

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2019-CA-00862-SCT

***BAY POINT PROPERTIES, INC. f/k/a BP
PROPERTIES, INC.***

v.

***MISSISSIPPI TRANSPORTATION COMMISSION
AND MISSISSIPPI DEPARTMENT OF
TRANSPORTATION***

DATE OF JUDGMENT:	04/22/2019
TRIAL JUDGE:	HON. CHRISTOPHER L. SCHMIDT
TRIAL COURT ATTORNEYS:	WILLIAM ALEX BRADY, II CHARLES S. LAMBERT, JR. JACK H. PITTMAN CHRISTOPHER M. HOWDESHELL
COURT FROM WHICH APPEALED:	HARRISON COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	WILLIAM ALEX BRADY, II CHARLES S. LAMBERT, JR.
ATTORNEYS FOR APPELLEES:	CHRISTOPHER M. HOWDESHELL JACK H. PITTMAN
NATURE OF THE CASE:	CIVIL - REAL PROPERTY
DISPOSITION:	AFFIRMED - 10/29/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE KING, P.J., COLEMAN AND BEAM, JJ.

COLEMAN, JUSTICE, FOR THE COURT:

¶1. Bay Point Properties, Inc. (Bay Point), prevailed at trial: the jury found in its favor on the issue of liability. However, in a case where Bay Point sought \$ 8.7 million, the jury awarded only nominal damages. Bay Point now appeals the circuit court's award of

reasonable attorneys' fees, costs, and expenses in an inverse condemnation claim pursuant to Mississippi Code Section 43-37-9.

¶2. The case originates from an action brought by Bay Point against the Mississippi Transportation Commission in which Bay Point sought damages resulting from inverse condemnation. After the verdict, Bay Point filed a motion requesting attorneys' fees, costs, and expenses. The trial court awarded \$500 in nominal damages and denied Bay Point's request for attorneys' fees, costs, and expenses. Bay Point appealed. The Mississippi Supreme Court affirmed in part and reversed in part. *Bay Point Props., Inc. v. Miss. Transp. Comm'n*, 201 So. 3d 1046, 1059 (Miss. 2016). The Court affirmed the jury's verdict, which had awarded Bay Point the encumbered value of the property, and reversed the trial court's decision to deny Bay Point's motion for attorneys' fees, costs, and expenses, stating, "Section 43-37-9's mandatory language—*shall* determine and award—leaves no room for judicial discretion, except as to a reimbursement amount that was 'reasonable.'" *Id.* at 1058. We remanded the issue of attorneys' fees to the circuit court. *Id.* at 1059. On remand, the circuit court awarded attorneys' fees, expenses, and costs in the amount of \$67,277.35 to Bay Point, although Bay Point had sought considerably more. The court determined that amount to be reasonable because Bay Point only received nominal damages. Bay Point appeals.

FACTS AND PROCEDURAL HISTORY

¶3. Bay Point owns approximately 14.3 acres of property in Harrison County, Mississippi, located east of the Highway 90 bridge across the Bay of St. Louis. On April 1, 2010, Bay Point filed an inverse-condemnation action against the Mississippi Transportation

Commission and the Mississippi Department of Transportation. The trial ended on August 13, 2013. The jury entered a verdict in favor of Bay Point; however, the jury only awarded nominal damages of \$500 because an easement encumbered the property.

¶4. Bay Point filed a motion for attorneys' fees, costs, and expenses, seeking a total of \$686,001.55. The trial court heard the motion for attorneys' fees on November 21, 2013, and denied the request by order entered on January 8, 2014. Bay Point appealed, raising various issues, including attorneys' fees, costs, and expenses.

¶5. On July 21, 2016, the Court reversed the circuit court's denial of an award of attorneys' fees, costs, and expenses to Bay Point. *Id.* at 1058. We noted that the trial court had discretion not to grant the full amount of attorneys' fees requested; however, it was error not to award any reimbursement at all pursuant to the language of Mississippi Code Section 43-37-9. *Id.* The Court remanded the issue of attorneys' fees to the circuit court to determine an amount that was reasonable. *Id.*

¶6. On remand, Bay Point filed a Supplemental Motion for Attorneys' Fees, updating the costs incurred during the litigation. Bay Point requested attorneys' fees, costs, and expenses in the amount of \$880,171.81. The circuit court conducted a hearing to determine the proper amount of fees and awarded Bay Point attorneys' fees, costs, and expenses in the amount of \$67,277.35. The amount awarded included \$33,321.42 in attorneys' fees, \$5,740 for surveyor fees, and \$28,215.93 for other costs, fees, and expenses incurred during the litigation. The court also awarded Bay Point postjudgment interest at the amount of 8 percent per annum. Bay Point appeals.

STANDARD OF REVIEW

¶7. “We will not reverse the trial court on the question of attorney’s fees unless there is a manifest abuse of discretion in making the allowance” *Mauck v. Columbus Hotel Co.*, 741 So. 2d 259, 269 (¶ 32) (Miss. 1999) (quoting *Deer Creek Constr. Co. v. Peterson*, 412 So. 2d 1169, 1173 (Miss. 1982)). Manifest means “unmistakable, clear, plain, or indisputable.” *Tupelo Redevelopment Agency v. Gray Corp.*, 972 So. 2d 495, 521 (¶ 81) (Miss. 2007) (internal quotation marks omitted) (quoting *Mabus v. Mabus*, 910 So. 2d 486, 488 (¶ 7) (Miss. 2005)). “[W]e, as an appellate court, will affirm the decree if the record shows any ground upon which the decision may be justified We will not arbitrarily substitute our judgment for that of the chancellor who is in the best position to evaluate all factors” *Mabus v. Mabus*, 910 So. 2d 486, 488 (¶ 7) (Miss. 2005) (alterations in original) (internal quotation marks omitted) (quoting *Tucker v. Tucker*, 453 So. 2d 1294, 1296 (Miss. 1984)).

DISCUSSION

¶8. Bay Point argues that the trial judge abused his discretion and is manifestly wrong by failing to award it the total amount of attorneys’ fees, costs, and expert appraisal fees actually incurred because of the taking of private property by the Transportation Commission. Bay Point argues it is entitled to an award of all fees and costs incurred in successfully prosecuting its inverse-condemnation lawsuit pursuant to Mississippi Code Section 43-37-9 (Rev. 2015). When the case *sub judice* was remanded by the Court, the Court stated,

Section 43-37-9's mandatory language—*shall* determine and award—leaves no room for judicial discretion, except as to a reimbursement amount that was “reasonable.” We conclude it was within the trial court’s discretion not to grant Bay Point’s request for \$680,000 in full. Yet we reject the trial court’s failure to award *any* reimbursement at all. Such a result is in direct violation of the statute and therefore manifestly wrong.

Bay Point Props., Inc. v. Miss. Transp. Comm’n, 201 So. 3d 1046, 1058 (Miss. 2016).

¶9. Pursuant to the Court’s holding, it was manifest error for the trial court not to award *any* reimbursement. However, the Court made it clear that the trial court need not award the full amount requested. Instead, the Court directed the trial court to determine an amount that was reasonable.

I. The award of attorneys’ fees, costs, and expenses was reasonable.

¶10. One method of calculating reasonable attorneys’ fees, the “lodestar method,” was adopted by the Supreme Court of the United States in *Hensley v. Eckerhart*. *Tupelo Redevelopment Agency v. Gray Corp.*, 972 So. 2d 495, 520 (¶ 78) (Miss. 2007) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 430 (1983)). The factors considered under the lodestar method include:

(1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the “undesirability” of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Hensley, 461 U.S. at 430 n.3 (citing *Johnson v. Ga. Highway Exp., Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), *abrogated by Blanchard v. Bergeron*, 489 U.S. 87 (1989)).

¶11. The factors considered in Mississippi are listed in Rule 1.5 of the Mississippi Rules of Professional Conduct. “Other than a minor rewording and reordering, these factors are virtually identical to the factors set out by the United States Supreme Court in *Hensley*.” *Tupelo Redevelopment Agency v. Gray Corp.*, 972 So. 2d 495, 521 (¶ 79) (Miss. 2007). The factors include:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, 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.

Miss. R. of Pro. Conduct 1.5.

¶12. Out of all of the factors listed in Rule 1.5, the only factor that is actually in issue in the case *sub judice* is the amount involved and the results obtained. The trial judge made findings of fact on each of the eight factors listed in Rule 1.5 and further found that because the results obtained did not reflect the award sought, the amount of attorneys’ fees awarded should be reduced.

¶13. While the following cases do not concern attorneys' fees, the cases do provide a good description of how factors should be considered. The Court has stated,

these factors are not variables in a mathematical formula. Nor is an *Albright* [*v. Albright*, 437 So. 2d 1003 (Miss. 1983)] analysis “premised solely on a scoring system” where findings on each factor are added and later compared to see which parent “wins.” *O'Briant v. O'Briant*, 99 So. 3d 802, 805–06 (Miss. Ct. App. 2012) (citations omitted). Rather, the “factors exist to ensure the chancellor considers all the relevant facts” before making a decision. *Id.* (citations omitted). This is why our manifest-error review “is not a mechanical check of the chancellor’s score card” to decide if he or she “‘tallied’ each parent’s score correctly.” *Id.* at 806 (citations omitted). We instead ask whether the chancellor considered all relevant facts, giving deference to the weight he or she assigns each factor.

Smith v. Smith, 206 So. 3d 502, 512–13 (¶ 24) (Miss. 2016).

¶14. There is little precedent in Mississippi concerning reasonable attorneys' fees; however, the United States Court of Appeals for the Fifth Circuit has held, “The most critical factor in determining an attorney’s fee award is the ‘degree of success obtained.’” *Saizan v. Delta Concrete Prods. Co.*, 448 F.3d 795, 799 (5th Cir. 2006) (internal quotation marks omitted) (quoting *Singer v. City of Waco*, 324 F.3d 813, 829 (5th Cir. 2003)). The court continued, “Prevailing party status ‘may say little about whether the expenditure of counsel’s time was reasonable in relation to the success achieved.’” *Id.* (quoting *Hensley*, 461 U.S. at 434). Additionally, the court stated, “Vindication, however, is not as weighty of a factor as monetary success.” *Id.* at 801 (citing *Migis v. Pearle Vision, Inc.*, 135 F.3d 1041, 1048 (5th Cir. 1998)). The United States Supreme Court has held, “Where recovery of private damages is the purpose of . . . civil rights litigation, a district court, in fixing fees, is obligated to give primary consideration to the amount of damages awarded as compared to the amount

sought.” *Farrar v. Hobby*, 506 U.S. 103, 114 (1992) (internal quotation marks omitted) (quoting *City of Riverside v. Rivera*, 477 U.S. 561, 585 (1986)). While the cases quoted above were considered in the context of civil-rights claims, their application to the amount-involved and the results-obtained factors are similar to the present case. The trial judge’s decision to place greater weight on results-obtained factor cannot be said to be an unmistakable or indisputable error. Accordingly, the decision of the trial court is affirmed.

CONCLUSION

¶15. The trial judge made specific findings of fact on each of the eight factors listed in Mississippi Rule of Professional Conduct 1.5. Based on the highly deferential standard of review, the trial judge did not commit manifest error by granting an attorneys’ fees award that was substantially less than what Bay Point requested. Accordingly, the decision of the trial court is affirmed.

¶16. **AFFIRMED.**

RANDOLPH, C.J., KING, P.J., MAXWELL, BEAM, CHAMBERLIN, ISHEE AND GRIFFIS, JJ., CONCUR. KITCHENS, P.J., DISSENTS WITH SEPARATE WRITTEN OPINION.

KITCHENS, PRESIDING JUSTICE, DISSENTING:

¶17. I respectfully dissent. Bay Point Properties, Inc., won its case. Therefore, by statute, Bay Point was entitled to recover the reasonable attorney fees, costs, and expenses that it actually incurred in litigating the case. Miss. Code Ann. § 43-37-9 (Rev. 2015). Yet the circuit court awarded a mere fraction of the attorney fees incurred and no fees for an expert appraisal witness despite the fact that this complex inverse condemnation case reasonably

necessitated expert testimony on valuation. I would hold that the trial court manifestly abused its discretion by placing undue weight on the amount of compensation recovered. I would reverse the decision of the circuit court and render a decision awarding Bay Point the full amount of attorney fees, costs, and expenses it requested with the exception of fees charged for the services of Charles Lambert, Sr.

¶18. The governing statute, Section 43-37-9, provides:

Where an inverse condemnation proceeding is instituted by the owner of any right, title or interest in real property because of use of his property in any program or project in which federal and/or federal-aid funds are used, the court, rendering a judgment for the plaintiff in such proceeding and awarding compensation for the taking of property, or the state's attorney effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will, in the opinion of the court or the state's attorney, reimburse such plaintiff for his reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of such proceeding.

Miss. Code. Ann. § 43-37-9. In *Bay Point Properties, Inc. v. Mississippi Transportation Commission*, 201 So. 3d 1046, 1058 (Miss. 2016), this Court recognized that, because the trial court had rendered a judgment for Bay Point, an award under Section 43-37-9 was mandatory. The Court reversed the trial court's denial of fees, costs, and expenses and remanded for an award of "reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding." *Id.* at 1059. We directed the trial court to determine a reasonable amount of reimbursement with reference to the factors set forth in Mississippi Rule of Professional Conduct 1.5(a):

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, 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.

Id. at 1058 n.11 (quoting Miss. R. Pro. Conduct 1.5(a)).

¶19. On remand, the trial court found that all the evidence other than the results obtained was either uncontested or favored Bay Point's bills for attorney fees, costs, and expenses. The trial court acknowledged Stephen B. Simpson's expert testimony that the attorney fees were reasonable and necessary because the case had been complex and thoroughly litigated, involving more than three hundred pleadings, more than twenty-seven depositions, several motions *in limine*, plus motions to compel and motions for summary judgment filed by both parties, numerous amended scheduling orders, a petition for an interlocutory appeal, a seven-day trial, posttrial motions, and an appeal. The trial court found that Bay Point should have spent less time on the case because, in the end, it did not succeed in securing just compensation for the unencumbered value of the property at issue, but only for the encumbered value. Because Bay Point had viable constitutional arguments that it was entitled

to just compensation for the unencumbered value, I would hold that the trial court manifestly abused its discretion by finding that Bay Point was unreasonable in pursuing those theories.¹

¶20. The Mississippi Transportation Commission (MTC) did not dispute that the work precluded Bay Point’s attorneys from accepting other employment. Nor did it contest Simpson’s testimony that the hourly rates charged by Attorney Alex Brady—of \$190 per hour—and Attorney Charles. S. Lambert, Jr.,—of \$150 per hour²—were not only reasonable, but low compared to the rates customarily charged in the area for similar work. In fact, the trial court found that the attorneys’ fixed fees were “more than reasonable and on the lower end of billing rates in this community for this type of representation, [and] the hourly rates charged by Bay Point’s counsel were reasonable throughout the litigation and appeal.” The MTC did not challenge the reputation, experience, or abilities of Bay Point’s attorneys.³

¹ In my dissent in *Bay Point*, I discussed the merits of Bay Point’s constitutional arguments. *Bay Point*, 201 So. 3d at 1059-63 (Kitchens, J., dissenting). Not only did two justices of this Court find those arguments meritorious, but two justices of the Supreme Court of the United States would have granted Bay Point’s petition for *certiorari* to review the constitutional implications of this Court’s decision affirming the verdict. *Bay Point*, 201 So. 3d 1046, *cert. denied*, 137 S. Ct. 2002, 198 L. Ed. 2d 750 (2017). See generally Kyle Usner, *Parks and Separation: How the Mississippi Legislature Decided Just Compensation in Bay Point Properties, Inc. v. Mississippi Transportation Commission*, 38 Miss. C. L. Rev. 49 (2019).

² As the trial court found, Bay Point’s written contract with Attorney Lambert called for \$150 per hour with a blended contingency fee, but Bay Point’s attorney fees motion requested a fixed fee of \$150 per hour. The trial court found that the attorney fee was a fixed fee.

³ I do not believe that the trial court manifestly erred by finding unreasonable the fee billed for the legal assistant services of Attorney Lambert’s father, Charles Lambert, Sr. The senior Lambert was a Bay Point corporate officer. The trial court found that Lambert, Sr., had been identified as a corporate representative at many depositions and hearings. In denying his fee, the trial court relied on Simpson’s testimony that it would be improper to

¶21. I would hold that the trial court manifestly erred by finding that the results obtained eclipsed all other indicators that Bay Point's fees, costs, and expenses were reasonable. In affirming the trial court, the majority discusses federal civil rights cases such as *Hensley v. Eckerhart*, 461 U.S. 424, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983), that emphasized the importance a court should place on a plaintiff's monetary success when determining an award of attorney fees under 42 U.S.C. § 1988. That the federal courts in civil rights cases place the most weight on this factor does not mean the courts of this state must do so in dissimilar cases. This is an apples and oranges comparison. This is especially so when Bay Point succeeded in obtaining a favorable verdict, statutorily entitling it to the reasonable attorney fees, costs and expenses that it actually incurred and paid. Miss. Code Ann. § 43-37-9. The statute's purpose is to secure compensation for the client, not the attorneys, for amounts incurred by the client in bringing an inverse condemnation action to a successful conclusion. Bay Point entered into an agreement for legal representation, its attorneys performed according to that agreement, and Bay Point never disputed the fees charged by its lawyers. Bay Point has paid every dollar of the attorney fees, costs, and expenses for which it claimed reimbursement. That Bay Point paid the fees without argument is another strong indicator that the fees were reasonable.

¶22. What is more, an expert witness testified to the reasonableness of the fees. Although Bay Point's theory of recovery did not win the day, it established that the government had violated its rights, and it secured a judgment in its favor. I observe that the trial court denied

award a fee for Lambert, Sr., acting in a dual role as a corporate representative and as a legal assistant for Bay Point's attorneys. I agree.

expenses for Bay Point's appraiser despite expert testimony that the appraiser's fees were necessary and reasonable. Because this complex inverse condemnation case reasonably necessitated Bay Point's presentation of expert testimony on valuation, the trial court's refusal to order reimbursement for the appraiser's fee was manifest error. By statute, Bay Point was entitled to recover the fees, costs, and expenses that it actually incurred. I would hold that Bay Point showed that its attorney fees, costs, and expenses were reasonable and that the trial court's award of a mere fraction of what Bay Point expended was a manifest abuse of discretion.