

Merie B. on behalf of Brayden O.

Caselaw No.

No. S-16-437

Filed on

Friday, February 24, 2017

SUMMARY: DHHS and the director of its Medicaid and long-term-care division appeal from the District Court for Lancaster County. The district court granted appellee's request for reimbursement for expenses that were incurred due to the wrongful termination of Brayden's services, as well as attorney fees.

The current matter initially came before the Supreme Court upon an appeal by Merie after the district court, pursuant to the Administrative Procedure Act, affirmed DHHS's determination that Brayden no longer qualified for waiver services. The Supreme Court reversed the district court's judgment and remanded the cause to the district court with directions to order DHHS to reinstate waiver services to Bryaden effective November 11, 2012.

Merie is the mother of Brayden, who suffers from Coffin-Lowry Syndrome. Brayden, who was 17 years old at the time of the court's hearing in the case, has the cognitive awareness of a 4- or 5 year old child and requires constant supervision. Additionally, Brayden has a seizure disorder, a heart disorder, and a myriad of neurological deficiencies, as well as vision and hearing deficits.

As a result of her disabilities, Brayden had been receiving home and community-based waiver services through the Medicaid division of DHHS since approximately 2001. On November 11, 2012, Brayden's services were terminated after DHHS reassessed her condition and determined that she no longer met the necessary qualifications for such services.

Merie appealed DHHS's determination and filed a petition for review under Nebraska's Administrative Procedure Act, Neb. Rev. Stat. § 84-907, in the district court for Lancaster County. The district court affirmed DHHS's determination that Brayden no longer qualified for waiver services, but on appeal to the Nebraska Supreme Court, the court reversed the district court's judgment and remanded with directions that the district court order DHHS to reinstate waiver services to Brayden, effective November 11, 2012.

Merie also filed a "Motion to Determine Expenses" in the district court. In her motion, she requested \$65,394.28 for reasonable and necessary childcare expenses that were incurred due to the wrongful termination of Brayden's services by DHHS. Merie testified that the expenses incurred while Brayden's services were terminated were \$45,349.26 in daycare expenses, \$15,477.01 in health insurance premiums, and other medical expenses of \$2,233.96.

In response, DHHS objected to the request for payment of health insurance premiums because these were not contested at the agency level and therefore outside the scope of the initial petition for review. DHHS acknowledged that it owed Merie for childcare expenses and out-of-pocket medical expenses. Consequently, the district court found that the health insurance premiums paid by Merie should be reimbursed by DHHS, because the denial of HIPPA benefits would not have incurred but for DHHS's improper termination of Brayden's

waiver services.

Therefore the district court ordered DHHS to reimburse Merie for health insurance premiums of \$15,477.01, in addition to the amount they had agreed to pay for daycare services.

Upon review, the Supreme Court agreed with DHHS and the director that the district court exceeded the scope of the mandate set out in Merie V. I. and therefore the district court's April 18, 2016 order was vacated. Merie argues that the mandate required DHHS to reinstate Brayden's waiver services effective November 11, 2012, and that therefore, any adverse consequences that were directly caused by the wrongful termination should be remedied.

The court relied on Gates v. Howell and the well established rule that after receiving a mandate, a trial court is without power to affect rights and duties outside the scope of the remand from an appellate court. Applying that rule to the current facts, the district court was without authority to expand the mandate and hold an evidentiary hearing on Merie's Motion to Determine Expenses. The district court was only to perform the ministerial act of spreading the judgment on its record. Any additional remedy that was sought by Merie must be pursuant to another proceeding and cannot be an enlargement of this appeal.

In conclusion, the Supreme Court determined that the district court had exceeded their scope of the mandate set out in Merie B. I, and therefore the April 18, 2016 order of the district court is hereby reversed and the cause is remanded with directions to vacate the judgment.
