

# Judge tells local court: Stop playing doctor

By Chip Drago  
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A court has directed Mobile County Probate Judge **Don Davis** to quit meddling beyond his authority in the delivery of court-ordered mental health care service in the community.

Sitting as a special judge after all of Mobile County's circuit judges recused themselves, Monroe County Circuit Judge **Dawn Wiggins Hare** late last month issued the ruling tempering the probate court's role in court-ordered outpatient treatment stemming from involuntary commitment proceedings.

She held that, under Davis, Mobile County's probate court exceeded its jurisdiction; violated the doctrine of separation-of-powers establishing boundaries for the judicial, legislative and executive branches of government; and violated consumers' rights in the local mental health marketplace.

Essentially, Hare ruled that Davis's judicial reach exceeded his statutory grasp in micro-managing AltaPointe, formerly Mobile Mental Health, and the treatment of individuals ordered to its care by the court.

"... there are no provisions authorizing the Probate Court to exercise clinical judgment or to require that AltaPointe submit status reports or attend status hearings absent 'a triggering event,' i.e. AltaPointe's determination that a consumer is in material non-compliance with the outpatient treatment order," she ruled.

As a court of limited jurisdiction, the local probate court doesn't have authority beyond that which is expressly stated in the law, ruled Hare. And while a probate judge may find, based on clear and convincing evidence, that an involuntary commitment is warranted, and order either in-patient or out-patient treatment, and further order specific conditions be followed, the actual directives and treatment plan is established by the **designated mental health facility**, she wrote, the emphasis supplied by the judge.

AltaPointe Health Systems had sought the reining in of Davis.

Davis referred inquiries to attorneys for probate court on the matter. Attorney **Mike Druhan** said an appeal of Hare's order would be filed with the state Supreme Court.

The dispute boiled down to the proper legal interpretation of "material non-compliance" with probate court orders, according to Druhan.

"Because clinical decisions are beyond the Probate Court's jurisdiction, AltaPointe determines a consumer's material noncompliance with the outpatient treatment order," wrote Hare.

According to Hare, probate court officials are entitled to one, a report when AltaPointe determines that an outpatient isn't complying with treatment orders; and, two, a revocation hearing if AltaPointe decides the consumer isn't complying with conditions set out for treatment.

"The Department of Mental Health (and not the Probate Court) is charged by the Legislature with setting standards of care and treatment and monitoring the treatment provided by a designated mental health facility, such as AltaPointe, and the designated mental health facilities are to determine the specific treatment," Hare ruled.

"The (Mobile County) Probate Court has failed to show this Court any statutory authority where the Legislature has designated or authorized the Probate Court with the Authority to dictate, set, monitor or enforce treatment," she ruled.

"The Legislature has unambiguously declared it to be the policy of this State that the Department (of Mental Health), and not the probate courts, sets the standards of care and treatment for Consumers and that the Department, and not the probate courts, provides the oversight of providers such as AltaPointe to ensure such persons receive the necessary treatment and to ensure AltaPointe is complying with the Department's standards."

In overstepping its bounds, the probate court violated the 14th amendment to the U.S. constitution guaranteeing that states not deprive a citizen "of life, liberty or property without due process of law." Consumers are entitled to the least restrictive environment that will achieve the purposes of the commitment, according to the law.

Hare ruled that AltaPointe had satisfied its four-point burden in qualifying for relief by mandate of a higher authority:

- The right to relief;
- Probate Court's duty to perform its job properly, accompanied by a refusal to do so;
- The lack of another adequate remedy;
- Properly invoked jurisdiction of the court.

Davis has been probate judge since 2000 when he won election to succeed the retiring Probate Judge **Red Noonan**.

On Dec. 7, 2007, Davis issued a general order over outpatient treatment from AltaPointe. The order took effect Jan. 1, 2008. AltaPointe that month sought to overturn the order. On Feb. 23, 2010, the probate court vacated its 2007 order and replaced it with a new general order.

"By entering the 2010 General Order, which includes several of the same provisions found in the 2007 General Order, the Probate Court confirmed that the issues raised" by Altapointe had to be addressed, Hare ruled.

AltaPointe officials said Davis's guidelines were costly and burdensome, diverting about \$1.5 million a year away from treatment and into dealing with red tape.