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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1943**

State of Minnesota,  
Respondent,

Rice County,  
Appellant,

vs.

Michelle Lee Walgenbach,  
Defendant.

**Filed May 29, 2012  
Reversed  
Larkin, Judge**

Rice County District Court  
File No. 66-CR-10-3253

G. Paul Beaumaster, Rice County Attorney, Terence J. Swihart, Assistant County Attorney, Faribault, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Harten,  
Judge.\*

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**LARKIN**, Judge

Appellant challenges the district court's order holding it financially responsible for a mental-health evaluation that would determine a defendant's competency to proceed in a felony-level criminal case. Appellant argues that, despite the district court's express statement to the contrary, the evaluation here is intended to determine whether the defendant remains incompetent to participate in the criminal proceeding and that the costs of the evaluation, therefore, are the responsibility of the state courts, and not the county. Because we agree that the evaluation is an updated competency evaluation and the judiciary is responsible for the costs of the evaluation, we reverse.

### FACTS

On October 27, 2010, defendant Michelle Lee Walgenbach allegedly stabbed her roommate in the head with a kitchen fork. Respondent State of Minnesota charged Walgenbach with second-degree assault with a dangerous weapon, domestic assault, and fifth-degree assault. On December 1, Walgenbach's counsel requested a mental-health evaluation under Minn. R. Crim. P. 20 to determine Walgenbach's competency to participate in the criminal proceedings. The district court ordered the evaluation, which was conducted on January 26, 2011. The evaluator found that Walgenbach was not competent to proceed in the criminal matter or to assist in her own defense; that she was mentally ill and chemically dependent; and that she would meet the criteria for civil commitment. Walgenbach's counsel moved the district court to suspend the criminal proceedings based on the evaluation results. The district court found Walgenbach

incompetent due to her mental illness and suspended the proceedings under rule 20.01, subdivision 6.

In accordance with the requirements of rule 20.01, the district court ordered appellant Rice County to conduct a pre-petition screening pursuant to Minn. Stat. § 253B.07, subd. 1 (2010), to determine whether Walgenbach met the criteria for civil commitment. The district court also ordered the head of the institution to which Walgenbach was committed, or, if not committed, “the office or other person charged with her supervision,” to submit reports to the court at least every six months regarding Walgenbach’s future mental-health status and competency to proceed.

On March 10, Rice County Social Services conducted the pre-petition screening. In a letter dated March 15, 2011, addressed to the district court judge who presided over this case, Rice County Social Services informed the district court that the pre-petition screening team had determined that

Ms. Walgenbach is not appropriate for Civil Commitment at this time. She most recently successfully completed inpatient Chemical Dependency Treatment . . . and is currently in an aftercare program . . . as recommended. Therefore, because of her willingness to comply with treatment and recommendations, the Team concluded that Ms. Walgenbach does not present a danger to herself or others at this time.

In August, six months after suspending the criminal proceedings, the district court reviewed the matter. Rice County did not submit any reports regarding Walgenbach’s current whereabouts or condition, but the prosecutor indicated that she had information that Walgenbach was living in Northfield. In a letter dated August 22, 2011, to the Rice County Attorney’s office and copied to Rice County Court Administration, Rice County

Social Services informed the court that “[a] Petition for civil commitment was not voted forward by the Pre-Petition Screening Team. No further action was required . . . and [the] file was closed.” The county provided no information regarding how Walgenbach’s mental illness was being treated or monitored, or whether voluntary mental-health services had been offered to her.

On September 13, the district court reviewed the suspended criminal case. Walgenbach’s counsel informed the district court that Walgenbach had left a message for counsel on March 16, stating that she had left her aftercare program. Although Walgenbach did not provide an address or phone number, counsel believed she was living in Northfield.

The district court held another hearing on September 20. Walgenbach appeared at the hearing. After the hearing, the district court ordered “an updated evaluation regarding [Walgenbach’s] competency, whether [Walgenbach] remains mentally ill, whether [Walgenbach] is receiving appropriate and sufficient services to address her mental illness (if any), and whether the criminal case should remain suspended or prosecution should resume.” The district court also ordered that “[t]he cost of the examination may be billed to Rice County and shall be considered a cost of adult mental health services under chapter 245.” The district court concluded:

3. Rice County Social Services provided no services to [Walgenbach] after the agency declined to recommend civil commitment. There is no indication that case management services were ever offered to [Walgenbach] as required by Minn. Stat. § 245.4711.

....

5. Because the court ordered Rice County Social Services to initiate a pre-petition screening investigation, and because no other office or person was supervising [Walgenbach] despite [her] diagnosis as mentally ill, the court concludes that Rice County Social Services had continuing responsibility for her supervision. The agency is responsible for “clinical supervision”—that is, “the oversight responsibility for individual treatment plans and individual mental health service delivery”—of whomever was managing [Walgenbach’s] treatment. *See* Minn. Stat. § 245.462, subd. 4a.

6. Rule 20.01 does not provide clear guidance for a circumstance in which the court has directed the initiation of civil commitment proceedings, the pre-petition screening team refused to support such a petition, and the circumstances justifying that refusal have fundamentally changed: civil commitment was deemed unnecessary because [Walgenbach] was voluntarily engaging in services, but she left her aftercare within a week of the pre-petition screening.

7. The policies behind Rule 20.01 and chapters 253B and 245 were not served when [Walgenbach] fell into this “black hole,” absent from all services, supervision and authority, despite having been accused of a serious and violent felony offense and found mentally ill and incompetent to proceed.

8. In the event that the court finds a person mentally ill who is not under commitment, and the court orders the initiation of commitment proceedings, “[t]he court must supervise the commitment as provided in Rule 20.01, subd. 7.” Rule 20.01, subd. 6(b)(1).

9. Because the court’s previous attempt to exercise supervision under Rule 20.01, subd. 7, was not successful, in that a commitment proceeding was not initiated and no office or person filed a six month review report on [Walgenbach’s] mental condition with an opinion as to her competency to proceed, the court now must fulfill its duty to exercise supervision by alternative means. The court concludes that another examination of [Walgenbach] is necessary at this

time, to determine [Walgenbach's] current mental condition, [her] treatment needs, and whether those needs are being met.

10. This examination is not being ordered pursuant to Rule 20.01 (*see* Minn. Stat. § 480.182(4)) nor is it an examination for a proceeding under chapter 253B, *see id.* at (3). This examination is necessary because the pre-petition screening team “voted” not to pursue commitment and then no voluntary mental health services were provided to [Walgenbach]. The cost of the examination shall be assigned to the “county of financial responsibility,” and shall be considered a cost of adult mental health services under chapter 245.

11. Because [Walgenbach] has been residing in Northfield, Rice County, MN, Rice County is the “county of financial responsibility” for the purposes of Minn. Stat. ch. 256G.

This appeal follows, in which Rice County challenges the district court's order holding it financially responsible for the cost of the mental-health evaluation.

## **D E C I S I O N**

Rice County contends that the district court erred in characterizing Walgenbach's mental-health evaluation as an adult mental-health service under Minnesota Statutes chapter 245, which makes the cost of the evaluation the financial responsibility of the county, rather than of the judiciary. Rice County argues, in essence, that the district court did not have the statutory authority to hold it financially responsible for the mental-health evaluation. “[S]tatutory construction is a question of law, which we review *de novo*.” *Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009). “The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2010). “We construe statutes to effect their essential purpose but will not

disregard a statute's clear language to pursue the spirit of the law.” *Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 123 (Minn. 2007). Construction of a rule of procedure is, likewise, a legal question, which an appellate court reviews de novo. *State v. Martin*, 591 N.W.2d 481, 484 (Minn. 1999).

Minn. R. Crim. P. 20.01 provides for the suspension of criminal proceedings upon a finding of incompetency. A defendant is not competent to enter a plea, stand trial, or be sentenced if he or she lacks the ability to “rationally consult with counsel” or “understand the proceedings or participate in the defense due to mental illness or deficiency.” Minn. R. Crim. P. 20.01, subd. 2. “If the prosecutor, defense counsel, or the court, at any time, doubts the defendant’s competency, the prosecutor or defense counsel must make a motion challenging competency, or the court on its initiative must raise the issue” and “the court must appoint at least one examiner . . . to examine the defendant and report to the court on the defendant’s mental condition.” *Id.*, subds. 3, 4(a).

The rule further provides for continued supervision of defendants while the case is suspended, including the receipt of regular reports on the defendant’s mental condition from the institution or officer charged with the defendant’s supervision. *Id.*, subd. 7. Felony proceedings may resume if the court finds the defendant competent to proceed within three years after the finding of incompetency. *Id.*, subd. 8. Minn. Stat. § 480.182 (2010) requires state courts to pay the expenses associated with rule 20 competency examinations.

The relevant portion of chapter 245, on the other hand, is known as the “Minnesota Comprehensive Adult Mental Health Act.” Minn. Stat. § 245.461, subd. 1

(2010). Its purpose is to ensure a unified, accountable, comprehensive adult mental-health service system that, among other things, “recognizes the right of adults with mental illness to control their own lives as fully as possible,” “promotes the independence and safety of adults with mental illness,” and “eliminates abuse of adults with mental illness.” *Id.*, subd. 2 (2010). Chapter 245 designates no procedures or protections for a defendant in a criminal proceeding, nor does it provide a process to determine if a defendant is competent to proceed.

Nonetheless, the district court stated that the mental-health examination was “not ordered pursuant to rule 20.01,” but rather was “a cost of adult mental health services under chapter 245.” We disagree. The district court ordered “an updated evaluation regarding [Walgenbach’s] competency, whether [Walgenbach] remains mentally ill, whether [Walgenbach] is receiving appropriate and sufficient services to address her mental illness (if any), and whether the criminal case should remain suspended or prosecution should resume.” These evaluative issues are consistent with the requirements of a court-ordered examination under rule 20. *See* Minn. R. Crim. P. 20.01, subd. 4 (stating that an examination must include, in part, “[a] diagnosis of the defendant’s mental condition[,] . . . the defendant’s capacity to understand the proceedings or participate in the defense[,] . . . any treatment required for the defendant to attain or maintain competence[,] . . . whether a substantial probability exists that the defendant will ever attain competency to proceed[,] . . . and . . . the availability of acceptable treatment programs in the geographic area including the provider and type of treatment”).

Moreover, the district court ordered the same evaluator who had conducted the original rule 20 examination to conduct the updated mental-health examination.

As discussed above, Minn. R. Crim. P. 20 governs competency determinations in criminal cases, while chapter 245 does not address criminal proceedings. Chapter 245 simply does not authorize competency examinations as adult mental-health services. *See* Minn. Stat. § 245.466, subd. 2 (describing the services that constitute adult mental-health services). Contrary to the district court's assertion, rule 20 provides the legal basis for the mental-health examination that the district court ordered. The legislature has unambiguously required the state courts to pay rule 20 costs. *See* Minn. Stat. § 480.182. The district court therefore erred by ordering Rice County to pay for Walgenbach's mental-health evaluation.

Rice County further argues that the district court's failure to follow rule 20 procedures violated Walgenbach's constitutional rights, that Rice County is not the county of financial responsibility under Minn. Stat. § 256G.02, subd. 4 (2010), that the district court erred when it ordered an updated competency examination without a statutory basis, and that the district court improperly considered funding when it ordered Rice County to incur the cost of a rule 20 examination. Because Rice County is entitled to relief under the plain language of section 480.182, it is unnecessary to consider these additional arguments. But in an attempt to provide guidance to the district courts in future cases in which felony-level criminal defendants are found incompetent but not committed, we offer the following observations.

Minn. R. Crim. P. 20.01, subd. 7 provides:

The head of the institution to which the defendant is committed, or if the defendant is not committed to an institution, *the person charged with the defendant's supervision*, must report to the court periodically, not less than once every six months, on the defendant's mental condition with an opinion as to competency to proceed. *The court may order a different period.*

(Emphasis added.)

Although the emphasized language presumes that some unidentified person will be “charged with the defendant’s supervision” and that said person must report to the court regarding the defendant’s current mental condition and competency to proceed on a schedule determined by the court, the rule does not indicate who is responsible for these obligations. The district court’s order indicates that, in this case, the district court believed that Rice County Social Services was responsible, even in the absence of a court order directing the agency to assume and fulfill the supervision and reporting requirements. Although we agree with the district court’s conclusion that the defendant in this case “fell into [a] ‘black hole,’ absent from all services, supervision and authority, despite having been accused of a serious and violent felony offense and found mentally ill and incompetent to proceed,” we caution district court judges that this result can easily occur when the district court does not specifically designate the person who is “charged with the defendant’s supervision” and responsible for reporting to the court on the defendant’s condition. *See* Minn. R. Crim. P. 20.01, subd. 7.

Here, the district court appears to have made certain assumptions regarding what would happen in the absence of a court-ordered civil commitment. For example, the

district court apparently expected Rice County Social Services to offer voluntary mental-health services to Walgenbach and to assume the responsibilities of a person “charged with [Walgenbach’s] supervision” under rule 20. As this case demonstrates, that expectation is unrealistic—especially at a time when public resources are stretched. In future cases in which the district court desires close supervision of defendants who are found incompetent due to mental illness but who are not civilly committed, the court should consider its authority to specifically designate a person or agency to act as “the person charged with the defendant’s supervision”<sup>1</sup> and to establish a reporting schedule that satisfies the court’s legitimate public-safety concerns.

**Reversed.**

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<sup>1</sup> For example, the district court’s February 17, 2011 order states that “[b]ail or other conditions of release ordered in this matter are continued subject to further Order of this court or until and unless this matter is dismissed.” Consistent with this order, the district court could have considered a condition of release requiring defendant’s continued participation in her current treatment programs and her mandatory provision of progress reports to the district court. The district court also could have considered utilizing the processes that it normally uses to supervise criminal defendants who are conditionally released pending resolution of their cases.