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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0961**

State of Minnesota, by its
Commissioner of Transportation, petitioner,
Appellant,

vs.

Hellervik, LLC,
Respondent,

U. S. Bank, National Association, et al.,
Respondents Below.

**Filed January 14, 2013
Affirmed
Halbrooks, Judge**

Ramsey County District Court
File No. 62-CV-11-677

Lori Swanson, Attorney General, Jeffery S. Thompson, Assistant Attorney General,
St. Paul, Minnesota (for appellant)

Howard A. Roston, Fredrikson & Byron, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Stauber, Judge; and
Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant State of Minnesota challenges the district court's award of attorney fees to respondent Hellervik, LLC. Because the district court did not abuse its discretion when it considered the pre-existing contingent-fee arrangement as one factor in its determination of reasonable fees, we affirm.

FACTS

The facts of this case are undisputed. Hellervik agreed to pay its counsel on a contingent-fee basis in a condemnation proceeding initiated by the Minnesota Department of Transportation (MNDOT). Specifically, Hellervik agreed to pay 40% of any award it received that was greater than the last offer made by MNDOT. Respondent received an award of \$3,475,000, which was \$1,290,000 greater than MNDOT's last offer. According to the contingent-fee arrangement, therefore, Hellervik's counsel was entitled to 40% of \$1,290,000 or \$516,000.

In addition, because the final award was more than 40% greater than the last written offer, Hellervik was statutorily entitled to receive reasonable attorney fees from MNDOT. Hellervik moved for attorney fees following the condemnation hearings. The district court ordered MNDOT to pay \$430,000 in reasonable attorney fees. This appeal follows.

DECISION

According to Minnesota law, in certain situations, condemning authorities are required to pay landowners' attorney fees following an eminent-domain proceeding:

If the final judgment or award for damages, as determined at any level in the eminent domain process, is more than 40 percent greater than the last written offer of compensation made by the condemning authority prior to the filing of the petition, the court shall award the owner reasonable attorney fees, litigation expenses, appraisal fees, other experts fees, and other related costs in addition to other compensation and fees authorized by this chapter.

Minn. Stat. § 117.031(a) (2012). “Reasonable attorney fees” is not defined by statute. We review the district court’s award of attorney fees for an abuse of discretion. *Milner v. Farmers Ins. Exch.*, 748 N.W.2d 608, 620 (Minn. 2008). Generally, the district court is most “familiar with all aspects of the action from its inception through posttrial motions” and is in the best position to evaluate the reasonableness of requested attorney fees. *Anderson v. Hunter, Keith, Marshall & Co.*, 417 N.W.2d 619, 629 (Minn. 1988).

Milner set out the “[f]actors considered in determining reasonableness” of an attorney fees award: “[1] the time and labor required; [2] the nature and difficulty of the responsibility assumed; [3] the amount involved and the results obtained; [4] the fees customarily charged for similar legal services; [5] the experience, reputation, and ability of counsel; and [6] the fee arrangement existing between counsel and the client.” 748 N.W.2d at 621 (quoting *State v. Paulson*, 290 Minn. 371, 373, 188 N.W.2d 424, 426 (1971)).

The district court applied the *Paulson* factors in this case. The district court considered the time that Hellervik’s counsel was required to spend on the case (approximately 200 hours) and stated that the case “did not present complicated damage issues.” But the district court also noted that “condemnation is a specialized area of law.”

The district court found that Hellervik’s counsel obtained a significant result for his client and that “‘a contingent fee based on the recovery over the offer made by the condemning authority’ as here is ‘perhaps the most common method of setting fees between attorneys and clients in Minnesota condemnation cases’” (quoting *Cnty. of Dakota v. Cameron*, 812 N.W.2d 851, 866 n.4 (Minn. App. 2012), *review granted* (Minn. May 30, 2012)). Finally, the district court found that Hellervik’s counsel has “considerable experience and ability in the field of eminent domain” and “the fees that Counsel seeks to recover are pursuant to the fee agreement existing between counsel and their client.” Based on these factors, the district court reduced the agreed-to fee of 40% of the amount that the award exceeded MNDOT’s last written offer to 33 1/3% of that amount.

The state claims that the district court abused its discretion because it was required to use the lodestar method (i.e., the hours reasonably expended multiplied by a reasonable hourly rate) to calculate reasonable attorney fees under the statute. The state argues that this court first “decided that fee shifting statutes require lodestar rather than contingency rates” in *Liess v. Lindermeier*, 354 N.W.2d 556 (Minn. App. 1984). But this overstates the holding in *Liess*. *Liess* sued for approximately \$6,000 in damages for fraud related to a real-estate transaction and sought to recover her attorney fees under Minnesota’s private-attorney-general statute. 354 N.W.2d at 557. *Liess* requested approximately \$13,000 in attorney fees, which she calculated using the lodestar method. The district court considered the *Paulson* factors, but ultimately awarded attorney fees of only \$2,500 stating that “contingent fee arrangements are commonly used in suits for damages, and that such contingent fees are most commonly set at an amount equal to one-third of the

recovery.” *Id.* We vacated the district court’s attorney-fees award because calculating those fees based on a contingent-fee arrangement ignored the purpose of the private-attorney-general statute. *Id.* at 558. We noted that fee-shifting provisions in consumer-protection statutes generally encourage attorneys to accept cases in which damages may be “small, nominal, or nonexistent.” *Id.* (quotation omitted). We therefore remanded the issue of attorney fees to the district court to consider the purpose of the statute along with the *Paulson* factors. *Id.* We did not decide, as the state asserts, that all “fee shifting statutes require lodestar rather than contingency rates.”

The state asserts that shortly after *Liess*, “the Minnesota Supreme Court . . . construed statutory language on attorney fees and adopted the lodestar method to determine reasonable attorney fees,” citing *Anderson*, 417 N.W.2d at 628, and *Specialized Tours, Inc. v. Hagen*, 392 N.W.2d 520, 542 (Minn. 1986). But, again, this argument overstates these holdings. Both cases involved analyses of a district court’s use of the lodestar method to award attorney fees, but neither case addressed, or decided, whether the lodestar method is required in all fee-shifting statutes.

In *Cameron*, we upheld attorney fees awarded pursuant to Minn. Stat. § 117.031(a) that had been calculated as one-third of the amount of the award over the condemning authority’s last written offer. Cameron agreed to pay his attorney “one-third of the recovery over the county’s original offer or an hourly fee, whichever was greater.” 812 N.W.2d at 865. Based on this agreement, Cameron owed his attorney \$217,991.45, which was based on his attorney’s hourly fee. *Id.* But the district court did not award this amount. *Id.* The district court instead awarded Cameron one-third of the award over

the condemnor's last offer, or approximately \$162,000. *Id.* In addressing Cameron's argument that the district court abused its discretion by lowering his requested attorney fees in this manner, we stated:

A fee arrangement is only one of six factors to be considered by the district court when determining a reasonable award of attorney fees. . . . And because the district court appropriately considered all of the relevant factors and did not clearly err in determining the reasonable value of counsel's work, we affirm its attorney-fee award.

Id. at 866 (citations omitted).

Because there is no controlling precedent that mandates the use of the lodestar method in condemnation cases, appellant's argument that, in *Cameron*, we departed from established precedent is unavailing. To the contrary, *Cameron* followed supreme court cases applying the six *Paulson* factors to assess the reasonableness of attorney fees—including the underlying fee arrangement. That is precisely what the district court did in this case. We therefore conclude that the district court acted within its discretion by awarding Hellervik \$430,000 in attorney fees.

Affirmed.