

Attorney's Fees


4/16 (1985)

memo re: recovery of expert fees in the
Urban case

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pi. #4050

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MEMO TO: Barbara Williams
FROM: Wilbert LeMelle and Lee Kurman
RE: Recovery of expert fees in the Urban League case
DATE: April 16, 1985

STATEMENT OF ASSIGNMENT: Research the case law precedents in New Jersey to determine the likelihood of recovering expert fees in the Urban League case.

ISSUE: Are expert fees recoverable where not expressly provided for by statute?

CONCLUSION: No.

DISCUSSION: The leading case on the subject is Housing Authority of Long Branch v. Valentino, 47 N.J. 265 (1966). In Long Branch, the defendants were awarded \$83,000 as the value of property taken by the plaintiff city of Long Branch in a condemnation proceeding. Some time later, the defendants made two motions for the allowance of interest on the amount awarded and for counsel fees as well as fees paid to their experts in the condemnation trial. Interest was allowed, but counsel and expert fees were denied.

On appeal, the Supreme Court of New Jersey unanimously affirmed the lower court's determination of interest, and held further that:

With respect to the order denying counsel and expert witness fees, again we find no error. There is no provision in the statute for them. And the application for counsel fees is not within the scope of our existing rule. See R.R. 4:55-7 [4:42-9]. Id. at 268.

Expert fees were awarded in one subsequent case in spite of the absence of any statutory basis providing for them. In New Jersey Turnpike Authority v. Bayonne Barrel & Drum Co., 110 N.J.Super. 506 (Law Div. 1970), the Superior Court, Law Division, held that legal fees and expert witness fees incurred by the defendant condemnee in an eminent domain proceeding were recoverable at the discretion of the trial court. The court reasoned that the award of such fees was necessary to insure just compensation of the defendant who was forced into costly litigation by the plaintiff condemnor.

The Turnpike Authority case was expressly overruled by State v. Mandis, 119 N.J.Super. 59 (App. Div. 1972) only two years later. In Mandis, the Superior Court, Appellate Division, reversed the judgment of the Law Division awarding legal and expert witness fees to the defendant in a condemnation proceeding. The trial court had based its award of fees on the precedent of Turnpike Authority, but the appellate court found the Long Branch case to be dispositive. The Appellate Division in Mandis, after quoting from Long Branch (see page 1 of this memo), held that the defendant was not entitled to recover legal and expert witness fees, and added that:

In so far as N.J. Tpk. Authority v. Bayonne Barrel & Drum Co., 110 N.J.Super. 506 (Law Div. 1970), holds to the contrary, it is disapproved. See Mandis, p. 61.

For other marginally related cases, see also State v. Lippincott, 124 N.J.Super. 498 (Mun. Ct. 1973) (expert witness assigned to indigent criminal defendant at public expense when necessary to adequately protect rights) and Fahey v. Carty, 102 F.R.D. 751 (D.N.J. 1983) (expert fees awarded in personal

injury action at the discretion of the trial court when expert testimony is indispensable to determination of the case, based on F.R.Civ.P. 54(d)).

Upon review of the case law precedents in New Jersey, it seems clear that expert fees are not recoverable where not expressly provided for by statute. It is therefore extremely unlikely that the Urban League will be able to recover fees paid to experts in the present case.

LMK W/L