

IN THE SUPREME COURT OF TEXAS

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No. 12-0274
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CITY OF LAREDO, TEXAS, PETITIONER,

v.

LUIS MONTANO, CECILIA MONTANO MOTA, CRUZ JORGE MONTANO, CLARENCE HILLBURN AND CLARENCE HILLBURN AS EXECUTOR OF THE ESTATE OF GLORIA MONTANO HILLBURN, DECEASED, RESPONDENTS

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ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FOURTH DISTRICT OF TEXAS
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PER CURIAM

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. The City appealed the award, complaining about deficiencies in the property owner’s attorney’s fees proof under the fee-shifting statute. The court of appeals reformed the award in part and, as reformed, affirmed. ___ S.W.3d ___, ___ (Tex. App.—San Antonio 2012). Because we conclude that deficiencies remain in the property owner’s proof of

attorney's fees, we reverse the court of appeals' judgment, in part, and remand to the trial court for further proceedings.

The Montano family owns property in the central business district of Laredo near the International Bridge No. 1 to Mexico. In December 2004, the City decided it needed the Montanos' property to widen a street and build a pedestrian plaza near the bridge. The Montanos refused to sell. The family claimed that the City had no public purpose for their land but rather merely intended to benefit El Portal Center, a private entity operating a nearby shopping center.

The City filed suit to condemn the property in March 2006. The case was tried to a jury about four years later. The jury agreed with the Montanos that the City had no authorized public use for the property and awarded attorney's fees and expenses. The trial court rendered judgment on the jury verdict, awarding the Montanos \$446,000 in attorney's fees through trial, additional attorney's fees on appeal, and additional sums for appraisals and other expenses the property owner incurred. The City appealed the attorney's fees award.

The court of appeals reversed the award of appellate attorney's fees, holding that the statute did not authorize their recovery. ___ S.W.3d at ___ (citing *FKMP'ship Ltd. v. Board of Regents of the Univ. of Houston Sys.*, 255 S.W.3d 619, 637 (Tex. 2008)). And, after the Montanos agreed to reduce their attorney's fees recovery to \$422,302.91 through remittur, the court of appeals affirmed the remainder of the judgment. *Id.* at ___. The City appeals, asking this Court to remand the attorney's fees award to the trial court for reconsideration because of inadequacies in the Montanos' proof.

During this litigation, the Montanos were represented by three attorneys, Lopez Peterson, L.L.C., Richard J. Gonzalez, and Adriana Benavides-Maddox. The trial court awarded the Montanos their attorney's fees as a lump sum, but the court of appeals broke the award down by representation, concluding the evidence to be legally and factually sufficient to support an award of "\$46,302.91 for Lopez Peterson's hours, \$339,000 for Gonzalez's hours, and \$37,000 for Benavides-Maddox's hours," yielding a reasonable and necessary fee of \$422,302.91 through the trial of the case. *Id.* at _____. Lopez Peterson represented the Montanos only through the Special Commissioner's award, and the City does not question its fees in this Court. The City, however, does question the fees attributed to the other two attorneys, Gonzalez and Benavides-Maddox, and their testimony in support of the award.

Gonzalez testified that Luis Montano hired him as the lead attorney in the case in December 2004 or January 2005. Gonzalez did not testify as to the details of his fee agreement, but his testimony about the hours devoted to the case suggests the agreement was for Gonzalez to be paid an hourly rate, rather than a negotiated or contingent fee. The attorney testified to performing the following tasks in the Montanos' defense: (1) made an open records request; (2) searched through city council meeting minutes regarding the Montano family's property; (3) watched thirty-eight DVDs of the city council meetings (some more than once); (4) visited the premises many times; (5) conducted "a lot" of legal research; (6) prepared the pleadings and motions; (7) spent time in court for appearances; (8) spent "countless hours" preparing for and taking depositions; (9) reviewed the transcripts and DVDs of the depositions; and (10) prepared for trial and tried the case. Gonzalez

further testified to working on the case for 226 weeks,¹ estimating that he devoted on average “a barebones minimum” of six hours a week to the case.

Gonzalez, however, admitted that he did not keep time records in the case. Moreover, he apparently did not have a firm idea about what the Montanos owed him for his work before his testimony at trial. While on the witness stand, Gonzalez was given a calculator with which he eventually estimated that he had 1,356 hours in the case (226 weeks x 6 hours/week). He then multiplied those hours by his hourly rate of \$250 to conclude that the Montanos owed him a fee of \$339,000 through trial. He noted that the family had previously paid him \$35,000, leaving a balance of \$304,000.

In addition to the time and labor involved in representing the Montanos, Gonzalez touched upon some other factors that we have acknowledged as relevant to the determination of a reasonable attorney’s fee. *See Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 818 (Tex. 1997) (quoting Texas Disciplinary Rule of Professional Conduct 1.04, State Bar Rules, Art. 10 § 9, Rule 1.04).² Gonzalez testified that recent changes in the law made the case novel and complicated. He

¹ Gonzalez did not represent the Montanos before the Special Commissioners but returned to the case after the Special Commissioners awarded the property to the City.

² The decision and rule list the following eight factors as relevant when determining the reasonableness of a fee: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly; (2) the likelihood ... that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

also claimed to have turned away other business because of the time demands of the case, although he could not remember any specific examples. Finally, he noted his success in defeating the City's attempt to condemn the Montanos' property for far less than its appraised \$4,000,000 value, and the defense's modest cost, which was only about ten percent of the property's value. There was also testimony that Gonzalez was one of only a few local attorneys who would take this type of case and that his hourly rate of \$250 an hour was reasonable and customary for a lawyer of his experience, reputation, and ability.

On cross-examination, Gonzalez conceded that this was his first condemnation case, although he claimed extensive experience in other types of litigation against the government. When asked about any bills, invoices or other documentary evidence of his time in the case, Gonzalez admitted he had none but pointed to the "thousands and thousands and thousands of pages that were accumulated in this case" as evidence of his time investment. Gonzalez further conceded that he would have put more effort into documenting his hours in the case were he preparing a bill for his client.

When asked about tracking his time for billing purposes, Gonzalez began to explain his process before a sustained objection cut him off in mid-sentence:

Normally the way that I would do this is that I would go back in time and look at the documents in the case and then that would help me to make a list of how much time I spent; for example, preparing the list of witnesses that was requested by your office. I remember that list of witnesses and the list of —

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