ATTORNEY FOR LAKE COUNTY BOARD OF COMMISSIONERS

Angela M. Jones
Law Offices of Angela M. Jones
Munster, Indiana

ATTORNEY FOR LAKE COUNTY COUNCIL

Gerald M. Bishop
Merrillville, Indiana

ATTORNEYS FOR APPELLEES

Theodore E. Rokita
Attorney General of Indiana

Frances Barrow
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Lake County Board of Commissioners and Lake County Council,

Appellants-Plaintiffs,

v.

State of Indiana, Office of the Attorney General of the State of Indiana, Lake County Probation Department, Jan Parsons, in her official capacity as Director and Chief Probation Officer of felony Probation Department of the

April 30, 2021

Court of Appeals Case No. 20A-MI-1527

Appeal from the Marion Superior Court

The Honorable Kurt Eisgruber, Judge

Trial Court Cause No. 49D06-1906-MI-24203

Superior Courts of Lake County, Criminal Division, et al.
Appellees-Defendants

Mathias, Judge.

[1] The Lake County Board of Commissioners and Lake County Council (collectively, "Lake County") appeal the Marion Superior Court's entry of summary judgment in favor of the State of Indiana, the Office of Attorney General, the Lake County Probation Department, and Jan Parsons, in her official capacity as the Director of the felony Probation Department of the Superior Courts of the Lake County Criminal Division (collectively "the Appellees"). On appeal, Lake County argues that the trial court erred when it entered summary judgment in favor of the Appellees after concluding as a matter of law that the county is responsible for the costs of Lake County probation officers' legal representation in defending against a federal lawsuit.

[2] Under Indiana Code subsection 11-13-1-1(c), Lake County is responsible for paying the costs of its probation officers' legal defense that are incurred in the performance of the officers' duties. We therefore affirm the trial court's grant of summary judgment in favor of the Appellees.

Facts and Procedural History

[3] In 2015, probationer Lorena Bostic filed a complaint in the United States District Court for the Northern District of Indiana against the Lake County Board of Commissioners, five Lake County Superior Court Criminal Division Judges, Lake County Chief Probation Officer Jan Parsons and Lake County Probation Officer Miroslav Radiceski, in their official capacities, alleging violations of her constitutional rights (the "federal litigation").[1] The judges of the Lake County Criminal Division are responsible for hiring and supervising probation officers, but Lake County is statutorily required to pay the probation officers' salaries and expenses. Both Parsons and Radiceski were employed by the Lake County Probation Department when the offenses alleged in the federal litigation occurred.

[4] On December 2, 2015, Lake County submitted a formal written demand to the Indiana Attorney General requesting that the office appear for and defend Parsons and Radiceski in the federal litigation. The Attorney General declined,

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[1] Bostic alleged that Radiceski, her probation officer, abused his position on multiple occasions, which culminated in non-consensual, sexual conduct. When Bostic refused Radiceski's sexual advances, he retaliated by filing a petition to revoke Bostic's probation. While the petition to revoke was pending, Radiceski attacked Bostic in an alcove adjacent to an enclosed stairwell in the Lake County Government Center. Parsons was aware of Radiceski's misconduct, and in January 2014, she filed a motion to withdraw the petition to revoke Bostic's probation. Parsons also transferred Bostic's probation to the Porter County Probation Department. However, Bostic's probation was transferred back to Lake County where she was subjected to ridicule and snide remarks by Radiceski's former co-workers. On the probation department's motion and without notice to Bostic or her counsel, the Lake Superior Court issued an *ex parte* order extending her probation by one year. Two weeks later, Bostic filed an emergency motion to vacate the one-year extension of her probation and advised the trial court of the abuse she received from Lake County Probation Department personnel. Shortly thereafter, the Probation Department filed a motion to discharge Bostic from probation, which was granted.

having concluded that Lake County is responsible for defending the probation officers.[2] Appellant's App. Vol. II, p. 235. The federal litigation remains pending.

[5] On March 23, 2019, Lake County filed a complaint for declaratory relief against the Appellees and argued that because Lake County probation officers are state employees, the State is required to represent and indemnify them. On December 23, Lake County moved for partial summary judgment, asking the trial court to conclude that probation officers are state employees. In response, the Appellees filed a cross-motion for summary judgment and argued that the State is not obligated to defend the probation officers in the federal litigation because counties are required to pay for legal representation and damages incurred by probation officers. On June 23, 2020, the trial court heard argument on the parties' motions.

[6] On August 3, the trial court issued an order denying Lake County's motion for partial summary judgment and granting the Appellees' cross-motion for summary judgment. The trial court concluded that Lake County is responsible for paying the costs of defense and indemnification of its probation officers. Lake County now appeals.

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[2] Lake County and the State attempted to resolve the issue presented in this appeal in the federal litigation, but the district court declined to exercise supplemental jurisdiction over the issue because it is a pure question of Indiana law, and Indiana state courts "have a strong interest in resolving this claim." Appellant's App. Vol. II, p. 176.

Standard of Review

[7] When our court reviews a summary judgment order, we stand in the shoes of the trial court. *See Matter of Supervised Estate of Kent*, 99 N.E.3d 634, 637 (Ind. 2018) (citation omitted). Summary judgment is appropriate "if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Ind. Trial Rule 56(C). Where, as here, the challenge to summary judgment raises a question of law, we review it de novo. *Ballard v. Lewis*, 8 N.E.3d 190, 193 (Ind. 2014). The fact that the parties have filed cross-motions for summary judgment does not alter our standard for review, as we consider each motion separately to determine whether the moving party is entitled to judgment as a matter of law. *Reed v. Reid*, 980 N.E.2d 277, 285 (Ind. 2012).

Discussion and Decision

[8] The facts in this case are undisputed. The question presented in this appeal is whether Lake County or the State is, as a matter of law, responsible for paying the costs of legal representation for the Lake County probation officers in the federal litigation.

[9] Lake County argues that probation officers are state employees, and therefore, the State is required to indemnify them and pay the costs of their defense.[3] *See*

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[3] Attorney General must also defend judges or prosecutors who are "sued for civil damages or equitable relief [where] the suit would be construed, under notice pleading, as arising out of an act performed within the scope of the duties of the judge or prosecuting attorney[.]" Ind. Code § 33-23-13-3.

Ind. Code 4-6-2-1.5(a) (requiring the Indiana Attorney General to defend state employees). In support of this argument, Lake County relies on *J.A.W. v. State*, 650 N.E.2d 1142 (Ind. Ct. App. 1995), *aff'd in relevant part*, 687 N.E.2d 1202, 1203 n.3 (Ind. 1997)).

[10] In that case, J.A.W. filed various tort claims and a 42 U.S.C. § 1983 claim against the Marion County Probation Department and his probation officer alleging that the officer failed to protect him from sexual abuse. *Id.* at 1146. Our court rejected J.A.W.'s argument that the Marion County Probation Department was a county entity and therefore subject to suit under § 1983. (cite) Citing several statutory provisions, we observed that "Probation is an arm of the court." *Id.* at 1150. We then explained that the Marion County Probation Department was not a county entity simply because it is funded by county government. *Id.* Indeed, that funding system is "merely reflective of the longstanding policy of funding state courts through county revenues." *Id.* at 1150–51. We concluded that the Marion County Probation Department and J.A.W.'s probation officer, acting in his official capacity, were state entities, and thus not subject to suit under § 1983.[4] *Id.*

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[4] Although J.A.W.'s probation officer could generally be subject to suit under § 1983 in his individual capacity, our court concluded that he was entitled to absolute judicial immunity from suit because he was implementing and enforcing the juvenile court's probation order. *Id.* at 1151–52. We observed that "[a]bsolute judicial immunity therefore extends to persons performing tasks so integral or intertwined with the judicial process that these persons are considered an arm of the judicial officer who is immune." *Id.*

[11] In addition to relying on our court's holding in *J.A.W.*,[5] Lake County notes that the statutorily mandated judicial control over probation departments and probation officers in support of its claim that probation officers are state employees. *See* Ind. Code ch. 11-13-1. The Appellees acknowledge that probation departments have been considered "arms" of the State for determining liability for certain claims, including those brought under § 1983. But the Appellees assert that a probation officer's status for determining liability under § 1983 has no bearing on the proper inquiry before us—whether the General Assembly has imposed a duty on the State to defend and indemnify probation officers. *See* Appellees' Br. at 12–13. We agree.

[12] Our General Assembly is tasked with determining which governmental entities are responsible for funding probation departments. And therefore, we turn our attention to the relevant statute: Indiana Code section 11-13-1-1. Under section 11-13-1-1, Lake County probation officers "serve at the pleasure of the" Lake Superior Court and "are directly responsible to and subject to the orders of the court." *Id.* The statute further provides that probation officers' salaries are paid

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[5] Lake County also claims that our court's more recent opinion in *Hendricks County. v. Green*, 120 N.E.3d 1118 (Ind. Ct. App. 2019) supports its argument. We are not persuaded. In that case, our court addressed only whether a probation officer was entitled to a cash payment of her accumulated paid time off after she resigned from her position. 120 N.E.3d at 1121. Hendricks County argued that requiring the county to make a cash payment violated its policy for county employees. But the county's employee manual explicitly stated that the policies did not apply to all county employees and that employees of the county court system "should confirm with their respective court whether they are covered by these policies." *Id.* at 1124 (cleaned up). Our court concluded that the probation officer was a court employee, and therefore, "the determination as to whether deferred compensation can be cashed out falls statutorily within the ambit of the judiciary." *Id.*

"out of the county, city, or town treasury by the county auditor or city controller."[6] *Id.* Importantly, the statute also specifies that "[p]robation officers are entitled to their actual expenses necessarily incurred in the performance of their duties."[7] *Id.* Thus, if Lake County probation officers' legal expenses are "actual expenses necessarily incurred in the performance of [the officers'] duties," then Lake County is responsible for those costs.

[13] To make this determination, we apply our well-established rules of statutory construction:

> Our first task when interpreting a statute is to give its words their plain meaning and consider the structure of the statute as a whole. We avoid interpretations that depend on selective reading of individual words that lead to irrational and disharmonizing results. As we interpret the statute, we are mindful of both what it

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[6] Salaries for probation officers "must comply with the minimum compensation requirements for probation officers adopted by the judicial conference of Indiana under" Indiana Code section 11-13-1-8. *Hendricks Cnty. v. Green*, 120 N.E.3d 1118, 1123 (Ind. Ct. App. 2019), *trans. denied*. And "in consultation with . . . at least one (1) judge of a court or division of a court authorized to impose probation . . . " a "county, city, or town fiscal body shall adopt a salary schedule setting the compensation of a probation officer." *Id.* As to judicial oversight of probation officer salaries, our supreme court has observed,

> [u]sing a central judicial entity with special expertise to establish minimum salary levels for probation officers, rather than having separate determinations in each county, is more efficient and insures fairness and some degree of uniformity in the setting of salaries by trial courts statewide. Far from being an unconstitutional exercise of legislative authority, the process by which probation officers' salaries are determined in fact illustrates the coordinate branches of government acting cooperatively and responsibly.

Matter of Madison Cnty. Prob. Officers' Salaries, 682 N.E.2d 498, 501 (Ind. 1997).

[7] Also, salaries of any "administrative personnel needed to properly discharge the probation function . . . shall be . . . paid out of the county or city treasury by the county auditor or city controller." I.C. § 11-13-1-2. Probation officers are generally "entitled to the same benefits, holidays, and hours as other county, city, or town employees." Ind. Code § 36-2-16.5-5.

> does say and what it does not say. To the extent there is an ambiguity, we determine and give effect to the intent of the legislature as best it can be ascertained. We do not presume that the Legislature intended language used in a statute to be applied illogically or to bring about an unjust or absurd result.

ESPN, Inc. v. Univ. of Notre Dame Police Dep't, 62 N.E.3d 1192, 1195–96 (Ind. 2016) (cleaned up).

[14] We initially observe that subsection 11-13-1-1(c) does not expressly state that counties or cities are responsible for paying the "actual expenses necessarily incurred." However, the immediately preceding sentence requires that probation officers' salaries are paid "out of the county, city, or town treasury by the county auditor or city controller." I.C. § 11-13-1-1(c). It is thus reasonable to infer from the statute's plain language that counties or cities are also responsible for paying probation officers' "actual expenses necessarily incurred." Moreover, Lake County has not cited, and we have not found, any statute that requires the State to pay any expenses associated with the operation of probation departments.[8] For these reasons, it would be illogical to conclude that an entity other than the county auditor or city controller bears responsibility for paying probation officers' expenses—interpreting the statute otherwise would be irrational and disharmonizing. We therefore may reasonably presume that the

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[8] However, the General Assembly has created "a program of state financial aid to be used for the support of court probation services." Ind. Code § 11-13-2-1(a). The fund is administered by the judicial conference of Indiana to provide grants to probation departments for specific purposes listed in Indiana Code section 11-13-2-2.

General Assembly intended that counties or cities are responsible for paying their probation officers' actual expenses necessarily incurred in the performance of their duties.

[15] Next, we consider whether the costs of the probation officers' legal representation in the federal litigation are "expenses necessarily incurred in the performance of their duties." I.C. § 11-13-1-1(c). The Appellees cite to two prior decisions from our court—*Mears v. Lake County Council*, 709 N.E.2d 747 (Ind. Ct. App. 1999) and *Delaware County Circuit Court v. Indiana Civil Rights Commission*, 719 N.E.2d 417 (Ind. Ct. App. 1999)—in support of its argument that the legal costs here fall within the ambit of subsection 11-13-1-1(c). We find those decisions persuasive.

[16] In *Mears*, Lake County sought indemnification of legal expenses incurred in a lawsuit involving employees at the Lake County Juvenile Detention Center.[9] 709 N.E.2d at 748. The State argued that Lake County was statutorily required to pay all expenses of juvenile detention facilities, including legal expenses. *Id.* at 749. The statute at issue provided, "if these [juvenile detention] facilities are operated by the juvenile court, the judge shall appoint staff and determine the budgets. The court may contract with other agencies to provide these facilities. All **expenses** shall be paid by the county." *Id.* (quoting former Ind. Code § 31-6-

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[9] In the underlying case, the juvenile and his parents filed the § 1983 claim against the Juvenile Court Judge, Lake County, and Juvenile Detention facility employees after their child was sexually assaulted by cellmates while he was detained overnight at the Lake County Juvenile Detention Center. *See Lake Cnty. Juv. Ct. v. Swanson*, 671 N.E.2d 429, 433 (Ind. Ct. App. 1996).

9-5(b)) (emphasis added).[10] Because the statute did not define "expenses", our court considered the plain and ordinary meaning of the term. *Id.*

[17] We observed that "expense" is defined as: "That which is expended, laid out or consumed. An outlay; charge; cost; price. The expenditure of money, time, labor, resources, and thought. That which is expended in order to secure benefit or bring about a result." *Id.* (quoting Black's Law Dictionary 577 (6th ed. 1990)). Our court reasoned that "[l]egal costs and judgments are part of the 'price' that must be paid in order to derive the 'benefit' of having a juvenile detention center," and therefore, "legal costs and judgments would fall into the definition of expenses." *Id.* We were unpersuaded by Lake County's argument that the State should bear the responsibility for the juvenile detention center employees' legal costs simply because the State was responsible for Judge Mears's legal expenses. *Id.* Though the judge exercised exclusive control over the detention center employees, no statute required the State to pay "expenses incurred in defending all persons under the judge's control." *Id.* at 750.

[18] Our court reached a similar conclusion in *Delaware County*. There, after a juvenile-center employee was discharged from her employment, she filed a discrimination complaint with the Civil Rights Commission against the Circuit Court Judge and the juvenile center. *Del. Cnty*, 719 N.E.2d at 419. The Civil Rights Commission found that the employee was unlawfully terminated from

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[10] Indiana Code section 31-6-9-5 was repealed 1997. The current version of the statute, Indiana Code section 31-31-8-3, similarly requires the county to pay all expenses of juvenile detention and shelter care facilities.

her employment based upon handicap discrimination and ordered the Circuit Court to pay the employee her lost wages and benefits. *Id.* The Circuit Court refused to pay the judgment and the Civil Rights Commission ultimately filed an application for writ of assistance to enforce the judgment under Trial Rule 70. *Id.* The trial court granted the Commission's writ and ordered Delaware County to pay the judgment from county funds. *Id.*

[19] On appeal, Delaware County argued that it was not responsible for the judgment because the Circuit Court is a state entity. Our court agreed that the Circuit Court is a state entity, but also reiterated that "Indiana law has long required that county government directly finance the operation of the state trial court system." *Id.* at 419 (quoting *J.A.W.*, 650 N.E.2d at 1150). And the same statute at issue in *Mears*, Indiana Code section 31-31-8-3,[11] specifically required counties to pay the expenses incurred to operate juvenile detention and shelter care facilities. *Id.* Relying on *Mears*, our court concluded that the "judgment against the Circuit Court is an 'expense' in operating the Juvenile Center." *Id.* at 420.

[20] These two decisions reflect Indiana's long standing policy requiring county governments to directly finance the operation of the state trial court system, including certain legal expenses. Our General Assembly has continued to require county governments to finance probation departments while allowing

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[11] Formerly Indiana Code section 31-6-9-5.

the judiciary to exercise control over the operation of those departments. These decisions are within our legislature's control.

[21] In line with our holdings in *Mears* and *Delaware County*, we conclude that "actual expenses necessarily incurred in the performance of [probation officers'] duties," I.C. § 11-13-1-1(c), include the legal costs of defending probation officers who are sued for acts committed while serving in their official capacities. And in the federal litigation, Bostic sued the Lake County Probation Department, Jan Parsons, in her official capacity as the Director of the Felony Probation Department, and her probation officer, for acts that she alleges occurred while she was subject to the probation department's supervision. Thus, the legal costs of defending the probation officers falls within the ambit of subsection 11-13-1-1(c) and are the responsibility of Lake County.

Conclusion

[22] For all of these reasons, we agree with the trial court's conclusion that Lake County is responsible for the legal costs of defending its probation officers in the federal litigation. The trial court's entry of summary judgment in favor of the Appellees is affirmed.

[23] Affirmed.

Altice, J., and Tavitas, J., concur.