

IN THE CIRCUIT COURT OF CRITTENDEN COUNTY, ARKANSAS

STATE OF ARKANSAS

VS.

DAMIEN ECHOLS, JESSE MISSKELLEY  
and JASON BALDWIN

FILED  
at \_\_\_\_\_ o'clock \_\_\_\_\_ m. NO.

NOV 10 1993

PLAINTIFF

CR-93-516  
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LAVADA NORRIS, CLERK

DEFENDANTS

MEMORANDUM BRIEF OF CRITTENDEN COUNTY, ARKANSAS,  
IN OPPOSITION TO BEING COMPELLED TO PAY ATTORNEYS' FEES

It was stipulated at the previous hearing herein that the attorneys appointed to represent the defendants herein were appointed by the Crittenden County Circuit Court in June of 1993 prior to the effective date of Act 793 of 1993. That Act became effective on July 1, 1993, since the Arkansas Supreme Court in State v. Post, 311 Ark. 510, 845 S.W. 2d 478 (1993) had invalidated Ark. Code. Ann. Sec. 16-92-108 in its entirety and held that in the absence of statutory authority, the responsibility for paying indigent defense fees fell on the State as opposed to the County. This decision was reaffirmed in State v. Independence County, 312 Ark. 472 (1993) and in State v. Campbell, 851 S.W. 2d 434 (April 19, 1993). All of these decisions predated the appointment of counsel in these causes. These cases were the law in the State of Arkansas and consequently, the Court-appointed attorneys acquired a vested right that they would be paid reasonable fees for their services in representing these defendants throughout these cases so long as they remained attorneys of record and were not relieved of this representation by the Court. They also were assured that the State of Arkansas would

be responsible for the payment of these fees because at the time of the appointment which created this vested right, this was the law in Arkansas as stated in these cases.

Subsequently, the Arkansas Legislature passed Act 1193 of 1993 which had an effective date of July 1, 1993. This Act put the responsibility for paying appointed private attorneys on the county where the crime was committed. In Section 8 of this Act, it states "that when private attorneys . . . are appointed to represent an indigent person, the attorneys . . . shall be paid by the county wherein the crime was committed". This Act does not authorize the payment of the fees to these Court-appointed attorneys in this case because their appointment was effective prior to the effective date of the Act and the legislation does not purport to be retroactive in its application. It is a general rule of statutory construction that changes in statutes relating to vested rights are characterized as substantive and require application of the law as it existed at the time the right was created. Arkansas State Police, et al v. Welch, et al, 772 S.W. 2d 620 (Ark. App. 1989); Union National Bank of Little Rock, et al v. Barnhart, 823 S.W. 2d 878 (Ark. Sup. Ct. 1992). In the Barnhart case, the Supreme Court states that all statutes are to be construed as having only a prospective operation unless the purpose and intention of the legislation is to give them a retroactive effect and it is expressly declared or necessarily implied from the language used. The Act herein certainly does not contain any express declaration or necessary implication that

it was intended to perfect pre-existing right. The date of the appointment is controlling here, because that appointment carried with it the right to expect the award of reasonable fees to be paid by the State under the then controlling case law as established by the Arkansas Supreme Court. This right was antecedent to Act 1193 which purported to transfer the responsibility of paying these fees to the County. The Arkansas Supreme Court in State v. Campbell, 351 S.W. 2d 434 (p. 437) made it clear that the Courts may consider what government funds are available for the payment of Court-appointed counsel. Therefore, when these Court-appointed attorneys were appointed in June of 1993, they had a right to rely on this decision that gives the Circuit Courts the right to consider the State funds because they were the governmental funds that the Supreme Court had held should be used to pay Court-appointed attorneys at the time of their appointment. This Court can take judicial notice of the fact that the State is much better able to make funds available to pay Court-appointed attorneys in a case of the magnitude of this one than is Crittenden County. The presiding Court judge in this particular case is keenly aware of the enormous amount of time that has been spent by Court-appointed counsel in this case and, in view of his experience as a Prosecutor and Circuit Judge, having participated in a number of Capital Felony cases, can realize that attorneys' fees in a case of this nature could very well bankrupt Crittenden County. Crittenden County had a right to rely on the law at the time of these appointments as did the

Court-appointed counsel here that the County's funds would not be called upon to pay these fees.

Effective July 1, 1993, the County is aware that appointments made after that date will be the responsibility of the County. They can plan accordingly to try to handle those extraordinary cases such as this one that could in effect break the County. In fact, they have done so by contracting with outside counsel to limit their exposure in those cases when the Public Defender has a conflict. However, in these particular cases, they had no such right because the law did not impose upon the County the responsibility to pay Court-appointed attorneys at the time of these appointments.

The State has cited a Federal Court case in support of its position that the County should be responsible after the effective date of this Act and the State should be responsible for reasonable fees prior to that date. However, this case is not binding on the State Courts and, furthermore, it appears to have dealt with the amount of fees that could be collected as opposed to who would pay the fees. What the Federal Court in that case did was similar, but the Supreme Court in State, ex rel, Moose v. Kansas City and Memphis Railroad and Bridge Company, held in 117 Ark. 606, 174 S.W. 2d 248, that the strict rule of construction contended for does not apply to remedial statutes which do not disturb vested rights or create new obligations but only supply a new or more appropriate remedy to enforce an existing right or obligation. In this particular case, the strict rule of con-

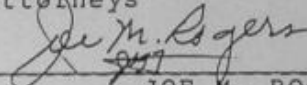
struction does apply because the statute that the State argues for disturbs the vested rights of the previously Court-appointed attorneys for reasonable compensation to be paid by the State. It also creates a new obligation on behalf of the County to pay Court-appointed attorneys' fees. For these reasons, the County should not be held responsible for paying these Court-appointed attorneys, but the State should.

Respectfully submitted,

CRITTENDEN COUNTY, ARKANSAS

BY HALE, FOGLEMAN & ROGERS,  
Its Attorneys

By

  
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Memorandum Brief of Crittenden County, Arkansas, was served upon the parties hereto by depositing a copy thereof in the United States Mail, postage prepaid, addressed to the attorneys of record, as follows:

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on this 10<sup>th</sup> day of November, 1993.

*Joe M. Rogers*  
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