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EMINENT DOMAIN - TEXAS

City of Laredo v. Montano

Supreme Court of Texas - October 25, 2013 - S.W.3d - 2013 WL 5763179

In this eminent-domain case, a jury determined that the City of Laredo's condemnation was not for an authorized public use and awarded attorney's fees and expenses to the property owner under Texas Property Code § 21.019(c). This fee-shifting statute authorizes the trial court to "make an allowance to the property owner for reasonable and necessary fees" and expenses to the judgment date, when condemnation is denied.

Of the lawyers who represented the Montanos, Richard Gonzalez was awarded $339,000 and Adriana Benavides-Maddox was awarded $37,000.

The City appealed the award, complaining about deficiencies in the property owner's attorney's fees proof under the fee-shifting statute.

As to Gonzalez, the Supreme Court of Texas determined that his testimony regarding his hours was devoid of substance and, thus, insufficient to support lodestar determination of attorney fees. He testified that he had reasonably accumulated about 1,356 hours in the case. He came to this number by multiplying his 226 weeks of active employment by a factor of six, representing his estimate of average number of hours per week he worked case, although the record provided no clue as to how he came to conclude that six hours a week was a "conservative" estimate of his time in case, he did not appear to have known how much he was owed for his services until the calculations at trial, he conceded that, had he been billing his client, he would have itemized his work and provided this information, and similar effort should be made when adversary is asked to pay instead of client. As the Supreme Court noted, "Our puzzlement deepens when we consider Gonzalez's testimony that he did not make any record of his time in the case or prepare any bills or invoices for the Montanos." The court remanded for further consideration, leaving open the possibility that Mr. Gonzalez would receive nothing more than the $35,000 he had previously been paid by the Montanos.

Although Ms. Benavides-Maddox appears to have kept no billing records either, the Supreme Court found that her testimony about her unbilled trial work was at least some evidence on which to base an award of attorney fees in because it concerned contemporaneous or immediately completed work for which she had not had time to bill, or presumably even record, in her billing system. Billing inquiry involved contemporaneous events and discrete tasks—the trial and associated preparation for each succeeding day, it was a task the opponent witnessed at least in part, having also participated in the trial, and attorney's charges relating to the trial were not questioned on cross-examination.

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