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STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1362

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

vs.

Roger D. Krause, et al.,
Respondents Below,

Douglas Smith,
Respondent.

Filed May 14, 2018
Reversed and remanded
Ross, Judge

Steele County District Court
File No. 74-CV-08-2127

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

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Considered and decided by Worke, Presiding Judge; Peterson, Judge; and Ross, Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

In this attorney-fee appeal, a law firm representing Douglas Smith in his eminent-domain action worked only 82 hours spanning eight years, but their part-contingency, part-hourly-rate fees arrangement resulted in a total fee of about $168,000. The district court concluded that this full amount constitutes reasonable attorney fees, and it ordered the state to pay the fee under Minnesota Statutes section 117.031(a) (2016). Because the district court failed to begin its calculation using the presumptive "lodestar" amount of $34,133 (or some other lodestar amount), which is the product of the hours reasonably spent and the reasonable hourly rate, and because it did not sufficiently explain why adding $133,000 to that amount reflects a reasonable fee in this case, we reverse and remand for the district court to recalculate the award.

FACTS

The Minnesota Department of Transportation demanded 44 acres from Douglas Smith by eminent domain. The state offered Smith $361,200 as just compensation for the taking. Smith hired the Malkerson Gunn Martin law firm to negotiate a better result, and, after more than seven years, Smith settled for $1,081,000 for the taking. The eminent-domain statute, Minnesota Statutes section 117.031(a) (2016), authorizes the district court to order the state to pay reasonable attorney fees in this circumstance.

The law firm represented Smith under a hybrid attorney-fee rate that was part hourly and part contingency. The primary attorney agreed to work for half his typical hourly rate of $350 and would add a contingent fee of 16.5% of the total amount recovered exceeding

the state's offer. Based on the agreed-upon hourly rate, including slight increases in 2009 and 2010, and the final settlement of 299% of the state's offer, the firm submitted $168,009.12 in attorney fees.

Smith moved the district court for an attorney-fee award. The district court ordered the state to pay the full amount that the firm submitted.

The state appeals.

D E C I S I O N

The state argues that the district court misapplied the law when it determined what constitutes reasonable attorney fees. We review an award of attorney fees for an abuse of discretion. *Cty. of Dakota v. Cameron*, 839 N.W.2d 700, 711 (Minn. 2013). A district court abuses its discretion when it misapplies the law. *City of North Oaks v. Sarpal*, 797 N.W.2d 18, 24 (Minn. 2011). We apply that standard here.

Our review informs us that the district court misapplied the law. A person whose property is condemned through the state's exercise of eminent domain is entitled to reasonable attorney fees whenever the final settlement is more than 40% greater than the state's last written offer. Minn. Stat. § 117.031(a) (2016). The "lodestar" method governs the award of attorney fees under the statute. *Cameron*, 839 N.W.2d at 703.

The United States Supreme Court explained the starting point of the lodestar method this way:

> The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services.

Hensley v. Eckerhart, 461 U.S. 424, 433, 103 S. Ct. 1933, 1939 (1983). In each of its iterations in Minnesota, the lodestar method has followed this same threshold process of multiplying the number of hours reasonably expended by a reasonable hourly rate. *See Cameron*, 839 N.W.2d at 711; *Green v. BMW of N. Am., LLC*, 826 N.W.2d 530, 535 (Minn. 2013); *Milner v. Farmers Ins. Exch.*, 748 N.W.2d 608, 621 (Minn. 2008); *Anderson v. Hunter, Keith, Marshall & Co., Inc.*, 417 N.W.2d 619, 628 (Minn. 1988); *Specialized Tours, Inc. v. Hagen*, 392 N.W.2d 520, 542 (Minn. 1986). The lodestar provides only the presumptive reasonable-fee amount: "The product of reasonable hours times a reasonable rate does not end the inquiry." *Hensley*, 461 U.S. at 434, 103 S. Ct. at 1940. Other considerations may lead a district court to adjust the fee upward or downward. *Id*.

The district court here failed to begin with a traditional lodestar calculation. The record does not indicate that the district court determined and then multiplied a reasonable hourly rate by a reasonable number of hours expended to determine the presumptively reasonable fee. Instead of determining that lodestar amount and then considering whether to adjust it, the district court seems to have begun with the firm's submitted total and then cited reasons why that amount seemed reasonable. It pointed to the results obtained, the risk to the law firm, the years in negotiation, and the amount of communications during that time. We do not think this approach follows the required lodestar process.

Smith defends the district court's approach based on *Cameron*, which one might read as a variation from the typical lodestar approach. The *Cameron* court stated that the district court must perform the initial calculation and must consider "all relevant

circumstances" when evaluating the reasonableness of the hours expended by attorneys and their hourly rates. *Cameron*, 839 N.W.2d at 711. The district court "then evaluates the overall reasonableness of the award by considering" the relevant factors, seemingly for a second time. *Id*. Smith seizes on this language and implies that the district court need not conduct the initial calculation but may at once determine the lodestar amount and evaluate the reasonableness of adjusting beyond it.

We are confident that Smith reads too much into *Cameron*. Nothing in *Cameron* suggests that the supreme court intended to replace the settled lodestar approach that had been described in earlier cases. Indeed, *Cameron* indicates that the supreme court intends to follow the federal lodestar method, which it had described in prior cases, and to firmly adopt it. *See id.* (noting that the issue is "whether [the supreme court] should adopt the federal lodestar method" and describing that method by reference to other cases). And under that method, the results-obtained factor "should not be used *again* in determining whether a multiplier is warranted." *Milner*, 748 N.W.2d at 624 (emphasis added). This means that the results-obtained factor should not be considered a second time to justify an upward adjustment from the lodestar amount if it has already been considered to set the lodestar amount.

The United States Supreme Court foreshadowed *Milner*'s concern about applying a single factor at both the lodestar calculation and adjustment phases in *City of Burlington v. Dague*, 505 U.S. 557, 562–63, 112 S. Ct. 2638, 2641 (1992), and it prohibited the practice. To the extent some tension exists between *Milner* and *Cameron*, we read *Cameron* to allow for consideration of the relevant factors at either the initial lodestar-calculation stage or the

adjustment stage, *Cameron*, 839 N.W.2d at 711, and we read *Milner* to require that each factor be applied only once, either in the lodestar-calculation stage *or* in the adjustment stage. *Milner*, 748 N.W.2d at 624. The district court cannot rely on the same factor to justify the initial determination of the presumptive amount and also to justify an upward adjustment. And an upward adjustment from the lodestar amount is limited to cases of exceptional success. *Hensley*, 461 U.S. at 435, 103 S. Ct. at 1940.

The district court erred by failing to follow this two-step approach: first determining the hours reasonably expended multiplied by the reasonable hourly rate, and second analyzing whether some other factor or exceptional circumstance justifies an adjustment. Although Smith seems to have conceded that $34,133.75 was the reasonable value of the firm's time, the district court did not determine that this amount (or any other) was the presumptive reasonable fee. On remand, the district court must set the initial lodestar amount by considering all relevant circumstances to determine which hours were reasonably expended and what rate was reasonable. The district court should deviate from this lodestar, or guiding light, only if other circumstances compel a different course. That is, it should recognize the "strong presumption that the lodestar amount represents a reasonable fee" and that "an upward adjustment of the lodestar amount is warranted only in rare cases of 'exceptional success.'" *Milner*, 748 N.W.2d at 624 (quoting *Blum v. Stenson*, 465 U.S. 886, 897, 1045 S. Ct. 1541, 1543 (1984)).

We add that any upward adjustment from the lodestar amount requires sufficient findings to support it. "[A]ny upward adjustment must be supported by specific evidence in the record and detailed findings by the district court." *Milner*, 748 N.W.2d at 624. Here

the district court referred to the fact that the case spanned nearly eight years and involved much communication. But this averages only about 10 hours of work by the firm in each of those years, and that amount is presumably accounted for through an hourly fee reflected in a presumptive lodestar. Although the results obtained were substantial, the district court did not explain how the firm's efforts in obtaining the results were not already fully reflected in a properly calculated lodestar amount. And it did not explain whether the results were due to exceptional legal service as opposed to some other circumstance. The district court also referred to the risk to the firm as indicated by the (partial) contingency component, but it did so without considering the holding that an enhancement based on a contingency fee arrangement is not usually part of a lodestar calculation. *See Dague*, 505 U.S. at 567, 112 S. Ct. at 2643–44, *cited* in *Milner*, 748 N.W.2d at 621 n.9. The district court's findings do not sufficiently support an upward adjustment of more than five times the apparent lodestar amount.

We reverse the fee award of $168,000 and remand for the district court to perform the initial lodestar calculation in light of the relevant factors and to award that amount unless it makes detailed findings of other factors or exceptional circumstances that justify an adjustment.

Reversed and remanded.