

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.

OPINION

REIF, J.

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{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).