STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0036

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

vs.

David J. Schaffer, et al.,
Respondents Below,

Joseph Hamlin,
Respondent.

Filed August 7, 2023
Affirmed
Ross, Judge

Dakota County District Court
File No. 19HA-CV-17-4231

Keith Ellison, Attorney General, William Young, Assistant Attorney General, St. Paul, Minnesota (for appellant)

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Bradley J. Gunn, Malkerson, Gunn & Martin, LLP, Minneapolis, Minnesota (for amicus curiae Minnesota Eminent Domain Institute)

Considered and decided by Bjorkman, Presiding Judge; Ross, Judge; and Reyes, Judge.

SYLLABUS

A district court awarding attorney fees in an eminent-domain proceeding under Minnesota Statutes section 117.031(a) (2022) is not limited to the amount specified in the landowner's attorney-fee agreement.

OPINION

ROSS, Judge

The state condemned a portion of an owner's land in an eminent-domain proceeding to construct a highway, offering the landowner $43,000 in compensation. After the landowner rejected the offer, court-appointed commissioners heard his challenge and awarded him $92,000. The landowner, who was represented by legal counsel under a contingency-fee arrangement based on a percentage of the damages obtained, moved the district court to recover his attorney fees under Minnesota Statutes section 117.031(a). The district court determined the landowner's fee award using the lodestar method, ordering the state to pay the landowner an amount that exceeded the contingency-fee amount. The state appeals the award, arguing that section 117.031(a) limits attorney fees to a landowner's out-of-pocket payments. Because section 117.031(a) does not limit attorney-fee awards to the amount a landowner agreed to pay his attorney, the district court acted within its discretion when it determined the fee award, and we affirm.

FACTS

Appellant State of Minnesota, through the commissioner of transportation (MnDOT), condemned part of respondent Joseph Hamlin's Dakota County land in November 2017 to construct a trunk highway. MnDOT valued the condemned land at

$43,000, and it offered Hamlin that amount before beginning eminent-domain condemnation proceedings. Hamlin declined the offer and MnDOT deposited $43,000 as a "quick-take" payment. The parties did not settle the valuation disagreement, and the district court appointed commissioners to determine the proper value. The commissioners conducted a hearing and valued the taking at $92,000, an amount about 114% higher than MnDOT's final written offer. MnDOT tendered payment in full, including interest.

Hamlin moved the district court for an award of attorney fees and costs under Minnesota Statutes section 117.031(a), seeking $177,433.50 in attorney fees, plus an additional $34,127.83 for appraisal fees, expert fees, and other litigation expenses and disbursements. In addition to his attorney, Hamlin had engaged an appraiser, arborists, and other specialists to assist in his valuation challenge. Hamlin retained his attorney on a contingency-fee basis, agreeing to pay him one-third of the amount of damages above MnDOT's final written offer before condemnation proceedings. The retainer agreement also provides that the firm would "represent [Hamlin] in [a Minnesota Statutes section 117.031(a) claim for attorney fees] under such terms as we mutually agree." The record on appeal contains no so-described agreement of terms.

The district court conducted a hearing on the attorney-fee claim and found that Hamlin owed his attorney $16,333.33 under the contingency-fee agreement, which is one-third of the $49,000 difference between MnDOT's final offer and the commissioners' award. The district court then applied the lodestar method to determine the reasonable amount of attorney fees to award under section 117.031(a) and awarded Hamlin $63,228.

It also awarded Hamlin his appraisal fees, expert fees, and other expenses of $24,049.98, none of which are disputed on appeal. MnDOT appeals the attorney-fee award.

ISSUES

I. Is a landowner's eminent-domain attorney-fee award under Minnesota Statutes section 117.031(a) limited by the amount the landowner would owe his attorney under his contingency-fee agreement?

II. Did the district court abuse its discretion by awarding the landowner more in attorney fees than the landowner contracted to pay his attorney?

ANALYSIS

MnDOT challenges Hamlin's attorney-fee award, arguing that Minnesota Statutes section 117.031(a) limits the amount of an attorney-fee award to a landowner's out-of-pocket expenses. It argues that the district court therefore abused its discretion by awarding Hamlin more in attorney fees than the district court found he contracted to pay his attorney.

We begin by identifying what our opinion does not decide. The parties' briefs reflect their underlying disagreement about who—as between Hamlin and his attorney—would benefit from an attorney-fee award that exceeds the amount that Hamlin would pay under the contingency-fee agreement. Each incorporates its respective premise into its argument: MnDOT contends that the award results in a windfall to Hamlin, while Hamlin argues that his attorney would receive the excess. We observe that the record on appeal does not inform us sufficiently to resolve this disagreement, but resolving it is unnecessary to decide the appeal. Hamlin also questions (but does not directly challenge) the district court's failure to include statutory interest in its finding that he owed his attorney $16,333.33. We limit

our analysis to the district court's finding that Hamlin owed his attorney $16,333.33 and its attorney-fee award of $63,228. We now consider MnDOT's challenges to the attorney-fee award.

I

MnDOT asks us to hold that a landowner's actual expenditures cap the amount of attorney fees that the district court may award under Minnesota Statutes section 117.031(a), which states as follows:

> 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.

Because Hamlin's award was about 114% greater than MnDOT's last written offer, he is entitled to recover fees. MnDOT contends on appeal that the phrase "shall award the owner" in section 117.031(a) renders the claim personal to the owner and that, therefore, the district court can award a landowner no more than the amount the landowner had to pay his attorney. We review this issue of statutory interpretation *de novo*. *Vermillion State Bank v. State by Dep't of Transp.*, 895 N.W.2d 269, 272 (Minn. App. 2017). We interpret a statute by applying the plain meaning of its terms when those terms are unambiguous in context. *Id.* For the following reasons, we hold that a landowner's contingency-fee agreement does not limit recovery under section 117.031(a).

The plain meaning of the statute, corroborated by the caselaw interpreting it, forecloses MnDOT's argument that the district court may award fees no greater than a landowner's contingency-fee agreement. The focus of the operative statement, "the court shall award the owner reasonable attorney fees," is "reasonable attorney fees." The general term, "reasonable," does not expressly limit the amount based on any extant agreement between the landowner and his attorney, and caselaw has defined "reasonable attorney fees" in section 117.031(a) to mean reasonable as calculated under the lodestar method. *See County of Dakota v. Cameron*, 839 N.W.2d 700, 711 (Minn. 2013). Courts determine attorney fees using the lodestar method by multiplying a reasonable number of hours by a reasonable rate, then by considering the relevant circumstances, including "the time and labor required; the nature and difficulty of the responsibility assumed; the amount involved and the results obtained; the fees customarily charged for similar legal services; the experience, reputation, and ability of counsel; and the fee arrangement existing between counsel and the client." *Id.* (quoting *State by Head v. Paulson*, 188 N.W.2d 424, 426 (Minn. 1971)). MnDOT's fee-capping argument implicitly demands that the district court must focus primarily, if not exclusively, on the last of these factors—the fee arrangement between attorney and client. In other words, MnDOT would have us alter the well-settled lodestar method by replacing the word "and" that precedes the final factor in the list with the restriction, "but no more than." MnDOT cites no court that has so construed the method or limited the concept of reasonableness.

Caselaw interpreting section 117.031(a) informs us that the lodestar method already considers the fee arrangement between counsel and the parties and allows the district court,

in its discretion, to determine the amount that it finds is reasonable based in part on that fee agreement. In *Cameron*, the supreme court affirmed an attorney-fee award lower than what the client had to pay his attorney, reasoning that the district court did not abuse its discretion in considering all of the lodestar factors. 839 N.W.2d at 711–12. The supreme court more recently held that a contingency-fee agreement cannot justify enhancing the lodestar amount. *State v. Krause*, 925 N.W.2d 30, 34 (Minn. 2019). The *Krause* court determined that to allow the enhancement based on a contingency-fee agreement "would duplicate the consideration of the fee agreement existing between counsel and the client, which is one factor to be considered in determining the reasonable hourly rate that is used to calculate the lodestar amount." *Id.* Although both *Cameron* and *Krause* address situations in which a landowner contracted to pay his attorney *more* than the amount awarded, the cases reject the assumption that the single factor of a fee agreement controls a lodestar analysis.

It is true that no precedential opinion addresses a situation like this one, where the district court's section 117.031(a) award was higher than the fee-agreement amount, but a well-reasoned nonprecedential opinion of this court addresses that scenario. Our "unpublished opinions may be persuasive." *Donnelly Bros. Constr. Co. v. State Auto Prop. & Cas. Ins. Co.*, 759 N.W.2d 651, 659 (Minn. App. 2009), *rev. denied* (Minn. Apr. 21, 2009). In *State, ex rel. its Commissioner of Transportation v. Great River Resources*, we affirmed the district court's application of the lodestar method to a landowner's claim for attorney fees, holding that although the owner had to pay his attorney only about $7,000 under a contingency-fee agreement, an attorney-fee award of $25,055 was appropriate based on the district court's determination of the reasonable hourly rate and the

reasonableness of hours spent given the complexity of the case. No. A14-0302, 2014 WL 4389142, at *3 (Minn. App. Sept. 8, 2014). We rejected the state's argument that the lodestar method should not apply when the lodestar amount is higher than what the landowner has to pay his attorney. *Id.* at *2. And in doing so we observed that the fee agreement is only one of the six lodestar factors that the district court should properly consider. *Id.* at *3. We are persuaded by the reasoning of *Great River Resources* and follow it here.

MnDOT argues that the reasoning in federal lodestar civil-rights cases that allow attorney-fee claims exceeding a contingency-fee agreement does not support an award of attorney fees in excess of the amount Hamlin owed his attorney because those cases are distinguished based on their involving a requirement that plaintiffs prove liability and their typically involving minimal monetary damages. We question this reasoning because the right to just compensation for a governmental taking is no less an important constitutional right than those vindicated in traditional civil-rights litigation. *See* U.S. Const. amend V; Minn. Const. art. I, § 13. And awards in takings cases, like those in civil-rights cases, might not be commensurate with a reasonable attorney fee. In any event, this is not the court to overturn the supreme court's decisions in *Cameron* and *Krause* or to depart from their lodestar approach to section 117.031(a) claims.

The supreme court has also decided how to apply the lodestar method in eminent-domain cases in which government entities abandoned condemnation efforts, and our holding aligns with the approach in these cases. *See Paulson*, 188 N.W.2d at 425; *City of Minnetonka v. Carlson*, 265 N.W.2d 205, 205 (Minn. 1978). The attorney-fee and costs

statute for cases of abandonment allows for recovery of reasonable fees: "When the proceeding is dismissed for nonpayment or discontinued by the petitioner, the owner may recover from the petitioner reasonable costs and expenses including attorneys' fees." Minn. Stat. § 117.195, subd. 2 (2022). The *Paulson* court affirmed an attorney-fee award to a landowner who owed his attorney nothing under his contingency-fee arrangement. 188 N.W.2d at 426. It held that the district court "properly did not regard the contingent fee arrangement as the most controlling factor." *Id.* The *Carlson* court applied *Paulson* to reject the city's argument "that appellants had no out-of-pocket legal expenses and therefore . . . should not be entitled to reasonable attorneys fees." *Carlson*, 265 N.W.2d at 207. We apply the lodestar method in the same way here. MnDOT attempts to distinguish these cases as relying on quantum meruit principles. We do not so distinguish the cases because the supreme court did not decide them under that reasoning. The cases instead further undermine MnDOT's argument that a landowner's statutory recovery is limited by an attorney's contract-based claim to fees.

Minnesota courts have also declined to endorse a single controlling lodestar factor in contexts other than eminent-domain actions. *See Green v. BMW of N. Am., LLC*, 826 N.W.2d 530, 538 (Minn. 2013) (rejecting a "dollar value proportionality rule" in attorney-fee cases under Minnesota's lemon law and holding that the results obtained in litigation are just one lodestar consideration and are not controlling); *Braatz v. Parsons Elec. Co.*, 850 N.W.2d 706, 712 (Minn. 2014) (applying *Green* to the Workers' Compensation Act and rejecting a dollar-value proportionality rule); *650 N. Main Ass'n v. Frauenshuh, Inc.*, 885 N.W.2d 478, 495 (Minn. App. 2016) (applying United States Supreme Court precedent

and concluding that attorney-fee awards are not limited by contingency-fee agreements under the Minnesota Common Interest Ownership Act). Our holding parallels this application of the lodestar method in other areas of Minnesota law.

Against this weight of authority, MnDOT maintains that our decision in *Vermillion State Bank v. State by Department of Transportation* requires us to establish the fee agreement as the preeminent lodestar factor. But *Vermillion* does not support that proposition. In *Vermillion*, we decided whether, under the inverse-condemnation attorney-fee statute, an attorney had standing to sue for reasonable attorney fees. 895 N.W.2d at 272. In concluding that the attorney did not have standing, we reasoned that the statute at issue unambiguously provides that only a landowner and not an attorney may petition for attorney fees. *Id.* at 275 (analyzing Minnesota Statutes section 117.045 (2016), which has not been amended). *Vermillion* answered only the question of an attorney's standing to recover his fees, an issue we do not face today. We add that MnDOT's argument overlooks the difference in wording between the statute considered in *Vermillion* and the one involved here. While section 117.045 (2022) allows a landowner to petition the court "for *reimbursement* for reasonable costs and expenses" in an inverse condemnation, section 117.031(a) authorizes the district court to "*award* the owner reasonable attorney fees." Minn. Stat. §§ 117.045, 117.031(a) (emphasis added). So even if *Vermillion* had held that section 117.045 allows a landowner to recover only his out-of-pocket fees, the holding would not directly support MnDOT's theory about how the lodestar method applies to section 117.031(a).

We are also not persuaded by MnDOT's cited cases for its suggestion that attorney-fee statutes in general exist only to reimburse owners. In *State, By Head v. Savage*, the supreme court held that the reasonable costs under the eminent-domain abandonment statute do not include expenses for an owner's time "resulting from and following abandonment of the proceedings." 255 N.W.2d 32, 38 (Minn. 1977). In so holding, the court focused on a landowner's actual cash outlays to describe expenses that were properly compensable. *Id.* The *Carlson* court declined to consider *Savage*'s focus on cash outlays, reasoning that the *Savage* court "did not have before it a contingent fee arrangement, and the general statements made there concerning out-of-pocket expenses must be read with reference to the court's specific holding." 265 N.W.2d at 207. We decline to apply *Savage* for the same reason. The court in *City of Maplewood v. Kavanagh* considered a statute providing for recovery of only "reasonable expert witness and appraisal fees of the owner, together with the owner's reasonable costs and disbursements" and does not discuss attorney fees. 333 N.W.2d 857, 860 n.8 (Minn. 1983) (quoting Minn. Stat. § 117.75, subd. 2 (1982)). And *Green*'s repeating that "[h]ours that are not properly billed to one's *client* are also not properly billed to one's *adversary*" addressed concerns about windfalls to attorneys, not clients, and it did not comment on the propriety of a limit based on attorney-fee agreements. 826 N.W.2d at 538–39 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)). None of these cases addresses section 117.031(a) or comments on contingency-fee agreements.

II

MnDOT relatedly argues that, because attorney-fee awards should be limited by fee agreements under section 117.031(a), the district court's lodestar analysis concluding that an amount higher than the agreement was warranted was an abuse of its discretion. MnDOT accepts as appropriate the district court's finding that $325 was a reasonable hourly rate and its implicit finding that 194.5 hours was a reasonable amount of time for Hamlin's counsel's work on the case, resulting in its $63,228 award. MnDOT vaguely questions but does not directly challenge the findings. MnDOT instead merely characterizes the district court's award as an improper lodestar enhancement under *Krause*. 925 N.W.2d at 33 (explaining that after the court calculates the lodestar amount, "other considerations may lead the district court to enhance or decrease the lodestar amount" in a second step). The district court here did not purport to enhance the lodestar amount. It simply made a lodestar determination of reasonable attorney fees in a single step. Because MnDOT does not challenge the district court's assessment of any particular lodestar factor, MnDOT offers no specific ground for us to determine that the district court abused its discretion.

MnDOT appeared to challenge the reasonableness of the district court's hours determination during its oral argument to this court. But MnDOT's briefing essentially concedes that, except for its contention that a cap on reasonable fees should apply, the district court's $63,228 attorney-fee award was reasonable. We decline to address arguments raised for the first time in oral argument. *See Getz v. Peace*, 934 N.W.2d 347, 353 n.3 (Minn. 2019). Based on the specific challenge MnDOT raises and our decision that

a contingency-fee agreement does not restrict a lodestar analysis, we hold that the district court did not abuse its discretion in awarding the attorney fees.

DECISION

The district court did not abuse its discretion by applying the lodestar method to determine the reasonable amount of attorney fees under Minnesota Statutes section 117.031(a).

Affirmed.