



# Supreme Court: Mobile County mental health center entitled to fees for expert witnesses

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For the second time since 2011, the Alabama Supreme Court has sided against Mobile County Probate Judge Don Davis (left) in a legal dispute with AltaPointe Health Systems CEO Tuerk Schlesinger. The court ruled that the mental health organization is entitled to fees when its doctors testify as expert witnesses at civil commitment hearings in Probate Court.

MONTGOMERY, Alabama – Mobile County’s government-funded community mental health organization is entitled to extra compensation for the testimony of its doctors at Probate Court hearings, according to a recent Alabama Supreme Court ruling that could affect agencies across the state.

Mobile County Probate Judge [Don Davis](#) had ruled that [AltaPointe Health Systems](#) was not entitled to fees when its doctors testified as expert witnesses because it already receives taxpayer funding.

But Chief Justice Roy Moore, who wrote the majority opinion, ruled that the law requires the probate judge to award “reasonable” fees for expert witness testimony. The ruling means that AltaPointe could receive up to the \$114,400 in fees it requested, plus fees for additional expert testimony that doctors have given since the original court filing.

The court was divided. Moore, joined by Justice Lyn Stuart, wrote the main opinion.

“By disqualifying AHS from receiving expert-witness fees for the testimony of its employees, the Mobile County Probate Court erred as a matter of law,” he wrote.

Six other justices concurred in the result but differed in the rationale or wrote separate opinions. Justice Greg Shaw dissented, arguing that the probate judge’s authority to grant “reasonable” fees should include no money at all.

It is the second time in the last two years that the Supreme Court has sided with AltaPointe in a legal dispute with Davis. In 2011, the court [ruled that Davis was exerting too much scrutiny](#) over the treatment of patients he had committed to AltaPointe’s facilities.

“It costs us a tremendous amount of money to put the required physicians or other professionals in the courtroom,” said, AltaPointe CEO Tuerk Schlesinger, pointing to the time it takes doctors away from treating patients. “This was a big win for us.”

Davis said the ruling does not affect his budget; any money for witness fees will come from the state general fund. But he noted that the Supreme Court had never address the issue before and that it could force changes in counties where probate judges have had similar policies.

“It has statewide implications,” he said.

Prior to April 2007, Davis had awarded fees based on a \$160 hourly rate. But he said he stopped that after learning that the Jefferson County Probate Court did not award fees to publicly funded health agencies. He noted that the doctors are salaried employees of AltaPointe and make the same money whether they testify or not.

“I started following the Jefferson County line of thinking,” he said. “It’s double dipping.”

The court rejected that argument, pointing to wording in the statute.

“However persuasive such an argument might be as a matter of public policy, the statute itself makes no such distinction, but instead applies to ‘any expert testimony,’” Moore wrote.

He indicated that it was up to the Legislature to change the law if it thought the regular appropriations to community health centers should cover the duties of their doctors in court.

Other justices focused on a section of the statute relating to the term “reasonable” fees. In his dissent, Shaw wrote that the law gave probate judges the discretion to deny fees.

“Here, the probate judge found that no fee was reasonable,” he wrote. “I do not believe that he exceeded his discretion in so finding.”

Justice Mike Bolin, a former Jefferson County probate judge, wrote that he agreed Davis exceeded his discretion in this case. But in his opinion, joined by Justices Jim Main, Kelli Wise and Tommy Bryan, he wrote that a decision not to award fees might be reasonable in some cases.

Still to be determined is exactly how much money AltaPointe will receive. It originally submitted a bill for \$188,800, representing testimony of 1,180 hearings from July 2008 through August 2011 at a rate of \$160 an hour. Later, it cut its request to \$114,400. 715 from January 2010 through August 2011.

AltaPointe appealed to the Supreme Court last year after Davis denied a request for a \$188,800 payment for the testimony of 1,180 hearings, as a rate of \$160 an hour. Later, AltaPointe cut its request to \$114,400 for the 715 hearings its doctors testified at from January 2010 to August 2011.

Schlesinger said the hourly rate is based on what Davis has paid in fees to other expert witnesses.

“It should be close to what he’s paying others,” he said.

Davis said he would hold hearings to determine the amount, which could vary from case to case. Factors to be considered include what expert witnesses receive in other venues and the education and experience of the witnesses. He said he also must determine whether the rate should be different for time the witness spends in court and as opposed to out-of-court time spent preparing for the testimony.

Davis said the actual testimony lasts an average of six to seven minutes per case.

The Supreme Court opinion noted that the AltaPointe witness sometimes spends 40 hours week preparing for hearings and testifying at them. Schlesinger said Davis conducts much lengthier questioning of expert witnesses than most probate judges.

He also said most probate judges allow testimony from other employees familiar with the cases. Davis requires testimony from the doctor.

Davis said attorneys have told him they are much more comfortable hearing from the actual physician, who is available to explain him diagnoses in person.

*Headline changed at 2:37 p.m. on Oct. 7 to correct the inference to fees come from the Mobile County Probate Court budget.*