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Hescott v. City of Saginaw

United States District Court, E.D. Michigan, Northern Division - July 23, 2013 - Slip Copy - 2013 WL 3817347

The Hescotts brought a complaint against the City after a residence they owned—an investment property—was demolished and the resulting debris was carried away without notice to them and without a court order authorizing the City's conduct.

One month before trial, the City made an offer of judgment pursuant to Federal Rule of Civil Procedure 68 amounting to \$15,000. The Hescotts rejected the offer. They sought \$324,750 to settle the case. When that suggested settlement was declined, the Hescotts opted to go to trial.

The Hescotts were awarded \$5,000 by a jury because the City carried away the debris of their demolished residential property without notifying them first. The award resulted from the jury's conclusion that the Hescotts' Fourth Amendment right against unreasonable seizures had been violated when the city re-entered the property without the Hescotts' consent or a court order. The jury rejected, however, the Hescotts' inverse condemnation claim that the demolition of the residence was improper—they concluded that the house constituted a public safety risk which justified emergency demolition.

The precise question faced was this: may the City recover its attorney's fees—as a part of its costs—after the Hescotts' eventual jury award fell below the City's previous offer of judgment? The Court concludes that the Hescotts were not entitled to an award of attorney's fees.

"The question of who is responsible for the legal expense of litigating this case is an interesting one because the unique facts implicate both the Civil Rights Attorney's Fees Award Act of 1976 (42 U.S.C. § 1988) and Federal Rule of Civil Procedure 68. Commonly referred to as simply § 1988, the Attorney's Fees Award Act was largely intended to encourage the enforcement of civil rights laws 'through the use of plaintiffs as private attorneys general.' Rule 68, on the other hand, was designed 'to promote settlement, rather than litigation.' That is, 'Rule 68 is designed to provide a disincentive for plaintiffs from continuing to litigate a case after being presented with a reasonable offer.'"