

SUPREME COURT OF OKLAHOMA

Oklahoma County Public Defender v. Adoptive Parents & Birth Mother

195 P.3d 377 (Okla. 2008) · Decided October 7, 2008

SUMMARY

The Oklahoma Supreme Court considered consolidated appeals concerning whether the Oklahoma County Public Defender had standing to challenge attorney-fee and expense awards in adoption proceedings. The court held that the Public Defender was not an aggrieved party because the orders imposed no burden or obligation on it and did not affect its substantial rights. The court dismissed the appeals and denied the request for superintending control.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Reif, J.; Edmondson, V.C.J.; Hargrave, J.; Opala, J.; Kauger, J.; Watt, J.; Taylor, J.
JURISDICTION	Oklahoma
DECIDED	October 7, 2008
DISPOSITION	dismissed
PROCEDURAL POSTURE	The Oklahoma County Public Defender appealed orders approving compensation and expenses for counsel for adoptive parents in adoption proceedings. The Public Defender argued that the awards improperly included compensation based on flat-fee contracts and nonlegal administrative expenses and alternatively sought superintending review.
STANDARD OF REVIEW	The court reviewed whether the Public Defender was an aggrieved person with statutory standing to appeal and whether the circumstances warranted the exercise of superintending control.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Oklahoma County Public Defender v. Adoptive Parents, Birth Mother

TOPICS

- adoption
- standing
- appellate procedure
- statutory interpretation
- family law procedure

PRACTICE AREAS

Family law

Adoption

Appellate procedure

Standing

Statutory interpretation

QUESTIONS PRESENTED

1. Whether the Oklahoma County Public Defender had standing as an aggrieved person to appeal orders approving adoption-related costs and expenses.
2. Whether the Supreme Court of Oklahoma should exercise superintending control to review the adoption-cost orders despite the Public Defender's lack of appellate standing.

HOLDINGS

1. The Public Defender lacked standing because the challenged orders did not impose a burden or obligation on it and had no binding effect on any of its rights, interests, person, or property.
2. The court declined to exercise superintending control because the Public Defender sought review of issues that were not presented by an actual controversy and the record did not show harm to the children or the public interest.
3. The Public Defender's conclusion, reached while acting as a special master, was not binding on the appointing courts.

KEY QUOTATIONS

“One cannot appeal from a decision, however erroneous, which does not affect one's substantial rights.” (¶ 6)

“We do not sit to decide hypothetical issues or to give advisory opinions about issues not yet in controversy.”
(¶ 7)

FACTUAL BACKGROUND

The district courts appointed the Oklahoma County Public Defender to assist in reviewing applications for adoption costs and expenses. The Public Defender objected to awards that included amounts based on flat-fee attorney contracts and nonlegal administrative expenses, asserting that the awards exceeded the costs authorized by Oklahoma adoption statutes. The challenged orders did not impose any burden or obligation on the Public Defender or affect the Public Defender's rights, interests, person, or property.

PROCEDURAL HISTORY

The district court appointed the Public Defender to assist in reviewing applications for adoption costs and expenses pursuant to an administrative order. After the trial courts approved the challenged compensation awards, the Public Defender appealed. The Supreme Court of Oklahoma consolidated the companion appeals, dismissed them for lack of standing, and denied the alternative request for superintending control.

DISPOSITION

dismissed

CASES CITED

- Tribal Development Co. v. Roff, 1912 OK 431, ¶ 2, 125 P. 1124, 1125
- Tribal Development Co. v. White Brothers, 1911 OK 117, syllabus 4, 114 P. 736
- Cleary Petroleum Corp. v. Harrison, 1980 OK 188, ¶ 4, 621 P.2d 528, 530
- Underside v. Lathrop, 1982 OK 57, ¶ 7, 645 P.2d 514, 517
- In re Peterson, 253 U.S. 300, 40 S. Ct. 543, 64 L. Ed. 919 (1920)
- People v. Superior Court (Laff), People v. Superior Court, 25 Cal. 4th 703, 107 Cal. Rptr. 2d 323, 23 P.3d 563, 584-85 (2001)
- State v. Doe, 93 N.M. 621, 603 P.2d 731, 734 (Ct. App. 1979)
- City of Guthrie v. New Vienna Bank, 4 Okla. 194, 38 P. 4 (1894)

OPINION

REIF, J.

REIF, J.

{1 These companion appeals are considered together and consolidated for the sole purpose of promulgating one opinion to resolve the identical issue presented. The question is whether the Public Defender has standing to challenge the compensation awarded the adoptive parents' counsel. The Public Defender has contended that the compensation awards in question are erroneous, because they are based on "flat fee" attorney fee contracts and include non-legal administrative expenses. The Public Defender seeks (1) a ruling that these elements of compensation are not authorized by 10 O.S. § 7505-8.2(B)(1)(a) through (b), and (2) a declaration that the only costs and expenses that may be awarded in adoption cases are those set forth in § 7505-3.2(B)(1)(a) through (b).

12 The Public Defender believes that standing to bring these appeals flows from its participation in the underlying cases. The Public Defender points out that the trial court in each of these adoption cases appointed the Public Defender to assist the court in review of the application for costs and expenses. These appointments were made pursuant to an administrative order issued by the Presiding Judge of the District Court of Oklahoma County. However, the Public Defender's participation in these cases is not alone sufficient to confer standing to appeal an order that is contrary to the Public Defender's view of the law.

138 Even though the Public Defender's participation did enure to the benefit of the children, the Public Defender was not appointed to represent the children. The text of both the administrative order and the individual orders appointing the Public Defender in these cases expressly states that the Public Defender is appointed to "assist the Court in review of the application for [the adoption] costs and expenses." In doing so, the courts are actually appointing the Public Defender to act as a special master.¹

*379{4 The administrative order charged the Public Defender with the duty to ensure "strict compliance with the law" in reviewing the costs and expenses of a particular adoption. In fulfilling

this responsibility, the Public Defender has concluded that the only allowable costs and expenses in an adoption case are those set forth in § 7505-3.2(B)(1)(a) through (h). While this legal conclusion by the Public Defender acting as a special master does represent a strict view of allowable adoption costs and expenses, it is not binding on the appointing court. *Tribal Development Co. v. Roff*, 1912 OK 431, ¶ 2, 125 P. 1124, 1125; *Tribal Development Co. v. White Brothers*, 1911 OK 117, ¶ 0, 114 P. 736 (syllabus 4). Additionally, this conclusion fails to take into account § 7505-8.2(B)(4). This statute provides, in pertinent part, that "[the provisions of this subsection shall not prohibit a court from... including any additional costs and expenses in connection with an adoption other than those specified in this subsection based on unusual circumstances or need."

15 The legislature has expressly limited standing to bring appeals in adoption cases to "any person aggrieved" by the trial court's appealable orders. 10 O.S.2001 § 7505-7.1. "Generally, if the judgment sought to be reviewed does not, by its own force, operate to impose a burden or obligation [on the appealing party], and it has no binding effect upon any right, interest, person or property of the appealing party, that appellant is not deemed aggrieved." *Cleary Petroleum Corp. v. Harrison*, 1980 OK 188, ¶ 4, 621 P.2d 528, 530 (footnote omitted).

¶ 6 The orders approving the costs and expenses in the adoptions at hand do not impose a burden or obligation on the Public Defender, nor have any binding effect upon a right, interest, person or property of the Public Defender. "Conjecture or speculation about possible adverse consequences that may flow from the decision at some point in the future will not suffice to support a person's 'aggrieved' status. One cannot appeal from a decision, however erroneous, which does not affect one's substantial rights." *Underside v. Lathrop*, 1982 OK 57, ¶ 7, 645 P.2d 514, 517 (footnotes omitted). The Public Defender is simply not "aggrieved" by the refusal of the appointing trial courts to follow the Public Defender's recommendations in regard to the flat fee contracts and administrative expenses.

17 In the alternative, the Public Defender asks this Court to review the orders in question in exercise of the Court's superintending control. The Public Defender contends there is a potential for adoptions to become a contest with "babies going to the highest bidder" in the absence of a strict, uniform interpretation of 10 O.S. Supp.2007 § 7505-8.2 by this Court. In declining to exercise superintending control, it is sufficient to note, "[w]e do not sit to decide hypothetical issues or to give advisory opinions about issues not yet in controversy." *Id.* at 19, 645 P.2d at 517. Nothing in the records presented suggests that the trial courts below have interpreted § 7505-8.2 to the detriment of the children involved or the greater public interest.

18 Accordingly, these appeals are dismissed and the alternative request for superintending review is denied.

19 EDMONDSON, V.C.J., HARGRAVE, OPALA, KAUGER, WATT, TAYLOR and REIF, JJ., concur.

¶ 10 COLBERT, J., dissents.

¶ 11 WINCHESTER, C.J., disqualified.

. While there is no statutory authority for the trial court to appoint a special master to assist the court in reviewing the costs and expenses of an adoption, the power to appoint special masters is an inherent power of the judiciary. In *Re Peterson*, 253 U.S. 300, 40 S.Ct. 543, 64 L.Ed. 919 (1920); *People v. Superior Court*, 25 Cal.4th 703, 107 Cal.Rptr.2d 323, 23 P.3d 563, 584-85 *379(2001); *State v. Doe*, 93 N.M. 621, 603 P.2d 731, 734 (Ct.App.1979). In Oklahoma jurisprudence, the Territorial Supreme Court for Oklahoma Territory recognized that "authority to appoint referees, masters, and commissioners has always belonged to the courts and judges...." *City of Guthrie v. New Vienna Bank*, 4 Okla. 194, 38 P. 4 (1894).