

[Bond Case Briefs](#)

Municipal Finance Law Since 1971

EMINENT DOMAIN - TEXAS

[Baker v. City of McKinney, Texas](#)

United States District Court, E.D. Texas, Sherman Division - August 26, 2022 - F.Supp.3d - 2022 WL 3704302

Homeowner brought action against city seeking compensation for damages to her home caused by standoff with armed fugitive, alleging violation of the Takings Clauses of the federal and state constitutions.

Following jury trial, the District Court entered judgment in favor of homeowner and awarded \$44,555.76 in just compensation for the cost of repairs to her real property, and \$15,100.83 in just compensation for the loss in market value to her personal property. City moved for new trial.

The District Court held that:

- City was liable for unconstitutional taking based on destruction of property during standoff;
- Homeowner's daughter did not consent to taking;
- Governmental immunity did not shield city from liability under Takings Clause of Texas Constitution;
- Jury instruction on relevance of police officers' actions did not constitute plain error; and
- Damages award of \$15,100 for loss of personal property was not against the weight of the evidence.

City was liable on homeowner's claim for unconstitutional taking in violation of the Fifth Amendment based on destruction of property during standoff and after officers forcefully entered home by breaking down both front and garage door and running over backyard fence, even though law enforcement could lawfully enter homeowner's property pursuant to the public interest in order to draw armed fugitive out of home, where law enforcement could not lawfully destroy homeowner's property.

Homeowner's daughter did not consent to taking, as would preclude city's liability for unconstitutional taking under the Texas Constitution, although daughter consented to law enforcement's entry onto the property in order to draw out armed fugitive in home, where daughter did not consent to destruction of property.

Governmental immunity did not shield city from liability under Takings Clause of Texas Constitution for damage to homeowner's property caused by police officers' apprehension of dangerous fugitive in home; claim under state constitution for taking, damaging, or destruction of property for public use constituted waiver of governmental liability, and officers destroyed homeowner's property for public use.

Exclusion of evidence of donations of items, money, and insurance proceeds that reduced out-of-pocket expenses homeowner incurred in repairing home after it was damaged by police officers pursuing armed fugitive did not prejudice city by forcing it to compensate homeowner twice for same injury, as would warrant new trial in action alleging unconstitutional taking in violation of the

Fifth Amendment, where benefits were entirely voluntary and from private third-party payments or services, benefits were in no way funded or paid for by city, nor had homeowner ever been compensated by city for her losses, and allowing city to completely forego paying just compensation by taking private property then waiting for third party to cover owner's losses would have resulted in injustice to homeowner.

Jury instruction, in homeowner's § 1983 action against city alleging unconstitutional taking based on damages caused to her home by police officers' standoff with armed fugitive, stating that any actions taken by police department were not relevant to consideration of whether city violated homeowner's rights by taking her property without just compensation did not constitute plain error, as would warrant new trial, where homeowner's § 1983 claim was not premised on officers' actions in destroying her property, but on city's refusal to provide her with just compensation.

Verdict awarding homeowner \$15,100 for loss of personal property was not against the weight of the evidence, and thus did not warrant new trial in homeowner's action against city alleging unconstitutional taking under the Fifth Amendment and Texas Constitution arising from police officers' standoff with armed fugitive, where homeowner testified that tear gas had permeated the walls and floors of her home, and that, by the time she was permitted to enter her home after tear gas had been remediated, city had removed everything that was in it and no pictures of her damaged personal property had been taken, and homeowner's testimony detailed personal property that had been destroyed, including pre-destruction photographs of each item she discussed.