IV-E funding, the county owes no financial obligation for foster care costs, which the DHS and the federal government divide. Federal statutes and regulations control Title IV-E funding. 42 USC 670 *et seq*.; 45 CFR 1355; 45 CFR 1356. Just one restriction envisions that "[federal financial participation] is not available when a court orders a placement with a specific foster care provider." 45 CFR 1356.21(g)(3).

In December 2009, the DHS filed a petition requesting that the circuit court assume jurisdiction over the three involved children. The petition reflects that in late October 2009, the children's mother admitted to a Children's Protective Services worker that she had ingested Vicodin during her pregnancy with one of the children, causing the child to "test[] positive for Opiates shortly after . . . birth." After a December 19, 2009 preliminary hearing, the circuit court removed the children from the parents, but the petition remained pending until a continued preliminary hearing date. The December 19, 2009 order contained the following language:

> If DHS places the minor(s) in a placement that charges an administrative rate or if DHS agrees to pay an administrative rate, DHS shall pay the full cost of the administrative rate. This Court will not be liable for payment of any

> administrative rates, or parts thereof, or other non-traditional placement costs unless this Court has approved said costs in advance in a court order.

After the continued preliminary hearing on December 29, 2009, the circuit court authorized an amended petition and exercised jurisdiction over the children.

On January 5, 2010, the DHS filed with the circuit court its determination that none of the children qualified for federal benefits under Title IV-E; identical handwritten explanations for two of the children noted, "[U]nlicensed relative & court order language restricting placement," while the third child's explanation read, "MGH & court order language restricting placement." By January 6, 2010, the children's guardian ad litem (GAL) had commenced an administrative appeal with a DHS hearing coordinator. The GAL filed in the circuit court a "motion to review placement" on January 8, 2010, and the court held a lengthy hearing that same day. At the outset of the hearing, the court framed the inquiry as whether it should "modify the order and plan . . . in the best interest of the children," given the DHS's recent funding decisions.[1] But questioning of four DHS employee witnesses and later comments by the circuit court revealed that the recent funding decisions of the DHS had not impaired or jeopardized the children's best interests, and that the real question at issue was the availability of Title IV-E funds.

On January 15, 2010, the circuit court entered a 20-page opinion and order characterizing as "abundantly clear . . . that the case was wrongly found ineligible for Title IV funding." The circuit court explained, in relevant part, as follows:

> There was the mistaken belief that court language restricted the ability of the department to place. As a matter of law and in accordance with the testimony received at the court hearing, . . . it is clear that the language did not restrict in any way the department's ability to place the children where they felt the most appropriate placement was, even including a placement that charged an administrative rate also called a P.O.S. rate.
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> [A county DHS director] testified that the Department of Human Services would pay the private provider not only the foster care rate but their so-called purchase of service or administrative rate directly. The department would not have to request further authority of the court to place any Title IV child or to pay the administrative rate. They could do it in accordance with the present court order. He testified DHS could place the child even in a private agency licensed foster home and would pay for the entire cost under Title IV funding. The court order did not in any way restrict the department's flexibility or ability to place these children.

[1] The local DHS employees testified that the decision to deny funding on the basis of the court order language was made by a "Title IV-E Review Committee" in Lansing.

The court also emphasized that it had "not in any way attempt[ed] to specify a placement or a specific foster care provider." The court concluded that all the children had Title IV-E eligibility, and instructed the DHS to "immediately classify all three children as Title IV eligible."

This Court granted the DHS's application for leave to appeal the circuit court's decision.[2] Meanwhile, circuit court supervision of the children and parents continued. On July 16, 2010, after a dispositional review hearing, the circuit court entered an order allowing the parents unsupervised visits and providing, "DHS may return the children to their parents at their discretion after observing overnight visits." The court also incorporated the following paragraph:

> As stated on the record, the court order of 1/15/2010 which ordered DHS to provide Title IV-E funding for the children is rescinded because Christina Creten, the Title IV specialist for the department, has announced and notified the guardian and the Court that they have changed their position. Effective May 4, 2010 they have now approved the disputed language in the court order which they had been objecting to and have now declared the children to be Title IV-E eligible in all respects. Thus, there is no need for the court to order them to provide funding as they are doing so on a voluntary basis.

The record contains a July 1, 2010 memorandum on DHS letterhead, authored by "child welfare funding specialist" Creten to the administrative hearing bureau, summarizing:

> Pursuant to their [DHS employees in Lansing] guidance [in May 2010], DHS changed their position on the matter and will allow [T]itle IV-E on those cases where the judge added language regarding the agency using a purchase of service. . . . [T]his matter has been resolved and the Department has changed its position on the court order language.

On July 28, 2010, the DHS notified the GAL that it had dismissed the children's administrative appeals because "the problem you addressed has been resolved."[3]

The DHS insists on appeal that the circuit court did not possess subject-matter jurisdiction to opine with respect to child eligibility for Title IV-E funding. We review de novo the legal question whether a court has subject-matter jurisdiction over a case. *Specht v Citizens Ins Co of America*, 234 Mich App 292, 294; 593 NW2d 670 (1999). To the extent that our

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[2] *In re MP, MP and DR, Minors*, unpublished order of the Court of Appeals, entered June 9, 2010 (Docket No. 296331).

[3] Petitioners moved in this Court to dismiss the instant appeal, however this Court denied the motion. *In re MP, MP and DR, Minors*, unpublished order of the Court of Appeals, entered September 8, 2010 (Docket No. 296331).

analysis involves statutory interpretation, we similarly consider de novo this issue of law. *Detroit v Ambassador Bridge Co*, 481 Mich 29, 35; 748 NW2d 221 (2008).

The circuit court's rescinding of the offending order from which the DHS appeals renders the merits of this appeal moot. "The principal duty of this Court is to decide actual cases and controversies. To that end, this Court does not reach moot questions or declare principles or rules of law that have no practical legal effect in the case before us unless the issue is one of public significance that is likely to recur, yet evade judicial review." *Federated Publications, Inc v Lansing*, 467 Mich 98, 112; 649 NW2d 383 (2002), clarified on other grounds by *Herald Co, Inc v Eastern Mich Univ Bd of Regents*, 475 Mich 463, 471-472; 719 NW2d 19 (2006). The circuit court ordered that its "order of 1/15/2010 which ordered DHS to provide Title IV-E funding for the children is *rescinded* . . . ." (Emphasis added). To rescind something, like a contract, means "[t]o abrogate, annul, avoid, or cancel [it] . . . [, n]ot merely to terminate it . . . but to abrogate it from the beginning." Black's Law Dictionary (4th ed). Consequently, when the circuit court on July 16, 2010 rescinded the portion of the January 15, 2010 order that the DHS asserts the court entered without jurisdiction, the abrogation of this order "from the beginning" left no error for this Court to review on appeal. Black's Law Dictionary. "If the . . . [DHS] was ever entitled to the relief prayed for, we cannot now make any decree to aid it." *Street R Co of East Saginaw v Wildman*, 58 Mich 286, 287; 25 NW 193 (1885). Because our analysis and decision of the issue presented by the DHS would embody a declaration of "principles or rules of law that have no practical legal effect in the case before us," we cannot decide this moot issue. *Federated Publications*, 467 Mich at 112.

As we have noted, a court may decide moot questions if "the issue is one of public significance" "that is likely to recur yet regularly evade judicial review." *Federated Publications*, 467 Mich at 112-113. We accept that this appeal focuses on an issue of public significance. But the mootness exception does not supply a ground for judicial review in this case because we find unsatisfied the "likely to recur" portion of the exception: first, notwithstanding the DHS's predictions that the precise issue in this case will recur in the future, we can conceive of no reasonable likelihood that other circuit courts in Michigan might adopt orders containing funding or placement language identical to that adopted by the Delta Circuit Court in its January 2010 order and here challenged by the DHS; and second, the DHS has concededly altered its view toward the Title IV-E eligibility of children subject to orders containing court language that the DHS deemed objectionable in this case. No indication of record suggests that the DHS might resort to its earlier position that the language the circuit court employed in its December 2009 placement provisions would preclude the involved children's eligibility for Title IV-E funding. Moreover, we additionally find unsatisfied here the "regularly evade judicial review" element of the mootness exception. We cannot discern any reason why, should the precise legal question at issue here arise in a future circuit or probate court proceeding, the dispute would likely evade judicial review.

Although we understand our dissenting colleague's concern that the circuit court usurped this Court's authority by rescinding the offending portion of the January 15, 2010 order, the issue presented in this appeal nevertheless qualifies as moot. Regardless of the propriety of the circuit court's action, the DHS concedes that as the state agency "charged with administering the Title IV-E program," it has approved the disputed language. Should a circuit court insert into a future order placement language similar to that the Delta Circuit Court crafted in this case, which

spawned the present Title IV-E funding dispute, no untoward limitations on placement would ensue. Simply put, the DHS's own action has rendered this appeal without consequence and there remains no controversy for this Court to resolve.

Because the DHS has not shown that the present dispute meets the requirements of a mootness exception, we dismiss this appeal on mootness grounds.

Dismissed.

/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher