IN THE SUPREME COURT OF FLORIDA

CASE NO. SC 00-1427

MIAMI-DADE COUNTY,

Appellant,

v.

THE OFFICE OF THE CAPITAL COLLATERAL REGIONAL COUNSEL,

and

VICTOR TONY JONES,

Appellees.

ON APPEAL FROM THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR MIAMI-DADE COUNTY, STATE OF FLORIDA

ANSWER BRIEF OF APPELLEES

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PRELIMINARY STATEMENT

This case is before the Court on an interlocutory appeal taken by Miami-Dade County from an order by the Honorable Victoria Platzer of the Eleventh Judicial Circuit, in and for Miami-Dade County, Florida. The appeal concerns the order by the lower court requiring that mental health experts appointed by a court to conduct an evaluation pursuant to Carter v. State, 706 So. 2d 873 (Fla. 1997), should be paid by Miami-Dade County, not by CCRC-South.

Citations to the Record on Appeal in this appeal shall be as (R. #). All other citations are self-explanatory.

STATEMENT OF FONT

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STATEMENT OF THE CASE AND FACTS

Mr. Jones generally accepts the Appellant's Statement of the Case, but would add a few additional matters for purpose of clarification.

As correctly noted by Appellant, Mr. Jones, through his CCRC-South counsel, filed a motion for a determination of competency pursuant to Carter v. State, 706 So. 2d 873 (Fla. 1997) (R. 21-23). At an April 22, 1999, hearing on the motion, Judge Platzer granted the motion and ordered the evaluation without objection by the State (R. 100). Mr. Jones' counsel recommended that the court appoint Dr. Hyman Eisenstein due to his previous involvement in and familiarity with Mr. Jones and his case (R. 101). The State indicated that it had also contacted some doctors who "agreed to be appointed, and they are on the Court list" (R. 102); the State also objected to Mr. Jones' recommendation of Dr. Eisenstein because he was not "acceptable" (R. 103). The court then requested the parties to attempt to stipulate to the experts "and if you can't, then I will appoint somebody" (Id.).

At a hearing before Judge Platzer on May 25, 1999, the State submitted the name of Dr. Jane Ainsley, and Mr. Jones submitted the name of Dr. Ruth Latterner (R. 109); the court thereupon appointed both experts to conduct the competency evaluation for Mr. Jones (Id.). A written order was also entered (R. 25). The evaluations were subsequently conducted and both experts

testified before Judge Platzer at a competency hearing (R. 181-91) (Testimony of Dr. Latterner); (R. 116-76) (Testimony of Dr. Ainsley).

Following the competency hearing, Mr. Jones filed a Motion for Payment of Competency Expert, dated August 20, 1999, requesting that Miami-Dade County be responsible for the fees incurred by Dr. Latterner, who had sent her invoice to Mr. Jones' counsel (R. 42-43). In his motion, Mr. Jones acknowledged that the CCRC office "is required to pay certain costs associated with postconviction litigation, such as the cost of transcripts, . . . and the costs associated with an evidentiary hearing" (R. 42-43). However, Mr. Jones argued that the county should pay for Dr. Latterner because she was court-appointed and "Mr. Jones counsel was required to choose an expert off the approved list of experts" (R. 43). The motion was copied to Miami-Dade County, specifically to Assistant County Attorney Bloch (R. 44).

On November 19, 1999, Mr. Jones filed a Renewed Motion for Payment of Competency Expert in light of Dr. Latterner's second invoice for her time at the competency hearing (R. 49-50), again requesting that Miami-Dade County pay, and noting that there had yet to be any objection by the County to Mr. Jones' first motion (R. 49). The renewed motion was also copied to Mr. Bloch at the County Attorney's Office (R. 51).

On January 18, 2000, a status hearing was held before Judge Platzer regarding the progress of Mr. Jones' postconviction case

(Supp. R. 3). At the conclusion of the hearing, Mr. Jones' counsel brought up the issue of Dr. Latterner's invoices because her office had been "hounding" counsel to get paid; Mr. Jones' counsel also stated that he had spoken with Mr. Bloch about this matter "several months ago" (R. 9). At that time, Judge Platzer signed an order requiring Miami-Dade County to pay Dr. Latterner's invoices (R. 65).

On February 3, 2000, the County filed a motion to vacate Judge Platzer's order, arguing that CCRC should be responsible for paying Dr. Latterner pursuant to Hoffman v. Haddock, 695 So. 2d 682 (Fla. 1997). Following the submission of memoranda of law by both Mr. Jones (R. 67-70), and the County (R. 71-75), a hearing was conducted before Judge Platzer.

At the hearing, the County objected to paying Dr. Latterner (R. 235). Judge Platzer acknowledged that "I appointed the expert and I believe the County should be responsible for the payment of the expert. I am granting, once again, the motion" (R. 236). Judge Platzer did, however, agree that if the County wanted to contest the fees, she would schedule a hearing on that issue (Id.). The County again maintained that under "very clear authority" from the Florida Supreme Court, it is CCRC, not the counties, that are responsible for the cost (R. 236-37). The County did acknowledge that "[t]here is no case dealing with the competency experts" but argued that an expert appointed by a court pursuant to Carter was the type of cost that CCRC should

bear (R. 237-38).

In response to the County's arguments, Mr. Jones' counsel argued:

> [W]e are dealing with a court appointed expert. We are not dealing, like in a matter like Porter, which involves court reporter transcripts, or Hoffman, which involves the costs of hearings. We are dealing with something you have acknowledged there is no law either way. I was the attorney in Porter, I don't know if Porter came out before Hoffman or after, but be it as it may, we are dealing with court appointed experts. Mr. Block [sic] is mixing up the issues, the constitutional issue with the terms of the payor of payments. They are not related and so if the Court wants to deny Mr. Block's motion, Mr. Block can certainly appeal. I certainly don't think, or vice versa I will submit an appeal, because it certainly defeats the whole purpose of having a court appointed expert to have the party pay for the expert, no matter what the expert found.

(R. 241).

After Judge Platzer pointed out that the county normally pays for experts in criminal proceedings (R. 243), the County argued that it did so because of specific statutory provisions; however, CCRC's statute "tells the CCRC to pay for these things" (R. 243-44). Judge Platzer then stated:

> Again, it's not CCRC, I mean, there are all sort of things that are part and parcel of the Court doing what it needs to do in order to proceed with the hearing. One of them is to have a defendant transported. One of them is to insure the defendant is competent to proceed, and based upon that, and based upon their good faith motion to have him evaluated for purposes of competency, I appointed an expert. I

> believe, I feel it's incumbent on the Court to do so. I believe, I feel it is incumbent on the County to do it.
>
> I understand you are disagreeing with me, and you have to do whatever. Let me say this, if you want me to address the amount of the fees, I am happy to do that at another time. I granted the order on the notice saying the County is responsible for paying.

(R. 244-45). The County requested a stay as to addressing the reasonableness of Dr. Latterner's fees, which the court granted pending the instant appeal (R. 245).

SUMMARY OF THE ARGUMENT

In a case of first impression, the lower court correctly ordered that Miami-Dade County, not CCRC-South, bear the cost of a court-appointed mental health expert who is appointed by the court to conduct a competency evaluation pursuant to Carter v. State, 706 So. 2d 873 (Fla. 1997). Although the CCRC offices are responsible for bearing the costs of most expenses incurred during the collateral attack process, the situation in the instant case does not fall within such costs that CCRC should bear. Here, Mr. Jones filed a motion for a Carter competency evaluation. Without objection from the State of Florida, the court granted the motion and ordered that both Mr. Jones and the State submit a name from the approved list of experts. Because Mr. Jones was required by the lower court to choose an expert from the list of experts approved by Miami-Dade County to conduct the competency evaluation, this is not the type of cost that the CCRC offices should be required to bear. The lower court's order should be affirmed.

ARGUMENT

As both parties agreed below, the issue of who is responsible for payment of experts appointed by a court to conduct a competency evaluation pursuant to Carter v. State, 706 So. 2d 873 (Fla. 1997), is one of first impression. There is no law directly on point. However, Mr. Jones submits that the lower court correctly analyzed the issue and correctly determined that the counties, not the CCRC offices, should bear the unique costs associated with experts appointed to conduct Carter evaluations. Mr. Jones does not dispute that the CCRC offices are required to pay certain costs associated with postconviction litigation, such as the cost of transcripts, Porter v. State, 700 So. 2d 647 (Fla. 1997), and the costs associated with an evidentiary hearing. Hoffman v. Haddock, 695 So. 2d 682 (Fla. 1997). See also Orange County v. Williams, 702 So. 2d 1245 (Fla. 1997); § 27.7001 *et. seq.* The costs that CCRC is required to bear, however, are not without logical limitation, as the instant case epitomizes. The key issue presented by this appeal is the propriety of a party paying the fees and court time for a court-appointed expert. This is a vastly different situation than the issues addressed in Porter, Hoffman, and Williams. Here, pursuant to Carter, the lower court found that a competency evaluation was required, and ordered that the parties submit names from the list of approved mental health experts. Dr. Latterner was the name

submitted by Mr. Jones, and she was subsequently appointed to evaluate Mr. Jones. Dr. Latterner was not hired by collateral counsel to evaluate his client, but rather was appointed by the court to conduct a competency evaluation.[1]

Thus, while CCRC is generally responsible for most costs associated with postconviction proceedings, fees and other expenses incurred by experts appointed by a court for purposes of a Carter evaluation are not something that the Mr. Jones' collateral counsel, the party requesting the evaluation, should be responsible for. A court-appointed expert has a unique role in judicial proceedings: "Experts appointed by the Court to

[1]The proceedings below were conducted prior to the Court's promulgation of the amendment to Fla. R. Crim. P. 3.851. See Amendments to the Florida Rules of Criminal Procedure, 2000 WL 1637548 (Fla. Nov. 2, 2000). Mr. Jones would note that the manner in which the lower court and the parties proceeded was consistent with the new Rule 3.851 (d), and the new rule is also consistent with Mr. Jones' contention in this appeal that Carter experts are court-appointed and as such should not be paid for by the defendant. For example, Rule 3.851 (d) (5) requires that the court, if finding reasonable grounds for a competency evaluation, "shall order the prisoner examined by no more than 3, nor fewer than 2, experts before setting the matter for a hearing. The court may seek input from the death-sentenced prisoner's counsel and the state attorney before appointment of the experts." That the Court, in approving the rule, envisioned that the parties might have some input into the experts chosen by the trial court to conduct the competency examinations is demonstrative of the underlying assumption that one of the parties would certainly not be paying for that expert's fees. A party can hardly be required to pay for the fees of an expert which the party has not chosen or contracted with.

ascertain mental capacity are neither prosecution nor defense witnesses, but neutral experts working for the Court, and their findings and opinions are subject to testing for truth and reliability by both prosecution and defense counsel." Parkin v. State, 238 So. 2d 817, 821 (Fla. 1970). See also Chapman v. State, 391 So. 2d 744, 746 (Fla. 5th DCA 1980) (same). As Mr. Jones argued below and the lower court evidently agreed, it would defeat the whole purpose of having an expert be appointed by the court to have a party in the proceeding pay for that expert. As noted in Parkin, a court-appointed expert is cloaked with "neutrality," whereas an expert paid for by a litigant is always subject to attack for bias because he or she is being "paid" by the party. This Court recently acknowledged the "probative value of the information sought where the expert was employed by that party for the pending case," writing:

> The information sought here would reveal how often the expert testified on Allstate's behalf and how much money the expert made from its relationship with Allstate. The information sought in this case does not just lead to the discovery of admissible information. The information requested is directly relevant to a party's efforts to demonstrate to the jury the witness' bias.
>
> The more extensive the financial relationship between a party and a witness, the more it is likely that the witness has a vested interest in that financially beneficial relationship continuing. A jury is entitled to know the extent of the financial connection between the party and a witness, and the cumulative amount a party has paid an expert during their relationship.

> A party is entitled to argue to the jury that a witness might be more likely to testify favorably on behalf of the party because of the witness' financial incentive to continue the financially advantageous relationship.

Allstate Insurance Co. v. Boecher, 733 So. 2d 993, 997 (Fla. 1999). See also Gold, Vann & White, et. al. v. DeBerry, 639 So. 2d 47, 56 (Fla. 4th DCA 1994) (error for trial court to limit discovery of information that a "significant part of the [expert's] income" was derived from payment from a party to litigation because such information is "relevant to demonstrate the witness's potential bias"); Langston v. King, 410 So. 2d 179, 180 (Fla. 4th DCA 1982) ("while we agree that the trial court has broad discretion in determining the extent to which a witness may be examined about any interest or bias, we believe that as a minimum the parties should have the right to elicit the existence and terms of any agreement for compensation to be paid to an expert witness"). And the reality is that when the expert is being paid by defense counsel in capital cases, they are particularly vulnerable to attack. See, e.g. Campbell v. State, 679 So. 2d 720, 724 (Fla. 1996) ("in a capital case the State may point out the frequency with which a defense expert testifies for capital defendants, since this is `relevant to show bias, prejudice, or interest'"); Henry v. State, 574 So. 2d 66, 71 (Fla. 1991) (noting that "the prosecution was properly allowed to elicit from defense expert, Dr. Robert Berland, that ninety-eight percent of his clientele consisted of criminal defendants and that forty percent of his practice consisted of first-degree murder defendants represented by the Hillsborough County Public Defender's Office. These questions were relevant to show bias, prejudice, or interest").

The Appellant speculates on a parade of horribles should the Court agree that counties should pay for costs associated with Carter proceedings. For example, it argues that such would "fragment the Hoffman line of cases" (Initial Brief at 9). This is not the case. Neither Hoffman nor Chapter 27 can be logically read in as concrete manner as Appellant does. Under Appellant's view, the CCRCs pay for every single cost associated with a postconviction action without exception. This would lead to ludicrous results. For example, this very appeal arose from a postconviction proceeding. Under the unforgiving view of Appellant's reading of Chapter 27 and Hoffman, Mr. Jones and/or CCRC-South would be responsible for paying the legal fees occasioned by opposing counsel since "the CCRC, not counties, must pay post-conviction expenses" (Initial Brief at 7). Under Appellant's view, CCRC must pay for when Mr. Jones is housed

while in Miami-Dade County for hearings, and for all costs associated with that housing, including security, transportation, food, etc. In reality, however, the county pays for these costs, not Mr. Jones or CCRC-South. Mr. Jones recognizes that these examples are rather extreme, but under Appellant's cramped reading of Hoffman, the costs discussed in these hypothetical situations would have to be borne by CCRC. "[A] statute must not be construed to bring about an unreasonable or absurd result." State v. Schell, 222 So. 2d 757, 759 (Fla. 2d DCA 1969). Thus, assuming *arguendo* that Appellant is correct that the explicit wording of Chapter 27 requires CCRC-South to pay costs associated with a Carter proceeding, Mr. Jones submits that this is a situation justifying a departure from the plain and literal meaning of the statute. As this Court has acknowledged, "[s]uch departure is permitted when a literal interpretation would lead to an illogical result or one not intended by the lawmakers." Parker v. State, 406 So. 2d 1089, 1091 (Fla. 1982).

Appellant's reliance on the "clear distinction between trial costs and post-conviction proceedings in death penalty cases" (Initial Brief at 7), is unavailing in the unique circumstances of a Carter-type competency proceeding. While it is true that collateral proceedings are "civil in nature" (Initial Brief at 9) (citing Carter, 706 So. 2d at 875), they are also "unlike other traditional civil actions" in that they are "quasi-criminal" and have an inherently "constitutional . . . nature." Allen v. Butterworth, 756 So. 2d 52, 60-62 (Fla. 2000). Thus, given this proper characterization of collateral proceedings, the Appellant's stubborn reliance on the "civil v. criminal" distinction is unpersuasive. The Court in Carter recognized that constitutional principles, see Drope v. Missouri, 420 U.S. 162 (1975); Dusky v. United States, 362 U.S. 402 (1960), and the meaningful assistance of counsel in an initial collateral proceeding, warranted a "right to be competent" despite the civil nature of collateral proceedings. Carter, 706 So. 2d at 875.[2] Thus, the "line of demarcation" (Initial Brief at 9), between purely "civil" and purely "criminal" issues is blurred with respect to the unique situation of a competency proceeding. The

[2]In fact, the central issue in Carter was whether the Court's previous decision in Jackson v. State, 452 So. 2d 533 (Fla. 1984), holding that there was no right for a defendant pursuing collateral relief to be competent because collateral proceedings were "civil" proceedings, should be revisited. The Court held that it should, and it abrogated the majority view in Jackson.

lower court's order should be affirmed.

CONCLUSION

For the reasons set forth by the lower court and in this brief, Mr. Jones and the CCRC-South Office submit that the lower court's order should be affirmed.

I HEREBY CERTIFY that a true copy of the foregoing ANSWER BRIEF has been furnished by United States Mail, first class postage prepaid, to all counsel of record on January 24, 2001.

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