

Bond Case Briefs

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EMINENT DOMAIN - NORTH DAKOTA

North Dakota Department of Transportation v. Schmitz

Supreme Court of North Dakota - May 8, 2018 - N.W.2d - 2018 WL 2111964 - 2018 ND 113

Following trial to determine the amount due to property owner for eminent domain taking, property owner sought an award of attorney fees, expert witness fees, and litigation costs.

The District Court awarded property owner \$137,347.50 in attorney fees, \$35,930.96 in expert fees and \$8,027.38 in litigation costs. Property owner appealed.

The Supreme Court of North Dakota held that:

- The trial court's order awarding property owner \$114,840 in attorney fees was not an abuse of discretion;
- Order lowering the hourly rate of associate attorney to \$150 per hour was not an abuse of discretion;
- The trial court's order declining to award expert witness fees for nontestifying expert was not an abuse of discretion; and
- Remand was required to allow the trial court to properly apply statutes addressing litigations costs and disbursements.

The trial court's order awarding property owner \$114,840 in attorney fees was not an abuse of discretion, in eminent domain action; the court found reasonable expenditures of 287.1 hours for attorney at \$400 per hour, and it expressly considered the character of legal services rendered, the results obtained, the customary fee charged for services in the locality, and attorney's skill and ability.

The trial court's order lowering the hourly rate of associate attorney to \$150 per hour when determining attorney fee award in eminent domain action was not an abuse of discretion; the trial court found \$150 per hour a customary fee for associates in the locality, and the \$150 figure fell within the range of evidence presented to the trial court.

The trial court's order declining to award attorney fees incurred in making the application for attorney fees and costs in eminent domain action was not an abuse of discretion; no authority supported a mandatory award for preparation of an application for attorney fees and costs, and the trial court determined the reasonable number of hours that were expended by attorney and associate attorney for the entire action.

The trial court's order declining to award expert witness fees for nontestifying expert was not an abuse of discretion, in eminent domain action; the trial court excluded costs for nontestifying expert witness because he "added nothing as he did not even testify at trial," and statute gave the trial court the sole discretion over the number of expert witnesses who were allowed fees or expenses.

The trial court's decision to reduce the amount of expert fees and expenses awarded was not an abuse of discretion, in eminent domain action, where the trial court considered area of expertise,

education and training, prevailing rates, quality of discovery responses, fee actually charged, and other factors, and the court considered the jury's rejection of the testimony from two experts the most important in its determination, which it categorized as consideration of "other factors."

Remand was required to allow the trial court to properly apply statutes addressing litigation costs and disbursements, in action seeking attorney fees, expert witness fees, and litigation costs associated with eminent domain action; the court found travel expenses, such as airfare, car rental, and meals, were not taxable as costs or disbursements, however statute provided a list of disbursements to be taxed in judgment, and second statute gave the court discretion to award other costs.