

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN DEPARTMENT OF
TRANSPORTATION,

Plaintiff-Appellant,

v

KPS ENTERPRISES, INC.,

Defendant-Appellee.

UNPUBLISHED
February 2, 2001

No. 216285
Macomb Circuit Court
LC No. 91-000619-CC

Before: Talbot, P.J., and O'Connell and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order awarding defendant \$35,300 in expert witness fees. This case arises out of a condemnation action pursuant to the Uniform Condemnation Procedures Act (UCPA), MCL 213.51 *et seq.*; MSA 8.265(1) *et seq.* We affirm in part, reverse in part, and remand for further factual findings.

Plaintiff first argues that the trial court abused its discretion in determining that \$200.00 per hour was a reasonable fee for the services of defendant's expert, William Walsh. We disagree.

We review for an abuse of discretion a trial court's award of expert witness fees in a condemnation action. *Dep't of Transportation v Schultz*, 201 Mich App 605, 609; 506 NW2d 904 (1993). An abuse of discretion exists if an unprejudiced person, considering the facts on which the trial court acted, would find no justification or excuse for the ruling, *Auto Club Ins Ass'n v State Farm Ins*, 221 Mich App 154, 167; 561 NW2d 445 (1997), or the result is so violative of fact and logic that it evidences a perversity of will or the exercise of passion or bias, *Schoensee v Bennett*, 228 Mich App 305, 314-315; 577 NW2d 915 (1998).

The testimony presented at trial supported the court's decision to award this hourly rate. During the hearing, Walsh testified that he routinely charged \$200.00 per hour for his services. Plaintiff's witness, in contrast, opined that the fee was excessive. However, this witness also admitted that some appraisers, albeit a minority, charged \$200.00 per hour. Given that Walsh had forty-four years of experience as a real estate appraiser, taught preliminary and advanced appraising at two universities and a management school, and had been called in by roughly fifty municipalities (as well as plaintiff) to perform appraisals on a number of large condemnation

projects, we conclude that the trial court did not abuse its discretion in ruling that Walsh was one of the minority of appraisers worth \$200.00 per hour. Moreover, as the trial court noted, one of plaintiff's experts charged a similar amount for his services. Although this expert's credentials and appraisal methods were not entirely similar to defendant's, plaintiff's expert did bill himself at trial as an expert in the valuation of real property. Thus, we find no abuse of discretion with respect to this issue.

Plaintiff also challenges the trial court's decision to award the entire amount of Walsh's fees to defendant. After examining the evidence presented at the hearing below, we agree in part.

The relevant portion of MCL 213.66; MSA 8.265(16) provides:

(1) Except as provided in this section, an ordinary or expert witness in a proceeding under this act shall receive from the agency the reasonable fees and compensation provided by law for similar services in ordinary civil actions in circuit court, including the reasonable expenses for preparation and trial.

* * *

(5) Expert witness fees provided for in subsection (1) and this subsection shall be allowed with respect to an expert whose services were reasonably necessary to allow the owner to prepare for trial. For the purpose of subsection (1) and this subsection, for each element of compensation, each party is limited to 1 expert witness to testify on that element of compensation unless, upon showing of good cause, the court permits additional experts. The agency's liability for expert witness fees shall not be diminished or affected by the failure of the owner to call an expert as a witness if the failure is caused by settlement or other disposition of the case or issue with which the expert is concerned.

This Court has interpreted these sections as mandating an award of reasonable expert witness fees. *Schultz, supra* at 609; *Hartland Twp v Kucykowicz*, 189 Mich App 591, 599; 474 NW2d 306 (1991); *Macomb Co Rd Comm v Fisher*, 170 Mich App 697, 699-700; 428 NW2d 744 (1988). However, the burden of proving what constitutes a reasonable expert fee lies with the claimant. *In re Condemnation of Property*, 209 Mich App 336, 339; 530 NW2d 183 (1995); *Detroit v Lufran Co*, 159 Mich App 62, 68; 406 NW2d 235 (1987). In addition, an expert is not automatically entitled to compensation for all services rendered. *Hartland Twp, supra* at 599. Experts are properly compensated for court time and the time required to prepare for their testimony; however, any appraisal service that goes beyond the scope of the type of services that a person in that profession would normally render are not compensable. *Schultz, supra* at 609. As this Court stated in *Lufran Co*:

We believe that, read in the conjunctive, experts are properly compensated under MCL 213.66; MSA 8.265(16) for court time and the time required to prepare for their testimony as experts, i.e., as individuals whose specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue. MRE 702. See *State Highway Comm'r v Rowe*, 372 Mich 341, 343; 126 NW2d 702 (1964). Therefore, we do not regard conferences with counsel for

purposes such as educating counsel about expert appraisals, strategy sessions, and critical assessment of the opposing party's position to be properly compensable as expert witness fees. [*Lufran Co, supra* at 67.]

The trial court must provide specific findings of fact and provide sufficient reasons for its determinations regarding awarded fees in order to provide a basis for review. Its failure to do so will result in a remand for further explanation. *Hartland Township, supra* at 599; *Wayne Co Bd of Rd Comm'rs v GLS Leasco, Inc*, 394 Mich 126, 142-143; 229 NW2d 797 (1975).

After reviewing the evidence presented at trial, we conclude that the court below erred in awarding the entire amount of Walsh's charged services. First, Walsh failed to explain what services he actually rendered on September 25 and 26, 1993, for which he billed seven hours. Second, other entries strongly suggest that he may have provided non-compensable "strategy" services on a number of occasions during meetings with trial counsel.

In sum, the trial court at least partially erred in awarding Walsh's fees. Given the complexity of the situation, particularly defendant's need to refute the evidence plaintiff presented at trial, we do not disagree with the trial court that many of Walsh's services were reasonably necessary to allow defendant to properly prepare for trial. In addition, some of the billing was detailed enough to support a decision that the expert's services were properly compensable under *Lufran Co, supra*. However, that the trial court gave little analysis regarding this issue, as well as the possible errors with respect to at least a portion of the award, lead us to conclude that the trial court abused its discretion in awarding defendant the entire amount of Walsh's witness fees. Therefore, we reverse the decision of the trial court and remand so that the court may provide a detailed analysis in a written opinion.

Affirmed in part, reversed in part, and remanded for further consideration consistent with this opinion. The trial court is directed to hear and decide the matter and make its findings in a written opinion within sixty days of the date of this opinion. We retain jurisdiction.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell
/s/ Jessica R. Cooper