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Summary of Valley Electric Assoc. v. Overfield, 121 Nev. Adv. Op.

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Valley Electric Assoc. v. Overfield, 121 Nev. Adv. Op. 2, 106 P.3d 1198 (2005).¹

PROPERTY—ATTORNEY FEES IN EMINENT DOMAIN ACTIONS

Summary

An appeal challenging the award of attorney fees to landowners in an eminent domain action under NRS 18.010.

Disposition/Outcome

Affirmed. NRS 18.010 authorizes attorney fee awards to condemnation defendants who recover \$20,000 or less in just compensation for the taken property and when warranted in the court's sound discretion.

Factual & Procedural History

Appellant Valley Electric Association, a non-profit utility cooperative, filed a condemnation action against the Overfields to secure an easement over the Overfield's land for the installation and maintenance of an electrical power transmission line. The Overfields rejected Valley Electric's \$6,000 pre-suit settlement offer, and ultimately proceeded to trial. The jury in the district court trial awarded the Overfields \$15,045. The Overfields subsequently moved for an award of attorney fees under NRS 18.010, which the district court granted because the judgment in favor of the Overfields did not exceed \$20,000.

Discussion

The Nevada Supreme Court generally reviews awards of attorney fees for abuse of discretion.² However, the court reviewed this issue, whether or not NRS 18.010³ allows for awards of attorney fees in eminent domain proceeding, de novo as a question of law.⁴

¹ By Kathleen L. Fellows

² *Parodi v. Budetti*, 115 Nev. 236, 240, 984 P.2d 172, 174 (1999).

³ NEV. REV. STAT. 18.010(2) (2005) provides, in pertinent part:

In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:

- (a) When he has not recovered more than \$20,000; or
- (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

⁴ *Trs. v. Developers Sur.*, 120 Nev. 56, 59, 84 P.3d 59, 61 (2004).

Both the Nevada and United States Constitutions allow for the taking of private property for a public purpose, provided that the government pays just compensation.⁵ Additionally, other entities may be authorized by statute to condemn public property.⁶

As a general notion, defendants in condemnation actions have no right to attorney fees as a part of just compensation for taken property.⁷ However, NRS Chapter 37 explicitly grants the authority to award attorney fees in specific types of condemnation proceedings, such as actions involving construction of railroad facilities⁸ or when the condemnor abandons the proceedings.⁹ But the Nevada Supreme Court additionally determined that nothing in NRS Chapter 37 precluded an award of attorney fees under other statutory authority, such as that found in NRS 18.010.

The court held that NRS 18.010 allows for awards of attorney fees in condemnation actions where recoveries of just compensation are limited in amount. A court, in its sound discretion,¹⁰ may allow attorney's fees to a prevailing party if the requirements of NRS 18.010 are met. Nevada Revised Statute 18.010 requires that the judgment be monetary in nature¹¹ and that the amount recovered be less than \$20,000. A party can only be a prevailing party under 18.010 "if it succeeds on any significant issue in litigation which achieves some of the benefit sought in bringing suit."¹² Furthermore, the term "prevailing party" is broadly construed so as to encompass plaintiffs, counterclaimants, and defendants.¹³

The court based this decision on the basis that not allowing an award of attorney fees in eminent domain proceedings under NRS 18.010 would force landowners in smaller value condemnation actions to accept unfair "low-ball" settlement offers to avoid exhaustion of additional condemnation proceeds through attorney fee expenditures.

Conclusion

The district court properly awarded attorney fees to the respondent under NRS 18.010. A court may, in its sound discretion, award attorney fees to a prevailing party in a condemnation proceeding where the amount of just compensation is less than \$20,000. However, the court left open the possibility that it may be an abuse of discretion for a court to award attorney fees where the amount awarded at trial is not substantially in excess of the condemnor's settlement offer prior to trial.

⁵ Las Vegas Downtown Redev. Agency v. Pappas, 119 Nev. 429, 441, 76 P.3d 1, 5 (2003); U.S. CONST. amends. V, XIV; NEV. CONST. art. 1, § 8, cl. 6.

⁶ See, e.g., NEV. REV. STAT. 37.010(8) (2005) (authorizing public utilities to exercise right of eminent domain).

⁷ Lamar v. Urban Renewal Agency, 84 Nev. 580, 581, 445 P.2d 869, 869 (1968); The United States Supreme Court has additionally stated that compensation to a landowner for indirect costs incurred in a condemnation action "is a matter of legislative grace." U.S. v. Bodcaw Co., 440 U.S. 202, 204 (1979).

⁸ NEV. REV. STAT. 37.140 (2005).

⁹ NEV. REV. STAT. 37.180 (2005).

¹⁰ Farmers Ins. Exch. v. Pickering, 104 Nev. 660, 765 P.2d 181 (1988).

¹¹ Smith v. Crown Fin. Serv., 111 Nev. 277, 285, 890 P.2d 769, 774 (1995). The court rejected the argument that condemnation proceedings do not result in a monetary judgment but result in a judgment *in rem*, because eminent domain proceedings include determinations of just compensation for condemned property as defined by NRS 37.009(3).

¹² Women's Fed. Sav. & Loan Ass'n v. Nevada Nat'l Bank, 623 F. Supp. 469, 470 (1985).

¹³ Smith, 111 Nev. at 284, 890 P.2d at 773.