

SUPREME COURT OF NEBRASKA

Mitchell v. French, 267 Neb. 656

676 N.W.2d 361 (2004) · No. S-02-738 · Decided March 26, 2004

SUMMARY

The Nebraska Supreme Court held that a county may be ordered to pay guardian ad litem fees under Neb. Rev. Stat. § 42-358(1) only after the court finds that the responsible party is indigent. Because the district court expressly declined to find Mitchell indigent and relied on unsupported unsworn statements, its order requiring Douglas County to pay Mitchell's share of the fees was erroneous. The court reversed and remanded with directions to vacate that payment order.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	McCormack, J.; Hendry, C.J.; Wright, J.; Connolly, J.; Gerrard, J.; Stephan, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	March 26, 2004
DOCKET	S-02-738
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Douglas County appealed an order requiring it to pay Mitchell's share of guardian ad litem fees in a paternity, custody, and child-support action. The Nebraska Supreme Court moved the appeal to its docket.
STANDARD OF REVIEW	Statutory interpretation presents a question of law reviewed independently by the appellate court.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion
PARTIES	County of Douglas, Nebraska v. Thomas S. Mitchell, Jr., Nikki A. French

TOPICS

- family law procedure
- paternity
- child custody
- child support
- statutory interpretation

PRACTICE AREAS

- family law
- appellate procedure
- statutory interpretation

QUESTIONS PRESENTED

1. Whether Neb. Rev. Stat. § 42-358(1) authorizes a county to pay a party's guardian ad litem fees without a court finding that the responsible party is indigent.
2. Whether the district court's statement that Mitchell was unable to make payments constituted an effective finding of indigency supported by the record.

HOLDINGS

1. Section 42-358(1) permits a county to pay guardian ad litem fees only when the court finds that the party responsible for the fees is indigent.
2. The district court's statement that Mitchell was unable to make payments was not equivalent to a supported finding of indigency; in any event, the unsworn statements of Mitchell's attorney were insufficient evidence to support such a finding.

KEY QUOTATIONS

“It plainly allows for payment of GAL fees by a county only if a court finds that the party responsible is indigent.” (676 N.W.2d at 363)

“The district court erred in ordering the county to pay Mitchell's half of the GAL fees because it did not first find that Mitchell was indigent.” (676 N.W.2d at 364)

FACTUAL BACKGROUND

Mitchell initiated a paternity and custody action concerning two minor children, and French sought custody and child support. A guardian ad litem was appointed, and the district court assessed the GAL's \$1,536 fee equally between Mitchell and French. Although the court expressly found French indigent and ordered the county to pay her share, it declined to find Mitchell indigent while ordering the county to pay his share based on his current inability to make payments. The record contained no evidence at the fee hearing beyond unsworn statements by Mitchell's attorney concerning unemployment, living with his parents, substance-abuse issues, and a possibly outdated income affidavit.

PROCEDURAL HISTORY

Mitchell filed a paternity and custody action against French, and French filed a cross-petition seeking custody and child support. After appointment of a guardian ad litem, the district court assessed the fees equally between Mitchell and French and ordered Douglas County to pay each party's share based on indigency or inability to pay. The court expressly declined to find Mitchell indigent but nevertheless ordered the county to pay his share, prompting the county's appeal.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court was directed to vacate its order requiring Douglas County to pay Mitchell's half of the guardian ad litem fees.

CASES CITED

- Unisys Corp. v. Nebraska Life & Health Ins. Guar. Ass'n, 267 Neb. 158, 673 N.W.2d 15 (2004)
- Mathews v. Mathews, 267 Neb. 604, 676 N.W.2d 42 (2004)
- Cox v. Hendricks, 208 Neb. 23, 302 N.W.2d 35 (1981)
- State ex rel. Ross v. Jacobs, 222 Neb. 380, 383 N.W.2d 791 (1986)
- Riederer v. Siciunas, 193 Neb. 580, 228 N.W.2d 283 (1975)
- Brackhan v. Brackhan, 3 Neb. App. 143, 524 N.W.2d 74 (1994)

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