

IN THE SUPREME COURT OF IOWA
Supreme Court No. 23-0214
Polk County JVJV251169

K.C., a child,
Plaintiff,

vs.

IOWA DISTRICT COURT FOR POLK COUNTY,
Defendant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE RACHAEL E. SEYMOUR, JUDGE

DEFENDANT'S BRIEF

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FINAL

CERTIFICATE OF SERVICE

On the 2nd day of January, 2024, the State served the within Appellee's Brief and Argument on all other parties to this appeal by e-mailing one copy thereof to the respective counsel for said parties:

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. The district court abused its discretion in denying the motions to reconsider the expert fee.

Authorities

Boyle v. Alum-Line, Inc., 773 N.W.2d 829 (Iowa 2009)
Elwood, O'Donohoe, O'Connor & Stochl v. Iowa Dist. Ct.,
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In re C.L.C., 798 N.W.2d 329 (Iowa Ct. App. 2011))
Pierce v. Nelson, 509 N.W.2d 471 (Iowa 1993)
Sioux Pharm., Inc. v. Eagle Labs., Inc., 865 N.W.2d 528
(Iowa 2015) (reversing
State Pub. Def. v. Iowa Dist. Ct., No. 08-0358,
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Iowa Code § 13B.4(4)(c)
Iowa Code §§ 232.141(2)(a), (3)(d), 815.11
Iowa Code §§ 815.4, 815.5

II. KC failed to preserve the constitutional issues he raises. Because this Court need not decide them, the State takes no position on them.

Authorities

Good v. Iowa Dep't of Hum. Servs., 924 N.W.2d 853
(Iowa 2019)
Lamasters v. State, 821 N.W.2d 856 (Iowa 2012)
Meier v. Senecaut, 641 N.W.2d 532 (Iowa 2002)
State v. Williams, 929 N.W.2d 621 (Iowa 2019)

ROUTING STATEMENT

This Court should dispose of this case by deciding if the district court properly exercised its discretion in determining the reasonable fee for an expert witness. The case thus presents a routine question of whether the district court properly exercised its discretion in determining that fee. None of the retention criteria in Iowa Rule of Appellate Procedure 6.1101(2) apply to the issues raised in this case, so transfer to the Court of Appeals is appropriate. Iowa R. App. P. 6.1101(1).

STATEMENT OF THE CASE

Nature of the Case

KC petitioned for certiorari to review a district court's orders refusing to reconsider the reasonable fee for his expert witness.

Course of Proceedings and Facts

KC filed an application to appoint an expert to assist him in resisting waiver to adult court. D0039, Mot. Expert Assistance (9/8/2022); App. 17-19. He requested \$7,990 to pay the expert. *Id.* at 2. The district court ruled that it "will authorize fees for Child's expert but will issue a separate ruling as to the amount which is being authorized." D0045, Order (9/13/2022); App. 44-45. KC filed a professional statement saying that the only other experts available for

KC to hire quoted fees of \$8,000 and \$10,000. D0049, Prof. Statement (9/18/2023); App. 46-47.

About two months later, the district court set “the maximum dollar amount for the child’s expert witness not to exceed \$4,590.” D0052, Order Setting Expert Fee (11/7/2022) at 3; App. 60. While the district court found the expert necessary, it found the \$7,990 fee requested “unreasonable.” *Id.* at 3. The court found the requested fee unreasonable because the expert did not need to travel from Ames to Des Moines to meet with KC or testify, the case required reviewing “minimum records,” and the application “lack[ed] information as to what ‘tests’ need to be administered and then scored.” *Id.* at 3.

Before the waiver hearing, KC moved for additional funds. He requested \$7,196.20 based on services rendered and anticipated future costs. D0053, Mot. Addl. Expert Fees (11/20/2022) at 3; App. 64. That request included an invoice, explained the records that the expert reviewed, and explained the tests that the expert administered and scored. *Id.* at 2–3; D0054, Ex.D (11/20/2022); App. 63-64, 66-67; *see also* D0057, Thomas Report (11/28/2022) at 2, 3–20; App. 103, 104-121.

After the waiver hearing, KC filed another motion for additional fees requesting \$7,791.20, the total amount that the expert billed. Do104, Am. Mot. Addl. Expert Fees (12/7/2022); App. 153-154; Do103, Ex.W (12/7/2022); App. 155-156. The district court denied the motion for additional fees “for the reasons previously noted in the original order setting fees.” Do105, Order (12/9/2022); App. 157-158.

KC moved the court to reconsider. Do106, Mot. Reconsider (12/22/2022); App. 159-162. He asked the court to explain “why the Court’s findings regarding reasonableness of compensation remain unchanged considering the additional information ... furnished to the Court” and requested “guidance from th[e court] on how it determined \$4,590.00 is reasonable compensation.” *Id.* at 3. The district court denied the motion “for the same reasons previously noted.” Do107, Order (1/6/2023); App. 163-164.

KC petitioned for certiorari to review the district court’s fee award. The Iowa Supreme Court granted certiorari. The State moved to reverse. The Iowa Supreme Court denied the motion.

ARGUMENT

Background

KC challenges the reasonableness of the fee awarded to his expert. KC Br. at 26, 64. The difference between the fee requested and the fee awarded is \$3,201.20. D0052, Order Setting Expert Fee (11/7/2022) at 3; App. 60; D0104, Am. Mot. Addl. Expert Fees (12/7/2022); App. 153-154. It is unclear to the State who is legally required to pay that difference, if anyone.

The State did not resist KC's requests for expert expenses. KC Br. at 41. The Iowa Supreme Court has said that the State should object to supplemental defense expense requests by indigent defendants only in "rare circumstances." *See State v. Dahl*, 874 N.W.2d 348, 353 (Iowa 2016). The public funds used to pay experts for indigent juveniles come from the indigent defense fund. Iowa Code §§ 232.141(2)(a), (3)(d), 815.11. The State Public Defender ("SPD") oversees that fund and believes that the expert should receive the full fee requested. Iowa Code § 13B.4(4)(c); SPD Br. at 28; *see State Pub. Def. v. Iowa Dist. Ct.*, No. 08–0358, 2009 WL 1492720, at *1 (Iowa Ct. App. May 29, 2009) ("[T]he State Public Defender ... is charged with administering the indigent defense fund.").

Also, KC pled guilty to a serious misdemeanor in adult court. He has not challenged his conviction or sentence. This certiorari proceeding will not affect that proceeding.

Given these circumstances, the State has no practical interest in the outcome of this action. With that in mind, it offers the following argument.

I. The district court abused its discretion in denying the motions to reconsider the expert fee.

Preservation of Error

KC preserved error on his claim that the district court abused its discretion in refusing to reconsider the expert fee. He requested appointment of an expert for his waiver hearing and received permission. D0039, Mot. Expert Assistance (9/8/2022); App. 17-19. The district court determined reasonable compensation below the amount that KC requested. *Id.*; D0052, Order Setting Expert Fee (11/7/2022) at 3; App. 60. KC requested additional funds when he had more detailed bills. D0053, Mot. Addl. Expert Fees (11/20/2022) at 3; App. 64; D0104, Am. Mot. Addl. Expert Fees (12/7/2022); App. 153-154. The district court denied his request and denied his motion to reconsider that denial, preserving error. D0105, Order

(12/9/2022); App. 157-158; DO106, Mot. Reconsider (12/22/2022); App. 159-162; DO107, Order (1/6/2023); App. 163-164.

Standard of Review

The proper standard of review is abuse of discretion. A district court has discretion in determining “reasonable compensation” for expert witnesses who are necessary to support an indigent defendant’s defense. Iowa Code §§ 815.4, 815.5; *Elwood, O’Donohoe, O’Connor & Stochl v. Iowa Dist. Ct.*, Nos. 0–455, 99–375, 2000 WL 1868967, at *2 (Iowa Ct. App. Dec. 22, 2000); *see also Hulse v. Wilfvat*, 306 N.W.2d 707, 709 (Iowa 1981) (“Applying the correct legal standard, a court has broad discretion in determining attorney fees.”). That is true even in juvenile cases. *See In re C.L.C.*, 798 N.W.2d 329, 335 (Iowa Ct. App. 2011) (stating in a juvenile case that “[w]e review a court’s discovery rulings and decisions whether to grant applications for state-funded investigators for an abuse of discretion”); *see also In re A.K.*, 825 N.W.2d 46, 49 (Iowa 2013) (reviewing evidentiary issue in appeal from a delinquency proceeding for abuse of discretion even though the court reviews “delinquency proceedings de novo”).

Indeed, the Iowa Supreme Court has applied abuse-of-discretion review to discovery claims when they are raised as discovery issues and de novo review when they are raised as constitutional issues. *State v. Clark*, 814 N.W.2d 551, 560–67 (Iowa 2012). It should do the same here.

The ACLU as amici argues that this Court should review “rulings seeking reasonable and necessary litigation costs for juveniles de novo” because juveniles receive greater protection from courts than adults do. ACLU Br. at 12. KC says the standard of review should be de novo because the issue has “constitutional icebergs.” KC Br. at 28. This Court should reject both arguments.

First, while juveniles are often entitled to greater protection than adults, nothing about a juvenile’s youth affects the reasonable pay rate for an expert. Whether the \$340/hour fee charged by this expert for each hour worked is reasonable has nothing to do with the aspects of youth like “independent functioning, decision-making, emotional regulation, and cognitive processing” that entitle juveniles to greater protection. KC Br. at 35 (citing *State v. Lyle*, 854 N.W.2d 378, 393 (Iowa 2014)); D0039, Mot. Expert Assistance (12/8/2022) at 2; App. 158. Determining if \$340/hour is reasonable is a subject of

district court discretion. *E.g.*, *Pierce v. Nelson*, 509 N.W.2d 471, 473, 475 (Iowa 1993); *Hulse*, 306 N.W.2d at 709; *C.L.C.*, 798 N.W.2d at 335.

Second, this is not a constitutional issue. The district court authorized the expert, KC received and used the report he needed, and the expert testified. D0045, Order (9/13/2022); App. 44-45; D0057, Thomas Report (11/28/2022); App. 102-124; Tr. Waiver Hr’g Vol. 1, 58:5–101:14; Tr. Waiver Hr’g Vol. 2, 5:1–19:24. The question is not whether the constitution entitled KC to the expert. It is whether the pay rate was reasonable given that KC got the expert he needed. De novo review is inappropriate.

Merits

A district court abuses its discretion when it “rests its discretionary ruling on grounds that are clearly unreasonable or untenable.” *Boyle v. Alum-Line, Inc.*, 773 N.W.2d 829, 832 (Iowa 2009) (per curiam). That includes failing to offer a sufficient basis from which an appellate court can review the exercise of discretion, *id.* at 834, and by relying on fact findings that are not supported by substantial evidence, *Pierce*, 509 N.W.2d at 473.

The district court abused its discretion in denying the motion for additional fees in two ways. First, its orders setting the expert fee and refusing additional fees offered an inadequate explanation to allow effective review. Second, it denied the request for additional fees and the motion to reconsider that denial for reasons unsupported by substantial evidence. The State discusses each in turn.

A. The district court abused its discretion by failing to explain its fee decision in a way that enables appellate review.

The district court failed to explain its decision setting the reasonable expert fee at \$4,590 in sufficient detail to allow appellate review. True, the original order setting expert fees gave four reasons why the \$7,990 fee requested was too much. D0052, Order Setting Expert Fee (11/7/2022) at 3; App. 60. But it gave no explanation of how it arrived at \$4,590 as the reasonable fee. *Id.* Reviewing the record does not offer an obvious explanation. The failure to offer an explanation for the decision arrived at is, generally speaking, an abuse of discretion. *Boyle*, 773 N.W.2d at 833–34 (reversing a district court order reducing attorney’s fees by 2/3 when the district court offered no findings to support its order and no rationale for the reduction); *see also Sioux Pharm., Inc. v. Eagle Labs., Inc.*, 865

N.W.2d 528, 543–44 (Iowa 2015) (reversing district court order when the court failed to “set forth its reasoning for [its] order[] ... in any detail” which made it “difficult for this court to engage in meaningful appellate review”).

That failure might not be a problem had KC made no other filings. *Green v. Iowa Dist. Ct.*, 415 N.W.2d 606, 608–09 (Iowa 1987). But in his motion to reconsider, KC explicitly requested that the district court explain how it arrived at a \$4,590 fee as reasonable. DO106, Mot. Reconsider (12/22/2022) at 3; App. 161. The district court’s failure to explain the fee is an abuse of discretion. *Boyle*, 773 N.W.2d at 833–34; see *Green*, 415 N.W.2d at 608–09.

Moreover, the original fee request and award were based on estimates of the amount of time that the expert would work, but the final fee request included an itemized bill for the work done. DO039, Mot. Expert Assistance (9/8/2022); App. 17-19; DO048, Tracy Aff. (9/18/2022); App. 42-43; DO104; Am. Mot. Addl. Expert Fees (12/7/2022); App. 153-154; DO103, Ex.W (12/7/2022); App. 155-156. The district court’s failure to issue new findings or reasons for its determination of the reasonable fee in the face of the actual bill was an abuse of discretion. *Elwood*, 2000 WL 1868967, at *2; DO105,

Order (12/9/2022); App. 157-158; D0107, Order (1/6/2023); App. 163-164.

It is not possible to determine how the district court arrived at \$4,590 as a reasonable expert fee. One can guess that the district court felt that \$340/hour was too high a pay rate given its experience with experts. But the district court declined to provide an explanation for why it selected \$4,590 as the reasonable fee despite KC's specific request. That lack of explanation leaves this Court unable to effectively review the fee. This Court should reverse and remand, directing the district court to reconsider reasonable expert fees.

B. The district court abused its discretion in denying the motions for additional expert fees because substantial evidence does not support the orders.

A district court also abuses its discretion by relying on findings unsupported by substantial evidence. *Pierce*, 509 N.W.2d at 473. The district court's orders refusing to award additional fees or to reconsider its order denying additional fees relied on factual underpinnings unsupported by substantial evidence.

The district court denied both the motion for additional fees and the motion to reconsider for "the reasons previously noted in the original order setting fees." D0105 (12/9/2022), Order; App. 157-158;

see also D0107, Order (1/6/2023); App. 163-164. The order setting fees gave four reasons that the requested fee was too high: (1) travel from Ames to Des Moines to interview KC was unreasonable, (2) travel from Ames to Des Moines to testify was unreasonable, (3) the “minimum records to be reviewed,” and (4) the “lack of information as to what ‘tests’ need to be administered and then scored.” D0052, Order Setting Expert Fee (11/7/2022) at 3; App. 60. When the district court denied the motion for additional fees, however, new evidence either undermined or warranted further explanation on three reasons given by the court for reducing the fee. The State discusses each reason for the fee in light of the evidence submitted after the original fee award.

One, refusing to grant fees to drive from Ames to Des Moines to interview KC when that was unnecessary was still a valid basis to reduce the fee to the expert because the expert charged for drive time. D0103, Ex.W (12/7/2022) at 1; App. 155. But that drive time amounted to 1.5 hours and mileage costs, or \$541.20. *Id.* It did not justify the entire \$3,201.20 fee reduction.

Two, the district court’s finding that it was not reasonable to charge to drive from Ames to Des Moines to testify was no longer

pertinent. The expert testified remotely and requested no compensation for traveling to testify. *Id.* This was no longer a basis to reduce the fee.

Three, KC and the expert both explained the records that the expert reviewed. DO053, Mot. Addl. Expert Fees (11/20/2022) at 3; App. 62-65; DO054, Ex.D (11/20/2022); App. 66-67; DO057, Thomas Report (11/28/2022) at 2, 3–12; App. 103, 104-121. In its order waiving KC to adult court, the district court noted that the expert “completed a thorough review of records related to the child.” DO102, Waiver Order (12/6/2022) at 2, ¶ 9; App. 150-151. Yet it stood by its earlier determination that the case involved reviewing minimal records. DO052, Order Setting Expert Fee (11/7/2022) at 3; App. 60; DO105, Order (12/9/2022); App. 157-158; DO107, Order (1/6/2023); App. 163-164. The district court never said how much time would have been reasonable to review records or why the two hours billed was unreasonable. DO105, Order (12/9/2022); App. 157-158; DO107, Order (1/6/2023); App. 163-164.

Four, KC and the expert both explained the tests administered and scored. DO053, Mot. Addl. Expert Fees (11/20/2022) at 2; App. 63; DO057, Thomas Report (11/28/2022) at 12–20; App. 113-121. No

evidence suggested that the tests were unnecessary or that the expert spent too long on them. The district court's prior concern that KC failed to explain the tests no longer applied.

Because the record failed to offer substantial evidentiary support for the reasons given by the district court for its orders declining to increase the fee award or to reconsider that denial, the district court abused its discretion.

C. The proper standard for assessing the reasonableness of expert fees in juvenile cases.

KC and the SPD suggest that this Court adopt for the juvenile context the test used to determine the reasonable rate of expert witness compensation used in *Pierce v. Nelson*, 509 N.W.2d 471, 474 (Iowa 1993). KC Br. at 29–32; SPD Br. at 25–28. In that case, the Iowa Supreme Court listed the following seven factors to decide the reasonable fee to pay an opponent's expert for that expert's time responding to discovery:

- (1) the witness's area of expertise;
- (2) the education and training required to provide the expert insight which is sought;
- (3) the prevailing rates of other comparably respected available experts;
- (4) the nature, quality, and complexity of the discovery responses provided;
- (5) the fee actually being charged to the party who retained the expert;
- (6) fees traditionally charged by the expert on related

matters; and (7) any other factor likely to be of assistance to the court in balancing the interests implicated by [the discovery rule.]

Pierce, 509 N.W.2d at 474. The Court also found that the discovery rule at issue required that the “deposition fee should bear some reasonable relationship to the physician’s customary hourly charge for patient care and consultation.” *Id.*

The SPD oversees the indigent fund used to pay expert fees for indigents and endorses the *Pierce* test. SPD Br. at 25–28; Iowa Code §§ 13B.4(4)(c), 232.141(2)(a), (3)(d), 815.11; see *State Pub. Def. v. Iowa Dist. Ct.*, No. 08–0358, 2009 WL 1492720, at *1 (Iowa Ct. App. May 29, 2009) (“[T]he State Public Defender ... is charged with administering the indigent defense fund.”). The State acknowledges both its limited interest in determining expert fees for indigent juveniles as well as the SPD’s expertise in the area. Still, the State offers a few thoughts on the *Pierce* factors.

One, as explained, the district court abused its discretion irrespective of any factors that might be prudent to apply when assessing an expert fee’s reasonableness. This Court therefore need not adopt a factored test to resolve this case.

Two, if this Court considers a test to apply, the State believes that the factors articulated in *Pierce* largely make sense.

Three, the fourth factor—the nature, quality, and complexity of the discovery responses provided—is unique to the rule of civil procedure interpreted in *Pierce*. A more applicable consideration might be the nature, quality, and complexity of expert service rendered. KC appears to apply this factor as the State suggests. KC Br. at 47–48. Similarly, the seventh *Pierce* factor specifically mentions the discovery rule at issue there, so this Court should alter that factor to allow consideration of any other information helpful to the court.

Four, the analysis should not be a rigid seven-factor test. Rather, these factors should serve as guideposts for district courts as they fulfill their statutory duty to determine the reasonableness of an expert fee. Iowa Code §§ 815.4, .5 (“[R]easonable compensation as determined by the court shall be awarded expert witnesses ... for an indigent person....”). In other words, a district court should not be required to discuss and apply every factor in every case. Also, this Court should acknowledge that district courts face challenges in fulfilling their statutory duty to assess the reasonableness of expert

fees because they will usually be unaided by the adversarial process as the State will usually take no position. *See Dahl*, 874 N.W.2d at 353.

Because the district court abused its discretion, the State suggests remanding to reassess the expert fee's reasonableness in light of any guidance that this Court provides.

II. KC failed to preserve the constitutional issues he raises. Because this Court need not decide them, the State takes no position on them.

Preservation of Error

KC failed to preserve error on the due process and equal protection claims he asserts on appeal. Though he raised the issue, he failed to secure a ruling. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

He argues: "The juvenile court violated [his] procedural due process and equal protection rights under both the United States and Iowa Constitutions by capping the compensation of [his] expert substantially below both the amount requested and the market rate for comparable experts." KC Br. at 64 (typography altered). That mirrors the argument he made in his motion for additional fees, so he adequately raised the issue. DO053, Mot. Addl. Expert Fees (11/20/2022) at 3 (arguing that denying him additional expert fees

“constitutes a de facto denial of expert assistance in violation of the Child’s due process and equal protection rights”); App. 64.

But he failed to secure a ruling. The district court summarily denied KC’s motion for additional fees without mentioning due process or equal protection. D0105, Order (12/9/2022); App. 157-158. When KC asked the court to reconsider that denial, he did not ask for a ruling on his due process or equal protection argument. D0106, Mot. Reconsider (12/22/2022); App. 159-162. The district court denied reconsideration, again without mentioning due process or equal protection. D0107, Order (1/6/2023); App. 163-164. The district court never mentioned, much less decided, if its refusal to award more fees after KC received an expert report and expert testimony violated due process or equal protection, so KC failed to preserve error. *Meier*, 641 N.W.2d at 537, 540–41; *cf. Lamasters v. State*, 821 N.W.2d 856, 865–66 (Iowa 2012) (finding that a post-conviction-relief applicant preserved error when district court mentioned a claim, later mischaracterized it, then denied the entire application for post-conviction relief).

Standard of Review

This Court reviews constitutional questions de novo. *State v. Williams*, 929 N.W.2d 621, 628 (Iowa 2019).

Merits

The State takes no position on KC's constitutional claims. The State believes that the district court abused its discretion in determining the reasonable expert fee. This Court therefore need not decide the constitutional questions and should not give the doctrine of constitutional avoidance. *Good v. Iowa Dep't of Hum. Servs.*, 924 N.W.2d 853, 863 (Iowa 2019) (applying the doctrine and collecting cases). On remand, the issues might evaporate if the court grants the entire fee. If not, the district court can decide any constitutional issue KC asserts.

CONCLUSION

The State requests that this Court grant a writ of certiorari, reverse the district court's orders declining to award additional fees, and remand for proceedings to determine reasonable fees and give reasons therefor.

REQUEST FOR NONORAL SUBMISSION

This case is appropriate for nonoral submission.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **3,674** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: January 3, 2024



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