CHINS

(DCS staffing)

8/28/17

In **Price v. Indiana Dept. of Child Services**, 80 N.E.3d 170 (Ind. 2017), the Indiana Supreme Court affirmed the Marion Superior Court's dismissal of DCS family case manager Mary Price's complaint against DCS and its director. Id. at 178. The Supreme Court held that Ms. Price was not entitled to the extraordinary remedy of a judicial mandate. Id. at 174. Ms. Price filed a proposed class action lawsuit in July, 2015, alleging that her caseload of forty-three children, whom she was assigned to monitor and supervise, violated the DCS staffing threshold established at IC 31-25-2-5. IC 31-25-2-5(a) provides that DCS "shall ensure that [the department] maintains staffing levels of family case managers so that each region has enough family case managers to allow caseloads to be at not more than: (1) twelve active cases relating to initial assessments, including investigations of an allegation of child abuse or neglect; or (2) seventeen children monitored and supervised in active cases relating to ongoing services." IC 31-25-2-5(b) provides that DCS "shall comply with the maximum caseload ratios described in subsection (a)." To help the legislature track compliance with the staffing caps, IC 31-25-2-4 requires DCS to submit yearly reports on family case manager caseloads, and IC 31-25-2-6(4) requires DCS to provide "a written plan that indicates the steps that are being taken to reduce caseloads."

DCS and its director moved to dismiss Ms. Price's complaint on two grounds: lack of subject matter jurisdiction, and failure to state a claim upon which relief may be granted (Indiana Trial Rule 12(b)(6)). The trial court dismissed Ms. Price's complaint under T.R. 12(B)(6) for failure to state a claim. The Court of Appeals reversed as to the judicial mandate in Price v. Indiana Dep't. of Child Servs., 63 N.E.3d 16 (Ind. Ct. App. 2016). The Indiana Supreme Court granted transfer, and resolved only Ms. Price's claim because the sought-after class had not yet been certified.

The Court said it reviews T.R. 12(B)(6) motions de novo, and will affirm a dismissal if the allegations "are incapable of supporting relief under any set of circumstances", quoting Thornton v. State, 43 N.E.3d 585, 587 (Ind. 2015). Price at 173. The Court explained that a T.R. 12(B)(6) motion to dismiss tests the legal sufficiency of the complaint. Id. The Court will affirm a dismissal if the trial court's decision "is sustainable on any basis in the record." Thornton at 587. Price at 173.

The Court explained that a judicial mandate will issue only when the law imposes a clear duty on the defendant to perform a specific, ministerial act and the plaintiff is clearly entitled to that relief. Id. at 174. The Court noted that Ms. Price's complaint was styled as an

action for mandate under IC 34-27-3-1. Id. IC 34-27-3-1 provides that "[a]n action for mandate may be prosecuted against any inferior tribunal, corporation, public or corporate officer, or person to compel the performance of any: (1) act that the law specifically requires; or (2) duty resulting from any office, trust, or station." Price at 174. The Court observed that the mandate statute does not provide examples of when courts could issue mandate orders. Id. Instead, courts must decide on a case-by-case basis, using the relevant statutes and applicable mandate case precedent as guides. Id. The court quoted State ex rel. Civil City of South Bend v. Court of Appeals of Indiana—Third Dist., 273 Ind. 551, 553, 406 N.E.2d 244, 245 (1980), which states that mandate is "an *extraordinary* remedy viewed with *extreme* disfavor." (Emphases added.) Price at 175.

The Court observed that judicial mandate is appropriate only when two elements are present: (1) the defendant bears an imperative legal duty to perform the ministerial act or function demanded and (2) the plaintiff "has a clear legal right to compel the performance of [that] specific duty." City of Auburn v. State ex rel. First Nat. Bank of Chicago, 170 Ind. 511, 528-29, 83 N.E. 997, 1003 (1908). Price at 175. The Court explained that, for a mandate, it is not enough for the law to impose a generalized duty. Id. The Court noted that, to be subject to a judicial mandate, the law must impose a specific duty to "do" or "perform" something. Id. The Court clarified that, if the defendant has discretion to fulfill the required outcome but no clear, absolute duty to perform a specific act, there can be no mandate. Id.

The Court explained that, where there is a clear legal duty to perform a specific act, the act must also be ministerial, affording the respondent no discretion in discharging the specific duty. Id. at 176. The Court said that a ministerial act does not necessarily arise from a statute's use of mandatory language, which is a *legislative* mandate (emphasis in opinion). Id. The Court opined that a legislative mandate does not mean, and the Court does not presume, that the legislature thereby commanded a specific ministerial act amenable to a *judicial* mandate (emphasis in opinion). Id. The Court gave examples of ministerial acts that a court can lawfully mandate: rule upon a permit application, approve a subdivision plat, pay a salary, pay a judgment (multiple citations omitted). Id. The Court opined that the specific ministerial acts subject to judicial mandate are to be determined solely from the law imposing the duty, and courts cannot impose a mandate remedy different than what is specified in the applicable law. Id.

The Court opined that judicial mandate was not proper in the Price case because IC 31-25-2-5 does not compel the performance of a specific, ministerial act. Id. at 176. The Court noted that, to be susceptible to a judicial mandate, the statute must also compel the performance of a specific act, not just a specific outcome. Id. at 177. Because the statute fails to outline specific actions which DCS must take to meet the caseload staffing requirements, the Court found the statute affords DCS wide latitude in complying with them. Id. The Court opined that IC 31-25-2-5 is not amenable to judicial mandate. Id. The Court noted other statutes that outline mandatory specific acts which DCS shall perform; for example, IC 31-25-2-24 requires DCS to submit an annual child fatalities report. Id. The Court explained that the yardstick for determining which statutes are amenable to judicial mandate is the extent and nature of judicial oversight required to ensure compliance with the underlying obligation. Id. at 178. The Court said that militating

against mandate are those matters requiring more oversight and expertise and that are not readily susceptible to a simple directive to attain compliance. Id. The Court explained that IC 31-25-2-5 does not specify acts to be performed to effectuate the legislature's caseload ratio cap. Id. The Court opined that granting relief in this case "risks entangling the judiciary" in the day-to-day affairs of DCS, which "would likely be a time-consuming intrusion" beyond the Court's institutional competence to discharge. Id.

The Court held that, although Ms. Price could not proceed with her mandate action, she might still seek relief through Indiana's civil service complaint procedures at IC 4-15-2.2-42. Id.