

Bond Case Briefs

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EMINENT DOMAIN - PENNSYLVANIA

Township of Millcreek v. Angela Cres Trust of June 25, 1998

Commonwealth Court of Pennsylvania - June 22, 2016 - A.3d - 2016 WL 3419109

Trust that held real property filed petition seeking \$3,359,900.33 in attorney fees, costs, and expenses nearly four years after prevailing in township's condemnation action.

The Court of Common Pleas awarded trust \$517,868 in fees, costs, and expenses. Trust appealed, and township cross-appealed.

The Commonwealth Court held that:

- Trial court had jurisdiction over fee petition;
- Trust was not entitled to costs incurred in separate environmental proceeding;
- Trust was not entitled to costs and expenses attributable to separate litigation;
- Trial court used proper methodology to arrive at amount of fee award;
- Trial court applied appropriate factors for evaluating reasonableness of engineering and geology fees;
- Reduction of paralegal's billing rate was not against clear weight of evidence; and
- Trial court did not abuse discretion in not accepting block billing.

Trial court had jurisdiction over trust's fee petition, which was filed nearly four years after entry of order sustaining trust's preliminary objections in township's condemnation action. Eminent Domain Code provided that it was the "complete and exclusive procedure and law" to be followed in condemnation proceedings, section of Judicial Code setting out 30-day time limit applied "except as otherwise provided or prescribed by law," and Eminent Domain Code did otherwise provide by placing no specific time limit upon condemnee's request for fees incurred in defeating condemnation.

Trust, which sought fees and costs incurred in successfully defending township's condemnation action, was not entitled to award of costs incurred in environmental proceeding that challenged project permit sought by township in connection with its attempted condemnation of property. Environmental proceeding was separate from condemnation action, as grant of permit would not have necessarily resulted in condemnation of trust's property.

Trust, which sought fees and costs incurred in successfully defending township's condemnation action, was not entitled to award of costs and expenses attributable to litigation separate from condemnation action, even though such litigation might have been ancillary to or motivated by the condemnation action. Eminent Domain Code permitted reimbursement of costs "actually incurred because of the condemnation proceedings."

Trial court properly determined amount of reasonable attorney fees award to trust, in township's condemnation action in which trust prevailed, by considering amount of township's attorney fees and doubling that amount to arrive at trust's award, where the trust failed to prove the reasonableness of the fees, costs, and expenses it paid to its attorneys.

Trial court provided sufficiently clarity as to how it arrived at award of attorney fees, costs, and expenses to trust, which prevailed in township's condemnation action, where court made numerous findings about excessiveness of trust's request for fees and costs, and court explained that no analysis was provided as to question whether services of engineers were required given nature of the litigation.

Trial court's reduction of paralegal's billing rate was not against the clear weight of the evidence in township's condemnation action in which trust prevailed and sought fees and costs. Trust provided testimony that paralegal performed at level of experienced associate attorney and that paralegal's rate was within range of paralegal rates in particular region of state, while township provided testimony and affidavit that hourly rates charged for paralegal was outside normative rates charged in region.

Trial court did not abuse its discretion in not accepting block billing used by trust's attorneys, in township's condemnation action in which trust prevailed and sought fees and costs, where no explanatory testimony was provided, so as to preclude objectively accurate determination of reasonableness of time expended on particular tasks.